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Theory and Practice of Regional Integration

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The Jean Monnet Chair

Theory and Practice of Regional Integration[♣]

Finn Laursen[♦]

Introduction

In this paper I shall briefly outline the classical theories of integration, especially neofunctionalism, which dominated the debate about European integration from the very beginning in the 1950s until the early 1990s. Next I want to outline what I consider the most important contribution to integration theory in the last 10-15 years, namely Andrew Moravcsik's liberal intergovernmentalism. Then I will look at some of the most important critiques of liberal intergovernmentalism, especially public choice institutionalism and sociological institutionalism. I will finish with a brief case study, asking what we can learn in theory and practice from the rise and fall of the Constitutional Treaty.

Classical theories[1]

Theories of integration have mainly been developed to explain European integration. Europe was the region of the world, where regional integration started in the early 1950s with the European Coal and Steel Community (ECSC) in 1952. Ernest Haas theorized this experience in *The Uniting of Europe* (1958). The main theoretical contribution was the concept of spill-over. Later Lindberg used this concept to study the early years of the European Economic Community (EEC), which started its existence in 1958 (Lindberg, 1963). These early theories are usually referred to as neo-functionalist theories.

There were some efforts to apply these neo-functionalist theories to integration in other parts of the world, especially in Latin America (Haas, 1961; Haas and Schmitter, 1964; Haas, 1967).

The integration process in Europe experienced a crisis in the mid-1960, when General de Gaulle instructed his ministers not to take part in meetings of the EEC Council. In the Luxembourg compromise in January 1966 the then six members of the European Communities (EC) agreed to disagree. The French insisted that decisions by a qualified majority vote (QMV) could not take place, when a Member State opposed a decision because of important national interests.

Some neo-functionalists tried to modify the theory to take account of the events in Europe in the mid-60s. This included Lindberg and Scheingold in *Europe's Would-Be Polity* (1970). But many students of European integration now stressed the 'logic of diversity' and the more intergovernmental aspects of the EC (e.g. Hoffmann, 1965, P. Taylor, 1983).

Later in the 1990s Andrew Moravcsik developed 'liberal intergovernmentalism' to explain the process of integration in Europe, suggesting the combination of a liberal theory to explain national preference formation and an intergovernmental theory of interstate bargaining to explain substantive outcomes (Moravcsik, 1991, 1993). In his book *The Choice for Europe* he added a third

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[1] This section relies upon Laursen 2003.

stage, institutional choice, where pooling and delegation of sovereignty was seen as a way to create 'credible commitments' (Moravcsik, 1998).

During the 1990s, in parallel with the IR debate concerning rationalist approaches vs. social constructivist approaches, it was also claimed that we need a social constructivist approach to understand European integration (e.g. Checkel, 1999; Marcussen et al., 1999).

When early theories of integration were developed there was much discussion in the literature on how to define the concept. It was for instance discussed whether integration refers to a process or to an end product. Of course the two can be combined. Integration could then be defined as a process that leads to a certain state of affairs. Karl Deutsch, for instance, defined integration as "the attainment, within a territory, of a 'sense of community' and of institutions and practices strong enough and widespread enough to assure, for a 'long' time, dependable expectations of 'peaceful change' among its population." When a group of people or states have been integrated this way they constitute a "security community." 'Amalgamation', on the other hand, was used by Deutsch and his collaborators to refer to "the formal merger of two or more previously independent units into a single larger unit, with some type of common government" (Karl W. Deutsch et al., 1957: 5-6).

Early efforts to study regional integration, as mentioned, mainly concentrated on the European Coal and Steel Community (ECSC) and the European Economic Community (EEC). In Ernst Haas's classical study of the ECSC, *The Uniting of Europe*, integration was defined as

> … the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectation and political activities to a new center whose institutions possess or demand jurisdiction over the pre-existing national states (Haas, 1958: 16).

In Leon Lindberg's study of the early EEC, *The Political Dynamics of European Economic Integration*, integration was defined without reference to an end point:

> ... political integration is (1) the process whereby nations forgo the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs; and (2) the process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new center (Lindberg, 1963: 6).

Lindberg considered his own concept of integration more cautious than that of Haas. Central to it was "the development of devices and processes for arriving at collective decisions by means other than autonomous action by national governments" (Ibid.: 5).

Some concepts of integration applied in studies of the European Communities (EC) may be too specific if we want to conduct comparative studies. Clearly, the process of European integration within the EC has gone further than integration in other regional settings. A relatively loose definition may be better for comparative studies. However, it seems fair to say that collective decision-making is an important aspect of all regional integration efforts. This collective decision-making can cover a varying number of functional areas (scope). The decision-making process can be more or less efficient and the common institutions established can be more or less adequate (institutional capacity).

What then explains changes in functional scope and institutional capacity of regional integration efforts? This is the central question in integration theory. Ernst Haas developed the concept of spill-over, which was also applied by Lindberg. According to Lindberg,

> ... spill-over" refers to a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth (Lindberg, 1963: 10).

Haas saw the EEC as spill-over from the ECSC. He talked about "the expansive logic of sector integration." He predicted that the process would continue in the EEC. Liberalization of trade within the customs union would lead to harmonization of general economic policies and eventually spill-over into political areas and lead to the creation of some kind of political community (Haas, 1958: 311).

When the European integration process experienced a crisis in the mid-1960s, however, many scholars concluded that Haas' early theory had been too deterministic. This included Haas himself, who now admitted that he had not foreseen “a rebirth of nationalism and anti-functional high politics.” A revised theory would have to take account of “dramatic-political” aims of statesmen such as General de Gaulle (Haas, 1967).

In a much-quoted article Stanley Hoffmann argued that the national situations and role perceptions were still rather diverse within the EC. In general he argued:

> Every international system owes its inner logic and its unfolding to the diversity of domestic determinants, geo-historical situations, and outside aims among its units (Hoffmann, 1966: 864).

So he contrasted the logic of integration with a logic of diversity. The latter sets limits to the degree to which the 'spill-over' process can operate. “It restricts the domain in which the logic of functional integration operates to the area of welfare.” Hoffmann advanced the suggestion that “in areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance, to the uncontrolled uncertainty” of integration (Ibid.: 882).

The feeling that early theory had seen the process as too automatic led to various efforts to reformulate integration theory. The effort by Lindberg and Scheingold in the book *Europe's Would-Be Polity* deserves special mentioning (Lindberg and Scheingold, 1970). Lindberg and Scheingold now studied the EC as a political system, where inputs in the form of demands, support and leadership are transformed into outputs in the form of policies and decisions. They added three integration mechanisms to that of spill-over already developed by Haas, namely (a) *log-rolling and side-payments*, i.e. bargaining exchanges designed to “gain assent of more political actors to a particular proposal or package of proposals,” (b) *actor-socialization*, i.e. the process whereby the “participants in the policy-making process, from interest groups to bureaucrats and statesmen, begin to develop new perspectives, loyalties, and identifications as a result of their mutual interactions,” and (c) *feedback*, which mainly refers to the impact of outputs on the attitudes and behaviour of the public at large. If the public finds the output from the system good and relevant, support for the system is expected to increase.

Integration was seen as a *political* process by Lindberg and Scheingold. On the demand side various domestic groups have expectations and lobby the governments for certain outcomes. On the supply side coalition formation and leadership are seen as central aspects of the process. To get decisions through the system you must have the support of various groups and individual decision-makers. This is where the role of the independent Commission was seen as important in the EC. The Commission can actively try to build coalitions to overcome national resistance to new policies and decisions, i.e. exercise supranational leadership.

How would the EC’s new momentum associated with the completion of the Internal Market in the EC during the years 1987-92 fit in with Lindberg and Scheingold's revised neo-functionalist theory of international integration. Quite well, one could argue. The EC was gradually expanding its scope, developing new policies to complement early policies, including technology, environment and monetary policies. The Internal Market project was partly due to feedback processes. The originally chosen approach of harmonization to overcome non-tariff barriers to trade (NTBs) had produced too few results. A new approach was necessary. Industry made demands. The Commission of Jacques Delors contributed with leadership. Also, the Single European Act (SEA) adopted in 1986 introduced qualified majority voting (QMV) as the rule to complete the Internal Market. The practice of unanimity, which had become the rule after the Luxembourg compromise in January 1966, had contributed to a slow down or even halting of the process of integration. Further, the negotiation process of the Intergovernmental Conference (IGC), which negotiated the SEA in 1985, had its own dynamics of linkages and bargaining exchanges (log-rolling and side-payments). We thus find some of the major mechanisms and dynamics singled out by second-generation neo-functionalist theoreticians such as Lindberg and Scheingold well represented in a catalogue of explanatory factors (Laursen, 1990).

But one can argue that converging national interests were important or even decisive. This included changes in domestic politics in some of the Member States, in particular in France under President Mitterrand (Moravcsik, 1991). Maybe neo-functionalists had not studied domestic politics sufficiently? Maybe they exaggerated the role of supranational institutions? With these questions we turn to liberal intergovernmentalism.

Liberal Intergovernmentalism

Andrew Moravcsik's liberal intergovernmentalism (Moravcsik, 1993 and 1998) has become an important reference point for most recent studies of integration, especially the big decisions he refers to as 'grand bargains'. The framework includes three phases: national preference formation, interstate bargaining and institutional choice (See fig. 1).

Figure 1: **International Cooperation: A Rationalist Framework**

Stages	**National Preference Formation**	**Interstate Bargaining**	**Institutional Choice**
Alternative independent variables underlying each stage	What is the source of underlying national preferences?	Given national preferences what explains the efficiency and distributional outcomes of interstate bargaining?	Given substantive agreement, what explains the transfer of sovereignty to international institutions?
	Economic interests or Geopolitical interests?	Asymmetrical interdependence or Supranational entrepreneurship?	Federalist ideology or Centralized technocratic management or More credible commitment?
	↓	↓	↓
Observed outcomes at each stage	Underlying national preferences →	Agreements on substance →	Choice to delegate or pool decision-making in international institutions

Source: Moravcsik (1998), p. 24.

The first stage concerns national preference formation. The central question asked by Moravcsik here is whether it is economic or geopolitical interests that dominate when national preferences of member states are formed. The answer based on major decisions in the European integration process was that economic interests are the most important.

The second stage, interstate bargaining, seeks to explain the efficiency and distributional outcomes of EU negotiations. Here two possible explanations of agreements on substance are

contrasted: asymmetrical interdependence or supranational entrepreneurship. Moravcsik arrives at the answer that asymmetrical interdependence has most explanatory power. Some member states have more at stake than others. They will work harder to influence outcomes and may have to give more concessions. On the other hand, the role of the Community actors, first of all the European Commission is not considered very important.

According to Moravcsik three factors are likely to determine the outcomes of interstate bargaining:

1. The value of unilateral policy alternatives, relative to the status quo, which underlies *credible threats to veto*.
2. The value of alternative coalitions, which underlies *credible threats to exclude*.
3. The opportunities for *issue linkage* or side-payments, which underlie "package deals" (Moravcsik, 1998, 63).

Summarizing the discussion of the first point Moravcsik says: "those who more intensely desire the benefits of cooperation will concede more to get them." Summarizing the discussion of the second point he says: "the credible threat of exclusion is likely to generate an even more powerful pressure on recalcitrant states than does the threat of nonagreement." In respect to linkage strategies Moravcsik observes that the major constraint lies in their domestic distributional implications. Concessions often create domestic losers. This will limit the use of package deals (Ibid., pp. 63-67).

We should not forget that Moracvsik mostly studied 'grand bargains'. It may be true that credible threats to exclude or veto play an important role in these. But in day-to-day decision-making the third factor, issue linkage, plays a more important role, and so do the Community institutions.

The third stage, institutional choice, explores the reasons why states choose to delegate or pool decision-making in international institutions. Delegation in the EC/EU case refers to the powers given to the Commission and the European Court of Justice. Pooling of sovereignty refers to the application of majority decisions in the Council, in practice mostly qualified majority voting (QMV). To explain institutional choice Moravcsik contrasts three possible explanations: Federalist ideology, centralized technocratic management or more credible commitment. The answer he gives is that states delegate and pool sovereignty to get more credible commitments. Pooling and delegation is a rational strategy adopted by the member states to pre-commit governments to future decisions, to encourage future cooperation and to improve future implementation of agreements (Ibid., p. 73).

Using theories of decision-making, negotiations and international political economy in general in an elegant combination has allowed Moravcsik to construct a parsimonious framework for the study of international cooperation including 'grand bargains' like EU treaty reforms.

Institutionalist Critiques of Liberal Intergovernmentalism

Rational choice institutionalists assume that actors have fixed preferences and that they behave instrumentally to maximize the attainment of preferences. "They tend to see politics as a series of collective action dilemmas." They "emphasize the role of strategic interaction in the determination of political outcomes." And, they explain the existence of institutions by reference to the functions those institutions perform (Hall and Taylor, 1996, pp. 944-45). With such a definition Moravcsik would qualify as a rational choice institutionalist. Another well-know student of European integration that would fit into this group is Mark Pollack (2003).

However, Moravcsik does not assign much importance to Community institutions in the 'grand bargains'.. At first sight it can look surprising that an approach called 'liberal intergovernmentalism' which includes 'institutional choice' as an important part should end up assigning a relatively unimportant role to institutions in major EU reforms. After all, 'credible commitments' are said to require 'pooling and delegation' of sovereignty. But, in the process of making the 'grand bargains' in the history of European integration the EC institutions were not assigned an important role. Those bargains were made by the member states. However, when it comes to implementing the bargains the Community institutions are considered important.

If we refer to Peterson's three levels of analysis (Peterson, 1995), we could say that Moravcsik is an intergovernmentalist when he studies 'history-making decisions' at the supra-systemic level, but admits of an important role for EC institutions at the systemic level of policy-setting as well as assuring implementation.

Institutionalists certainly assign great importance to EC institutions in day-to-day EC/EU politics (see especially Hix, 1999). The European Commission proposes legislation. The EC institutions, including the Commission and the European Court of Justice (ECJ), get involved with surveillance and enforcement of decisions. The Commission issues reports on implementation of directives. Member States that do not implement will be shamed at first and face the prospects of an ECJ infringement case later.

But there are also institutionalists who argue that EC institutions can play an important role in the treaty reforms, which has taken place through IGCs. Derek Beach studied the role of EC institutions in successive reforms, from the Single European Act (SEA) in the mid 1980s until the Constitutional Treaty (Beach, 2005). Based on negotiation literature Beach finds two reasons why leadership may be required in international negotiations, including IGCs:

1. The first bargaining impediment in complex, multi-party negotiations is that parties can have difficulties in finding a mutually acceptable, Pareto-efficient outcome owing to *high bargaining costs.*
2. The second bargaining impediment relates to *coordination problems* that can prevent the parties from agreeing upon an efficient agreement – even if there are low bargaining costs (Ibid, 18-19).

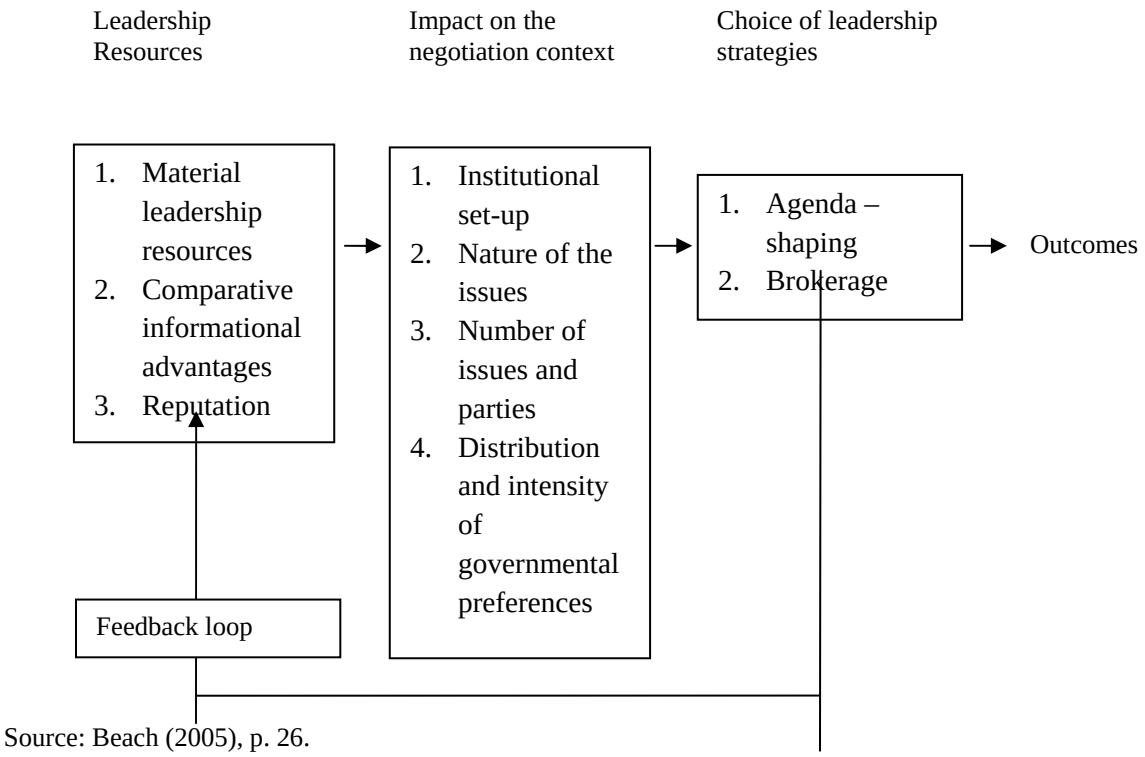
These bargaining problems can be solved if an actor with privileged information steps in and helps the parties get to the Pareto frontier. Leadership can also create a *focal point* around which agreement can converge (Ibid., 19-20). Bargaining costs are 'often so high that most governments are forced to rely upon the expertise of the Council Secretariat and Commission for legal and substantive knowledge, and assistance in brokering key deals' (Ibid., p. 258)

When the original European Communities were created there were no preexisting Community institutions that could play the role of EC institutions (although the High Authority of the ECSC played a role in the corridors when the latter two Communities were created). An intergovernmentalist analysis should therefore be expected to be the way to analyze the creation of the Communities as distinguished from their later reforms. But doesn't the initial creation then depend on national leadership of some kind? Can we explain the creation of the ECSC without looking at the role of leadership by Jean Monnet, Robert Schuman and others? Can we explain the creation of the EEC without the leadership roles played by some Benelux leaders, including especially Paul Henri Spaak from Belgium?

Liberal intergovernmentalism, i.e. Moravcsik, finds agreement in the 'grand bargains' among states in Europe relatively easy. The states have enough information to find relatively efficient solutions without a political entrepreneur, he argues. "Transaction costs of generating information and ideas are low relative to the benefits of interstate cooperation." National governments have resources to generate information. They can, "regardless of size … serve as initiators, mediators, and mobilizers." So EC negotiations are "likely to be efficient" (Moravcsik, 1998, p. 61)

The Moravcsik proposition has been question by other institutionalists than Beach. A similar critique has been formulated by Jonas Tallberg in the book *Leadership and Negotiation in the European Union* (2006).

Figure 2. How leadership by EU institutions matters – a leadership model of European integration



Source: Beach (2005), p. 26.

We reproduce Beach's analytical scheme in fig. 2. The argument by Beach is not that Community institutions always have influence in IGCs and treaty reforms. The research question is when and under what conditions do Community institutions have influence? The model singles out a number of variables that help explain influence, like resources, negotiation context and leadership strategies.

Many other institutionalists have developed explicit criticisms of liberal intergovernmentalism. Institutionalism is usually divided into three groups: rational choice, historical and sociological (see for instance Hall and Taylor, 1996, and Aspinwall and Schneider, 2001).

Historical institutionalists "tend to have a view of institutional development that emphasizes path dependency and unintended consequences." Institutions structure a nation's response to new challenges (Hall and Taylor, 941-42). An important article suggesting how historical institutionalism can be used to study European integration was written by Pierson (1996). Pierson puts emphasis on the gaps that emerge in the Member States' control of the process.

Sociological institutionalists give a very broad definition of institutions including "not just formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action." Institutions provide cognitive templates that affect identities and preferences. Culture is important. Sociological institutionalists are interested in "what confers 'legitimacy' or 'social appropriateness' on some institutional arrangements but not others" (Hall and Taylor, 947-49).

Liberal intergovernmentalists see the EU Member States as unitary rational actors that are in control of the process of integration. In the big decisions the EU institutions do not play a very important role. Historical institutionalists see gaps emerging in the Member States' control and attribute more importance to EU institutions. Sociological institutionalists pay attention to values,

ideas and identities. An important research question seen from a sociological perspective then is this: Is a common European identity emerging? (see also Risse, 2004)

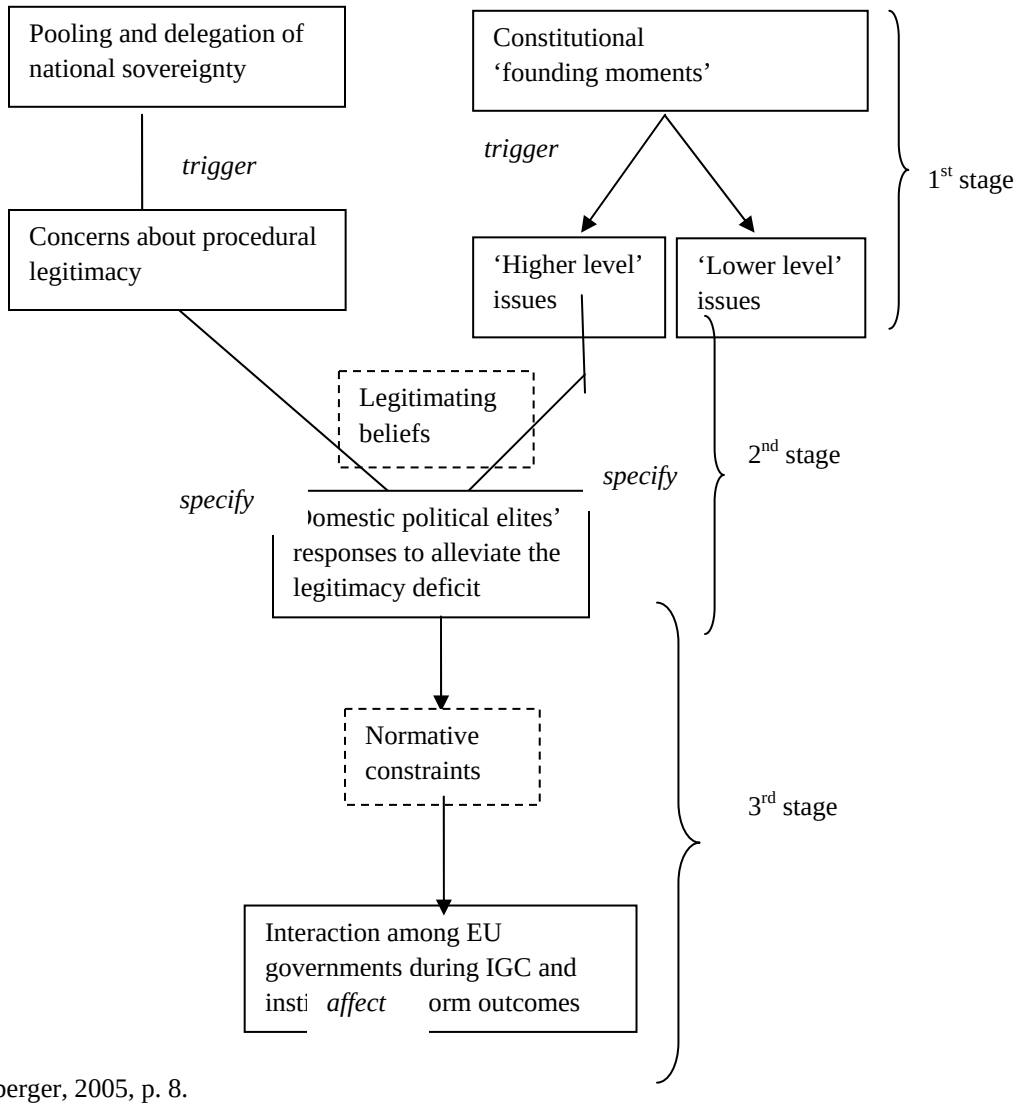
A special issue of the *Journal of European Public Policy* in 2002 raised a number of theoretical issues inspired by historical and sociological institutionalism. Gerda Falkner argued in the introduction that treaty-reform studies should move "beyond formal treaty reform, and … transcend economic interests and bargaining power" (Falkner, 2002a, 1). This was of course directed towards Moravcsik's approach. Reforms also take place through ECJ decisions as well as day-to-day interpretations by the Commission and the governments. Treaty-reform studies should be interested in "agency by EU-level actors" and "dynamics such as learning, socialization, and the incremental institutionalization of policy paradigms at the EU level" (Ibid, p. 2). She suggested that EU treaty reforms could be studied as three-level games, with EU institutions forming a third level. "This approach contextualizes member state power and bargaining to see how both are embedded in a dense web of structuring factors, many of which originate from EU-level institutions and procedures" (Ibid., p. 4). Sociological institutionalists believe that institutions shape preferences. A rationalist approach is insufficient when it comes to understanding preferences.

Criticisms from historical and sociological institutionalists go in different directs. They clearly do not form a coherent theory or model. The closest we get to a clear sociological institutionalist model is the one developed by Berthold Rittberger in his book, *Building of Europe's Parliament: Democratic Representation Beyond the Nation-State* (2005). He formulates the following sociological institutionalist hypothesis concerning the empowerment of the European Parliament:

> States will create or empower the EP as a response to a perceived lack of resonance between domestically internalized norms of democratic governance and progressive European integration which generates a mismatch between collectively held norms of democratic governance and governance at the EU level (Rittberger, 2005, p. 19).

This hypothesis has been developed to explain the increased importance of the EP in the EU institutional setup. It does not claim to explain other institutional reforms produced by IGCs. But it suggests that normative constraints play a role in treaty reforms.

Figure 3: Overview of Rittberger's theoretical argument



Source: Rittberger, 2005, p. 8.

The Case of the Constitutional Treaty[2]

The Constitutional Treaty died when the French and Dutch electorates voted 'no' to ratification in 2005. The death was formally announced by the Member States in June 2007 when it was decided to drop efforts to resuscitate the Constitution and instead negotiate another treaty called a Reform Treaty, which subsequently has become the Lisbon Treaty. Although the Reform Treaty will include most of the institutional innovations of the Constitutional Treaty all references to 'Constitution' have been dropped. So have references to symbols of constitutionalism.

The constitutionalist rhetoric had backfired. The rhetoric had made it sound as if the proposed treaty was more than it was. After all it was still a treaty among sovereign states. It was not a real constitution of a state. The Member States remained the 'masters of the treaty.' Had it been ratified future changes would still have required unanimity.

[2] This section largely reproduces the concluding chapter in Laursen 2008.

The term ‘constitution’ is not well-defined. It has different meanings in different time periods and in different countries. But normally it refers to the organisation of a government and it implies the existence of restraints upon that government. Such restraints can exist through a division of powers among legislative, executive and judicial authorities as advocated by Charles-Louis de Montesquieu. Restraints can also be introduced by a vertical division of powers between different levels of government as we find in federal states. The famous US checks-and-balances would be a good example of a constitutional arrangement. Stipulations about individual rights also put restraints on governments (Friedrich, 1968).

The moment we say ‘government’ we tend to think of ‘states.’ But the EU is not a state. It is an intergovernmental organisation of a special kind. By ‘pooling’ and ‘delegating’ certain powers to common institutions the Member States have created a governance system that is unique. Some decisions in the Council of Ministers can be made by a qualified majority vote (QMV). The Community institutions, first of all the Commission and the European Court of Justice (ECJ), have certain autonomy. EU institutions have supra-national powers, not found in other international organisations.

This *sui generis* nature of the EU makes it difficult to use the concepts when we study national governments or states. Still, the supra-national aspects of the EU give it state-like features, and the EU has a system of governance with many built-in restraints. As such you can argue that it already has a constitution.

To answer the question why the Constitutional Treaty was abandoned we obviously have to study the reasons for the ‘no’ votes in France and the Netherlands. If we do that it becomes clear that the voters in France and the Netherlands who dealt the Constitutional Treaty the death-blow did so for various reasons including some that had little or nothing to do with the Treaty itself. In France an important reason for voting ‘no’ was the economic situation in the country, which at the time was experiencing high unemployment. In the Netherlands many voted ‘no’ because they felt that they knew too little about the Treaty. These and other reasons mentioned by people when asked why they voted ‘no’ suggest that the use of referenda for ratifying EU treaties is very problematic, to say the least.

The next question would then be why 10 countries decided that they wanted to use a referendum to authorise ratification of the Constitutional Treaty. Apart from the two countries that may have had a constitutional reason for a referendum, namely Ireland and Denmark, the other countries could have ratified the Treaty by a parliamentary vote. If we look at it historically the use of referenda has been relatively limited. The original six Member States of the European Communities (EC) ratified the founding Paris and Rome Treaties without referenda. The UK entered the EC in 1973 without a referendum, but had a referendum after an odd re-negotiation of membership in 1975. France had a referendum on the Maastricht Treaty in 1992 which resulted in ‘*le petit oui*,’ which should have been a warning for President Jacques Chirac, who nonetheless called for a referendum about the Constitutional Treaty in the summer of 2004. Before that Prime Minister Tony Blair had decided that the UK would have a referendum about the Constitutional Treaty, which was at odds with the British concept of parliamentary sovereignty and the lack of historical practice of using referenda, with the exception of the 1975 referendum. In the case of the Netherlands it was the first EU referendum ever and the event was clearly mishandled by the government.

The outcome of the rush to organise referenda was that two countries out of 27 ended up holding the EU hostage. Is that what democracy is about? The question is legitimate because the advocates of referenda claim that it is the most democratic way of making important decisions, which at least would presuppose that people vote about the question formulated for the vote and do not try to punish an unpopular government or are ignorant about the issues. It clearly looks as if the premises of the rush to use referenda were faulty.

The alternative to direct democracy, including the use of referenda, is indirect or representative democracy. We elect members to Parliaments so that they can put in the work it takes to become

familiar with the issues and then decide on our behalf. Why not continue to do it that way in the EU too?

The defeat of the Constitutional Treaty is a defeat of direct democracy. The fall-back position, representative democracy and ratification of treaty reforms by parliamentary votes, is now confirmed by the new strategy of the Reform or Lisbon Treaty. Dropping all the constitutionalist rhetoric and symbols should make it possible for most Member States to ratify that treaty by parliamentary votes.

Trying to create greater legitimacy through the European Convention (2002-03) did not work, we now have to conclude. The wider participation in the Convention allowed more Members of national Parliaments (MPs) and Members of the European Parliament (MEPs) to take part and this may have affected some of the content of the Draft Constitutional Treaty which emerged from the Convention in the summer of 2003. But efforts to have a much wider debate starting from the post-Nice agenda in 2000 had limited success. The Constitutional Treaty was negotiated by political elites, whether we look at the Convention or the IGC 2003-04. The Convention could not have drafted a treaty without the leadership by the Praesidium. Deliberation may have framed some issues and created constraints on the governments, but where governments saw important national interests at stake they bargained hard in the IGC. It took the leadership of the Irish Presidency to pull through an agreement in June 2004.

The problem then was ratification. Here too political leadership was needed. But such leadership was not forthcoming in France and the Netherlands. The two governments failed dismally. Lack of information or misinformation contributed to the 'no' votes.

So deliberation, highly celebrated by advocates of deliberative democracy, did not produce more legitimacy. All the calls for more deliberation, dialogue and debate did not in the end create greater common identity, institutional trust or political legitimacy. We agree with Moravcsik on this (Moravcsik, 2006).

But two German scholars seem to disagree with that conclusion. Despite the doubts one can have about the Convention method, Thomas Risse and Mareike Kleine have maintained that the method increased the legitimacy of EU constitutionalisation considerably. The argument was based on the theory that more accountability (input legitimacy), increased transparency (throughput legitimacy) and enhanced problem-solving capacity (output legitimacy) should produce more legitimacy (Risse and Kleine, 2007). The argument stayed theoretical, however, and no comparative measurements of legitimacy were presented. The Convention should not be blamed for the ratification failure, the authors maintain, because the failure was due to the large gap between elite consensus and skepticism among many citizens. But, we may ask, should more legitimacy not mean less skepticism among citizens?

The EU as a Process of Constitutionalisation

The treaties founding the EC/EU are formally speaking treaties concluded between sovereign states. Changes in these treaties require the consent of all Member States. But these treaties have created a system that is different from classical intergovernmental organisations. There has been a certain delegation and pooling of sovereignty (Moravcsik, 1998). The Commission and ECJ have what has been called 'supra-national' powers and they can make decisions that are binding on the Member States. Also, an increasing number of decisions in the Council of Ministers can be taken by a qualified majority vote (QMV). Other scholars talk about 'supra-national governance' (e.g., Sandholtz and Sweet, 1998). This, it could be argued, has taken the EC/EU in the direction of a federal system, especially because of the interpretation given by the ECJ of the treaties.

The treaties have a strong constitutional character—even Moravcsik talks about "quasi-constitutional institutions" (Moravcsik, 1998, 2). They define vertical and horizontal divisions of powers and include various checks-and-balances. Treaty reforms have changed the institutional balance somewhat over time, and the functional scope of the EC/EU institutions has increased gradually. The EP has increased its powers and the use of QMV has expanded.

The ECJ has, as mentioned, made important contributions to this process of constitution-building in the EC/EU. Early in the 1960s the ECJ made decisions about direct effect—the so-called *Van Gend en Loos v. Nederlandse Administratie der Belastingen* case in 1963—and the supremacy of Community law—the so-called *Costa v. ENEL* case in 1964. Various ECJ rulings contributed to the consolidation of the internal market, thus driving economic integration forward. The treaties create entities that have state-like properties. Thus, the EC has formal powers to make treaties with third parties and internally the Member States must adapt national rules to the requirements of EC rules (Hix, 2005, 121-126). The constitutional character of the EC treaties was noticed by legal scholars early on, including for instance Eric Stein (1981), and in 1986 the ECJ described the founding treaties as a 'constitutional charter' (Hix, 2005, 121). Later on Joseph Weiler and other legal scholars have contributed to this debate (e.g., Weiler, 1999).

Constitutionalisation is more than legal integration spurred by the ECJ. It is also about fundamental rights, separation of powers and democracy (Rittberger and Schimmelfennig, 2007). It is thus also about the role of Parliaments. Constitutionalisation has been defined by Alec Stone as:

> [T]he process by which the EC treaties evolved from a set of legal arrangements binding upon sovereign states, into a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within [the sphere of application of EC law] (quoted in Weiler, 1997, 97).

Concerning fundamental rights the ECJ has recognised these as part of the EC legal system since 1969 (Rittberger and Schimmelfennig, 2007, 213). The Single European Act (SEA) for the first time referred to these in the preamble, where the Member States declared that they were:

> [d]etermined to work together to promote democracy on the basis of fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice (Treaties, 1987, 1009).

When the Maastricht Treaty added references to citizenship of the Union (Article 8) and fundamental human rights were mentioned in a specific article (Article F) this process of constitutionalisation clearly continued (Council of the EC, 1992). The Amsterdam Treaty added: "The Union is founded on the principles of liberty, democracy, respect for human freedoms, and the rule of law, principles which are common to the Member States" (Article 6) (European Union, 1997). Thus, the EU Charter of Fundamental Rights incorporated in the Constitutional Treaty was a logical extension of this development.

But should the EU have a (real) constitution? This question was formulated officially by the Laeken Summit in 2001 in the Declaration adopted then, which stated:

> The question ultimately arises as to whether … simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union (Belgium, EU Presidency 2001).

The Draft Treaty subsequently developed by the European Convention was entitled Draft Treaty Establishing a Constitution for Europe, a title retained by the IGC which concluded the negotiations (European Convention, 2003; Council of the European Union, 2004). This Draft Treaty was still a treaty, but it could be seen as a step in the process of constitutionalisation without creating a 'real' constitution.

In 1999 Weiler had asked the question "does Europe really need a constitution?" He expressed some skepticism, saying inter alia that "A formal constitution would rob Europe of its most important constitutional innovation: the principle of Constitutional Tolerance" (Weiler, 2000, 223). His argument was that the Treaty of Rome talked about "an ever closer union among the peoples of

Europe"—in plural. Thus, he said, Europe has rejected the 'One Nation' ideal, and the alien has been accorded human dignity.

It could be argued that the founding fathers of the European Communities were inspired by federalist ideas. Jean Monnet mentioned the "negative experience of international co-operation, whose institutions were incapable of decision-making." He therefore proposed "a joint sovereign authority" for the first European Community, the European Coal and Steel Community (ECSC) in 1950 (Monnet, 1978, 295). He also wanted to "abandon the unanimity rule in favour of a new system in which, to everybody's advantage, the idea of the common interest would replace that of the national interest" (*ibid.*, 353). Monnet inspired the French Foreign Minister Robert Schuman to propose the European Coal and Steel Community (ECSC) in 1950. In the Schuman Declaration which started it all functional sector integration was seen as a step towards a European federation. The Declaration argued that:

> By pooling basic production and by creating a new high authority whose decisions will be binding on France, Germany and the other countries who may subsequently join, this proposal will create the first concrete foundation for a European federation which is so indispensable for the preservation of peace (Schuman, 1950, 49).

Among scholars in the 1950s at least one American political scientist, Carl Friedrich, started talking about a 'federal trend' in Europe. He saw federalism a "the process by which a number of separate political organizations, be they states or any other kind of associations, enter into arrangements for making joint decisions on joint problems." In a federal arrangement "unity is combined with diversity in such fashion that there coexist spheres of autonomy for the inclusive community and exclusive community" (Friedrich, 1954 [1962]). Writing at the end of the 1960s Friedrich maintained that a federalising process was taking place in Europe (Friedrich, 1969). And federalism, according to Friedrich, was a kind of constitutionalism (Friedrich, 1968).

At the early stages of European integration many scholars insisted on the *sui generis* nature of the institutional set-up. Ernst Haas, for instance saw "a symbiosis of inter-ministerial and federal procedures" (1958, 526). In the early 1980s William Wallace argued that the EU is more than an international regime (or international organisation), but less than a federal state (Wallace, 1983). Writing about the EC in 1991 Robert Keohane and Stanley Hoffmann echoed this. According to them:

1. The EC is best characterised as neither an international regime nor an emerging state but as a network involving the pooling of sovereignty.
2. The political process of the EC is well described by the term 'supranationality' as used by Ernst Haas in the 1960s (although not as often used subsequently) (Keohane and Hoffmann, 1991, 10).

William Riker gave a formal, yet rather broad definition of federalism. As far as Riker was concerned, a constitution is federal, if

1. two levels of government rule the same land and people;
2. each level has at least one area in which it is autonomous; and
3. there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere (Riker, 1964, 11).

If we use this definition the EU is already federal in some areas. In the first pillar, the European Community, the EU has a fair amount of autonomy. The Union has exclusive competences at least in commercial policy and—among those members which have adopted the euro—monetary policy.

The main deficiency of the EU from a federalist perspective is the pillar structure of the Union. The second pillar (CFSP) and the third pillar (JHA) remain intergovernmental. The Union has no real autonomy in these areas. But the transfer of a number of areas from the third pillar to the first pillar by the Amsterdam Treaty can be seen as part of a federalising process. This transfer was set to

continue with the Draft Constitutional Treaty. But even with the Constitutional Treaty CFSP would have remained intergovernmental.

Seen *in toto* the EU is not a state. Indeed, if we take Max Weber's classic definition of a state as an organisation having a monopoly of the legitimate use of force, then the EU is clearly not a state. In the EU only the Member States have armies and police forces. Whatever federalism there is in the EU, it is largely economic federalism.

If we look at existing federal states the minimum scope normally includes:

1. A single market;
2. A common commercial policy;
3. A single currency;
4. A certain minimum federal budget (fiscal federalism);
5. A common foreign and security policy; and
6. A common army.

As we move down this list the EU starts looking less and less federal. The EU budget of little more than one per cent of the Union's Gross Domestic Product (GDP) remains very small compared with existing federal states. The common foreign and security policy (CFSP), although discussed much in connection with recent treaty reforms, has not changed fundamentally. The rapid reaction force now being created as part of the so-called European Defence and Security Policy (ESDP), after the war in Kosovo, and confirmed by the Treaty of Nice, is still limited to the so-called 'Petersberg Tasks' of peacekeeping, peace creation and conflict management. The Constitutional Treaty would have extended these tasks slightly, but it would not have extended federalisation to the 'high politics' areas of foreign, security and defence policy. These areas would remain intergovernmental and unanimity would remain the normal decision mode.

Has a Constitutional Equilibrium been reached?

Andrew Moravcsik has argued that a constitutional equilibrium has been reached by the EU (Moravcsik, 2005, 2006, 2007). According to him, "The Treaty of Rome has long provided the EU with a de facto constitution" (Moravcsik, 2007, 33). Although the EU's constitutional structure has federal elements it is essentially confederal, and the "EU does not (with a few exceptions) enjoy the power to coerce, administer, or tax." Constitutional change requires unanimity but "[s]uch a system is deeply resistant to any fundamental transformation without consensus among a wide variety of actors." So, despite some features of federalism, many of its most important elements are missing. Thus, "the EU has no police, no army, no significant intelligence capacity—and no realistic prospect of obtaining any of them" (*ibid.*, 34-35). And he argued that the Constitutional Treaty was not in fact a revolutionary document:

> Recent constitutional deliberations underscored the stability of existing constraints on political, coercive, fiscal, and administrative capacity. Notwithstanding its high-minded Philadelphian rhetoric, the proposed draft consolidated, rather than fundamentally reformed, the 'European constitutional settlement.' Few in recent constitutional debates called the EU's essentially confederal structure into question (*ibid.*, 36).

So the proposed reforms were incremental as earlier reforms of the Treaty of Rome had been.

The main reason why people do not take more part in EU debates is the fact that most salient political issues such as health care, pensions, taxation and education remain overwhelmingly national. What the EU can do about another issue that people care about—namely unemployment—is also limited because fiscal, labour market and education policies remain largely national. It is this problem of saliency of the issues dealt with at the EU level which also explains the low turn-out in elections for the European Parliament. Further institutional changes will not be able to get citizens to become more involved. As Moravcsik argues:

> Forcing the issue onto the agenda via a constitutional convention and referendum is counterproductive. This is the deepest lesson of the constitutional episode: from the very beginning with the Laeken Declaration—not simply at the end in a set of mismanaged referenda—the constitution utterly failed to inspire, engage, and educate European publics (*ibid.*, 43).

Implications for EU Scholarship

The final question we raise here is whether what Moravcsik calls "the constitutional episode" also has implications for EU scholarship, especially our theoretical debates. Not all scholars will agree with Moravcsik's analysis. Neo-functionalists and historical institutionalists may predict further processes of spill-over and a certain path-dependent trajectory of developments. Over time the functional scope of European integration has expanded, the powers of the European Parliament have increased and so has the use of QMV in the Council. Also membership has expanded over time. Although these changes may slow down now and in the future it seems that the potential for change is still there. There are still European countries that want to join the EU. As well, exogenous challenges, like threats of terrorism and environmental catastrophes, may put pressure on the EU Member States to pool and delegate sovereignty to a great extent than they do now. But Moravcsik's prediction that we should not expect fundamental change may well turn out to be correct.

Debates about the EU's democratic deficit will probably keep popping up. But, as the European Parliament becomes a real legislator on par with the Council this debate will start sounding hollower. Delegation is normal in democracies. The philosophical ideal of a high degree of deliberation is not attained in most national political systems.

If any theories or approaches to EU integration studies have suffered by the constitutional incident it seems to be some of the more social constructivist approaches, those inspired by theories of deliberative democracy. The constitutional debacle can be explained by rational theories of politics but it is difficult to see how social constructivism can explain the abandonment of the Constitutional Treaty.

It is beyond the job of this paper to try to explain the new Lisbon Treaty. But dare we surmise that liberal inter-governmentalism will do a good job, when we can analyse that next step in European treaty reforms? The exception will be the continuing empowerment of the European Parliament, where social constructivism seems to have a comparative advantage in explaining the developments. Further, we cannot ignore the role of political leadership. On leadership both liberal intergovernmentalism and social constructivism are weak.

Without knowing the final fate of the Lisbon Treaty we expect it to continue the trajectory of constitutionalisation of the European Union, simply because the Union needs a constitutional arrangement to create reliable commitments and legitimate governance. Will the politicians get it right this time? Will a return to a Jean Monnet-type gradualism help the EU to keep advancing? It seems that results—like jobs—are more important than symbols and rhetoric.

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