The Council of the European Union and the European Council

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Introduction

The European Council and Council of the European Union (ECC) constitute the executive–legislative core of EU politics. By design, these institutional arenas represent national interests in a networked, club-like model of interstate bargaining. They have also evolved an intricate organizational structure of collective governance across a wide range of sovereignty-sensitive policy areas, from macroeconomic policy to internal security. In most (but not all) policy areas, there is now the possibility of applying the qualified majority voting (QMV) rule; however, one of the more remarkable traits of the ECC, is the high proportion of legislative decisions taken by consensus, without recourse to any formal vote at all. Overall, the ECC is an unparalleled international example of what Anne-Marie Slaughter has suggestively termed ‘networks of networks’ (Slaughter 2004: 132). As a system of networked governance, the ECC’s operations now cover an all-inclusive range of public policies involving thousands of national officials at all levels of technical specialization and political seniority. In 2011, this included just under 4,600 official ‘institutional’ meetings (see Table 12.1) with an operating budget of over 500 million euros.

Even when we attempt to simplify its complex operations, it is not easy to succinctly describe the Council system. In the past, the blanket term ‘Council of Ministers’ captured the bulk of the mechanisms involved, however technically inaccurate the term may have been. Since the advent of the EU in the 1990s, the common practice is to differentiate between the Council of the European Union and the European Council. Some choose to refer to these in the plural as the ‘Council’ or the ‘EU Council’, while others still adhere to the old nomenclature ‘Council of Ministers’. The Council’s small but influential bureaucracy, the General Secretariat of the Council (GSC), has recently adopted the shorthand phrase ‘European Council and Council’ (ECC) to briefly describe these separate but interdependent bodies. My preferred terminology refers to the ECC as the ‘Council system’, although some may object that this imparts more systemic-level coherence to the constant cycle of independent meetings than actually exists.

The chapter is structured as follows. The next section provides a brief overview of significant changes to the ECC following the passage of the Lisbon Treaty. We then examine the
evolution of the ECC’s executive and legislative functions and consider the difficulties involved in finding the right label for the type of institutional authority this system represents. Building on this, the following section assesses the ECC from the perspective of networked governance and infranationalism in order to better account for its hybrid intergovernmental/supranational qualities. A separate section will explore voting patterns and contemplate a range of potential explanations for the Council’s ingrained consensus practices. We then turn our attention to the historical roots of this decision-making ‘culture’ and the patterns of socialization necessary to sustain it. A brief concluding section will follow to link the Council’s culture of decision-making to transformative effects in how national agents network in the EU legislative process.

The 2009 Lisbon Treaty and ECC reform

As the EU continues to expand, the ECC ‘system’ has evolved into a more layered and complex amalgam. The 2009 Lisbon Treaty (LT) is a good illustration of the incremental engineering of the ECC’s formal institutional structures. The most significant change is the designation of the European Council as an official, free-standing EU institution in which summitry involving heads of state and government can ‘define the general political directions and priorities’ of the Union. The LT strips the leadership of the European Council from the rotating presidency (which changes hands every six months), vesting it instead in a new full-time president. This president is selected by the European Council (QMV applies) for a two-and-a-half-year term (renewable once) and cannot simultaneously hold a national office. The president is expected to chair all meetings of the European Council (and the newer Euro summits) as well as ‘drive forward its work’ and ‘endeavor to facilitate cohesion and consensus’. However, the formal LT upgrade of the European Council’s role was pre-dated by a more incremental development dating back to at least the Maastricht Treaty era of the early 1990s. The accretion of overall strategic leadership in European Council summits reflects an institutional adaptation to the perceived pressures of the democratic deficit associated with the heightened politicization of EU affairs since the early 1990s (De Wilde and Zürn 2012). In addition, the Eurozone crisis has led to the further institutionalization of two annual summits of the Euro-area heads of state and government, extending the obligations of high-stakes summitry into new territory. Some interpret these top-down centralizing trends as a new tendency towards ‘executive federalism’
in the EU. Regardless of the underlying rationale, the regular practice of European Council leaders vetting the EU’s most important decisions now represents a safety-valve that modulates the Union’s evolving democratic deficit. The several dozen European Council summits spanning the period from 2008 to 2013 attest to how significantly the resolution of the Eurozone’s problems has hinged on the ‘output legitimacy’ conferred by the heads of government. Even prior to the LT changes, it was not uncommon for scholars to observe that the European Council was ‘operating increasingly as the senior branch’ of the Council system (Hayes-Renshaw and Wallace 2006a: 2).

The other major LT change for the ECC was the upgrading of the position of its Foreign Policy chief, now dubbed the High Representative of the Union for Foreign Affairs and Security Policy. In addition to the important external representation functions that the High Representative role entails, the job also includes chairing the Foreign Policy Council (made up of EU foreign ministers) and serving as vice-president of the Commission in charge of the External Relations DG. The position is appointed by the European Council (QMV applies) with the approval of the Commission president for a five-year term. The High Representative is also tasked with the establishment and administration of an EU-level diplomatic corps, known as the European External Action Service (EEAS). The EEAS was primarily created by transferring existing foreign policy specialists attached to the Council’s internal bureaucracy (GSC), along with experts from the Commission and the national diplomatic services. The purpose of the EEAS is to assist the High Representative and ensure the consistency of the Union’s external relations, including the management of some 130 delegations overseas.

Other LT changes include a revision of majority voting rules to phase out voting ‘weights’ and introduce a new double majority model based on minimum thresholds of 55 per cent of EU member states representing at least 65 per cent of the EU population (see note 1). In addition, the EP’s co-decision is extended into 40 or so new fields, including justice and home affairs (the LT considers co-decision to be the Union’s ‘ordinary legislative procedure’).

**What does the Council system do? What kind of institution is it?**

Ever since the original creation of the Special Council of Ministers under the European Coal and Steel Community (ECSC), the institution’s basic design has reflected member states’ desire for the representation of national interests in a setting of pooled sovereignty. The Council system that has since evolved has become considerably more complex in both its ‘scope’ and ‘level’ of decision-making (Lindberg and Scheingold’s terms; see Börzel 2005 for a more recent interpretation), but its basic institutional purpose has remained the same. Thus, despite major changes in the EU, such as the expanding co-decision powers of the European Parliament (EP) (see Chapter 11), the ECC has retained a basic, centralized gate-keeping function in the EU’s legislative process. The authority to take decisions at the EU level and the legitimacy behind the EU’s *acquis communautaire* fundamentally rests on the Council system’s role in articulating and representing national interests.

That said, from a different vantage point, the ECC also appears to be in a state of continual adaptation and change, with a healthy degree of creative experimentation built into the system. Historical institutionalists would stress the path-dependent sequence of building tight-knit clubs of like-minded officials who engage in repeated, face-to-face negotiations, facilitated by *in camera* settings that allow frankness and mutual responsiveness based on interpersonal relations, trust and what Robert Keohane terms ‘diffuse reciprocity’ (Keohane 1986). Even the most jealously guarded realms of national sovereignty (what IR used to call ‘high politics’) now feature Council-level networks of officials who operate in a pooled sovereignty mode. Many of these ‘networks’
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began modestly or with very limited competencies, such as the Trevi Group, which was formed in the 1970s to discuss terrorism (JHA), or the European Political Cooperation (EPC) process, which took 20 years to morph into the Common Foreign and Security Policy/European Security and Defence Policy (CFSP/ESDP). Another leading example of evolutionary change is European Council summitry, which began as an *ad-hoc* arrangement (e.g. Hague summit of 1969); by the mid-1970s, it had become an extralegal Community institution, but was not mentioned in the Treaties until the 1986 Single European Act. Now, post-Lisbon, this summitry is a full-blown independent EU institution with its own Chair. The ‘soft law’ policy coordination methods associated with the 1997 European Employment Strategy (EES) and the 2000 Open Method of Coordination (OMC) point to another pattern of experimentation. This type of policy coordination focuses on benchmarking and monitoring national employment and welfare policies; it is dependent on peer review and the exchange of best practices without the more intrusive and legally binding commitments found in the traditional ‘Community Method’ (Wallace 2010: 98–100).

Thus, in design and evolution, the ECC is the Union’s primary interface for networked governance in arrangements of ‘pooled sovereignty’. However, serious differences in interpretation emerge when we attempt to characterize the kind of institution it represents and the implications of ‘pooling’ among sovereign states. Analytical dissonance over the concept of ‘pooling’ dates back to the influential volume edited by Robert Keohane and Stanley Hoffmann in which the term was introduced. Specifically, the authors define the concept of ‘pooled sovereignty’ as ‘sharing the capability to make decisions among governments, through a process of qualified majority rule’, with an observable loss of national autonomy in the pooled issue areas (Keohane and Hoffmann 1991: 7–8). However, they go on to state that ‘pooling’ does not produce supranational outcomes, since ‘authority is not transferred to a supranational body’; rather, the ‘crucial decision-making role is taken by an interstate body’, the ECC. Another contributor to this project, Wolfgang Wessels, made a pointed effort to contest this interpretation, as the Keohane and Hoffmann formulation ‘only implies close horizontal cooperation and common management of competencies and instruments still in the hands of the national states’ (Wessels 1991: 137). In Wessels’ view, the important implication of pooled sovereignty is the ‘amalgamation’ of the ‘national system into a new common system with its own competencies, institutions, and procedures’, and thus the Council system is not an “interstate body” as Keohane and Hoffmann perceive it... but a body at the supranational level’ (ibid.: 149, 137). The semantic difference between the ‘supranational’ and ‘interstate’ labels is not only an academic concern, but would seem to matter to EU practitioners as well. One Council veteran, Philippe de Schoutteete, recalls a telling anecdote:

Ambassador Van der Meulen, who was Belgium’s permanent representative for a quarter of a century and a veritable pillar of COREPER, used to explain that one should never talk about the Ministers Council, which would describe an intergovernmental meeting, but about a Council of Ministers, in other words a Community institution comprising cabinet ministers.

(de Schoutteete 2011: 1)

In one of the pioneering texts in EU Studies, Ernst Haas expresses a view of the Council that is much closer to Wessels’ formulation than that of Keohane and Hoffmann. In his interpretation, rather than ‘the traditional principle of a diplomatic conference’, the Council is based on ‘the principle of a novel community-type organ’ (Haas 1958: 491). A conceptualization of pooled sovereignty that emphasizes the continued, ultimate authority of the nation-states that choose
to allow it (and, by implication, could revoke it at will) would potentially neglect the far-reaching implications that pooling has on the meaning of sovereignty (MacCormick 1993; Sbragia 1994; Waever 1995; Laffan 1998; Weiler 1999; Lewis 2009). Pooled sovereignty in the ECC seeks to enhance the collective action capabilities of European states, but this involves more than simply ‘changing the price of cooperation for self-interested actors’; it also entails ‘a process of creating new definitions of the self’ (Wendt 1996: 54; Gourevitch 1999: 159–60). In other words, the transformation of classical Westphalian sovereignty has been a key feature of the EU since its earliest days, and the Council system, despite all the disagreements over how to label it, is at the epicentre of that process.\textsuperscript{6}

The ECC as a locus of ‘networks’ and infranational power

The ECC is a highly advanced institutional structure with hybrid properties, capable of both defending national interests and taking binding collective decisions. In practice, the ECC closely resembles Anne-Marie Slaughter’s prescient work on contemporary interstate patterns of ‘disaggregated, networked’ relationships (Slaughter 2004). From this perspective, the EU’s ECC is a ‘network of networks’ with both horizontal and vertical components that create transnational clubs of national officials across a wide range of policy-making fields. The ECC’s networks also clearly satisfy her definition of ‘genuinely supranational’, since ‘they constitute an entity distinct from national governments that has a separate identity and loyalty and which exercises some measure of genuine autonomous power’ (ibid.: 22). A variety of micro-level studies have shown how ECC networks (such as the permanent committees that prepare ministerial meetings and pave the way for agreements) can promulgate a collective responsibility to ‘find solutions’ (Hanny and Wessels 1998; Laffan 2004; Lewis 2005; Howorth 2011). They may also create club-like stakeholder dynamics among policy specialists or ministers who may have more in common with one another than with their cabinet counterparts back home. Uwe Puetter’s research-based description of the Eurogroup and EU finance ministers as an ‘independently minded group, often at odds with cabinet colleagues in the national capitals’ corroborates this tendency (Puetter 2006, 2007). The EU’s rotating presidency is yet another pattern of EU-level agency and influence; it is not only a ‘duty’ but a ‘badge of responsibility and honour’ for each country to deliver a wide array of collective achievements, creating a ‘sense of ownership’ in the process (Metcalfe 1998; Elgström and Tallberg 2003; Westlake and Galloway 2004: 335; Tallberg 2006; Niemann and Mak 2010).

What negotiation theorists call ‘process’ and ‘relationship’ interests can be seen as empirical indicators of these intangible networking effects in the ECC: obtaining a stake in the ongoing process and maintaining a credible reputation among one’s colleagues become global, generic elements of what is perceived as the national interest in this social setting.\textsuperscript{7} The ‘network’ image is useful precisely because it spotlights the Council system as the EU’s infrastructure for pooled sovereignty and collective decision-making among interdependent ‘clubs’ of policy specialists at widely disparate levels of political seniority. The European Council and its full-time president now form the apex of this infrastructure, followed by senior ministerial formations such as ECOFIN and the Eurogroup (overlapping networks of EU and Eurozone finance and economy ministers) and Foreign Affairs (foreign ministers). There are a number of additional interdependent components, including the GSC, senior preparatory bodies (such as the Committee of Permanent Representatives [COREPER I and II], the Economic and Finance Committee [EFC] and the Political and Security Committee [PSC]), an array of policy-specific coordinating committees and a vast contingent of specialized working groups.
The added value of the ‘network’ imagery is that it allows us to move beyond binary thinking in which everything must be labelled as either intergovernmental or supranational. The simple fact is that the old intergovernmental-supranational distinction does not capture the essential qualities of the ECC all that well. For instance, this dichotomy cannot incorporate J. H. H. Weiler’s concept of ‘infranational’ power. According to Weiler, the infranational dimension of European integration has an ‘underlying ethos’ that is ‘managerial and technocratic’ and serves to dilute a purely ‘national element’ in the joint decision-making process (Weiler 1999: 283, 272). In describing EU infranationalism, Weiler finds intriguing parallels to generalizable patterns found in the field of Comparative Politics, such as the inclusiveness of the viewpoints hardwired into consociational polities and the accommodation style found in neo-corporatist settings that seek to avoid a confrontational mode of politics (ibid.: 282–5). Infranationalism denotes a logic of action based on professional expertise, infused with what neofunctionalists call l’engrenage (rough translation: getting caught up in the gears) and fortified by Helen Wallace’s ‘intensive transgovernmentalism’. Connecting the dots between general IR theories of cooperation (such as Slaughter’s model of networked governance) and institutional design features that promote club-like settings (à la Weiler’s notion of infranationalism) allows us to better appreciate the intentions behind the Council system: ensuring the capacity to produce a high volume of collectively legitimated and compromise-driven agreements in a networked setting of pooled sovereignty. As the following section will explain, the pattern of infranational-rich networking within the Council’s ‘intergovernmental’ decision-making machinery is not new, fleeting or issue or context specific. Rather, it is a venerable trait of the ECC, one that neofunctionalists have identified as a distinctive ‘procedural code’ that was institutionalized into the Council’s social fabric as early as the 1960s.

Voting patterns and consensus-seeking habits

One of the most striking features of the Council system is how the formal recourse to voting is offset by a durable informal commitment to consensus. There are three crucial points that should be emphasized here. First, actual voting is relatively rare. Historically, rates of contestation (either as ‘no’ votes or abstentions) are consistently low, approximately 20 per cent of all legislative acts. Second, contested voting tends to be clustered in a relatively small number of policy areas, such as agriculture and the internal market. In a pioneering analysis of Council voting patterns, Hayes-Renshaw et al. (2006) show that nearly half of all contested votes occur in AGFISH (Agriculture and Fisheries Council) cases, and another quarter stem from the Single Market. And third, despite the nuances, the systemic practice of consensus-seeking has survived all Treaty reforms, as well as the expanded scope for QMV, inter-institutional shifts in power and the rounds of enlargement. Indeed, one longitudinal study of Council voting between 1995 and 2010 stresses the ‘remarkable stability of Council legislative and roll call activity against the background of profound institutional change’ (Van Aken 2012: 10). Taken together, these three observations suggest that the practices of consensus-seeking have become durably internalized in the Council’s organizational culture.

Although the picture seems clear thus far, explanations of the ECC’s penchant for consensus remain steeped in controversy (see the irreconcilable differences in interpretation between Heisenberg [2008] and Schneider [2008], for example); however, recent research has illuminated this puzzle from a variety of theoretical angles. There are a number of convincing arguments related to the underlying strategic logic behind consensus patterns. First, the formal recourse to voting has a powerful orienting effect on outlier positions, helps to identify emerging majority
views and generally serves as a self-enforced limit on acts of opportunism and the parameters of instrumentalism. This strategic logic is so deeply ingrained that it is a veritable cliché among Council actors that the surest way to reach consensus is under the shadow of the vote. Dorothee Heisenberg (2007: 72) even asserts that ‘the role of QMV is more a deterrent to obstructive behavior than an actual shadow decision-making device’. Second, consensus-seeking is also consistent with a basic, instrumental ‘do unto others’ philosophy discouraging member states from driving hard bargains to the edge of the Pareto frontier, or, worse still, pressing for a vote that excludes or marginalizes a delegation experiencing domestic difficulties, since everyone knows they may find themselves in similar circumstances one day. An even more subtle dimension of this attitude can be discerned from a principal–agent perspective. In effect, the member states deliberately promote ‘Janus-faced’ negotiators because of their superior ability to deliver collective, consensual results (Neyer 2004; Lewis 2011). Third, consensus practices are reinforced because consensual outcomes help mask the winners and losers in the EU decision-making process. In the current highly politicized integration context, the veil of consensus effectively conceals this distinction, whereas public voting would broadcast it (Scharpf 2006). In this way, consensus patterns are driven less by ‘general agreement’ or the absence of opposition than by strategies of ‘blame-avoidance’ when a national delegation finds itself isolated (Novak 2013). Fourth, rational choice institutionalism tells us that consensus-seeking is also a valuable negotiation mechanism, employed to ‘create value’ through expanded time horizons and the gains in diffuse reciprocity that come with the knowledge that one’s member state will experience a steady distribution of benefits over the long run that otherwise might be more tenuous or difficult to secure on a narrow quid-pro-quo basis. Heisenberg (2007: 73) makes a similar inference: ‘In contrast to the outvoted minority under QMV decision-making, consensus decisions generated a steady stream of IOU’s which expanded exponentially with the expansion of the EU. Thus, the forward momentum of the EU almost demands the continuation of consensus as the dominant decision-making mode.’ Finally, there is growing support for the view that consensus-seeking is directly linked to social influence and social context. To get what you want, you must play by the rules, which include the mutual responsiveness and attempts at accommodation that consensus-seeking is dependent upon (Meyer 2006; Naurin 2007; Adler-Nissen 2008, 2009; Lewis 2008, 2010; Howorth 2011). This social context argument ties back into Weiler’s theory about the ‘infranational’ dimension of EU politics and its often underappreciated contribution to the EU’s collective decision-making capabilities. The idea of social influence differs from the first four explanations; in this case, consensus practices become internalized by actors as the ‘right thing to do’ in a given institutional context. The concept of social influence used here is borrowed from Iain Johnston’s constructivist model of IR socialization, which involves the internalization of group standards; in this model, ‘behavior is judged by the in-group and rewarded with backpatting or status markers or punished by opprobrium and status devaluation’ (Johnston 2008: 24). Even obstinate members such as the British instinctively comprehend this concept, as numerous attempts to ‘repair’ reputations have followed deviant behaviour (for example the infamous ‘noncooperation’ policy of 1996). Again, it is worth stressing that this explanation is not merely strategic or calculative but delves into the realm of standards of appropriateness and collectively legitimated group norms within a specific international ‘society’. In this view, consensus practices are consistent with pro–norm behaviour – which, in turn, is rewarded with greater social influence in ongoing Council deliberations. The key here, as Johnston explains, is that ‘the rewards and punishments are social because only groups can provide them, and only groups whose approval an actor values will have this influence’ (ibid.: 25). Violating consensus practices (e.g. ‘pushing’ for a vote, simply reading out instructions
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or national positions) can lead to shaming or opprobrium at the group level, as occurred during Sweden’s first year of EU membership in 1995, when the country was routinely sidelined from ECC deliberations and outvoted (for details, see Lewis 2008: 176–8). The durability of consensus in ECC networks is partly attributable to national actors internalizing this organizational culture in their conceptions of the self and identity. Consensus-seeking in this view is less a conscious, calculated ‘choice’ than a constitutive rule of the game and part of a ‘habitus’ of cooperation. In the social influence explanation of consensus-seeking, ‘normative conformity’ is the heavy lifter. To be sure, there are gradations of conformity and hypocrisy as well (e.g. invoking ‘solidarity’ when hopelessly isolated), but social influence functions as a powerful behavioural incentive because participants ‘need to appear to accept and adhere to the rules, standards, and values of their society’ (Gulliver, cited in Lax and Sebenius 1986: 256).

The Council’s preparatory networks here serve as an important early warning device for pro-norm behaviour, alerting the community that ‘implicit voting’ (a kind of straw poll) might occur and allowing pressure to be placed on minority views to justify their positions or request special understanding. Another empirical indicator of how social influence dynamics work can be seen in the behavioural effects that legal ‘opt-outs’ have on delegations that find themselves part of an out-group. Rebecca Adler-Nissen offers finely grained evidence to show how British and Danish officials in Council settings perceived a real loss of social influence and even psychological dissonance due to their Maastricht-era opt-outs in the policy fields of EMU and JHA. Most revealing from a social influence perspective is her documentation of how national officials engaged in ‘compensatory strategies’ to offset (or hide) their loss of influence, such as saving up extra goodwill or paradoxically being active and constructive in group discussions despite their legal ‘outsider’ status (Adler-Nissen 2008: 674–5, 678).

Origins and evolution of the ECC consensus ‘culture’

Thus far, the discussion has focused on the systemic, institutionalized qualities of consensus-seeking. However, the literature offers far fewer accounts of how these consensus practices became routinized and durable in the first place. Two points are worth singling out. First, Council consensus practices within these networked forums follow an acculturation process that builds up over time. Consensus-seeking is less a conscious ‘choice’ than part of the organizational ‘culture’ of how things are done. Nonetheless, internalizing and maintaining this culture involves norm socialization and requires continuous positive reinforcement. And second, consensus patterns evolve over time and can differ across various Council settings. In other words, consensus practices are nuanced and subject to change.

The ‘culture’ of consensus is internalized through a learning and socialization process. This culture has deep roots in the ECC’s institutional environments. Actor socialization to this culture follows a historical institutionalist sequence of path-dependence and lock-in effects. Neofunctionalists have identified a norm-based ‘procedural code’ for reaching collective decisions that was observable very early on in the system’s development (Haas 1958: 490–2; Lindberg 1963: 77–86, 280; Lindberg and Scheingold 1970: 87–98). Some attribute the origins of the culture to the work of the 1955 Spaak Committee, which was also (both in spirit and personnel) a precursor to the establishment of a permanent Brussels-based committee of high-rank preparatory agents (Noël 1966, 1967; Lewis 2012: 318). According to Lindberg and Scheingold, the Spaak Committee ‘were men who had developed . . . a “system attitude” – a willingness to behave according to an accepted bargaining code keyed primarily to a determination to succeed’ (Lindberg and Scheingold 1970: 242).
Other studies emphasize the critical juncture of the July 1965 empty chair crisis. Following a disagreement over integration, the French boycotted Council meetings until January 1966, when they were given procedural reassurances with respect to the right to continue discussions when ‘very important interests are at stake’ in what is known as the ‘Luxembourg compromise’. Here, clear self-reinforcing properties of consensus-seeking stem from the very ambiguity of invoking (and successfully selling to the group) a Luxembourg Compromise claim (Palayret et al. 2006; Heisenberg 2007; Aus 2008: 102; Lewis 2008). Hayes-Renshaw and Wallace (1996a: 268) assert that the Luxembourg compromise ‘was one of the conditioning factors that helped to embed habits of consensus-building rather than majoritarian voting’. Reflecting on the impact of the Luxembourg compromise, one active participant at the time recalls that afterwards ‘the very fact of asking for a vote to be taken became an unusual step and endowed the calling of a vote with a solemn political significance’ (Davignon 2006: 18). In this reading, the irony of viewing the Luxembourg compromise as a classic intergovernmental moment of safeguarding national sovereignty is that it actually represented an upgrade to the deliberative, supranational footprint of the Council’s system. It also served as a key test of whether the insulated, in camera settings – club-like venues such as COREPER – could quietly resolve seemingly intractable issues. As Ludlow recalls,

the crisis confirmed the importance of Coreper at times of Community difficulty. For the permanent representatives knew each other well, were well versed in the legal and other niceties of Community diplomacy, and were sufficiently low-profile to be able to meet discreetly without generating the type of publicity or expectation of results that surrounded most ministerial meetings.

(Ludlow 2006: 93)

Resolving the empty chair crisis was in effect a crucial confidence-building measure, promoting consensus-seeking among these club-like networks of negotiators. In this light, the so-called ‘reintroduction’ of QMV with the Single European Act in 1986 was more of a ‘breakthrough’, enabling QMV to be ‘reinterpreted’ as ‘no longer a big issue of principle but rather a matter of pragmatic practice, with the comfort of the knowledge that in those intervening twenty years actually the habits of the Council had become predominantly consensus-oriented rather than confrontational or majoritarian’ (Hayes-Renshaw and Wallace 1996b: 314).

Council research has also emphasized the importance of background or scope conditions that enable cooperative practices to emerge and become routinized. One condition already mentioned is relative autonomy for ECC negotiations and insulation from external pressures (Heisenberg 2007; Lewis 2011). In effect, the public ‘frontstage’ and the private ‘backstage’ are governed by different logics of action (Naurin 2007). Eschewing transparency entails the benefit of lowering incentives for public posturing and pandering, offering ‘little political payoff for obstruction’ (Stasavage 2004; Heisenberg 2005: 68). In other words, without the precondition of club-like settings for in camera negotiation, one might question whether the consensus culture could function. In a general survey of consensus patterns in multilateral negotiations, Lindell concludes that ‘the less publicity during international negotiations, the less a tendency on behalf of negotiators to address public opinion rather than each other’ (Lindell 1988: 79). The clear implication is that to understand why the ECC has produced a consensus-seeking culture we need to delve deeper into the social environments in which negotiations take place.

To some extent, the internalization of the rules of the game by actors accounts for the durability of this culture over time; after a certain point, playing by the rules becomes part of the habitus...
about how things are done. To the surprise of many, including veteran Council insiders, the newest members from Central and Eastern Europe have rapidly acclimated to Council norms and consensus-seeking habits (Mattila 2008, 2009; Hertz 2010; Leuffen 2010). While there is still considerable debate over how durable such internalized standards can be, there is significant evidence that internalization patterns vary by member state. As Thomas Risse explains, ‘Europeanized identities still come in national colors and resonate with the various national symbols and historical and cultural memories in different ways. The Europeanization of national identities has been consensual in Germany and Spain for quite some time and is contested in France and Poland, while the dominant discourse in Great Britain remains focused on the national-state’ (Risse 2010: 10). Drawing on an empirically rich social psychology literature, Risse explains how individuals can hold a multiplicity of social identities in different types of admixtures (how the many ‘we’s’ relate to one another): identities can be separate, cross-cutting, nested or even blended in ‘marble cake’ fashion (ibid.: 22–5).

Consensus practices are also subject to ongoing adaptation and change. Stéphanie Novak argues that consensus-seeking evolved in the context of completing the Single Market Project and the ‘reintroduction’ of QMV during the late 1980s. By her account, ‘the vote was used in an abrupt way in the early years, without any real diplomatic niceties, like a “procedural guillotine” to use the words of one representative’ but gradually became more ‘sophisticated’ (Novak 2011: 15). A more commonplace trend now is the reliance on a ‘presidency compromise’ to encourage consensus once a formal blocking minority has been ruled out. This practice may account in part for the post-enlargement trend of larger minorities in contested votes. New data shows that after May 2004 the proportion of single-state objections fell from approximately half of all contested voting instances to 35 per cent, while the percentage of contested cases with a minority of more than three member states increased to more than 25 per cent of all cases (Dehousse and Deloche-Gaudez 2009: 25). Some correlate this pattern to functional necessity following the enlargement from the EU15 to EU25+ and the growing heterogeneity of viewpoints around the negotiation table. Another trend in the ECC is a greater dependency on reading ‘formal statements’ into the minutes of a legislative act, which has been interpreted as a new outlet for signalling dissent without a publicly contested vote (Hagemann and De Clerck-Sachse 2007; Hagemann 2008). It has also been argued that consensus-seeking generally ‘masks a permanent “counting practice”’ that relies less on trying to bring everyone on board than on rapidly identifying majority win sets (Deloche-Gaudez and Beaudonnet 2010: 4). Calculating votes and gauging the threat of blocking minorities is a kind of ‘implicit voting’ practice from which one could safely infer that ECC consensus-seeking is never really ‘taken for granted’ in thick sociological institutionalist terms; rather, it is continuously subject to complex signalling and accommodation standards that operate at the group level.

It is also useful to contemplate what patterns of behaviour might signify ‘deconditioning’ acts undermining consensus-seeking and the pro-norm organizational culture described above. In the first place, we would expect to find evidence of currently rare or nonexistent activities: explicit logrolling and vote-trading, conditional acts of reciprocity, pushing for votes in the absence of group attempts to accommodate isolated or minority positions and/or permanent voting blocs and coalitions. If voting patterns ran roughshod over members’ interests with regularity, we might expect to see growing reliance on formal procedural guarantees, such as the rarely invoked ‘Ioannina Compromise’ or an increase in ‘very important interest’ claims under the still technically extant Luxembourg Compromise. Such practices would be likely to corrode the more basic preconditions that enable the kind of thick cooperation generated by the ECC’s networked, pooled sovereignty, namely trust and trustworthy reputations for mutual responsiveness. My own thinking here is influenced by Elinor Ostrom’s research on how trust,
reputation and reciprocity represent a tightly coupled and positively reinforcing dynamic in collective action situations. Over the course of the ongoing Eurozone crisis, there have been some signs that bargaining breakdowns can have caustic effects on ECC cooperation. One scholar recently notes how ‘the financial crisis has fundamentally distorted the balance of trust among eurozone elites’ (Crum 2013: 621). The us–them divide that appears increasingly ingrained between creditor and debtor countries within the Eurozone is not a gap that the ECC’s consensus culture can easily bridge. As Waltraud Schelkle observes, ‘the Union must avoid to be seen as a hard-nosed club that is run by whoever pays most’ (Schelkle 2012: 286). Britain’s truculence over Eurozone reform is adding to the problem, making the legal-institutional coherence between the ‘ins’ and ‘outs’ more difficult to manage. In particular, David Cameron’s December 2011 veto of the ‘fiscal compact’ on Eurozone budget discipline and the subsequent effort by 25 of the EU27 to sign an intergovernmental agreement outside the EU framework speaks volumes regarding the current UK role as the ‘awkward partner’. New strains between the ‘ins’ and ‘outs’ over issues such as the budget, banking union and even the EU’s finalité politique may signal constitutive changes in the established rules of the game.

Conclusion

The ECC’s functional design, consisting of specialized cohorts of tightly knit ‘clubs’ of decision-makers who meet in camera and over long-time horizons, was routinized early in the European integration process and continues to be the basic template. As this chapter has outlined, the ECC represents an advanced example of ‘disaggregated, networked’ relations among nation-states that have pooled sovereignty. Its most distinctive feature is its deeply ingrained culture of taking joint decisions by consensus. The consensus culture spans the entire hierarchy of national negotiators, from the heads of state and government who meet at European Council summits down to the preparatory committees and working groups. Historically and across all issue-areas, over 80 per cent of legislative outcomes are reached by consensus (Heisenberg 2005; Hayes-Renshaw and Wallace 2006a; Hayes-Renshaw et al. 2006; Mattila 2008, 2009). The long-term durability of this consensus culture is a striking characteristic of the European integration process. Formal Treaty changes that have expanded the scope for QMV and empowered the European Parliament through co-decision have not diminished consensus-seeking patterns; nor has the addition of new members, who consistently demonstrate their adaptation to the existing norms and rules of the game (Lempp 2006; Juncos and Pomorska 2007; Leuffen 2010; Hosli et al. 2011). Rather than moving towards a ‘veto culture’ in which voting (and voting blocs) would become regularized, the member states share a principled interest in working by consensus. Of course, this does not mean that formal voting rules have no impact on the legislative process; one’s ‘willingness to compromise’ is partly a function of whether there is recourse to the veto in those important circumstances in which unanimity still applies. Also surprisingly, at least from a traditional International Organization perspective on voting and power, we see scant evidence of voting blocs or even stable coalitions that cross issue-specific clusters (Heisenberg 2005: 77; Hayes-Renshaw et al. 2006: 175, 177). There are nuances, to be sure, such as the more confrontational voting style found in the AGFISH sector. There are also definite signs that the internalization of this culture is not uniform across all members, but instead reflects more macro-level variation in patterns of ‘Europeanized’ national identities. And while there is no reason to assume that the ECC’s style of networked governance is immutable, it has had transformative effects on the basic social identities and practices of the national officials who are enmeshed in its networks.
Notes

1 The Lisbon Treaty extends majority voting to approximately 40 new areas, many of which involve justice and home affairs. Some of the policy areas that remain subject to unanimity (i.e. veto rights are maintained) include: foreign policy, defence, fiscal policy, social security, and judicial and police cooperation in criminal matters.

2 The inaugural president was Herman Van Rompuy, then the incumbent Belgian prime minister, a politician known for his compromise-building skills; he was reappointed by the European Council to serve until November 2014. See Lewis (2013: 156) for more details.

3 For an analysis of this trend, see Crum (2013) and Puetter (2012). On the significance of Euro summits, see Hodson and Puetter (2013: 373–4).

4 The new High Representative post was filled by Baroness Catherine Ashton, who was previously a replacement British Commissioner in charge of External Trade. For more details, see Lewis (2013: 156–67).

5 In a more recent publication, Keohane (2002: 748) explores a broader interpretation of Europe’s pattern of ‘pooling’ sovereignty, including the recognition that ‘states’ legal authority over internal and external affairs is transferred to the Community as a whole, authorizing action through procedures not involving state vetoes’.

6 For a discussion of the EU’s transformative element, see Murray (2009). For more on how ‘pooling’ can lead to redefined notions of self and interest, see Lewis (2009).

7 In their seminal treatise on negotiation, Lax and Sebenius (1986: 71–2) define ‘process interests’ as ‘intrinsic interests in the character of the negotiation process itself’ and ‘relationship interests’ as ‘the value of . . . relationships’ with counterparts that ‘sometimes achieves an almost transcendent status’.

8 Consider the early observation by Haas (1958: 488): ‘There has evolved a common consciousness of the role of the Council in the ECSC system, a procedural code of which the compromise pattern which prevails forms an important part.’

9 For a similar overall finding, see Hayes-Renshaw et al. (2006: 164).

10 Golub (2006: 280) refers to the Luxembourg compromise as more of a ‘cryptic plan’ than compromise, since the latter ‘must involve mutual concessions, and here there were no evident concessions by anyone’.

11 The ‘active observer’ tradition that encourages new member states to attend ECC meetings for one year prior to the formal accession date is a built-in mechanism for normative socialization.

12 The Lisbon Treaty revises QMV by dropping the controversial voting ‘weights’ that kept countries such as France and Germany at parity votes despite the latter’s much larger population. The new QMV system is based on a ‘double majority’ calculation: approval of at least 55 per cent of the member states representing at least 65 per cent of the total EU population is required. An added safeguard sets a four member-state minimum to constitute a blocking minority, since any three of the big four (Germany, France, the UK, Italy) would represent more than 35 per cent of the EU’s population. In an illustrative example of the use of consensus practice, the Lisbon voting reforms will only be phased in after 1 November 2014, and even then any member state can request that the old ‘weighted’ voting system be applied instead until March 2017.

13 The Ioannina Compromise was a voting safeguard innovated at an informal meeting of the foreign ministers in 1994; it was designed to raise the comfort level of a near-blocking minority to avoid being ignored/outvoted by invoking a request for extra time to consider alternatives first. It has rarely been requested, although a similar formal ‘emergency brake’ safeguard will apply to the new QMV provisions in the Lisbon Treaty, especially those related to justice and home affairs.

Bibliography


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