



Intergovernmentalism, reloaded

The Transformative Power of 'Intergovernmental' Council Policy-Making

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Abstract

‘Intergovernmental’ Council decision making has manifestly transformative potential not just in its polity-making, but also in its policy-making variant. This diminishes the utility of the concept of *intergovernmentalism* and challenges the theory of *liberal intergovernmentalism*, which should be applicable to both intergovernmental polity- and policy-making alike, but, unlike its theoretical rivals supranationalism and constructivism, does not capture the transformative potential of everyday policy-making. Given that both ‘intergovernmental’ and ‘supranational’ modes of policy-making have transformative potential, and that both labels are merely ideal types of empirical reality, a case can be made that both the ‘intergovernmental’/‘supranational’ and the policy-making/polity-making dichotomies are dissolving.

Introduction

Since the beginning of the 1990s, it has been common practice to distinguish ‘intergovernmental’ and ‘Community’ (meaning the involvement of a ‘supranational’ element) parts of European Union (EU) polity, policy-making and politics. Broadly speaking, ‘intergovernmental’ designates the institutions representing the member states: the Council(s) of Ministers, the European Council, and their subsidiaries; those EU policy-making procedures in which the member states have asserted their primacy, that is essentially those where the aforementioned Councils’ authority is exclusive or clearly dominant, and in particular those requiring unanimity; and the policy domains where these processes apply, notably the second and third pillars; as well as Council politics. The ‘Community’ realm covers the supranational institutions and their subsidiaries, all policy-making processes involving these institutions in a decisive way (the ‘Community method’, in particular the co-decision procedure, as well as ECJ rulings) and the policy domains – basically the first pillar – where they apply, as well as the intra- and inter-institutional politics among the EU’s supranational institutions.

As the above enumeration already shows, these broad categories have long since begun to overlap. Moreover, neither really is what it seems to be (anymore). Institutionally, for example, the evolution of the Council Presidency has left it with the outlook and some of the traits of a Community institution; ‘intergovernmental’ policy-making in the EU has gone beyond mere preferences-based bargaining and relied on the input and expertise of the Council Secretariat and the Secretary General

of the Council; and the relevance of both domestic and Council politics for outcomes at the EU level distinguishes 'intergovernmental' politics in the EU from classic 'inter-governmental' diplomacy. At the same time, the 'Community' institutions have never been free from member state influence (as seen in the continued relevance of national delegations and election campaigns for the EP, as well as in the ambiguous allegiance of Commissioners, for example); the Council(s) have begun to subvert the Commission's power of initiative in the context of the Community method; and intra- and inter-institutional politics more often than not involve considerable member state meddling.)

In this context, I argue that the 'intergovernmental' label falls short of capturing the political dynamics of the EU even in its 'intergovernmental' realm and – more importantly – effectively hides their transformative potential (cf. Schmitter 2004). The transformative power of 'intergovernmental' policy-making is due, in particular, to aspects of Council decision making such as the prevailing decision rules and modes of interaction as well as formal and informal institutional effects shaping the exercise of leadership and power, which combine to render "the complex games which governments play in Brussels" (Naurin/Wallace 2008b: 3, cf. *ibid.* 5) quite distinct from traditional inter-governmental negotiations in international relations. This has three main implications. First, conceptually, the 'inter-governmental' tag appears increasingly, ideal-typically, remote. Second, empirically, the notion of dichotomous 'intergovernmental' and supranational areas of EU policy-making, already weakened by multilevel governance approaches and constructivist thinking in integration theory, becomes increasingly blurry. Third, so does the theoretical differentiation of policy- and *polity*-making, arguably, given that 'intergovernmental' decision making itself appears to have transformative potential, not just in its constitutional, but also in its everyday policy-making variant, similar to regular 'supranational' policy-making (often referred to as 'the Community method'). Supplanting the still-dominant image of European integration proceeding exclusively through grand 'intergovernmental' bargains, as expressed most prominently in Andrew Moravcsik's (1993, 1998, 2008) liberal intergovernmentalism (LI), with the suggestion of European integration through, among other dynamics, transformative everyday decision-making in the Council(s), may help crossing the theoretical divide

between European integration and EU governance and underline the common causality of European policy- and polity-making.

This paper proceeds in three steps. The first part makes the case for the transformative power of formerly 'intergovernmental' decision-making in the Council. The second part demonstrates how intergovernmentalist theorizing (LI in particular, but also some other rational-choice based approaches) fail to capture this and offers some pointers towards scholarship of other "descent" that does. Finally, the third part ponders some of the conceptual and theoretical implications this may have for EU studies.

1. Transformative Post-Intergovernmental Decision-Making in the Council

As Fiona Hayes-Renshaw and Helen Wallace have noted, "the Council and its processes embody the recurrent tension in the construction of the EU between the 'supranationalists' and the 'intergovernmentalists'. But it is also the organ that locks the leading politicians from the member states, and their officials, into permanent discussion about their evolving cooperation and about a shared and enlarging policy agenda" (Hayes-Renshaw/Wallace 2006: 2/3; cf. also Lewis 2003a). This characteristic of the Council(s), and the central roles of both the Council(s) of Ministers and the European Council in all areas of EU decision making, are the basis for the transformative, as opposed to merely *reproductive* (cf. Schmitter 2004: 47) nature of everyday 'intergovernmentalism' in the EU.

Council negotiations on all levels today are a far cry from classical, intergovernmental negotiations/diplomacy, and even from hard intergovernmental bargaining over the distribution of gains from substantive cooperation as envisioned by LI. EU member states do not interact in a vacuum, beginning each new set of negotiations with a *tabula rasa*. Rather, they act as members of the EU's 'executive' in charge of long-term governance: "[g]overnments in the Council are like legislators in any parliament: where potential benefits to the whole society (the EU) are weighed against potential

losses to their individual constituents”.¹ As a governing institution, the Council has developed various instruments and procedures to facilitate decision-making, which in turn is governed by particular rules² – these are not ad-hoc, one-off negotiations over the distribution of substantive gains, the results of which are predictable on the basis of participants’ asymmetrical interdependence. They are much more than just another instance of “general tendencies among democratic states in modern world politics”, specifically, “a distinctly modern form of power politics, peacefully pursued by democratic states for largely economic reasons through the exploitation of asymmetrical interdependence and the manipulation of institutional commitments”.³ In other words, in the context of Council and particularly European Council negotiations, the LI view that the relative value of agreement for member states is “dictated” by asymmetrical interdependence which “above all” determines their relative power, which in turn “decisively shapes” interstate bargaining outcomes (Moravcsik 1998: 7), needs to be amended. The workings of the Council defy LI in several ways.

First, they are not ‘classic’ intergovernmental negotiations: member states do not negotiate as representatives of nothing but their own national interests, but as members of a bigger whole based on an extensive *acquis communautaire*, representing at the very least considerable sunk costs, and arguably part of their identity. This is reinforced by the representation of the whole, the EU/EC, in the negotiations through a Commission representative, and the Council’s acting as a collective principal to its various EU agents (only the Council can be “a real political counterweight” to independent agents in policy fields beyond the ‘Community’, such as the ECB; Majone 2009: 164). Most importantly, however, this is due to the fact that these negotiations, especially at the level of the European

¹ Hix 2005 (chapters 2-2 & 3-8), who describes Commission and Council as the two parts of the ‘dual executive’ of the EU, the former in charge of short-term and the latter of long-term ‘government’. Similarly, Lewis (2005: 166) has argued that “the Council is closer to an upper chamber in a federal polity than an ‘ordinary’ international organization.”

² *Ibid.*, in particular chapter 3.

³ Moravcsik 1998: 5. The claim that “the behavior of EC member governments is *normal*” (*ibid.*: 4/5, emphasis in the original) in this sense begs the question of why there are no other EU-shaped creations out there, why the EU is indeed “a unique, multileveled, transnational political system” (*ibid.*: 1) which “ranks among the most *extraordinary* achievements in modern world politics” (*ibid.*, emphasis added)? The explanation that “[i]f the motivations of postwar European leaders were distinctive, it was because their countries were touched more intensely by economic trends common to all advanced industrialized democracies” (*ibid.*: 5) seems a bit unsatisfactory in light of this feat.

Council, are meticulously planned, prepared, shaped and steered by the Council Presidency, whose central role all member states take on in turns.⁴

Second, Council negotiations are repeat games (Smith/Ray 1993: “institutionalized intergovernmental exchange”; cf. Rosamond 2000: 147). They are institutionalized, even *routinized* to an extent that increasingly undermines any clear-cut distinction of national vs. common/EC/EU interests. The mere fact that member states *are* members and do participate in a never-ending string of negotiations means their interests are more than national, as they agree to pay the maintenance price for their ‘negotiation forum’. In the extreme, as the EU becomes ‘the way things are done’, any deal is better than no deal, because only a deal secures the ability to act. Consequently, member states’ respective BATNAs (best alternatives to a negotiated agreement, cf. Fisher/Ury/Patton 1991; Shell 1999: 101/ 102, 105) become increasingly irrelevant/less attractive and their win-sets (Putnam 1988) stretch, because issues are not just linked but also dealt with recurrently until ‘settled’, and the next negotiation always looms. This creates feedback loops from previous decisions (cf. Wincott 1995; see also Pierson 1998) in the multi-level game that is EU politics (cf. Putnam 1993) on a level distinct from ‘normal’ international exchange.

Third, there is mounting evidence that much more than just “hard bargaining” goes on behind Council doors. As Frank Schimmelfennig effectively demonstrates for the case of the decision to enlarge the EU to new member states rather than leave them with the status of associated countries, as LI would have predicted, “community effects on intergovernmental bargaining” (Schimmelfennig 2004: 75), specifically the “community ethos” (idem 2001, 2003), have to be taken into account: “Community actors cannot just bargain, that is, exchange threats and promises, but need to argue, that is, legitimize their preferences on the basis of the community ethos, and to be concerned about their image and credibility as community members”. Thus, arguing can be assumed to play a role in the Council chamber, paving the way for ‘mechanisms’ such as “rhetorical action” by proponents of a

⁴ Cf. Majone 2009: 174 – 176 on building and using a reputation as a device for achieving credible commitment, its implications for the criteria for a successful Council Presidency and the importance of reputation and *esprit de corps* on all levels of the Council.

decision which, in “argumentative interaction”, may not change the preferences of opponents but can be sufficient to effectively silence them and prevent them from “openly opposing” it (idem 2004: 91).

Fourth, ‘intergovernmental’ cooperation in the Council – especially European Council Summitry – far from blocking progress in terms of European integration has acquired a dynamic that makes it likely to contribute as much, if not more, to progress in terms of European integration than the classic ‘community method’ (cf. Majone 2009). Thus, member governments’ political commitment to the EU is continuously renewed and deepened in a never-ending string of ritualized meetings on the multiple levels of governance in the European Union, associated with varying degrees of public information, interest and expectations and mediatized pressures to produce some sort of result and thus maintain credibility. This does not per se eliminate differences and contestation among member states on various dimensions, of course, but this responsibility has generated and is perpetuated in decision-making procedures geared to avoid open disagreement (cf. Wallace/Naurin 2008b: 8/9, Aus 2008 on the “informal consensus norms” in the Council(s)): constructive abstention, avoidance of voting in the Council, extensive pre-meeting, behind the scenes consensus/compromise-seeking, and the existence of COREPER itself. As a result, the Council achieves agreement on many more issues than predicted by conventional and amended rational choice-based veto-player models (cf. Thomson et al. 2006; König/Junge 2008: 81). Even in the context of dramatically enlarged EU membership with its increased conflict potential, member states only rarely register discontent by voting against a legislative act or abstaining, but rather attach “formal statements” to Council minutes instead (cf. Hagemann 2008, also Mattila 2008). If EU policy-making were merely a matter – and integration the cumulative result – of a long series of unrelated decisions, one might expect much more confrontational, unbiased decision-making, even within the constraints of path-dependence.

Finally, the accumulation or centralization of power in the Council – the strengthening of the ‘intergovernmental’ features of the EU – itself also constitutes progress in terms of European integration. The most prominent example of this is the member states’ veto power, which gives them

an unprecedented amount of influence on the policies pursued by other member states. This influence is due entirely to the institution of the (European) Council(s) and, in turn, ensures higher levels of coordination and cooperation “in anticipation” of Community policy. Moreover, it has spawned additional, ‘new’ modes of voluntary self-governance, such as the Open Method of Coordination⁵, and caused even non-member states to align their policies with those of the Union in some cases (e.g., Switzerland and the Schengen Agreement).

In sum, the Council “embodies a sense of collective purpose, collective commitments and collective ideas. It is the forum for reconciling the distinctive purposes and powers of the member states with the needs for recurrent and disciplined joint action” (Hayes-Renshaw/Wallace 2006: 3). The transformative potential of Council decision making is manifest in multiple ways, and the distinction of opposing ‘intergovernmentalist’ and ‘supranationalist’ visions of the EU “too stark a contrast” (ibid.).

II. Capturing the Transformative Potential of the Council Theoretically

II.1 The limits of Intergovernmentalist Theorizing

Traditionally, the interaction of governments in international relations has been explained by *intergovernmentalism*. Its basic tenets (cf. Rosamond 2000; Schimmelfennig 2004; Schimmelfennig/Rittberger 2006; Hix 2008) include:

- the assumption that the main actors in the EU are rational member state governments (e.g. Hoffmann 1982; Moravcsik 1991) with a clear set of mostly material preferences derived either from structural/geopolitical (in the case of classic/realist intergovernmentalism) or domestically dominant interests (in the case of LI, cf. Moravcsik 1993, 1998);
- the assumption that these governments engage in ‘hard bargaining’ with each other on the basis of these preferences and will only agree to outcomes commensurate with them;

⁵ Even though the question of whether these new modes of governance, and in particular the Open Method of Coordination, are themselves transformative or else rather defensive on the part of the member states is subject to some debate, cf. Citi/Rhodes 2007.

- the assumption that governments possess the political and informational resources to come to a conclusive decision over what does and does not match their preferences.

On the basis of these premises, early, traditional intergovernmentalist theorists concluded that European integration would remain minimal (e.g. Hoffmann 1966, 1982; Milward 1984; 2000); the latter, liberal edition reasoned that a certain amount of pooling or delegation of sovereignty to common agents enabled governments to overcome coordination and collective action problems by providing credible commitments. In Moravcsik's (2008: 3) own words, the "LI framework explains major EU decisions in three stages. (...) National preferences are explained with endogenous policy theory. Substantive outcomes of interstate bargaining (on the basis of the preferences) are explained with Nash bargaining theory, operationalized using asymmetrical interdependence. And institutional pooling and delegation (to implement substantive outcomes) are explained using regime theory."

As is evident from the outline of the workings of the Council in part one, it deviates from the basic tenets of intergovernmentalist reasoning in general and the LI model of integration in particular. Most importantly, while competing theories of integration, most prominently neofunctionalism/supranationalism (cf. Haas 1958, 2004; Stone Sweet/Sandholtz 1998; Schmitter 2004) have long argued for the transformative nature of the 'supranational' realm of EU decision making, LI does not recognize any such potential for the 'intergovernmental' sphere: it remains ontologically "reproductive", that is, it conceptualizes integration as "a process that reproduces the existing characteristics of its member-state participants and the interstate system of which they are a part" (Schmitter 2004: 47/48), progressing in a "sequence of irregular big bangs" (Moravcsik 1998: 2) rather than evolving incrementally.

Yet LI's model of "major EU decisions" as involving preference formation, intergovernmental bargaining and institutional choice should be applicable to all 'intergovernmental' EU decision making, whether major or minor, to "the grand bargains" of European integration as well as to the nitty-gritty process of everyday EU policy-making. "After over a decade of formally modeling the institutional details of the EU legislative process," Andrew Moravcsik triumphantly announced in 2008, "empirical

data suggests that preferences and veto positions, not institutional details, explain outcomes – just as LI predicts. (This result holds for constitutional decisions as well as everyday ones.) (Thompson [sic] et al 2006)” (Moravcsik 2008: 4). The methodological and epistemological problems of formal modeling notwithstanding, the most interesting part of this statement is the fact that it explicitly extends the reach of LI to everyday EC/EU policy-making. Even though it may well be the case that, “with its empirical domain in ‘European integration’, that is, institutional changes in the EU polity, LI coexists well with rational-choice institutionalism, with which it shares basic theoretical and methodological assumptions and which has its empirical domain in European Union politics, the day-to-day policy-making within the institutions explained by LI (Pollack 2001”, 2004; Schimmelfennig 2004: 92), the point here is that there is no reason why these two “empirical domains” should be separate, nor why LI should not be applicable to both. Institutional change in the EU polity happens also between the big, constitutive decisions (cf. inter alia Hix 2002, Farrell/Héritier 2006, Héritier 2007), for example through the formalization of informal changes. Schimmelfennig (2004: 81/82) illustrates that “[e]ven if one accepts that LI is a theory of constitutional change rather than day-to-day policy-making”, Moravcsik’s selection of cases overemphasizes economic issues requiring unanimous agreement while omitting “constitutional changes reached through Commission strategies and Court decisions (which have constitutional force when they interpret the Treaty)” (Scharpf 1999: 167). LI further does not consider Council decisions (e.g. on comitology) or “inter-institutional agreements, which have changed the institutional set-up and distribution of competences independently of inter-governmental negotiations” (Schimmelfennig 2004: 82). Along the same lines, Wincott (1995) emphasizes the significance of both inter-institutional interaction and day-to-day EU decision-making for European integration (cf. also Rosamond 2000: 146); and Peterson/Bomberg (2000: 27) argue that “policy outcomes are now as much (often more) a product of inter-institutional than inter-governmental bargaining”. In addition, as elaborated above, the practice of normal ‘intergovernmental’ policy-making has itself developed considerable transformative potential. Thus, while Moravcsik (1995: 613) has described the application of LI to grand bargains as “a theoretically justified first

step”, there is “nothing to rule out the use of liberal intergovernmentalism for the analysis of everyday decisions” (Rosamond 2000: 147).

In principle, therefore, LI’s first stage, national preference formation of Council members, should explain the negotiating governments’ preference formation for each Council decision. The limits of LI’s theorizing of preference formation – most notably its over-emphasis on domestic economic interests and neglect of domestic institutions and politics as well as transnational dynamics (cf. e.g. Wallace 1999, Caporaso 1999) – have been pointed out early on. In light of what can be observed in the Council, it should be added here that preference building happens there, too (cf. Wallace/Naurin 2008b: 5), which puts into question the separation of preference formation from the subsequent stages of intergovernmental negotiation and institutional choice.

Further, LI’s second stage should explain the outcome of each and every instance of “interstate bargaining” in the EC/EU context, that is, every working group, committee, Council or European Council meeting in addition to every IGC. Essentially, the third stage of the LI model amounts to the argument that “whereas EU governments do not need or want supranational institutions to define their preferences, to provide them with the information necessary to reach efficient substantive agreements, or to devise rules of distribution, they rely on them to solve the second-order problems of control, sanctioning, and incomplete contracting – mainly through credible pre-commitments” (Schimmelfennig 2004: 80). Yet in practice, “it is easy to find cases where the member states compromised their collective credibility, either by not taking seriously their commitments or by committing themselves to unrealistic objectives” (Majone 2009: 165), which is a direct blow to LI’s account of institutional choice or at least its applicability to non-constitutional decision-making (such cases include the Lisbon Agenda, especially R&D spending and the Community Patent, as well as biotechnology).⁶

Moreover, the analytical differentiation of substantive negotiation results due to asymmetrical interdependence and subsequent (functional) institutional choice remains generally muddy: “[a]s

⁶ However, cases like the Lisbon Agenda with its far-reaching, long-term impact put into question yet again the distinction between history-making and other decisions in the EU.

Moravcsik's case studies amply demonstrate, member-state governments do not first settle substantive policy issues and then turn to the selection of institutional arrangements but have institutional preferences in addition to policy preferences, bargain on policies and institutions at the same time, and make linkages between the two" (ibid.: 82). Also, it is probably safe to assume that governments do not just wish to implement the substantive outcomes of "major EU decisions", but those of all decisions they take, even if they may not require major additional pooling or delegation ("institutional choice" – which in any case may take many forms). Presumably, in those minor or everyday EU decisions, governments would find other ways of solving coordination and/or collective action problems (cf. Majone 2009). Hence, the stages of LI's decision making model very much overlap and merge; neither separately nor in conjunction, however, do they represent a recognizable picture of what passes for 'intergovernmental' decision making in today's EU.

Beyond "the obvious criticism that LI is not able to explain all of EU politics, in particular its day-to-day policy-making under the first (EC) 'pillar'"⁷, LI arguably does not even explain what Moravcsik himself limited its scope to: "treaty negotiations and other issues of unanimous decision-making" (Schimmelfennig 2004: 81) – which, of course, can also be read to include such instances of everyday policy-making. Traditionally, 'intergovernmentalism' designates policy cooperation between relevant national policy-makers with little or no involvement of EU institutions; such cooperation is considered weak and not very constraining for participants. It certainly does not accommodate a demand for democratic accountability, let alone complaints of a democratic deficit (e.g. Hix 2008). Yet even traditionally 'intergovernmental' cooperation in policy areas outside of the Community framework (including monetary and foreign policy) has evolved, with varying participation, into just another "policy mode in and around the EU" (Wallace/ Wallace 2007: 351). In light of this development, Majone (2009: 163) argues that while "self-government by the community of member states is usually called

⁷ Schimmelfennig 2004: 81; cf. also Garrett/Tsebelis 1996. Empirical criticism of LI has compiled a long list of broader developments that it is unable to explain, ranging from the steadily rising importance of the European Parliament (e.g. Hix 2008), to individual governments' behavior in the European Convention (e.g. Kassim 2004, Dimitrakopoulos/Kassim 2004), to enlargement (Schimmelfennig 2003) and apparently declining public support for European integration across the continent.

intergovernmentalism, ... this label does not really capture the character of policy-making in the crucially important areas where national sovereignty has been preserved essentially intact". More specifically, 'intergovernmentalism' "resonates too much of cooperation among governments in many other international organizations, in which the intensity of cooperation is quite limited and the levels of mutual commitment and of collective discipline are low" (Wallace/Wallace 2007, 351; cf. Wallace 2005: 87; Wallace 2000). This is largely due to the "overly simplistic" nature of the "alleged sharp dichotomy between supranationalism and intergovernmentalism", and results in a "compelling case for reassessing how intergovernmentalism is characterized, *taking into account the evolution of several policy processes visible within the EU system*" (Wallace/ Wallace 2007: 351, emphasis added).

II.2 Towards a Re-conceptualization of Intergovernmentalist Theorizing

Given these limits of the dominant 'intergovernmentalist' theorizing, and the nonetheless core role of the 'intergovernmental' Council(s) in EU decision-making, many scholars have made attempts to re-conceptualize 'intergovernmentalism' in a way that better fits EU policy- and polity-making as well as politics today, "where there are multiple actors and interests and a more complex set of preferences and decision-making rules" (Hix 2008: 577). Stone Sweet and Sandholtz (1998) see a kind of embedded intergovernmentalism; Majone (2009: 162 – 180) looks "beyond intergovernmentalism" and sees several "non-Community" approaches to European policy-making, including Wallace's 'intensive transgovernmentalism' or, perhaps somewhat understating the case, "confederal arrangements" (e.g. the CFSP, Majone 2009: 163). In his view, these "new modes of governance ... rest on the more elastic, but also more fragile and precarious, foundations of information exchange, networking, collective learning, and reputational mechanisms" (Majone 2009: 165), which can nonetheless be highly effective (e.g. EMU, Schengen, JHA in general). For Helen and William Wallace, "intensive transgovernmentalism" is one of five coexisting, instable modes of EU policy-making which vary over time and are "influenced by the functional differences between policy domains". They "can be found across the range of day-to-day policy-making in the EU" but "exclude the domain of constitu-

tive politics or system-shaping as regards the overall political and institutional architecture of the EU” (Wallace/Wallace 2007: 341). Thus, these authors, while critical of the supranationalism/intergovernmentalism dichotomy (idem: 341, 351) seek to maintain the policy- vs. polity-making dichotomy, despite drawing on the latter to help re-conceptualize the former. This is especially puzzling because they argue that “within the EU this mode [intensive transgovernmentalism] has in practice become a vehicle for developing extensive and cumulative cooperation, gradually with elements of a treaty foundation, but with a variety of experimental institutional arrangements” (idem: 352/353).

‘Intensive transgovernmentalism’ indicates that “some ... transgovernmental relationships may ... fall outside the classical EU procedures and structures and ... develop a momentum, an intensity of interactions, and a density of structured and productive collaboration” (Wallace/Wallace 2007, 352). Within the “broad EU framework”, it is characterized by:

- “policy entrepreneurship from some national capitals and the active involvement of the European Council in setting the overall direction of policy;
- the predominance of the Council of Ministers (or an equivalent forum of national ministers) in consolidating cooperation;
- the limited or marginal role of the Commission;
- the exclusion of the EP and the ECJ from the circle of involvement;
- the involvement of a distinct circle of key national policy-makers;
- the adoption of special arrangements for managing cooperation, in particular the Council Secretariat [cf. also Beach 2008];
- the opaqueness of the process, to national parliaments and citizens; but
- the capacity on occasion to deliver substantial joint policy.”⁸

⁸ Wallace/Wallace 2007: 352. The authors also identify variations of ‘intensive transgovernmentalism’ occurring outside of the EU framework; for present purposes, however, these are less interesting. Suffice it to say that they have sometimes resulted in policy outcomes that have subsequently been included in the Treaties (e.g. the Schengen Agreement).

Given all the issues raised with LI, Wallace and Wallace's (2007: 352) much more modest concept of "intensive transgovernmentalism" seems a better-suited approach to constellations in which "EU member governments have been prepared cumulatively to commit themselves to rather extensive engagements, some joint actions and some collective disciplines, but have judged the full EU institutional framework or the full EU membership to be inappropriate or unacceptable, or not yet ripe for adoption". Empirically, the "process of transgovernmentalism has proved more resilient and less voluntarist than appears at first sight", resulting in "more not less cooperation among EU governments ... at both the practical and the discursive level" (again, CFSP provides the most notable example, idem: 353). Policy domains where it has prevailed (including EMU, CFSP, and JHA) have been "among the most dynamic areas of EU policy development" for the last decade (idem: 354).

These observations, and especially the occurrence of "interesting examples of cumulative transgovernmentalism [in the shape of newly created agencies in such a policy domain], which coexist with continuing arguments about shifts from transgovernmentalism to 'communitarization'" (Wallace/Wallace 2007: 353) once again raises the question of why this mode of policy-making, in particular, should not be applicable to constitutional decisions? The authors seem to suggest that the outcomes of "cumulative transgovernmentalism" are inherently different from those of 'communitarization'; but first, there is no reason why that should always be the case; and secondly, reducing European integration to 'communitarization' would mean disregarding large parts of that process. Even if 'intensive transgovernmentalism' produces "atypical" institutional arrangements (cf. idem: 354), they still constitute instances of European integration just as much as more 'typical' ones.

Indeed, the notion of "cumulative transgovernmentalism" may provide a more useful account of many instances of institutional choice than (now classical) LI. In particular, the findings that "[n]ew areas of sensitive public policy are being assigned by EU member governments to forms of collective or pooled regimes, but using institutional formats over which they retain considerable control"; and that these regimes "have 'soft' institutions" which may either harden, or themselves be "capable of

developing 'hard' policy, or at least ... be aimed at creating the capacity to deliver 'hard' policy" (ibid.) make the link between policy- and polity-making explicit.

III. In Lieu of a Conclusion: the Dissolution of Dichotomies?

As Jachtenfuchs (2001, 2007) and others have noted, in the 1970s, there was a broad shift in interest of much European studies scholarship away from explanations of *integration* (questions of *why* the European Community had emerged and what its overall significance was in the context of international relations in general) and to the analysis of the Community's *functioning* (questions of *how* policy-making worked). Basically, the "dependent variable of a large part of European integration studies shifted from the polity to its policies" (Jachtenfuchs 2007: 160), presumably not least due to the fact that the prevailing integration theory at the time, Ernst Haas' neofunctionalism, appeared unable to cope with the set-backs in the process in the mid-60s and the ensuing stagnation in the 1970s (cf. Haas 1971, 1975). Still, early analyses of the policy process in the Community drew directly from integration theory, while seeking to "bracket the question of integration and the EU's final destination" (Pollack 2005: 26): in one of the first edited volumes dedicated to the study of *Policy-Making in the European Communities* (Wallace/Wallace/Webb 1977), the state of the debate in European integration was surveyed, and hypotheses and implications for the nature of EC policy-making were derived from it.

When European integration was revitalized in the mid- to late 1980s, so was the academic interest in it, and both supranationalism and liberal intergovernmentalism emerged in the 1990s and have largely defined the terms of debate ever since. At the same time, however, the interest in the European policy-making process did not cease, and a series of innovative contributions of legal and comparative scholarship (e.g. Stein 1981; Weiler 1981, 1982; Scharpf 1988; Sbragia 1992, 1993) gradually led to the conceptualization of the "Euro-Polity" as a system of multilevel governance (e.g. Puchala 1984; Marks 1992, 1993; Marks et al. 1996; Hooghe 1996; Hooghe/Marks 1999, 2001; Jachtenfuchs/Kohler-Koch 2004).

The emergence of the multilevel governance 'school' has resulted in "the widely accepted view that institutional developments [!], political processes and substantive policies in the European Union can be better understood by regarding the EU as a system of two interlocking levels of government with a strong role for its member states" (Jachtenfuchs 2007: 162). However, while this approach thus claims some insights about "institutional developments" in the EU, its explanatory focus is mostly on *policy* outcomes and, to a lesser extent, on the *politics* involved. In other words, rather than seeking to explain the EU *polity* and its emergence, this approach conceptualizes "the nature of this system of governance as a potential *cause* of political processes and public policies" (idem: 170, emphasis added): the EU as a political system is no longer an outcome to be explained but the independent variable. More concretely, from the "characteristic features of such a multi-level system" (including "the lack of a monopoly of force and taxation, a hierarchical legal system, a weak role of political parties, and a loose coupling of the two main system levels") "a number of rather specific conclusions can be drawn with regard to a specific mode of governance, typical patterns of policy-making or the overall problem-solving capacity of the EU" (ibid.).

Meanwhile, analysis of the integration process remains curiously apart and essentially structured by the same debate between (neo-)neofunctionalist/supranationalist and intergovernmentalist arguments that began over a decade ago. Arguably, these two dichotomies – integration theory vs. policy analysis and intergovernmentalism vs. supranationalism – are both artificial, and they are linked: ironically, the intergovernmental/supranational divide superficially appears to provide some continuity between the explanations for the *why* of European integration and the *how* of EU policy-making; yet it has resulted in unsatisfactory explanations for both.⁹ While the movement towards multilevel governance approaches has done much to overcome that divide in the analysis of contemporary EU policy-making, the same has yet to be done for the analysis of European integration. The development of constructivist/ideationalist approaches to this process (e.g. Christiansen et al. 1999; Parsons 2003;

⁹ Cf. Wallace/Wallace (2007: 341) who "deliberately do not locate" their five different modes of policy-making in the EU "along a spectrum from supranational to intergovernmental, which is, in our view, an overly simplistic dichotomy".

Risse 2004; Checkel 2007) has begun to capture its “transformative impact” (Christiansen/Jørgensen/Wiener 1999: 529); but the dominant notion is still that European integration as a *process* and the European Union as a political *system* are subject to distinct and separate causalities (cf. figure 1).

	Intergovernmental	Supranational
Polity-Making	Treaties, Enlargement	ECJ Decisions
Policy-Making	e.g. CFSP	e.g. Competition

Figure 1: Dominant theoretical dichotomies of EU decision making

The existence of this notion may be attributed to the well-established and deeply entrenched intellectual pedigrees involved (international relations and comparative politics, respectively), and the separation between the arguments about the why of European integration and the how of EU policy-making is largely intact (e.g. Rosamond 2000: 146; Pollack 2005; Schimmelfennig/Rittberger 2006). Yet there are arguably no good empirical reasons why EU *policy*-making and *polity*-making should be the outcome of different causal processes. Quite to the contrary: there is abundant evidence of how mutually influential both are and always have been, and of their shared *politics*. First, the same actors in the same structural circumstances have been involved in both at any given time. Second, there is no intrinsically different decision-making process underlying constitutional/constitutive decisions and ‘normal’, everyday EU policymaking: the same games are played; the outcomes are equally (un)predictable (cf. Lindner/Rittberger 2003).¹⁰ The institutional effects and political dynamics of Intergovernmental Conferences (IGCs) and even the European Convention have not differed in any systematic way from those of the ‘regular’ processes of EU decision-making (cf. e.g. Menon 2004; Kassim 2004; Hosli/Arnold 2007; Crum 2008; Pennings/Arnold 2008). The continuity of the decision-making processes and political dynamics is further underlined by the debate about the desira-

¹⁰ I am excluding the consideration of referendums here on the grounds that it is so far unclear whether they fundamentally change existing political dynamics or reinforce them; whether their outcomes are due to genuine politicization of the decision-making process or mere popularization; and hence whether they serve to differentiate constitutive decision-making from everyday policy-making or not.

bility of a politicization of EU decision making, which shifts the emphasis from the supranational/intergovernmental to the left/right dimension of contestation (e.g. Hix 2006, cf. Rittberger 2009) and the concerns it has raised to protect “constitutional issues” from politicization (e.g. Bartolini 2006). Finally, there is no reason why normative aspirations for constitutional decisions in terms of legitimacy and democratic accountability (cf. e.g. Schmitter/Majone/Moravcsik 2000; Risse/Kleine 2007) should not apply to everyday decision-making in the EU, too (e.g. Rhinard 2002; Warleigh 2003; Offe/Preuss 2006). Perhaps, therefore, the dimensions of EU decision making might be more accurately thought of in a less dichotomous fashion, as pictured in figure 2.

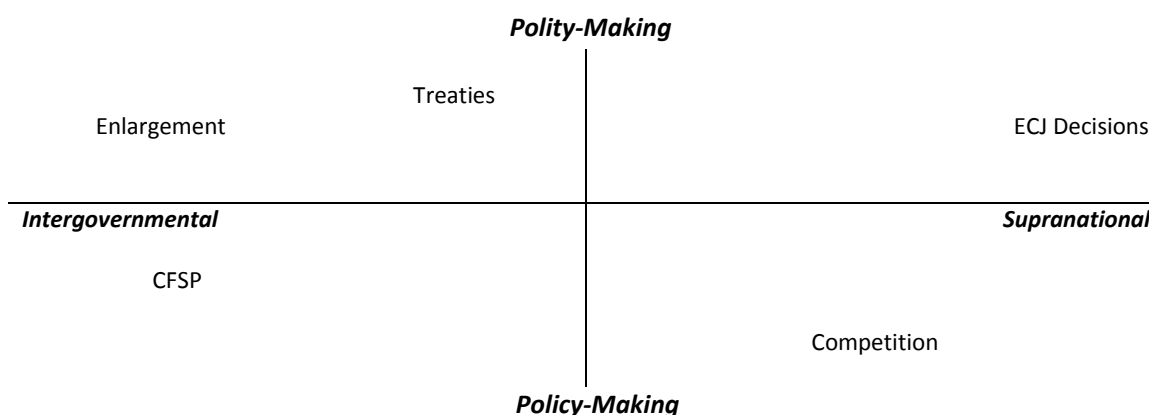


Figure 2: Theoretical dimensions of EU decision making

The continuously evolving EU polity is inseparable from its policies and politics. Overcoming the dichotomy between constitutional and substantive decisions, therefore, is necessary to explain both and thus dissolve the latent blockade of integration theory due to the intergovernmentalism/supranationalism dichotomy, which has largely reduced scholars of European integration to accepting “*additive* explanations of integration phenomena” (Schimmelfennig/Rittberger 2006, emphasis in the original) made up of various approaches based on differing, and partly *contradictory*, epistemological and ontological foundations and fenced in by strict scope conditions. Thus far, attempts to link explanations of policy- and polity-making have been few and mostly one-way, drawing on integration theory to help explain EC/EU policy-making and/or the operation of the EU system (e.g. Webb 1977,

Alter 1998, Wallace/Wallace 2007: 351 – 355). In some cases, the reverse has been suggested but not delivered¹¹; however, Wincott (1995), in a direct challenge to LI, develops a policy analysis-based alternative account of recent integration history, “emphasizing the everyday practices of the EC/EU as important to its unraveling trajectory (i.e. ‘integration’)” as well as the role of supranational institutions, in particular the ECJ (Rosamond 2000: 146; Wincott 1995: 603 – 606).

Both challenging the “baseline theory” (Schimmelfennig 2004: 75) of European integration, LI¹², in its native “domain of application” (Jupille/Caporaso/Checkel 2003) in this way and extending it beyond its comfort zone to the empirical domain where it ought, as a matter of principle, to apply also (everyday EU policy-making), may suggest an approach that might eventually lead to more comprehensive theorizing about the EU and its development.

¹¹ One notable example is Trondal 2006, whose title, “The Public Administration Turn in Integration Research” might lead one to expect that insights from research on the EU as a political system would now be applied to the question of the emergence of that system. This expectation, however, is disappointed as it becomes evident quickly that the focus, instead, is on the links of public administration theory in general and European governance in particular. Still – that the promise of the title might be one worth fulfilling is evident from Trondal’s conclusion that “the public administrative turn has brought added insights with respect to conditions for institutional change and persistence, the role of deliberate design, the prospects for the co-existence of multiple, overlapping, co-evolving and conflicting governance dynamics, [and] the emergence of multilevel administrative systems” – all of which, however, merely help reduce “the lack of systematic knowledge about the impact of administrative structures at the domestic and EU level”, according to him (18).

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