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# Theorizing EU treaty reform: beyond diplomacy and bargaining

Thomas Christiansen, Gerda Falkner and  
Knud Erik Jørgensen

**ABSTRACT** This article argues that a comprehensive approach to treaty reform requires both a more inclusive and longer-term perspective. We re-conceptualize agency and structure in the process of treaty reform; examine theoretically as well as empirically the respective roles of interests, ideas and institutions in treaty reform; and seek to reconcile agency and structure, as well as ideas, interests and institutions, in a temporal perspective on treaty reform.

**KEY WORDS** Historical institutionalism; intergovernmental conferences; political theory; treaty reform.

## 1. INTRODUCTION

This article seeks to connect the study of European Union (EU) treaty reform to the wider theoretical literature in the social sciences. So far, EU treaty reform has mainly been studied in either an atheoretical manner or else with a specific theoretical focus like that of liberal intergovernmentalism (Moravcsik 1993), which tends to exclude what are potentially important aspects of the subject. In the approach developed here, we discuss the interaction between elements of structure and patterns of agency, and, in particular, the respective roles of ideas, interests and institutions, as important factors in shaping actor preferences. We argue that a recognition of the temporal dimension of treaty reform – the study of treaty reform as process rather than event – is crucial in order to move our understanding of treaty reform beyond the traditional image.

However, rather than being merely a critique of what one might call ‘static and statist’ approaches, this article seeks to complement a theory of treaty reform which – though valuable – we regard as distinctly partial. Instead of focusing exclusively on formal amendments to treaties in the course of intergovernmental conferences (IGCs), we also consider the periods between IGCs, some of which have potentially constitutional significance. ‘Treaty reform’, in the definition used in this article, consists of both formal and informal innovation in the constitutional framework within which EU institutions operate.<sup>1</sup>

This article proceeds in three stages: first, by re-conceptualizing agency and structure in the process of treaty reform; second, by examining theoretically as well as empirically the respective roles of interests, ideas and institutions in treaty reform; and third, by seeking to reconcile agency and structure, as well as ideas, interests and institutions, in a temporal perspective on treaty reform. By way of conclusion, we argue that a state of the art approach to treaty reform requires both a more comprehensive and longer-term perspective.

## 2. TREATY REFORM AND PATTERNS OF AGENCY

Past analysis of treaty reform has tended to be actor-oriented. Indeed, the very ontology of treaty reform as conceived of by liberal intergovernmentalism is actional. In contrast to the role of structure, which is discussed below, there is therefore no need here to further emphasize this aspect. However, we do argue that the inclusion of patterns of agency is not always straightforward. Two suggestions are being made here to improve this: first, to move beyond the unitary actor assumption of member states, not only at the stage of domestic preference formation, but also in the course of actual negotiations about treaty reform; second, to accord the proper analytical place to EU-level actors.

Recognizing that governments rarely act as unitary actors is nothing new in the political science literature, considering that the 'bureaucratic politics paradigm' was already pioneered by George Appleby and Norton Long in the 1940s and 1950s, further developed in the 1960s by Aaron Wildavsky and Francis Rourke, and refined in the 1970s and 1980s by Graham Allison, Morton Halperin, and Guy Peters (Keagle 1988: 17). What is important here is to emphasize the way in which bureaucratic politics may impact on the representation of a member state, and the projection of a 'national interest', in the context of treaty reform negotiations. The domestic preference formation thesis holds that the pluralism of domestic positions is reconciled into a national negotiation stance at the outset of negotiations. The point to be made here is that a plurality of 'national' positions may persist and feed into the negotiating process, and that an awareness of such bureaucratic politics needs to be part of comprehensive research on treaty reform. This matters, in particular, since negotiation teams tend to include experts from a range of sectoral ministries, and where issues remain 'open' for the duration of the negotiations, allowing participants to table revised position papers at any stage. In such a negotiation environment it is difficult for governments to impose central control over the input from 'their' member state.<sup>2</sup>

Bureaucratic politics can have both a horizontal and a vertical dimension. One can imagine competition between different government departments (or between Commission units) in defining a particular position in the IGC negotiations. Furthermore, EU-level actors who will have to live and work more closely with any new treaty may take a more long-term view of what are desirable treaty modifications than the national political élites (who may take a more short-term perspective with an eye to their own re-election). It is

important to note that where EU treaty reform is concerned, relevant actors which may be subsumed under the heading of a 'national government' are not only located at the domestic level, but also at the European level since parts of the national bureaucracy also form a unit of the EU-level polity. This includes most notably the permanent representations of member states in Brussels with their 'distinct culture of compromise and community-method' (Lewis 1998: 479), who in recent years have not only had a role in day-to-day EU decision-making, but also, and increasingly, in the negotiation of treaty reform. Permanent representatives, for example, had an important role in preparing the Nice IGC, and a significant number of them were national representatives in the pre-Amsterdam reflection group.

Taking into consideration not only economic costs and benefits but also organizational self-interest, as suggested by the bureaucratic politics literature, and looking additionally at potentially antagonistic approaches within one and the same 'national government' will result in a less homogenous and, above all, more malleable perception of 'national interest', which makes findings that hint at EU-level changes of actor orientations even more plausible (see below). Furthermore, incorporating the large variety of actors which can play a role in domestically defining a 'national' interest is important since the more longitudinal lens we develop here allows us to recognize their potential role at the European level.

A more inclusive perspective on the variety of actors involved in treaty reform should, in addition to breaking down the unitary actor assumption on national governments, also include the potentially significant role of EU-level actors beyond state representatives (see Christiansen, in this issue). Although EU-level actors participate in different ways in the treaty reform process, and while their influence may not be as strong as in the general policy process, the role of EU institutions (such as the Commission and the European Parliament (EP)) and transnational actors (such as the European Party federations, private lobby groups, citizen action groups, transnational labour–employer alliances) should not be assumed away.

Among even the formal participants of IGCs are Euro-level actors such as the European Commission and the EP. Both institutions are represented at IGCs and have therefore an opportunity to project their institutional self-interests. The participation of these institutions tends to be dismissed – or ignored – in studies of treaty reform on the basis of their lacking a final veto over the outcome of any IGC. Such a perspective neglects the potentially significant role that either institution can play. That the EU bodies can use resources derived from participation in the day-to-day policy process is one of many reasons why a long-term perspective on treaty reform is so essential (see section 7 below). Such entrepreneurship may be easier in situations where creativity, vision, skill, trust, reputation for neutrality, legitimacy or technical expertise are scarce, and where network management across actor categories or even layers of the European multi-level system are at stake (Moravcsik 1999). The Commission, despite having presented its own position paper at the

outset of the IGC, can and does act in IGCs as well as between such summits as a broker between different national positions, and as a supplier of policy ideas (see Falkner, in this issue). The Members of the European Parliament (MEPs) participating in the process bring a wider discourse into the negotiations. They can legitimize the proceedings as directly elected representatives of the European citizens, but they can potentially also delegitimize a new treaty since criticism in the relevant committee or even the plenary is widely publicized.

The Presidency and Council Secretariat or, to be more precise, the Secretariat's legal service, also participate formally in IGCs, but their influence on treaty reform has rarely been addressed so far.<sup>3</sup> It is appropriate to mention these two institutions together, as it is usually their co-operation in the course of an IGC that provides for the detailed drafting of summit conclusions, the taking of conference minutes and the preparation of successive drafts of the revised treaty. The relative influence of staff from the Presidency and from the Council Secretariat will differ from one case to another, but – whatever the balance in this relationship – between them they play a significant role in the preparation and execution of negotiations.

Finally, examining transnational actors seems worthwhile since they have in several treaty reforms played a non-trivial role (Mazey and Richardson 1997). With regard to the Single European Act, one cannot exclude the influence of the European Round Table of Industrialists on shaping the Single Market Programme (Green Cowles 1995). Where Maastricht is concerned, Helen Wallace suggests that 'the skill of a behind-the-scenes coalition of big employers to get their text on pensions and the Barber judgment adopted in the Maastricht IGC suggests that forces other than statecraft are sometimes at work' (Wallace 1999: 159).

In short, even in the absence of sustained efforts to research the role of EU-level actors systematically across IGCs, it seems safe to conclude that EU-level actors can matter in treaty reform. How and to what extent they matter ought to be a question of empirical investigation rather than being assumed *ex ante*.

### 3. TREATY REFORM BEYOND BARGAINING: ELEMENTS OF STRUCTURE

Actors operate within a structured environment which provides opportunities and constraints. This is also true for the governments in the frame of EU treaty reform; yet in comparison to the focus on the capacity of national executives for strategic action, there has as yet been little attention paid to the elements of structure. In response to this lacuna, we introduce here the role of legal, temporal and political structures bearing on EU treaty reform.

An important aspect structuring treaty reform is obviously the EU treaties themselves. Acting within the EU framework, the member state governments are not free to do as they like. IGCs are not faced with a tabula rasa on which

new deals can be struck, but rather with the dense framework of existing treaties and agreements. There is scope for additions and departures from this existing framework, as the example of the introduction of the pillar structure in Maastricht demonstrates. However, the fact that the treaties originating from IGCs are essentially concerned with the *reform* of existing treaties constitutes a slippery slope towards incremental adaptation of already institutionalized patterns of behaviour.

Beyond the substantive limitations imposed, at least in practice, by the legal structure of the treaties, the very process of treaty reform is constrained by the presence of detailed rules and established practices, a fact that is often neglected. To begin with, IGCs are convened by a simple majority decision of the Council (as Margaret Thatcher and two other heads of government discovered in the case of the Single Act IGC). The EP and the Commission (in cases where it is not the latter which has suggested convening an IGC) must be consulted, and the subsequent negotiations are governed by the provisions of the formal Council Decision to that effect, as well as by a host of more detailed, and often unwritten, rules (see below). The picture of legal structures underpinning treaty reform is therefore much more complex than the well-known rule (Article 48, Treaty on European Union (TEU)) that all member states must agree on and ratify any change to the treaty before it comes into force.

Second, the structure of time constrains the governments before and during IGCs (Ekengren 2002). At the national level, election cycles have to be respected since EU issues might override national issues if national elections are held too close to a major EU event. The European level has its own specific time structure involving the regular coming and going of presidencies, summits, Commission and EP terms of office. In addition, budgetary reforms, structural fund framework decisions, and the like, are events which may impact on IGCs if they happen in parallel. This implies that not only *de jure*, but also *de facto*, formal EU treaty reforms cannot occur at just any time. In addition, each individual IGC will set itself a time limit and establish a certain work schedule which helps to gauge the progress of negotiations against the final 'deadline', and individual Presidencies will provide more detailed 'road maps' towards the conclusion of 'their' part of the IGC. Usually these revolve around the European Council meeting(s) which they will hold during their term of office. Finally, the frequency and duration of meetings at all levels – official, ministerial and heads of state – has become increasingly rule-bound.

The upshot of this imposition on political time at all levels of treaty reform negotiations can be said to have quite profound effects on the nature of negotiations. The apparent absence of a recourse to extend the time for negotiations (as the self-imposed 'deadline' to complete negotiations is immovable) enforces an 'all or nothing' discipline on the reformers – either the negotiations are concluded successfully or else they fail. In contrast to many international (or indeed private sector) negotiations, where postponement is a

frequently used option, the time limit of IGCs can be seen as a device that concentrates the minds of the negotiators, and disciplines both laggards (who may otherwise delay negotiations with objections) and ambitious leaders (who may otherwise hold out for more) in favour of the centre ground, who want to see the conclusion of an agreement and who are satisfied with limited progress rather than an inconclusive end to the negotiations. The dynamic effect is that, as time passes and the negotiations inch closer to the final deadline, the use of the national veto – the key legal resource of national governments – becomes increasingly difficult to use, given the dangers of being seen to have ‘wrecked’ the reform effort and thus being responsible for subsequent functional problems such as the blocking of enlargements.

A third aspect of the environment structuring the action of governments in the course of EU treaty reform is constituted by their ‘political hinterland’ at home. Although European integration indeed provides opportunities for executives and leads to ‘an extraordinary centralization of domestic power in the hands of national executives’ who ‘cut slack, that is, loosen constraints imposed by legislatures, interest groups, ministries and other domestic actors’ (Moravcsik 1994: abstract), there are factors such as public opinion on deeply engrained policy issues that cannot easily be circumvented by governments forming their negotiating positions for IGCs. Even at the end of such formal treaty modifications, each government can only confront its home public (or relevant sections thereof) with a limited number of sacrificed national positions. Even in member states which do not hold public referenda on IGC ratifications, there are potential sanctions in the form of forthcoming elections, parliamentary votes (of particular relevance in the case of minority governments) or judicial reviews by national constitutional courts.

Certainly, Gourevitch’s famous ‘second image reversed’ dictum should be kept in mind: ‘in using domestic structure as a variable in explaining foreign policy, we must explore the extent to which that structure itself derives from the exigencies of the international system’ (Gourevitch 1978: 882). In fact, we agree with Wendt on the usefulness of an approach to the agency-structure problem which does not preclude a priori making both agents and structures problematic, i.e. dependent variables (Wendt 1987: 337). Valuable assistance in doing so may come from explicitly going beyond snapshot approaches to EU treaty reform.

Below we propose the development of a comprehensive approach to EU treaty reform that is able to capture the operation of both agency and structure. Such an approach will need to consider the role of ideas and institutions as well as interests, all three of which have, in social science theory, been identified as operating as both dependent and independent variables (Weber 1993: 267, 272; Berman 2001: 233). In the following we therefore seek to close the gaps left by traditional approaches by considering, first, the respective roles of interests, ideas and institutions and, second, their interplay in the process of EU treaty change.

#### 4. INTERESTS IN THE PROCESS OF TREATY REFORM

It is not controversial to claim that interests should be a key factor when explaining processes of European integration and EU governance. Contending views exist, however, regarding the types of interest one should include and possibly favour, at which level of actor aggregation one should study interests, and whether or not preference formation should be endogenous to the study of treaty reform.

Not surprisingly, economic historians like Alan Milward argue that material, economic interests dominate. Andrew Moravcsik shares this view, though he also takes geopolitical interests into account (only to dismiss them as largely unimportant; 1998: 4, 476–9). Furthermore, there are relational or social interests to consider (in sustained good co-operation, for example) and cultural interests (in continuing to live or behave as one has been used to do, even if there are no economic costs of adaptation pending).

Whether the focus has been on member states or (more rarely) on EU-level interests, it has so far tended to be on the collective or ‘corporate’ interests of actors. In the case of member states, the shorthand for this is the ‘national interest’; in the case of the EU-level actors, it is the ‘institutional interest’. We hold, however, that a comprehensive analysis of treaty reform also requires attention being paid to the micro-level of negotiation and bargaining, involving an awareness that individuals matter and that collective categories like governments or institutions need ‘unpacking’. Ultimately, negotiations about treaty reform are conducted not by ‘member states’ or by ‘EU institutions’, but by individual actors. Such a perspective entails the search for answers to questions such as: Who are the participants in treaty reform negotiations? What are their political convictions, and what are their preferences with regard to the outcome of the IGC? How do they relate to their political ‘masters’ in national capitals? How do they relate to each other in the conference room, and in bilateral exchanges? There is a whole host of questions about the dynamics of negotiations which cannot be reduced to national or institutional interests, but which require a recognition of individual preferences and interpersonal relations. A look at the processes occurring at the micro-level of negotiations is necessary in order to accord these their proper analytical place. Last, but not least, paying attention to the level of the individual emphasizes a further point about interests: recognizing processes of social learning.

While rational-choice scholars tend to take interests as given, it seems important to us to be open for an investigation of interest formation in order to gather a full understanding of the dynamics of European integration, since new information can change perceptions of self-interest. A dense interaction framework such as the EU is prone to confronting actors with new information that may potentially lead to such learning and re-conceptualizing of self-interest. This can matter in the environment of an IGC, which is both very intense for the participants (in terms of the frequency of contacts) and of substantial duration (one to two years). For the individual actors involved in



the day-to-day negotiations, the IGC provides a social context which constitutes an environment for social learning.

Not only interests, but also norms and ideas, play a role in preference formation for many theorists. For historical and sociological institutionalists, normative role expectations matter, since norms may define both necessary conditions for particular actions or the ends that the actions are aiming to reach (Scharpf 1997: 63ff.). We hold that an inclusive approach to the process of preference formation is important, not in the least place because it offers crucial links to the field of ideas (see below). On the one hand, collective ideas – represented in discourses and ideologies – seem to constitute an important part of actor identity, which in turn shapes the interests of actors, shaping in turn policy-making (Jepperson *et al.* 1996). On the other hand, one can argue that ideas become embedded in organizations, which in turn influence the power and information of actors, and thus their perception of self-interest and their preferences.

While we consider it an empirical issue which kind of interest ultimately prevails in a given instance (or which combination of economic, geopolitical, social or cultural interests), the possibility of preference (re-)formation and of learning processes leading to a reframing of self-interest should explicitly be taken into consideration in the study of European integration generally and of EU treaty reform in particular. *Not* to assume that ‘preferences . . . are exogenous to a specific international political environment’ (Moravcsik 1998: 24) allows us to recognize EU-level preference formation processes if we happen to see them.<sup>4</sup>

The study of treaty reform could benefit from the insights of a large number of authors who have, during recent years, pointed to the issue of Euro-level preference (and partly even identity) formation. Issue areas have included the Single Market Programme (Keohane and Hoffmann 1991), economic and monetary union (EMU) (Sandholtz 1993: 2), the controversial domain of common foreign and security policy (Jørgensen 1997; Smith 1996: 45; Tonra 1997), telecommunications policy (Schneider *et al.* 1994: 475), steel policy (Dudley and Richardson 1997), electricity (Eising 2000) and social policy (Falkner 1998). On a more general level, authors (most notably, Christiansen *et al.* 2001; Kohler-Koch 2000; Ruggie 1993: 172; Lewis 1995: 2 and Mazey and Richardson 1996) have underlined the importance of learning, framing and preference formation processes at the EU level.

As Alberta Sbragia already outlined in 1994, a state’s identity as a ‘member state’, although comparatively much younger, may at times outweigh its identity as a ‘nation state’ (Sbragia 1994). Far from assuming that it always does, one should nevertheless allow for this possibility in state-of-the-art research. That the ‘mechanisms of education, socialization, and participation that develop, maintain, and undermine shared identities are obviously more weakly developed at the international level than within individual nation-states’ (March and Olsen 1998: 961) should not prevent us from taking them into consideration in the study of EU treaty reform.

Not only specific examples (for example, Falkner, in this issue) but also manifold arguments at a general social science level suggest that endogenizing preference formation is appropriate in any study of EU governance. As soon as we disaggregate the 'state actors' involved in the negotiation processes (in the wider sense), we see individual actors embedded in groups. These are the 'micro-foundations' of EU politics (Mörth 1998; Marks *et al.* 1996: 348ff.; Checkel 1999) which are actually often neglected in the European studies literature (but see Christiansen *et al.* 2001). In other disciplines such as organizational theory and social psychology, however, there is literature on the issues of how individuals tend to reshape their preferences in groups and organizations. The vocabulary includes, notably, simple and complex learning, leadership, cognitive shifts, different reference frames, and fluid preference orders.<sup>5</sup> There seems to be no theoretical argument why the general insights on the micro-foundations of politics should *not* apply to the EU level, particularly since the regular interaction between relevant actors is nowadays basically as dense as at the national level (Wessels 1997; Rometsch and Wessels 1996).

Indeed, in the course of the 1990s, most of the complex and technical detail of EU treaty reform was negotiated by what seems to be a Brussels-based IGC 'policy community'. Treaty reform today can be seen as a policy of the EU, requiring a great deal of technical expertise and long periods of agenda-setting, negotiation and implementation. As a result, a community of 'treaty-reform policy-makers' has sprung up, consisting essentially of the IGC desk officers in the permanent representations of member states and their counterparts in the European Commission and the Council Secretariat. Many, even most, of the decisions taken in the course of an IGC are being negotiated at this level (see, for example, Stubb 1998: 18), while the political spotlight shines on the disputes and debates among heads of state during the final summit. This recognition has an obvious relevance for determining the level of analysis, the dominant unit of analysis and the methodology to be adopted.

It is not only with regard to the level of preference formation that state-centric integration theory conceptualizes politics in the European multi-level system too narrowly. Its limitations also affect *timing*. Preference formation does not necessarily precede bargaining (as held by Moravcsik 1998: 473). It is often intermingled with bargaining, particularly in long-term processes of iterative negotiations on a topic. Eastern enlargement is a case in point, which demonstrates that governments may enter negotiations and even European Council meetings with uncertain preferences, as Lykke Friis' work has underlined (1998). Anthony Forster's study of Britain in the negotiations of the Maastricht Treaty also found that preference formation and bargaining in the IGC were actually intermingled (Forster 1998: 358).

Such empirical findings from existing research on EU treaty reform will not surprise international relations specialists since the research on the Cuban missile crisis has already revealed that goals are often only discovered in the course of making a decision, not in advance of it (Anderson 1983). In the case

of EU politics, this means that the European level is of potential relevance in preference formation. In fact, this insight is a specific expression of Wendt's general claim that interaction at the systemic level of international politics changes state identities and interests (Wendt 1994). Exactly how important interaction among states is for the constitution of their identities and interests is an empirical issue. However, we cannot address this issue unless we have a framework for conducting research (in our case, on EU treaty reform) that makes state identity and interest an issue for both theoretical and empirical enquiry (Wendt 1992: 423; Jepperson *et al.* 1996).

## 5. IDEAS AND TREATY REFORM

The schism between materialism and idealism belongs to the classic nodal points of the social sciences (Hall 1993: 31–54), meaning that we cannot and should not avoid it in the context of analysing treaty change. Three major currents of thought all argue that ideas matter, yet disagree about what ideas are, *how* they matter and how their role should be *analysed*.

Margaret Weir (1992: 207–8) distinguishes between public philosophies (broad concepts tied to values and moral principles which can be represented in symbols and rhetoric) and technical ideas (programmatic sets of statements about cause and effect relationships associated with a method for influencing those relationships). Studying the field of American employment policy, she shows how the interaction of ideas and politics over time created a pattern of 'bounded innovation' in which some ideas became increasingly unlikely to influence policy. If one applies this concept to European integration, the 'ever closer union' as announced in the early articles of the E(E)C Treaty comes to mind as a sort of 'basic philosophy', while the common market with its four freedoms appears as the more technical concept to make European unity a reality. These ideas have been a slippery slope towards further integration – but more specifically have meant further economic liberalization, for which in most cases qualified majority voting sufficed, while other fields (like social policy) suffered more difficult framework conditions because of the dominance of the common market concept (Streeck and Schmitter 1991; Scharpf 1999a). As to the power of ideas, Weir stresses that 'simply opposing ideas to material interests excludes many of the most interesting questions'. She rather focuses on 'the fit between ideas and politics' (1992: 188).

Goldstein and Keohane (1993: 5; see also Parsons 2001) go further by arguing that ideas can have an independent causal effect on (foreign) policy outcomes. They differentiate between three types of beliefs (world views, normative beliefs and causal beliefs) and three causal pathways (road maps, focal points and institutionalization). Their argument is that

ideas influence policy when the principled or causal beliefs they embody provide road maps that increase actors' clarity about goals or end-means

relationships, when they affect outcomes of strategic situations in which there is no unique equilibrium, and when they become embedded in political institutions.

(Goldstein and Keohane 1993: 3)

This is, compared to John Ruggie, still a comparatively limited view, which includes only individually held beliefs (not collective ideas represented in discourses and ideologies) and hardly explores the concept of 'world view'. Ruggie (1998) attributes far greater significance to world views as affecting both state interests and patterns of negotiated outcomes. Furthermore, Ruggie goes beyond strict causal explanation, allowing also for *ideational causation*: 'some ideational factors simply do not function in the same way as either brute facts or the agentive role that neo-utilitarianism attributes to interests' (1998: 22). The importance of factors such as aspiration, legitimacy and rights, therefore, tends to be underestimated as constituting social action. They are what Ruggie calls *reasons for action*, not *causes of action*: 'the aspiration for a united Europe has not caused European integration but it is the reason the direct causal factors have had their causal capacity' (1998: 22).

Since the role of ideas in processes of European integration and EU governance is still a largely unexplored field, further abstract dispute over specific categorizations and even specific ways of potential influence seems of secondary importance. At this stage, it is crucial that we simply pay systematic attention to this level. While proving the causal role of a specific idea remains a difficult task, excluding this possibility at the conceptual level makes the researcher blind to a potentially important variable. Once again, therefore, we opt for a rather more inclusive framework.

To date, exploring the role of ideas has notably been conducted on a general level (Jachtenfuchs *et al.* 1998). The role of national discourses, a representation of collective ideas (Diez 1999; Larsen 1997) and ideas about the EMU project (Marcussen 1999) have been analysed. A systematic investigation of the role of ideas in the processes of EU treaty reform has not been conducted so far, although some arguments could be propounded to that effect.

Political leaders publicly espouse certain ideas of relevance to treaty reform processes, thus shaping their national, and ultimately the EU-wide, debate. Yet individual ideas matter not only in domestic and public debates, but also, and perhaps even more so, in the course of actual negotiations. In a particular setting, predominantly found in meetings at the level of officials, ideas may have a decisive influence on the course of negotiations. If participants in a meeting look for the 'best' solution to a given problem, they will appreciate specific ideas or conceptions advancing that search – irrespective of the source. A crucial intervening variable seems to be the style of negotiations: in a different setting (i.e. in the context of a summit meeting, rather than during the weekly meeting of personal representatives) and with a different set of participants (i.e. political élites rather than officials), an IGC is more likely to

be in 'bargaining' mode than in 'problem-solving' mode (Scharpf 1997: 130), thus discounting the power of ideas in the conference room.

However, beyond such rational deployment, and in keeping with the theoretical discussion above, ideas can matter in the wider and deeper sense of shared beliefs, whether this is in terms of causation, political programmes or public philosophies. In this perspective, ideas take their power not from being expressed in public debate or official negotiation, but precisely by *not* having to be expressed because of their hidden influence on deliberations. At least three categories of such collectively held ideas could be relevant in EU treaty reform: first, ideas about the nature of EU integration generally; second, ideas about the more specific issues being debated; and, third, ideas about the nature of treaty reform and the conduct of the actual negotiations themselves.

The political debate (and, in its slipstream, the academic analysis) tends to focus on the second category – the substance of the negotiations (see, for example, Moravcsik and Nicolaidis 1999; Gray and Stubb, forthcoming). Such accounts tend to emphasize differences in opinion among negotiators about the desirability of one or the other type of reform, rather than any pre-existing consensus (in particular, unspoken consensus) among them. However, negotiations are conducted on the basis of many widely shared understandings, at the very least that there is a need for treaty reform and that this requires an IGC. Both of these are basic (and presumably obvious) preconditions for the conduct of an IGC, but they constitute a rather far-reaching agreement (and, as we argue, in recent cases mostly a shared understanding) among the participants.

Discourses about specific 'problems' facing the EU and the 'need' to address certain issues can also be powerful influences, in particular on the agenda-setting aspect of treaty reform. While discourses and ideas seem less promising in explaining what is negotiated in the final hours of EU summits, they can go a long way to explain the persistence of certain conceptions which lead to and subsequently inform earlier IGC negotiations. One example of such a discourse is the social construct of indispensable EU reform before eastern enlargement.

## 6. THE ROLE OF INSTITUTIONS IN TREATY REFORM

Contemporary introductions to institutional theory frequently include three different new institutionalisms: historical, rational-choice and sociological institutionalism (Hall and Taylor 1996; Peters 1998). However, it may be useful to start off this section with a few comments on *old institutionalism* since we are dealing with EU treaty change and this approach plays a significant role in many studies of European integration, particularly in the Continental literature on the subject. In Kratochwil and Ruggie's succinct characterization, within formal institutionalism

the premise was implicit that (1) international governance is whatever international organizations do; and (2) the formal attributes of international

organizations, such as their charters, voting procedures, committee structures, and the like, account for what they do. To the extent that the actual operation of institutions was explored, the frame of reference was their constitutional mandate, and the purpose of the exercise was to discover how closely it was approximated.

(Kratochwil and Ruggie 1986: 755)

Though presented as a distinct old-fashioned approach to the study of international organization, legal institutionalism still characterizes a significant part of the literature on European integration and EU governance.

*Historical institutionalism* (HI) is a 'thick' institutionalism at the level of middle-range theory (Steinmo *et al.* 1992). It is a reaction particularly to the strong element of functionalism in most structural-functionalist behavioural approaches of the 1960s and 1970s (Hall and Taylor 1996). By contrast, historical institutionalists allow dysfunctional features to play a role when explaining how institutions shape political life. Being in its earlier phase a perspective with certain structural leanings (in the sense of some degree of institutional determinism), HI focused on explaining continuity rather than institutional formation and change (Thelen and Steinmo 1992; Pierson 1996). These leanings have been balanced in recent writings, where leading historical institutionalists stress elements of transformation and draw on insights from sociological institutionalism: for instance, the role of shared normative understandings as a force potentially driving institutional change (Thelen 1999: 370).

*Sociological institutionalism* (SI) is, like HI, a 'thick' institutionalism. It has its source of inspiration in sociology where John W. Meyer has been among its leading 'developers'. Revealingly, he entitled his pioneering article: 'Institutionalized organizations: formal structure as myth and ceremony' (Meyer and Rowan 1977; see also Thomas *et al.* 1987). Like HI, SI too is a response approach, attacking key assumptions about rationality in the field of organization theory. SI has served as a source of inspiration particularly for political scientists, emphasizing the formation of meaning and the assimilation of culturally specific practices that have symbolic value into organizations with a view to enhancing their legitimacy (March and Olsen 1989; Hall and Taylor 1996).

*Rational-choice institutionalism* (RCI), finally, is a 'thin' institutionalism in the sense that institutions are considered only to modify a basically methodological individualist model of analysing how 'economic man' performs in the sphere of politics. In this understanding, institutions are only one framework condition of agency, as co-ordinating mechanisms shaping the distribution of information, but they have no impact on actors' goals. Although they build the necessary foundations of a specific comparative advantage (i.e. 'parsimonious' design), a number of limitations of RCI have been widely discussed: the highly specified conceptions of instrumental action; the assumption of fixed preferences (making preference formation a black box); the lack of attention to

norms, symbolic aspects and culture; and the exclusive focus on instrumental rationality, which neglects communicative rationality.

It is crucial to see that the different institutionalisms vary in their definitions of the key term 'institution'. This is yet another point where the schism between ideas/norms and materialism comes in. While old institutionalism and rational-choice institutionalism focus on formal institutions and rules (such as procedures laid down in the EC Treaty), both historical and sociological institutionalism include, in addition, not only standard practices but also norms since 'institutions shape the *goals* political actors pursue and the way they structure power relations among them' (Peter Hall, quoted in Thelen and Steinmo 1992: 2; emphasis added).

These approaches to institutional analysis help us to address the way in which, over time, the convening, the conduct and the implementation of IGCs have become institutionalized. Even treaty reform summitry is based on a mixture of formal and informal rules, most of which are unknown to a wider audience beyond the participants. Given that IGCs can in fact be regarded as a *meta-institution* (the institution which sets the rules for the actual EU institutions), it is remarkable how little is generally known – and asked – about their internal workings.

In fact, the institution of the IGC is based on an amalgam of rules derived from different sources, including the procedures of the Council of Ministers and the Committee of Permanent Representatives (COREPER), and the Council Secretariat. In the above discussion on elements of structures, reference was made to the rules governing the process of treaty reform. As IGCs have become more frequent, consist of a larger number of participants and deal with a highly technical subject matter, the rules governing the conduct of the conferences have also expanded. The result has been a veritable bureaucratization of the process of formal treaty reform. Among the many issues seen to require a more standard response has been the degree of openness of the negotiations towards 'external' interests (non-governmental organizations, organized interests, candidate countries and other 'third parties') and the 'division of labour' between the official level (essentially the weekly meetings of 'personal representatives of Heads of State') and the political level (the monthly meetings of foreign ministers and the European Council meetings dealing with IGCs).

All three schools of institutionalism – rational-choice, sociological and historical – shed light on particular aspects of this institutionalization of treaty reform. Certain features of the IGC as an institution lend themselves readily to interpretation as rational choice, notably the imposition of a temporal regime of the IGC. These can be seen as a regulative mechanism aimed at preventing defection and thus ensuring that effective negotiations take place. On the other hand, RCI would have difficulty in explaining certain features and outcomes of the IGC method which would seem to question an underlying logic of rationality. Since Nice there have been some rather vocal criticisms of the IGC method, and in particular of the nature of negotiations

in the course of the final summit meeting. Insider reports from both Amsterdam and Nice indicate that in the course of successive, sleepless nights the nature of decision-making increasingly departed from rational action, while in the final rush and chaos the opportunities for oversight, misunderstanding and administrative error rapidly increased (*Guardian* 2000). Thus, beyond the structural environment mentioned earlier, the capacity of government for strategic action in the IGC 'endgame' is also compromised by the practical and human limitations which negotiators encounter as the summit deadline draws closer – hardly conditions under which the usual assumptions of rational-choice approaches hold true. Ultimately, RCI leaves important issues unexplained, and a more inclusive approach therefore needs to turn to SI and HI in seeking to explain the broader picture of treaty reform.

Indeed, both the historical and the sociological varieties of new institutionalism offer more promising explanatory avenues. HI, with its emphasis on path dependency and historical continuity, goes a long way in explaining why the basic set-up of IGCs has not only remained unchanged since the historical precedent of the Single European Act negotiations (see Budden, in this issue), but has, in fact, become increasingly institutionalized along these lines (see Sverdrup, in this issue). SI highlights that the institutionalization of treaty reform followed a 'logic of appropriateness'. Practices were adopted and subsequently evolved into rules, not so much as the result of strategic and rational choices, but because such practices were present in the cultural and institutional environment of those participating in the treaty reform negotiations. Once these rules of treaty reform constituted part of the increasingly rigid institutional structure of the IGC method, it became exceedingly difficult to change them, or to reverse any such 'choices'.

HI would suggest that a historical rupture might cause an opportunity for a fundamental change in the institutional set-up, but – for better or worse – there has been no such rupture. Presumably, if treaty reform were to trip up on its own rules, for example by failing to agree on a reform within the time limit imposed on the IGC for coming to a successful conclusion, this would constitute such a rupture and may be expected to provide the opportunity for institutional change. For the time being, the established IGC method persists, although the Nice problems prompted a discussion of the Fundamental Rights Charter's convention procedure with a view to the forthcoming treaty reform. It would fit the HI concept of incremental institutional layering, which is considered typical in the absence of serious ruptures (Thelen 2001), if this were envisaged (as seems to be the case to date) as an additional mechanism rather than as a clear departure from the established patterns.

## 7. TOWARDS A COMPREHENSIVE APPROACH: TREATY REFORM AS PROCESS

So far, we have argued that an understanding of treaty reform requires attention to both structures and agency, and that, rather than merely focusing



on interests as the driving force behind treaty reform, analysis also needs to consider the role played by ideas and by institutions. Each of these elements can have an independent quality in the overall explanatory framework developed here. However, linking these parts of the explanation is the temporal dimension to treaty reform. Not only focusing on discrete events of treaty reform – the snapshot analysis of individual summit meetings – but studying treaty reform as a longer-term and potentially continuous process allows us to identify more linkages between agency and structure, as well as between interests, ideas and institutions. Hence, a process-oriented and comprehensive analysis promises to shed more light on the dynamics of EU treaty reform.

The temporal dimension is a crucial element in the study of treaty reform for a number of reasons. It may be comparatively easy to distinguish between agency and structure at the abstract level, but any specific example will immediately reveal the crucial importance of their relationship over time, highlighting the significance of process. For example, the structure of the political environment often depends primarily on the time frame. What is a definite structural limit to agency in the short run (public opinion at home, for instance) may turn out to be an object of strategic action if viewed through a more long-term lens.

Furthermore, a longitudinal view of treaty reform alerts us to phenomena outside the realm of the more narrow studies of specific IGCs. Only an explicit temporal dimension reveals that there are ‘spillovers’ between day-to-day policy-making and IGCs, hence between informal and formal treaty reform. Procedurally, treaty reform in general and IGCs in particular have taken much of their cue from the day-to-day politics of the EU. A powerful example here is the important role played by the Presidency, in conjunction with the Council Secretariat – a mode of action witnessed in normal practice in the EU’s legislative process. Moreover, redefinition of specific treaty provisions is additionally possible between IGCs (see Greve and Jørgensen, in this issue). This also includes the *political* redefinition of particular aspects of a treaty in the course of ratification, especially in response to adverse referenda results, as in the case of Denmark after Maastricht and, presumably, Ireland after Nice. The aim here is to change the meaning or interpretation – not the letter – of the treaty (at least not the letter of the main body of the treaty, in so far as protocols are introduced once an IGC has ended) in order to ‘offer’ something to the member state concerned and to enhance the chances of a second referendum accepting the new treaty. A second avenue for a *de facto* redefinition of the treaty may result from Court rulings. A good example is the ‘treaty base game’ (Rhodes 1995) under the pre-Amsterdam Article 118 EC Treaty on health and safety at the workplace, which was increasingly interpreted in a wide sense to cover working conditions in general and to serve as the legal basis for, say, a directive on working hours.<sup>6</sup> Sometimes, this will trigger new formal treaty reform in the following IGC. In such cases, substantive issues may be put on an IGC agenda *de facto* by jurisprudence of the European Court of Justice. One example of this is the Amsterdam Treaty’s post-‘Kalanke’ provision

in Article 141, paragraph 4, EC Treaty, where the signatories reacted to a gender equality decision by the European Court of Justice that had restricted the ability of member states to provide for quota aiming to promote gender equality at work. In other cases – and employment policy is an example here – practices are developed between IGCs which are later incorporated into the treaties.

Further ‘spillovers’ of relevance for treaty reform occur, to an increasing extent, between different IGCs. They concern mainly issues which could not be resolved (at all or in part) in the first IGC and hence had to be taken on board as ‘leftovers’ for the next one. At Maastricht, Amsterdam and Nice, further IGCs were envisaged to discuss the leftover issues of earlier ones. In fact, the Amsterdam leftovers made up the central part of the Nice agenda. Yet another IGC was envisaged when the Nice Treaty reform was finalized, demonstrating the presence of a pattern and, potentially, a tradition. Such examples illustrate the need to study different IGCs in conjunction with, rather than in isolation from, one another. However, beyond the linkages between different IGCs, there is a need to relate developments in the periods between IGCs to the treaty reform process (see in particular Christiansen; Greve and Jørgensen; Falkner, in this issue; see also Christiansen and Jørgensen 1999). Doing so will allow us to discern the evolution of ideas and institutions over time, as well as the impact these have on the formation of national interests and, ultimately, on the agreements which constitute treaty reform.

In such a process-oriented perspective, a recognition of the linkage between ideas, institutions and interests becomes possible. We hold that none of these elements can be neglected if EU treaty reform is to be studied in depth. While the researcher should be open to all of them at the theoretical level so as not to impede a comprehensive analysis from the outset, the characteristics of any specific treaty reform instance have to be established empirically. To offer new and more inclusive avenues of doing so has been the purpose of this article.

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## NOTES

- 1 We distinguish the concept of ‘treaty reform’ here from both ‘EU reform’ – which may be applied to non-constitutional changes to institutions or policies – and ‘constitutional reform’ – which may be applied to distinguish between constitutional and non-constitutional aspects of treaty modification.
- 2 It is therefore too simplistic (Scharpf 1999b) to treat state actors as proxies for the underlying social forces (Moravcsik 1998).
- 3 An exception is Stubb (1998), who argues that the civil servants of the Presidency and the Council Secretariat are ‘the most influential actors in an IGC’.
- 4 We do not deny that processes of domestic preference formation occur and that instances of treaty reform provide for mechanisms that transfer domestic prefer-

ences on to the European level. Allowances need to be made for the differences in national political systems (Caporaso 1999) which would, for example, permit distinctions to be made between, on the one hand, more inclusive political systems and, on the other hand, rather more élitist political cultures among the member states. This recognition notwithstanding, what follows is not meant to deny the validity of the 'state interest thesis', but is meant to demonstrate that it leaves crucial aspects of the role of interests in treaty reform unexplained. Without such qualifications, any interest-based explanation is bound to provide only a reductionist perspective on treaty reform.

- 5 Although cross-fertilization seems promising, it is uncontested that also in these literatures no generally accepted and generalizable scope conditions of socialization processes in groups are defined. Nor are there any clear-cut predictions about when we should actually expect them to happen. In the analysis of European integration, however, it already seems a big leap forward if the possibility of Euro-level preference (re-)formation is not excluded from the research design from the outset.
- 6 The UK appealed in vain against this law (Directive 93/104/EEC of 23 November 1993, OJ 93/L 307) since the Court agreed to the extensive interpretation which the majority of governments had chosen (Judgment C-84/94, 12 November 1996).

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