

# **On the Study of EU Treaty Reforms: Where are we after the Debacle of the Constitutional Treaty?**

Finn Laursen  
Department of Political Science  
and  
EU Centre of Excellence  
Dalhousie University  
Halifax, Nova Scotia, Canada  
[www.euce.dal.ca](http://www.euce.dal.ca)

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### **Abstract**

This paper endeavours to give an overview of some of the existing research on Intergovernmental Conferences (IGCs) and the role they have played in negotiating the founding treaties of the European Communities (EC) in the 1950s and their later reforms, including the creation of the European Union (EU) in 1992. It outlines the most important approaches to the study of IGCs and treaty-making, viz. liberal intergovernmentalism and various neo-institutionalist approaches. It argues that liberal intergovernmentalism remains an important approach, but it underestimates the role of domestic politics and need for leadership to overcome collective action problems. This role of leadership can be played by Community institutions (Commission and Council Secretariat) as well as the Presidency or individual member states. Liberal intergovernmentalism also fails to explain the continuous empowerment of the European Parliament, which can best be explained by sociological institutionalism. The role of referenda in some cases suggests that treaty reforms must be studied as 2-level games.

### **Introduction**

This paper deals with the study of EU treaty-making and treaty-reform, including Intergovernmental Conferences (IGCs) and the role they have played in the continuous reform process which has been a part of the history of European integration. We shall discuss the nature of IGCs and how they have been studied by various scholars. Where is the study of IGCs now and how might it move forward?

The focus will be on IGCs. IGCs are not the only way to agree on reforms of the EU, whether it be reform of its basic institutional structure or changes in the scope of common policies. Some changes in the scope of common policies have taken place through normal decision-making mechanisms, involving the Commission, the Council and increasingly also the European Parliament, e.g. on the basis of art. 235 of the original EEC Treaty (Art. 308 EC of the Consolidated Treaty produced after the Amsterdam Treaty). The development of a common environmental policy from the early 1970s is an example. The founding treaties did not explicitly mention the environment. Only in the Single European Act in the 1980s did the environment get a section in the treaties. Also some institutional reforms have taken place without the use of IGCs, like the decision in the 1970s to have the European Parliament elected directly (see for instance Herman and Hagger, 1980). Some of the decisions by the European Court of Justice (ECJ) have also had profound effects on the institutional structure and policy scope of the EU.

In many treaty reforms linkages were created between scope of policy-making and institutional capacity, the main exceptions being the Merger Treaty in 1965 and the Treaty of Nice in 2001 both of which nearly exclusively dealt with institutional changes.

**Delimiting the subject matter**

The reforms we are interested in concern the European Communities (EC) from 1952 as well as the European Union (EU) from 1993. The EC and the EU have been based on treaties concluded by the participating states. So a central question for scholarship is: How were these treaties negotiated and why? How do we explain the outcome of the negotiations?

Let’s start by recalling that the European Communities were based on three treaties, listed in table 1.

Table 1: The Founding Treaties of the European Communities

	Name	Signed	In force	Published
1.	Treaty establishing the European Coal and Steel Community ( <i>Treaty of Paris</i> )	18 April 1951	24 July 1952. It expired on 23 July 2002, after 50 years	Not published in Official Journal
2.	Treaty establishing the European Economic Community ( <i>Treaty of Rome</i> )	25 March 1957	1 January 1958	Not published in Official Journal
3.	Treaty establishing the European Atomic Energy Community (A second <i>Treaty of Rome</i> also known as the <i>Euratom Treaty</i> )	25 March 1957	1 January 1958.	Not published in Official Journal

Source: [http://europa.eu/scadplus/treaties/eec\\_en.htm](http://europa.eu/scadplus/treaties/eec_en.htm).

Treaty texts can be found at: <http://www.ena.lu/>

The two Communities created by the Treaties of Rome, the EEC and EAEC (or EURATOM), still exist today as part of the first pillar of the EU. The EU was created by the Treaty of Maastricht in 1992 (in force since 1993). Apart from the EC in the first pillar it added Common Foreign and Security Policy (CFSP) in a second pillar and Justice and Home Affairs (JHA) cooperation in a third pillar.

The founding treaties were negotiated in diplomatic conferences later referred to as Intergovernmental Conferences (IGCs). Early treaty making also included negotiation of a European

Defence Community (EDC) and European Political Community (EPC) in 1951-52. This project was rejected by the French National Assembly in 1954. The Fouchet Plan negotiations (1961-62), a Gaullist plan for political union, followed later. This plan failed because of disagreements among the then six EC Member States.

The founding treaties had articles foreseeing reforms. In the EEC Treaty this was article 236. In the ECSC Treaty it was Article 96, and in the EURATOM Treaty it was Article 204. These articles were replaced by Article N in the Maastricht Treaty, later changed to Article 48 TEU in the Consolidated Treaty worked out after the negotiation of the Amsterdam Treaty in 1997.

Article 236 of the EEC Treaty foresaw the possibility of treaty amendment through ‘a conference of representatives of the Governments of the Member States.’ This conference would determine ‘by common accord the amendments to be made’ to the treaty. Amendments would ‘enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements’ (*Treaties*, 1987, p. 413). In the following such a conference became known as an IGC. An IGC can be called by a majority of the Member States but a new treaty requires unanimity to be adopted (the meaning of ‘common accord’). The current Article 48 TEU also requires consultation of the European Parliament and “where appropriate, the Commission” as well as the European Central Bank “in the case of institutional changes in the monetary area” (European Union, 1997, p. 31).

Legally speaking any meeting of government representatives based on art 236 of the EEC Treaty, now Article 48 TEU, can be called an IGC. But it seems fair also to include the conferences that negotiated the founding treaties as IGCs.

The Irish Presidency in the first part of 2004 gave the following definition of an IGC:

An Intergovernmental Conference (IGC) is the means by which Member States negotiate or amend an EU Treaty. Conclusion of the negotiations requires consensus among all Member States, following which the formal Treaty text is prepared for signature. After signature, the Treaty must be ratified by all Member States in accordance with their national constitutional requirements.

(<http://www.eu2004.ie/templates/standard.asp?sNavlocator=88>)

This definition catches the essential of an IGC, so we shall adopt it. An IGC is a forum for inter-state negotiation. Consensus is required for a new treaty to be adopted. This has implications for the dynamics of such a forum.

The three founding EC treaties went through a number of reforms based on Article 236 EEC or Article 48 TEU. Leaving out treaties dealing with the Dutch West Indies, the European Investment Bank and Greenland we get the list in table 2 of the most important treaty reforms.

Table 2: Important Treaty Reforms Applying Intergovernmental Conferences (IGCs)

No	Name	Signed	In force	Published
1	Treaty establishing a Single Council and a Single Commission of the European Communities ( <i>Merger Treaty</i> )	8 April 1965	1 July 1967	OJ L 152, 13.07.67
2	Treaty amending certain budgetary provisions ( <i>Treaty of Luxembourg</i> , also known as the <i>First Budget Treaty</i> ).	22 April 1970	1 January 1971	OJ L2, 02.01.71
3	Treaty amending certain financial provisions ( <i>Treaty of Brussels</i> , also known as the <i>Second Budget Treaty</i> )	10 July 1975	1 June 1977	OJ L 91, 06.04.78
4	<i>The Single European Act</i>	28 February 1986	1 July 1987	OJ L 169, 29.06.87
5	Treaty of European Union ( <i>Maastricht Treaty</i> )	7 February 1992	1 November 1993.	OJ L 224, 31.08.92
6	<i>The Amsterdam Treaty</i>	2 October 1997	1 May 1999	OJ C 340, 10.11.97
7	<i>The Treaty of Nice</i>	26 February 2001	1 February 2003	OJ C 80, 10.03.01

Source: Compiled by the author. See also Gray 2000, note 6.

The latest reform, the Reform Treaty or *Lisbon Treaty*, which was signed in December 2007, has replaced the Constitutional Treaty, prepared through a so-called European Convention (2002-03) and finalized by an IGC (2003-04). Because of ‘no’ votes in referenda in France and the Netherlands in 2005 the Constitutional Treaty was not fully ratified, and in June 2007 it was decided to replace it by a simplified treaty, a Reform Treaty, which would not be called a Constitutional Treaty. This Reform Treaty was negotiated by an IGC during the Portuguese Presidency in the second part of 2007 but much preparatory work was carried out during the German Presidency in the first half of 2007. It

became known as the Lisbon Treaty. It was in turn rejected by the Irish voters on 12 June 2008. At the moment its future is uncertain.

The Treaties amending the founding Treaties since 1962, negotiated through or adopted by IGCs, are of course not equally important. The earlier reforms, prior to the SEA in 1986, have attracted less scholarly interest than the later reforms from the SEA to the Constitutional Treaty and Lisbon Treaty. Further, the early reforms of the EC treaties, like the Merger Treaty in 1965 and the budget treaties in 1960 and 1965 were largely negotiated through normal legislative procedures, through Council and Committee of Permanent Representatives (COREPER) negotiations. The IGC formally required was a short meeting at the end of the process. It is only from the Single European Act in the 1980s that the IGC becomes the decisive negotiating forum. It is also from this moment that the IGC becomes 'institutionalized' and starts attracting scholarly interest.

The first IGCs were not referred to by that name. The very first one in 1950-51 was called the Schuman Plan conference. The officials negotiating the first Community treaty actually considered themselves 'experts' and some delegations included not only government representatives but also representatives from the coal and steel industries. However, the delegations sought instructions from the governments and the Foreign and Prime Ministers were called upon to settle the more difficult issues, and in the end all participating states had to accept the result (Diebold, 1959, pp. 60-75). So we conclude that the Schuman Plan conference was an IGC as defined above.

No doubt, the IGCs negotiating the founding treaties were less formalized than later IGCs, from the SEA onwards. But they were negotiations between government representatives and they had to reach a consensus. These are the essential ingredients of an IGC.

It is probably fair to say that scholarly interest in IGCs start from the SEA in the 1980s. The IGCs from the SEA to the Nice Treaty have worked on three levels: Heads of State or Government, Foreign Ministers and Personal Representatives of Foreign Ministers. The Personal Representatives would normally meet fairly frequently, often weekly, the Foreign Ministers less often, such as once a month, and the Heads of State/Governments (The European Council) even less frequently, once or twice per Presidency. But all recent IGCs have been concluded with meetings of the European Council, where the remaining difficult issues have had to be negotiated (Smith, 2002, pp. 13-15). Interestingly enough, the IGC 2003-2004 that followed the European Convention used a simplified structure. It dispensed with the Personal Representatives (for more, see Laursen 2008).

Strictly speaking we should mention that enlargement negotiations have also been referred to as IGCs, between the applicant country and the EU member states. Accession treaties usually include institutional stipulations, such as voting weights. The first enlargement in 1973, for instance, changed the voting weights in the Council of Ministers and fitted the new members, the UK, Denmark and Ireland into the scale of voting weights. The politics of enlargement, however, is different from the politics of treaty reforms as such. They are based on a separate article (Art. 237 in the EEC Treaty, Art. O in Maastricht, now Art. 49 TEU). Apart from each Member State being a veto player here too, enlargement, since the entry into force of the SEA, also requires the assent of the European Parliament. The EP has not succeeded in getting a similar power in treaty reform IGCs.

### **Theories and Research Questions**

A classic political science treatise on the first Community, the ECSC, was written by Ernest Haas (1958). In his book, *The Uniting of Europe*, he developed the neo-functionalist theory, which became a reference point for later theoretical developments (Pentland, 1973; Rosamond, 2000; Laursen, 2003). We also have an important account of the early years of the EEC by another American political scientist. Based on Haas' neo-functionalism Leon Lindberg analyzed the EEC in *The Political Dynamics of European Economic Integration* (1963). But disappointingly neither Haas nor Lindberg studied the actual negotiations of the Treaties. Recent scholarship has tended to be critical of the early theories, although contemporary historical institutionalism resembles neo-functionalism on some points.

Recent scholarship dealing with treaty reforms has asked questions about agenda setting, the actual negotiations and how to explain the outcome. Who are the most important actors, what are their interests, how do they influence outcomes? How are they constrained by rules and norms? What is the role of power? Is some kind of leadership needed to produce agreements? Are agreements efficient? Are they equitable?

In IGCs the actors are governments representing formally sovereign states. The Commission has been allowed to take part in IGCs, but it cannot bloc decisions. The European Parliament has only had an advisory role, being loosely associated with IGCs, and it has not been allowed to play the role it

would like to play (Gray, 2000). In IGCs the governments thus try to stay in full control. To what extent they succeed in this is of course an interesting research question.

Many scholars use theories from comparative politics when they study the existing EU system (e.g. Hix, 1999, 2005). When you study IGCs, many would argue that theories from International Relations (IR) can be applied. Another way to look at it is to say that IGCs deal with ‘history-making’ decisions at the super-systemic level while the EU system as such makes policy-setting decisions at the systemic level (Peterson, 1995 and 2001; Peterson and Bomberg 1999, p. 9). The bargaining mode is intergovernmental at the super-systemic level but inter-institutional at the systemic level. It is also suggested that the best theories at the super-systemic level are ‘macro theories’ such as liberal intergovernmentalism or neofunctionalism and the best theories at the systemic level are various versions of ‘new institutionalism’. Others would argue that you need to combine different theories at the different levels to fully account for reforms. And, as we shall see, institutionalist theories also have contributions to make to super-systemic level negotiations.

We shall now proceed to review what we consider the most important theoretical approaches to the study of treaty reforms and see what kind of research questions they ask.

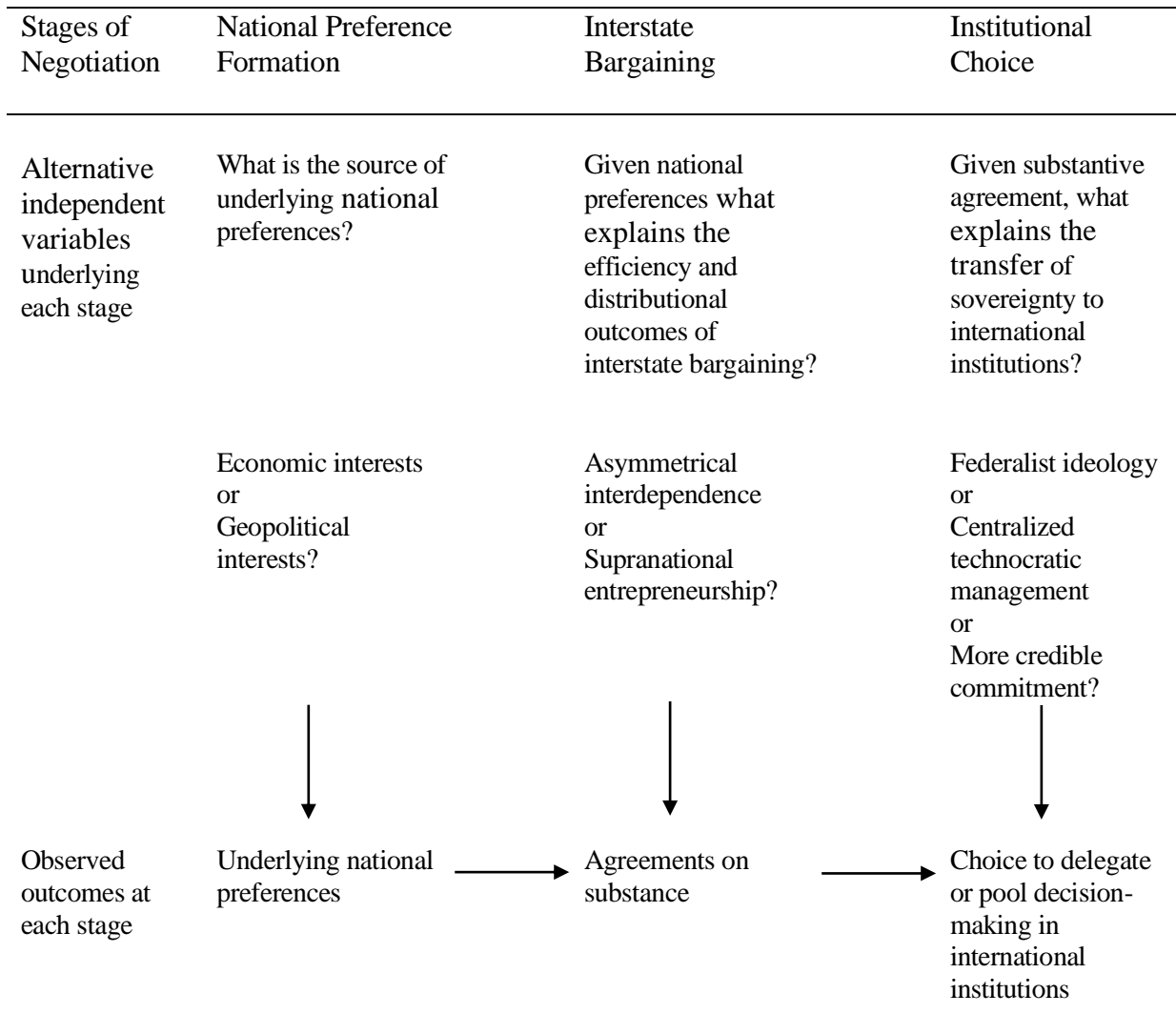
### *The Liberal Intergovernmentalist Analytical Framework*

Andrew Moravcsik’s liberal intergovernmentalism (Moravcsik, 1993 and 1998) has become an important reference point for most recent studies of treaty reforms. The framework includes three phases: national preference formation, interstate bargaining and institutional choice (See fig. 1).

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.



Figure 1: International Cooperation: A Rationalist Framework



Source: Moravcsik (1998), p. 24.

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.

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 (ECJ). 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 commitment. 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.

But liberal intergovernmentalism has been criticized a lot. Some find it too parsimonious. The preference formation part, we argue, pays too little attention to partisan aspects of domestic politics, the political games between governments and oppositions (Milner, 1997). The negotiation part does not really open the ‘black box’ of negotiations (Beach, 2000). But at least Moravcsik’s scheme can help us structure studies of ‘history making’ decisions and it does suggest a number of important research questions.

When *The Choice for Europe* was published *The Journal of European Public Policy* arranged a review section symposium including Helen Wallace, James Caporaso and Fritz Scharpf, with a response from Moravcsik. All three in their critiques talked about case selection. Scharpf was the most outspoken on this:

- given his selection of cases – most of his preferred hypotheses have such a high degree of a priori plausibility that it seems hard to take their competitors quite as seriously as he does. Since only intergovernmental negotiations are being considered, why shouldn’t the preferences of national governments have shaped the outcomes? Since all case studies have issues of economic integration as their focus, why shouldn’t economic concerns have shaped the

negotiation positions of governments? And since only decisions requiring unanimous agreement are being analysed, why shouldn't the outcomes be affected by the relative bargaining powers of the governments involved? (Wallace et al., 1999, p. 165).

Wallace wanted more about the politics within the Member States. Similarly Caporaso asked "Do domestic institutions matter?", suggesting that "differences in the organization of interest groups (pluralist vs. corporatist), political parties (two party vs. multiparty), and executive-legislative relations (parliamentary vs. presidential) make a difference" (Ibid., p. 162). Wallace also suggested that ideology or doctrine has played a bigger role than admitted by Moravcsik (Ibid., p. 159).

### *Rational choice institutionalists*

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).

Moravcsik does not assign much importance to Community institutions in IGCs and treaty reforms. At first sight it can look surprising that an approach which includes 'institutional choice' as an important part should end up assigning a relatively unimportant role to institutions in EU reforms.

Institutionalists certainly assign great importance to EC institutions in day-to-day EC/EU politics (see especially Hix, 1999, 2005). 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 reforms of the EC/EU institutions. 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)

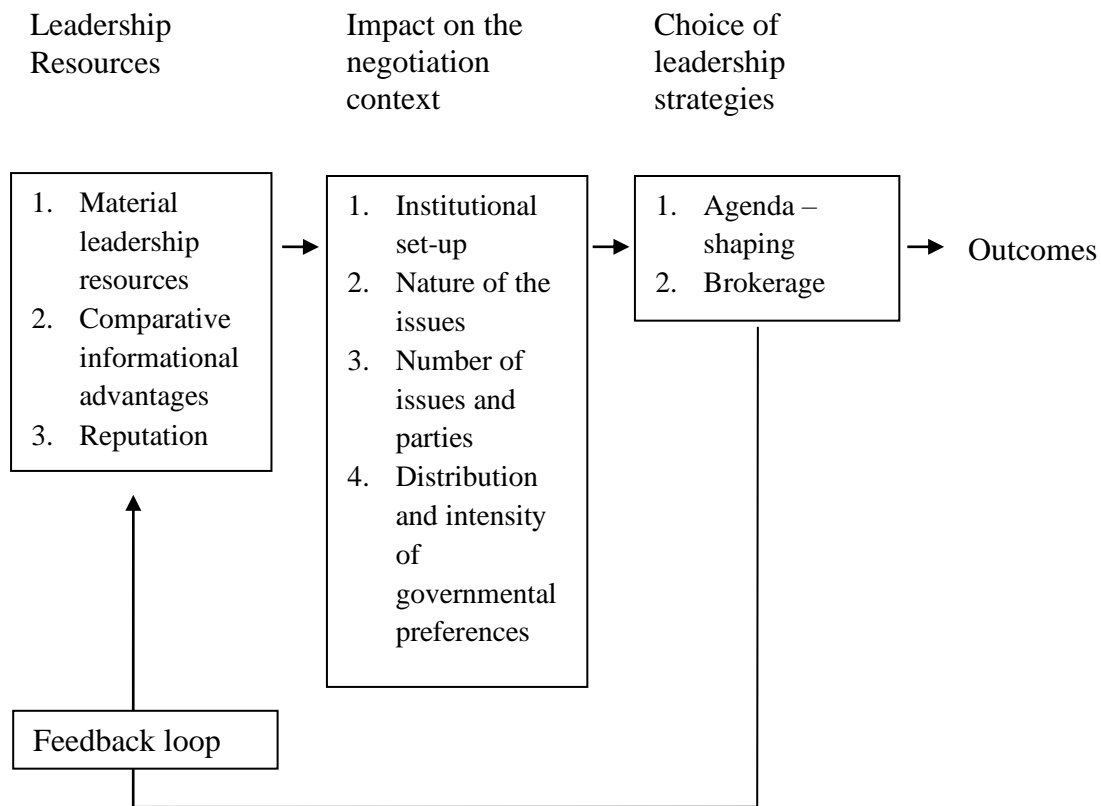
When the original European Communities were created there were no preexisting Community institutions that could play the role of EC institutions (although the High Authority of the ECSC played a role in the corridors when the latter two Communities were created). An intergovernmentalist analysis should 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. “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 questioned 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).

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.

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



Source: Beach (2005), p. 26.

So the role of the EU institutions, the Commission, the Council secretariat or the EP should not be ignored. Also the role of the Presidency is sometimes important (Svensson, 2000; Dür and Mateo, 2006). Especially the negotiation of the Constitutional Treaty raises some important new questions (Magnette and Nicolaïdis, 2004; Laursen, 2006c and 2008). The European Convention (2002-03), which initiated the reform, was more a process of deliberation than inter-state bargaining, even if there was an end-game in the Convention with negotiations playing an important part, and where the members of the Convention anticipated the reactions of the Member States in the IGC, which followed (2003-04). To what extent did the deliberation frame the questions for the governments? Did the wider participation of MPs and MEPs in the Convention give the draft from the Convention a kind of legitimacy that made it difficult for the Member States to reopen the issues?

There can be no doubt that preparatory bodies can help set the agenda and sort out difficult technical issues. It is also fair to conclude that the Convention framed the issues of IGC 2003-04 in an influential way. Much of the content that had not been accepted by the Nice Treaty IGC in 2000 was now accepted by the member states – only to be rejected by the French and Dutch voters, which underscores the two-level nature of EU treaty-making and reform.

### *Historical and Sociological institutionalists*

A number of institutionalists have developed explicit criticisms of liberal intergovernmentalism. Institutionalism is usually divided into three main 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).

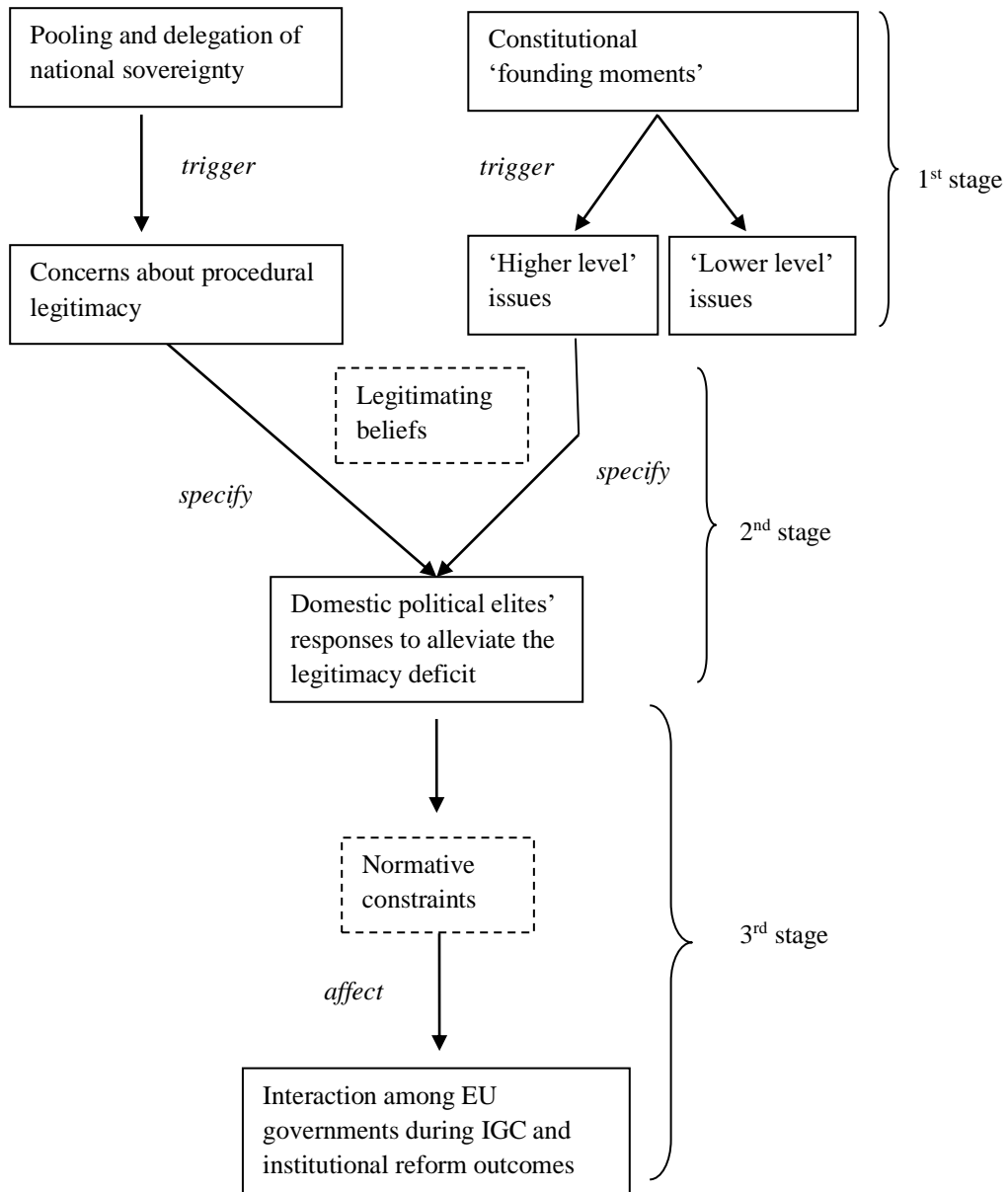
Whereas liberal intergovernmentalists see the EU Member States as unitary rational actors that are in control of the process of integration, historical institutionalists see gaps emerging in the Member States’ control and attribute more importance to EU institutions. Sociological institutionalists pay attention to values, ideas and identities.

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 seen as insufficient when it comes to understanding preferences.

These and other criticisms from historical and sociological institutionalists go in different directions. 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).

Figure 3: Overview of Rittberger's theoretical argument



Source: Rittberger, 2005, p. 8.



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 IGCs.

It can be argued that rationalists have underestimated the issue of procedural or ‘input’ legitimacy. In the early years European integration was very much based on performance or so-called ‘output’ legitimacy. Good, relevant decisions were supposed to lead to support for the process (Lindberg and Scheingold, 1970). But the question of ‘input’ legitimacy (Scharpf, 1999) has also played a role. How accountable are the decision-makers? How transparent is the process? These questions have been very much on the agenda in recent years. Indeed, they got on the agenda in the 1970s, when the empowerment of the European Parliament started.

The debate about the EU’s alleged ‘democratic deficit’ became a central aspect of the political debate in Europe during the 1990s. How democratic is the EU and how democratic can it become? (Schmitter, 2000). Does European democracy require a European *demos*? (Weiler, 1999). Or can parallel improvements of the roles played by national parliaments and the European Parliament improve the EU’s input legitimacy?

### *Summary*

What we have seen so far is that scholars have asked many different questions. Scholars accepting the rationality assumption of liberal intergovernmentalism see the following central research questions: how are national interests (or preferences) formed? How do the member states negotiate reforms? Who has influence? When and why do member states ‘pool and delegate’ sovereignty? Some rationalists add questions about the influence of Community actors in the reforms as well as the role of leadership in overcoming collective action problems. Sociological institutionalists ask questions about legitimacy of the process as well as the role of norms and ideas.

### **So what do we know?**

Trying to summarise what we know about IGCs and EU reforms is a huge and difficult task and important disagreements remain among scholars, partly based on different ontologies and epistemologies. The following is a brief statement of what the current reviewer believes we know.

*Initiating reform: Leaders and laggards*

The question of agenda setting deserves further study. The very first reform, the Merger Treaty in 1965, was put on the agenda by the High Authority and Commissions of the two other Communities in 1960, and the European Parliamentary Assembly, as the Parliament was called at the time, also pushed for reform. The Dutch were the first to put forward a draft treaty proposal in 1961. Once the French dropped their resistance in 1964 the new treaty could be negotiated. So from the beginning there have been leaders and laggards. In the case of the more well-known SEA the European Parliament and the Commission put the reform on the agenda. The laggards were the UK, Greece and Denmark at this point in time (De Ruyt, 1987). The Commission played an important role in getting Maastricht on the agenda, especially the EMU part. The Political Union part was to some extent driven by the Franco-German tandem. The laggards were the UK and Denmark (Laursen and Vanhoonacker, 1992).

Some reforms have been initiated because the previous reform foresaw it. The Amsterdam IGC was foreseen by Maastricht. Nice took place because of the so-called Amsterdam left-overs, the unsolved institutional issues. Similarly the Treaty of Nice was widely considered insufficient and a post-Nice agenda was established already in Nice in December 2000. This led to the negotiation of the Constitutional Treaty and after that the Lisbon Treaty (Laursen, 2006a).

*The Member States: Constrained masters of the treaties*

The Member States are legally speaking the masters of the treaties, but this is also very much a reality. They dominate the IGCs which always conclude the treaty-making process. They have also, at least until the Convention preparing the Constitutional treaty, tended to dominate preparatory bodies. The Treaty of Paris was prepared by the French government, Jean Monnet and his associates in particular. They put forward a *document de travail* when the conference started (see for example Gillingham, 1991, p. 239). The Treaties of Rome were prepared by the Spaak Committee (July 1955-May 1956) (see for example Keesing's Report, 1975). The SEA was prepared by the Dooge Committee (July 1984-March 1985) (see for example, De Ruyt, 1987, pp. 51-59). The Economic and Monetary Union part of the Maastricht Treaty, however, was prepared by the Delors Committee (Dyson and

Featherstone, 1999), but the Political Union part of the Maastricht Treaty had not gone through comparable joint preparation (Laursen and Vanhoonacker, 1992). The Amsterdam Treaty was prepared by the Reflection Group with representatives from the governments (June 1995-December 1995) (Laursen, 2002, pp. 4-5). Whatever preparation the Treaty of Nice had it was mainly carried out by the Finnish Presidency in the second part of 1999 (Laursen, 2006b, p. 3). So we find heavy national input in treaty reform preparations.

We can further say that rational models, like liberal intergovernmentalism, go a long way in explaining the behaviour of Member States in IGCs. They have their preferences and interests that they pursue in hard bargaining processes. These interests depend on demands from domestic constituents and a process of domestic politics. The domestic politics part is somewhat underspecified in liberal intergovernmentalism. It matters what kind of government the member states have: how strong it is vis-à-vis the parliament, how united it is, how strong the opposition is, how controversial European integration is in the member state in question? Answering the latter question may require deeper historical analyses. History may explain national identity but also be a factor that contributes to party-political games and conflicts. Most EU governments, caught in a two-level game, normally face important domestic constraints. Understanding these domestic constraints is an important part of doing research on EU reforms.

During the process of negotiations there are important bargaining exchanges. In the end all member states must find the proposed agreement better than, or at least not worse than, the existing treaty. The bargaining issues are of two main kinds, issues of efficiency (reaching the Pareto frontier) and distribution (where you end up on the Pareto frontier). However, as pointed out by a number of scholars, states face collective action problems in intergovernmental negotiations. Pareto-efficient solutions are not always easy to find. Leadership can assist member states in overcoming these collective action problems.

Scholars have also been interested in influence in interstate negotiations. Do the bigger member states have more influence than smaller member states? Is the intensity of preferences an important factor as suggested by Moravcsik's asymmetrical interdependence concept? Can small powers also be influential? How does the need for a referendum to ratify an agreement affect the influence of a member state? According to Schelling, binding your hands can increase your influence (Schelling, 1960, Putnam, 1988)

*Importance of leadership contributions*

Leadership can be required to reach agreements in complex international negotiations. Let us mention some examples of such leadership in EC/EU IGCs.

The first of the original Community treaties, the Treaty of Paris, creating the ECSC, was negotiated by the six original member states in Paris from 20 June 1950 to 18 April 1951. Jean Monnet, who was the intellect behind the Schuman Plan of 5 May 1950, chaired the conference. Two members of the French delegations, Etienne Hirsch and Pierre Uri, had prepared a text, which became the basis of the negotiations. Basically, the treaty emerged through the negotiations as representatives from the other future member states suggested changes and additions. It seems fair to talk about French leadership. Foreign Minister Robert Schuman appeared personally during the conference and he delivered the required parliamentary majority for ratification at the end of the process. Monnet's ideas and tenacity played an important role (Parsons, 2003, pp. 50-66; Haas, 1958, pp. 240-251)

After the plans for a European Defence Community as well as a Political Community failed to be ratified by the French National Assembly in 1954 European integration was re-launched by a meeting of foreign ministers in Messina in 1955. The pro-Community Belgian politician Paul Henri Spaak was asked to chair a committee which would outline plans for a common market (and an Atomic Energy Community) from July 1955 to spring 1956. "Spaak was well suited by temperament and conviction to draft the necessary report. His enthusiasm for integration had already won him the nickname 'Mr. Europe'" (Dinan, 2005, p. 32).

An intergovernmental conference started in Brussels on 26 June 1956. It was chaired by foreign minister Spaak (Küsters, 1987). The two treaties of Rome, establishing the EEC and the EURATOM, were signed on 25 March 1967. Parsons argues that pro-community French leadership again was decisive (Parsons, 2003, p. 116). But it would be fair to mention Benelux leadership, too. It was a Dutch politician Johan Willem Beyen who first suggested a plan for a customs union in 1953, and the Dutch kept pressing for a common market as distinguished from more limited sector integration. It was a Beyen-Spaak agreement that led to a 'Memorandum from the Benelux Countries to the six ECSC Countries' which defined the notion of an Economic Community in May 1955 and which formed the basis of the Messina decisions (Monnet, 1978, p. 403). During the IGC bilateral

meetings between German Chancellor Konrad Adenauer and French Prime Minister Guy Mollet also contributed to sorting out some of the disagreements in November 1956 and February 1957 (Moravcsik, 1998, p. 144). But writing about the Brussels IGC the French historian Pierre Gerbet says, “L’arbitrage politiques était exercé par le président Spaak” (Gerbet, 1983, p. 213). So the role of the president or chair of the negotiations can be important.

Since the negotiation of the Treaty of Paris in an IGC in 1950-51 and the Treaties of Rome in an IGC in 1956-57 there have been a number of treaty reforms as outlined earlier. The first ones, the Merger Treaty of 1965 and the Budget Treaties of 1970 and 1970, were negotiated through the Council and then confirmed in brief IGCs (Smith, 2002). The High Authority and Commissions were pressing for these reforms, assisted by the European Parliament.

The SEA was negotiated in an IGC during the Luxembourg Presidency from July to December 1985. The Commission had taken part in the preparatory work in the Dooge Committee, which prepared this reform. When the IGC started the Commission continued to take part in the negotiations, even if this was not foreseen in article 236 of the EEC Treaty. The Commission’s participation was accepted by the member states that had got used to its role in day-to-day business. The European Parliament, on the other hand was not allowed to take part. The Draft Treaty on European Union adopted by the EP in 1984 under the leadership of federalist MEP Altiero Spinelli implied much ‘more Europe’ than the member states were willing to contemplate at the time. So the EP was only to be consulted, and that is largely the way it has been since then.

In the end the Commission played an important role in the SEA IGC, the first quasi-constitutional IGC (Budden, 2002). More than half the proposals considered during the IGC had been put forward by the Commission (Corbett, 1987). It is probably fair to say that most of the SEA was originally drafted by the Commission. Even if the EP was not directly involved in the IGC it should be recognized that the EP contributed by putting reform on the agenda because of Spinelli’s leadership in the EP (Schmuck, 1987).

A number of treaty reforms followed the SEA. First, it was the Maastricht Treaty which established the European Union, followed by reforms in the Amsterdam and Nice Treaties. The IGCs negotiating these reforms were organised on similar lines, member states negotiating, but assisted both by the Commission and the Presidency, the latter further assisted by the Council secretariat. The EP has only been consulted. Many scholars have argued that the Commission played a less important role

in the reforms that followed the SEA (e.g. Beach, 2005). Certainly the Presidencies played important roles in producing negotiating drafts and brokering agreements, occasionally playing controversial role such as the Dutch in the second part of 1991 (Wester, 1992) and the French in the second part of 2000 (Schout and Vanhoonacker, 2006). In the IGC that concluded the negotiations of the Constitutional Treaty in 2004 the Italian Presidency had less success than the Irish Presidency (Dür and Mateo, 2006).

Space does not allow for a detailed discussion of these issues (for more discussions see Laursen and Vanhoonacker, 1992; Laursen and Vanhoonacker, 1994; Laursen, 2002a, Laursen 2006b, and Laursen 2008).

By definition, intergovernmental conferences have member states as the most important actors. But they are assisted by the Presidency which in turn usually is assisted by the Council secretariat. The Council secretariat has a useful institutional memory. The Presidency can arrange ‘confessionals’ with member states to try to find the bottom lines and thus locate possible agreements. Occasionally, the Commission can also contribute to the process (for a sophisticated discussion, see Beach 2005). Further, national leadership can sometimes be important, as for instance the Kohl-Mitterrand leadership during the Maastricht negotiations.

### *Ideational and normative factors*

According to liberal intergovernmentalism demands from societal groups, mostly economic groups, have been decisive in the process of European integration. We have argued above that domestic politics matters. Governments want to stay in power. Politicians want to be elected and re-elected. So politicians have to listen to their constituents. But more than economics enter when citizens and politicians decide whether European integration is a good thing or bad thing. Political interests and attitudes are often rationalised in the form of ideologies. Ideas concerning the future of Europe vary, from pro-integration federalists to anti-integration nationalists. If economic interests are clear and strong they may triumph. If not ideational factors may become more important.

In liberal democracies people share certain ideas about legitimate governance, including free elections, protection of human rights, etc. These ideas are also projected onto the European stage. These ideas have played a role in the making and changing EC/EU level institutions from the very beginning. Since the very first IGC in Paris in 1950-51 ideas of efficiency and legitimacy have battled.

The institutional system invented then included both a relatively autonomous executive (High Authority, later Commission), a Council to represent the member state governments, a parliamentary assembly (later known as the European Parliament) to represent the citizens and a judiciary (the European Court of Justice), thus imitating the divisions of powers found in the member states and other liberal democracies. Creating a strong executive and court as well as applying qualified majority voting in the Council may have contributed to creating ‘credible commitments’, as argued by Moravcsik, but these considerations cannot explain the continuous strengthening of the European Parliament. To understand that part of the process you need to look at normative factors relating to procedural legitimacy (Rittberger, 2005).

### *Outcomes*

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 organizations. There has been a certain delegation and pooling of sovereignty. These are the terms used by Andrew Moravcsik (1998). The Commission and ECJ have certain ‘supranational’ powers. They can make decisions that are binding on the Member States and their citizens. Also, an increasing number of decisions in the Council of Ministers can be taken by a qualified majority vote (QMV). Some scholars talk about ‘supranational 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 EC/EU treaties have a strong constitutional character. Even Moravcsik talks about ‘quasi-constitutional institutions’ (Moravcsik, 1998, p. 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. The functional scope of the EC/EU institutions has increased gradually. The EP has increased its powers and the use of QMV has increased. But the basic structure has remained largely the same over time.

The ECJ has made important contributions to the process of constitution building in the EC/EU. Early on in the 1960s the ECJ made decisions about direct effect, *Van Gend en Loos v. Nederlandse Administratie der Belastingen* in 1963, and supremacy of Community law, *Costa v.*

*ENEL* in 1964. Various ECJ rulings contributed to the consolidation of the internal market, thus driving economic integration forward. The treaties themselves have state-like properties. The EC has formal powers to make treaties with third parties. Internally the member states must adapt national rules to the requirements of EC rules (see for instance Hix, 2005, pp. 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, p. 121). Later on Joe Weiler and other legal scholars have contributed to this debate (e.g. Weiler, 1999).

When it comes to defining constitutionalization Weiler quotes Alec Stone approvingly:

[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, p. 97).

So primacy and direct effect of EC law are important parts of this process of constitutionalization. But constitutionalization is more than legal integration spurred by the ECJ. It is also about fundamental rights, separation of powers, democracy, including the roles of parliaments (Rittberger and Schimmelfennig, 2007). Concerning fundamental rights the ECJ has recognized these as part of the EC legal system since 1969 (Rittberger and Schimmelfennig, 2007, p. 213). The SEA for the first time mentioned them in the Preamble.

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 constitutionalization clearly continued (Council of the EC, 1992). Amsterdam 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). 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 for the first time officially by the Laeken summit in 2001 in the Declaration adopted then. The Draft Treaty



subsequently developed by the European Convention was entitled ‘Draft Treaty Establishing a Constitution for Europe’ a title retained by the IGC that 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 constitutionalization without creating a “real” constitution.

In the end the Constitutional Treaty did not survive national politics in at least two member states and its replacement, the Lisbon Treaty, now faces problems because of the ‘no’ vote in Ireland in June 2008. But European-level constitutionalism still exists, without the name.

At the early stages of European integration many scholars insisted on the *sui generis* nature of the institutional set-up. Haas, for instance (1958, p. 526), saw “a symbiosis of inter-ministerial and federal procedures.” 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:

1. The EC is best characterized 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, p. 10).

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 a part of a federalizing process. This transfer was set to continue with the Draft Constitutional Treaty. But even with the Constitutional and Lisbon Treaty CFSP would have remained intergovernmental.

### **Conclusions: gaps and new directions**

Studies of IGCs and treaty reforms go in many different directions. The literature is vast. But the number of studies using political science theories in a systematic fashion is rather limited. The best

overall effort to produce theory-based qualitative research remains Moravcsik's *The Choice for Europe* (1998). Among rational choice institutionalists the contribution by Derek Beach must be singled out as important (Beach, 2005). The recent volume he edited together with Colette Mazzucelli on *Leadership in the Big Bangs of European Integration* (2007) should also be mentioned. Historical and sociological institutionalists have still not produced comparable systematic studies. Rittberger's study of the EP (Rittberger, 2005), which combines rationality with the use of rhetoric, is the most interesting recent contribution. When pooling and delegation create concerns about procedural legitimacy domestic political elites will respond to alleviate the legitimacy deficit. Empowering the EP is a way to deal with that deficit. In the IGCs member states will face normative constraints. Let us also mention Parsons' *A Certain Idea of Europe* (2003) as an important book, looking at the role of ideas and coalitional politics in France.

At the theoretical level the debate between rationalists and social constructivists is a challenge. Empirical studies should discuss the implications for integration theory. This might include a discussion about the possibility of combining rational and social constructivist models. This possibility has already been discussed in an interesting fashion by Schimmelfennig (2003) in relation to the EU's latest enlargements, and it inspired Rittberger (2005), with whom Schimmelfennig has worked. In a recent co-authored article Rittberger and Schimmelfennig (2007) came up with the concept of 'normative spillover':

In a nutshell, we argue that functional supranational integration has regularly undermined existing democratic and human rights institutions at the national level and thereby created a democratic legitimacy deficit of European integration. This legitimacy deficit triggered arguments, in which interested or committed actors drew on the shared liberal-democratic community norms in order to create normative pressure in favour of the constitutionalization of the EU. We propose to term this process 'normative spillover' (Rittberger and Schimmelfennig, 2007, p. 216).

Shared norms of a community can be used strategically, thus in a rational fashion, to shame recalcitrant actors to move. This has been an important ingredient of interstate bargaining ignored by liberal intergovernmentalism.

The present reviewer thinks that liberal intergovernmentalism can go a long way towards explaining central aspects of EU treaty reforms, especially the reforms from Rome to Maastricht, where economic issues were important, including the Internal Market in the SEA and the Economic and Monetary Union (EMU) in the Maastricht Treaty. However, a rationalist approach cannot explain the empowerment of the European Parliament. Further, after the end of the Cold War the process becomes more politicized, and accountability issues came even more to the fore. The days of the so-called 'permissive consensus' were over (Laursen, 1994). Issues of legitimacy became more important.

Another challenge for research is the fact that it is impossible to cover the preferences of all actors in detail. Some selection is necessary. Moravcsik chose to study the three big actors, France, Germany and the UK. But this will sometimes be insufficient. Italy and Spain have also played important roles, and Poland has been a key actor in connection with the Constitutional Treaty. Even smaller actors have played important roles, including the Benelux countries, Denmark and Ireland, the latter two partly because of the use of referenda. Seen from a two-level perspective (Putnam, 1988, Evans et al. 1993; Milner, 1997), it can be argued that the use of referenda to ratify a new treaty will strengthen that state in the negotiations.

As argued by many scholars, including some rational choice institutionalists, the preferences of EU actors, the EP, the Commission, the Council secretariat as well as the roles played by the Presidency in IGCs and by the Praesidium in the Convention must also be included in our studies.

The Constitutional Treaty was followed by the Lisbon Treaty in 2007. It raises the question, what went wrong with the Constitutional Treaty? Has a constitutional equilibrium or settlement been reached, as argued by Moravcsik (2006 and 2007). Is he right, when he argues that the premises behind the Constitutional Treaty, basically that more participation and deliberation would create greater common identity, institutional trust and political legitimacy, were wrong? And, given the recent 'no' vote in the Lisbon Treaty referendum in Ireland in June 2008, how does that vote fit in with our understanding of the process of EU treaty reform?

Overall, the biggest challenge is to reintroduce comprehensive, theory-guided, comparative research that should also include the earlier treaty reforms so far left for lawyers and historians to study.

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