

## New institutionalism and policy change in the European Union

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### **Abstract:**

This essay examines the role of institutions in policy change in the European Union. The timing of policy change is attributed to the 'pull' of increasing supranational competence and the 'push' of converging practices in the international political economy of transport. The nature of change attributed to three factors: the existence of both state and supranational institutional environments, the structure of the supranational institutions (privileging certain actors and ideas over others), and the agency role played by supranational institutions. The essay applies neo-institutional theories to this sector, finding that historical/sociological institutionalism is best suited to explaining change, though elements of rational choice institutionalism are also important.

The purpose of this essay is to explore the role of institutions in European Union (EU) policy change in the 1980s.<sup>1</sup> It evaluates the way state and European institutions determined both the timing and the nature of policy change in the European shipping industry.<sup>2</sup> The debate over the role transport plays in social and regional cohesion, the linking of policies and practice in member states through the single market, the externalities of environmental pollution and congestion associated with transport growth, have all raised the profile of this sector and added urgency to the search for regional policies. Yet shipping has long been a jealously protected sector for many European states, both for economic and security reasons, and so was insulated from common action for many years. However, from the mid-1980s a number of factors conspired to lift shipping from neglect and nationalism, resulting ultimately in a common shipping policy (CSP) in 1986.

Theorists examining policy and institutional change in Europe have tended to adopt either a multi-level governance approach or a liberal intergovernmental approach (among others, see Marks et al, 1996; Moravcsik, 1993; for a critique of both, see Pierson, 1996). Apart from the fact that they stress different actors, they also have a different view of change. While multi-level governance is more realistic in incorporating actors from different levels in the EU policymaking process, it offers no prediction about how change comes about. It is little more than a description of a decisionmaking system, and one that could apply to many individual countries as well as the EU. As a static model, it lacks a means to predict change.

Liberal intergovernmentalism, on the other hand, suffers from the disadvantage of relying much too heavily on state choice in the policymaking process, thereby ignoring the important supranational and subnational actors that most theorists believe contribute to outcomes in ways other than through state gatekeepers. It ignores or underplays the crucial agency role of the supranational institutions and the structural bias of European institutional design, which leads to a much higher likelihood of market decisions being adopted than others. However,

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<sup>1</sup>Following common practice, the term European Union is used throughout, though the policy area is contained within the European Community pillar.

<sup>2</sup>In the interests of brevity this paper omits the empirical analysis, the important elements of which may be found in Aspinwall (1995).

liberal intergovernmentalism has the advantage of a firm dependent variable (a policy or treaty change), and specifies whose preferences and strategic actions are the important ones.

In addition, both approaches suffer from the failure to incorporate crucial differences between national institutions -- such as the interaction between the civil service and interest groups -- that circumscribe the relationship national actors have with supranational actors. Multilevel governance simply ascribes certain functions to certain levels, so that 'authority and policymaking influence are shared across multiple levels of government -- subnational, national, and supranational' (Marks et al, 1996: 342). There is also an unspoken assumption that supranational, national, and subnational functions are distributed equally among member states, which may be the case in law, but it is hardly the case in practice. Liberal intergovernmentalism accords an important role to domestic interest aggregation, but again fails to differentiate between national systems. This leads to the conclusion that what matters is the distribution of preferences and power among states (Moravcsik, 1993). Consequently it underplays the important issues of how European institutions privilege certain ideas and actors over others; how some non-state actors are empowered by virtue of their national systems to take a stronger role in European-level advocacy than other actors; and how the activities of the European institutions may alter what is possible in terms of policy change.

In an effort to redress these shortcomings I adopt a neo-institutionalist framework to examine governance change. My analysis is based around the two putative variants of neo-institutionalism: rational choice and historical/sociological (Shepsle, 1989; Moe, 1991; Bulmer, 1994; Hall and Taylor provide an excellent review of the field, which distinguishes between four variants -- rational choice, historical, sociological and economic). I suggest that the *timing* of policy change can be attributed to two factors. First, until the 1980s insufficient institutional "pull" existed at the EU level -- in other words the authority contained in the EU institutions was insufficient to overcome the many obstacles to collective action. Considering that transport policy was one of only two "constitutionalized" policies (with agriculture) in the Treaty of Rome, it may seem odd to characterize the failure to agree a common policy as one of insufficient institutional authority. However, until a strengthened decisionmaking

procedure (qualified majority voting) was adopted in combination with the move toward the single market, member state differences could not be overcome.

Second (and closely related), until the 1980s there was insufficient convergence among actors and member states to "push" them toward common solutions. Different national attitudes to transport were clearly evident, based upon historically distinct ideologies and values -- grouped roughly around a social cohesion pole and a liberal pole. The lack of agreement among member states and market actors on these basic ideologies and values continued until a combination of ideological change and a restructuring of the international economy began to produce a new approach to transport. The liberalism v. social solidarity dichotomy was resolved in favor of the former, due in part to the deregulatory agenda originating in the US and UK. But in addition, new methods of production and retailing, which rely on cheap transport, changed the preferences of industrial transport consumers and prompted creation of EU level pressure groups to advocate change. Within this context, actors began to rationally 'choose' the same (liberal) policies. This occurred at the same time that a number of EU institutional developments -- European Court of Justice (ECJ) cases, the Single Market program, the adoption of qualified majority voting, and European Commission and Parliament advocacy -- increased the "pull" of Brussels. The "output failure" that characterized transport policy in the 1960s, according to Lindberg and Scheingold (1970), had finally given way to progress.

In short, this approach argues that the *timing* of governance change in shipping was due to the push of the international political economy and the pull of European institutions. The pushing and pulling metaphor takes us a long way toward an explanation of why policy change took place *when* it did, but it does not explain the *nature* of that change. The nature of policy change may be attributed to three specific features of institutions in Europe and the agents who inhabit them -- the nested character of institutions in the EU; the structural bias of supranational institutions; and the agency role of supranational actors.

Nested institutions are important because the decisionmaking arrangements within the supranational institutions provide opportunities for the resolution of some, but not all conflict.

Many policy areas remain outside the remit of the EU. In addition, differential state-society relations between member states ensures different responses to the challenge of European integration. Where the state reaches deep into society, owning monopoly enterprises and reproducing hierarchical relationships, the reaction to change (or the possibility of change) is likely to be far different than for states ordered in a more 'horizontal' manner. State ownership of monopolies and protection of national firms tends to fossilize national policy communities of bureaucrats, producers, and national parliaments in such a way that they are resistant to change from both inside the state (consumer groups, new producers, and "generalist" ministries) and outside the state (foreign producers, the EU, and other international organizations). Hierarchical states are more likely to view issues as in the national interest, and so will be more resistant to negative -- or liberalizing -- integration. These policy patterns are less visible in the states characterized by competition, openness, and private ownership where actors are more likely to be engaged in the transport integration process, and have often developed closer links to foreign producers and consumers.

In addition to the nested character of institutions in the EU, the structural bias of supranational institutions is important. Even where the EU has clear competence, the structure of its institutions privileges certain *types* of regulatory policy over others. The existence of producer (DGVII) and consumer (DGIV) directorates with shared competence over shipping policy marginalizes other interests. Neither environmental nor labor advocacy played a large part in the creation of a CSP. The dominant mode of policymaking has been negative, reflecting both the ascendant normative bias of liberalism and the structure of EU institutions, which privileged negative over positive integration (for a discussion of how the decisionmaking apparatus encouraged negative integration, see Scharpf, 1988).

Finally, the agency role of EU actors is crucial to an understanding of the institutional basis of policymaking (among others, see Cram, 1997; Pierson, 1996; Burley and Mattli, 1993). The European Commission and the European Court of Justice (ECJ) have actively constructed a European competence in important ways, through rulings, proposals, and alliances with actors at various levels across the EU. In the case of the Commission, this activity is ongoing through an identification of new issues, proposed solutions, and establishment of alliances.

Throughout its work, the Commission strives to legitimize itself and create a demand for European level public goods.

### **Institutions and policy change**

Neo-institutional theories provide a reasonable first cut on both the timing and nature of policy change in shipping. The study of institutions has gained renewed credibility in recent years, and in this research agenda they are seen as structuring political actions and outcomes, rather than simply mirroring social activity and rational competition among disaggregated units (March and Olsen; Thelen and Steinmo; Lindberg and Campbell). The most basic premise of neo-institutionalist analysis is that the behavior of units within social systems is affected by the rules, norms, and procedures of institutions. They structure outcomes by privileging certain actors and ideas over others. They thereby contain the bias individual agents have built into their society over time; institutions are repositories for the cultural gene pool.

In the European context, as elsewhere, the hypothesis is that institutions make politics. As March and Olsen explain, the "establishment of public policies, or competition among bureaucrats or legislators, activates and organizes otherwise quiescent identities and social cleavages" (1989: 18). The structures of supranational institutions -- particularly the decisionmaking arena and the ECJ -- help to shape policy change, mediate between integrative actors, and create conditions in which incentives for collective action are changed. Institutions alter the menu of possible solutions, act as conduits for change, and to adapt the imagery of Robert Putnam (1993), create a horizontal civil society at the EU level in place of the hierarchy of inter-state bargaining.

But this raises a number of questions. Are institutions passive and neutral structures within which social groups interact on the basis of equality, or do they privilege certain actors and ideas over others? And do they through their own agency contribute to certain outcomes over time? How do the various cultures and institutional environments of member states influence the preferences and behavior of particular actors? Are their preferences "given" --

exogenous to the integration process -- or are they endogenous to the process and subject to modification over time? Do actors define their interests and act on them based upon national and international political-economic conditions, or have the European institutions created a new logic and a new "identity"?

Rational choice institutionalism sees institutions as providing a context within which individual decisions are set. They are, to quote Shepsle (1989: 135), "equilibrium theories. They seek to explain characteristics of social outcomes on the basis not only of agent preferences and optimizing behavior, but also on the basis of institutional features." Institutions provide a set of formal rules and procedures, or informal practices, that structure relationships. North (1981: 12) voiced this when he said that "something more than an individualistic calculus of cost/benefit is needed in order to account for change and stability." The missing element in neoclassical economics was institutions, which "provide the framework within which human beings interact. They establish the cooperative and competitive relationships which constitute a society ..." (North, 1981: 201).

The main contribution of institutions from the rational choice perspective is as a means of overcoming certain transaction costs to market-oriented conduct between individuals (Williamson, 1985). Institutions (including legal norms, but also broadly encompassing such forms of organization as firms) can provide oversight and enforcement, information, and other public goods that would not be provided in a "market." Internationally, institutions are seen to fill this role on behalf of their state principals. The rational choice approach assumes that actors behave in a strategic manner, acting upon exogenously-given preferences and pursuing the most desired outcome. States desiring gains from cooperation, therefore, create and maintain institutions to lower the transaction costs associated with inter-state activity, such as incomplete contracting, imperfect information, and the inability to monitor and enforce agreements. Institutions are created by bargaining, and represent the most efficient possible solutions to functional problems (see for example, Keohane, 1984).

Within the EU, the rational choice approach has its exemplar in the theory of the "optimal public goods area" (Mattli, 1996). In this theory, technological change causes a change in

state preferences, and a redefinition of the size of the area of governance. As Mattli (1996, Chapter 3, pp. 3-4) explains:

"New transportation and communication technologies 'shrink' distances and thus also the size of the state. In other words, new technologies increase the radius of an area over which effective governmental organization is possible. A government may adjust by simply servicing the larger area. But such jurisdictional expansion is not easily possible on a continent already crowded with countries. Instead, the government will adjust by pooling resources with neighboring states to jointly produce public goods that exhibit economies of scale."

Similar reasoning has been applied to the major intergovernmental agreements between EU member states, which are seen as the result of the calculated choice of member states, particularly the large ones (Moravcsik, 1991; Garrett, 1992; Keohane and Hoffmann, 1991; for a rational choice perspective on "lower politics" issues, see H  ritier, 1995). In these perspectives, institutions are designed to deal with the classic problems of international cooperation. As international and domestic environmental conditions change, member state preferences and strategies change as well. The metaphor is one of two-level games (Putnam, 1988), in which states parlay domestic demands into international outcomes. Thus, the interpretation often given to the Single European Act is that it was a response on the part of member state governments and big business to a perceived collective decline in European competitive advantage (Moravcsik, 1991; Sandholtz and Zysman, 1989; Keohane and Hoffmann, 1991).

Most Europeanists operating from the rationalist perspective would not deny that institutions provide a context within which decisions are made. Indeed, those who have examined change in the EU and labelled it rational often specifically highlight the cultural or social contexts of decisions. Thus, Schneider (forthcoming: 4) recognizes "the emotional and psychological sources of human behaviour." Moreover, H  ritier (1995, 281) acknowledges the utility of "a symbolic-interactionist approach, emphasizing the role of social rules and cultural traditions" in explaining policy outcomes. Nonetheless, these two scholars are firmly in the rationalist camp and their primary emphasis is on actor intentionality.



The historical institutionalist approach takes a different cut on institutional change in the EU. The focus here is on the ways prior institutional commitments condition further action, limit the scope of what is possible, and cause agents to redefine their interests (Bulmer, 1994; Pierson, 1996). Institutional and policy change become "path dependent" as actors define their preferences endogenously, based upon what has occurred in the past. History creates context, which shapes choice. In social policy, as Pierson (1996: 156) points out, member state power is increasingly constrained by a 'partial but nonetheless significant development of European-level social policy'. Within this tradition, scholars have also pointed out how the institutions have taken advantage of "slack" to construct themselves (Cram, 1997).

Significantly, this theoretical perspective holds within member states as well, which confounds the determinism or teleology of functional approaches (compare Thelen and Steinmo, 1992: 11 to Campbell and Lindberg, 1991: 328). As numerous scholars have shown, European states possess unique traditions which color their responses to external change in important ways (see for example Hall, 1986; Schmidt, 1995; Katzenstein, 1985; also, for intra-Italian differences, see Putnam, 1993). The separate state-society traditions, decisionmaking processes, and modes of capitalism, offer a rich variety of potential responses to EU demands for integration. In an environment of nested institutions we must look both at the EU level and within the states.

This (vertical and horizontal) proliferation of polities throws up serious obstacles to institutional accounts of change in the EU. One must look to the insights of both historical and sociological institutionalism. Both Hall and Taylor (1994) and Finnemore (1996) distinguish between the structural and constraining features of historical institutionalism and the cognitive and culturally embedded features of sociological institutionalism. By carefully avoiding discussion of culture in his article on historical institutionalism and European integration, Pierson (1996) implicitly agrees with this distinction.

I draw from both the historical and sociological traditions to explain EU policy change, but a clear delineation between them is difficult to verify through empirical analysis. The reason is that while institutions (such as the state and its bureaucracy) are endorsed and legitimized by

cultural attributes, over time these institutions help to reinforce culture and condition responses to potential and real change. The interaction is two-way -- constraints and cognitive processes are intertwined. This becomes readily apparent as one looks at how member states in the EU address institutional and policy change at the supranational level. The European institutions create a certain 'path dependency' which constrains member state choice (Pierson, 1996; Bulmer, 1994). But equally important, distinct member state institutions, anchored in bedrock cultural traits, mean that actors will interpret and react to policy change in very different ways.<sup>3</sup> EU policies are as much a compromise between different state cultures as between actors' interests. Over time the mutual impact of culture and historical institutional evolution are impossible to separate.

Thus, the important differences between the rational and historical approaches to European integration are three-fold. First, the rationalists tend to take the member states as the most important actors, since they make decisions in the Council of Ministers and European Council (Scharpf, 1988; Schneider, 1996; Moravcsik, 1993; Garrett, 1992). It is the preferences of member states and their strategic choices that determine outcomes within a context of institutional rules. It is also the preferences and strategies of states that determine how institutions are changed.

In the historical institutionalist account, by contrast, it is possible to accommodate a greater range of actors in the European decisionmaking process, and in this sense it bears a strong resemblance to neofunctionalism (Haas, 1958). Substate private interests acting transnationally, for example, help to set the agenda for decisions that are made by the Council (while not writing in a specifically historical institutionalist vein, Sandholtz and Zysman, 1989, and the contributors to Greenwood and Aspinwall, 1997, among others, have shown how substate actors participate in the decisionmaking process at the supranational level). In doing so, they narrow the range of viable options for member states. Non-state actors helped to shape the form and content of the single market, and in turn the single market helped to shape

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<sup>3</sup> As Finnemore (1996) points out, one of the problems with the sociological institutionalist literature is its tendency to focus on the homogenizing effects of an emergent 'world culture'. However, as studies of European political economy have noted, the differences between state traditions in Europe is very important in determining their response to change.

thinking on monetary, environmental, and social policies. However, not all non-state actors have the same influence or interest in the integration process. Very wide differences exist between actors from different member states, based upon the historical development of relations between institutions of authority and civil society (Aspinwall, 1997).

The second difference is over the relative importance of institutions at different levels. The rationalist account sees the EU as the relevant institutional environment, created by member states in a moment of clear thinking. The European institutions were designed to overcome the transaction costs of international cooperation; less prosaically, they were supposed to ensure peace. They are subject to modification if they are not working properly, and the rules that are decided within the EU institutional environment are designed to maximize the welfare of member states. In this paradigm there is little scope for agency slack or discretion; member state principals retain control over institutional agents. Moreover, states are game-players, parlaying the interests of their domestic constituencies into international action. These domestic environments are treated in a static and, for the most part, monolithic manner (an exception to the latter is Huelshoff). Governmental chief executives act as the principal conduit between national interests and the supranational level (Moravcsik, 1993). Any difference that may exist between states based upon their state-society relations or cultural bias is built into the domestic preference formation stage of this paradigm.

In the historical account, the EU is also an institutional environment. However, this theory is potentially more explicit about the way member states' preferences are conditioned and shaped both by non-state actors (regions, interest groups, Eurocrats, and others), and also by what they have already agreed to within Europe. As Pierson (1996) has argued, gaps emerge in member state control over institutional evolution, and these gaps are extremely difficult to close. These come about because of the autonomy of supranational institutions, the short time horizon of member state political actors, the unintended consequences of decisions, and changes in member state preferences.

Perhaps most importantly, the member states themselves are not just actors but also separate institutional contexts, with long histories and particular modes of state-society relations. For

example, the similarities in corporatist arrangements among small European states distinguished their responses to economic change from those of the large industrial states (Katzenstein, 1985). Research has also pointed to the similarities among other groups of states, particularly the southern EU member states (Kosmidis, 1996; Josselin, 1996; Hall, 1986). The nature of domestic institutional arrangements has an important impact upon how states respond to a variety of external challenges, including demands for integration.

The third difference is that rationalists and historicists tend to stress different decision events and processes (Bulmer, 1994). Rationalists usually examine the commanding heights of European summitry, especially the changes to treaties. The overriding importance of executive decisionmakers at these moments is an implicit starting point for analysis, which then works backward to determine how they sorted demands domestically and planned their bargaining strategies internationally. By contrast, the historical approach tends to stress the more numerous, more workaday decisions that are made at a lower level. These decisions are made in informal networks by pressure groups, national bureaucrats, and EU officials, and the accumulation of these decisions ultimately constrains government executives.

A number of efforts have been made to synthesize or reconcile these approaches (Norgaard; Ostrom; Hall and Taylor). However, both have important contributions to make to our thinking on European integration, and remain fundamentally irreconcilable because of their different starting points and assumptions. This study will show that both the rational choice and the historical/sociological approaches yield insights into the development of the CSP. The changing political economy confronted by European industry in the 1980s (described briefly in the next section) had important ramifications for competitiveness. For many market actors and states the 'rational choice' was to create a regional market and regional public goods where these had been state-defined before. Nonetheless, it is the cultural, economic, and political differences between member states and market actors that determined how they responded to these changes and how the final policy agreement came about. Moreover, the structure and role of the European institutions had an important impact on the shape of the agreement. These crucial nuances are captured in a much more satisfactory manner by historical and sociological institutionalism.

## **The timing and nature of governance change.**

Given that a common transport policy was stipulated by the Treaty of Rome, why did it take nearly thirty years for something resembling a CSP to appear? Furthermore, why did it take the shape it did, and how can neo-institutional theories help us decipher this change? Earlier I suggested that the timing of change was caused by the increased "pull" of institutional authority at the supranational level, and the increased "push" of convergence in the political economy of transport, both within states and more widely. The nature of this shift was determined by the nested character of European institutions, the particular structure of the supranational institutions, and their agency role.

### **1. The timing of change.**

The decisions of the ECJ, the single market programme, and the new voting rules all created a 'pull', increasing the incentives and opportunities for collective action. These seemingly minor changes to the institutions provoked a logic that culminated in the liberalization of shipping markets, a decision that many countries, particularly the Mediterranean ones, would not have made independently of this logic. The Court of Justice, in two decisions, demanded a common transport policy from the Council and removed shipping from the *lex specialis* exceptionalism in the transport title. While it is true that the Court was established by the member states in order to reduce the transaction costs of agreeing to common rules (Garrett), it would be an understatement to say that many member states did not welcome these decisions. The concessions extracted by protectionist states in agreeing to liberalization, the backsliding on commitments, the incomplete implementation and enforcement, all bear witness to their hostility to liberalization. As Krasner has pointed out, initial choices cannot be taken back easily; these decisions tend to "canalize future developments" and limit the range of options available to decisionmakers (1984: 240).

The single market initiative was the means by which a common shipping policy would be formed -- shipping policy (and transport more generally) came into being on the coattails of

the single market and decisionmaking reform. A rational commitment by member states to establish common institutions and a single market brought European-level public transport goods into being, a development that some of the member states would clearly have opposed given an ability to rationally act on exogenous preferences outside this new context. They did extract what concessions they could, but their options were limited. Indeed, the preservation of important elements of national interest through safeguard clauses, long phase-in times, and incomplete enforcement shows that member state prerogatives did matter. Nevertheless, on the matter of shipping policy, the striking conclusion is that the supranational institutions had escaped the narrow confines of traditional agency autonomy and were exercising a degree of discretion that many member states found excessive. This is consistent with what historical institutionalism leads us to believe.

Although increased institutional authority may have provided scope for policy change in shipping, convergence in the political economy of transport changed the calculus among a sufficient number of actors in favor of collective action. Specifically, there was growing agreement among many (but not all) actors that liberal transport systems were preferable to protected systems serving social goals. This was partly a response to the growing acceptance of liberal ideas, and partly a means of making European manufacturers more competitive. Moreover, pressure existed from inside and outside the EU to counter third unfair practices by third countries.

Ideological and global economic shift was manifested in transport through deregulation and privatization, which spread from the US and UK to other parts of Europe. The dissemination of liberal ideas, and their adoption throughout the EU, privileged certain options over others. In addition, growing factor-based foreign direct investment, trade, and new methods of production and retailing put increased emphasis on transport and caused a partial globalization of west European economies (Schmidt, 1995). This produced pressure to open transport regimes to competition, reduce or eliminate cartels, and offer greater choice. Both public and private actors began to see competitive challenges and opportunities in the same light as industrial competitiveness, disinvestment, trade, and similar issues scaled the ladder of general concern. The growing voice of transport consumers and the increasing attention paid

to the anti-competitive impact of shipping cartels bear witness to this change. This 'push' conforms most closely to the rationalist account of institutional change; it puts emphasis on actors' interpretations of external events and shows how they contributed to policy change.

Thus, the fundamental and long-lasting tension underlying state traditions in transport in western Europe -- the tension between consumerism and choice on the one hand and cohesion on the other -- began to break down as the latter lost its sense of legitimacy. Under these circumstances, the "beggar-thy-neighbor" approach of separate national policies created an EU-wide void in that public goods at the regional level were undermined by national industrial protection. Apart from threatening to scuttle the single market, this was also a suboptimal welfare outcome, and the growing recognition of this provided increased incentives for EU-level collective action on shipping regulation.

This convergence in thinking extends beyond simply the shipping sector -- we see it in both functional and geographic actors. The "push" of convergence helps explain why the large member states decided in the 1980s to support the Single European Act (Keohane and Hoffmann, 1991; Moravcsik, 1991; Garrett, 1992). Moreover, it is now widely accepted that converging views among economic actors, particularly large firms faced with declining competitiveness vis-a-vis American and Japanese firms, led to a concerted effort to promote and guide the single market initiative (Sandholtz and Zysman, 1989; Cowles, 1995).

## 2. The nature of change.

To fully understand the nature of governance transformation in this sector we need to dig a little deeper into the special features of the EU and member state institutions. In particular, three institutional factors are crucial to an understanding of the development of the common shipping policy. First, the structure of the EU institutions privileged certain actors over others, and this contributed to the negative integration bias. Second, the "nested institutional environment" of the EU and its member states shaped the formation of preferences and strategies by actors in a way that conditioned them to seeing a CSP as a viable strategy.

These first two factors are familiar from Hall's (1986) work on state economic institutions in

Britain and France. Finally, the third factor is the agency role of the EU institutions themselves, who over a period of time are actively creating the conditions suitable for an increased level of competence for the EU. Some work has been done on the agency role of the Commission and Court (Cram; Burley and Mattli; on the role of agency in governance transformation, see Campbell and Lindberg, 1991: 327), and the perspective adopted here gives strong emphasis to these agents. These institutional factors were the context, or filter, through which actors responded to specific economic and political changes -- the push and pull -- in the shipping sector.

*a. The European institutions as structurally-biased fora.*

One way in which the institutional character of Europe shapes the evolution of shipping governance is through the structure of the EU institutions. Obviously, decisions are made in the context of these institutions, and it is instructive to examine the ways they privilege certain actors and ideas over others. The fact that the transport and competition directorates had the principal influence on the drafting of shipping legislation was extremely important to its outcome. The constant involvement of these two directorates in both the drafting and oversight of transport creates a system in which the principal conflict is between shipowners and consumers. Other actors remain outside the privileged inner circle, including environmentalists and labor. Moreover, national security (traditionally an important rationale for fleet creation and protection) is not a legitimate subject for the supranational institutions. International regimes, such as the IMO and ILO, also remove some issues from potential EU competence, including environmental and safety matters.

However, despite the producer-consumer bias to the conflict, these interests were not treated identically in the negotiations. Although both DGVII and DGIV (the former oriented toward carriers, the latter toward consumers) had a hand in formulating the proposal on competition, it was DGVII that initially drafted it, a fact which many consumers believe led to an inappropriate producer bias that was subsequently impossible to reverse. Likewise, the fact that it was transport ministers who dealt with this issue in the Council of Ministers certainly lent weight to the carrier viewpoint at the expense of shippers (this was repeatedly



emphasized in interviews with officials in the EC Commission, national transport ministries, and interest groups; see Aspinwall, 1995). British, German, and Dutch user associations requested assistance from ministry officials of export and economic affairs but were rebuffed, because officials were unfamiliar with transport affairs and believed transport to be too small a percentage of landed cost to be concerned about it.

Thus, institutional design has vitally important consequences for the later distribution of power among actors and their formation of preferences (Hall and Taylor, 1994: 3). The EU's institutional structure ensured that the integration process in shipping followed a particular path, conditioned and determined in part by the choices made in institutional design. Competition and market opening were the legitimate issues, and the 10 year history since the establishment of common rules bears this out. Not only are non-market issues off the agenda, but consumers and carriers are the privileged actors in the system.

The administration of maritime competition policy is an example of how decisions are structured by institutions, and how these decisions then limit future possibilities. Consumer and shipowner groups presently hash out alternative views in the competing directorates in the Commission. Member states remain outside this process. The directorates have each developed relations with their natural constituencies, and though they share authority over maritime competition, DGIV has greater power than DGVII by virtue of its factfinding powers and its lead in dealing with specific cases. DGIV's lead in enforcing competition and DGVII's lead in drafting the regulation helps explain the difficulty in settling upon a pattern of administration. DGIV and consumers would like to see it become less permissive toward cartels; carriers (and to a lesser extent DGVII) are concerned about the excessively dogmatic anti-cartel attitude of DGIV.

*b. Nested institutions*

Nested institutions affect outcomes because only some issues are ripe for resolution at the EU level. As I have stated, global institutions have legitimacy as well, and this robs the EU of potential authority. The IMO and ILO have authority over important aspects of maritime

environmental and safety policy. Clearly one could argue that the reason these issues have not been handed to the EU level is that the actors involved in such a decision have not rationally calculated that such a transfer is appropriate. Equally, it is possible to argue that the historical evolution of institutional competence over issues by global regimes (or states) predates the formation of the EU by (in some cases) a very long time, and they are thus embedded in a particular context which defies change, regardless of the "appropriateness" of such change.

There is a second way in which the nested nature of institutions affects outcomes -- namely the different cultural contexts of member states. Northern states, with privately-owned shipping fleets, embraced liberalization of shipping markets from the very beginning. On the other hand, Mediterranean shipping industries began as the most protected, the most state-owned, and the least amenable to supranational action. Mediterranean states argued for harmonization in advance of liberalization in order to cushion the impact of free market policies. They were unsuccessful in their calls for harmonization, but the experience since 1986 shows there has been considerable reluctance among southern member states to fully embrace the spirit of the internal market opening regulation by abolishing all cargo reservation policies. The Commission has devoted some attention to the laggard member states in an effort to get them to abide by their commitments (Commission, 1990; Commission, 1992c).

A particularly blatant case of post hoc protectionism involved the plans of a UK ferry operator, Cenargo, to enter the Spanish-Moroccan trade in early 1993. Spain opposed the planned service, and cited a 1979 agreement apportioning the ferry trade between Spain and Morocco. It claimed that some of the ports Cenargo planned to use were not designated ports of entry, and that the Spanish Parliament had not amended the bilateral agreement with Morocco. The UK government position was that internal market liberalization required such bilateral agreements to be phased out or adjusted to allow other EC member states' companies access to the trades.

Spain was concerned that the economy of the Spanish enclave of Melilla, next to Nador in Morocco, would suffer as a result of diverted traffic. In addition, Transmediterranea, the

Spanish state-owned ferry, was in the process of being sold to Banco Central Hispano, and Cenargo's planned service undermined the sale. Spain initially forced Cenargo to change its plans and cancel the service, although in September 1994 (under pressure from both the UK and the Commission) it backed down and opened the route.

This uneven acceptance of policy change is also reflected in differences between national shipowner groups. Among carriers the key interests came from the UK, Denmark, Germany, the Netherlands, and Greece (on the liberal side) and France, Italy, and Spain (on the protectionist side). In addition, crucial differences took shape between national associations, in which some emerged as major players within the peak organization (the UK, Greece, and France) and others remained sidelined. Those groups on the sidelines were either small and weak or were accustomed to resolving problems internally. The relationship between many shipping companies and national bureaucracies was underpinned by state ownership or subvention, and was often so close that the companies were essentially welded to the state. Consequently, many of them had little international experience and had little involvement in peak level deliberations.

Consumer advocacy also reflects these national differences in institutions and culture. Southern user associations have been less active at the European level because of state involvement in the maritime industry, and a lack of effective leadership (Baasch, 1994; Cornede, 1994; Faull, 1994), despite the fact that, arguably, the liberalizing changes in train would benefit them more than the northern states. Indeed, from a rational point of view it is rather surprising that southern consumer associations were so quiet, given the potential welfare gains to be had from liberalization. The reason for their weak voice was that they were undermined by the embedded historical relationship between the state and the firm, which marginalized consumer interests.

In addition to the influence of the state there was a basic divergence in approaches and organization. Some consumer groups preferred contractual, arm's-length inter-firm dealings with shipowners while other preferred a more cooperative approach. Continental shipper associations (with the exception of France) have traditionally been more resigned to the

presence of shipping cartels than British shippers. They tend to take a less aggressive and doctrinaire stance (Kröger, 1993; Garatea Uzkola, 1994). In France and Britain, on the other hand, consumers have become particularly insistent that DGIV uphold the letter of the Treaty of Rome and not permit DGVII to 'hijack' competition policy (Welsh, 1993). Indeed, a German shipper representative complained about the excessively dogmatic approach adopted by the French and UK shippers' councils (Schultze-Eckardt, 1994).

The divergence in views is due to the fact that German industrial transport users develop long-term relationships with carriers, and are eager not to upset the relationship by an aggressive stance on competition. This is consistent with the pattern of German industrial commitment to long-term stability through cross-holdings and other means (Lane, 1995), and it demonstrates a reluctance to adopt 'Anglo-American' market relations with shipowners. In addition, organizational factors influence consumer advocacy. Most continental consumer groups are part of industry confederations or chambers of commerce, and are just one element of the overall priority of these groups. This dilutes their voice, especially compared to the UK and France, where dedicated national shipper associations have emerged.

These distinct variations in shipping consumer advocacy, based around divergences in national cultures and types of capitalism, had an important impact upon the effectiveness of the peak level association in the negotiations on the competition policy, and also in subsequent administration. While in law transport liberalization applies equally to all member states, in practice there are differences in application, enforcement, and interpretation. These differences are due as much to the historical patterns of culture and institutional arrangement as to any rational decision by state or societal interests. Moreover, they provide immensely important variations in actors' preferences on future policy change.

*c. The agency role of the European institutions.*

Finally, an important element of this analysis concerns the agency role of the supranational institutions. The Commission has become an agent of change in two ways -- first, within the bounds of existing legislation, and second in an effort to bring new areas within the

competence of the European institutions. In the first case, as I described above, DGIV has sought to manage the administration of maritime competition policy in a manner more conducive to consumer interests. This can be seen from shipowners' seething denunciations of the 'legal ayatollah' nature of DGIV's enforcement.

Second, DGVII has repeatedly sought to build upon the success of the 1986 regulations and increase EU authority over issues beyond maritime competition and market access. From 1989 onward, proposals in the social, fiscal, environmental areas would (if successful) have brought new policies under the purview of the EU, and a maritime study group also began to address key problems facing European maritime interests. The Commission has quarreled with member states on many occasions, and little tangible progress has been made.

Nonetheless, the Commission has undertaken various tasks, many of which help increase the legitimacy of the supranational institutions -- detailed information gathering, creating a dialogue with maritime interests, identifying problems, and proposing solutions. Over time, new symbols and myths are forged, even if success is incremental. The Euro registry, for example, was enthusiastically pushed by the Commission partly so that the 12-star European flag would be flying from ships in harbors the world over. As the Commission put it, "the European flag flying on Community vessels throughout the world would be a powerful reminder of the Community presence in global trade, and a symbol of the Community as a single trading entity" (Commission, 1989b: 15).

The Commission's activism has attracted new interests to it, because even unsuccessful policy proposals necessitate responses from interested actors. It therefore inevitably draws participants into the European decisionmaking process (my focus here is on functional interests, but the Commission has attracted territorial interests as well. See Jachtenfuchs and Kohler-Koch, 1995; Hooghe and Keating, 1994). These new participants may leave the process with a more negative view toward European integration than they had beforehand, and it is impossible to say whether the Commission will ultimately succeed at convincing member states and interest groups to expand maritime competence. Yet over time there is no reason why member states will not increasingly see the need to link maritime liberalization

with social, environmental, and other issues. After all, they have done the same with market liberalization more generally.

If a consensus begins to take shape on the need for further common action, the Commission will have been largely responsible for preparing the ground. Acting upon existing rules and within a specific institutional structure (but with a degree of independent discretion) the Commission has managed to begin hewing a path toward greater integration. In addition to the Commission, the Court has also acted to promote a European *acquis*. It played an extremely important part in beginning the process of transport integration through the jurisprudence described earlier. Its influence is increasingly recognized in other spheres as well (Burley and Mattli, 1993). The Court's activism is limited by political expediency, but nonetheless it plays a role in creating the institutional context which in the future determines the shape of EU governance systems.

## **Conclusion**

This essay sought to highlight the importance of institutions -- broadly conceived -- in European policy integration. The timing of the common shipping policy was the result of the dynamics of institutional "pull" and convergence "push." Both dynamics worked in favor of a common policy. The nature of the policy depended on several institutional characteristics spelled out in this essay: structural bias, nested institutions, and agency activism. EU institutional design structured the debate in such a way to bias eventual solutions toward market liberalization, a fact which was augmented by the spread of ideas and by external change. Moreover, institutions exist at several levels, each with their own histories and context. Member state economic institutions in particular were vitally important to a resolution of the shipping negotiations. Finally, the Commission and Court propelled the process in unanticipated ways. The consequences of their actions have important ramifications for market actors and member states.

Although elements of the rational choice approach to institutions are essential for understanding how an *acquis maritime* was built, it is the historical and sociological

approaches which yield the most insights. Policy choice must be understood as a process of constrained rational responses to political and economic change, guided and conditioned (or occasionally forced) by institutional structures and agents. Governance transformation is path-dependent. It is historically specific, and constrained in important economic and political ways (Lindberg and Campbell).

The design of the European institutions privileged certain actors and solutions over others. Shipowners and consumers were the principle non-state actors in the debate; maritime labor, despite its deep concern over liberalization and its 'rationally chosen' opposition to market opening, was ignored. It was not simply ideological change that undermined labor, but also the particular fragmentation of the Commission into producer and consumer directorates. Moreover, the ongoing activism of the Commission on maritime matters -- in both DGIV and DGVII -- indicates the ability of institutional agents to operate within a pre-designed system in unanticipated ways.

Finally, the separate 'histories' of the member states had extremely important consequences for the process of maritime integration. State ownership and protection in the southern countries led not simply to a rational calculus that liberalization was problematic, but to a differentiation in interest representation and advocacy. Consumer interests in these countries were under-represented. In the liberal northern countries they were far better represented, but with different objectives depending on their organizational characteristics and inter-firm relations. Shipowners also had different objectives, based around the competing notions of liberalism and protectionism. These conflicts were (and still are) played out not just at the inter-governmental level, but among interests within a specific supranational institutional context.

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