Institutionalism, Multi-Level Governance, and the European Union’s Actions in External Trade Negotiations: Some Clues for Research

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Paper to be presented at the ECPR Joint Sessions of Workshops
Institut d’Etudes politiques Grenoble
Workshop on “Decision-Making within International Organizations”
April 6-11, 2001
1. Introduction

This paper is about institutions as independent variables and about the EU’s conduct of external trade negotiations as the dependent one. It aims at helping to illuminate one aspect of the complex array of factors that explain the EU’s external trade policies. It does not pretend to provide a model that could tell the whole story about these policies. Neither does it pretend that institutions determine these. It only tries to help to finding out what difference institutions make.

The objective of this paper is twofold. First, it aims at providing more insight into the ways in which institutional analysis can help understanding politics and policies. It will try to find some complementarity between the three main institutionalisms – rational choice institutionalism (RCI), historic institutionalism (HI), and sociological institutionalism (SI) – and to show how this may help understand the importance of institutionalism in political research. It does not want to draw the ultimate conclusion about the rights and wrongs of each of these institutionalisms.

Second, the paper aims at helping to provide deeper insight into the EU’s conduct of external trade negotiations. In doing so, it provides clues about the way in which research on this subjected could be modeled.

2. The Dependent Variable

The dependent variable consists of the EU’s conduct of external trade negotiations. The perspective is the extent to which the EU’s fifteen member states try to have an impact on the final outcome of such negotiations. The assumption is that each of the member states tries to have as much impact as possible. This assumption has two – to a certain extent conflicting – consequences, which makes that one could even speak of a principal-agent paradox. First, that each member state has an interest to exert as much control as possible on the external negotiations. This means that they have an interest in endeavoring for a negotiating situation that is as close as possible to a hypothetical situation in which they would negotiate themselves and on their own.

Second, impact not only depends on exerting individual control, but also on the ability to exert influence, to use power, in the external negotiations. In order to be able to do so, each member state has an interest in endeavoring for a situation that enables the EU to combine the influence and power of all the member states when negotiating with its external partners. That is only possible when the member states jointly can have an impact on the external negotiations, which means that each of them accepts to relinquish at least part of its own impact. That requires each of the member states to search for an optimal tradeoff between the benefits of their own control on the process, and the benefits of the EU’s capacity to mobilize its market power. Whereas the former implies maximizing ones power, the latter implies checking ones power. Although this is not peculiar for external trade negotiations – it is the essence itself of joint decision-making, certainly in the EU – the fact that this tradeoff has to be made in the context of external negotiations, makes it more compelling, as we will see.

The fact that we will look at the EU’s conduct of external trade negotiations from the perspective of the member states’ attempts to have an impact, to exert control, has an important consequence. It means that the context on the basis of which this happens is one of multi-level policy-making. This sounds evident in the context of the EU, but important here is
the member states’ perspective. It means that different levels play a role, the lowest one being completely controlled by the member states as it is their domestic politics themselves. In the EU – the next level – the member states have to engage in decision-making jointly with their counterparts and with the European Commission. This has repercussions for the extent to which they can control this level.

Still another level is the one where the external negotiations take place. There, a member state has an interest in a situation where the EU can exert its full market power, as at this level it has to negotiate with its external partners who want to control the final outcome – the trade agreement – as much as possible as well. This brings us to the independent variable.

3. Institutions: Independent or Intervening Variables?

The reference to the multi-level governance (MLG) context could be considered as an institutional factor. But we have to be careful about that, because after all, in politics, there is more that can be defined as an institution – thick or thin – than that there is not. There is a need therefore to clarify what is exactly meant by institution. We will come back to that later.

The reference to MLG is important however. It points at the fact that the independent variable will not only refer to institutions but also to institutional interactions. In the context of MLG, this means that attention will be paid to the effects of the interactions at each level on the one hand, and among the levels on the other, and at the extent to which the latter affects the former. In addition, by looking at MLG, institutions will be dealt with as both independent and intervening variables (see figure 1).

Figure 1: Institutions as independent and intervening variables

As independent variables, we will look at the autonomous impact of institutions on the member states’ ability to control the external negotiating process. As intervening variables, we will look at the extent to which MLG leads to the institutionalization of the EU decision-
making process that itself impacts on the member states’ ability. We will come back to that directly after having dealt with the meaning of institutions itself.

4. How to Define Institutions?

It is a daunting task to give the definition of an institution. As institutions are central – either explicitly or implicitly – to most political research, a panoply of definitions have been used. It is therefore not important to look for a definition that would be acceptable for all, but rather to provide a definition that is sufficiently clear to allow for a valid operationalization of the concept. In doing so it is important to make the distinction between institutions, and their effects. Although to a certain extent, it is difficult to define institutions independently from what we expect from them, a definition should precisely aim at disconnecting these two.

In its most elementary form, institutions can be seen as structures in which the preferences of different actors are being aggregated (Milner, 1999: 121). They are the context in which strategic interactions will take place and thus, where collective action will occur. One could say that this definition is the most “thin” definition one can provide, and as such it shows up in scholarly work on rational choice institutionalism. Scharpf (1997: 38) for instance, defines institutions as:

“(..) systems of rules that structure the courses of actions that a set of actors may choose.”

“Rules” refers to formal and informal rules such as procedures, codes of conduct, etc. (Hall & Taylor, 1996: 938).1 As Scharpf (1997: 46) observes, institutions to a certain extent determine what can be reached through the interactions minimally. But rather than determining what can be reached minimally, they define what will be allowed maximally. Certain courses of action will be rejected or can only be chosen at a very high cost (cf. Börzel, 2000: 226). In this sense, institutions change the payoffs for the different participants (Scharpf, 1997: 38-39). They increase the cost of certain actions – through penalties either immediately or in the long run – and reduce the cost of interactions – by making behavior more predictable or rather, less unpredictable.2 They exclude certain outcomes and certain courses of action, with an emphasis on the latter rather than the former.

In such a minimalist definition, institutions are not agents. They are not active but passive players. They shape expectations and limit options and because of that, they create constraints and opportunities. But they do this passively in the sense that they are not agents of their own. It is important – for heuristic reasons – to restrict the definition in this sense. If we would provide agency to institutions we would not be merely referring to institutions but to particular institutions with specific characteristics, namely the capacity to act (cf. Cram, 1998: 69). But even if they lack this capacity, the question has to be raised whether still, they matter. As such, institutions defined as passive players provide a forum (arena) in which positions are being defended and interests warranted through interactions that lead to collective action.

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1 Hall and Taylor (1996: 938) refer to institutions – as they are defined by historical institutionalists – as “the formal and informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy.” In our approach, it only concerns the polity.

2 As Rockman has observed “institutional arrangements make opportunities more or less available and increase or decrease the risk of acting” (quoted in Reich, 2000: 505).
Institutions provide some stability. They are “resistant to redesign” (Hall & Taylor, 1996: 940). That is their essence. But that doesn’t mean that they are static. That depends on the time frame one takes. In the short run, they normally are, otherwise they wouldn’t be stable. But in the medium and longer run, they can be considered to be dynamic, although this is only indirectly relevant when one tries to find out how institutions affect policy outcomes. Looking at institutional change provides some clues on the autonomy of institutions. This is an important aspect. In case they are autonomous, they are not epiphenomenal. Otherwise they would. Being autonomous means that – whatever the explanation for their emergence – institution have a certain existence at least partially independent from their environment, and from the political actors that are affected by them. In other words, they have to be “sticky” to a certain extent (cf. Pierson, 2000: 490-491). Thelen’s concept of “dynamic constraints” points to that in the sense that institutions may be mutable, but that nonetheless, they function as constraints. Changes can be the consequence, then, of deliberate actions to change the institutional parameters, or an unintended consequence of interactions (Thelen & Steinmo, 1995: 17). If institutions could be changed according to the requirements of concrete situations, they would be epiphenomenal in the sense that they would not have any significance of their own but would merely be an instrument of actors that are not constrained by them.

When dealing with the institution’s stability a last remark is in order. By definition, if institutions have an effect on their own, they create path dependency in the sense that the choices of the past affect the choices of the present. If they wouldn’t, institutions wouldn’t matter. The decisive question to point to the difference between historical institutionalism and rational choice institutionalism is then, whether the “clock can be turned back”. If indeed, institutional choices of today can be taken independently from the institutional choices of the past, the timeframe of path dependency will be short (and the dependency itself vulnerable), and historical institutionalism insignificant (cf. Hall & Taylor, 1996: 954).

5. What Can Be Expected from Institutions?

What can we expect from institutions? That is an important question if we want to determine whether and how they matter. In other words, they have to make a difference. If they don’t do this, they cannot supposed to have an impact, they cannot supposed to matter. But what difference do they have to make? In order to answer this question, it could be useful to look at the three different kinds of institutionalism in a complementary way. Seen from the perspective of an individual actor, institutions can have a limited or a large impact. In the lack of any impact, an actor could be expected to be purposive in the sense that he makes choices according to the logic of rational choice (RC). He would try to maximize his utility by weighing the costs and benefits of different courses of action, and by deciding which action to take.

A minimalist institutionalist approach, one that is central to rational choice institutionalism (RCI), would refer to a situation where an individual enters the decision-making process with exogenously determined preferences, but where the institutions would be helpful in providing information, and in making some courses of action more costly than others. The actors continue to behave rationally, that means, on the basis of a strategic calculus. But in doing so, the institutions are helpful. They provide information about capabilities. They narrow the

3 Or in the words of Sibeon (who talks about structures), they are “relatively enduring though not immutable (...)” (Sibeon, 1999: 142)
scope of possible actions because they create procedures that provide for a specific sequence of actions and for specific rights, duties, and constraints for each of the participants (Hall & Taylor, 1996: 944-945). They also provide enforcement mechanisms that help to protect the rights, to fulfill the duties, and to respect the procedural constraints. In this sense, they will not only constrain options but equally enable courses of action that are either unfeasible or too costly in the absence of institutions. They will equally affect the usefulness of the resources that the actors possess or control (cf. Scharpf, 1997: 51). In other words, in RCI, one can only expect a minimal effect from institutions. As Checkel (1999: 546) has phrased it, in RCI:

“(...) institutions are a structure that actors run into, go ‘ouch’, and then recalculate how, in the presence of the structure, to achieve their interests (...)”

When historical institutionalism (HI) is at play, one can expect more from institutions. It remains unclear however, what one can expect. In making the distinction between the three institutionalisms many authors seem to struggle, not with the distinctiveness of rational choice institutionalism or sociological institutionalism, but with the exact meaning of the historical variant. This is quite obvious in Hall and Taylor’s (1996: 939) attempt to do so as they make a distinction between two approaches: the “calculus approach” and the “cultural approach”, whereby the first clearly fits into RCI, and the second in SI. Historical institutionalism is not really distinctive from neither of these two, as, according to the authors, in historical institutionalism a “calculus” variant and a “cultural” variant can be discerned. As Hay and Wincott (1998: 951) observe, does this way of approaching historic institutionalism “a considerable disservice” to the “potentially distinctive social ontology of this approach.” And they add (Ibidem: 953):

“By locating both approaches within (...) [the historical institutionalist] canon [Hall and Taylor] imply that historical institutionalism is not a distinctive approach to institutional analysis in its own right.”

And they may be right. Hall and Taylor (1998: 950) themselves indicate that the combination of the instrumental and the cultural ontology in HI – the eclecticism of HI – has its costs:

“historical institutionalism has devoted less attention than the other schools to developing a sophisticated understanding of exactly how institutions affect behavior, and some of its works are less careful then they should be about specifying the precise causal chain through which the institutions they identify as important are affecting the behavior they are meant to explain.”

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4 These “enabling capacities of institutions” are central in the new economics of organization (cf. Scharpf, 1997).
5 The reference to “minimal” is equivocal however, and we should be pretty clear on this. Minimum is meant to mean that institutions do not affect the preference formation itself. But apart from that, one has to recognize that in RCI, they indeed have a strong, if not a determinative impact, on the actors’ behavior. As Tsebelis (1990: 40) has indicated: “Individual action is assumed to be an optimal adaptation to an institutional environment, and the interaction between individuals is assumed to be an optimal response to one another. Therefore, the prevailing institutions (rules of the game) determine the behavior of the actors, which in turn produces political or social outcomes.” That the institutions determine the behavior of actors can of course, only be the case if the signals they send to the actors are unequivocal on the one hand, and reduce the possible courses of action to just one option on the other. Although it is clear that institutions reduce uncertainty or should do so, that does not mean that they eliminate it. They may constrain the possible options available to the actors. They seldom reduce the options to just one (cf. Moser & Schneider, 2000: 3). As Murphy (1996: 169) phrases it: “There is always more than one way to skin a cat; no possible set of constraints eliminates all degrees of freedom.” Rational choice recognizes this through the folk theorem (cf. Green & Shapiro, 1994: 26).
6 The same kind of approach can be found with Martin and Simmons (1999: 103), but not as variants of historical institutionalism. For them, a distinction has to be made between the rational choice approach and the constructivist approach when analyzing how institutions matter.
But they equally claim (Hall & Taylor, 1998: 958, footnote 2) that “(..) although much rational choice theory is underpinned by assumptions from what we term the ‘calculus approach’, and many sociological institutionalists take a ‘cultural’ approach, we do not see the two schools as conterminous with these approaches.”

In trying to find what one can expect from institutions before one could claim that historical institutionalism is at work, Steinmo and Thelen on the one hand, and Peter Hall on the other, provide a first clue. Steinmo and Thelen (1995: 8-9) point to the fact that institutions do more than just changing the strategic environment in which actors behave instrumentally. They change the actors’ preferences as well. As they phrase it (Ibidem: 9; italic in original):

“Thus one, perhaps the, core difference between rational choice institutionalism and historical institutionalism lies in the question of preference formation, whether treated as exogenous (rational choice) or endogenous (historical institutionalism).”

In the same vein, Hall (1986: 19, also quoted in Steinmo & Thelen, 1995: 2-3) points at the effect of institutions on both the relative power positions of the actors, and on their own assessment of their interests:

“Institutional factors play two fundamental roles in this model. On the one hand, the organization of policy-making affects the degree of power that any one set of actors has over the policy outcomes (..). On the other hand, organizational position also influences and actor’s definition of his own interests, by establishing his institutional responsibilities and relationship to other actors. In this way, organizational factors affect both the degree of pressure an actor can bring to bear on policy and the likely direction of that pressure.”

And in the same sense, he defines the close relationship between interests, institutions, and ideas as follows (Hall, 1995: 91):

“Institutions interact with interests and ideas in a variety of ways. By providing routines linked to processes of socialization and incentives for certain kinds of behavior, they contribute to the very terms in which the interests of critical political actors are constructed. By making organized activity and the expression of political views more or less viable for certain groups, they affect the power with which the interests of key social groups are pressed.”

The problem with all these definitions is however, that they don’t provide the basis of an approach that is significantly different from sociological institutionalism, that provides “a distinctive response to the question: how do institutions relate to individual action?” (Hall & Taylor, 1998: 960). But they do provide clues for such a response.

At the minimum, they add to the rational calculus a second assessment, that of appropriateness. In doing so, they include the element of interaction, whereby the individual actor has to decide about his courses of action by weighting his desire to maximize his utility against the institutional pressure to forgo certain courses of action, even if precisely these would enable him to maximize his utility. In other words, what is distinctive for historical

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7 Attempts by Hall & Taylor (1998: 960) to provide such a distinctive response do not really succeed. Looking at “how institutions confer power or authority on some actors while reducing the power of others”, is not fundamentally different from what one would expect from rational choice institutionalism. But explaining “how the structure of ideas embodied in the institutions of a polity may affect individual action” comes close to historical institutionalism.
institutionalism is the interplay between agency action and structure. As Hay and Wincott (1998: 954) have phrased it:

“Actors are strategic, seeking to realize complex, contingent and often changing goals. They do so in a context which favors certain strategies over others and must rely upon perceptions of that context which are at best incomplete and which may very often reveal themselves inaccurate after the event. (...) the context is viewed in largely institutional terms.”

We would add that given the fact that actors are strategic, they behave themselves moderately instrumental. Their instrumentality is indeed moderated as they don’t look for the optimal payoff but for satisfying outcomes. And this “satisfaction” itself is determined by a combination of material – interest optimization – and immaterial (psychological) concerns – appropriateness. What is appropriate, is determined – or rather suggested – by the institutional context in which the actor interacts with others. At minimum therefore, what would distinguish historical institutionalism from rational choice institutionalism is the fact that in the latter the logic of consequentiality prevails, whereas in the former the logic of consequentiality (LOC) is being moderated by the logic of appropriateness (LOA).8 In both cases however, it concerns the instruments and strategies used by the actors to realize their pre-determined preferences. That is a difference with sociological institutionalism, because here the preferences are supposed to be affected by the institutions as well, i.e. they are supposed to be endogenous.

In this way of defining historical institutionalism and distinguishing it from the sociological variant, one could claim that to a certain extent, a caricature is being made of both. Indeed, most historical institutionalists will consider it as a heresy to claim that only the choice of strategies, not the preferences, is endogenous. The objective here is not however to make caricatures, but to help building theories that enable us to exactly understand where, how, and to what extent, institutions affect individual political behavior. The way in which the three institutionalisms are being distinguished here helps in keeping the benefits of the rational choice institutionalism’s parsimony, while simultaneously trying to explain part of its residual variance. In doing it in this way, we try to avoid falling in the methodological traps for which among others, Moravcsik (1993: 15; 1999: 678-679) has warned us. Indeed, in trying to explain the residual variance, we need to be as rigorous as in the testing of the theoretical models to which this variance is residual. We cannot afford to engage in indeterminate statements, in unclear claims about causal relationships, or in abstract discussions that do not result in clear testable hypotheses.

For the sake of parsimony, we should equally separate rigorously the analysis of the impact of institutions on individual behavior from the impact of individual behavior on institutions. In other words, the analysis of institutional impact should be separated from the analysis of institutional change. Or rather, they should only be combined at a later stage, after we have gained sufficient insight in the question of institutional impact. From this perspective, though institutional change may be important for historical institutionalism, we should first know better what the importance of institutional persistence is. This brings us to the question of path dependency.

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8 In the words of March and Olsen (1989: 36): “A calculus of political costs and benefits is less important; a calculus of identity and appropriateness is more important.” We emphasize however that the calculus is still there. It is indeed the “calculus of political costs and benefits” as moderated by the “calculus of identity and appropriateness”.
Although path dependency is quite often presented as something that is essential for the difference between rational choice institutionalism and its historical counterpart, it is not. As has been mentioned above, stability and persistence are essential characteristics of institutions. Otherwise, they would be mere epiphenomena. Where there is persistence, there is path dependency as choices of the past will affect opportunities of the present, and as today’s choices will impact on tomorrow’s outcomes (cf. Pierson, 1996). The importance is therefore, not in path dependency, but in the nature of its consequences. Actors create institutions because they want to create certain consequences in the sense that they bring the payoffs of certain actions closer to their preferred outcomes. But institutions are not individual devices. They are collective and therefore, intersubjective (cf. Guzzini, 2000: 164 & 166). And in that sense, they generate not only intended but also unintended consequences. The unintended consequences can be found in the norms of appropriateness that interacting within institutions brings with it, and eventually in the preference changes that this entails. From that perspective, one can see how path dependency plays a distinctive role in each of the three institutionalisms, whereas indeed it plays a role in all of them. In rational choice institutionalism, path dependency will play a role in the sense that the dependency is predictable, but nonetheless compelling (otherwise, institutions would be epiphenomena only). In historical institutionalism, the dependency is partly unpredictable in the sense that norms of appropriate actions will emerge. In sociological institutionalism, dependency will be partly unpredictable in the sense that it not only affects the appropriateness of actions but also the appropriateness of preferences.

This brings us back to the question of what we can expect from institutions in the historical institutionalist sense. We can expect them to change, not just the power relations among the actors, but also the norms of appropriateness that guide their strategic actions and interactions. From institutions in the sociological institutionalist sense, we can expect that they will change the actors’ preferences as well, i.e. that they will partly replace individually determined preferences by jointly or collectively determined ones. The following table indicates how this affects the complementarity of the role of institutions among the three

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9 To quote Pierson (1996), who looks at the European integration and the EU member states: “First, there must be an account of why gaps – by which I mean significant divergences between the institutional and policy preferences of member states and the actual functioning of institutions and policies – would emerge. Second, critics must explain why, once such gaps emerge, they cannot reliably be closed.”

10 Making the distinction in this way exposes it to the criticism that we are not talking about historical institutionalism anymore because the essence of that approach is in institutional change. For some authors in this tradition (cf. Pierson, 1996; 2000), it certainly is. But many others that have been writing in this approach have been focussing on institutional impact first and institutional change only implicitly. Given the lack of focus on institutional change, one could claim that it would be better to talk about “thick sociological institutionalism” and “thin sociological institutionalism”, analogous with the so-called thick and thin rationalist assumptions in rational choice analysis (cf. Green & Shapiro, 1994). “Thin sociological institutionalism” would then, be a better name for our historical institutionalism. We have not opted for such an approach, first because in political science, too much authors invent too much new approaches they want to father. We do not share this kind of ambition. Second, because we believe that there is an added value to separate the study of institutional change from institutional impact, even in historical institutionalism. There is no analytical reason therefore, to father a new institutionalism when the three existing ones are more than sufficient. Indeed, instead of inventing new ones, we should refine the existing ones in order to enable them to be exposed to rigorous empirical research and to enable us to test empirically whether it is useful to continue to separate the three.

11 If one, following Steinmo and Thelen (as quoted by Bulmer, 1994: 356) define institutional impact as follows: “By shaping not just actors’ strategies (as in rational choice), but their goals as well, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own imprint on political outcomes”, HI would suppose to be concerned about the “mediating their relations of conflict and cooperation.”
institutionalisms, and between these three and institution-free rational choice,\textsuperscript{12} taking into account that we focus on institutional impact only, not on institutional change.

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<thead>
<tr>
<th>Approach</th>
<th>Expected Effect</th>
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<td>Rational Choice (RC)</td>
<td>Logic of consequentiality</td>
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<tr>
<td>Rational Choice Institutionalism (RCI)</td>
<td>Institutionally affected logic of consequentiality</td>
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<tr>
<td>Historical Institutionalism (HI)</td>
<td>Action-related logic of consequentiality as moderated by the logic of appropriateness</td>
</tr>
<tr>
<td>Sociological Institutionalism (SI)</td>
<td>Preference-related logic of appropriateness</td>
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Table 1: The Expected Impact of the Three Institutionalisms

6. Intended and Unintended Consequences

The choice not to control (or to loose control) can be perfectly rational, and therefore, deliberate. What else is European integration about? It all started as a deliberate attempt at reaching objectives by voluntarily forgoing the ability to have full control on public policy. It is about gaining control by surrendering control. Lindberg’s definition points us to that fact. As he phrased it (Lindberg, 1963: 6), integration is: “the process whereby nations forgo the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs.”

Implicit in this definition is the close relationship between the “gaining” and the “forgoing”. Even in case of unanimity rule, the first cannot be achieved without the latter.\textsuperscript{13}

And what is true for European integration is true for all situations where political actors decide to interact.\textsuperscript{14} In other words, it can be perfectly rational that actors intend to create consequences that themselves entail consequences that are unintended. A member state can decide to accept the qualified majority rule on regional policy, knowing that in the future, this rule can create situations in which decisions will be adopted that it does not want to be adopted (unintended), but that nonetheless will enable the actor to achieve (intended) objectives that it cannot achieve without QMV. What is intended and unintentioned is sometimes difficult to separate from each other. It expresses to a certain extent a risk assessment based on anticipated costs and benefits. The expected benefits of being able to act jointly are considered to be more valuable therefore,\textsuperscript{15} than the cost the loss of control will incur.\textsuperscript{16} It is necessary to be extremely careful therefore, when talking about intended and unintended consequences or when measuring them.

\textsuperscript{12} The use of RC can also be considered to deliver counterfactual evidence, namely by showing that in the absence of institutions the same outcomes would be generated as in their presence.

\textsuperscript{13} As Kohler-Koch (1996: 362) has indicated, was the incremental expansion of the scope of integration a consequence of the fact that “(..) the member states themselves (..) considered joint problem-solving to be more attractive than preserving their national autonomy.”

\textsuperscript{14} The word “interaction” refers indeed to a situation where there is at least mutual action and therefore, where there is at least minimal or no hierarchy among the actors.

\textsuperscript{15} Martin and Simmons (1999: 99-100) indicate that essentially, it concerns a mixed game in which self-interested actors realize that they can only maximize their utility by acting jointly.

\textsuperscript{16} A typical example is Margaret Thatcher’s support for QMV on internal market issues during the 1985 IGC.
Institutions are not created however, with the explicit objective to increase the unpredictability of outcomes, at least not from the perspective of the rational actor. Such an actor may accept the cost of unintended consequences because this cost pales at the benefits of the intended ones. One can assume therefore, that institutions are being created in order to reduce the net unintendedness of the consequences. In this way the logic of institutional creation is close to the one that is central to Transaction Cost Economics (Mulé, 1999: 147). In the effort to reduce the unintendedness of the consequences new unintended consequences may arise, but that is the price the rational actor is prepared to pay. These unintended consequences may have a multiplicatory effect however, in the sense that they entail new consequences that are equally unintended so that the rational actor who decided to create institutions is losing control over them to the extent that he is even not able anymore to reap the benefits of these.

If we only look at the interactions among the actors themselves, this interplay of intended and unintended consequences becomes particularly relevant. When decisions about institutional creation or reform are being taken, an actor is perfectly able to assess – given the rules and procedures that will be institutionalized – the consequences. He will be able to anticipate the effects of his decisions on the relative power positions, and on the new opportunities that are engendered by these. A rational actor will assess his decision on this. Rational choice institutionalism points at this assessment.

The actor’s assessment will be incomplete however. It will not cover the whole spectrum of the costs and benefits that will emerge. As the institutions will get a life of their own – in the sense that they are more than the sum of the participating actors – they will engender consequences that were impossible to anticipate accurately in advance. When we talk about interactions only, such costs and benefits emerge as a result of the informal norms and rules that are being created by the interaction itself. They will close certain avenues and open others. They will restrain the logic of consequentiality and open the door to the logic of appropriateness. Historical institutionalism should aim at making clear where path dependencies start to emerge that are themselves unintended consequences. It should help us finding out how institutions – that are supposed to be created to reduce the residue of uncertainty in human action – simultaneously reduce and enhance this residue, and how this affects the strategic choices made by political actors.

7. The Logic of Consequentiality versus the Logic of Appropriateness

It has been mentioned several times now. Decisive in the different institutional impact that we expect in rational choice institutionalism and historical institutionalism is the role of the logic of appropriateness (LOA). This is a concept however, that is not without its own problems.

LOA can best be understood in contrast with the logic of consequentiality (LOC) because it has been elaborated as a reaction to the pervasive influence of LOC in the study of politics.

17 Note that as soon as joint action has been started, a new cost will emerge: the cost of the exit option (Martin & Simmons, 1999: 111). The larger the sunk costs of joint action the less probable exit will be. In this sense, what Stopford and Strange (1991: 140) have called the “obsolescing bargain” for companies when dealing with governments also exists for cooperation among states.

18 What Kohler-Koch (2000: 514) claims about intended and unintended consequences and institutional development therefore, is equally applicable for the interactions within existing institutions. As she phrases it: “The living institutions of any polity owes its characteristics both to constitutional design and to the intended and unintended consequence of decisions taken by a multitude of actors.”
The meaning of LOC is well known. Hindess (1989: 49), for instance, has formulated it as follows:

“Actors have a given set of ends, they choose between them in a consistent fashion and, of the means of action available to them, they select the most appropriate to the realization of their chosen ends.”

March and Olsen (1998: 949) talk about “a logic of anticipated consequences and prior preferences”. Actors are rational, evaluate different possible options, and choose among them in terms of interest maximization. In this approach, cooperation emerges because actors expect gains from coordinated action.

Important is however, that the choices of the actors are more guesses than determinate choices, something that is recognized by most rational choice theorists. As Green and Shapiro have observed (1994: 26):

“The dominant view among rational choice theorists is that in politics unique equilibria can seldom be identified, though theorists differ on the significance of this fact.”

Whatever the consequence for rational choice analysis itself, the fact that indeed, most possible outcomes are indeterminate, creates room for other factors that will determine what the outcome will be. It is here that identity and appropriateness show up in institutionalist thinking. March and Olsen (1984: 736) see room for this in the two guesses that actors have to make when making a choice: a guess about the future consequences of current action, and a guess about future preferences for possible future outcomes. In these guesses, uncertainty plays a role, otherwise it wouldn’t be guesses in the first place. That reflects the fact that decisions are based on assessments of situations and their consequences, and not on conclusive calculations of these. Actors operate “within the constraints of bounded rationality rather than instrumental rationality” (Mulé, 1999: 148). This rationality leaves, at minimum, room for interpretation, and therefore, for mechanisms that affect interpretations, such as belief systems. This room becomes even larger when one takes into account that in many cases, actors themselves do not even try to calculate, or otherwise stated, do not even try to eliminate the amount of uncertainty in their assessments. In many cases, they leave it – most frequently unconsciously – to others to do so. That is why besides consequence-governed, rule-governed factors are important in explaining political behavior.

In rule-governed behavior, actors do not act on the basis of a means/end and cost/benefit analysis, but on the basis of a logic of appropriateness. We hold that although appropriateness explains part of individual political action, it does not allow for determinate predictions (Kerremans, 1996: 220-221). It is more or less a mixture of consequence-governed and rule-governed factors that determines choices. That of course, immediately raises the question, under what conditions the former or the latter will prevail, and if none prevails, what the relative importance of each of the two is. The answer to that question is an empirical one although some authors have provided some clues. And in providing it, caution is required in determining whether the logic at work is consequentiality or appropriateness. It is not always evident to distinguish the two on the basis of empirical findings. This is the consequence of

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19 Krasner (1999: 185-186) has indicated for instance, that the LOC has more chances to be determinative in situations where the actors have multiple and contradictory identities, where there seem to be no relevant rules at all, and in which the material results of different courses of action are obvious. LOA will show up in situations where the actors have clear identities that specify appropriate behavior, and where the material results of different courses of action are relatively unclear.
the fact that a distinction has to be made between how actors behave, and why they behave as such. The question is relevant because the two logics not only refer to actual behavior but also to the intentions that form the basis of that behavior. Measuring behavior can be intricate. Measuring intentions is laborious.

In order to avoid the trap of confusing behavior with intentions, a distinction between two kinds of logic of consequentiality (LOC) and the logic of appropriateness (LOA) may be useful. LOC-1 would be the logic that is reflected in the intentions, whereas LOC-2 would refer to the actual behavior. The same would apply to the logic of appropriateness. LOA-1 would refer to the intentions, whereas LOA-2 would refer to the actual behavior. The following table clarifies this.

<table>
<thead>
<tr>
<th>Behavior</th>
<th>Intentions LOC-1</th>
<th>LOA-1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Consequence-related behavior</td>
<td>Rationalized myths</td>
</tr>
<tr>
<td>LOC-2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOA-2</td>
<td>Opportunistic adaptation</td>
<td>Rules-based behavior</td>
</tr>
</tbody>
</table>

In this table, four possible situations have been presented. In the first situation (LOC-2/LOC-1), an actor behaves on the basis of an instrumental rationality. His actual behavior reflects his intention to behave instrumentally as he believes that this is the best way to maximize his utility. With this combination, pure instrumentality is at work.

In the second situation, the actor decides to adapt his behavior to what is considered to be appropriate. He does so however, not because he believes that he should, but because he believes that given these rules, it is the best possible strategy to maximize his utility. An EU member state for instance, may forgo the opportunity to veto a decision because it believes that one way or the other, this could backfire. At first sight, such a member state may behave appropriately (LOA-2), but does so because his cost/benefit calculus suggests him to do so (LOC-1). Although his behavior would suggest that the logic of appropriateness is at work, it really is the logic of consequentiality that is decisive. In other words, the actor has adapted his behavior opportunistically.

Only in the third situation can one say that the logic of appropriateness is at work. Here the actor will behave according to the rules of the game, because he doesn’t even think of acting differently. Acting appropriately is not, then, the consequence of a rational calculus, but the consequence of the conviction that an actor cannot and should not act differently.

The fourth and last situation refers to the rationalized myths (cf. Christensen & Rovik, 1999: 175). In such a situation, actors behave on the basis of a cost/benefit analysis but do so within the confines of appropriate behavior. This means that their calculus is not just based on a bounded rationality because of their limited capacity to take into account all the possible costs and benefits of all possible alternatives, but because the spectrum of the alternatives that they include in their assessment is restricted by those alternatives that are considered to be appropriate. Such behavior may be presented as based on the logic of consequentiality –

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20 Schimmelfennig (2000: 117) claims for instance, that behaving legitimately often is a choice based on a calculation wherein states determine “whether the benefits of international legitimacy are worth the costs of adaptation and conformity.” As a consequence, the actor that will be socialized “confront[s] the standards of legitimacy as an external institutional fact which impacts upon (...) [its] cost-benefit calculations.”
because it is considered to be appropriate to pretend to behave in this way – but is really based on notions of appropriateness.

8. Complementary and Cumulative Effects of the Three Institutionalisms

Based on the above, it is possible to try to measure the exact effects of institutions by using the three institutionalisms in a complementary way. As has been indicated above, the starting point would be that actors try to behave rationally, that they try to weigh the costs and the benefits of different alternatives before they decide. If they can do this without any impediment, rational choice (RC) is supposed to be at work.

When an actor behaves in this way, but has to do this in an institutionalized context, rational choice institutionalism (RCI) will supposed to be at work when the actor will continue to try to maximize his utility, but taking into account the path dependencies created by the institutions – the sequence of the procedure, the power relations as created by the institutions – and using the benefits of the informational added value provided by the institutions.

When an actor departs from utility maximizing behavior because of the written and unwritten rules, historic institutionalism (HI) will supposed to be at work. When the preferences themselves are being affected by the institutions – i.e. when preferences have been changed as a consequence of participation in the institutionalized decision-making – sociological institutionalism (SI) will supposed to be at work.

The four approaches (RC, RCI, HI, and SI) are not only supposed to be complementary, but also cumulative. Even if an actor is exposed to the logic of sociological institutionalism, part of his behavior will continued to be inspired by rational choice, and rational choice institutionalism. Equally, when an actors’ strategic choices are being confined by rules of appropriateness, one can expect that in case these rules still leave some room between a range of appropriate strategies, that the actor concerned, will choose among these on the basis of his concern to maximize his utility, given the behavioral confines. And even when sociological institutionalism is at work, the actor can be considered to strive for a maximal achievement of the appropriate preferences, taking into account the behavioral confines. This means that four possible explanations of institutional impact on actors’ strategies can be discerned:

RC
RC+RCI
RC+RCI+HI
RC+RCI+HI+SI

This equally means that in researching institutional impact empirically, attempts should be made to distinguish the four possible explanations in this way.

9. Multi-Level Governance and Two-Level Games

In the case of European Union decision-making, multi-level governance certainly is a factor of complexity. We do not have to repeat all aspects of multi-level governance here. Others have written extensively on this. We only have to point at two aspects. First, the relationship between multi-level and governance, and second, the relationship between multi-level and institutionalism.
Marks (1995) and Kohler-Koch (1996; 1999) have pointed at the importance of the first. Marks (1995: 392; cf. Hooghe & Marks, 1997) has pointed at this relationship as follows:

“I suggest that we are seeing the emergence of multilevel governance, a system of continuous negotiation among nested governments at several territorial tiers – supranational, national, regional, and local – as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level.”

Kohler-Koch (1996: 360) specifies this even further by pointing at the fact that the multi-level character of the decision-making has promoted a kind of governance in which hierarchical (or authoritative) ways of decision-making are replaced by a “highly interwoven negotiating system” (Kohler-Koch, 1999: 25). It concerns:

“(..) a system based on the recognition of a plurality of interests (..) [that is] linked to a reductionist concept of legitimacy which is equated with efficient performance.”

Indeed, by negotiating, situations are avoided in which there are clear winners and losers, since the losers would be inclined not to abide by the decisions taken, which would negatively affect the system’s performance. When pointing at this “governance without government” Kohler-Koch looks at the involvement of private and public actors in policy-making and the role of the public actors to “bringing together the relevant actors of society” (Ibidem: 26), to provide for “a sympathetic treatment of target groups”(Ibidem: 25; see also Rhodes, 1997: 53; Peterson & Bomberg, 1999: 22-23). This way of governance is equally important however, for the relations among public actors only. In the EU this means that governance will take place in inter-organizational networks that act as negotiating systems where the focus is on consensus-building rather than on imposition of majority positions. But in this sense, governance itself could be or become an important generator of rules of appropriateness.

A warning is in order however. The “governance” in multi-level governance can be misleading in the sense that “bringing together the relevant actors of society” would suggest that systems of multi-level governance are open. It is not, or rather, only to a certain extent. This makes that in a sense, the relationship between “multi-level” and “governance” is a contradictory one. On the one hand, the multi-level character of governance requires less imposition and more negotiation and involvement in order to enhance the system’s performance. On the other hand, however, the multi-level character provides opportunities for closures. The outcome is therefore, selective, or even strategic openness. This is central in the paradox of weakness to which many authors have referred. This paradox refers to a situation where the participation of the member states at the EU level enables them, to insulate themselves – whenever that is functional – from the demands of domestic interest groups (Grande, 1996: 328). The separation between the two levels functions as a kind of “wall” therefore, against the access of an unrestricted amount of societal demands to decision-making and enables the public actors to open and close this access strategically. “Agency

21 As a matter of fact, a non-authoritarian or hierarchical way of authoritatively allocating resources is the essence of the concept “governance”. As Rhodes (1997: 49 & 53) has observed: “(..) steering is a synonym for governance”, and “(..) governance refers to self-organizing, interorganizational networks.”

22 As Grande (1996: 324) has stressed: the EU is not just a multi-level system but “a multi-level system of joint decision-making”, featured by “the institutional interlocking between national and supranational institutions”. Ebbinghaus (1996: 418-419) refers to a polyarchy that is one part of the “Mehrebenen-Polyarchie” in the multi-level governance system: “Der polyzentrische Ansatz fügt nun ein weiteres Element hinzu, nämlich ein multiples Akteursnetz, das vom Staat bis in die Gesellschaft hinein gespannt ist. Er sieht internationale Politik als komplexe Interdependenz in einer mehrschichtigen Polyarchie.”
Capture” by one or a limited number of interest groups is almost impossible therefore (Ibidem: 322; see also Wincott, 1995). Public actors gained power, therefore, to “(..) to pursue [their] (..) own (public) interest against strong pressures from societal actors” (Kohler-Koch, 1996: 369).

There is no reason however to suppose that this paradox of weakness does not play a role in the relations among the public actors, in the sense that they enable one public actor to exclude others. This is nothing original since to a certain extent, and in a slightly different way, this has already been suggested by Putnam’s two-level game (Putnam, 1988: 434), and even by Schelling’s conjecture (Schelling, 1966: 19). But in both cases, a central point is that the government representatives (chiefs of government) are simultaneously involved in two games – an international and a domestic – whereby the domestic one is a game in which the government leader has to cope with parliament and interest groups, because these have to ratify the agreement concluded at the international level. But by playing the two levels against one another, the chief of government can open and close the game at level I for the players of level II (cf. Milner, 1997: 77-88).

When comparing the two-level game with multi-level governance, one has to be careful to clearly make the distinction between the two. The first distinction is that multi-level governance suggests a stronger kind of integration at what Putnam called level I (the international level, than the two-level game. Or rather, that the two-level game leaves this question open, whereas the concept of MLG does not. Stronger integration means that MLG suggests that the interactions at level I will take place within more or less institutionalized settings, without by definition saying anything about the presence or absence of institutional impact.

Second, as Sidenius (1999: 178) has observed, multi-level governance does not presume that government leaders are the only relevant actors at level I. To a certain extent therefore, MLG is a departure from the state-centrist approach of the two-level game.

The importance of comparing the two approaches – MLG and two-level games – in this context, is that it brings us to the recognition that both can be relevant to understand decision-making in the EU. This is even more the case when one studies the EU’s external trade relations because that implies that the EU as a multi-level governance system is itself involved in a two-level game.

The two-level game is important because it indicates how interactions at one level affect interactions at the other, although the two levels are in principle autonomous from each other. Second, it stresses the possibility that the actors who participate at the two levels can use this role in order to play the interactions at one level against those of the other. In other words, those with the janus-like position in the game, have a strategic advantage that the others don’t have.

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23 For an interesting account of agency capture in the context of trade policy, see Underhill (1999).
24 Putnam uses the term “ratification” in a broader sense than the legal one: “(..) I use the term generically to refer to any decision-process at level II that is required to endorse or implement a level I agreement, whether formally or informally” (Putnam, 1988: 436).
25 As Sidenius phrases it: Instead, we move to a multi-level game, which leaves much more room for independent action of supranational institutions and – more important in this context – EU action directly by domestic interests.”
Multi-level governance is important because it points at the possible relevance of the institutional setting in which multiple levels interact, or – as in the case of the EU – are integrated. Besides that, the role of supranational institutions is being stressed. And finally, it is recognized that private actors can have direct access at level I.

In the case of the EU’s external trade policy, we have to take into consideration, the logic of the two level game where the internal EU decision-making process can be considered as level II, and the external negotiations as level I. The internal EU decision-making process is however, a multi-level game. Rather than speaking of a three-level game, therefore, we would study the EU’s external trade policy from the point of view of a combined two-level/multi-level governance setting.

![Diagram of Two-Level/Multi-Level Governance Setting](image)

**Figure 2: The Two-Level/Multi-Level Governance Setting**

**10. The Two-Level/Multi-Level Governance Setting and Institutionalism**

This paper aims at analyzing the impact of institutions on the EU’s conduct of external trade negotiations. If the context of such negotiations is being treated as a two-level/multi-level governance setting, the question that immediately shows up is where we can expect institutions to have an impact. The following figure tries to clarify that.
Figure 3: Institutional Impact in the Two-Level/Multi-Level Governance Setting

Four aspects (numbered 1 to 4 in figure 3) are important here:

1. The extent to which the external negotiations are being institutionalized, whereby “the extent” refers to RC, RC+RCI, RC+RCI+HI, and RC+RCI+HI+SI;
2. The extent to which this institutionalization (or its absence) affects the decision-making in the EU by providing strategic opportunities to some, several or all EU actors;
3. The extent to which the internal negotiations are being institutionalized given the fact that they take place in the context of external ones, and how far this institutionalization goes (RC, RC+RCI, RC+RCI+HI, and RC+RCI+HI+SI);
4. The extent to which there is a feedback from the institutionalization inside the EU to the one in the external negotiations. A negative feedback would mean that the former negatively affects the latter. A positive feedback would mean the opposite.

The benefit of this approach is twofold. First, it avoids a study of the interaction between the EU’s internal decision-making with the external trade negotiations without taking into account the question of institutional impact. Meunier (2000) sets a step in that direction, but her analysis has basically been restricted to rational choice institutionalism, namely because of her more or less formal focus on the EU Council decision-making rules (unanimity and QMV).

Second, it tries to find out to what extent the dynamics – if any – of the external negotiations reverberate into the interactions not just at the EU level, but also between the member states’ representatives in the EU bodies (Council, Committee 133, ad hoc committees), and their respective domestic political systems.26

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26 This immediately raises the question of the way in which the actors are being perceived, a haunting one in institutional analysis. Milner (1999: 128) referring to the work of Frederick Frey indicates that working with aggregates is acceptable on condition that it concerns an actor that is still able to behave itself as one coherent unit, and that given this condition, one should look for the highest possible level of aggregation. Related to this is
11. The Challenge of Operationalization

The framing of this approach is only the first step however. Another aspect will consist of its operationalization. Bulmer (1994: 373) has provided some clues in that sense, some of which are useful for this kind of research. He suggests *inter alia* (1) the identification of the boundaries of the sub-system, in this case external trade negotiations; (2) the mapping of the policy participants, where attention should be paid at the different levels and organs (Council members, Commission negotiators, members of the Committee 133 and its auxiliaries, members of ad hoc committees, external partners, international actors (such as the WTO secretariat)); (3) the networks among the participants, which means that not only attention has to be paid to the mapping of the participants themselves but also of the relations and interactions among them. Besides these three, attention should be paid at (4) the strategies used by the member states and the Commission, and their perceived limits on the leeway to use these strategies; (5) the extent to which the external negotiations are being used strategically to affect the internal ones and vice versa, and by whom; (6) the extent to which the member states succeed in acting as one principal and its effect on the role of the Commission as the agent; (7) the extent to which politicization affects the strategies and the networks; (8) the impact of formal and informal external negotiations on the interaction between the internal and the external negotiations.

12. Conclusion

We have tried to provide a model to study the impact of institutions on the EU’s conduct of external trade negotiations. We did so by suggesting a way of working in which rational choice, rational choice institutionalism, historical institutionalism, and sociological institutionalism are supposed to be possible explanations of political behavior that are complementary and cumulative towards one another.

Applying this model is another challenge however. The basis of such an application could be the analysis of concrete decision-making processes in the European Union that aim at deciding the positions to be taken in external trade negotiations, at conducting these negotiations themselves, and at adopting their outcomes: the international trade agreements. Different authors have analyzed such decision-making processes. Most of them did not do so from the perspective of institutional impact and among the research that has been done, a need exists to look further than only at the formal (legal) aspects and to look more systematically at institutional impact that goes beyond rational choice institutionalism. That is not to say that RCI is problematic in itself when it is used as a tool to study external trade negotiations. On the contrary, Meunier’s recent article on this subject (Meunier, 2000) – and more precisely on the extent to which different institutional arrangements affect the possible role of the Schelling Conjecture – has shown that this kind of approach is a *conditio sine qua none* for deeper institutional research. It gives us a clue what we can expect from institutions minimally and provides a challenging question whether we can find more in terms of institutional impact.

There are reasons to expect this. Previous research on the EU’s external trade relations (cf. Kerremans, 1996) which has not been conducted to measure institutional impact, has provided

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the condition of agency (Sibon, 1999: 141; see also Scharpf, 1997: 39 & 54-57) where an actor has to be capable of taking decisions and of acting according to these.
some indications however, that more is at work than RCI expects. But rigorous empirical testing is required in order to corroborate this. Recently, such research has been started with a focus on three case-studies: the (abortive) attempt to launch a Millennium Round of multilateral trade negotiations, the negotiations for the Cotonou Agreement, and the negotiations on the Chinese accession to the WTO. This will hopefully provide more insight in the EU’s conduct of external trade negotiations and in the impact of the three institutionalisms on this.
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