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# A rationalist-institutionalist explanation of endogenous regional integration[1]

Henry Farrell and Adrienne Héritier

**ABSTRACT**   What is at the basis of regional integration and what are the processes that drive integration? Why do integration processes develop faster in some issue areas than in others? These questions are at the heart of our own work, just as they are the driving concerns of Ernst Haas's version of neofunctionalism. While we, unlike Haas, emphasize endogenous processes of institutional change based on bargaining processes in a particular institutional context, rather than exogenously driven processes of technical needs and spillover, we believe that there is important overlap between our approach and Haas's, as well as areas of disagreement. By exploring these areas of overlap in this article, we hope – by focusing on bargaining processes – to empirically illustrate on the one hand how our approach may help to answer questions that Haas's version of neofunctionalism had difficulties with, and on the other how Haas's emphasis on epistemic factors can alleviate some of the blind spots in our own perspective.

**KEY WORDS**   Bargaining theory; endogenous institutional change and regional integration; epistemic communities; formal and informal institutions.

## 1.  INTRODUCTION: WHAT DRIVES REGIONAL INTEGRATION?

What is at the basis of regional integration and what are the processes that drive integration? Why do integration processes develop faster in some issue areas than in others? These questions are at the heart of our own work, just as they are the driving concerns of Ernst Haas's version of neofunctionalism. While we, unlike Haas, emphasize endogenous processes of institutional change rather than exogenously driven processes of technical needs and spillover, we believe that there is important overlap between our approach and Haas's, as well as areas of disagreement. By exploring these areas of overlap in this article, we hope to empirically illustrate on the one hand how our approach may help to answer questions that Haas's version of neofunctionalism had difficulties with, and on the other how Haas's emphasis on epistemic factors can alleviate some of the blind spots in our own perspective.

Haas argues that deepening integration flows from a process of spillover/ramification. In contrast to Mitrany (1975), he does not conceive of this as an automatic technical process, but as a process driven both by the interest-oriented behaviour of political élites and the impact of expertise and epistemic communities in complex technological policy areas. He provides us with an understanding of the macro-level processes driving European integration. What his work arguably lacks is a specification of the precise processes by which belief systems translate into policy outcomes.

In this article we set out our own model of an endogenously driven mechanism of formal and informal institutional change building on the foundations of negotiation theory. We illustrate how the mechanism works with reference to the empirical example of the early agreements in codecision-based legislation in Europe. While our account may explain the occurrence or non-occurrence of institutional change/integration it could in principle also be applied to the uneven development of integration in different policy areas (see, for instance, for external and internal security policy Börzel (2005)). By including the mechanism of negotiation as part of the causal account it is possible to explain differential degrees of institutional change/regional integration. The depth and speed of integration/institutional change would then depend on the outcome of this negotiation process in which expertise does play an important role, but is subject to a power-driven negotiation process.

However, our emphasis on bargaining might usefully be supplemented with a more detailed examination of the processes through which the parameters of bargaining are set. As we note in our conclusions, Haas provides just such an account of parameter-setting, which is especially relevant to those fields of policy-making where technical knowledge is of importance.

## 2. HAAS'S ARGUMENT

Ernst Haas built on David Mitrany's version of functionalism, extending and revising it in important ways. Mitrany sought to show that transnational ties among experts (rather than politicians) in solving technical problems led to increased collaboration among states and thus to international integration. Successful co-operation in one field would lead to a ramification/spillover, i.e. further collaboration, in other fields. Under this account, integration occurs because of external factors (the technical nature of the problems being solved) rather than an internal dynamic within the regional organization.

According to this early account integration would proceed quasi-automatically. There would be demands for additional integrated services as centralized institutions found themselves unable to satisfy all the demands of the new clients. Activities associated with integrated sectors would 'spill over' into linked sectors not yet integrated, and become the focus of demands for more integration (Haas 1991: 23).

Thus, economic integration would lead to political integration in Europe, integration being defined as a process 'whereby political actors in several distinct

national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the preexisting national states' (Haas 1958: 16). In contrast to Mitrany, however, Haas stressed that technical tasks cannot be separated from political tasks, or welfare from power. 'International integration is advanced most rapidly by a dedication to welfare, through measures elaborated by experts *aware of the political implications* of their tasks and representative of homogeneous and symmetrical social aggregates, public or private' (Haas 1958: 49; emphasis added). The actors become politicized because, in response to initial technical purposes, they consider the spectrum of means considered appropriate to attain them and choose among them (Haas and Schmitter 1964: 707). Hence, it is necessary to specify the conditions under which actors will choose to collaborate. Haas argues that the force driving choice will be the self-interest of political élites. Integration only occurs when political élites consider it to be in their self-interest. Thus, Haas's epistemology rests on the assumption of a goal-oriented actor: 'rather than relying upon a scheme of integration which posits "altruistic" motives as the conditioners of conduct, it seems more reasonable to focus on the interests and values defended by them as far too complex to be described in such simple terms as "the desire of Franco-German peace" or "the will to a United Europe"' (Haas 1958: 13; Haas 1991: 23). As Haas says: 'the ontology is "soft" rational-choice: societal actors, in seeking to realize their value-derived interests, will choose whatever means are made available by the prevailing democratic order ... The ontology is *not* [original emphasis] materialistic: values shape interests and values include many non-material elements' (Haas 1991: 23, 25).

How would Haas then account for the unevenness in speed and depth of regional integration in different policy areas? Two points emerge. First, since Haas argues that spillover is not automatic, the preferences of the political élites will determine whether sectoral integration is taken forward or not. Thus, in the context of the European Community of the mid-1970s Haas expressed reservations regarding the logic of spillover. He did not think that a common monetary policy was imminent. He argued that an integration process based upon expectations of economic gain is an 'ephemeral' and 'frail process, susceptible to reversal' because it is not based upon deep ideological commitments (Haas 1967: 324). Thus, the first explanation for unevenness of integration across sectors, admittedly theoretically not very sophisticated, would be: deepening integration occurs whenever the political élites predominantly prefer it over other possible outcomes.

The second answer to the 'why' of differential sectoral integration can be derived from Haas's argument about epistemic communities and the role of expertise. The influence of problem interdependence and its treatment through the professional knowledge of epistemic communities would favour deepening integration. One of neofunctionalism's core claims is that integration is accelerated in issue areas in which scientists and technicians play a central role. The key causal factor is learning. Epistemic communities, characterized by a

high level of technical and expert knowledge, may play a role in accelerating regional integration, because scientific views tend to converge, and facilitate the formation of policy communities. Since collaboration among states takes place under conditions of great complexity, there is uncertainty about means–ends relationships in policy-making in areas such as the environment, energy, industrial policy, research and development, and technology transfer. In the process of gaining control over this complexity and interdependence among policy areas, we may expect convergent problem views and policy solutions, i.e. integration.

> Epistemic communities are associations of professional experts in a particular field who, because of the knowledge they have, have an unusual influence on politicians and bureaucrats, and are, therefore, able to penetrate government departments and make their ideas part of policy... They only operate in fields of policy where science matters. In the field of human rights, forget it ... In environmental politics, it matters a great deal.
>
> (Haas 2000: 10)

Haas argued that if we could say that a given scientific idea or discovery 'or a network of specialists triggered the development of a political consensus, which in turn legitimated a new international program, we could make a definite observation about the impact of science on collective problem-solving' (Haas *et al.* 1977: 9).

However, in his own research Haas noted that, even in the case of complex science-based issues, international epistemic communities have had only modest effects: although states have increasingly been confronted with complex and interdependent problems, the political willingness of political élites to engage in supranational action has not increased accordingly (Haas 1976: 184). Empirically, Haas failed to find unequivocal evidence of this. He concluded that, despite the growth of international institutions and fora for debating scientific issues, the power of these bodies to bring about a policy change has remained weak (Haas *et al.* 1977: 352ff.).

So why is it that epistemic communities and other factors sometimes lead to an acceleration of regional integration and sometimes not? We argue that a proper emphasis on causal processes will help us to arrive at a better answer to this question. Haas does not describe a causal process explaining why the members of epistemic communities do or do not translate their beliefs and preferences into influence over policy outcomes, why some wield influence on bureaucrats or not. Although Haas provides some of the elements of such a theoretical explanation, he does not bring them together into a coherent whole. Haas discusses modes of conflict resolution in a bargaining process when he talks about the three methods of resolving disputes among states, i.e. the methods of the 'lowest common denominator', of 'splitting the difference' and of 'upgrading the common interest' (Haas 1961: 371). However, even if these important elements of a conflict-solving strategy are present in Haas's theory of integration, they are not premised on a fully developed theory of

negotiation.[2] Furthermore, the simple claim that epistemic communities' causal beliefs are diffused to and among state decision-makers, and that there is an increasing likelihood of convergent state behaviour and international policy co-ordination, is 'theoretically incomplete' (Sebenius 1992: 356) because it does not specify the mechanism by which the influence of epistemic communities translates into policy outcomes.

We will argue that, by applying negotiation theory, we can account better for when regional integration takes place and when it does not. This negotiation theoretical approach to integration also potentially allows us to accommodate the influence of epistemic communities and their expertise.

## 3. AN ENDOGENOUS DYNAMIC OF REGIONAL INTEGRATION/ INSTITUTIONAL CHANGE THROUGH THE INTERPRETATION OF INCOMPLETE CONTRACTS

In our work we have focused on endogenous causal mechanisms accounting for institutional change, with particular reference to decision-making rules in regional integration, i.e. Europe. The argument as such, however, may be applied to the occurrence or non-occurrence of other types of institutional change such as the delegation of decision-making powers in particular policy areas to a supranational level. Thus, in contrast to Haas we scrutinize the development of integration in terms of its weakening or deepening at the level of *institutions*, i.e. rules of behaviour, in this particular case the rules governing the distribution of competences and authority among formal European decision-making bodies. Further, we present an *endogenous* explanation of institutional change; rather than privileging the specific characteristics of the issues, or focusing on spillover from other issue areas, we concentrate explicitly on processes of institutional bargaining and negotiation.

In a first step, accounting for the *development of informal institutions*, defined as rules of behaviour not subject to third-party dispute resolution, we argue that the creation of informal institutions is driven by the interpretation of formal rules, which we define as written rules of behaviour subject to third-party dispute resolution. Since formal rules are usually ambiguous, actors develop informal rules guiding the daily application of these rules.[3] Actors will have different interests over the content of these rules, in particular when these rules effectively redistribute decision-making weight, each actor preferring those rules that maximize its own decision-making competences. Thus, we suggest that the rule-making process will be driven less by common gains from co-ordination than by conflicts over how these common gains are distributed (Knight 1992).

In a second step, we argue that, under specific conditions, these informal institutions may in turn affect future rounds of Treaty change, i.e. *informal rules may be formalized* and contribute to a further development of integration.

This negotiation-centred perspective suggests that the speed and extent of integration can be explained by negotiations and the relative bargaining power of actors.

Empirically we examine the institutional change in the legislative procedure of codecision, i.e. joint decision-making of the Council of Ministers and the European Parliament. We argue against the one-shot game approach or 'procedural models' (e.g. Tsebelis and Garrett 2000), which posits that the procedural rules of regional integration produce determinate equilibria, and are the product of conscious choice by a small group of actors – the member states. We share with Haas the base assumption that all actors have bounded rationality, and a limited ability to anticipate truly uncertain events. Thus, the member states cannot anticipate all eventualities and cannot create 'complete contracts'. They are constrained in their ability to respond to unexpected outcomes, creating opportunities for other actors to influence the institutional development. Under these circumstances, institutional outcomes will only imperfectly reflect the intentions of the principals (member states) and will be shaped in important ways by the indefinitely iterated exchange among the main actors in the legislative process.

We also argue that these 'procedural models' over-emphasize the formal legal sequencing of decision-making processes at the cost of analysing the impact of informal extra-legal bargaining in decision-making – institutional rules may reflect both power relations and the intensity of preference/saliency of an issue for actors, in a way that is not reducible to the formally defined number of votes, or right to submit a proposal, etc. (Achen 2003).

Thus, we argue that member states do not have complete control over the integration process and stress that power differences affect the re-negotiation of the specifics of ambiguous treaty provisions (Farrell and Héritier 2003, 2004). We assume that actors are goal-oriented and seek to reach institutional outcomes that match their objectives, so that bargaining over the implementation of political procedures may lead to the creation of informal institutions.[4] Bargaining may involve formal negotiations around a table, but this is not necessary – the negotiation of new rules may be tacit, ongoing, and decentralized (Knight 1992; Sebenius 1992: 352). The more powerful an involved actor, in terms of available options should agreement not be reached, i.e. the better the fall-back position, the more likely it is to obtain the outcomes it desires. Based on this argument (Knight 1992), we argue that the following factors may affect the relative influence of actors to achieve the informal rules that they prefer.

1 The formal institutional framework. While formal institutions do not decisively determine the relative power positions of actors, they may have an important influence upon them. Formal institutions grant general competences to actors, and have a substantial effect on their ability credibly to threaten specific kinds of action. Formal institutions' actual effects do not necessarily reflect the intentions of their designers, both because it is impossible to predict all contingencies that these institutions must deal with in advance, and because the third-party dispute resolution provider which provides definitive interpretations of these institutions has considerable

autonomy from the member states (Stone Sweet 1999; Moral Soriano 2002). Indeed, particular formal institutions, such as the unanimity rule, giving the right of veto to every single decision-making participant, invite the emergence of informal institutions to avoid a deadlock situation (Héritier 1999).

2 The fall-back position in the case of non-agreement, as reflected in the factors of:

- differing time horizons. Some actors take a longer view than others. Shorter time horizons may make actors vulnerable to pressure; other actors may be willing to delay decisions for long periods, or to threaten such delay, if this serves their particular interests.
- differing sensitivity to failure. Some actors may be less affected by failure to reach agreement on a specific item of legislation (or legislation in general) than others because of differences in the intensity of preferences, i.e. the saliency of an issue to them. These actors will be better able to make credible threats with regard to this item (or items) of legislation, in order to enhance their overall position in the negotiation of informal rules.

The two factors discussed above are likely to have an important – and differential – impact on the ability of actors to decisively shape terms of interaction that are favourable to them. Over time, a basic *modus vivendi* is likely to be hammered out, consisting of informal rules which provide a basic structure to interactions between actors by co-ordinating expectations, which will reflect the differential power of actors to make credible threats that other actors must take account of. This process of informal institutionalization is likely to affect outcomes in two main ways: (1) informal institutions may modify or even supersede formal procedures; (2) substantive issues may be instrumentalized to establish informal institutional gains.

First, when informal institutions have arisen, these clearly are likely to structure the legislative process. They may have implications for legislative procedures, affecting the practices through which legislation is drafted and amended, modifying, or in extreme cases effectively replacing, the formal institutions governing inter-institutional relations, thus shifting the relative decision-making weight between actors. Second, while actors struggle over informal rules, they may seek to demonstrate their power by delaying or blocking individual items of legislation that are important to others, so as to show that they are willing to endure breakdown (i.e. are obdurate 'types'), and thus increase their overall bargaining strength.

Therefore, our first claim is that there is a process of informal institution creation, which is influenced, but certainly not determined, by the formal institutional framework. Informal institutions will also be affected by power disparities and different intensities of preferences in the negotiation process between actors. In other words, the availability of non-agreement alternatives for actors will reflect not only formal institutions, but also differences in time horizons and differences in sensitivities to failure.

Second, the processes of formal and informal institutional change may become imbricated, so that actors with little direct power over formal institutional change will seek to exercise indirect influence through making their informal co-operation conditional on formal institutional concessions that they desire.

## 3.1  The introduction of informal institutional rules

Within the European Union (EU), we apply these arguments to the codecision procedure of legislative decision-making, which has been the subject of much recent study. The two most important actors engaged in negotiations over the informal rules under which codecision is applied are the Council of Ministers and the European Parliament; while the European Commission plays a role, it is a secondary one.

We argue that:

– *legislative actions will be linked together in a succession of indefinitely iterated interaction (issue) rounds, wherein legislative actors will seek to make their co-operation in one issue round conditional on another;*
– *substantive short-term policy goals will be forfeited in order to obtain long-term institutional goals;*
– *these iterated interactions will give rise over time to informal institutions, which will structure actors' expectations.*

We propose that:

– *informal institutions will reflect the bargaining power of actors, as determined by the existing formal institutions and the factors affecting non-agreement alternatives, i.e. time horizons, sensitivity to failure.*

Or more specifically:

– *Given the equality of the Council and the Parliament under the codecision procedure, the actor with the better fall-back position, i.e. with longer time-horizons and less vulnerability in the case of non-agreement, will have more power to shape informal rules.*

In order to provide an initial 'plausibility probe' for our model, we seek to examine the evolution of the codecision procedure, both in formal and informal terms. If our model provides a first good fit to the data on codecision, one could proceed to a systematic testing of a number of its claims.

*Empirical plausibility probe*

*Case 1: The institutionalization of 'trialogues' and 'early agreements'.*  The introduction of the codecision procedure in the Maastricht Treaty led to a series of institutional battles between the Parliament and the Council over how codecision should be implemented (Farrell and Héritier 2003). Fundamental

ambiguities in the Treaty text led Parliament and Council to adopt differing interpretations. While the Parliament maintained that the codecision procedure effectively gave it equality with the Council in the process of debating and deciding legislation, the Council initially maintained that it did not need to bargain with the Parliament, and would merely indicate those pieces of legislation that it was prepared to accept or reject, on a 'take it or leave it' basis. Neither side was initially prepared to back down – the Parliament went so far as to threaten to block or slow down legislation in order to increase its negotiating power. After a series of hard-fought legislative battles, the Council gradually came to accept that it did indeed need to negotiate with the Parliament over legislative items that came under the codecision procedure. This in turn gave rise to a series of informal institutions, which instantiated the expectations of both Council and Parliament over how negotiations should proceed, and reduced transaction costs by creating a set of shared expectations among all actors in the legislative process regarding appropriate procedures.

The most important of these institutions involved the process of informal meetings, or 'trialogues' and 'early agreements' (Shackleton 2000). Trialogues allowed the Parliament and Council to meet together after the first reading of a particular piece of legislation in order to discuss points of contention, and to hammer out differences and come to a mutual agreement and avoid the conciliation procedure. The Committee of Permanent Representatives (COREPER) and the Council had to recognize that Parliament had the role of copartner in legislation. The introduction of the informal trialogues enabled both sides to speak more frankly, and to explain in more detail the underlying reasons for the positions that they adopted and, in well over a fourth of all legislative items per year, led to 'early agreements'.[5] In the words of an official from the European Parliament,

> this institutional innovation has . . . served to generate a variety of procedural norms and shared beliefs about how the parties should behave which can only be described as 'rules of engagement'. By the end of the Maastricht era, they had become so self-evident that no one contested them.[6]

In a world where the Parliament was willing and able to block legislation, the Council had a strong interest in ensuring that discussions with Parliament began at an early stage, and were conducted reasonably smoothly. The Council is keen to see legislation passed in time (because of deadlines for legislation set during European Councils). Further, the six-month presidency system means that each member state holding the presidency has a strong incentive to see part of its agenda passed through early agreements within the six months. Also, COREPER 2, which is relatively under-staffed, would face serious problems if each piece of legislation had to pass through the time-consuming and arduous procedure of conciliation. In other words, the non-agreement alternative to early agreements is costlier for the Council than the Parliament. Finally, the Council and member state government representatives are more likely to be blamed in domestic politics for failing to pass particular items of legislation

than the individual Members of the European Parliament (MEPs) who are elected in 'second-order elections' which usually revolve around national controversies rather than European issues. The Council, therefore, is more vulnerable *vis-à-vis* the failure of negotiations than the Parliament and has fewer non-agreement alternatives than the Parliament in negotiating the informal rules under codecision. Hence – following our argument – the informal institutions governing codecision should to a larger extent reflect the institutional preferences of the Parliament.

Under our argument, the trialogues and early agreements can be seen as an unexpected informal institutional innovation – they were in no sense anticipated in the Maastricht provisions that introduced the codecision procedure. However, once they had been introduced – because of the Parliament's strong bargaining position – they began to guide day-to-day behaviour under codecision, and demonstrably eased transaction costs. Given the potential veto power of the Parliament over important items of legislation, the member states had some considerable incentive to reach an appropriate *modus operandi*, giving the Parliament important clout in the decision-making process that initially had been denied by the Council.

*Case 2: Establishing an informal rule of 'Council coming to committee'.*   Another effort of the Parliament to establish an informal institution has enjoyed considerable success, i.e. the attempt to establish an informal rule that the Council comes to the relevant Committee of Parliament in order to defend its legislative proposals. This is very clearly an effort by the Parliament to extend its power further by building on the model of national parliaments, which have committees that can summon ministers to defend proposed legislation. The Parliament's efforts were initially opposed by many member states (Interview, Permanent Representations 1 and 2). Actors within the Council feared that this would certainly create logistical problems for the Council, given the Secretariat's chronic lack of time and resources; even more pertinently, it would also create internal and external negotiating problems for the Council. Within the Council, it would be more difficult to negotiate on contentious issues if member states' actual positions on an issue were revealed by the Presidency in an 'official' forum (Interview, Permanent Representations 1 and 2, Brussels, January 2001; Interview, MEP, Brussels, March 2001). It would also weaken the Council's negotiating position *vis-à-vis* the Parliament in a possible future conciliation by providing information about the Council's bottom line. Thus, 'it would challenge the way in which Council traditionally operates, searching for agreement outside the public eye and avoiding open discussion of its position' (Shackleton 2000: 12). Most member states would clearly prefer that contacts between the Parliament and the Council remain informal, secretive and voluntary rather than formal, public and obligatory.

As matters currently stand, the Parliament has had some real success in persuading representatives of the Presidency to come to committee. Since the Amsterdam Treaty, the competent ministers of the member state holding the

Presidency appear before the competent parliamentary committee at the beginning or end of their period in office (EP Activity Report July 2000/1: 11). In purely formal terms, the representatives of the Council only offer *information* about the overall position of the Council. They do not openly engage in *negotiations* with the members of the Parliament committee and they do not give explicit information on individual member states' stances. However, informally, the Council has recognized the need to accede to some of Parliament's demands in order to smooth the process of law-making. Thus, the Council now provides the Parliament with documents that effectively allow MEPs to figure out what the main sticking points are – and which member states oppose particular initiatives (Interviews, Council representatives, October 2001). Increasingly, ministers recognize that they need tacitly to negotiate with the committees in question in order to get legislation through. Thus, there is some considerable evidence to suggest that the Parliament is making real progress in its efforts to win concessions.

The Parliament continues to push for this to be extended to a general duty on the part of ministers to defend their proposals to the Parliament, threatening to withhold informal co-operation to persuade the Council to its point of view. 'The Parliament should not develop informal contacts unless the Council is first prepared to make a greater effort to explain its views in committee' (EP Activity Report 2000/1: 29, 52). And: 'on the basis of active Council participation in committee meetings, committees should decide what kind of contacts they are willing to agree to outside this framework e.g. trialogues' (EP Activity Report 2000/1: Appendix V). The Parliament's ability to carry through on these threats is to some extent limited by its own internal disorganization, and inability to organize MEPs to implement collective action (Farrell and Héritier 2004). Thus, the proposed informal rule met with substantial resistance on the part of rapporteurs. In one prominent MEP's words:

> They can write down whatever they want. They write a lot of reports. Nobody will take notice of that … Those people who are really doing the job, need the contacts and they use the contacts … I am an independent MEP. I am not one that follows the orders of the Vice President … There are some people who want such rules, but they have no chance.
>
> (Interview, Rapporteur B, January 2002)

This internal conflict regarding the change of interorganizational rules makes it difficult for Parliament collectively to carry through on its threat, and has therefore reduced the prospects of achieving this institutional revision.

Hence, in terms of the *negotiation of an informal institutional rule* of 'Council coming to committee' the Parliament has obtained real – but somewhat limited – success.

## 3.2 The formalization of the informal institutional rules

In a second step we ask whether the informal institutional rules which have been negotiated will be formalized in subsequent treaty revision rounds. One simple

argument that flows from our theory is that the combination of (a) the inability of member states to agree to complete contracts that would cover all possible contingencies, and (b) the decision rules governing formal revision, will mean that it will sometimes be impossible for member states to reverse informal institutional gains, and that indeed under certain circumstances they may wish to incorporate them into the treaty. We can derive some initial hypotheses from this simple framework.

– *When all member states agree that the informal institution in question hurts their interests, and that it can be blocked through formal Treaty changes, they will be able to incorporate new Treaty revisions that seek to undermine the informal institution on the basis of unanimity.*
– *When all member states agree that the informal institution in question has positive (or for those member states at the margin, neutral) consequences, and that transaction costs would be lowered by making it more formal, they will agree to formalize it by incorporating it into the Treaty.*
– *If member states disagree with respect to the benefit of an informal institutional rule, they will not formalize it, but the informal rule will remain as an informal rule.*

However, we note that this argument has clear limits – it does not explain certain kinds of treaty change. Thus, it cannot explain why member states would accept a loss of competences through the formalization of informal rules. In fact, there have been formal institutional developments benefiting the Parliament that cannot be explained by either of our first two hypotheses; a case in point is the elimination of the right to resubmit the Council Joint Decision after a failed reconciliation procedure. In order to account for this, one has to look beyond the preferences/unanimity logic of member state decision-making. Why has the Parliament been successful in extending its formal competences in the revision of macro-institutional rules even when the gains of the Parliament implied a relative loss of competences of the Council?

   We suggest that actors, such as the Parliament, which have a limited formal role, or no formal role in the negotiation of treaty changes, may still have informal influence through their formal role in making lower-order rules. They may withhold co-operation at the lower level of rule-making or indeed in a different higher-level rule-making arena where the actor in question does have formal competences.

   In the context of the EU we ask whether the Parliament as the actor with no formal rights in higher-order rules revisions will seek to use its informal weight in order to gain formal institutional concessions from the member states. Again we conduct an initial 'plausibility probe' of these arguments by showing how they seem to describe well or less well three cases of the formalization or non-formalization of informal institutions.

*Plausibility probe: the (non-)formalization of informal rules*

*Case 1: The formalization of 'early agreements'.*   During the treaty changes after Maastricht, the Council Secretariat proposed an effective extension of the trialogue procedures that had been negotiated between Parliament and Council, so that it would cover earlier parts of the codecision process. They found considerable enthusiasm among the member states. Accordingly, the Treaty of Amsterdam formally included a new measure, which allowed the Council and the Parliament to begin negotiating at a much earlier stage with regard to dossiers that were either technical in nature, or very time sensitive. This 'early agreement' provision was intended to promote agreement at the stage of the first reading, before Council had reached a formal common position. We see how an informal institution, which was not predicted *ex ante*, provided gains to member states which they formalized in a subsequent round of Treaty negotiations.

*Case 2: A stronger role for the Parliament in Treaty revisions.*   The Parliament only has a right to be heard with respect to Treaty revisions and accordingly issues Resolutions and reports. An important group of member states recognized the need to associate the Parliament more closely with the work of the Inter-governmental Conferences. Resistance to this association could be overcome 'with the help of the political agenda' (Schiffauer 2004: 10f.).

The Parliament used its right of veto over the Northern enlargement (its formal acquiescence was necessary) to push for an increased role, emphasizing that enlargement would only be possible if there were an institutional deepening of the EU. It agreed to support the enlargement decision when in 1996 it was guaranteed a role in the preparatory *groupes de réflection* for the treaty revision. In these *groupes de réflection* the representatives of the Parliament arguably played an 'agenda-setting' role (Schiffauer 2004: 11). This case shows how an actor, who is not formally part of the process of the definition of higher-order rules, by issue linkage may increase its influence by withholding its formal consent in a separate higher order issue arena where it does have a formal say.

*Case 3: A formal role for Parliament in comitology under codecision legislation.*   After the introduction of the codecision procedure the Parliament fought battles on how the codecision procedure should be applied over each individual item of legislation. Besides asserting its role in the codecision process itself, the Parliament had the institutional aim of asserting its position in the comitology process (Bergström 2003: 228; Corbett *et al.* 2000: 258). It used the Open Network Telephony case to underline its demand for a *droit de regard* and a substitution mechanism. The Council did not make any concessions and the conciliation process ended in deadlock. Finally, the Council was willing to consider the exercise of implementing powers under codecision in the Intergovernmental Conference of 1996 and to accept for the intermediate period a *droit de regard* for the Parliament. But, disappointingly for the

Parliament, in the Amsterdam Treaty the member states did not formally strengthen the role of the Parliament in the exercise of implementing powers at the Treaty level, but provided for a new Comitology Decision, i.e. a revision of the Council Decision of 1987 (Bergström 2003: 230–56).

Thus, in this case the Parliament's indirect power to block legislation in its role as a co-legislator did not provide it with enough leverage to induce the formal macro-institutional decision-makers to take its views on the shaping of the treaties into account. One reason may be that the Parliament had other important issues at stake in the Amsterdam Treaty negotiations, such as the widening of the application of the codecision procedure and the right to approve the President of the Commission, so that the role in the exercise of the implementation powers did not have the same salience for Parliamentarians as winning an increase in their legislative powers.

## 4. CONCLUSION

In the above, we have argued that our approach, which seeks to identify the causal mechanisms through which deepening integration or other forms of institutional change work, helps to answer some of the questions that Haas's version of neofunctionalism has difficulty in handling. In particular, we suggest that negotiation theory helps us to identify the key causal mechanisms explaining when regional integration/institutional change does or does not occur in a particular instance. Our argument stresses the extent to which regional integration is a function of institutions, as well as the importance of differential bargaining power in accounting for institutional change. Our argument is endogenous in that it posits that institutional change occurs when ambiguities in higher-order rules lead to the negotiation of informal rules, thus allowing institutions to work on a day-to-day basis. The outcome, the informal rule, in turn depends on the relative bargaining power of the actors involved which is linked to their particular institutional position (i.e. the short-term horizon of the Council Presidency and the lesser vulnerability of the Parliament *vis-à-vis* a negotiation failure). While we develop our argument with regard to legislative institutions, we submit that it may be extended to those issue areas where scientific knowledge plays an important part. Accordingly, we suggest that Haas's research agenda, which elaborated the impact of problem interdependence and epistemic communities on the regional integration process, should be supplemented by a bargaining approach. The influence of epistemic communities on policy-making will be mediated by the negotiation processes through which institutions are created and revised. It is not enough to conceive of the impact of epistemic communities in the sense of convergence of policy beliefs as a 'trickle down' or socialization process – a finer-grained attention to the causal processes involved is needed.

Haas argues that the views of epistemic communities diffuse to and among state decision-makers, that there is an increasing likelihood of convergent state behaviour and international policy co-ordination, informed by the

causal beliefs and policy preferences of the epistemic community, that the application of consensual knowledge to policy-making depends on the ability of groups transmitting this knowledge to access and exercise bureaucratic power. This is true, but 'theoretically incomplete' (Sebenius 1992: 356–7). Epistemic consensus and empowerment are not sufficient to account for agreement, and key elements are missing from Haas's account. We propose that power-based bargaining and strategic action provide the missing part of the story that Haas is trying to tell.

However, we also wish to conclude by suggesting that while Haas's account is incomplete without a theory of negotiation, so too are negotiation theories of the sort that we employ, if we do not pay attention to the factors that Haas identifies. We do not attempt to lay out a complete argument as to how to integrate bargaining theory with epistemic factors here; this is one of the key challenges facing both rational choice accounts of bargaining (which tend to overlook epistemic factors) and constructivist accounts of negotiation (which tend to underplay the real role that clashes of interests play). Instead, following Johnson (2002), we seek to identify the foundations of a research agenda that might begin to bring Haas's concern with epistemic factors back to bargaining theory, just as we have sought to apply bargaining theory to explain some of the outcomes that Haas's current model has difficulty in explaining.

In particular, we focus on the importance of problematizing the basic notions underlying game theoretic accounts of negotiation. Some aspects of negotiation are well captured by game theory. Others, even if they may be difficult to model in formal terms, are still compatible with the underlying assumptions of game theory. Others still are difficult or impossible to reconcile with the fundamental concepts of game theory as it is usually applied.

Our basic theoretical framework stems in large part from the standard accounts of bargaining in non-cooperative game theory, building both on simple accounts that employ mixed motive co-ordination games (Krasner 1991; Knight 1992) as well as the variants of the Rubinstein bargaining model (Rubinstein 1991). All of these accounts rely on the assumption that actors have *complete information* about the games that they are playing – that is, that they share common knowledge over the underlying structure of the game, including *inter alia* the possible actions that are available to each player at each decision-making node of the game, and the outcomes that are associated with particular combinations of strategies. Games that have incomplete information are, relatively speaking, intractable – while Harsanyi shows that some games of incomplete information may be transformed into games of imperfect information in which Chance takes the first move, his technique still requires that players have complete knowledge over the underlying probability distribution associated with Chance's move.[7]

Recently, it has become popular to argue that constructivist accounts may help to complement game theoretic accounts by explaining how this common knowledge is generated. While this is an important step in the right direction, it still underestimates the importance of uncertainty in explaining bargaining outcomes.

In the middle of bargaining, new possibilities of action (or hitherto unknown consequences of particular actions) may be revealed to players (Farrell 2003).

Here, we may see how epistemic factors may play a crucial role, not only in shaping the common frame of knowledge shared by negotiators when bargaining begins, but also in allowing negotiators (and outside actors with specialized knowledge) to intervene in debates for strategic or non-strategic reasons. Epistemic factors may determine bargaining outcomes to the extent that they delineate the range of possible alternatives that are available to actors (Johnson 2002). This means that they will be a key negotiating resource in many contexts. Actors may deploy epistemic resources to foreclose or to disclose new possibilities of action, or to reveal hitherto unsuspected consequences associated with those actions. Thus, epistemic communities may make previously acceptable bargains unacceptable, or vice versa, by changing the common body of knowledge regarding the benefits and drawbacks associated with each available alternative. In short, they may fundamentally reshape the parameters within which political actors bargain – and do this even while bargaining is taking place. As Haas himself would predict, epistemic communities are unlikely to play such a role in the kinds of bargaining that we discuss in our empirical examples, where scientific knowledge has little relevance. However, if negotiation theory is extended to areas such as environmental policy-making, we predict that it will be necessary to pay attention *both* to epistemic factors and to bargaining in order to explain outcomes. We note that this is an important research agenda both for rationalist and constructivist approaches to international relations – understanding exactly how epistemic factors and strategic motivations intersect in situations of negotiation. While we do not pretend to do more here than sketch out the beginnings of this agenda, we feel confident in asserting that it will require attention both to the basics of strategic interaction, as sketched out by game theorists, and the forms of knowledge creation described by Haas.

**Addresses for correspondence:** Henry Farrell, Department of Political Science, Elliott School of International Affairs, George Washington University, Washington DC 20052, USA. email: henry@henryfarrell.net/Adrienne Héritier, Department of Social and Political Science, European University Institute, Via dei Roccettini 9, 50016 San Domenico di Fiesole, Italy. email: Adrienne. heritier@iue.it

## NOTES

1 We thank Yannis Karagiannis, Tanja Börzel and the anonymous reviewer for their comments and suggestions.
2 White presents a convincing analysis of how these core elements of neofunctionalism had important political implications. The methods of resolving disputes developed by Haas were taken up by Lindberg (1965: 12) who talked frequently to Karl-Heinz Narjes (Chef de Cabinet of Walter Hallstein). Hallstein in various lectures expressed the idea of a 'Sachlogik' of an inevitable process of economic

and then political integration in Europe (White 2003: 121). The Commission in its famous 'triple deal' which then triggered the 'empty chair crisis' applied this approach of bundling issues when it proposed the financing of the common agricultural policy, but also unexpectedly introduced two new dimensions: to have its own financial resources and to give the European Parliament new authority to oversee the Community budget (White 2003: 124). The triple deal arguably was 'entirely the brainchild of Hallstein ... [It] ... was cooked up by Karl-Heinz Narjes and Ernst Albrecht ... and sold to Hallstein' (White 2003: 125). To be true, the issue of an increase of the supervisory authority of the Parliament linked to an independent source of revenue of the Commission was also supported by the Dutch, Italian and German governments (Bergström 2003: 61f.).

3  See also Stone Sweet (1999) for dispute resolution by courts in the interpretation of ambiguous rules; and Jupille's 'procedural politics' for the selection of lower-order rules under a higher-order rule (Jupille 2004).
4  Informal rules may also specify formal rules in a way that is useful for all actors (win/win informal rules; see Stacey and Rittberger 2003). These informal rules are not subject to negotiation, but emerge spontaneously.
5  Interview with Council Official B.
6  Shackleton (2000).
7  However, see Aumann *et al.* (1995) for an effort to develop an applicable theory of games with incomplete information.

## REFERENCES

Achen, C.H. (2003) 'Institutional realism and bargaining models', in R. Thomson, F.N Stokman, C.H. Achen and T. König (eds), *The European Union Decides: A Model Comparison.* Unpublished manuscript, pp. 95–113.
Aumann, R.J., Maschler, M.B. and Stearns, R.E. (1995) *Repeated Games with Incomplete Information*, Cambridge: MIT Press.
Bergström, C.F. (2003) *Comitology. Delegation of Powers in the European Union and the Committee System*, Oxford: Oxford University Press.
Börzel, T.A. (2005) 'Mind the gap! European integration between level and scope', *Journal of European Public Policy* 12(2): 217–36.
Corbett, R., Jacobs, F. and Shackleton, M. (2000) *The European Parliament*, London: John Harper.
European Parliament (2001) *Activity Report 2000/1*, Brussels, available on htpp://www.europarl.eu.int/code/information/activity_reports/activity_report_2002_en.pdf
Farrell, H. (2003) 'Constructing the international foundations of e-commerce: the EU–US safe harbor arrangement', *International Organization* 57(2): 277–306.
Farrell, H. and Héritier, A. (2003) 'Formal and informal institutions under codecision: continuous constitution building in Europe', *Governance* 16(4): 577–600.
Farrell, H. and Héritier, A. (2004) 'Inter-organizational negotiation and intra-organizational power in shared decision-making: early agreements under codecision and their impact on the Parliament and the Council', *Comparative Political Studies* 37(10): 1184–212.
Haas, E.B. (1958) *The Uniting of Europe*, London: Stevens & Sons.
Haas, E.B. (1961) 'International integration: the European and the universal process', *International Organization* 15(3): 366–92.
Haas, E.B. (1967) '*The Uniting of Europe* and the uniting of Latin America', *Journal of Common Market Studies* 5(4): 315–43.
Haas, E.B. (1976) 'Turbulent fields and the theory of regional integration', *International Organization* 30(2): 173–212.

Haas, E.B. (1991) 'Does constructivism subsume neo-functionalism?', in T. Christiansen, K.E. Jørgensen and A. Wiener (eds), *The Social Construction of Europe*, Thousand Oaks: Sage Publications, pp. 22–31.

Haas, E.B. (2000) Interview by H. Kreisler, Institute of International Studies, University of California at Berkeley, 30 October.

Haas, E.B. and Schmitter, P.C. (1964) 'Economics and differential patterns of political integration', *International Organization* 18(4): 705–37.

Haas, E.B., Williams, M.P. and Babai, D. (1977) *Scientists and World Order: The Uses of Technical Knowledge in International Organizations*, Berkeley: University of California Press.

Héritier, A. (1999) *Policy-making and Diversity in Europe: Escaping Deadlock*, Cambridge: Cambridge University Press.

Johnson, J. (2002) 'How conceptual problems migrate: rational choice, interpretation, and the hazards of pluralism', *Annual Review of Political Science* 5: 223–48.

Jupille, J. (2004) *Procedural Politics: Issues, Influence, and Institutional Choice in the European Union*, Cambridge: Cambridge University Press.

Knight, J. (1992) *Institutions and Social Conflict*, New York: Cambridge University Press.

Krasner, S.D. (1991) 'Global communications and national power: life on the Pareto frontier', *World Politics* 43: 336–66.

Lindberg, L.N. (1965) 'Decision-making and integration in the European Community', *International Organization* 19(1): 56–80.

Mitrany, D. (1975) *The Functional Theory of Politics*, New York: St Martin's Press.

Moral Soriano, L. (2005) 'Public services: the role of the European Court of Justice in correcting the market', in D. Coen and A. Héritier (eds), *Refining Regulatory Regimes: The Creation and Correction of Markets*, forthcoming Edward Elgar.

Rubinstein, A. (1991) 'Comments on the interpretation of game theory', *Econometrica* 59(4): 909–24.

Schiffauer, P. (2004) 'Die Gestaltungskraft des Europäischen Parlaments im Prozess der Entstehung einer Verfassung der Europäischen Union', Europäisches Parlament, Abteilung Internationale und Konstitutionelle Angelegenheiten, Brussels.

Sebenius, J.K. (1992) 'Challenging conventional explanations of international cooperation: negotiation analysis and the case of epistemic communities', *International Organization* 46(1): 323–65.

Shackleton, M. (2000) 'The politics of codecision', *Journal of Common Market Studies* 38(2): 325–42.

Stacey, J. and Rittberger, B. (2003) 'Dynamics of formal and informal institutional change in the EU', *Journal of European Public Policy* 10(6): 858–83.

Stone Sweet, A. (1999) 'Judicialization and the construction of governance', *Comparative Political Studies* 31(2): 147–84.

Tsebelis, G. and Garrett, G. (2000) 'Legislative politics in the European Union', *European Union Politics* 1(1): 5–32.

White, J.P.J. (2003) 'Theory guiding practice: the neofunctionalists and the Hallstein EEC Commission', *Journal of European Integration History* 9(2): 111–31.

**Interviews**

Permanent National Representations 1, 2 and 3: six interviews, January and October 2001

Council Secretariat: two interviews, October 2001

Rapporteurs: two interviews, January 2002

MEPs: two interviews, March 2001

Conciliation Committee: one interview, October 2001

Commission: one interview, October 2001