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# **The New Intergovernmentalism: European Integration in the Post-Maastricht Era**

Christopher J. Bickerton, Dermot Hodson and Uwe Puetter<sup>1</sup>

## **Abstract**

The post-Maastricht period is marked by an integration paradox. While the basic constitutional features of the European Union have remained stable, EU activity has expanded to an unprecedented degree. This form of integration without supranationalism is no exception or temporary deviation from traditional forms of European integration. Rather, it is a distinct phase of European integration, what is called ‘the new intergovernmentalism’ in this article. This approach to post-Maastricht integration challenges theories that associate integration with transfers of competences from national capitals to supranational institutions and those that reduce integration to traditional socioeconomic or security-driven interests. This article explains the integration paradox in terms of transformations in Europe's political economy, changes in preference formation and the decline of the ‘permissive consensus’. It presents a set of six hypotheses that develop further the main claims of the new intergovernmentalism and that can be used as a basis for future research.

## **Introduction**

The years since the signing of the Maastricht Treaty in 1992 have been characterized by a seemingly unrelenting expansion in the scope of European Union activity. In this post-Maastricht period, the EU has not only completed the transition from single market to monetary union and expanded from 15 to 28 members, but it has also increased its involvement in socioeconomic governance and justice and home affairs. The EU now has a common foreign and security policy, its own foreign policy representative and a European diplomatic service. From social policy to the environment, virtually all aspects of government policy in Europe today are shaped by the EU in some way.

And yet for all this integration, the basic constitutional features of the Union have remained remarkably stable. At Maastricht it was decided that major new areas of EU activity would be developed without conceding substantial powers to the European Commission or the Court of Justice of the EU (CJEU). Far from rejecting or revising this principle, the Treaties of Amsterdam, Nice and Lisbon confirmed it. Though the area of justice and home affairs was ‘communitarized’, it still departs from the classic Community method in several key respects. In other new areas of EU

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activity, such as the extension of employment and social policy co-ordination at Amsterdam and Nice, supranational decision-making was studiously avoided.

Though it has gained much power in this period, the European Parliament has contributed to these developments. Concerned with expanding its own institutional reach, the EU legislature has shown a willingness to depart from the Community method providing it is involved to some degree in new areas of EU activity. Many had expected the global financial crisis to edge Europe towards further supranationalism, but this has not yet happened. The two key intergovernmental treaties following the crisis – the fiscal compact and the European Stability Mechanism (ESM) Treaty – empower the Commission to a limited degree in one case and not at all in the other. The same can be said of the EU's plans for banking union, which have seen Member States transfer new powers for financial supervision to the European Central Bank (ECB) while ensuring that the Commission's influence over banking resolution is constrained.

With the constitutional framework unchanged, integration since Maastricht has been pursued via an intensification of policy co-ordination between Member States. This has occurred at all levels: from heads of state or government in the European Council down to national experts in comitology committees. This co-ordination varies in its range of formality and in its degree of institutionalization (compare the shadowy existence of the 'Frankfurt Group' with the routinized actions of the political and security committee), but it consistently avoids transferring more powers to traditional supranational bodies – notably the Commission and the Court.

This degree of policy co-ordination has been possible because of the deliberative and consensual quality of EU decision-making. Deliberation and consensus-seeking have long been taken to be the behavioural hallmarks of supranationalism, but in the post-Maastricht period they have imposed themselves as dominant norms regulating the relations between national actors.<sup>2</sup> We see this in the pre-eminence of the European Council – a deliberative and consensus-building body par excellence. It is confirmed in the problem-solving orientation of national experts – a phenomenon captured in the burgeoning work on epistemic communities and comitology (Brandsma, 2013, pp. 8–9). National parliamentarians now regularly deliberate with one another in three interparliamentary conferences: the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), the Interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP), and the Interparliamentary Conference on Economic and Financial Governance. Even in areas as firmly tied to national sovereignty as security and defence policy, co-ordination is driven by the strength of a shared professional ethos among national officials (Davis Cross, 2011). Though conflict remains (for instance, in the falling out over Iraq or disagreements over financial support for Greece), participants seek solutions from within the process and less through vetoes or exits. Where individual Member States have negotiated opt-outs to specific aspects of EU activity (for example, the UK in justice and home affairs), the attachment to deliberation and consensus has prevented

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<sup>2</sup> For some, 'deliberation' refers to a 'discussion mode', whereas 'consensus' is a decision-making procedure (Dehousse et al., 2014, p. 845; Novak, 2013; Urfalino, 2007). In fact, both terms can also be framed as behavioural norms, which is the approach taken in this article. The concept of 'behavioural norm' draws on Haas (2004, p. 59), who thought of European integration as being not only about the creation of a specific decision-making regime, but also a certain style of politics regulated by particular norms of behaviour.

their exclusion from negotiations in these areas (Adler Nissen, 2008; Holzinger and Schimmelfennig, 2012, p. 301).

Delegation, where it has occurred in the post-Maastricht period, has been to *de novo* bodies rather than traditional supranational institutions.<sup>3</sup> The category of *de novo* bodies is broad, but points to a key development since 1992. It refers to newly created institutions that often enjoy considerable autonomy by way of executive or legislative power and have a degree of control over their own resources. However, they fulfil functions that could have been delegated to the Commission and tend to contain mechanisms for Member State representation as a part of their governance structure. *De novo* bodies include the ECB, the European External Action Service (EEAS), the ESM, and numerous regulatory and executive agencies.

This tendency towards deliberation and consensus-building, and the delegation to *de novo* bodies, represents an important integration paradox: Member States pursue more integration but stubbornly resist further supranationalism (Puetter, 2012, p. 168). This constitutes a challenge to EU studies given that more integration has so often been taken to mean transfers of competences away from national capitals and towards supranational EU institutions. For theories reducing integration to a series of bargains between nation-states, the post-Maastricht period is equally paradoxical. While the constitutional framework has remained stable, the degree of integration has been extensive and unprecedented. National actors have consistently favoured deliberative and consensual behaviour over national vetoes and threats of exit, and their interactions have gone far beyond the narrow confines of intergovernmental conferences (IGCs). States remain central to the European integration story, but they are not the ‘obstinate’ nation-states of traditional intergovernmentalist theory (Hoffmann, 1995).

Our starting point for this article is that this form of integration is not a temporary deviation from a more longstanding supranational trend. Rather, it is a new phase in European integration that has become entrenched and systematically reproduced in the two decades since Maastricht. While recognizing that periodization is difficult and that processes of sociopolitical change rarely respect the neat boundaries of legal texts and treaties, we take the Maastricht Treaty of 1992 as our starting point because it stands out as the moment where the acceleration in EU activity was formally cast on a basis other than the traditional Community method. In this article, we label this post-Maastricht phase in European integration ‘the new intergovernmentalism’.

We are aware that the terms ‘intergovernmental’ and ‘supranational’ are often given different meanings in the scholarly literature. Following Haas (2004), in his discussion of the meaning of ‘supranationality’, we note that these terms refer both to separate decision-making logics (integration through formal acts versus voluntary policy co-ordination) and to certain behavioural norms that the ‘grand’ theories of EU integration have associated with one or another level of decision-making and political authority. In a purely institutional sense, the new intergovernmentalism points towards an absence of supranational decision-making as typically framed by the

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<sup>3</sup> We think of the Commission and CJEU as traditional supranational institutions insofar as they are founded on a formal mandate, which grants them enough autonomy from Member States that they can take independent decisions and build up their own bureaucratic resources. Traditional intergovernmental institutions, by contrast, are founded on the representation of Member States and deal with collective decision-making through forms of voluntary policy co-ordination. They include the European Council, the Council, the Eurogroup and high-level policy committees such as the political and security committee.

Community method – that is, the transfer of lawmaking power to the European level, an expansion in the initiating powers of the Commission and the enforcement powers of the CJEU, and the resort to majority voting to pass legislation binding on Member States (Dehousse, 2011, p. 3). More broadly, the new intergovernmentalism also highlights the way in which certain behavioural norms associated with supranationalism – namely deliberation and consensus-seeking – have become uncoupled from their traditional supranational settings and function as the operative norms for EU Member States. Our point here is not to deny the role of supranational actors, but rather to acknowledge the fact that their relative importance in determining the character and direction of the integration process has been in question ever since Maastricht.

We begin this article by situating our approach within existing theories of European integration, placing the emphasis on where we think our contribution lies. We then provide a contextualized explanation of the new intergovernmentalism by focusing on transformations in Europe's political economy and on the changing dynamics of preference formation in Europe. The final part presents a set of hypotheses associated with the new intergovernmentalism, which we hope can serve as catalysts for further research.

### **The Politics of the Post-Maastricht Period**

In early theorizing about European integration, neofunctionalists stressed the importance of Community bodies (Haas, 2004) while intergovernmentalists pointed to the continuing relevance of nation-states (Hoffmann, 1995, pp. 71–106). Though they differed in their beliefs about the causes of integration, both converged in their assumption that integration entailed the empowerment of supranational actors. This assumption also underpins Schmitter's (2004) neo-neofunctionalism and is central to the 'supranationalist school', who define 'institutionalization' as 'a process through which supranational governance – the competence of the European Community to make binding rules in any given policy domain – has developed' (Sandholtz and Stone Sweet, 1998). As a result of this, Haas's heirs have struggled to explain the tendency towards integration without supranationalization in the post-Maastricht period. Liberal intergovernmentalism has seen itself as a voice of reason, but it too has downplayed the significance of integration in new areas of activity since Maastricht (Moravcsik, 2002; 2010).

The same limitation is apparent in more recent rationalist theories of European integration that rely on incomplete contracts. With a similar methodology to liberal intergovernmentalism, these theories see the EU as subject to ongoing institutional change (Héritier, 2007). On its own, the concept of 'incomplete contracts' is agnostic about the future direction of integration. However, these authors assume that integration is driven by supranational actors who use the openness of incomplete contracts to expand their powers (Karagiannis and Héritier, 2013, p. 98; Cooley and Spruyt, 2009).

Other contemporary scholarship on the EU distances itself from these concerns. In place of abstract writing on the 'nature' of the EU 'beast', much of today's scholarship is focused on individual policy areas or specific institutions. This development owes its debt to Wallace et al. (1977), who began the shift in EU studies from polity-building to policy-making. Such empiricism has led to many novel insights and generated a wealth of new knowledge in individual policy areas. The new governance literature, for instance, has been extremely useful in directing attention

towards the practice of policy co-ordination and the functioning of de novo bodies and decentralized modes of governance (for example, De la Porte et al., 2001; Trubek and Mosher, 2003). A limitation of this 'post-ontological' turn is that it inhibits inquiry into any underlying trends that may characterize the post-Maastricht period as a whole (Bickerton, 2012, pp. 8–12). New discoveries are seen as deviations from established patterns rather than as instantiations of a new order. To take an example, the work on experimentalist governance presents these new modes of decentralized policy co-ordination as experimental departures from the Community method norm (Sabel and Zeitlin, 2008). Kenneth Armstrong (2011, p. 188) is right to note that sharp contrasts between the 'old' Community method and 'new governance' can be misleading as the latter is both a step away from, and an evolution in, the Community method.

In this section, we trace the origins of the new intergovernmentalism through an examination of Europe's changing political economy and transformations in domestic politics within European states. The post-Maastricht period has of course been subject to much exogenous change: from the acceleration of globalization to the enlargement of the EU after the collapse of the Berlin Wall (Kriesi et al., 2008; Zielonka, 2006). Our own focus is not intended to dismiss this broader context, but rather to recognize that these exogenous forces have indeterminate institutional effects. Heightened economic competition in the late nineteenth century, for instance, resulted in a sharpening of national conflicts within Europe, growing protectionism and eventually war (Maier, 1981), whereas in the 1950s competitive pressures coincided with the first great wave of European integration. We seek to go beyond this indeterminacy by focusing on mid-range causal mechanisms that mediate between these exogenous forces and EU-level institutional change.

The ambition to specify exactly how domestic politics matter for the European integration process has long been at the heart of intergovernmentalist concerns. Liberal intergovernmentalism has focused on domestic interest groups and has attempted to systematize the role played by socioeconomic interests, individual leaders and political ideology (Moravcsik, 1998). Our understanding of domestic politics is broader and, like Simon Bulmer's (1983) use of the term 'national polity', it includes problems of legitimacy and authority and treats the preference formation process itself as an input into institutional change at the EU level. From this perspective, preference formation and EU integration are not neatly separated in space and time, with the former occurring first at the national level and the latter following on in the form of strategic bargaining between Member State governments. Rather, EU integration has become increasingly shaped by pressures occurring within the processes of preference formation, creating a more dynamic and unstable set of relationships between domestic constituencies, Member State governments, and EU policies and institutions.

### **The Political Economy of Post-Maastricht Integration**

Explaining the pursuit of integration in the absence of supranationalism involves differentiating the political economy of the post-Maastricht era with that of earlier periods. As scholars have noted, the 1950s and 1960s were the high point of 'embedded liberalism', reflected in the actions and policy orientations of European Community institutions (Milward, 1992; Ruggie, 1998, pp. 62–84). Indeed, some of the chapter headings of Haas' (2004) seminal work seem inescapably tied up with

western Europe's golden age of postwar social democracy: 'price policy', 'investment policy', 'cartel policy', individual chapters on trade associations and trade unions.

Two characteristics in particular differentiate this period from the post-Maastricht era. First, while enough convergence existed for the first steps in European integration to be taken, the actual degree of substantive integration thereafter remained limited. Economists like Haberler or Belassa, who studied the effect of regional integration on economic growth in western Europe, concluded that its contribution was small (Majone, 2011, p. 21). The Treaty of Rome, Tony Judt (2005, p. 303) writes, remained 'a declaration of future good intentions' until the arrival of the Single European Act (SEA). European integration in this period is thus best considered as part of a broader national project of economic development (Schmidt, 1996, p. 77; Milward, 1992). Second, contained within the national structures of postwar capitalism were very different political bargains struck between competing social forces (Schonfield, 1965). These lent to intergovernmental relationships a certain rigidity and implacability: national positions were not merely the preferences of individual elites, but were reflections of wider bargains between states and civil societies, with commitments to a 'mixed economy' serving as important obstacles to further European economic integration (Scharpf, 1999, p. 58). French positions in European negotiations, for instance, reflected not merely the views of de Gaulle, but also Gaullism as a determinate social and political formation within France (Johnson, 1981, pp. 71–102; Anderson, 2009, pp. 87–9). When the postwar Golden Age gave way in the 1970s to heightened intra-European competition, the response of national governments was thus defensive and self-regarding. A Dutch proposal to pool the European Community's oil resources in order to mitigate the effects of the OPEC price rises, for instance, was rejected by other Member States whose better relations with Arab states gave them access to cheaper oil (Möckli, 2009, p. 191).

The increase in the scope of EU activity after Maastricht was possible because of the undoing of these rigid national positions. This began with the convergence in Member State preferences around economic policy questions, what one European Commissioner has dubbed the 'Maastricht orthodoxy' (Andor, 2012). This convergence first took hold in the early 1980s but the abandonment of the postwar economic consensus was uneven and governments adopted different national strategies in their attempts to preserve the balance between growth and social protection (Gourevitch, 1986; Goldthorpe, 1987). By the beginning of the 1990s, a certain ideational uniformity prevailed among European political elites regarding the primacy of price stability, the limits of government intervention and the superiority of markets over planning as the pillars of societal organization (Scharpf, 1987).

Keohane and Hoffmann (1991, p. 23) write that the SEA 'resulted less from a coherent burst of idealism than from a convergence of national interests around the new pattern of policymaking: not the Keynesian synthesis of the 1950s and 1960s but the neoliberal, deregulatory programme of the 1980s'. In fact, driving this convergence of policy goals was a restructuring of the European state itself, where key postwar institutions and their corresponding policy frameworks were being dismantled (Bickerton, 2012, pp. 90–109; Stone, 2014). Central to this process was a growing recognition among national elites – from Mitterrand in France to Papandreou in Greece – of the limits of national strategies (Short, 2013; Mazower, 1998, p. 337). Hitherto, governments would pursue their goals via wider European frameworks and the rigid state-society ties that had conditioned government responses in the postwar period gave way to a looser set of relations that were less national in scope. This was

the moment when the planning and big government instincts of the postwar era were finally jettisoned. Nation-states in Europe had become Member States.

It is a striking feature of the post-Maastricht period that this ideational convergence paved the way for intergovernmental co-operation rather than delegation to supranational institutions. While a consensus emerged in the 1980s on the need for a supranational central bank, national authorities remained acutely aware in the 1990s and 2000s that a one-size-fits-all approach to fiscal policy and structural reforms was economically and politically problematic. This concern for the differences between national models of capitalism made EU-level deliberative practices all the more essential (Hall and Soskice, 2001, p. 56; Schmidt, 2009, p. 310). A key function of the Eurogroup among finance ministers is to exchange views on how national economic policies can be tailored to meet shared policy challenges. This is also true of the stability and growth pact (SGP) and the Six-Pack (Hodson, 2011). Institutional diversity across Member States is different, however, from competition between entities that are tightly integrated through national compacts between business and labour. The latter tends to impose limits upon EU activity, whereas the former does not. With the weakening of such compacts, governments sought European frameworks as a way of managing their institutional diversity and of disciplining their domestic constituents.

This mixture of ideational convergence, institutional diversity and the unravelling of postwar compacts help us understand the intensification of integration after Maastricht and it also accounts in part for the popularity of more flexible and open-ended procedures. The shift towards such procedures had already begun under Jacques Delors' third term as Commission President. The subsequent expansion of EU economic policy into the domains of macro-economic governance, including fiscal policy, wage and employment policy and the question of national welfare state reform, has continued this trend. The Lisbon Strategy of 2000 (which lives on in 'Europe 2020') was the clearest evidence that Member States preferred peer pressure and consensus-building under the open method of co-ordination to the codification of reform commitments under the Community method (Hodson and Maher, 2001). United in their scepticism about the efficacy of national policy solutions, national governments have accommodated their institutional differences through decentralized policy co-ordination and elite and expert-level deliberation within bodies such as the Eurogroup and the economic and financial committee (Puetter, 2014). These differences are no longer tied to a Keynesian vision of the state, nor are they a reflection of an institutionalized balance of social forces at the domestic level. Consensus is thus easier to pursue (though not always attain) and the policy areas open to EU co-ordination are far greater in number.

### **The End of the Permissive Consensus and Europe's Crisis of Political Representation**

The integration paradox is partly the result of political economy changes propelling national elites forward in their integration activities. However, it is also the result of new political constraints and challenges faced by these same elites. The early decades of European integration had benefitted from a 'permissive consensus' in which the people deferred to elites when it came to the pooling of sovereignty (Lindberg and Scheingold, 1970; Lahr, 2002, p. 248). Scholarship on the EU has come to recognize that much has changed in the post-Maastricht period. Euroscepticism, for instance, is increasingly being seen as an enduring feature of contemporary European integration



rather than as an epiphenomenon (Usherwood and Startin, 2013). Interest, however, has mainly been in how European integration is contested, where and by whom (Marks and Steenbergen, 2004). Less attention has been paid to the way such conflict has refashioned the integration process itself.

A key claim of the new intergovernmentalism is that preference formation at the national level has succumbed to difficulties in the articulation of interests and to a more generalized crisis of representative politics (Mair, 2008; Papadopoulos, 2013). Such difficulties stem from what Schmitter (2008, p. 208) has referred to as the 'generalized loosening of the links between interests and organizations', meaning the unravelling of those interests forged out of the grand cleavages of religion and class and mediated by the Christian, social democratic and communist parties (Lipset and Rokkan, 1990 [1967]). In their place has arisen a volatile and indeterminate sort of politics, where individuals seek direction and guidance from a range of actors, many of whom do not last long on the political scene. Anger and frustration co-exist alongside more traditional organized interests, the legitimacy of which is increasingly contested by domestic publics.

The crisis of representation comes from a growing disenchantment with representative politics and from what Rohrschneider and Whitefield (2012) call the 'strain of representation' (Hayward, 1995; Crouch, 2004; Hay, 2007). In the face of declining memberships and weak partisan alignments, governing parties rely increasingly on the state's bureaucratic apparatus (courts, regulatory agencies, independent commissions) for their power and legitimacy (Katz and Mair, 1995). This only reaffirms people's belief in the existence of an undifferentiated political caste that rules in unrepresentative ways. Tellingly, during the austerity protests in Europe in 2011 and 2012, what prevailed was a belief that national democracy was failing its citizens (Kaldor and Selchow, 2012).

The impact of these developments on European integration has been contradictory. On the one hand, they have strengthened the commitment of national executives to European policy-making, thus pushing the EU towards what Habermas called a system of 'executive federalism' (Habermas, 2011; Crum, 2013). On the other hand, the evident decline in the permissive consensus on the EU and concern about democratic representation has made governments wary about their involvement in pan-European policy-making. This has ushered in a marked separation between politics and policy-making, with the latter dominated by European co-operation and the former obstinately national in form (Schmidt, 2006). Committed to further rounds of policy co-ordination but having also to manage domestic disillusionment with representative politics, Member State governments have struggled to find any real equilibrium. At the European level, they have favoured more informal and 'secluded' modes of decision-making – a move the European Parliament has supported owing to the benefits it can reap from exercising its co-decision powers via the relative obscurity of inter-institutional agreements (Reh et al., 2013; Costa, 2014, pp. 82–9). As a result of this unravelling in the relationship between interests and organizations, and the impact upon the preference formation process at the domestic level, national executives in Europe often seem to identify more with one another than with their own populations. We saw this in the treaty negotiations of the 1990s and 2000s, in particular the machinations around ratifying the Lisbon Treaty after the rejection of the Constitutional Treaty in France, the Netherlands and Ireland.

## **The New Intergovernmentalism: Six Hypotheses**

Building on the above account, we can now formulate a more precise set of expectations about European integration in the post-Maastricht period. In this section, we set out six hypotheses, each of which is related to a particular aspect of the new intergovernmentalism. We use the term ‘hypothesis’ in the same general way as it used by Brady and Collier (2010, p. 331) to refer to a ‘tentative answer to a research question’. The hypotheses aim to elucidate, explain and tease out the normative implications of the new intergovernmentalism. In other words, we hold that the answer to the question of what characterizes the paradoxical set-up of post-Maastricht integration is the occurrence and presence of the different institutional and political dynamics contained in the six hypotheses. Our concern in each case has been to ensure that each of our hypotheses stand as testable propositions and we believe there is sufficient research available already to give them much plausibility. We do not pretend to show conclusively in this article that the new intergovernmentalism can make sense of the integration paradox in ways that alternative theories cannot. Instead, our aim is to set out conceptual building blocks for further theory-refinement and testing. We do not explore in this article whether the new intergovernmentalism might have application beyond the EU. Our sense is that the new intergovernmentalism resonates with the informalization of global governance evident in bodies such as the G7 and IMF, but these linkages are not taken up here (on this point, see Bickerton, Hodson and Puetter, 2015: chapter 15).

*H1: Deliberation and consensus have become the guiding norms of day-to-day decision-making at all levels.*

While deliberation and consensus have been part of European integration from the very beginning, they have traditionally been understood as a subjective component of supranational institution-building (Haas, 2004). Simply put, deliberation and consensus-building were seen from this perspective as an attempt to foster agreement between Member States over policy means and ends and so pave the way for the delegation of new policy-making powers to the supranational level. The correspondence between these behavioural patterns and supranationalist dynamics has weakened in the post-Maastricht period, we contend, such that deliberation and consensus-building are now ends in themselves rather than a means to further supranationalist integration. Deliberation and consensus-building, in other words, have become institutionally deracinated from supranationalist dynamics and are today to be found at the heart of EU policy-making in general, and especially in settings that are explicitly intergovernmental in their institutional determinations. In comitology, for example, participants are formally sent as delegates of national administrations but interaction is mainly deliberative and consensus-seeking (Joerges and Neyer, 1997; Pollack, 2003b; cf. Dehousse et al., 2014). It is even true of the European Council and the Council of Ministers in EU economic governance, where the oxymoron of ‘deliberative intergovernmentalism’ was coined in order to capture these new dynamics (Puetter, 2012; 2014).

The importance of deliberation and consensus reflects the decentralized character of decision-making in the new areas of EU activity. Without strict adherence to consensus-seeking practices, collective action is impossible and inconsistent. Empirically, we therefore would expect to find evidence for a strong institutionalization of deliberative practices even though qualified majority voting has

emerged as the default decision rule in many areas of EU policy-making. Grandstanding and the threat of using one's veto have, of course, not disappeared in this period, but they have become exceptional. Attempts to 'go it alone' are often widely condemned, as George Papandreou discovered when he attempted to introduce a referendum in Greece on its bail-out agreement. The achievement of consensus, or of 'apparent consensus' as Novak (2013) has demonstrated, has become the standard by which outcomes and institutions are judged. The failure to find such a consensus is considered, as Perry Anderson (2009, p. 62) memorably put it, an 'unthinkable breach of etiquette'.

Operating outside of a supranational decision-making logic, the responsibility for policy-making also lies more squarely on Member States. Thus, in comparison to earlier instances of consensus-seeking within core intergovernmental bodies like the Council of Ministers (see Bulmer, 1996), these norms of deliberation and consensus today go well beyond the discrete moments of institutional innovation marked by IGCs. They extend to the sort of day-to-day policy-making that requires renewed collective agreement at all stages of the policy process. Hence the intensive involvement of the European Council in the post-Maastricht period in the minutia of justice and home affairs policy and, especially after the global financial crisis struck, in economic governance.

*H2: Supranational institutions are not hard-wired to seek ever-closer union.*

A key feature of the new intergovernmentalism is that supranational institutions, far from resisting this turn towards decentralized modes of decision and policy-making, have often been complicit in it. The post-Maastricht period has been notable for the absence of a big push by the Commission for the centralization of decision-making in new areas of EU activity. While the EU's eastern enlargement may have played a role here, the timing suggests that enlargement has tended mainly to exaggerate pre-existing trends present within EU institutions before 2004 (Ponzano et al., 2012). The Commission has not been bereft of ambition since Maastricht, but its energy has been directed at projects that involved few new transfers of powers to the supranational level. The Commission, for instance, lent its support to many of the new deliberative forms of decision-making by embracing the Lisbon Strategy and seeking a close working relationship with the Eurogroup. Even after the global financial crisis hit, the EU executive showed itself reluctant to seek new powers for itself (Hodson, 2013). Importantly, such tendencies are not limited to the Commission but apply also to the CJEU, which has showed ambivalence about the pursuit of ever closer union in new areas of EU activity (Saurugger and Terpan, 2014). We see this in the Court's ruling on the SGP in July 2004, which underlined Member States' sovereignty in economic policy.

These developments suggest that the preferences of supranational institutions themselves may not be as hard-wired towards supranationalism as was generally assumed by many EU scholars (for example, Pollack, 2003a; Cooley and Spruyt, 2009). Instead, such institutions act strategically: when faced with a favourable environment for entrepreneurialism they may well take advantage of it, but, in a more hostile environment, they avoid putting forward proposals that stand little chance of success (Hodson, 2013). Another explanation refers to transformations in the institutions themselves. In the Commission's case, the trend towards choosing the President from the ranks of current or recent members of the European Council may explain the EU's sympathy towards intergovernmental decision-making, as might a

degree of ideological divergence at the level of Commission services (see Kassim et al., 2013). A growing partisanship within the EU executive (Hix, 2008) may also complicate the institution's preferences as partisan considerations need not overlap with support for more supranational decision-making.

For all of its expanding powers, the European Parliament is not necessarily a special case. The EU legislature has become a more partisan body during the post-Maastricht period (as documented by Hix et al., 2006) and scholars have noted that the preferences for European integration play a secondary role among many of its members. Indeed, it may be more accurate to say that the Parliament's strongest preference is towards expanding its power within the constellation of EU institutions. More supranational decision-making may or may not be the route towards such a goal, and the Parliament has not been shy to act in ways that undermine the traditional Community method.

*H3: Where delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo bodies.*

A third hypothesis associated with the new intergovernmentalism is that integration in the post-Maastricht period has tended to entail the creation of de novo bodies rather than the empowerment of traditional supranational institutions. This preference for the creation of de novo bodies reflects a recurring political tension in the last two decades: Member States are reluctant to delegate authority to traditional supranational institutions such as the Commission and the Court because of the difficulties this presents in terms of public justification and legitimacy; and yet national executives are fully committed to collective action in areas such as border security and diplomacy – new areas of EU activity that need new institutional frameworks. We see this tension playing out in the marked proliferation of EU agencies since 1992. Defining agencies with any precision is difficult (see Schout and Pereyra, 2011) but even if we follow the Commission's narrow definition of agencies as regulatory bodies, the number of agencies has increased from three in 1993 to 32 by 2012 (European Commission, 2009).

The fact that de novo bodies are not supranational institutions in the traditional sense goes some way towards understanding national governments' willingness to empower these bodies rather than the Commission and CJEU. There is an ambivalent relationship between de novo bodies and existing EU law: some are created within the EU treaties, others outside of them. The EEAS, for example, was constituted as 'a functionally autonomous body of the Union under the authority of the High Representative', with the High Representative serving as Vice President of the European Commission but also acting under a mandate of the Council of Ministers, a body the High Representative chairs (Article 18, Treaty on European Union [TEU]). The EEAS contrasts with the European Financial Stability Facility (EFSF), created in May 2010 to provide financial support to troubled eurozone members. It was created outside of the framework of the EU treaties and has as its shareholders eurozone finance ministers. The Commission and the ECB are represented only in an observer capacity. Straddling these two examples, we have the ESM, a permanent body, launched in September 2012 and similar in its institutional architecture to the EFSF. However, a revision to Article 136 of the TEU has opened the door to the formal creation of a crisis resolution mechanism within the treaties. Another key difference with the Commission is that de novo bodies have relatively simple and issue-specific mandates. They often have a strong intergovernmental strand to their governance

structure that facilitates Member State control and prevents ‘mission creep’. The EU's border agency, Frontex, for instance, has on its management board representatives from each of the EU's Member States, as does the board of governors of the ESM.

Though Member States may have become wary of delegating authority to supranational institutions, it would be wrong to reduce the interest in de novo bodies to merely a power struggle between national governments and existing supranational bodies. Given that the vast majority of de novo bodies derive their legal status from secondary law, this can only mean that the Commission has been complicit in their creation. While the European Commission has traditionally defended the Meroni doctrine – which limits the discretionary powers granted to EU agencies (Kelemen and Majone, 2012) – this defence has become more qualified in the post-Maastricht period. The Commission's support for bodies such as the EEAS or the ESM may be only grudgingly given (especially in the case of the EEAS), but it nevertheless suggests that the turn towards the use of de novo bodies signals a shift in the pattern of EU integration that is broader than merely the victory of Member States over supranational institutions. Indeed, the CJEU's ambivalence towards de novo bodies in the Pringle case<sup>4</sup> suggests that complicity with this trend extends to the Court as well.

*H4: Problems in domestic preference formation have become standalone inputs into the European integration process.*

Our arguments above about the political economy of post-Maastricht integration and the end of the permissive consensus imply a different view of the role played by domestic preference formation processes in determining EU policy-making. These processes above all need to be historicized and placed within the contexts of ruling ideologies, the precise substance of contestation in a given period, patterns of state-society relations and their associated institutional dynamics (Schmidt, 2009). In this we deviate from liberal intergovernmentalism and its ‘societal’ or ‘liberal’ model of preference formation (Moravcsik and Schimmelfennig, 2009, p. 69). In our view, this account of domestic preference formation rests upon an unnecessarily reductive notion of domestic politics. Sectoral interests undoubtedly influence the positions governments take in EU negotiations, but the role of domestic politics in EU integration is broader than this.

How interests represent themselves to the rest of society – whether it be in the form of factions at court, estates, parliamentary groupings, mass parties or new social movements – has always been contested and in flux (Maier, 1981), but the post-Maastricht period has been marked by a growing distrust in the political system as a whole. Instead of spurring people on to organize themselves differently, as occurred in the past, political life itself has been recast around this sentiment of distrust in the body politic. Populist movements direct their criticism at the political establishment as a whole, while the Pirate parties of Germany and Sweden focus on procedural issues such as transparency. As seen with the ‘Indignados’ in Spain, anger and frustration have become a basis for mobilization. In Germany, the word of the year in 2010 was ‘wutbürger’ (angry citizen) (Kaldor and Selchow, 2012). In Eastern Europe, corruption of the political class has become a key political concern, discrediting many post-1989 political parties and institutions (Krastev, 2007). Concern about the political process itself, and not only its outputs, has steadily become a central focus

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<sup>4</sup> Case C-370/12, CJEU, 27 November 2012.

for contestation in Europe in the post-Maastricht period and this shapes the direction taken by European integration.

We thus expect to find that domestic politics matters not only in the form of sectoral interests around which national governments bargain within EU intergovernmental settings; we must also consider how public concerns about representation, legitimacy and the organization and articulation of interests affect the institutional make-up of the EU. What matters for the new intergovernmentalism are the growing indeterminacy of preferences, the interaction between sectoral interests and more disparate and protean anti-political sentiments, and concern with the procedural as well as the substantive components of policies.

*H5: The differences between high and low politics have become blurred.*

Another feature of the new intergovernmentalism is the blurring of the distinction between high and low politics. This does not simply mean, as scholars have long observed (for example, Christensen, 1981), that no area really classifies anymore as 'high' or 'low'. The original intention behind the distinction was not to grant special status to some policy areas over others, though Hoffmann had given this impression in his earlier writing. As he put it: '[A]s the artichoke is slowly eaten, the governments become ever more vigilant' (Hoffmann, 1995, p. 85). Writing later, he suggested that what qualified as 'high' and 'low' politics varied over time, the determining factor being an issue area's 'momentary salience' (Hoffmann, 1995, p. 218). Here he had in mind the rapid politicization of seemingly uncontroversial issues of 'low' politics, such as economic growth and welfare in the Golden Age of postwar European capitalism, following the economic crisis of the 1970s.

The differences between Hoffmann's account and the contemporary blurring between high and low politics in the post-Maastricht period are twofold. First, according to Hoffmann (1995, p. 218), salience refers to those issues of an existential nature for states: in his words, 'how essential it appears to the government for the survival of the nation or for its own survival'. What is striking about the post-Maastricht period is that existential concerns are often posed in relationship to a country's isolation or withdrawal from the logic of European integration – not from its application. This can be seen, for example, in repeated calls during this time for EU Member States to speak with one voice internationally or risk a diminished role on the world stage (see, for example, Blair, 2005). In fact, the zero-sum relation Hoffmann posited between national existence and involvement in European integration is today found mostly on the margins of Eurosceptic sentiment.

A second difference is that Hoffmann assumes a degree of correspondence between popular and elite sentiment in order that an issue be judged salient for a country as a whole. As already emphasized above, under conditions of considerable disaffection by publics regarding the views of politicians, and scepticism about their role as representatives, such correspondence is often absent. The UK's decision to walk away from negotiations over the fiscal compact in December 2011, for example, was viewed as reflecting sectoral interests (the defence of the City of London) and party politics (tensions within the Conservative Party) rather than any clear-cut defence of the national interest. The difference between high and low politics have thus been blurred because of the difficulties in forging any single and coherent narrative about the national interest that could meet the standards of Hoffmann's 'momentary salience' and thus qualify as belonging to high politics.

*H6: The EU is in a state of disequilibrium.*

In its account of the post-Maastricht period, this article has sought to emphasize the unstable and contradictory nature of contemporary European integration. As Europe has moved away from the postwar economic consensus and as elites have converged upon a set of macroeconomic goals and expectations that are sceptical about the efficacy of national instruments and policy tools, so has liberalization accentuated and sharpened the institutional differences between national societies, requiring co-ordination via decentralized channels. Post-Maastricht political developments, particularly the growing fragmentation of societal interests and the demise of the permissive consensus, have led to an uncoupling of policy-making from national politics which often leaves national elites at odds with the wishes of their domestic constituencies. Far from being a passing phase or a product of the economic crisis since 2007, this instability lies at the core of European integration in the post-Maastricht period.

In studying the EU from the perspective of disequilibrium, this approach breaks with a strong scholarly preference for focusing on stability and continuity. While Haas agonized about the periodic crises facing the European Community in the 1950s and 1960s – to the point where he declared peremptorily in his 1968 preface that ‘de Gaulle has proved us wrong’ (Haas, 2004, p. xxiii) – supranationalists in the 1990s and 2000s have been far more sanguine about the fate of the EU. References to crises in Sandholtz and Stone Sweet (1998) are few and far between, and where they do arise they tend to focus on the pre-Maastricht period. While some authors acknowledge the end of the permissive consensus, they see public support for policy integration among EU Member States as favourable on the whole. Stone Sweet et al. (2001) are more open to the possibility of crisis in the European project, though their prediction that ‘the people of Europe’ could tire of having so much decision-making ceded to the ‘Brussels complex’ gives no indication that this scenario had already come to pass at the time of writing.

Liberal intergovernmentalism has been even more upbeat in its assessment of the EU. In his defence of the EU against the charge of the democratic deficit, Moravcsik (2002) argued that the indirect accountability of the EU to its citizens via the mediating role of Member State governments was an adequate source of democratic legitimation. Since then, he has been quick to call for calm in moments of perceived crisis. When confronted with the collapse of the European constitution in 2005, his conclusion was Panglossian in its optimism. He argued that by bringing the EU back in line with its reliance upon the indirect legitimacy of Member State-based representation, the failure of the European Constitution was in fact a good thing for the European project (Moravcsik, 2006).

In its interest in the fundamental disequilibrium at the heart of post-Maastricht integration, this article does not seek to put forward an optimistic or a pessimistic account. Such subjectivism has marred much of the EU studies field, making it difficult for critical accounts of EU activity not to be taken as an unbecoming lapse of faith (Majone, 2009, pp. 2–3). The goal here is to present an analytical account of European integration that treats disequilibrium as a property of the post-Maastricht phase and opens up fundamental questions about the durability of European intergovernmentalism as things stand. A key question as the EU enters its third decade since Maastricht is whether the consensus between national and EU policy-

makers will hold as the challenges of closer co-operation without recourse to traditional forms of delegation deepen. More fundamental still is whether the disconnect between national elites and domestic constituencies can persist as Eurosceptic parties move closer to the mainstream and popular concerns about the merits of EU membership intensify.

## Conclusions

European integration in the post-Maastricht period is characterized by an important paradox. Integration has proceeded apace and has gone far beyond what was achieved in the heyday of Robert Schuman, Jean Monnet and Jacques Delors. However, the manner in which this integration has taken place has largely eschewed the classical Community method. We have seen integration take place in the absence of supranationalism, with new institutions created that have concentrated the powers and activities of national governments and national representatives. Policy-making has developed informally, escaping many of the legislative frameworks that characterized supranational lawmaking beyond the nation-state. Understanding this development requires a new effort in theorizing post-Maastricht integration. Instead of merely contrasting the new with the old, we have shown how new policy areas that did not – or only in a very limited form – exist before the Maastricht Treaty have been based on what we call ‘the new intergovernmentalism’. The Commission and the CJEU have been reshaped in the post-Maastricht era and are no longer the ‘engines of integration’ that they once were. Even the European Parliament has been a willing participant in some of these developments.

This article has given an explanation for this new intergovernmentalism by locating it in the conjunction of deep-seated changes in Europe's political economy and in an unstable set of political dynamics that have increasingly pitted pro-integration elites against more sceptical populations. In developing this account, the article has taken much from intergovernmentalist theories and from the new governance literature, while drawing attention to the limitations of these approaches. In coining the term ‘the new intergovernmentalism’ the article hopes to engage in a fundamental debate about methods of integration that has fallen out of favour in recent years. Many scholars have preferred to focus on specific aspects of the EU ‘beast’, satisfying themselves with the thought that whatever it is, at least it is still with us (Leca, 2009, p. 312). This article has argued strongly that these policy- and institution-specific analyses need to be combined with broader reflections upon the nature of the EU. Without such reflection, all change appears to us as modifications or adaptations to the status quo.

By putting forward six hypotheses, this article has made concrete suggestions of how to combine such broader reflections with the analysis of specific, empirically testable instances of EU policy-making and institutional development. We claim that a distinctive form of European integration has emerged in the post-Maastricht period; one that is a product of its own time rather than an extension of the longer running integration process initiated in the early 1950s. We hope that in making this argument, and in drawing attention to some of the fundamental disequilibria that characterize European integration today, we can generate analytical and normative debates about the EU and its role in the political life of Europe.

For some, ‘deliberation’ refers to a ‘discussion mode’, whereas ‘consensus’ is a decision-making procedure (Dehousse et al., 2014, p. 845; Novak, 2013; Urfalino, 2007). In fact, both terms can also be framed as behavioural norms, which is the



approach taken in this article. The concept of 'behavioural norm' draws on Haas (2004, p. 59), who thought of European integration as being not only about the creation of a specific decision-making regime, but also a certain style of politics regulated by particular norms of behaviour.

We think of the Commission and CJEU as traditional supranational institutions insofar as they are founded on a formal mandate, which grants them enough autonomy from Member States that they can take independent decisions and build up their own bureaucratic resources. Traditional intergovernmental institutions, by contrast, are founded on the representation of Member States and deal with collective decision-making through forms of voluntary policy co-ordination. They include the European Council, the Council, the Eurogroup and high-level policy committees such as the political and security committee.

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