

The Creation, Interpretation and Contestation of Institutions – Revisiting Historical Institutionalism

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Abstract

One major shortcoming of the historical institutionalist literature is its alleged lack of testable propositions and the elusive notion of ‘unintended consequences’ of initial institutional choices. In this article we offer a historical institutionalist explanation of institutional creation and institutional operation which intends to overcome these shortcomings. We apply our theory to the case of the creation of the European Community’s budgetary treaty in 1970 and the operation of the enacted treaty provisions. We demonstrate that, under specified conditions, actors may be doomed to opt for ‘dysfunctional’ institutions at the moment of their creation. Furthermore, we show that the notion of ‘unintended consequences’ does not help us to understand the reason for the contestation of treaty provisions.

1. Introduction¹

It should be considered a truism that the constitutional reality of the European Union (EU) cannot be fully understood by exploring and explaining exclusively *either* the making and reform of the ‘formal constitution’ (i.e. the treaty) at the ‘grand bargains’ *or* the unfolding of the formal constitution over time, e.g. through rule-interpretation (Héritier, 2001; Stacey, 2001), transactionism and dispute resolution (Stone Sweet and Brunell, 1998; Fligstein and Stone Sweet, 2001) or ‘spillover’ mechanisms (Corbey, 1995). However, much of the so-called neofunctionalist-intergovernmentalist debate has suffered from this false dichotomy between process-oriented and more statist views of European integration. So far, few scholars have made serious attempts to include both aspects of European integration, which we subsequently label the *institutional creation* and *institutional operation* phases, into their research designs (for exceptions, see Pierson, 1996; Stone Sweet and Sandholtz, 1998; Stone Sweet, Fligstein and Sandholtz, 2001; Falkner, 2002).

Despite some of these attempts to look at the EU and the evolution of institutions as a ‘moving picture’ rather than a ‘photograph’ (Pierson, 1996, p. 127), the literature that can be assembled under the label of *historical institutionalism* (see, for example, Steinmo et al., 1992; Hall and Taylor, 1996; Bulmer, 1998) has, however, bypassed the constitutional evolution of the EU polity. The historical institutionalist contributions to be found in explaining aspects of EU policy- or polity-development (Pierson, 1996; Armstrong and Bulmer, 1998 and the overview by Aspinwall and Schneider, 2000) often face the difficulty to square the empirical challenges posed by the dynamic process of policy and polity development, as well as institutional creation *and* change with methodological rigor. Although there are recent attempts to point at the centrality of the *temporal dimension* and connected methodological challenges in order to make sense of institutional evolution, i.e. institutional creation and change/reformulation (Pierson and Skocpol, 2000; Thelen, 2000), Pierson has been among the few to elaborate on the conditions conducive for the emergence of unintended consequences and path dependence of initial institutional choices (see Pierson,

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2000a, 2000b; see Miller, 2000 for a response).² We strongly sympathize with the strive for developing propositions that can be subjected to empirical scrutiny in the historical institutionalist research program and note that there is a discrepancy between theoretical work on historical institutionalism and its empirical application based on testable propositions. We will show in the ensuing paragraphs that students of dynamic processes of institutional development do not necessarily have to resort to ‘unintended consequences’ in order to account for the existence of dysfunctional institutions or policies. By ‘revisiting’ historical institutionalism, we join Bulmer in claiming that historical institutionalism “is ‘up to the job’” of analyzing the system of EU governance (Bulmer, 1998, p. 382). Furthermore, we follow Pierson (2000b) by specifying the conditions under which we would expect political actors to create institutions that will be contested. We hence do not only ‘go back and look’ but also develop generalizable propositions about the link between institutional design and operation (instead of attributing dysfunctional institutions *post hoc* to the phenomenon of ‘unintended consequences’), and provide plausibility probes to illustrate the application of these propositions.

In the first part of this article (section 2.), we analytically separate the *institutional creation* and *institutional operation* phases and demonstrate that it is in exploring their *linkage* that we find a key to understand subsequent institutional developments, i.e. the degree to which institutions are stable or contested. In the second part of the paper (sections 3. and 4.), we apply our theory to one of the most understudied aspects of EU politics, EU *budgetary politics*. EU budgetary politics have had to suffer from a remarkable degree of inter-institutional conflict since the revision of the budgetary provisions of the Rome treaties in 1970 and 1975. We will provide (a) descriptive data to show that the level of institutional contestation has been variable under different ‘institutional regimes’ and (b) employ primary sources from extensive archival research to reconstruct the key actors’ preferences for alternative institutions from which we then predict the level of institutional contestation.

Our empirical evidence shows that the institutional creation process was characterized by almost insurmountable tensions among the Community member states regarding the role of the European Parliament (EP) in the budgetary process. The new budgetary treaty which was

² In a recent article published in *Governance*, Pierson has produced a number of working hypotheses linking institutional design and its consequences and draws attention to the limits of equilibrium-oriented studies of institutional design (see Pierson, 2000b, p. 495).

finally adopted in April of 1970 did not resolve these tensions, but sparked a wide range of different interpretations among the Member States as to what they considered to be the implications of the treaty. We also observed that in the institutional operation phase, the tensions resurfaced and led the actors of the enacting coalition, most notably the Budget ministers in the Council and the EP, ardently debate and even contest the validity of the budgetary institutions. These findings hence contribute to the theoretical debate on the relevance of ‘unintended consequence’ and the link between institutional creation and operation; moreover, they enrich our understanding of EU budgetary politics which is still a largely under-researched area of the EU (with the important exception of the work by Brigid Laffan, 1997, 2000, as well as Begg and Grimewade, 1998).

2. Creating and operating institutions : Conditions for conflict and stability

In this section, we will separate the phases of institutional creation and institutional operation in order to shed light on the potential tensions that institutional creations may inhibit as a result of *variation in actors’ foci in the creation phase*, i.e. whether they are driven by instrumental calculations about the distributive effects of the institution-to-be or to principled considerations that relate to considerations of appropriateness based on “polity-ideas” (see Jachtenfuchs et al., 1998). Furthermore, we will hint at the consequences of the dominance of either of the logics of action (‘instrumental’ or ‘principled’)³ for the institutional operation phase: Do the actors involved in the ‘execution’ of the new institutions share a similar interpretation of the rules governing the institutional settlement? Do the actors of the ‘executing’ coalition coincide with those who brokered the institutional deal, i.e. the enacting coalition? What are the conditions that have to prevail so that we will expect actors to contest the new institutions?⁴

2.1. The institutional creation phase

The challenge faced by negotiators in solving collective actions problems is often epitomized by the so-called *negotiator’s dilemma* (see, for example, Lax and Sebenius, 1986 and Scharpf,

³ These two logics of action are also frequently dubbed *logic of consequentialism* and *logic of appropriateness* (see March and Olson 1989, 1998).

⁴ We conceive of institutions as the ‘rules of the game’ and hence subscribe to their regulative function, e.g. institutions as enabling and constraining devices such as decision-making rules, laws etc. (see Scott, 1995). We thus use the terms rules and institutions interchangeably.

1997) which – in devising or reforming an institutional order – mirrors the combined search for the ‘common good’ as well as the struggle to realize individual distributive goals. Referring to the debates on the U.S. Constitution in 1787, Calvin Jillson and Cecil Eubanks have re-labeled this tension by distinguishing between *higher* and *lower* level choices which designers of institutions have to struggle with:

“At the ‘higher’ level, the constitution-maker wrestles with general questions concerning the scope, scale, and form appropriate to government. ‘Will the government have a legislative or an executive focus? Will its legislature be bicameral or unicameral?’ As the general institutional design and the relationships that will pertain among its component parts become clear, the constitution-maker moves closer to the realm of practical politics. The questions that dominate this ‘lower’ level of constitutional design concern the regulation of political behavior through rules governing such specific matters as suffrage and voting, eligibility to office and representation. [Q]uestions at this level are much more likely to be decided with direct reference to the political, economic and social characteristics of the chooser than with reference to philosophical principles.” (Jillson und Eubanks, 1984, p. 438)

‘Higher’ level problems hence lead actors to activate fundamental principles or norms that provide guidance in creating the general institutional structure of a polity. According to Jillson and Eubanks, actors are capable to disentangle substantive, material issues (‘lower’ level problems) from those that affect the construction of this general institutional structure. The plethora of analyses of the making of the U.S. constitution culminates in the question about the *true motivations* of the members of the Philadelphia Constitutional Convention (see, for example, Jillson, 1988). Were the delegates at Philadelphia driven by material interest or did considerations about an appropriate polity based on normative reflection better characterize the Constitutional Convention and its outcomes?⁵ We share the view adopted by Markus Jachtenfuchs who argues that it would be premature to establish an *a priori* link between questions of principle (‘higher’ level concerns) and questions that settle the distribution of gains through the creation of institutions (‘lower’ level concerns). Although we do not deny that political actors’ preferences for institutions are frequently informed by their preferences for the realization of certain policies (see, for example, Tsebelis, 1990, 1999), the proof, however, has to be empirical rather than theoretical unless it is possible to specify the conditions under which actors design institutions on the basis of substantive policy

⁵ See Jachtenfuchs (1999, pp. 76-77) for a brief overview of this literature. See Jon Elster (1994) for the distinction between ‘bargaining’ and ‘arguing’ modes in constituent assemblies and Risse (2000) for an application to diplomatic bargains in international politics.

preferences and with a specific distribution of gains in mind. One of the conditions we are aware of relates to the capacity of actors to measure and evaluate the potential distributive implications (or the degree of payoff certainty) of an institutional arrangement with a view to realizing defined policy preferences (see, for example, Knight 1992 and Mueller, 2001). However, Mueller (2001) and Tsebelis (1990) concede that political actors cannot always foresee the distributional consequences of their institutional choices, and hence “their only guide will be the increase in the efficiency of the institution” (Tsebelis, 1990: 117), i.e. institutions that improve the condition of all actors relative to the status quo.

We argue, however, that ‘efficient institutions’ can come in many forms, and in order to explain what these institutions will look like, we have to take into account, for example, readily available devices such as norms that ‘tell’ actors what ‘the right thing to do’ will be in a specific situation. These norms may help actors to choose certain institutions among a multitude of potential ‘efficient’ alternatives in order to reduce uncertainty or complexity (norms as *focal points*) or, in novel situations, these norms may even help them define their preferences in the first place, for instance, by providing helpful analogies (norms as *road maps* or *sign posts*).⁶ We argue that where political actors are either unable to make cost-benefit computations about the expected effect of institutions or where the question of the creation of specific institutions is disconnected from distributive issues, norms will feature much more strongly in defining the preferences of political actors and will thus serve as *road maps* or *sign posts* (see Jachtenfuchs, 1999, pp. 44-46; Gourevitch, 1999; B. Rittberger, 2001).

Although we will not endogenize norms in order to explain why a *particular* norm impacted on actors’ preferences, there is a recent strand of research that has explored the content and relevance of different polity-ideas on actors’ institutional and policy preferences. Referring to Max Weber, Jachtenfuchs et al. (1998) argue that the construction and reform of political systems cannot only be brought about through the convergence of different actors’ substantive interest in cooperation; a polity that is to be stable and effective also needs to be considered legitimate to command the compliance of its citizenry. Jachtenfuchs et al. hence suggest that

⁶ Although Goldstein and Keohane (1993) write about *ideas* in this context, we prefer the notion of *norms* or *normative orientations*. Whereas ideas denote subjective beliefs, norms are inherently intersubjective, i.e. they are shared expectations about appropriate behavior held by a community of actors (Boekle et al. 2001). See Goldstein and Keohane (1993), Jachtenfuchs (1999) and Spruyt (2000) for the role of norms in accounting for actors’ preferences.

the process of legitimation has to be fuelled by factors other than effectiveness. *Polity-ideas* are considered to play a crucial role in this respect. Jachtenfuchs et al. define them as norms or “normative orders in which specific constructions of the legitimacy of a political system are (re)produced through the ascription of purpose and meaning”, or, equally, as “convictions about the rightfulness of governance shared by actors in the political system” (Jachtenfuchs et al., 1998, p. 413). Yet, polity-ideas “are not uniform or consensual but may differ widely among different groups or corporate actors, for ... there are always contending structures of meaning, and hence contending polity-ideas.” (Jachtenfuchs et al., 1998, p. 413) Returning to our distinction between ‘higher’ and ‘lower’ level concerns, polity-ideas particularly affect the way of how actors think about principles of government (‘higher’ level concerns).

In order to analytically assess the relative importance of ‘higher’ level over ‘lower’ level concerns (and vice versa) in informing the preferences of actors, the task of the researcher is to separate those phases in negotiations over institutions during which discussions about norms relating to the appropriate form of a specific institutional setting are paramount (i.e. where references among the political actors to distributional issues are infrequent or non-existent) from phases in which distributional issues are central in the discussion about the creation of institutions. This strategy will allow us to distain from constantly invoking either exclusively principled/norm-driven *or* interest-driven explanations of institutional creation (Jachtenfuchs, 1999, p. 79).

What can we deduce from the preceding paragraphs for the question as to whether or not the institutions-to-be will be contested? We hypothesize that the outcomes intended by the enacting coalition are most likely to be realized if ‘lower’ level concerns (issues with distributive implications) are dominant and drive actors’ motivation to cooperate, i.e. where actors know the payoffs and distributive implications of their institutional choices. Although this may sound counterintuitive, the investment made by actors in dividing actually ‘divisible’ spoils of cooperation is often so high that ‘unpacking’ the deal is likely to come at very high costs. As a conjecture, where actors are not able to make projections about the expected distributive effects of their institutional choices institutions may be much more open to interpretation and also contestation. The link between the institutional creation and institutional operation phase can thus be depicted as follows: Enacted institutions are likely to be subject to conflicting interpretations when the actors of the enacting coalition are driven by opposing norms or *polity-ideas* (‘higher’ level concerns) with regard to the institutional

choices they wish to make. This point is underlined boldly by Elgström who argues that conflicting norms are difficult to negotiate in the first place. He claims that norm negotiations are different from negotiations with a distributive or a redistributive character. In norm negotiations, “actors can not be expected to concede on their principles, even when faced with the most convincing and eloquent persuasive argument. They may, however, be prepared to concede on matters of implementation (“how and when”) and on the scope or applicability of the norm.” (Elgström, 2001, p. 3) Or, as we have advanced here, actors may remain vague about the practical applications of the negotiated outcome if agreement shall not be jeopardized.

In contrast, if actors’ institutional preferences are driven by the expected substantial policy gains they seek from the enacting of a specific set of institutions, the spelling out of the details of institutional rules will be more specific (see B. Rittberger, 2001, pp. 677-685). This, of course, does not mean that these rules will not be subject to contestation in the future, as we will show in the next section. However, we contend that we expect to observe more ‘interpretative activities’ where the design of institutional rules is driven by opposing norms or polity-ideas (‘higher’ level concerns) within the enacting coalition.

Proposition 1: When ‘lower’ level concerns dominate actors’ preference profiles, they will be more inclined to press for a detailed and specific institutional agreement limiting the scope for interpretation. However, when conflicting ‘higher’ level concerns dominate actors’ preference profiles, they will be less able to specify the details of the rules governing future interaction among the executing coalition and hence the potential for rule interpretation is likely to increase.

2.2. The institutional operation phase

Institutional rules frame and structure the interaction among of the actors within the executing coalition. They influence outcomes and thus determine the distribution of gains from institutionalized cooperation. As rules may be more or less ‘incomplete’ and are open to interpretation, actors in the executing coalition participate *post hoc* in the re-formulation of institutional rules by interpreting them and by filling (perceived) gaps. The separation between institutional creation (‘games over rules’) and operation (‘games within rules’) hence becomes blurred. Jack Knight (1992) makes this point forcefully by demonstrating that actors who are not satisfied with the distributional outcomes produced by institutional rules have an

incentive to challenge the dominant application of rules by employing an alternative interpretation or by not ‘obeying’ to the dominant one. For Knight, the game over outcomes is supplemented by a constantly smoldering battle over rules and their interpretation. The distribution of bargaining power among the various actors and the degree to which they are satisfied with the distributive outcomes determines the dominance of a certain set of rules over another.

Following Knight (1992, chapters 2-3), we define ‘rule contesting behavior’ as an action taken by a member of the executing coalition geared towards changing the dominant application of institutional rules.⁷ We assume that rule contestation is an integral part of the institutional operation phase, operating among actors of the executing coalition.⁸ The likelihood of contestation, so our main contention, is related to the institutional preferences (see previous section) and cost-benefit calculations of the actors that are party to the executing coalition. The following paragraphs will focus in particular on actors’ cost-benefit calculations.

Interpretation. Of the factors that influence the costs of contestation, the rules themselves constitute one of the most important. Not only do they determine the institutional power of the various actors, but they themselves make contestation more or less costly depending on the degree to which they are perceived to be incomplete or ill-specified. The link with the creation phase is obvious: if actors of the enacting coalition fail to settle their contrasting institutional preferences and expectations in the institutional creation phase, and if actors that will form a constituting part of the executing coalition are left out of the creation process (and display ‘extreme’ preferences from the perspective of at least one other member of the enacting coalition), a climate for rule contestation is created. The availability of different interpretations significantly reduces the cost for contesting the application of rules for each actor. Deviation from the expected behavior and disobedience can be justified as just a different – if not the more ‘appropriate’ – interpretation of the rules. The costs are even further reduced if there is no third party, which arbitrates between rivaling interpretation and/or enforces the dominant interpretation, and when the costs of non-agreement (i.e. the default position) are low.

⁷ It is, however, possible that there is no dominant interpretation of existing institutional rules and thus contestation takes the form of a tension between various rivaling interpretations.

Unity. The unity of the contending actor as well as potential internal divisions among the remaining actors of the executing coalition reduce the cost of contestation. The more unified a group of actors, the more easily it can pursue a contesting strategy. Similarly, if the group defending the dominant application of rules is divided, contestation is more likely to be successful. To elaborate more concrete expectations as to the degree of an actors' degree of cohesiveness (or unity), we have to link this variable to actors' time horizons.

Preferences and time horizons. The co-existence of conflicts over outcomes and over institutions leads to a bargaining situation in the institutional operation phase which bears very different characteristics than that of the creation phase. On the one hand, the effects of institutional decisions on distributive outcomes become more visible in the institutional operation phase and hence the uncertainty over the effects of institutional choices on outcomes decreases. Institutional conflicts are settled differently than in the creation phase, because the distributional dimension and the institutional dimension can be traded against each other. On the other hand, the negotiations over distributive outcomes can directly affect the institutional negotiations. Often the institutional and distributive tensions directly coincide; at other times gaining institutionally entails short-term losses on the distributive dimension. Therefore, actors with the longer time horizon are more likely to succeed institutionally, because they are willing to accept short-term distributive losses for long-term institutional gains (which will then also translate in a more beneficial distribution of gains).

Figure 1 illustrates the choice situation of an actor from a short-term oriented perspective on a two dimensional graph. The point where the x-axis and y-axis intersect represents the status quo. The x-axis displays the institutional benefits and losses, for example, in form of more or less decision-making power (influence over outcomes). The y-axis displays short-term distributional gains and losses, for example, in form of direct monetary effects. The two axes describe a space of possible outcomes of institutionalized interaction with another actor. Which would be a short-term oriented actor's mostly preferred solution (compared to the status quo)? A short-term oriented actor would presumably aim to realize all those possible outcomes that produce distributive gains (quadrant I and II), and would only engage in institutional conflict when direct distributive gains were involved. In contrast, an actor with a

⁸ We are less interested in contestation when it takes the form of lobbying the enacting coalition outside the routine operation of the institutional design.

long-term orientation would concentrate almost exclusively on the institutional dimension and aim at realizing outcomes depicted in quadrants II and III, because she would know that short-term distributive losses would be compensated by future streams of distributive benefits resulting from institutional gains (Figure 2). We can thus conclude from this discussion that there is a correlation between the length of actors' time horizons and the likelihood of challenging the existing institutional provisions.⁹

Figure 1: Short-term oriented actor

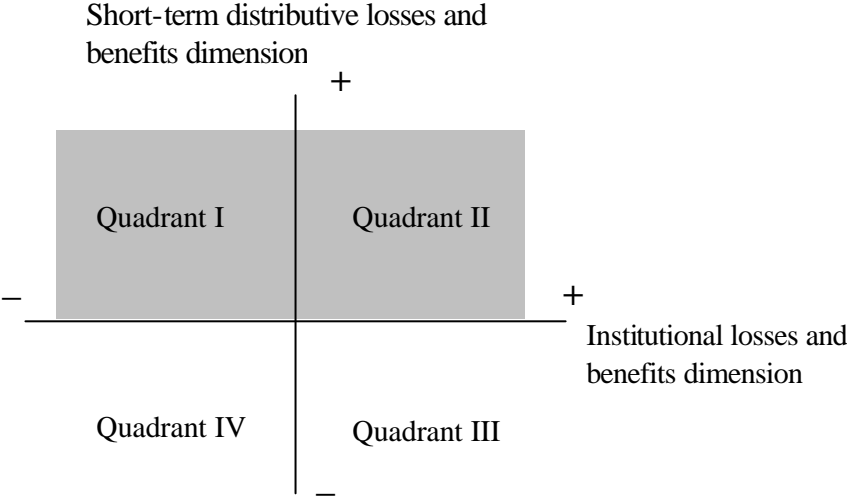
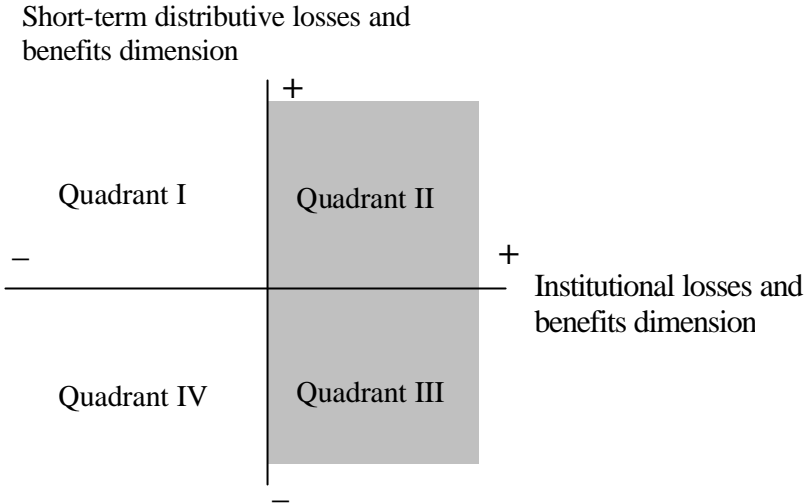


Figure 2: Long-term oriented actor



⁹ Simon Hix (1999) argues, for example, that the discrepancy in time horizons between member states in the Council and members of the EP (MEPs) leads to rule contestation given MEPs' longer time horizons (MEPs are more willing to sacrifice short-term policy losses for long-term institutional gains, given that the EP's institutional 'ideal point' is much further from the institutional status quo than that of the average Council member) vis-à-vis the member states in the Council. Hence, we argue that potential discrepancies in time horizons affect the bargaining power of the actors in the executing coalition because they affect the individual actors' 'breakdown value' (see Knight 1992).

Following the preceding discussion about the factors that affect the likelihood for rule contestation (dependent variable) in the institutional operation phase, we can advance the following propositions.

Proposition 2 The likelihood of institutional conflict is higher the stronger the *incongruence in the composition* of the enacting and the executing coalition and the more pronounced the *difference in preferences* among actors in the operation phase.

Proposition 3: The larger the *scope of interpretation* of the enacted institutions, the longer the *time horizon* of an actor in the executing coalition and the stronger her *internal unity* (in comparison to the time horizon and unity of the other actors of the operation phase), the more likely it is that this actors will pursue her preferences for institutional change and contest the institutional rules.

In the following section our propositions will be subjected to exploratory empirical testing. In order to ensure variation on our dependent variables (*institutional rule specification* in proposition 1 and *institutional rule contestation* in propositions 2 and 3) we will be analyzing two phases of institutional creation and institutional operation in which our two dependent variables assume different values. We thus find support for the effect of our independent variables on the degree of institutional rule specification and institutional rule conflict.

3. The creation of budgetary institutions and conflicting polity-ideas: A *Federal Europe* or a *Europe des états*?

To understand the institutional creation of 1970 we have to take a closer look at the institutional preferences of the Member States (re)negotiating the treaty (the enacting coalition) and their ‘institutional choice’. To shift from preferences and outcomes in the *institutional creation phase* to the likelihood of rule interpretation and contestation in the *institutional operation phase*, we will then consider the preferences of the enacting coalition in the light of the institutional bargain.

3.1. Reforming the budget and the role of the European Parliament? Competing views on how Europe should be governed

When the question of institutional reform surfaced in the early 1960s, in particular in the context of the end of the transition period foreseen for 31 June 1965, competing views on the Community's *finalité* and concomitantly on the question of whether and how to strengthen the Community institutions came to the fore. Two fundamentally distinct polity-ideas or 'higher' level concerns informed the institutional preferences for European integration of subsequent Gaullist governments under General de Gaulle, and since 1969, Georges Pompidou on the one hand, and the vast majority of political parties and governments of the five other Community member states (Germany, Italy, and the Benelux countries) on the other. It was in particular the issue of the Commission's role and the involvement of the EP in Community decision-making which produced formidable clashes between two fundamentally opposed views on how Europe should be governed, a *confederal-statist* view held by the Gaullists who were in government at the time and a *federal-dynamic* view which enjoyed the (somewhat variable) support of the other member states (of both parties in government and their most important contenders for governing power). We have assembled a multitude of archival diplomatic documents to trace the different actors' institutional preferences. Where possible, we seek not to consult secondary sources which often conflate preferences and strategies and hence provide poor information as to what the different actors actually wanted (see Frieden, 1999; Moravcsik, 1998, pp. 77-85). In the following, we will present the results of this analysis.¹⁰

France and the Gaullist's suspicion of supranationalism

Various internal documents of the French diplomatic service demonstrate the critical and reserved attitude of the French government vis-à-vis the role of the EP in a revised budgetary procedure.¹¹ The arguments advanced by the Gaullists to justify this reservation center around three claims: First, the founding Treaties envisaged a purely consultative assembly and hence it would be excessive to endow it with any more powers. Secondly, the Commission and Parliament – by using the pretext of democracy – would only seek to realize their own spending preferences. Thirdly, it would be excessive to endow the European 'assembly' with powers analog or even more significant when compared to those of national parliaments

¹⁰ For a more detailed analysis of the actors' preferences, see Lindner and Rittberger (2001).

¹¹ HAEC, MAEF.DECE-05.02, MAEF 1124, 21 February 1964; HAEC, MAEF.DECE-05.02, MAEF 1124, 26 February 1964, p. 2; HAEC, MAEF.DECE-05.02, MAEF 1124, 10 May 1965.

which have a more ‘representative character’.¹² The French governments’ institutional preferences were thus tied firmly to the conception or polity-idea of a *Europe des états* which restricted the government’s scope of institutional reform options drastically and ruled out delegation and pooling of sovereignty. During de Gaulle’s and of his successor, Georges Pompidou who was in power by the time the summit in the Hague which ultimately brought the Community budgetary procedure on the reform path, these orientations remained stable. For the French government, progress in Community matters was only possible if it served the economic interests of their farmers, hence the vehement call for a centralized CAP-financing scheme. Yet, given the institutional preferences of the other Member State governments, CAP-reform and the concomitant reform of the Community’s budgetary procedure was strongly contested inducing profoundly conflicting views as to the role the EP should play in a reformed budgetary procedure in which the Community would be endowed with own resources.

The other ‘Five’: a federal vision

The bottom-line of the argument advanced by the other five governments stipulated that with the subsequent transfer and sharing of competences, the European institutions had to ‘catch up’ against a system of Council-domination. In the different Member States, the desire to strengthen the EP was voiced in various parliamentary debates and resolutions (see Niblock, 1971, pp. 85-87). Diplomatic documents from the German federal government, for example, lay out that the government’s general foreign policy objectives were driven by a federal *Leitmotiv*¹³ or polity-idea. As essential part of this polity-idea, the powers of the EP should be enhanced and direct elections held. Even against the drawback of the ‘empty chair crisis’ there continued to be broad support across the ‘Five’ that further integration had to go hand in hand with the strengthening of the EP’s powers. During the Council meeting in the Hague, all Member States with the exception of France pressed for a stronger parliamentary involvement in the course of the reform of the CAP-financing scheme. For the French government, the inclusion of the EP in the budgetary procedure had to be limited to the smallest degree possible and was acceptable only to the extent that the overall institutional balance was not upset. The Gaullists advanced arguments to limit the role of the EP that resonated with her

¹² HAEC, MAEF.DECE-05.02, MAEF 1124, 26 February 1964, p. 2; see also HAEC, MAEF.DECE-05.02, MAEF 1124, 10 May 1965; HAEC, MAEF.DECE-05.02, MAEF 1124, 10 May 1965; see also AAPD – 1970, 30 January 1970, No 30.

¹³ AAPD – 1963, 17 July 1963.

view of a *Europe des états* whereas the other member states view about how Europe should be governed fitted very well with the support for a more influential EP.

Table 1 summarizes the preceding discussion about how Europe should be governed by distinguishing between the two main opposing polity-ideas ('higher' level concerns) held by Gaullist France and the 'Five' and the consequences that flow from these different polity-ideas for the role of the EP in the Community polity as well as the key adherents of each of the orientations.

Table 1: Contending polity-ideas: How should Europe be governed?

	Europe as a federation-to-be	Europe des états
Transfer of sovereignty	Viewed positively: delegation of sovereignty in policy sectors has to be accompanied by transfer/sharing of decision-making competences and creation of democratic control mechanisms	Viewed with reservations: emphasis on intergovernmental cooperation; opposition to delegation of competences to supranational institutions and opposition to majority voting; no demand for mechanisms of democratic accountability beyond the institutions of the nation state
Legitimacy and accountability	Emanates from both national and inter-, supranational institutions	Vested firmly in national institutions
Role of the EP in the Community polity	Developmental: the more competencies are shared or delegated, the stronger the call for compensation of the power of representative institutions at the supranational level	Limited: the EP is an 'Assembly' not a 'Parliament'; only a consultative and deliberative role as foreseen in the treaties
Key adherents	Christian and social democrats, liberal and radical parties in the 'Five' and France; all party groups in the EP excluding French Gaullists	Gaullist governments under de Gaulle's and Pompidou's presidencies (more pragmatic, less 'doctrinaire' under the latter's)

3.2. Bargaining over conflicting higher level concerns: How divisible are norms?

Throughout the 1960s, there has been a Member State coalition pressing for more parliamentary powers. However, the bargaining leverage of this coalition of Member States was too limited to successfully 'drag' the French Gaullists to the bargaining table and renegotiate the role of the EP in Community decision-making. The reform of CAP financing which was a key issue in French domestic politics opened up a venue for firmly establishing

and pushing through the alleged ‘logic’ link between the creation of own resources to lock in a permanent CAP financing scheme and an increase in the powers of the EP. Pressure directed at France and exercised by the other Member States was aimed at the acceptance of the ‘logic’ that the creation of own resources produced a ‘accountability gap’ (given the loss of national parliaments’ control over a substantial part of the budget and the lack of compensatory mechanisms for this gap at the Community level) which could only be remedied by increasing the budgetary powers of the EP. During the negotiation that followed the summit meeting in the Hague in December 1969, the idea of altering the role of the EP was accepted in principle although it was not yet clear how this would materialize: the divergences in ‘doctrine’ or polity-ideas as to the EP’s role in a reformed budgetary treaty did not allow for a simple solution to the negotiations. We have previously hinted at the argument that bargaining over ‘divisible’ issues is more likely to result in a outcome that represent a point on the respective actors’ contract curve than this is case with bargaining over principled issues: When actors hold competing norms or polity ideas as to what they consider appropriate solutions to a given problem (here: the creation of own resources and the question of parliamentary accountability), it is more difficult to make concessions on issues of principle than when the ‘pie’ is divisible (see Elgström, 2001). As we have argued above, the consequence may be no agreement at all, or the adoption of different interpretations as to what the newly enacted rules actually mean.

Yet, given the pressure to come to an agreement over CAP (which was highly valued by France) and prospective UK-enlargement (which was highly valued by the other ‘Five’), the Member State delegations could not afford to fail over the issue of parliamentary involvement in the reformed budgetary procedure. Following various bilateral and Council meetings, a compromise emerged, however, tainted by profound doctrinal divisions. Whereas policy-makers, most notably the French Foreign Affairs Minister, Maurice Schumann, and Giscard d’Estaing in the finance ministry referred to ‘technical details’, the battle about EP influence in the budgetary procedure more accurately mirrored a fierce ‘ideological battle’ over ‘higher’ level concerns, i.e. how the Community polity should be organized.¹⁴

The Council approached a compromise in February 1970 the most prominent part of which was a distinction between administrative expenses (‘non compulsory expenditure’) which

¹⁴ Agence Europe, 21 January 1970, p. 1.

would make up roughly 4% of the total budget and ‘compulsory expenditure’, directly flowing from the Treaty and to which third parties had legal claims. This compromise had two other crucial facets. First, the EP’s ability to increase the overall amount of expenditure had been scrapped by the Council upon French pressure with the introduction of the distinction between compulsory and non compulsory expenditure which reduced EP influence to roughly 4% of the overall budget (non compulsory expenditure). Secondly, the member states ascertained that the size of the Community budget would remain largely under the Council’s control (see Pollack, n.d., p. 167). What were the consequences of this compromise for the operational phase of the revised budgetary treaty? Given the battle over the role of the EP and the non-divisibility of norms or polity-ideas, we would – pursuing our first proposition – expect diverging interpretations advanced by both the signatories but also by those actors which are party to the executing coalition, most notably the EP.

3.3. Institutional preferences in a divided executing coalition

The Belgian Presidency’s representation of the compromise elaborated by the Council mirrored that – given the fundamentally diverging higher level concerns – the Council members were unable to agree on detailed treaty provisions and common interpretation of the rather vague compromise that could satisfy both normative orientations.¹⁵ The French Gaullists rationalized and justified the institutional creation before the National Assembly by claiming that they had managed to keep the ‘balance of power’ intact and that every possible gate for more supranationality had been closed. In stark contrast to the debate in the French parliament, the other negotiating parties of the enacting coalition were referring to the provisions as if they were part of an entirely different document. The vast majorities of the other national parliaments had been in favor of a ‘real’ strengthening of the EP’s role in the budgetary procedure.

We have argued previously that one factor fuelling conflict over institutions in the institutional operation phase recurs from the composition of the enacting coalition. Yet, we have also claimed that the composition and preferences of the executing coalition who apply and interpret the institutional rules play a crucial role in accounting for institutional rule contestation. Given that the EP was to become part of the executing coalition, it is therefore necessary to consider its preferences on the issue of budgetary treaty reform. EP activities

¹⁵ Journal officiel des Communautés européennes, séance du 13 mai 1970.

leading to the adoption of the Luxembourg Treaty are well documented and will not repeated here at length.¹⁶ Numerous committee reports and parliamentary debates have constantly invoked that a reform of the Community's financing system had to go hand in with an increase of the Parliament's budgetary powers. The bottom-line of the EP's motivation to criticize the new treaty provisions concerned, in particular, the distinction between compulsory and non-compulsory expenditure which limited its potential influence to allocate expenditure to a minimal proportion of the budget. The vast majority of Members of the EP (MEPs) passed a resolution which stated not only the EP's general disappointment with the provisions adopted but also its intention 'to do something about it'. Not only did it claim the right of the 'last word' as well as the right to reject the budget as a whole in order to provoke a new draft budget, so vehemently denied by the French; the resolution also stipulated that the provisions adopted by the Council could not be considered 'intangible' as they only marked the beginning of an evolutionary period within which the EP will see a further extension of its powers.

3.4. Returning to theory: Institutional creation, interpretation and conflict

The evidence provides ample support for the propositions elaborated in section 2.1. We have demonstrated that the key actors in the treaty reform process activated different polity-ideas or 'higher' level concerns about how Europe should be governed in order to specify which role they wished the EP to play in a Community endowed with own resources. We have found that the two conflicting 'higher' level concerns produced fierce 'doctrinal' debates about the appropriate scope of powers for the EP and thereby rendered the reform of the budgetary provisions extremely cumbersome. We have also shown that the institutional debate did not follow an instrumentalist logic about how to realize certain projected gains from the creation of specific institutional rules, and have conjectured that the actors' difficulty to project the distributive consequences of their institutional design decisions opened an avenue for norms of 'appropriate' government (i.e. polity-ideas) to influence the governments' institutional preferences thereby serving as *road maps* or *signposts*. Furthermore, given the stark differences displayed by the Gaullist government and the 'Five' with regard to the scope of the EP's powers, a compromise was not only hard to find but also subject to conflicting interpretations: each of the member state governments sought to square the institutional provisions with their interpretation of the 'parliamentary democracy'-norm. We can thus

¹⁶ See European Parliament (1970). The ensuing elaborations are based on this collection of documents.

conjecture, in line with *proposition 1*, that the presence of these conditions led to an ill-specified treaty document, open to interpretation (low institutional rule specification) and, given the ‘extreme’ institutional preferences of the EP, likely to be subject to contestation (pending the value of the independent variables affecting institutional rule contestation).

In addition to the rule-specification-variable, *propositions 2* and *3* state that the likelihood of institutional rule contestation increases when the enacting and executing coalitions are not congruent in composition, when preferences over the content and effect of these institutions diverge among the actors of the executing coalition and when these actors have different cost-benefit calculations about contesting the existing rules (the length of time horizons). The empirical evidence presented so far shows strong support for the presence of the first two of the three factors, i.e. incongruence among enacting and executing coalition and diverging institutional preferences. The following sections will deal with these factors at more length.

4. The revenge of the left-outs: consequences of enacting a vague treaty

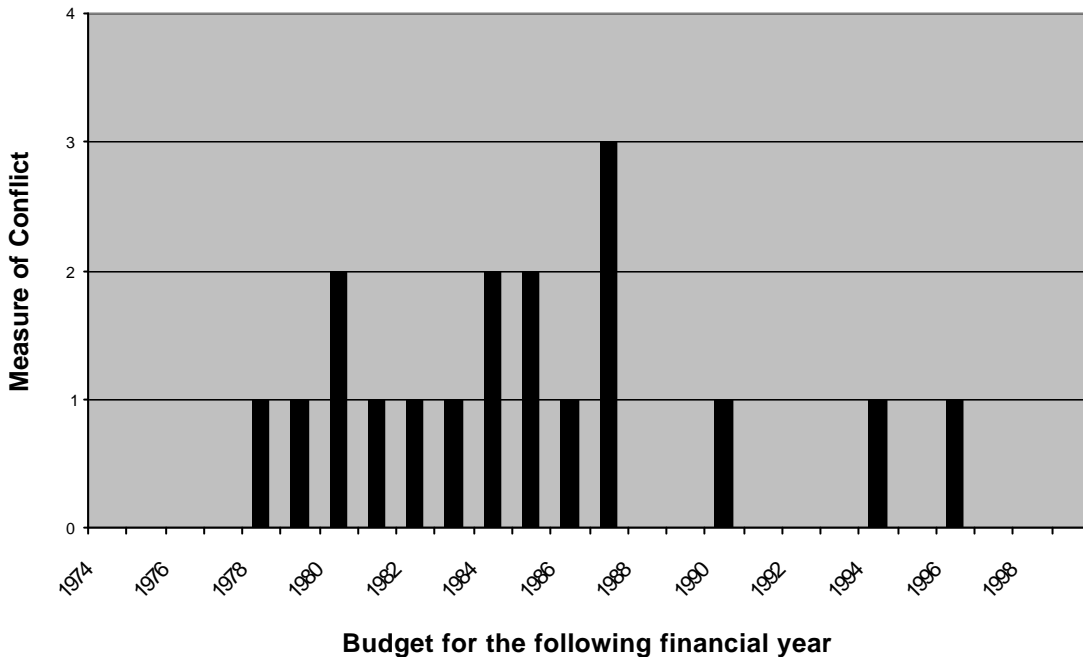
The new budgetary procedure quickly became the battlefield for fierce institutional conflict between the EP and the Council. Observers in the 1980s spoke of “institutionalized conflict” in budgetary politics – referring to the fact that, from the late 1970s, conflict was deeply entrenched in the annual budgetary procedure (Läufer, 1981). In the first part of this section, we illustrate the evolution and dominance of conflict. As an illustrative case study, we have chosen the negotiations over the 1979 budget. The 1979 budget is a good example because as the first budget that was adopted under the provisions of the 1975 budget treaty¹⁷ it already entailed all the key characteristics of conflict that was to dominate the following years. As *Figure 3* reveals, the value of the dependent variable, i.e. the level of institutional rule contestation, is high in the period from 1979-1988 relative to the period thereafter. The institutional reform of 1988 remarkably reduced the level of interinstitutional conflict.¹⁸ Hence, to explain this variation in the level of the dependent variable, the 1988 reform provides us with an interesting second case to subject our propositions to exploratory testing.

¹⁷ The 1975 budget treaty slightly revised the 1970 budget treaty and granted the EP the right of rejection of the overall budget.

¹⁸ Conflict has been operationalized by employing the following indicators: actors’ inability to abide by the budgetary time table as laid down in the treaty, the enactment of the 1/12 rule as the result of non-agreement

As in the previous section, in the second part of this section, we seek to explore the factors that led this institutional reform to a higher level of institutional rule specification when compared to the 1970 treaty.

Figure 3: Measure of rule contestation: level of interinstitutional conflict between 1974 and 1999 (procedures for the 1975 budget until the 2000 budget)



4.1. The 1979 budget

The 1979 budget was the first budget where institutional conflict played a dominant role in budgetary decision-making. Although actors had already experienced some interinstitutional tensions since the introduction of the new budgetary procedure in 1974, the negotiations in 1978 led to an intensive clash of rivaling interpretations of the treaty provisions. During the procedure, Parliament found itself in a position where it was able to capitalize institutionally on a gap in the treaty. This gap had gained relevance because the Council was internally divided over its distributive objective: In its second reading of the budget, the Council had failed to assemble the majority for rejecting a parliamentary amendment for increasing the Regional Fund as three member states with strong distributive interests in regional policy refused to reject the amendment. At the same time, the Council did not have an internal majority for adjusting the maximum rate of increase accordingly. The EP could therefore argue that the Council had implicitly increased the maximum rate by failing to reject the amendment.

between the two arms of the budgetary authority, actions taken before the European Court of Justice, and member states' refusal to pay their share of the enacted budget (see Lindner, 2000).

Although the Council strongly contested this interpretation of the treaty, the EP pursued its strategy and was supported by the Commission that implemented the budget as adopted by the EP. Only a supplementary budget adopted in June 1979 settled the dispute between Council and EP even though the differences over the treaty interpretation remained. *Table 2* presents an overview over the annual procedure and the adoption process of the 1979 budget.

Table 2: Overview over the treaty provisions for the annual budgetary decision-making procedure and the developments during the adoption process for the 1979 budget

Annual budgetary procedure		Adoption process of the 1979 budget
Year: n-1	<i>Commission</i> prepares Preliminary Draft Budget.	Commission proposed significant increases in NCE*.
	<i>First Reading in the Council:</i> Council adopts Draft Budget.	The Council reduced NCE significantly.
	<i>First Reading in the EP:</i> EP tables amendments to NCE* and modifications to CE**.	EP reinstated Commission proposals and raised NCE. It threatens the Council to reject the overall budget.
	<i>Second reading in the Council:</i> Council adopts CE and votes on NCE.	The Council did neither have a majority for rejecting an increase of the Regional Fund as proposed by the EP nor a majority to adjust the maximum rate of increase accordingly.
	<i>Second reading in the EP:</i> EP votes on NCE (within the maximum rate of increase***) and adopts/rejects the overall budget.	Interpreting the Council's failure to reject the EP's proposal as an implicit increase of the maximum rate the EP adopts the budget. However, the majority of the EP does not follow the recommendation of the EP's Committee on Budgets which proposed an even stronger line of conflict.
Year: n	<i>Commission</i> implements the budget.	The Commission implements the budgets despite legal doubts and resistance from some Member States.
		Council and EP agree on a supplementary budget which ex ante 'legalizes' Parliament's adoption. The EP does not support proposals of the Commission for a further increase of the Regional Fund in order not to endanger the compromise with the Council.

*NCE = Non-compulsory expenditure.

**CE = Compulsory expenditure.

***Maximum rate of increase = A percentage of the non-compulsory expenditure of the current year that indicates the upper limit of increase of the non-compulsory expenditure of the coming year. The Commission on the basis of indicators that are given in the treaty calculates it. It can be modified by a joint-agreement between the EP and the Council.

Source: EC Treaty, EC Bulletin for 1978 & 1979 and Strasser (1979).

4.2. Returning to theory: assessing institutionalized conflict

The case of the 1979 budget allows us to go through the different independent variables and assess their impact.

Incongruence of enacting and executing coalition: Leaving the EP out from the enactment of the 1970 treaty proved to be a consequential decision. As it had not been member of the enacting coalition, the EP did not feel bound by the dominant treaty interpretation. But even within the Council, the change from the European Council and the Foreign Affairs Council, who had negotiated the treaty, to the Budget Council strained inter-institutional relations, because it strengthened the emphasis on distributive preferences and marginalized those voices in the Council that had been in favor of strengthening the EP.

Differences in preferences and time horizons among the actors of the executing coalition: Differences in institutional and distributive preferences among actors of the executing coalition played an important role in inciting institutional conflict. The EP's distributive preferences were based on a strong interest in expanding the redistributive dimension of the European level and in realizing specific policy preferences. In order to attain these aims, Parliament sought to increase its budgetary powers. However, the institutional preference for increased parliamentary powers equally stemmed from a general interest in enhancing its own powers (i.e. influence over outcomes). Normative concepts of a federalist Europe with a strong Parliament played an important role in the formation of institutional preferences. Although the short-term distributive and long-term institutional gains mostly coincided, the EP disciplined itself at points, as in the 1979 supplementary budget, and did not opt for a distributive success where it endangered institutional gains.

The preferences of the Budget Council and its time horizon significantly differed from that of Parliament. Delegates from the national finance ministries were short-term oriented. They were mainly concerned with keeping their annual countries' contributions low and expanding only those expenditures which entailed direct benefits for important national constituencies. It might seem surprising that compared to the findings presented in section 2. the Budget Council's institutional preferences were closely linked to its distributional preferences: the majority of member states (even the other 'Five' Member States) was anxious not to lose decision-making power against a Parliament that was seen as taking an excessive spending approach towards the budget. In contrast to the situation during the treaty negotiations,

uncertainty over the distributive consequences was significantly lower and actors took a much greater interest in them.

Large areas of interpretational differences: Key for the occurrence of institutional conflict in budgetary politics was the ambiguity of the treaty provisions. The budgetary treaty provided all actors with ample opportunities for conflicting interpretations based on competing polity-ideas. While some issues were genuinely inconsistent, as demonstrated in the case of the procedure for the 1979 budget, others were left ambiguous and thus provided a low-cost situation for challenging the dominant interpretation. The EP was particularly favored because the Commission implemented the budget as adopted by the Parliament even when the Council and the Commission itself did not share the legal interpretation of the EP.

Unity: The EP was able to contest the Council's interpretation because of a high degree of internal unity. Unity was necessary because of the three-fifth majority rule for plenary decisions. Although there were still differences among MEPs over how far one should push the institutional objectives, which led to a defeat of the Budgets Committee in the procedure for the 1979 budget, subsequent years illustrated that the distributive tensions in Parliament were clearly more pronounced than the institutional ones. Institutional conflict therefore had an important function in unifying Parliament.¹⁹ The Budget Council was much weakened by distributive differences. Repeatedly the EP was supported by member states that opted for their individual short-term distributive interest rather than the long-term institutional interests of the Council. Consecutive enlargements undermined the austerity camp and strengthened demands for regional redistribution. Moreover, the Budget Council had to accept the interference of other Councils, most importantly the Agricultural Council and the European Council which made it difficult to contain conflict strategies of the EP.

4.3. The Sea change of 1988

In 1988, the European Council changed budgetary politics at the European level significantly by introducing a multi-annual budget plan into the annual budgetary decision-making. The multi-annual budget plan, called financial perspective, has an institutional and distributive dimension. On the institutional dimension, it set annual ceilings and upper limits for the main

¹⁹ For the annual budgetary procedures, the Budget Committee and the Agricultural Committee had an agreement that both side would not interfere with each other (Misch, 1987). Budget experts accepted the price

categories of the budget, while on the distributive dimension it entailed a doubling of the regional spending of the Community and the introduction of new own-resources for financing this increase. An institutional agreement between the Council, the Commission and the EP committed the three institutions to comply with the multi-annual budget plan and specified its relevance for the annual budgetary procedure. This interinstitutional agreement supplemented the treaty but remained soft-law. It had to receive its binding nature solely from the political willingness of actors to comply.

The 1988 reform was a significant event of institutional change from the perspective of the level of institutional rule contestation. Although the reform did not completely eliminate institutional conflict between the two arms of the budgetary authority, it reduced the level of conflict considerably. As ceilings were set, the maximum rate of increase lost its importance for limiting the expenditure. Similarly, distinction between compulsory and non-compulsory expenditure became less relevant. In giving its consent to the financial perspective, the EP was included in the decision over the overall expenditure distribution (and indirectly in the decision over revenue). Moreover, the new multi-annual budget plan massively increased non-compulsory expenditure above the treaty rate of increase, and it gave the EP an important distributive security: the amounts entered for regional policy constituted spending targets and ceilings, as in the other categories. The distributive motivation for institutional conflict thus lost relevance because possible institutional gains would not have such a strong distributional consequences anymore (i.e. lower benefits of contestation) – although the normative motivation for institutional gains still remained and the Budget Committee continued to contest the treaty provisions during the annual procedures, albeit on lower scale. A key difference to the pre-1988 situation was the risk that contestation would entail. Radical contestation was likely to destroy the whole interinstitutional agreement and its attractive distributive dimension. The institutional fall back (default) position of the provisions of the 1970 treaty disciplined actors and the multi-annual character of the financial perspective committed actors to a longer time horizon. A contestation of the rules of the financial perspective would have resulted in a return to the treaty. This was not attractive for the EP. In the years before 1988, the contestation of the treaty rules had led to a situation without an unambiguous institutional setting. The default position was non-agreement, which was often better for the EP than the treaty provisions. The interinstitutional agreement had made the EP

recommendations by the Agricultural Committee in the votes of agricultural prices in spring while the agricultural lobby in the EP supported the budget in the budget votes in autumn.

to a member of the enacting coalition and did not want to endanger the favorable outcome for a period of many years through institutional conflict. More intense institutional debates were limited to the occasions when the framework was to be renegotiated when a multi-annual budget plan expired. Here, the EP traded institutional gains against distributive concession. As the Council did not want to re-open the multi-annual budget plan agreed among heads of governments, the EP had the bargaining power to push for institutional concession.

Overall, the success of the 1988 reform strongly supports our propositions. The level of institutional conflict (the dependent variable) decreased because the EP became part of the enacting coalition, the institutional reform reduced the scope for rivaling interpretation, the time horizon of both actors was synchronized and the internal unity of the EP declined because the institutional dimension of budgetary politics lost importance. Moreover, the institutional creation of the financial perspective differed significantly from that of the 1970 budget treaty. Actors of the enacting coalition shared the same norm of multi-annual planning which served a *focal point* for framing a previously reached distributive consensus. The rules of financial perspective were therefore clearly defined and specified. *Tables 3 and 4* summarize our empirical findings and link them to the propositions.

Table 3: Creation and Operation of the 1970 Budget Treaty

Institutional Creation Phase – 1970 Budget Treaty	
Independent Variable	
‘Higher’ versus ‘lower’ level concerns	<u>France</u> : Institutional preferences inspired by the polity idea of <i>Europe des états</i> and distributive concerns (CAP) <u>The ‘Five’</u> : Institutional preferences informed by the polity idea of a <i>Federal Europe</i>
Dependent Variable	
Rule specification	Open treaty provisions / high potential for rule interpretation
Institutional Operation Phase – 1974-1987	
Independent Variables	
Congruence	<u>New representatives</u> : Budget Council replaced European Council and General Affair Council <u>New actor</u> : European Parliament
Preferences	<u>Budget Council</u> : <i>short-term</i> orientation towards <i>distributive</i> objectives; institutional status quo-preference <u>EP</u> : <i>long-term</i> orientation towards <i>institutional</i> objectives; distributive expansionist spending interest
Interpretation	Conflicting preferences over open treaty provisions
Unity	<u>Budget Council</u> : split over distributive objectives <u>EP</u> : united over institutional objectives
Dependent Variable	
Rule contestation	High level of rule contestation

Table 4: Creation and Operation of the 1988 Interinstitutional Agreement

Institutional Creation Phase – 1988 Interinstitutional Agreement	
Independent Variable	
'Higher' versus 'lower' level concerns	<u>All actors</u> : Lower level concerns dominate
Dependent variable	
Rule specification	Set of closed rules supplements the treaty / low potential for rule interpretation
Institutional Operation Phase – 1988-1999	
Independent Variables	
Congruence	Congruence between enacting and executing coalition
Preferences	Convergence towards long-term orientation but still differences in institutional preferences
Interpretation	Limited scope for interpretation of institutional agreement
Unity	<u>Budget Council</u> : more united on distributive front <u>EP</u> : less united on the institutional front
Dependent Variable	
Rule contestation	Low level of rule contestation

5. Conclusion

In this article we have proceeded in two steps. First, we have specified the conditions under which newly designed or reformed institutions of Community budgetary politics will be more or less open to interpretation by the actors enacting the new institutional rules. We have found support for the argument that in particular where actors' polity-ideas or 'higher' level concerns over how the European polity *should* be governed conflicted, ill-specified institutional provisions ensued and the working properties of these institutions were interpreted very differently by the actors involved. Secondly, we have linked the institutional design or creation phase to that of institutional operation. We have argued that in addition to ill-specified institutional rules, actor-properties (congruence of enacting and executing coalitions, differences in institutional preferences, internal unity, and time horizons) affect the degree to which the enacted institutions become contested. Our findings support these claims: Due to two non-reconcilable polity-ideas (*Europe as a federation-to-be* and *Europe des états*), the Community Member States did not find agreement with regard to the role the EP should play in a Community endowed with 'own resources' and in the consequent enactment of the budgetary treaty, high levels of inter-institutional conflict ensued. These high levels of institutional rule contestation were only resolved after an institutional reform was achieved

during which conflicting polity-ideas were secondary, and the distributive ('lower' level) concerns of the member states and the EP dominant. The EP was now party of the enacting coalition, the institutional dimension became less relevant and time horizons were somewhat synchronized.

The findings presented in this paper allow us to assess the explanatory value of some of the instruments of historical institutionalism. We show that our approach to historical institutionalism questions the role of two of historical institutionalists' key concepts, i.e. unintended consequences and exogenous shocks, to the degree that they may become superfluous under the conditions elaborated in this article.

Unintended consequences

In *The Choice for Europe*, Andrew Moravcsik criticizes historical institutionalism for underestimating foresight of governments that claim that unintended consequences are abundant and result from the short-sightedness of those that designed them. According to Moravcsik, historical institutionalists fall into this trap because "their analyses are rarely based on a detailed, primary-source analysis of national preference formation. Instead, they make do with public justifications by governments and with secondary sources. Yet, since governments often have an incentive to deny or simply ignore their responsibility for certain outcomes ... accounts based on secondary sources and their public justifications tend to generate inadequate ... support for claims about 'unintended consequences'." (Moravcsik, 1998: 491) We have demonstrated in this article that thorough primary source analysis of the preferences of institutional enacting coalitions, indeed, helped us defuse this alleged shortcoming of jumping to potentially false conclusions regarding 'unintended consequences'. By looking at the logic lying behind the institution building efforts of the enacting coalition our findings suggest that even if actors in the creation phase have had full information over the consequences of their institutional choice, they might not have embarked upon a different course of action: Given the difference in institutional preferences among members of the enacting coalition, no other than the actual compromise seemed to have been feasible. Actors in the creation phase opted for ambiguous provisions and left space for interpretation because they recognized this as the only available option to reconcile the different institutional preferences. They *accepted* that this strategy would possibly induce tensions in the operational phase – postponing the decision to introduce 'own resources' over the disagreement of the role of the EP was considered too costly an option.

Conflict-laden institutions instead of exogenous shocks

In this article we have also qualified the often-made claim both by some historical institutionalists as well as by their critics that events which are exogenous to the research design, such as ‘critical junctures’, induce ‘punctuated equilibria’ and thus lead to institutional change and reformulation. Instead, we have argued that the budgetary institutions of 1970 were subject to severe contestation and ultimately institutional change, not because of the existence some exogenous event. Rather, in this article we have sought to *endogenize* institutional conflict and rule contestation by emphasizing the importance of analyzing actor preferences and constellations at the moment of institutional design efforts. Although we do not deny that exogenous factors may impact on the functioning of institutions, it has been demonstrated here that institutional analyses that do not ‘go back and look’ (Pierson) are prone to miss an essential part of a comprehensive explanation of why institutions, once enacted, appear dysfunctional.

The European Union has often been characterized as an ‘unfinished’ constitutional system whose evolution has not only been fuelled by functional demands to overcome collective action problems, but also by different polity-ideas as concerns the appropriate governance structure. Looking at the present debate about the ‘Europe 2004’-project which is supposed to culminate in the adoption of a European Constitution from the vantage point of the argument presented in this article, we are obviously likely to observe fundamental differences on the level of polity-ideas. Yet, more importantly, the degree to which these polity-ideas translate in the creation of institutional rules and decision-making procedures, and the degree to which the actors of prospective executing coalitions will be included in the constitution writing process will fundamentally affect the contestedness of any future European constitution. The ‘method’ of a constitutional convention comprising members of the EP, national parliaments and the member state executives is therefore to be welcomed. However, if the convention’s proposal for a European constitution will not bind the Council member states, the fate of any European Constitution could be the same as that elaborated by the Ad hoc-Assembly for a European Political Community in the 1950s, or it could result in ongoing inter-institutional conflicts which recur to the disagreement over how Europe should be governed.

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