The Impact of Institutional Environments on Negotiation Styles in EU Decision Making

Jeffrey Lewis
Cleveland State University
Department of Political Science
2121 Euclid Ave. RT 1744
Cleveland, OH 44115-2214
j.lewis07@csuohio.edu

Abstract: Within the Council of the European Union (EU), the institution designed to represent 'national interests,' why do researchers continue to find such differential patterns of cooperation? From obdurate fights to ingrained habits for working consensually towards outcomes everyone can live with, the Council system covers a wide spectrum of bargaining behavior. To account for why, we need better explanations of how variation in the Council's institutional environments impacts negotiation styles. Doing so will help researchers develop more systematic accounts of EU decision making that can more accurately map the causal complexity between institutions, behavior, and legislative outcomes.

1. INTRODUCTION

Research on the Council of the European Union (EU) has progressed considerably in recent years in both the range of empirical findings and the theoretical approaches used to make sense of them. Quantitative research has given us a much firmer understanding of voting patterns and coalitional dynamics within the Council's legislative politics (see, *inter alia*, Thomson et al. 2006; Hagemann and Hoyland 2008; Mattila and Lane 2001; Golub 1999). This has been complemented by qualitative research based on interviews, surveys, and even participant observation accounts that shed light on why Council actors behave the way in which they do (see, *inter alia*, Heisenberg 2005; Aus 2008; Cunha and Swinbank 2009; Bostock 2002). We know now that the often asserted claim of consensus-seeking in Council negotiations is confirmed by available voting records where contested outcomes are consistently outnumbered by consensus-based ones (Hayes-Renshaw, Aken, and Wallace 2006). We also have a clearer picture of the socialization effects that participants are faced with, both at the level of individual negotiators and member-states (Beyers 2005; Lewis 2005; Egeberg 1999). Previously understudied components of the Council are now better accounted for, including the rotating presidency (Tallberg 2006), the general secretariat (Beach 2004), preparatory committees (Egeberg, et al. 2003; Häge 2007), and the working groups (Fouilleux et al. 2005; Beyers and Dierickx 1998). But while Council research has 'reached a new phase of sophistication,' as Daniel Naurin and Helen Wallace point out in recent edited volume, they also note that 'there are still many dark corners waiting to be revealed' (Naurin and Wallace 2008: 1-2). One such dark corner, and the focus of this article, is accounting for how institutional environments impact negotiation styles and how researchers can study variation in institutional contexts across the wide range of Council settings.

A key question for Council research is thus how do institutional contexts vary in everyday EU negotiations and what difference does this make on observable bargaining behavior? Overall, the goal is to better understand the causal relationship between institutions and styles of negotiation. Typically, theories of international relations discount or overlook the potential causal role that institutional contexts can play in (de)legitimating negotiation styles or creating durable standards of (in)appropriateness. Two-level games research, for example, has tended to pay less attention to what effects international institutional contexts can have; in Robert Putnam's path-breaking account only three sets of factors are important to the size of win-sets: Level II (domestic) preferences and coalitions, Level II institutions, and Level I (international) negotiators' strategies. There is no corresponding role ascribed for 'Level I' (international) institutions (Putnam 1988: 439).

For conceptual clarity, and following a similar distinction made by other contributors to this volume, negotiation styles are coded in dichotomous terms, either as more competitive and prone to 'hard bargaining' tactics or more cooperative with regularized patterns of mutual compromise, accommodation, and consensus-seeking (Dür and Mateo 2008; McKibben 2008). Admittedly, this is oversimplified as the empirical reality of Council bargaining is more accurately depicted as a continuum ranging between the polar ideal-types of 'competitive' and 'cooperative' styles. Indeed one of the potential value-added payoffs of this line of research is the ability to better specify the range and variability of negotiation styles found in the EU. Variation in institutional environments can cause variability in what Fritz Scharpf (1997: 84) calls 'interaction orientations' with considerable scope for his intriguing yet underspecified idea of 'intermediate forms' than span between individualism, solidarity, and competition. If the EU has evolved a set of hybrid institutional environments for decision making (Laffan 1998) then we should expect to find evidence of hybrid modes of interaction. The study of institutional environments holds promise to those who seek to explore the finely grained balancing between instrumental and noninstrumental motivations behind national officials' attitudes and behavior within the Council system. In a similar fashion, Steven Weber (1998: 81) has argued:

Regimes that are intricately nested one within another should support higher levels of cooperation than those that are not. The EU is certainly a set of nested regimes, but that is a minimum description. The 'institutional environment' concept goes several steps further, to where technical/efficiency criteria and power considerations – even traded off and logrolled between sets of regimes in different issue-areas – are less important than are standards of legitimacy and norm-based procedures.

In short, if the growing number of IR and EU scholars who argue against an 'either/or' view of rationalist-constructivist claims in favor of a 'both/and' approach are on the right track, then taking better stock of institutional environments' effects can help account for the *why* and *when* different logics of action obtain.[1]

This article focuses on how four variables of EU institutional environments impact observed styles of negotiation. Specifically: (1) the degree of insulation from domestic politics (in-camera negotiation), (2) the scope of issue coverage, (3) the interaction intensity among negotiators, and (4) the normative density which includes formal and informal rules, principles, and standards of behavior. Where one finds higher insulation, wider scope, greater interaction intensity, and/or more densely laden norms it is expected that the style of negotiation will tend to be more cooperative than those venues with higher publicity, narrower scope, lower interaction intensity and/or thinner norms. While these variables can co-vary they often cluster together, which suggests they have positive reinforcing effects on each other over time. One of the big challenges for this line of research lies in more precisely identifying the interaction effects at work, a point discussed below. Another challenge is that institutional environments and their effects should not be studied in a vacuum due to the daunting number of intervening variables which can come into play and are discussed elsewhere in this special issue such as actor characteristics (Dür and Mateo, this issue), issue-type (McKibbens, this issue), the level of technical detail (Quaglia, this issue), and domestic-level factors (Bailer, this issue). These limitations notwithstanding, putting a spotlight on what difference institutional environments make can help us better account for the 'chameleon-like'

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[1] See Panke (2006: 374) for an application of this reasoning to a structured comparison of the institutional design for Intergovernmental Conferences (IGCs) and the Constitutional Convention.

qualities of the Council system and the range of behaviorisms which make up EU negotiations (Wallace 2002).

The remainder of this article is organized as follows. Section two introduces the four independent variables under consideration with a focus on how to conceptualize empirical indicators that capture variation across institutional environments. Section three examines how we can make more coherent the patterned variation across different settings by using a levels of analysis distinction between ministers' meetings, preparatory level forums, and interinstitutional venues such as codecision negotiations. A brief conclusion follows, identifying current shortcomings and avenues for future research.

2. HOW DO INSTITUTIONAL ENVIRONMENTS VARY?

Thinking of the Council as a set of 'nested' institutional environments can help us understand the range of bargaining behavior found in EU decision making. In particular, studying institutional environments can help us generalize the scope conditions under which more cooperative styles of negotiation can develop, take root, and become more durable over time. In settings that code higher on our variables: those with higher insulation from domestic scrutiny, those which transact with wider scope and/or with higher interaction intensity, and those with a higher density of norms and group-community standards we should expect to see different negotiation dynamics than those which code lower. As will be sketched below, in higher range settings, not only do institutional environments enable a more cooperative style of negotiation they can work to delegitimize certain acts of instrumentalism associated with more competitive styles of negotiation.

Degree of Insulation

Insulation is a central feature in the Council's institutional makeup. According to Hayes-Renshaw and Wallace (2006: 6), 'participants often want to speak in unvarnished terms and to deploy arguments that they would not repeat so easily in a more explicit and public form. Ministers and their officials build coalitions, exercise leverage and do deals, benefiting from the veil of secrecy that largely cloaks their actions.' The Council's in-camera settings help enable cooperative styles of negotiation because they facilitate

speaking frankly, explaining problems, and expecting mutual responsiveness under a long shadow of the future. Over time, the Council has developed a subtly different logic of action for when it operates in-camera than when it functions more publicly. A stark example is the universal scorn interview subjects pour on the attempt to make the Council more transparent by televising select ministerial debates. No one fails to mention that the behavior of the ministers changes when the cameras are turned on – they start reading from pre-arranged speeches! In Daniel Naurin's (2007) terms, the logics of the 'public frontstage' and the 'private backstage' are not the same. In-camera settings are intended to build 'thick trust' and diffuse reciprocity, and to promote deliberation based on norm-governed but largely informal rules (Lewis 2003). Insulated institutional environments also help 'cut slack' and avert incentives for posturing and pandering to domestic audiences (Stasavage 2004). Secrecy has the collective effect of disciplining the pursuit of national interests since the group subjects claimants to what Dorothee Heisenberg (2008: 267) describes as a 'peer review' process of assessing individual preferences and collectively legitimating (or rejecting) exceptions, special dispensations, derogations, and so on (Neyer 2003, 2004; Lewis 2005). Thus, *institutional settings with a high insulation for in-camera negotiations are more likely to develop cooperative styles of negotiation* (H1).

How can we measure variation in Council insulation? Direct measurement is obviously difficult since more secretive settings are harder for outside observers to learn about. But there are proxies that can be used to gauge the degree of insulation; two illustrative measures are discussed below. The first is the frequency of 'informal' meetings. Informal meetings are designed as a venue to discuss sensitive issues under less watchful eyes. There is growing evidence that cooperative styles of negotiation are prevalent at the level of 'informal' ministers meetings (Puetter 2003). Informal meetings have more secretive, closed door characteristics with no expectations of public minutes, a higher scrutiny of 'outsider' admittance into the room, and a reliance on fewer official languages (with English, French and German the norm). Some premier ministerial bodies such as the GAERC and Ecofin regularly use the informal format to contain really tricky discussions. In practice, informal sessions routinize a kind of 'restrictive session' writ large for the policy specialists involved without calling attention to such a need for a

more closed door setting in the first place. Since informal sessions tend to not adopt legislative acts, a register of the meeting does not even show up in 'Monthly Summary of Council Acts,' leaving at best a ghostly impression in the official record.

In general, the EU has witnessed a trend of increased reliance on 'informal' meetings over the last two decades, at both the ministerial and preparatory levels. Averaged over the last seven EU presidencies, the number of informal ministerial meetings has grown to 15 per term.[2] And the use of informal meetings now extends well beyond just the ministers. For example, during the 2008 Slovenian presidency, there were 12 informal ministerial meetings and 53 informal meetings altogether, including committees and various working groups.[3] The 2007 Portuguese presidency held 14 informal sessions for ministers and 46 total informal sessions.[4] If we add into this picture the 'informal' purposes behind group lunches at various levels (the monthly GAERC lunch is arguably one of the most important tables in Justus Lipsius) and the 'informal' trip organized under the rotating presidency strategically prior to European Council summits, we gain an even healthier appreciation of the informal in Council affairs.

The second measure of insulation is the incidence of *de facto* decision making, which implicates institutional settings of the Council other than the juridically empowered ministers' sessions which draw more domestic-level scrutiny by relevant constituencies. There are a number of empirically measurable proxies for *de facto* decision authority, from the use of the 'A points' procedure where files go to the ministers only in need of a rubber stamp, to the practice of indicative voting, or the use of the silent procedure to goad those with reserves to reconsider. At the level of EU preparatory bodies, insulation to promote a cooperative negotiation style is a basic and enduring feature (Lewis 2003, 2005; Aus 2008; Niemann 2004; Reh 2007). If the Council

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[2] Based on scheduled 'calendar of events' records from member-state presidency websites (December 2006-June 2009), author's calculations.

[3] Figures are derived from the 'main events' listing available at: http://www.eu2008.si/en/index.html

[4] Figures are derived from the 'meetings and events' listing available at: http://www.ue2007.pt/UE/vEN/

has a habitus of cooperation, this is one of the oldest sources.[5] Perhaps the crowning example of preparatory insulation is found in the Economic and Finance Committee (EFC) which group senior civil servants from the finance ministries and central banks to deliberate eurozone macroeconomic policy. A CGS official described the EFC as 'a very closed, monastic community.'[6] The EFC reports directly to Ecofin/Eurogroup, has an internally selected Chair, and even its own independent secretariat headed by a high ranking Commission official who reports directly to the EFC president (Puetter 2007: 1302). EFC representatives in most cases do not even file written reports of meetings to their political authorities back home (i.e. no paper trail at all).[7] While the euro has enhanced the EFC's autonomy, the organizational culture goes far back in time to the Monetary Committee's precursor role in 'socializing' Europe's macroeconomic policy community since the late 1950s (Westlake 1995: 264; Ludlow 1982).

But perhaps a more telling pattern of how insulation can lead to cooperative styles of negotiation is how quickly this can root itself in *new* institutional settings. Two contrasting examples will serve to illustrate the point. First, there has been a night-to-day contrast within the field of Justice and Home Affairs from the early post-Maastricht days when officials viewed each other with mutual suspicion and the pattern which has evolved in the last decade. Close accounts of the JHA field are complementary in the portrayal of deeper forms of cooperation (and higher legislative output) coinciding with more insulated, less visible forums such as the JHA Counsellors group which often finesses politically charged issues quietly for their political superiors. The justice and interior ministries have linked EU goals at constructing an area of 'Freedom, Security, and Justice' with the methodology of insulating 'collective decisions from parliamentary

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[5] An historic example is the role of the permreps in resolving the infamous 'Empty Chair Crisis' (Wallace and Winand 2006: 35). A more routine, recurrent pattern that relies heavily on preparatory insulation are the annual fisheries quotas (TACs) which the EU deputies handle. 'Five horrible days in December,' remarked one, '[There is] lots of give-and-take behind closed doors. It is helpful all this information is not made public' (Interview, 27 May 2003).

[6] Interview, 17 May 2000.

[7] Interviews, 16 and 29 May 2000.

and judicial review at both national and EU levels' (Den Boer and Wallace 2000: 518; Guiraudon 2003).

A second pattern is how codecision cooperation between the Council and EP has come to rely on negotiation in more informal and less visible venues (Shackleton and Raunio 2003; Garman and Hilditch 1998). The best example of this cooperative style is the 'trialogue' method which has both formal and informal variations designed to maximize the chances for Council-EP compromise in the first or second reading phase. Trialogue gets its name from putting a more restrictive group of key principals together from the EP, the Council, and the Commission and encouraging a frank, open exchange of views. If early compromise cannot be reached, the conciliation procedure rests on an intentionally designed in-camera setting which give actors a high degree of autonomy to reach a deal under a 'closed rule' environment that prevents either the Council or EP from amending any agreement. Michael Shackleton argues that a 'new legislative culture' (Shackleton 2000) has emerged between EP-Council negotiators and the results speak for themselves: The average length of time for legislative acts to be adopted under codecision fell from 737 days between 1991-98 to 618 days between 1999-2004 (Hayes-Renshaw and Wallace 2006: 65, Box 2.4). And out of 169 legislative acts adopted by codecision between July 2004 and December 2006, 63 percent were concluded during first reading and a further 15 percent during 'early' second reading.[8] What is ironic, perhaps mildly shocking even, is of course the very idea of codecision as a procedure to redress the EU's democratic deficit by giving the directly elected parliamentarians more legislative muscle has come to rather quickly rely on closed door in-camera methods to work.

Scope and Interaction Intensity

Council settings vary widely in the scope of issue coverage. A wider scope creates a different negotiating dynamic due to the more synergistic issue linkage and package deal making possibilities that can occur, but as discussed below, it can even more

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[8] European Parliament. Conciliations and Codecision Activity Report, July 2004 to December 2006. 31 January 2007.

importantly change and broaden the perspective of negotiators who perceive a heightened sense of responsibility to 'find solutions' and/or a sense of duty to make things work. Measuring scope requires assessing two aspects: how technically specific briefs are and whether there is a narrow or horizontal range of issue-areas under consideration. Agricultural policy making is a good example of a field that is both very technical and narrow in range. For example, in preparing the AGFISH Council, the Special Committee on Agriculture (SCA) is limited to those files which do not have external trade or money implications (in which case they are dutifully responsible to refer the matter to Coreper). One SCA representative drew the following contrast: 'The SCA, compared to Coreper, is more of an expert group, more detailed, and doesn't mind getting immersed in details…Coreper is driven to find solutions. The SCA is driven to protect specific national concerns. So Coreper is more susceptible to take into account a more horizontal perspective.'[9] A similar characterization can be made of the budget officials from the national finance ministries (meeting in Ecofin Councils) whose negotiations are 'heavily circumscribed by procedural rules' and operate under a much more palpable shadow of the vote – discussions continue only until they have obtained a threshold QMV (very different from other Council venues which work to 'bring everyone on board') (Hayes-Renshaw and Wallace 2006: 43; Westlake 1995). On the other hand, the remit of foreign policy is much more generalized and not infrequently involves horizontal issues (policies with financial implications or questions involving legal institutional competence). This holds much in common with the generalized and horizontal purview of the Ecofin/Eurogroup nexus which is broadly responsible for the coherence of macroeconomic policy. One can argue that a similar pattern is currently occurring with JHA as that policy area has burgeoned in scope over the last decade (Monar 2001: 755).

The scope variable helps us get at how institutional environments structure the perspective-taking of the delegates (Peters 1997; Lewis 1998). This is a subtle point, not to be confused with some notion that national actors are turned into structural dopes, but there is ample evidence that negotiating venues with higher issue scope have different standards of what is expected and acceptable in terms of making arguments, receiving

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[9] Interview, 20 March 1997.

understanding, limiting interventions, etc. The 'senior' preparatory group of permanent representatives stands out in this regard. Some permreps talk of a duty to 'avoid Council'; where does such a view come from? The institutional expectations to deliver done deals to the ministers across a wide range of issue-areas encourage permreps to think more globally and cut through the fog of what may have seemed intractable in the experts' institutional setting.[10] Nor is this a new or fleeting phenomenon, it has deeply institutionalized roots; Joseph Salmon referred to this as the *vue d'ensemble* back in the early 1970s (Salmon 1971: 642). Thus, restated as a hypothesis: *institutional settings with a wide scope of issue coverage are more likely to develop cooperative styles of negotiation* (H2).

Council settings also vary by the intensity of interaction, which is different than issue scope, although we should expect them to frequently be found together. Exceptions might include forums narrow in scope but with high intensity due to legal deadlines such as commercial trade negotiations within the context of the Article 133 Committee. But in general, operationalizing interaction intensity can be helpful to account for how national officials become acclimated into EU institutional environments and develop habits of cooperative negotiation based on social capital and interpersonal relations. Hayes-Renshaw and Wallace describe those ministers who meet more intensely as follows: 'This intensity pervades the daily lives, frames of reference and work patterns of the participants. It encourages a dense form of collegiality and collective identity, such that a reference to 'we' or 'our' policy is as likely to be a collective EU position as to a national position' (2006: 47). Arguably, this is a pattern that can be generalized more broadly to those Council venues which operate at a high level of interaction intensity. For example, one important example worth singling out is the interaction intensity among the EU deputies (of Coreper I) and top legal advisors in the CGS who find themselves representing the Council in codecision negotiations with the EP.[11] In other words,

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[10] See Bostock (2002: 226-29) for three examples detailing this trait.

[11] The number of codecision files obviously varies by presidency. But some estimates place the time spent on codecision matters at upwards of 50 percent of the Deputies time (Bostock 2002: 223; Interview 27 May 2003).

institutional settings with a high interaction intensity are more likely to develop cooperative styles of negotiation (H3).

Interaction intensity can be gauged using several proxy measures. Superficially, as a first cut, one can measure the frequency of contact, although there is good reason to avoid conflating incidence with intensity.[12] More frequent, recurrent negotiation settings are likely to have a different interpersonal and normative dynamic than those which meet more infrequently or strictly on an *ad hoc* basis. Related to this, one can hypothesize that interaction intensity is higher for officials that are Brussels-based rather than shuttling from the national capitals. Most who are Brussels-based are habituated into the permanent representations which carries with it the attendant socialization effects that those based in national capitals would miss out on. In other words, irrespective of the frequency of contact, those exposed to the Janus-like culture of Brussels are likely to interact with their counterparts differently. A good example of this are the JHA Counsellors who are based in Brussels at the national permreps and the tightly knit esprit de corps among them which often helps pave the way for ministerial deals (Hayes-Renshaw and Wallace 2006: 88; Aus 2008). An interesting test of this point might be to find those specialist groups with mixed national customs for Brussels-postings and test whether different viewpoints can be discerned – the SCA delegates are one such example. A big member state SCA representative (who held the formal title of minister) once remarked 'sending a representative from the capital [rather than posting to Brussels] often reflects suspicion. Suspicion of going native.'[13]

Another proxy measurement for the intensity variable is to study patterns of tenure in different venues. Longer tenure can reflect capitals' vested interest in creating venues with higher capacity to accumulate social-political capital and extend the shadow of the future. Likewise, tenure increases the forum's capacity for institutional memory and balancing *demandeurs* (in this light assigning the EU deputy permreps the duties of codecision makes perfect sense). This measure does pose tricky methodological issues as some member-states have higher turnover of personnel (the Mediterranean countries

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[12] For more on problems with the 'contact thesis,' see Checkel (2005: 807).

[13] Interview, 20 March 1997.

generally enjoy lower tenure rates for example) and at lower administrative levels such as the working groups the records of who attends are sketchy at best.

Normative Density

An institution's normative density is an intangible element that is nicely captured by the notion of an 'organizational culture' or David Kreps' idea of a 'corporate culture' which contains a set of rules of the game ('how things are done, and how they are meant to be done in the organization') that evolve and adapt to meet new circumstances (1990: 93). From a wide range of informal norms, rules, and standards of appropriateness which prescribe and proscribe certain behavior and arguments to the penchant for consensus-based outcomes that everyone can live comfortably with, the Council system is endowed with a distinctive 'culture' of collective decision making. This culture transcends individual personalities, member-states' roles and reputation, policy competence, and even era of integration. The roots of this culture can be found in the earliest accounts of the Special Council of Ministers meeting in the ECSC days which neofunctionalists came to refer to as the Council's 'procedural code' (see, *inter alia*, Haas 1958; Lindberg 1963; Lindberg and Scheingold 1970: 95-98). But the Council's 'culture' is not uniform and can be found in varying degrees of tensile strength and durability throughout different institutional venues. We should expect that where this culture is more engrained, the style of negotiation is more cooperative and in extreme cases can even work to delegitimize or place limits on instrumentalism (by risking group opprobrium) such as demanding exception without explaining the reason, making threats, and so on. Thus, *institutional settings with a high normative density are more likely to develop cooperative styles of negotiation* (H4).

One of the most basic and durable normative standards in the Council is to make collective decisions by consensus. The 'consensus-seeking assumption' as one Brussels' insider put, operates at almost all levels of the Council's work (partial exceptions include budget negotiations and areas of 'enhanced cooperation') although in some venues such as Coreper or the EFC pushing for a vote is considered inappropriate. One of the best empirical measures of this consensus 'reflex' among negotiators is the frequent practice of spending extra time to 'bring everyone on board' rather than call for a vote even when

a clear majority exists under conditions of QMV. Norms and appropriate standards also exist for those delegations who find themselves in need of special consideration (derogation, exemption, reading a statement into the minutes, etc.). There are group expectations that a delegation in a difficult situation explain and justify their derogation needs and the group subjects such claims to a collective legitimation process (Neyer 2004; Lewis 2005).

Measuring an institution's normative density requires a careful (and often painstaking) triangulation process. First, there are now macro-level voting statistics that show the incidence of contested votes by member-state and issue area. Some sectors such as Agriculture, Fisheries, and the Internal Market vote more often and record more contested votes, suggesting that consensus norms and cooperative styles of negotiation are less firmly rooted there. Second, there are micro-level methods to measure norms and how they apply in individual circumstances through semi-structured interviews and survey research with participants. Corroborating publically recorded positions from available documents with interview-based methods is often essential, since only the latter can reveal actors' understandings of normative standards and how they do or do not apply in different circumstances.[14] Measuring an institution's normative density with qualitative methods involves determining answers to questions such as: Is there a propensity to work by consensus even under QMV? Are there durable expectations that derogations are to be justified with reasons? Are there convincing traces of 'diffuse' forms of reciprocity and empathetic understanding that cannot be attributed simply to instrumentalism? Finally, a helpful test of normative density is to study the behavior of newcomers (at the level of individual negotiators and/or member states) to process trace whether and how they experience a trial-and-error sequence of learning the rules of the game and how they are socialized to the institution's normative culture. Newcomers can often detect the rules of the game during an 'active observer' period which some participants describe as a type of 'probationary period.'[15] An interesting case of an unsocialized newcomer learning to

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[14] See Heisenberg (2008) for a more extensive discussion.

[15] Interviews 22 May 2003. New Central and Eastern European delegates began attending various Council sessions nearly one year prior to formal accession. A similar initiation occurred before the Nordic enlargement.

practice a more cooperative negotiation style is Sweden's first year attending Council negotiations where 'exposure to the Council culture was a baptism of fire' as they registered nearly half of all 'no' votes in the Council for 2005 (Lewis 2008: 176; Hayes-Renshaw et al. 2006: 183, fn. 5).

3. MAPPING VARIATION AND STRATEGIES FOR EMPIRICAL RESEARCH

A full test of the institutional environments argument would involve coding and measuring the entire range of Council settings from the technical specialists to the ministers to gain a finely grained picture of the differential patterns of competitive and cooperative styles of negotiation. A first step would be to map out and compare different institutional environments within different levels of the Council system and then build complexity into the picture by examining what interaction effects exist among the levels. A 'levels' approach would compare the Council's institutional environments from within (1) the ministers' sectoral Councils, (2) the preparatory group structures, and (3) interinstitutional venues such as in the field of codecision or Intergovernmental Conferences (IGCs). A second step would involve looking across these levels to account for how patterned variations in say, contested voting in the field of agriculture, or consensus-seeking in foreign policy, is implicated by *where* substantively different files are negotiated.

Pragmatically, another approach is to develop structured, focused comparisons both within and between different levels of the Council with an aim towards cumulative and more generalizable findings. By following a 'most similar' case study design (say, Coreper II and the EFC) or a 'most dissimilar' logic (say, the AGFISH Council and the GAERC) one could leverage replicable comparisons without the time and resource commitments that a full mapping would require. By process tracing the patterned similarities and differences across institutional environments, the range of variation and interaction effects between the institutional variables could be uncovered. For instance, do the most highly insulated venues also practice the densest sets of normative standards? Do narrow scope settings have higher rates of contested votes? This approach can also lead to better explanations for previously understudied patterns. For example, if one

established how the AGFISH institutions operate at lower normative densities and with lower domestic insulation this would better account for the reliance on Coreper I deputies to work out norm-based, consensus-driven deals on annual fishing quotas.[16] As a final suggestion, there is much to suspect that impressive advances in codecision cooperation stem at least in part from the insulated, norm-based styles of cooperative negotiation that trialogue and conciliation environments have evolved between Council-EP actors.

4. CONCLUSIONS

This article has focused on how institutional environments impact the styles of negotiation we witness in everyday EU decision making. Institutional variables that impact whether more competitive or cooperative styles adhere include: insulation, issue scope, interaction intensity and informal norms. A big challenge for future research is to more precisely account for how the variables interact, and to identify more systematically how they tend to cluster and reinforce or repel each other in different institutional environments. But the underlying pattern is clear enough. Higher levels of insulation, issue scope, interaction intensity, and norms deepen the mutual trust and introspection that engenders more cooperative styles of negotiation to take hold and become routinized. And the incidence of these institutional traits coupled with the way they tend to have reinforcing effects, suggests that this is neither coincidence nor historical contingency. Higher insulation tends to encourage greater scope and interaction intensity, which is facilitated by denser informal norms as in the 'bottlenecking' job of Coreper as the Council's senior preparatory body. Member states have enshrined Coreper's 'senior' status in the Treaties to firewall them from bureaucratic turf battles with other preparatory bodies such as COPS, CATS, and to some extent the highly autonomous EFC. On the other hand, some institutional environments seem designed for more competitive styles of negotiation, such as the AGFISH Council and its specialized preparatory body the SCA. Daugbjerg (1999: 423) argues that the EU's agricultural policy network in general is structured by institutional contexts that fragment and

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[16] 'Five horrible days in December,' remarked one EU Deputy, '[There is] lots of give-and-take behind closed doors. It is helpful all this information is not made public' (Interview, 27 May 2003).

disperse decision making to 'provide many veto points which can be used, often successfully, to mobilize opposition to reform.' In this policy area, our variables tend to reinforce a more competitive style of negotiation: a more narrow issue scope may reinforce lower interaction intensity, with fewer norms to proscribe and prescribe behavior, and lower levels of institutional insulation. In the old days of 'marathon sessions', Meester and van der Zee (1992: 146) note that agricultural ministers were motivated to wage 'a battle of attrition' in order 'to suggest to the grass-roots that a hard bargain was driven and the minister has does his utmost to sell his case dearly'. In general, as Paul Culley notes, 'Tough bargaining, tactical brinkmanship and physical and mental exhaustion are the stock-in-trade of negotiations in the Agricultural Council' (Culley 1999: 204).

Overall the reinforcement effects are hard to pinpoint simply because there is a multiplicity of patterns. Yet another pattern is the insulated but narrow scope found in the Article 133 Committee. In preparing trade mandates, both the full members and the deputies more readily calculate majorities and possible blocking coalitions. Why is the shadow of the vote more foreshortened here? Perhaps it stems from the strategic game with the Commission over the flexibility in negotiation mandates but also perhaps as a mechanism to keep delegates honest about remaining flexible in the rapidly changing and technically demanding realm of international economic negotiations.

To better pinpoint the interaction effects of the institutional variables which this paper identifies, one would need to conduct historical process tracing research which faces serious methodological constraints (including access to information and interviews with participants). Which came first: insulation, issue intensity, or norm-governed negotiations? One hypothesis worth further consideration is way in which insulation seems to work as a prerequisite or a more basic scope condition for the others. Why is this? So much of the cooperative glue holding the Council's culture together is backed by thick trust, mutual responsiveness, diffuse conceptions of reciprocity, and so on. Insulation helps enable the trustworthy mutual expectations that make cross-sectoral, bottlenecking negotiations feasible and lend informal, unwritten norms a durability (that relies not on threats or external sanctions but a kind of self-restraint) that would not otherwise be possible as actors come to expect like-minded treatment by their

counterparts over time. The way the 'Empty Chair Crisis' was quietly resolved in the more insulated settings of the Coreper II ambassadors may well be one important and early formative moment. In their retrospective on the Luxembourg Compromise, Wallace and Winand (2006: 35) note the permreps were 'keen to 'find an elegant way' out of the crisis without isolating France. The foreign ministers, who had to reckon with public opinion and their own governments, could not play the role that the Coreper did, as 'a very intimate group able to work in complete mutual trust'.' On the other hand, even if insulation is a deeper order (or just older) causal mechanism for cooperative styles of bargaining in the EU, there are *still* rich interaction effects at play. Norms, such as getting the consent of the 'noes' before a formal vote or spending extra time in general under QMV to placate minorities, helps to reinforce institutional environments with dense scope as member states have a higher comfort level that they will not be driven to the wall on issue x, y, or z.

On balance however it is striking the degree to which this variation is by design intended to promote a high quality cooperative process that relies on consensus-seeking assumptions and a deliberative environment rich in norms for explaining and justifying positions to reach collective outcomes that everyone can live with. The Council's 'culture' evidenced in the type and range of institutional environments discussed above is even more striking when placed in a comparative regional context. Consider the often cited 'ASEAN Way' in Asian regionalism. It seems *prima facie* to have many similarities: a global preference for consensus-based outcomes, a love of informal arrangements, durable expectations for mutual consultation and responsiveness, and noninstrumental reasons in trying to accommodate each other. But the underlying purpose and resulting institutional design is completely different. The 'ASEAN Way' is premised on the principle of noninterference and often leads to the thinnest of lowest common denominator (LCD) outcomes. As Khong and Nesadurai (2007: 35) find, 'subscribing to the 'ASEAN Way' shielded national governments from having to commit to addressing joint tasks that governments either found too demanding administratively, politically difficult if these went against dominant national interests, or not sufficiently important given a set of national priorities.' When viewed comparatively, the EU's institutional contexts are noteworthy for the degree to which different combinations of

insulation, scope, interaction intensity, and informal norms undergird cooperative styles of negotiation *by design*. Asian regionalism has a very different institutional context and underlying design, one which currently seems to foreclose the kind of dynamic density that promotes the cooperative negotiation styles found in Europe's many 'club-like' settings.

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