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Jeffrey Stacey

Integrating Europe

Informal Politics and Institutional Change

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*I would like to dedicate this work to my parents Joy and
Jim and sister Julie for their loving and bountiful support*

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Contents

| | |
|--|------|
| <i>Acknowledgments</i> | viii |
| <i>List of Figures</i> | x |
| <i>List of Tables</i> | xi |
| <i>List of Abbreviations</i> | xii |
| | |
| 1. Introduction | 1 |
| 2. A Theory of Informal Politics | 32 |
| 3. Describing Informal Accords | 62 |
| 4. Explaining Informal Accords | 94 |
| 5. Informal Accords and Non-Accords | 119 |
| 6. Informal Accords and Budgetary Politics | 149 |
| 7. Informal Accords and Legislative Politics | 186 |
| 8. Conclusion | 228 |
| | |
| <i>Bibliography</i> | 248 |
| <i>Index</i> | 263 |

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List of Figures

| | |
|--|-----|
| 1.1 Types of informal accords: a continuum | 25 |
| 2.1 A bargaining model of the EU's informal sphere: actors, preferences, and constraints | 44 |
| 2.2 Hypotheses of ultimate causes: postulated changes in the model's constraints | 51 |
| 2.3 Proximate hypotheses: postulated changes in the model's second-order constraints | 55 |
| 4.1 Trend line of the EU's informal interorganizational dynamics | 104 |

List of Tables

| | |
|--|-----|
| 4.1 Categorization of informal accords | 103 |
| 4.2 and 4.3 Informal accords by decade | 105 |

List of Abbreviations

| | |
|-------|--|
| BIS | Bank of International Settlements |
| CAP | Common Agricultural Policy |
| CFSP | Common Foreign and Security Policy |
| DG | Directorate General |
| DV | Dependent Variable |
| EC | European Community |
| ECU | European Currency Unit |
| EEA | European Economic Area |
| EEC | European Economic Community |
| ECJ | European Court of Justice |
| EMU | Economic and Monetary Union |
| EPP | European People's Party |
| EU | European Union |
| FSAP | Financial Services Action Plan |
| GNP | Gross National Product |
| HI | Historical Institutionalism |
| IAIS | International Association of Insurance Supervisors |
| ICC | International Criminal Court |
| ICTY | International Criminal Tribunal of the former Yugoslavia |
| IEC | International Electrotechnical Commission |
| IGC | Intergovernmental Conference |
| IAs | Interinstitutional Agreements |
| IOSCO | International Organization of Security Commissions |
| ISO | International Organization for Standardization |
| IVs | Independent Variables |
| LI | Liberal Intergovernmentalism |

| | |
|------|------------------------------------|
| MCAs | Monetary Compensatory Amounts |
| MEPs | Members of the European Parliament |
| MLG | Multilevel Governance |
| NGOs | Nongovernmental Organizations |
| NIE | New Institutional Economics |
| OJ | <i>Official Journal</i> |
| P/A | Principal–Agent |
| QMV | Qualified Majority Vote |
| RCI | Rational Choice Institutionalism |
| SEA | Single European Act |
| SI | Sociological Institutionalism |
| SIE | Structure Induced Equilibrium |

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1

Introduction

Politics and institutions

When it comes to politics, is it important to play by the rules? When we think of politics, we tend to conjure up images of “office politics” or a pair of politicians squaring off in a media interview or on the floor of Congress. Politics as a social phenomenon is not confined to the hallowed halls of government. In fact, wherever there are disagreements among individuals or groups we have politics on our hands, contests among individuals or groups of some kind to get what they want. From children arguing on the playground all the way to US senators fighting it out over national budget resources, politics appear to be everywhere in social life. Often it seems that whoever is stronger or smarter tends to win the contest, sometimes in a no-holds-barred sort of way.

But take a closer look and you will find that just like maneuvering the checkout lines at a busy supermarket or playing a pickup game of basketball, in every sort of contest imaginable the actors are competing according to some set of rules. These can be either implicit and generally understood by those interacting, or more explicit with a written down set of rules that competitors can appeal to, if necessary. In the study of politics rules are referred to as institutions, and if politics is about playing some sort of game, then institutions constitute the rules of the game. But it goes beyond that, for virtually all aspects of social life have institutional elements that govern human behavior. For even social interactions devoid of disagreement and overt politics are governed by rules; moreover, institutions structure the behavior of actors in normal everyday situations, such as an understood rule in Japan that no employees can leave for the day until the boss goes home first.

Institutions clearly constitute the sinews of politics, the stuff that defines a given political arena and sets out the rules for competition. While it is important how powerful or skilled political actors are, institutions are often just as important in explaining the outcome of the competition. Change the rules, and more than likely you change the outcome. Just like standard actors like politicians or nation-states rarely play only one round of the games they participate in, the rules of the game normally do not remain static. If institutions matter to our understanding of why different actors in society behave the way they do, then institutional change may matter even more. But understanding why the rules of political contests may all of a sudden change, after having been in place and adhered to possibly for long periods of time, constitutes a puzzle.

Take the European Union (EU), for instance. The conventional wisdom that European integration is explained largely by negotiations of treaties by its Member States is something of a myth, albeit a powerful one in light of today's reigning scholarship. It seems scholars and journalists alike have trouble ascertaining what EU insiders encounter in Brussels on a daily basis. In essence, the intermittent treaties that formally transfer sovereignty from Member States to the EU's supranational level tell only part of the story.

Instead of being the sole origin for such transfers, formal treaties often function as repositories of previously arranged sovereignty transfers that have already taken place, in the EU's informal sphere. These earlier outcomes stem from efforts of the EU's three principal policy-making actors—the Council of Ministers, the European Commission, and the European Parliament, also known as the Three—to broker informal agreements between them, which systematically serve to alter policy-making rules. What is more, the new informal rules occasionally serve to alter the balance of power among these actors, all of which occurs outside of the EU's cumulative Treaty. As such the amending treaties not only create new formal rules, but they also serve to gather together extant informal rules and infuse them with a legal component they lack—in a word, they *formalize* them. Even prior to this step, however, to the extent that informal rules have already transferred power from the Council's Member States to the Parliament, Europe has previously become more integrated.

This is the untold story of European integration. While these mundane matters for EU policy-makers remain fairly obscure to the scholarly ranks, national politicians have in recent years begun to take notice, particularly in the Danish and British parliaments. What they have grown concerned about is the mushrooming phenomenon of informal horse-trading in Brussels, for in the eyes of critics what began as a way of making formal

legislation work in practice has become a threat to democracy. Take the EU's most recent informal agreement, for example. Bilateral in nature, it was negotiated between the Council and Parliament as a result of the Parliament's long-standing desire to augment its feeble authority over policy implementation—known in EU circles as comitology. In traditional democracies, legislatures have a system of holding the executive branch accountable for the ways in which it implements legislation, but in the EU the Parliament has for much of its existence lacked such a system to hold the Commission to task for its implementing decisions.

As of 2006, the Parliament has made major inroads into the Council's sturdy redoubt, whose committees of national civil servants have long held singular sway over their Commission counterparts when it comes to comitology. But pressure from the Parliament boiled over after the Member States failed to ratify the recently proposed Constitutional treaty due to French and Dutch vetoes the year before. Informal bargaining went on for months before the Council capitulated, and in an informal agreement granted the Parliament a newfound veto power (over Commission implementation decisions for all legislation created under the EU's codecision policy-making procedure, that is, the vast majority of EU legislation).¹ This is not a formal institutional change; instead it constitutes an informal change in the rules, and one that is not prescribed by the Treaty and therefore technically not even legal.

Informality is important not only because informal rules are ubiquitous, but also because they frequently serve as the direct forerunner to formal institutional change. In other words, as evidenced repeatedly in the EU, formal laws are frequently tried out first as informal rules; as such, the political contest to create them occurs much earlier than most observers realize. The study of informal rules is surprisingly rare given that they are fought over just as fiercely as formal rules are; EU actors engage in contentious bargaining sessions, not only over treaties but informal agreements as well. The informal rules comprising them are neglected largely due to scholars' erroneous assumption that political actors will refuse being bound by them in light of their nonlegal status; in fact, actors pay a price for violating them. In the EU, weaker actors in fact will cease cooperation across the board if stronger actors do this.² Informal rules are nonetheless frequently created either because they constitute a tryout for formal

¹ EU official, interview by the author, European Commission, Brussels, July 4, 2007.

² EU official, interview by the author, European Parliament, Brussels, July 6, 2007.

institutional change or because the formidable creation of laws proves too prohibitive.³

The new rules bundled together play a critical role in shaping the strategic interaction among the Three. In the context of an institutional framework of rules that structure their interaction, the Three bargain competitively not only over policy outcomes, but also over the rules that allocate the very powers they use to make policy. In the course of this incessant strategic interaction, whenever such a power game outcome cannot be fed into an amending treaty in the making, they take the form of new informal agreements. The intermittent result of a single round of this competition is a bundle of new rules, that is, informal institutions—which then recursively feed back to and become a part of the institutional framework that structures the next round; actors thus comply with an altered set of rules in making their subsequent strategic choices.

This book makes two major inquiries. On one level it examines the widely regarded but vaguely understood phenomenon of institutional change, seeking to map uncharted territory with application across various social and political arenas. This book maintains that informality, understood as the dynamics surrounding nonlegal rule creation, offers an insight into how institutions change. More fundamentally, it employs a rationalist theory of institutional change in which institutions are not taken as given, or exogenous. Instead, the rules of the game so to speak are supplied by the players themselves, or endogenous. An institution comprises shared expectations among actors to interact with one another in accordance with a particular pattern. This equilibrium persists until actors alter them, either at the behest of a power play by a strong actor—perhaps a coalition of actors—or as a result of bargaining among actors of various strength.

This theoretical approach differs from others in which institutions are assumed to be “thick” and thus difficult to change, even by powerful actors; such theories view institutions as accretions that either congeal or become malleable only gradually over time almost in the absence of actors’ behavior, that is, agency. Rather, it assumes that institutions are often “thin” and thus more amenable to being changed, depending on a given arena’s configuration of actors (i.e., their preferences, their power, and the nature of their strategic interaction). In deploying this variant of rational institutionalist theory, this book further seeks to compensate for the irony of how numerous rationalist scholars tend to apply the theory most ideally suited

³ EU official, interview by the author, European Commission, Brussels, July 4, 2007.

for explaining the phenomenon of change to arenas of institutional stasis, namely the structure-induced equilibrium approach.⁴

On a second level, the book illuminates institutional change in the EU, revealing a causal component of European integration not incorporated in conventional accounts of how nation-states relinquish their sovereignty. Reigning theoretical accounts in the Regional Integration field posit that integration stems from formal intergovernmental treaties between governments, such as EU Member States. Andrew Moravcsik's *tour de force* is a case in point, falsely attributing the source of a trove of primary EU laws to the preferences of the EU's most powerful Member State governments.⁵ Moravcsik is hardly alone in this insistence; he is merely the most insistent and therefore the most open to criticism. While this book, like his, makes use of the theoretical concept of incomplete contracting, its findings about the importance of the EU's informal sphere place it along with Craig Parson's more ideas-based approach as one of the more "anti-Intergovernmentalist" works in the field.⁶

Instead, what if a broad swathe of the laws in EU treaties were not created by the Member States, let alone the most powerful ones? What if supranational actors like the European Parliament were instrumental in their creation? And what if the laws in question not only were originally conceived as informal institutions without legal force, but furthermore that whenever one of these clashes with a formal law EU actors actually were to abide by the former? Finally, what if all these things served to decrease the so-called democratic deficit of the EU, albeit in a manner woefully lacking in legitimacy? Whatever accounts for these outcomes amounts to an enormous puzzle, and this book seeks to explain them.

Theories of European integration

As Mattli and Slaughter and others have called for a transcendence of the conventional debate over legal integration in the EU, so too there needs to be a transcendence of the conventional debate over the EU's political

⁴ For exemplars of the structure-induced equilibrium approach that treats institutions as exogenous, see Shepsle (1979) and North (1990); for exemplars of the rationalist approach that treats them as endogenous, see Schotter (1981) and Calvert (1995).

⁵ See Moravcsik (1998). Note that the reference is to primary law and the sources of EU treaties, as opposed to secondary legislation and the policy sphere in which the Commission and Parliament are formally involved (for all policies made according to the EU's codecision procedure, the Parliament and Council are coequals).

⁶ See Parsons (2003).