Challenges to liberal intergovernmentalism

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Abstract

Slapin (2011) and Finke et al. (2012) represent the best theory-based book-length studies of the most active period of treaty reform in the history of the European Union - from the Treaty of Amsterdam to the Treaty of Lisbon. These works offer the opportunity to assess the extent to which liberal intergovernmentalism, a 'baseline' theory of regional integration, has withstood empirical scrutiny. I first address what I consider a misinterpretation of liberal intergovernmentalism – the presumed pre-eminence given to a country's relative capability. I then identify challenges to this framework. Methodologically, they concern the measurement of preferences, value of disagreement and opportunities for linkages in treaty negotiations. I then assess evidence of lower-than-unanimity thresholds for treaty reform, which may represent a theoretical challenge. I finally observe that focal points and bargaining dynamics deserve greater scholarly attention.

Keywords

Intergovernmentalism, Institutional affairs, Bargaining, Unanimity, International Relations

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Finke, Daniel, Thomas König, Sven-Oliver Proksch, and George Tsebelis. *Reforming the European Union: Realizing the Impossible*. Princeton University Press, 2012.

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'Liberal intergovernmentalism (LI) has acquired the status of a "baseline theory" in the study of regional integration' (Moravcsik and Schimmelfennig, 2009: 67). Does LI still deserve this preeminence? The recent works of Slapin (2011) and Finke et al. (2012) offer a precious opportunity to assess the extent to which LI has withstood empirical scrutiny during the most active period of treaty reform in the history of the European Union (EU). They are the ultimate products of several projects and represent the most thorough, rigorous and theory-based book-length studies of the long and difficult journey of treaty reform which began in March 1996, when the European Council launched the intergovernmental conference of the Treaty of Amsterdam, and concluded with the entry into force of the Treaty of Lisbon in December 2009.

In the thirty-five years following the treaties of Rome, European leaders have only had to go back to the constitutional drawing table essentially twice, adopting the Single European Act in 1986 and the Treaty of Maastricht in 1992. In the decade between 1997 and 2007, they held four intergovernmental conferences and a constitutional convention.

The four proposals produced by these gatherings have been subject to ten referenda for ratification, four of which failed to elicit enough popular support. European leaders had to deal with half-botched reforms, ambitious proposals, tough negotiations and recalcitrant publics in a period during which the number of member countries almost doubled and the EU population increased by more than twenty-five percent.

With the Treaty of Maastricht also concludes Moravcsik's (1998) *The Choice for Europe*, undoubtedly one of the most important scholarly contributions to the study of European integration. Slapin (2011) and Finke et al. (2012) have collected extensive datasets and provide some of the most detailed analyses of the attempts at treaty reform after the Maastricht Treaty. These works are rich in detail and analysis, hence, I will not offer here a comprehensive review. Interested readers would be better served by going straight to the original contributions. I will use them selectively to assess the challenges facing LI.

These works share several traits with LI. They believe that preferences are issue-specific and that they vary across states, within states, and across time according to issue-specific domestic pressures and institutions. Slapin (2011), and especially Finke et al. (2012) have collected quite disaggregated data on preferences of several national actors and they have assessed the congruence between, for instance, the positions of voters, parties and government executives (Slapin, 2011: 34-51), or those of leaders, negotiating agents, Convention delegates, and voters (Finke et al., 2012: 120-128, 151-

169). Some of these results will be discussed below, but one is safe in saying that Slapin (2011) and Finke et al. (2012) do not depart much from LI's focus on issue-specific preferences. They actually get into it in much greater detail. On the other hand, although a major issue in these negotiations, they do not analyse institutional choice from the perspective of mechanism design, whereby its functional objective is to enhance the credibility of policy commitments - the third stage of the LI framework.

Central instead are the challenges that these works offer to the portion of LI that deals with interstate bargaining. In the next section, I discuss Slapin's *Veto Power*, which primarily covers the Treaty of Amsterdam. Next, I cover Finke et al.'s *Reforming the Union*, which begins with the aftermaths of the Treaty of Nice and concludes with the Treaty of Lisbon. I first address what I consider a misinterpretation of LI, namely the presumed central role given to a country's capability. I then analyse evidence offered by these works of lower-than-unanimity thresholds for treaty reform. This represents a methodological challenge for LI, predominantly with regard to the measurement of the disagreement value and linkage opportunities, and, perhaps, a theoretical one as well.

Challenges to liberal intergovernmentalism: the Treaty of Amsterdam

The ambitious Treaty of Maastricht stipulated that an intergovernmental conference had to be convened in 1996 to examine further revisions. The agenda for the conference was already set out to a large extent, covering issues such as visa, energy, tourism, extension of codecision, hierarchy of legal acts and the Western European Union. Apart from

monetary union, negotiations took place on the background of the accession talks with Central and Eastern European countries. Many felt that the system of weighted voting in the Council of Ministers and the composition of the European Commission required a substantial overhaul before enlargement (Slapin, 2011: 21). After the longest intergovernmental conference in EU history, the Treaty of Amsterdam was signed in October 1997 and entered into force in May 1999.

Relative state capabilities and liberal intergovernmentalism

The core exercise of *Veto Power* consists in juxtaposing institutionalist and intergovernmental expectations about the outcomes of negotiations in intergovernmental conferences. According to Slapin, an institutionalist approach

> would suggest that because all states must assent to and ratify any EU treaty before it comes into force, member states with a preference for the status quo can threaten to veto any treaty which pushes integration too far. Thus, the right to veto is a source of power for those member states with a preference for the status quo… [For intergovernmentalists], power is defined in terms of a distribution of capabilities, and derived from member states' size and resources, and not formal rules such as veto rights. (14, see also Slapin, 2008: 132)

Accordingly, whenever smaller states are sufficiently more conservative than larger ones, LI and institutionalism offer competing expectations. Institutionalism would predict a significantly more modest reform than LI, unless smaller states are somehow

compensated from their loss. Slapin's analysis covers 228 issues discussed at the intergovernmental conference; 85 of which have been eventually included in the Treaty of Amsterdam. The institutionalist expectation is captured by the number of member states opposing any reform, while the intergovernmentalist one is predominantly captured by a capability and saliency-weighted sum of member states' preferences. Slapin finds that the number of states opposing reform is the most robust and significant predictor of the probability of reforming an issue, while the weighted preference measure (and its variants) performs poorly, interpreting this as strong evidence of institutionalism outperforming intergovernmentalism (Slapin, 2011: 87). This conclusion is further strengthened by a detailed analysis of which states managed to secure the best outcome. With the exception of France, larger countries have been significantly outperformed by those states (most of which are of smaller size) that had to convince Eurosceptic parliaments for ratification (Slapin, 2011: 89-98).

This work should be praised on several grounds, from the rich set of data on the preferences of the actors and issues involved in the negotiations, the rigorous treatment of missing values (23-30), and the serious consideration Slapin gives to the exogeneity of these preferences (34-7).

What I find more puzzling is his interpretation of the second stage of the LI framework: interstate bargaining. LI's understanding of interstate negotiations is firmly rooted in game-theoretic bargaining models (Moravcsik, 1998: 60-63). Above all, these models

give pre-eminence to the value attached to disagreement.[1] This factor drives the outcomes of negotiations in non-cooperative games of alternating offers (McCarty and Meirowitz, 2007: 285–6; Rubistein, 1982), in cooperative games, where the best alternative to a negotiated agreement determines the Nash solution (Dixit and Skeath, 1999: 523–9), and in spatial models of legislative bargaining, where the utility attached to the status quo determines voting behaviour (e.g. Garrett and Tsebelis, 1996). Indeed, for LI,

> treaty amending negotiations take place within a noncoercive system of unanimous voting in which governments can and will reject agreements that would leave then worse off than unilateral policies… [T]he distribution of benefits reflects relative bargaining power, which is shaped in turn by the pattern of policy interdependence. *The power of each government is inversely proportional to the relative value that it places on an agreement compared to the outcome of its best alternative policy* (Moravcsik, 1998: 60-2, emphasis added)

The institutional critique of LI, as formulated by Garrett and Tsebelis (1996) and Tsebelis and Garrett (2001), does not rest on different sources of bargaining power - the

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[1] Moravcsik (1998: 62-3) prefers the term 'asymmetrical interdependence', but he clearly acknowledges his intellectual debt to prominent scholars of bargaining theory such as Binmore, Rubenstein, Raiffa and Sebenius. I use 'disagreement value' simply to emphasize that it is the same concept used by intergovermentalism and institutionalism.

disagreement value is central to both approaches -, but on a superficial treatment of the consequences of institutional choice - the third stage of the LI, mechanism design.[2]

This misunderstanding of the sources of bargaining power for LI may originate from the fact that *The Choice for Europe* covers in detail only France, Germany and the United Kingdom, leading observers to conclude that only the views of largest states (hence, relative state capabilities) matter (Finke, 2009; Finke et al., 2012: 13; Slapin, 2011, 2008).

However, size is not listed among the key factors for understanding a negotiated outcome (Moravcsik, 1998: 63) and, later on, Moravcsik and Schimmelfennig (2009:

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[2] To understand such consequences, institutionalist scholars move the level of analysis to where secondary laws are adopted (Garrett and Tsebelis, 1996), implemented and interpreted (Tsebelis and Garrett, 2001). While treaty negotiations are Pareto-improving (Moravcsik, 1998: 60-2), 'outcomes of the legislative process sometimes are outside the Pareto set of member governments' (Garrett and Tsebelis, 1996: 288), while bureaucratic and judicial discretion is inversely related to the easiness to override administrative and judicial measures (Tsebelis and Garrett, 2001). However, since the presence of a treaty base is a necessary condition to secondary law, while the presence of primary and secondary law is a necessary condition to bureaucratic and judicial measures, short of misjudgements, LI and institutionalism do not necessarily reach different conclusions about the determinants of European integration. Tsebelis and Garrett (2001: 360) indeed believe that these 'institutional interactions…generally reflect the collective will of the member governments concerning their desired trajectory for the evolution of the EU'.

74) purposefully make the point that 'relative size of governments [is] a variable stressed by realist integration theorists like Joseph Grieco but not by LI'. Actually, the fact that Moravcsik chose to concentrate on the three largest states means that he did *not* consider relative capability (size, economic might or any other analogue) a crucial attribute of the value of disagreement because such feature does not vary much across these three countries (or it varies much less, considering all member states). Had he considered it important, he should have analysed both large and small countries. Short of an unlikely elementary mistake in research design, the focus on France, Germany and the United Kingdom means that, for Moravcsik, the value of disagreement is predominantly determined by factors *other than* capability. Indeed, he finds considerable heterogeneity across these three equally capable countries. He concludes

> 'governments that perceived themselves as benefiting the most … from any core agreement – as Germany benefited from industrial tariff reduction in the 1950s, France from agricultural liberalization in the 1960s, Britain from the SEA in the 1980s and France from the EMS and EMU agreements – proved most willing to compromise in order to achieve it' (1998: 482).

This is not to say that capability or size is irrelevant, but we should reflect on *when* and *how* it affects the value of disagreement. To the extent that size enables an effective unilateral policy, it makes agreement on a common policy less valuable. To the extent that it renders viable alternative coalitions of policy coordination, which may have

negative externalities for excluded countries, it decreases these latter countries' value of disagreement. To the extent that it enables the establishment of policies that compensate perceived losses with targeted benefits (e.g. the social, regional development, and cohesion funds), it lowers the disagreement value of recalcitrant states. In these circumstances, larger states have more means at their disposal to alter other countries' values of disagreement.

But this does not need to be the case. In institutional issues, such as the Council voting weights or the size of the Commission, it is indeed difficult to flesh out exactly *how* size can be used to manipulate the value of disagreement of other states. The importance of capability can also be disputed in other policies. Irish foreign policy can hardly have a global reach and, following this capability logic, one would expect this country to be a keen supporter of a common policy. Yet, after the first negative referendum on the Lisbon Treaty, the Irish government insisted to have guarantees that the treaty would not prejudice its policy of neutrality. Despite the small size of this country, neutrality (read: no common foreign policy action) is highly valued by its political elites.

Preferences and thresholds

The attributes that capture the value of disagreement are policy specific, and capability may or may not be part of them. This is an issue of measurement we should probably

pay more attention to.[3] Slapin (2011: 23-5) combines data from documents and expert surveys to produce two measures: the number of countries opposing reform, for institutionalism, and the sum of member states' weighted preferences, for LI. The former can actually be conceived as a sum of (rescaled) unweighted preferences.[4] That preferences are central to both institutionalism and LI is perfectly in line with these approaches, but the use of essentially the same attribute to operationalize two independent variables is somewhat problematic. Moreover, assuming limited opportunities for issue linkages and coalitional alternatives, it should be enough to have a *single* state objecting reform for an issue to be excluded. Whether there is one or fifteen conservative states should not matter for the likelihood of reforming an issue. If instead we sum up the preferences of, say, one conservative state and fourteen reformist

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[3] The problem is relevant to EU legislative studies as well. Indeed, somewhat troublesome is Thomson's (2011) findings according to which the inclusion of an estimate of the utility associated with failure *worsens* the predictive power of a model of decision-making based on the Nash bargaining solution.

[4] For member states $i = 1 \dots n$, the weighted preference is operationalized as $\sum_i^n C_i S_i(-(P_i - X)^2 + (P_i - SQ)^2)$, where C_i is a measure of state's i relative capability (its share of EU GDP), S_i is a dummy variable measuring the saliency attached to the issue and P_i is the state's preference, ranging from -1 (for the status quo) to 1 (reformist). Slapin (2011: 77) sets the value of the status quo SQ at -1 and the value X of reforming an issue at 1. The formula above thus becomes $\sum_i^n 4\ C_i S_i P_i$. The number of member states opposing reform is simply this formula without the weights $4\ C_i S_i$ and with P_i taking the value of 1 for a conservative state and 0 for a reformist one.

ones, we expect this issue to be reformed, thus *denying* the veto power to the single opposing state. The summing up of preferences actually operationalizes a capability-based argument where each state has the same weight. And such weight does matter.

How would different operationalizations of state preferences perform? Table 1 presents the results of a series of Davidson and MacKinnon's (1981) J-tests of models employing different measures. I use Slapin's data as well as his probit model where the dependent variable is the probability of an issue being included in the Treaty of Amsterdam. Because Slapin's two key independent variables use practically the same attribute, I employ a single independent variable, operationalized differently in each model.

In the *Single veto* model, the preference variable takes the value of 1 if *all* the states with an explicitly stated position (missing values are not imputed) prefer reform and 0 if one or more states prefer no reform. This is the narrowest interpretation of bargaining power in LI terms. If just a single state rejects reform, this issue should not be included in the treaty. It assumes no role for issue linkages and coalitional alternatives.

The other models sum up the positions across member states. In the *Unweighted* model, I sum up the preferences across states, assuming that missing observations are preferences for the status quo. This is similar to the *Weighted Preference* variable in model 2 in Slapin (2011: 79), excluding the weights. In the *Salience-weighted* model, I sum up the preferences across states weighted by their salience. As in Slapin's (2011: 79) model 3, missing observations are treated as indication of low salience, which is

equivalent to indifference towards the inclusion of an issue. Finally, in the *Salience-capability weighted* model, I sum up the preferences across states weighted by both salience and capability (the same as model 3 in Slapin, 2011: 79).[5]

< TABLE 1 here >

Table 1 reports the coefficients of the predictions $\hat{Y}$ of an alternative model once they are included in a null model. A significant coefficient means that the alternative model contains information that is not entirely covered by the null model. The results are conclusive only if, once the null and alternative models are switched, the new coefficient of $\hat{Y}$ is not significant. The first model rejects and is not rejected by the second model.

Results are quite informative. The *Salience-weighted* model is clearly superior. It rejects all the other models and is not rejected by any of them. When its prediction is included in the other models, the relevant coefficients, across the penultimate row, are significantly greater than zero. This model hence contains information that is not fully considered in the others. Instead, once the predictions from the other models are added

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[5] For member states $i = 1 \ldots n$, let C_i be a measure of state's i relative capability (its share of EU GDP), S_i a dummy variable measuring the saliency attached to the issue and P_i is the state's preference, ranging from -1 (for the status quo) to 1 (reformist). In the *Unweighted* model, the preference variable is computed $\sum_i^n P_i$, in the *Salience-weighted* model $\sum_i^n S_i P_i$, and in the *Capability-salience weighted* model $\sum_i^n C_i S_i P_i$.

to the *Salience-weighted* model, none of the relevant coefficients, across the penultimate column, are significantly greater than zero. These models do not add anything relevant to it. The *Single veto* model is rejected by all the other models and it only rejects the *Unweighted* model. Of the models employing the sum of preferences, the *Salience-capability weighted* one performs the worst. It is rejected by and cannot reject the other two models.[6]

Because the best performing model employs the *sum* of salience-weighted preferences, the power of veto of few conservative states, *regardless* of their size, seems to be effectively circumscribed. Indeed, Slapin (2011: 84-6) finds that the probability of reforming an issue is still around 0.5 in case of four conservative states. For institutional issues, the likelihood of reform is higher than 0.5 even with three conservative states. Similarly, Hug and König (2002: 469) show that it did not matter much if only a couple of states were recalcitrant to reform to a policy area. Almost every issue pertaining to that area was included in the treaty.

These results appear somewhat at odds with the analysis of Moravcsik and Nicolaïdis (1999). There could be two reasons for this discrepancy. First, preferences, measured by Slapin at a highly disaggregated level, do not appear to fully converge with Moravcsik and Nicolaïdis' broader analysis. For instance, in employment policy, French opposition

[6] The *Single veto* model performs worse if we assume that missing data are preferences for the status quo. Results do not differ if we measure capability with the Council voting weights.

and British support to issues, such as 'high employment as EU objective' and 'inclusion of an employment chapter', seem at odds with Moravcsik and Nicolaïdis' analysis. Curiously, Moravcsik and Nicolaïdis (1999: 75) find limited gains for the French government, while, for Slapin (2011: 89-98), France is the only large country that performed well. As one referee noted, these discrepancies may be due to the measuring of positions on a pre-set agenda in Slapin (2011) rather than across all possible outcomes.

Second, on the surface, the assumption of issue independence appears reasonable. In these negotiations, the opportunities for linkages and alternative coalitions were limited also according to Moravcsik and Nicolaïdis (1999: 74). Yet, at Slapin's highly disaggregated level, this assumption looks more problematic. The intra-issue linkages noted by Moravcsik and Nicolaïdis (1999: 74) are ignored. At this level, the position on an institutional issue, such as the decision-making rule to be employed in a given policy, could be conditional upon *how* closely related questions are solved, like the substantive coverage of such policy. The dependent variable in this analysis is *whether* an issue was included in the treaty; to account fully for issue interdependence, the challenge would be to evaluate both *whether* and *how* it was included.

Further challenges: from the Convention to the Treaty of Lisbon

Although some progress was made in the Treaty of Amsterdam (e.g. the institution of the High Representative for foreign policy and the reform of codecision and

Commission investiture), the treaty failed to deal with the thorniest issues concerning the composition of the Commission and the weighting of Council votes. In a protocol, governments stipulated the principle of one commissioner per state, after the first enlargement, provided that the weighting of Council votes was modified. To deal with these issues, the protocol also stipulated for another conference to carry out a comprehensive review at least a year before membership exceeded twenty.

With the enlargement negotiations well under way, the Treaty of Nice signed in February 2001 fell well short of these objectives. Among other things, it provided for more members of the European Parliament, a commissioner per state,[7] and a convoluted triple majority system of Council decision-making. This treaty attracted widespread criticism (e.g. Finke et al., 2012: 3; König and Bräuninger, 2004; Rittberger, 2005; Tsebelis and Yataganas, 2002; cf. Wessels, 2001) and was clearly perceived as unsatisfactory by European leaders. Only ten months after it was signed, they therefore set up a Convention on the Future of Europe with the purpose of producing yet another proposal.

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[7] The Treaty stipulated that once the number of member states reached twenty-seven, the number of commissioners, unanimously set by the Council, will have to be less than the number of member states. That decision has not been (and will not be) taken. The college of the 2009 Commission is still composed of twenty-seven commissioners.

Relying on extremely rich data on the opinions of political leaders, governmental agents, Convention delegates, national parliaments and voters, Finke et al. (2012) offer the most detailed examination of the arduous process that settled these issues, from the Convention to the ratification of the Treaty of Lisbon. Finke et al. (2012) begin the analysis in February 2002, when the Convention started its proceedings. The Convention was composed by representatives of national governments and parliaments, of the European Parliament and of the Commission. By July 2003, its President, Valery Giscard d'Estaing, presented an ambitious proposal for a constitutional document that included far reaching institutional reforms, such as a double majority threshold for Council decision-making,[8] a reduction of the number of commissioners to two thirds of the number of member states, a permanent president of the European Council, provisions on enhanced cooperation and division of competences, and the incorporation of the Charter of Fundamental Rights. Finke et al. (2012) begin with an important puzzle: how did the Convention manage to produce such an ambitious proposal *despite* its highly heterogeneous composition? Much resided on the Laeken Declaration, which established the Convention, specified its composition and internal organization (e.g.

[8] The convoluted triple majority rule of the Treaty of Nice was supposed to be replaced by two thresholds, set at 50 percent for member states and 60 percent of population, with the important consequences of facilitating decision-making, limiting obstruction by single states, increasing the role of the parliament (where involved), and decreasing judicial and bureaucratic discretion (Finke et al., 2012: 28-54).

chairmanship and praesidium), and assigned these institutions agenda-setting powers, but remained vague with regard to the decision-making rules (which assign the power of veto).[9] This vagueness gave the presidency the opportunity to shape significantly the proceedings. Finke et al. (2012) offer a detailed analysis of how Giscard d'Estaing choose, perhaps strategically, to locate himself right at the centre of the conflict space - an ideal position for an agenda setter - and of how he took advantage of the vagueness in the declaration to make use of a wide array of agenda setting tools to shape the final proposal.

This rich and sophisticated analysis makes it a very interesting read, but from the LI perspective one might be ultimately tempted to dismiss it. The declaration made very clear that the Convention proposal would only 'provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions' (European Council, 2001: 8). Effectively, it took a year for member states to agree on a Constitutional Treaty in June 2004 - after a failed European Council summit in December 2003, eight governments announcing ratification through referendum and the enlargement to ten new countries. Nevertheless, the Constitutional Treaty differed only

[9] The Declaration demanded the Convention to 'draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved' (European Council, 2001). What 'degree of support' and 'consensus' meant was left unspecified.

marginally from the Convention proposal; for instance, the voting thresholds in the Council were slightly increased, their application included a transition clause for structural policies, the mandate of the European public prosecutor was limited to the penal code, and countries could opt out from the Charter of Fundamental Rights.

What *is* troublesome for LI, and for institutionalism for that matter, is that in June 2004 the political leaders of the twenty-five member states agreed *unanimously* to a reform that, according to the data offered by Finke et al. (2012), was *not* unanimously preferred to the existing treaties. Even allowing for measurement error, Figure 1.2 in Finke et al. (2012: 13, see also Figure 4.2, 115) indicates that the leaders of Cyprus, Czech Republic, Denmark, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland and Sweden and should have preferred the Treaty of Nice to the Constitutional Treaty, along the all-important institutional dimension that characterized the bargaining space. Estonian and Irish political leaders should have even rejected the reform on the second dimension, concerning policy jurisdictions (Finke et al., 2012: 115-7). Finke et al. (2012) state, cautiously and positively, that the Constitutional Treaty and the first version of the Treaty of Lisbon 'are very close to fulfilling the Pareto superiority criterion for adoption' (116). In other words, the Constitutional Treaty could only be considered Pareto superior to the Treaty of Nice if we allow for uncertainty in

the measurement of treaty positions, but 'certainly the chances that the Irish government preferred the Treaty of Nice [to the Constitutional Treaty] were even higher' (116).[10]

As with the Treaty of Amsterdam, where Slapin (2011: 82-6) finds evidence of majority threshold effects, the decision to sign the Constitutional Treaty indicates that, in a Union of twenty-seven member states, the chances of a single country or even a small group of states to hold hostage a reform may be tenuous. One could explain this decision from an LI perspective only if issue linkages or alternative viable coalitions reduced the value of disagreement for the recalcitrant states. It is hard to find evidence of the latter, while the former deserves certainly more investigation.

Clearly, the treaty version that finally came into force was not the Constitutional Treaty. By the time the agreement was reached in June 2004, eight countries announced ratification by referendum (aside from Ireland where it is compulsory). Did this unprecedented number of referenda increase the perceived risk of non-ratification, inducing leaders to sign a treaty they did not like in the expectation that it would not enter into force? On balance, evidence seems to indicate the opposite. Announcements

[10] To dismiss other sources of measurement error, Finke et al. (2012: 118) investigate the positions of other relevant domestic actors but find that they are located much closer to each other and to their leaders than to any actor of other states.

were designed to facilitate ratification.[11] Governments that did not gain much from the new treaty were more likely to announce a referendum, particularly if they were facing recalcitrant parliamentary parties. Finke et al. (2012: 134) find that the voters of some of these countries, such as the Czech Republic and Poland, were more reform friendly than their political leaders. Governments that gained a lot from the treaty were more likely to announce a referendum if the public was pro-reform. Finke et al. (2012: 147) conclude that 'political leaders chose the ratification path in consideration of the likelihood of a successful referendum and of the support of the treaty revision by the pivotal actors in parliament'.

Outcomes of referendum are hard to predict, so it seems quite risky for recalcitrant leaders to give consent to a reform on the expectation that it may not be implemented after all, especially if they can rely on a formal power of veto. Moreover, what turned out to be fatal was the French referendum which was announced *after* the leaders had agreed on the final text.

Finke et al. (2012: 151-69) offer an intriguing explanation. They contend that this outcome was possible because the positions of high ranking officials in charge of negotiations drifted toward those of their public, especially in countries where ratification required a referendum. Overall, officials became more intransigent if voters

[11] I base this comment on the interpretation of the results in Table 5.2 and Figures 5.3 and 5.4, which are somewhat at odd with the concluding comments (Finke et al., 2012: 148).

were more conservative than leaders, more accommodating if they were less conservative.

Consider the countries where leaders should have preferred the Treaty of Nice to the Constitutional Treaty (Finke et al., 2012: 13, 115-7). On jurisdictional reform, negotiating officials from the two recalcitrant countries (Estonia and Ireland) indeed were more accommodating than their leaders, in line with their public opinion. But the picture is more mixed in case of institutional reform. In some recalcitrant countries, negotiating officials appeared to be more accommodating than their leaders. This was in line with the stance of their public in referendum countries such as the Czech Republic and Poland, but *not* in Denmark and Ireland. In other recalcitrant countries, such as Cyprus and Malta, officials were *less* accommodating. In the Netherlands (a referendum country), they were so *despite* the high congruence between leaders and public opinion (Finke et al., 2012: 163-5).

Whether negotiators drifted or represented the updated views of their leaders as negotiations progressed, this data indicate where opposition was brewing. Yet, all the leaders eventually gave their consent to the reform in June 2004.

It could be argued that all this does not matter because the Constitutional Treaty failed to be ratified and the negotiations that followed naturally appeased more recalcitrant countries. Ironically, but not surprisingly, concessions were not designed to please the French government, the announcer of the first failed referendum; rather, they were

designed to persuade the publics and governments of recalcitrant countries, particularly, Poland, Denmark, the Netherlands and, eventually, Ireland. Even Britain gained small concessions (for the details see Finke et al., 2012: 171, 181-2). LI is perfectly suited to explain these concessions. Yet, Finke et al. (2012: 183) still note that

'the Treaty of Lisbon did not move the reform into the political leaders' unanimity winset. Under the caveat of the standard errors that accompany our estimates, we note that Irish and Estonian political leaders still preferred the Treaty of Nice over the Treaty of Lisbon'.

Even after the last concessions to the Irish, such as keeping one commissioner per country, they conclude that

'some political leaders remained sceptical of either the intergovernmental compromise or the Treaty of Lisbon. The Estonian, Danish, Polish, and Irish political leaders finally held no strong preference for any revision of the Treaty of Nice' (Finke et al., 2012: 185).

Conclusion

It may be just a matter of measurement. Indeed, the process of measuring the positions of several actors across several issues and across time may be prone to significant errors. Measuring the value of disagreement is particularly hard because it is issue specific and several factors shape the perception of the costs associated with failure. Indeed, positions on institutional or less important issues may be less stable (Moravcsik

and Nicolaïdis, 1999: 61) and their estimation harder. The longitudinal data on preferences and confidence intervals of Finke et al. (2012) could actually be employed to see if this was the case. Similar concerns apply to measuring the opportunities for issue linkages, which appear important in this context, given the highly disaggregated level of analysis. LI does not predict negotiations to end at the lowest common denominator if linkages offer opportunities to move beyond it (Moravcsik and Nicolaïdis, 1999: 73). Conceding that Slapin (2011) and, particularly, Finke et al. (2012) employ the most rigorous and systematic methodology of the field to date, these are still important challenges we face.

Or it may well be that in a Union of twenty-seven countries, the unilateral (or small group) blockage of a treaty reform will be short lived. Indeed, the establishment of the Convention turned out to be an effective way to circumvent opposition. Although clearly not the default condition, the Convention proposal was the focal point for the negotiations that lead to the Constitutional Treaty, and the latter the focal point for the Treaty of Lisbon. Not even the Irish government, clearly the most recalcitrant country, could avoid setting the terms of the negotiations around the Convention proposal when it held the presidency in 2004.

The process that generates focal proposals as well as the manipulation of beliefs that is associated with stalemates and breakthroughs in negotiations - notable traits of the past decade of treaty reform - are still rarely investigated (cf. Schneider and Cederman,

1994). Nevertheless, the presence of a focal point, if positioned well outside the unanimity winset, appears to ensure maximum reform under constraints. Indeed, the Convention method is now the central part of the ordinary procedure to revise the treaties. Finke et al. (2012: 194) conclude that 'political leaders appear to have proceeded with ratification *as if the rule for treaty change was a qualified majority, not unanimity*' (original emphasis). This behavior, if successful, is a theoretical challenge to LI, and to institutionalism for that matter.

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Table 1. J-tests of models with different operationalizations of preferences

Null model / Alternative model		Single veto	Sum of preferences: Unweighted	Sum of preferences: Salience-weighted	Sum of preferences: Salience- capability weighted
Single veto		-	1.64** (0.64)	*0.29* *(0.64)*	0.78 (0.63)
Sum of preferences	Unweighted	2.74** (0.39)	-	*0.96* *(0.77)*	2.15** (0.58)
	Salience-weighted	*3.04*** *(0.42)*	*1.90** (0.88)*	-	*2.73*** *(0.71)*
	Salience-capability weighted	2.85** (0.46)	0.84 (0.69)	*0.15* *(0.82)*	-

Note: Coefficients of $\hat{Y}$with robust standard errors in parentheses. ** p<0.01, * p<0.05. Figures in italics for the best performing model. Dependent variable is Pr(*Inclusion in the Treaty of Amsterdam* = 1).