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The Council, the European Parliament, and the paradox of inter-institutional cooperation

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Abstract: Decision-making between the Council of Ministers and the European Parliament is characterized by a paradox. On the one hand, there is a high potential for inter-institutional conflict. Historically, the EP and the Council have been opponents in the struggle for power. In addition, both institutions can be said to fulfill different representational roles within the political system of the EU, with the Council representing the member states and the Parliament representing the citizens. Furthermore, agreement between the two is complicated by decision rules posing high thresholds for agreement and actors with often diverging preferences. On the other hand, in day-to-day policy-making, the Council and the European Parliament display a high level of consensus and decision-making efficiency. Most legislation is decided in first reading, and early agreements provide a shortcut for cumbersome inter-institutional negotiations. To shed light on this paradox, we conceptualize the mechanisms and dynamics underlying inter-institutional cooperation and conflict by taking recourse to factors derived from historical, sociological and rational choice institutionalisms. We argue that the same logics which account for conflict also contain the explanation for cooperation. Furthermore, we demonstrate that each of the theoretical approaches is particularly well suited to highlight a certain aspect of the paradox.

Keywords: Council of Ministers; European Parliament; institutionalism; political science.

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Introduction

As of lately, the inter-institutional relationship between the Council and the European Parliament (EP) is receiving increasing attention within the empirical political science literature. While the early literature on EU legislative politics analyzed the interplay between the Council and the EP from a macro perspective (Corbett, Jacobs and Shackleton 2011; König 2008; Tsebelis and Garrett 2000), treating the institutions more or less as unitary actors, more recent scholarship is focusing on the interactions of political actors – such as individual Members of the European Parliament (MEPs), party groups, Council officials – and their behavior within the two institutions (Costello 2011; Costello and Thomson 2011; Hagemann and Høyland 2010; Mühlböck 2013; Naurin and Rasmussen 2011; Rasmussen 2005, 2007; Thomson 2011; Thomson et al. 2006). From these studies, a somewhat contradictory picture of the inter-institutional relationship emerges. On the one hand, there is a high potential for conflict between the Council and the EP due to their constant struggle to safeguard or to enhance their political influence within the EU’s political system, their different representational roles (with the Council acting as the representative of the member states and the EP representing the European citizens), and complex decision-making

procedures including players with diverse interests. On the other hand, day-to-day decision-making is found to be characterized by a high level of consensus, not only within, but also between the institutions. Despite initial controversies, most EU legislative procedures are concluded at a very early stage (see, for example De Ruiter and Neuhold 2012), and a procedure hardly ever fails completely (Huber and Shackleton 2013).

This article is dedicated to unraveling what we call the “paradox of inter-institutional cooperation” on a theoretical level. Relying on the strong body of institutionalist literature, we explain why it is possible to observe such a high level of inter-institutional agreement in day-to-day EU decision-making despite a strong potential for inter-institutional conflict. We conceptualize the mechanisms and dynamics underlying inter-institutional cooperation and conflict by taking recourse to historical, sociological and rational choice institutionalisms, which allows us to address the puzzle of inter-institutional cooperation from different angles. In doing so, we follow the classification of the seminal article by Hall and Taylor (1996) who differentiated between these three different strands of the “new institutionalism”. When applying them to our “paradox”, we find the theoretical approaches not conflicting, but complementary in highlighting different aspects of the puzzle. Using the different theoretical lenses, we point out that the same logics which account for conflict also contain the explanation for cooperation.

The remainder of the article proceeds as follows: First, we lay out the paradox in the relationship between the Council and the EP. Thereafter, we look at inter-institutional conflict and cooperation between the Council and the EP through the different lenses of the three institutionalisms. The conclusion summarizes the main theoretical arguments and stresses implications for future empirical work.

1. Conflict and cooperation: Describing a paradox

From the early days of their institutional history, the Council and the EP served to represent different entities, with the Council as the representation of the member states, and the EP representing the citizens. Within this general notion of citizen representation, the representational focus of the EP has undergone a remarkable development. While the Treaty establishing the European Coal and Steel Community (ECSC)¹ envisaged an assembly “which shall consist of representatives of the peoples of the States brought together in the Community” (Article 20 ECSC Treaty), the Treaty on the European Union² now reads: “The European Parliament shall be composed of the representatives of the Union’s citizens” (Article 14(2) TEU). Hence, while a representative to the Common Assembly was expected to represent the citizens of his or her respective member state, today, a Member of the European Parliament (MEP) is expected to represent the citizens of the EU in general. The different representational roles that the Treaty attributes to the Council and the EP are also manifest in

¹ Treaty establishing the European Coal and Steel Community, 18.04.1951 (23.07.1952-23.07.2002), not published in OJ.

² Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 326/13-47, 26.10.2012.

the perceptions of member states officials in the Council (or members of the Committee of Permanent Representatives - COREPER) and MEPs regarding their stance on the “other” institution. Despite ideological and partisan differences within and between the key decision-making organs in the EU, officials and MEPs highlight the relevance of different representational roles for their work.³

Over time, the relationship between the Council and the EP has changed remarkably. Despite the underlying idea of a federal-style system which was first articulated during the negotiations preceding the founding of the ECSC, it took the Council and the EP several decades to develop into a bicameral legislature, and even longer to be recognized as such (Kreppel 2011; Mühlböck 2013).⁴ This development is mainly characterized by a significant increase of the EP’s decision-making powers at the expense of the other EU institutions, most notably the Commission and the Council. Starting out as a mere advisory body, the EP has been granted more rights in subsequent treaty reforms and now has to be treated as an equal co-legislator under the Ordinary Legislative Procedure introduced by the Lisbon Treaty. Even prior to formal treaty changes, the EP has strategically used its competencies in some areas to press for more competences in other areas vis-à-vis the Council (Héritier 2007: 229-232; Hix 2002a; Rittberger 2008). This battle for political influence has shaped the interactions between the two institutions. When conflict between the Council and the EP arises, MEPs tend to defend “their” institution.⁵ The ongoing struggle between the two institutions has left its mark on the actors within the institutions, especially within the EP, who tend to be dissatisfied with the formal grants of power that member state governments negotiate at intergovernmental conferences (see Héritier 2007: 120). MEPs still perceive the relationship with the Council as an ongoing struggle.⁶ At the same time, Council officials often perceive the EP as an inconvenience if carefully negotiated deals between member states have to be redone due to the EP’s intervention and opposition.⁷ Hence, members of the Council and the EP clearly view each other as opponents (Mühlböck 2013).

³ According to a British MEP: “The job of looking out for the national interest is the job of the minister in the Council. The Council is organized in national delegations. The European Parliament is organized by political groups according to ideological perspectives. That does not mean to say that you don’t have any national interests coming into Parliament. And it also does not mean to say that you don’t have some ideological perspective affecting ministerial viewpoints in the Council. But the main organization of each institution is different. Otherwise why have two institutions?” (Personal interview with British Labour MEP, Nov. 2009, cited in Mühlböck 2012: 189). This interview was part of a larger research project on inter-institutional decision-making in the EU. In the 29 semi-structured interviews with MEPs, Council officials, and former ministers coming from 12 different member states, respondents were asked about their relationship to the respective “other” institution (cf. Mühlböck 2012).

⁴ The first to explicitly classify the EU as a bicameral system were Tsebelis and Money (1997).

⁵ Personal interview with Italian Council official, June 2011 (cited in Mühlböck 2012: 190).

⁶ According to a German MEP: “This parliament is still struggling for its rights and for implementation of its rights. The Commission was there, the Council was there. We still have to capture our share step by step. And that’s why this parliament holds together – despite all ideological disparities – more than any other parliament” (Personal interview with German CDU MEP, October 2009, cited in Mühlböck 2012: 190).

⁷ COREPER officials complain that MEPs seem to have a principal aversion against the Council: “And you see, if you talk to certain MEPs, they look at the Council as the enemy” (Personal interview with Portuguese Council official, June 2011, cited in Mühlböck 2012: 190).

Despite disputes over policies or decision-making prerogatives based on different institutional interests and representational roles, we find that in day-to-day decision-making, there is a surprisingly high level of cooperation and even consent between the two institutions (Mühlböck 2013). Negotiations between the Council and the EP prove to be shorter and less cumbersome in praxis than they could be in theory, as the experience with the Ordinary Legislative Procedure (formerly the Co-decision procedure) shows. The treaties allow for up to three readings in each institution. If the Council and the EP cannot agree on the same text in the second reading, a Conciliation Committee is introduced with the objective to arrive at a compromise text on which ministers and MEPs vote in the third reading. If the Conciliation Committee fails to put a compromise forward or at least one institution does not adopt it in third reading, legislation fails. Also, the legislative procedure may end unsuccessfully at an earlier stage, if one of the institutions rejects the proposal, e.g. if the EP in its second reading rejects the Council's first reading position. This, however, has only happened once so far, in the case of the Software Patent Directive⁸ in 2005. Joint texts emerging from conciliation were rejected by the EP only in three instances (European Parliament 2012). In total, only seven procedures have failed at third reading stage (Huber and Shackleton 2013). Furthermore, there is an increasing trend towards first reading agreements (De Ruiter and Neuhold 2012; Rasmussen 2007; Toshkov and Rasmussen 2012). To facilitate such "fast-track-legislation", the Council and the EP set up informal trilogues at an early stage, where the Council presidency, the EP's rapporteur responsible for the piece of legislation (plus potential shadow rapporteurs appointed by the other EP groups) and a representative from the Commission try to work out a compromise. As a result, in the legislative period 2004-2009, about 72% of the Commission proposals were adopted at first reading, more than twice as much as in the period 1999-2004 (De Ruiter and Neuhold 2012). While informal trilogues undoubtedly lead to more efficiency and help to avoid lengthy and cumbersome decision-making processes,⁹ this consensual form of decision-making has also been criticized for undermining democratic accountability, as the positions of the individual actors are concealed in largely secretive negotiations (Burns 2013; Rasmussen 2007; Reh et al. 2013). Hence, especially the EP (but also to some degree the COREPER) introduced measures to hold their delegates to account (Huber and Shackleton 2013). So far, however, these measures do not seem to have affected the consensual spirit between the Council and the EP.

How, then, can we account for this high level of cooperation and consensus between these two institutions, despite the high potential for conflict? This is the question we will try to answer in this contribution. To do so, we take recourse to the three different theoretical approaches in the realm of institutional theory, Rational Choice Institutionalism (RCI), Sociological Institutionalism (SI), and Historical Institutionalism (HI). Since there is no shortage of overviews of the new institutionalism in political science in general (see, for example Hall and Taylor, 1996; Peters 1999) and with a view to EU studies in particular (see, for example, Aspinwall and Schneider 2000; Stacey and Rittberger 2003), we will begin each section with a brief summary of the main tenets of RCI, SI and HI before focusing on their

⁸ Directive on the patentability of computer-implemented inventions, 2002/0047(COD).

⁹ Note however, that while more and more proposals are adopted at first reading, at the same time, the periods until the first readings take place have lengthened. Nevertheless, first reading agreements are still quicker than second reading agreements used to be (Toshkov and Rasmussen 2012).

respective contribution to unravel the paradox about inter-institutional cooperation and conflict.

2. Rational Choice Institutionalism and the Parliament-Council relations

2.1. Characteristics of Rational Choice Institutionalism

According to Rational Choice Institutionalism (RCI), actors aim at maximizing their exogenously defined preferences in settings characterized by interdependence and institutions that – as “rules of the game” – regulate actors’ behavior and affect their strategies (North 1990; Shepsle 2006). The focus is mainly on formal institutions, like rules of procedure, although this does not mean that the influence of informal institutions is ruled out. RCI assumes that institutions limit the strategies available to actors and hence affect the range of outcomes that can be obtained by political actors (Hall and Taylor 1996). According to RCI, institutions are created and designed to solve collective action problems, which can go along with strategic, self-serving behavior. The choice of one specific institutional form over another rests on the assumption that one set of institutions offers greater benefits for the actors involved than possible alternatives (Hall and Taylor 1996). As a corollary, actors will change institutions when the actors’ payoffs associated with a particular institutional setting change. Yet, the processes that lead to these changes are exogenous to the analysis and RCI offers little in terms of explanation how institutions lose their equilibrium positions to others (Hall 2010, 2013; Hall and Taylor 1996).

2.2. Rational Choice Institutionalism in research on the relationship between the Council and the Parliament

Research on the Council, the EP, and their inter-institutional relationship is strongly informed by RCI (for an overview of the rich body of literature, see Pollack 2006). This is not surprising, given that RCI has a strong history in the analysis of legislative politics (Hix 1999; Hix and Høyland 2011). RCI lends itself to the study of various questions associated with legislative institutions. EU scholars adopting an RCI approach tend to focus on formal institutions, like decision-making rules as laid down in the Treaties, Inter-Institutional Agreements or in the Rules of Procedure of the individual institutions – although this should not mean that they have not also been incorporating more informal structures. They have made use of RCI to predict the behavior of individual actors, such as voting behavior of ministers and MEPs (e.g. Costello 2011; Hagemann and Høyland 2010; Mühlböck 2013), as well as outcomes of decision-making processes, for example the question who profits from changes to the institutional set-up (e.g. Crombez 1997; König 2008; Tsebelis and Garrett 2000).

2.3. Rational Choice Institutionalism and inter-institutional conflict

According to RCI, the potential for conflict between the institutions (or between individual actors representing the different institutions) has its origin in the discrepancies in actors' preferences and differences between decision-making arenas within the institutions. Council actors are part of the national government of their respective member state. As such, they are responsible to national parliaments and it should thus be in their interest to act in line with the preferences of the parliamentary majority (although there might be conflicting incentives due to bureaucratic drift or party political preferences in coalition governments) (Strøm 2000). National positions are formed in advance within the respective national bureaucracy, and then discussed with proponents from other member states at the different stages of the Council decision-making in order to reach a bargain which satisfies all actors involved. In contrast, negotiations in the EP take place in a transnational environment, which is dominated by the political groups in the EP and mostly on national party lists, once in the EP, they sort themselves into transnational groups. Since they are "agents of two principals" (Hix 2002b), namely their national party and their European party group, they represent two sets of ideological preferences – European and nationally structured ones – with cleavages running between transnational groups rather than between member states. Moreover, the two institutions are characterized by different decision-making arenas. In the Council, proposals are first handled by national governmental officials, then by national diplomats and finally by the national ministers, with the goal to "maximize" the national interests in the final compromise between member states. In the EP, discussions take first place in the parliamentary committees, then within the groups. The discussion within the national party delegation takes either place at the same time as the group discussion, or is even left out. Yet, not only the institutional settings but also actors' political affiliations differ. In the Council, government officials negotiate with other government officials, while within the EP groups, members of parties in government and opposition interact with each other. Hence, according to RCI, both the differences in the initial preferences of the actors as well as the different incentive structures offered by the respective institutional settings might result in a gap between the positions formed in each of the institutions and, as a consequence, may generate conflict between the institutions.

2.4. Rational Choice Institutionalism and inter-institutional cooperation

While RCI points out that conflicts might occur because actors in the Council hold different preferences from actors in the EP, preferences might also be shared among all actors across institutions. Most importantly, both ministers and MEPs benefit from decision-making efficiency. If there were only endless conflicts at the EU level, actors would be blamed for not "getting things done". Hence, efficiency constitutes a primary goal of EU actors (Maurer 2003) and is an important motivation behind the creation of decision-making institutions. Decision-making actors facing coordination or cooperation problems tend to benefit from institutions, which help actors to resolve the collective action problem and reduce transaction costs (Pollack 2008). Due to the danger of gridlock between the Council and the EP, conciliation procedures were created. The Conciliation committee, but also the informal

trilogues are examples of institutions reducing the costs of decision-making (see e.g. König et al. 2007; Rasmussen 2005; Reh et al. 2013). Furthermore, the difficult task of ensuring the smooth functioning of legislative decision-making in the face of high conflict potential has also shaped decision-making structures within the Council and the EP. In contrast to the legislative system in the US, where the interplay between actors responsible for enacting laws is characterized by institutions that mainly provide mutual checks instead of loci of cooperation (reflecting the considerable distrust in centralized governance at the time of foundation), the founders of the EU have sought to provide institutions that foster mutual cooperation. In the Council, it is the task of the Presidency to get things done (cf. Thomson 2008). This does not only mean to find a compromise between member states, but also with the EP. In the EP, this is the role of the rapporteur. As in the case of the Council Presidency, it is in the interest of the rapporteur to actually strike a deal, as his/her reputation depends on the ability to consolidate different opinions (Benedetto 2005). That way, the risk of intra- as well as inter-institutional conflict has led to the creation of institutions that promote cooperation within and between the Council and the EP.

3. Sociological Institutionalism and the Parliament-Council relations

3.1. Characteristics of Sociological Institutionalism

Sociological Institutionalism (SI) is characterized by its rejection of the “logic of expected consequences”, which underpins RCI, and posits instead that actors are driven by a “logic of appropriateness” (March and Olsen 1998). SI stresses the importance of social identities or role orientations as scripts for behavior. Actors design and comply with institutions not as a result of ongoing cost-benefit calculations, but because they think that it is legitimate or the “right thing to do”. For sociological institutionalists, institutions reflect shared understandings of what actors perceive as legitimate, efficient, or modern (DiMaggio and Powell 1991). Institutions tend to be characterized by a high degree of durability and stability given that it is difficult to change normative or ideological investments (North 1990: 3-10). In contrast to RCI, SI does not conceptualize preferences as being fixed or exogenous, but treats them as endogenous and malleable through social interactions. From the perspective of SI, institutions do not only regulate actors’ behavior, they also exercise a constitutive effect by shaping their identities and preferences. Institutional formation also follows a logic of appropriateness. According to SI, institutions are created because they are considered to add legitimacy to a particular course of action. Institutional change follows the same logic as institutional formation, which is to increase legitimacy, but it remains outside the theory to explain why actors perceive an institution to require additional legitimacy (DiMaggio and Powell 1991; Hall and Taylor 1996).

3.2. Sociological Institutionalism in research on the Council and the Parliament

Research informed by SI in the study of the Council and the EP has been rather scarce, even though it has generated insights to other fields of European integration, such as Europeanization (e.g. Börzel and Risse 2007), legal integration (e.g. Stone Sweet and Caporaso 1998), or compliance with EU law (e.g. Falkner et al. 2005). Goetze and Rittberger (2010) have studied the empowerment of the EP from an SI perspective, pointing out how the EP has managed to use legitimacy concerns as a driving force. With its focus on norm-induced behavior, role orientations and socialization of legislators, SI seems well suited to study how Council officials and MEPs are adapting to their respective institutional environments, for instance whether they are “going native” (see Scully 2005) and which role orientations prevail among legislators (e.g. national or European, see Katz and Wessels 1999). Likewise, negotiation and decision-making styles in different environments such as committees, working groups etc. are analyzed with recourse to SI (see Laffan 2004; Lewis 2005; Naurin 2007).

3.3. Sociological Institutionalism and inter-institutional conflict

From the perspective of SI, inter-institutional conflict is fuelled by differences in actors’ dispositions, which are rooted in different role orientations and effects of socialization. Like RCI, SI stresses that different decision-making arenas affect the behavior of the actors, yet – unlike RCI – SI assumes that institutions can exercise a constitutive effect on actors, their identities and preferences. Hence, in the SI context, preferences are perceived to be endogenously defined, shaped by the institutional environment. EU institutions are thus identity builders which socialize political actors into accepting certain collective norms (Laffan 2004: 75-96). When, for example, MEPs act as loyal members of their transnational groups and as loyal members of the EP demanding a stronger position for “their” institutions, they may do so not because they expect to obtain particular tangible benefits, but because they have developed a common supranational identity. Likewise, ministers as well as officials interacting in the Council form common role conceptions and norms of behavior, which are based on trust, diffuse reciprocity and a culture of consensus (cf. Adler-Nissen 2009; Lewis 2003a). SI thus directs our attention to phenomena such as institutional identities and inter-institutional differences, which can be self-reinforcing: While strong institutional identities may facilitate consensus building *within* each institution, they are likely to render negotiations *between* institutions particularly cumbersome and conflictual – especially whenever issues that are relevant for an actors’ identity are at stake (cf. Checkel 2005). This suggests that the probability of conflict between the Council and the EP increases the more MEPs feel they need to uphold their role as “representatives of the EU citizens” vis-à-vis “the member states”.

3.4. Sociological Institutionalism and inter-institutional cooperation

Institutional role orientations and legitimacy concerns might, however, not only be conducive to conflict, but also to cooperation between the Council and the EP. SI puts even more emphasis on the effects of institutions that promote cooperation within and between the Council and the EP than RCI. Conciliation procedures and trilogues create environments of enhanced interaction between Council officials and MEPs, which are instrumental in building mutual trust as well as shared norms governing the interaction of the actors. As preferences are perceived to be endogenous to the institutional environment and the interaction among actors, the presumed effect of such shared institutional arenas is even more pronounced according to SI than according to RCI. Furthermore, in the SI perspective, actors may not only strive for efficient legislative procedures because this yields benefits for the actors, but because they believe that it is “the right thing to do”. Within the political system of the EU, legitimacy can be considered to rest on “adequate” democratic representation and accountability as well as on efficiency (see Scharpf 1997). To be efficient and to reach decisions, however, actors need to cooperate. Furthermore, according to SI, the potential dividing factor between the two institutions, namely the different representational roles, may simultaneously constitute a uniting force. The role of the EP as the supranational institution representing the EU’s citizens is to promote integration by adopting laws that overall benefit citizens and regulate their interrelationships. To do so, however, the EP needs the approval of its co-legislator, the Council. The role of the Council is to adopt laws that overall benefit member states and regulate their interrelationships. While the Council has not always needed the EP for this task and still retains sole authority on some issue areas, it has increasingly needed the EP to legitimize its actions, and ever more so as EU laws started to cut deeper into the autonomy of member states (Goetze and Rittberger 2010).

As a result, the factors that lead to inter-institutional conflict (according to SI, different institutional identities or representational roles) also account for consensus. Representational roles of ministers and MEPs are interlinked – due to the EU’s constitutional design, citizens as well as member states need to be represented. Hence, neither the Council nor the EP can provide legitimacy on their own – the institutions are mutually dependent in this regard and therefore need to seek common decisions.

We thus reach similar conclusions for the RCI and the SI perspective: What on the one hand leads to inter-institutional conflict, i.e. the divergent preferences (RCI) or identities (SI), on the other hand ensures that actors have a common, cross-institutional objective – efficiency (RCI) or legitimacy (SI) – which, in turn, leads actors to develop institutions fostering cooperation. What helps us to understand conflict between the Council and the EP therefore also helps us to explain inter-institutional cooperation.

4. Historical Institutionalism and the Parliament-Council relations

4.1. Characteristics of Historical Institutionalism

Unlike RCI and SI, Historical Institutionalism (HI) is not based on a distinct theory of action. HI scholars are either eclectic in the sense that they do not prefer one logic of action over another, or see themselves rather in the rational choice or in the sociological camp. HI distinguishes itself from RCI and SI by being chiefly interested in the conditions underlying institutional stability or “path dependence” (see Pierson 2000; Thelen and Steinmo 1992). Yet, historical institutionalists are increasingly coming to grips with institutional change, either by studying rapid institutional change at “critical junctures” (Capoccia and Kelemen 2007: 341), or by focusing on the tensions and conflicts that are inherent in institutions and eventually lead to institutional change (in the form of displacement, layering, drift, or conversion, see Mahoney and Thelen 2010) and institutional evolution (Lewis and Steinmo 2012; Steinmo 2015 (forthcoming)). Institutions are path-dependent when they persist in a changing environment even though they may be (or may have become) inefficient. Path dependent institutions are characterized by “increasing returns”-mechanisms, which can be considered “stabilizers” of existing institutions. Stabilizers can be a particular legitimating ideology or a particular distribution of power, which empowers a specific actor coalition while sidelining “change coalitions” (Lindner 2003: 917, see also Mahoney and Thelen 2010: 14). But the same factors that underpin institutional stability also help to explain why institutions undergo change. For example, existing institutions may – over time – cease to be perceived legitimate as values and subjective beliefs of the actors maintaining an institution change; or, the power of the dominant actor coalition declines relative to that of previously subordinate groups (Lindner 2003; Mahoney 2000).

4.2. Historical Institutionalism in research on the Council and the Parliament

Historical institutionalism has most prominently been applied to the study of EU integration (and specifically to the study of the Council and the EP) in the form of the rational choice inspired version of HI (e.g. Kreppel 2003; Lewis 2003a; Lindner 2003; Stacey 2003; Stacey and Rittberger 2003, or Héritier’s (2007) seminal book on institutional change in the European Union¹⁰). There are fewer sociologically inspired historical institutionalist accounts (e.g. Fligstein and Stone Sweet 2002; Lindner and Rittberger 2003) and even fewer studies that are completely eclectic between the logic of appropriateness and the logic of consequences (e.g. Pierson 1996). All these HI approaches have in common that they

¹⁰ It may come as a surprise to refer to Héritier under the heading of HI, while she explicitly mentions that her book follows the tradition of RCI (Héritier 2007: 10). Yet, Héritier uses a different classification scheme, encompassing only SI and RCI, while under the classification scheme of Hall and Taylor, as applied in this article, Héritier clearly follows the tradition of a rational choice variant of historical institutionalism, due to her emphasis on procedural development and power constellations.

emphasize the gradual institutional development over time, focusing on the dynamics behind rule changes instead of analyzing formal changes introduced at intergovernmental conferences (IGCs) as independent events. An overview of the historical institutionalist EU literature is given by Bulmer (2009).

4.3. Historical Institutionalism and inter-institutional conflict

Work inspired by HI which focuses on inter-institutional conflict between the EP and the Council has placed a strong emphasis on power asymmetries, which trigger demands for change and conflict over existing institutions. Analyses of budgetary and legislative decision-making rules in the EU have shown that existing formal institutions – treaty rules – constitute incomplete contracts, which especially those actors who consider themselves disadvantaged by the treaty rules, try to exploit in their favor. Several authors have argued that the EP has managed to exploit the “gaps” in the treaty by providing its own interpretation of the treaty rules and hence by challenging their interpretation and application by the member states (see Farrell and Héritier 2003, 2007; Héritier 2012; Hix 2002a). From an HI perspective, the initial distribution of power, fixed by the member state governments in the treaties, became vulnerable because the EP was able to summon sufficient power resources to challenge the formal treaty institutions and member states’ interpretation thereof. A prominent example is the abolition of the “third reading” in the Co-decision procedure. The EP succeeded in credibly threatening the Council to veto any legislation that the Council would not co-decide with the EP during the conciliation stage upon which the Council subsequently chose to refrain from using its formal treaty-based power (Farrell and Héritier 2003; Hix 2002a). The EP was able to challenge the Council because it was able to muster power resources that undermined the existing institution by using its power in linked arenas or by threatening obstructionism and thereby increasing the opportunity costs for the Council (see also Lindner 2003). Analyzing the decade-long conflict between the EP and the Council over the rules to adopt the EU’s budget, Lindner and Rittberger (2003) argue that the initial institutional design was fraught with tensions, since the member states creating the institutions for budgetary policy in the 1970s held completely different ideas regarding the scope of the EP’s involvement. The resulting institutions were hence wide-open to interpretation and subject to contestation by the institutional enacting-coalition, among which the EP was now a major player. The EP thus consistently challenged the extant institutional rules since it preferred a set of rules that would result in more influence over the adoption of the EU’s budget than was preferred by the majority of member state governments in the Council.

Table 1: Characteristics of the individual approaches and explanations for inter-institutional conflict and cooperation

	RCI	SI	HI
Characteristics of the approach	<p>“Logic of expected consequences” - actors act strategically to achieve their preferences</p> <p>Institutions limit available strategies, define costs and benefits of outcomes</p> <p>Creation of institutions to solve collective action problems</p>	<p>“Logic of appropriateness” - actors act according to collective norms, roles and scripts of behavior</p> <p>Institutions constitute actors, define their preferences and identities</p> <p>Creation of institutions to enhance legitimacy</p>	<p>Eclectic between “consequences” and “appropriateness” - actions strategically and normatively driven</p> <p>Institutions have distributive effects, undermining or re-enforcing the status quo</p> <p>Institutions as manifestation of „legacy of the past“</p>
Explanations for inter-institutional conflict	Discrepancies in actors' preferences	Different identities or representational roles	Power asymmetries; “incomplete contracts”
Explanations for inter-institutional cooperation	<p>Benefit of efficiency</p> <p>⇒ institutions created to reduce collective action problems</p> <p>⇒ Shared inter-institutional arenas</p>	<p>Efficiency necessary for legitimacy</p> <p>⇒ Mutual dependence to provide legitimacy</p> <p>⇒ Institutions created to enhance efficiency</p> <p>⇒ Shared inter-institutional identities</p>	<p>Costs of institutional conflict</p> <p>⇒ power of pro-institutional change coalition increases</p> <p>⇒ conflict (temporarily) settled by new contracts</p>

Source: authors' compilation

4.4. Historical Institutionalism and inter-institutional cooperation

Institutional conflict as evidenced in the struggle over the interpretation of legislative and budgetary decision-making rules between the EP and the Council is costly and hampers decision-making efficiency since inter-institutional power-games trump substantive (policy) concerns or inhibit compromise over questions of distribution (in the case of the budget). Yet, the same factors that generate conflict over the interpretation and application of institutional rules are also relevant to understand why the EP and the Council decided to bury the hatchet

(at least temporarily). In the case of budgetary decision-making rules, inter-institutional conflict over the interpretation of the budget treaty from the 1970s gave way to a relatively long phase of inter-institutional cooperation following the adoption of Inter-institutional Agreement in 1988 (see Lindner 2003). Since the institutional design and enacting-coalition were congruent, with the Council inviting the EP to negotiate over the application of the treaty rules, conflict over the interpretation of these rules was now markedly reduced. Similarly, conflicts over institutional design based on divergent institutional preferences between the Council and the EP in the application of legislative rules, appointment procedures (regarding the Commission) and implementing powers (comitology) were often overcome once the Council had started to consider the costs of ongoing conflict or blockage due to the EP's increased powers prohibitive. In sum, HI points us to an interesting process of endogenous institutional change whereby inter-institutional cooperation and conflict are systematically and causally linked: The choice and design of institutions inhibits tensions, which generate conflict over the application and interpretation of institutions, which – in turn – generates potentially significant costs when actors stick with the existing institutional structure, creating a new demand for institutional change and hence cooperation.

Conclusion

The goal of this article was to provide a conceptual map to address the empirical puzzle that we observe in the high level of cooperation between the Council and the European Parliament in day-to-day EU decision-making despite a high potential for inter-institutional conflict. Taking recourse to empirical research in EU studies inspired by rational choice, sociological and historical institutionalism, we have explored the factors and mechanisms underpinning this paradox.

Conceptualizing the relationship between the Council and the EP in terms of the different theoretical approaches illustrates that while ministers and MEPs differ in their preferences and role orientations (ministers represent their member states, while MEPs represent the European citizens), they do – under conditions specified by the different theories – share the objective to ensure efficient decision-making in the EU. This orientation towards efficient problem-solving – irrespective of the behavioral logic underpinning this orientation – ensures that the Council and the EP seek mutual consensus. Furthermore, it is the high potential for conflict that has led to the creation of institutions that promote consensus, such as informal trilogues or different rules established by Inter-Institutional Agreements. Hence, while the different institutionalist approaches shed light on different aspects of the relationship between the Council and the EP, they share one characteristic: the sources of inter-institutional conflict also contain the rationale behind cooperation. By analyzing conflict, we were thus able to provide explanations for consensus – not only because consensus is the absence of conflict, but because the same logics that account for conflict also account for cooperation.

Applying not only one but several different theoretical frameworks enables us to highlight different aspects of our puzzle: RCI helps us to model strategic actions of individuals in institutional environments and to explain the voluntary creation of institutions that constrain future behavior, like inter-institutional agreements. SI points us to the non-strategic, norm-

driven reasons behind human behavior and interactions in certain institutional settings, for example in committees or other negotiation situations. And HI highlights that the current relationship between the Council and EP is the product of complex, intertwined processes and developments over time. In more general terms, we found RCI most helpful in explaining *why* institutions were created (to increase decision-making efficiency which is beneficial for the actors involved) and we found SI most helpful in explaining *how* these institutions in fact promote consensus (by providing shared institutional arenas which facilitate the development of mutual trust and common norms through frequent interactions within institutional arenas). Both RCI and SI have blind spots when it comes to highlighting the processes that led to situations where institutional change was considered necessary by political actors to enhance the benefits or legitimacy of the existing institutional arrangements. This is the greatest strength of HI, which enables us to analyze path dependency not only as a means to establish institutional stability, but also as containing seeds for continuous institutional evolution – in our case leading from conflict to cooperation (and potentially back to conflict).

From our endeavor to study the “paradox of inter-institutional cooperation” through different theoretical lenses, we take away that the explanations provided by the different institutionalist theories are not contradicting and sometimes even overlapping. At the same time, each approach adds a new facet to the explanation. Thus, while we would not yet go as far as to suggest a new, synthesized institutional theory, it is our hope that this article encourages researchers to look over the fence of one theoretical approach, even if it is only to be aware of those aspects that might be removed from the research focus by choosing one approach over the other.

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