

Collaborative leadership in EMU deepening reforms

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Abstract

This paper assesses the new forms of collaborative institutional leadership that have developed in the post-crisis era in the EU for dealing with informal constitutional changes relating to EMU deepening. The argument proceeds in three steps. First we argue that current assessments of the role and influence of institutions in the post-crisis era need to be revised because they build on imprecise comparisons that tend to *conflate* the *role* of political champion played by the Delors Commission in 1991 with the *influence* of Delors Commission in 1985. Second, we contend that existing research has overlooked the *collaborative* and *informal* nature of institutional leadership, both in the post-Lisbon era, but also critically how important collaboration in the performance of more informal roles was in past ‘successes’.

The article then evaluates two instances of collaborative institutional leadership; the ESM and Banking Union cases. In the ESM case, we find that both the Commission and European Council President attempted in early stages of the negotiations to act as the political champion in the mold of the 1991 model. Failure in these attempts led the institutions to adapt and evolve, slowly moving towards more facilitating roles that echoed the 1985 model. When faced with another round of informal constitutional reform in the summer of 2012 regarding banking union, institutions provided more facilitating leadership a la the 1985 model. In particular, the combination of assisting governments in the control room through the provision of expertise, sounding out governments through the drafting process of the Four Presidents report, providing linkage and drafting functions

in the machine room, enabled institutions to upgrade the common interests, resulting in a banking union that was arguably more ambitious as a whole than governments left to themselves would have agreed.

1. Introduction

There have been many attempts to understand the role and influence of institutions in the reform process of the EU that was triggered by the start of the Eurocrisis in 2010, and later in reaction to the migrant crisis. Some scholars claim that we are witnessing a continuation or strengthening of the post-Maastricht trend of a ‘new intergovernmentalism’, in which heads of state and government (HOSG) dominate decision-making, using ad hoc intergovernmental action channels to push forward reforms, marginalizing the Commission in the process (Bickerton et al, 2015). Others have claimed that while the role of the Commission has been transformed, they are still influential because they have been delegated a range of new competences in economic governance (e.g. Nugent and Rhinard, 2016; Becker, Bauer, Connolly and Kassim, 2016). Analyses of the role and impact of the European Council President tend to converge on an argument that the role is primarily one of a broker between governments without real impact (Tömmel, 2017; Dinan, 2013, 2017).

In this paper, we argue that current assessments of the role and influence of institutions need to be revised for two reasons. First, many comparisons with past leadership by institutions – in particular the Commission – build on *imprecise comparisons*. We argue that scholars tend to *conflate* the *role* of political champion played by the Delors Commission in 1991 with the *influence* of Delors Commission in 1985. To counter this, we develop two ‘ideal-typical’ institutional leadership strategies named after the two periods in which they were used: the model of facilitation and assistance used by the Delors Commission in the 1985 IGC, and a ‘champion of Europe’ model of political advocacy that was best seen in the tactics of the Delors Commission in the second half of 1991 in the parallel EMU and Political Union IGC’s.

Second, we contend that existing research has overlooked the *collaborative* and *informal* nature of institutional leadership, both in the post-Lisbon era, but also critically

how important collaboration in the performance of more informal roles was in past 'successes'. Therefore, when scholars analyze the leadership roles of institutions individually, it is like attempting to analyze how a football team plays by focusing only on the actions of one player. For example, to really understand the role and influence of the Delors Commission in the 1985 IGC, one needs to include the close informal collaboration that took place with the Luxembourg Presidency.

This paper proceeds in three steps. First, we develop our typology of institutional leadership. In this, our analytical focus is on debates about the role and impact of *institutional leadership in major history-making decisions*, either formal (IGC's) or more informal constitutionalization processes that are accomplished through combinations of secondary legislation packages and minor treaty revisions, instead of also including the broader picture of the Commission's role in daily EU policy-making.

This section is followed by an assessment of two cases of institutional leadership in the EMU deepening reform process. In the ESM case, overall both the Commission and the European Council President tried to play a more overt political role, similar to the 1991 model. The not surprising result was that governments rejected the leadership attempts and instead organized the negotiations themselves at the EWG. Over time, institutions adapted and began playing a more productive, facilitating role in the later stages of the negotiations. In the case of Banking Union, institutions had learned from past debacles in EMU deepening reforms, and acted less as political champions and more as facilitators of agreement (i.e. the 85 model). The result of their leadership was a form of upgrading of the common interest, with a more ambitious reform agreed than arguably otherwise would have been. The conclusions discuss the broader implications of our findings for theorization on the roles and influence of institutional leadership in major history-making decisions in the EU.

2. Two ideal-types of institutional leadership

Determining what the 'baseline' for comparisons is critical when assessing whether we are witnessing a decline in the ability of the Commission or other EU institutions to play leadership roles. Our argument is, briefly put, that most evaluations of the Commission's (and other supranational institutions) *role* conflate the 'champion of Europe' role played by the Commission in the 1990-91 IGC with their *influence* enjoyed by the Delors Commission in the 1985 IGC (Single European Act).

Most research merely posits a 'decline' of the Commission without putting forward an explicit baseline for this comparison beyond stating that they are comparing with the Delors Commission (e.g. Peterson, 2015; Nugent and Rhinard, 2016: 1199; Hodson, 2013).¹ For example, Hodson (2013: 302, 312) claims that the Commission under Delors succeeded in upgrading the common interest, but that this declined after Delors. However, by using the blanket statement about the Delors Commission, the role and influence enjoyed in 1985 is somewhat conflated with the more political role in 1991 that resulted in a lack of influence.

We contend that much of the literature on institutional leadership of the Commission builds on a conflation of role and influence that masks important differences. In the 1985 IGC, a key reason for why the Commission was quite influential was that it eschewed playing a highly politicized role, instead working in close collaboration with the Luxembourg Presidency in providing facilitating leadership. During the actual reform negotiations, the key to Commission influence was not high-level political leadership in driving Europe forward, but instead the lower-level and behind-the-scenes assistance offered by the Commission in collaboration with the Luxembourg Presidency in linking negotiating levels together, and managing the agenda, drafting texts, and finding compromises. In contrast, in the later stages of the 1990-91 IGC, the Delors Commission

¹ - A recent exception to this conflation is Ross and Jenson (2017), who note the high-water mark being the 1985 IGC, and the lack of influence of the Commission in the 1990-91 IGCs. However, they overlook the critical importance of collaboration with the Luxembourg Presidency, in particular at the machine room level, that was so critical to success. The result is that we are left with an explanation that explains success in 1985 with a combination of Delors and his team's creativity and intellectual entrepreneurship and convergence of member state preferences around a 'win-win' solution (internal market).

thought of itself more as a player than an assistant to governments, acting as the ‘champion of Europe’ in a way that backfired spectacularly.

In order to understand the roles played by institutions in constitutional reform negotiations, we first draw on principal-agent (PA) theorization and negotiation theory to develop a set of negotiating functions that need to be provided for the successful conclusion of efficient agreements (Tallberg, 2003, 2006; Kingdon, 2003; Carnevale and Arad, 1996; Young, 1991). We then develop two ideal-typical leadership models based on who is providing different functions, describing a facilitating 1985 and a political champion 1991 model of institutional leadership.

The functions that need to be supplied in constitutional reform negotiations

EU constitutional reform negotiations can be either formal treaty negotiations in the form of Intergovernmental Conferences (IGCs), or more informal and implicit constitutional reforms that involve altering the meaning and effect of a constitution through the use of packages of secondary EU legislation and minor treaty amendments (Behnke and Benz, 2009: 216-217).² Given that sensitive constitutional norms are being changed either formally or implicitly, member states as the ‘Master’s of the Treaties’ have to be intimately involved in the negotiations at the highest level. This means that the key decisions have to be taken at this level, but the heads of state and government (HOSG) cannot thrash out the details of treaty reforms, in particular when implicit reforms are being undertaken through packages of secondary EU legislation as in Banking Union. This means that lower-levels have to be closely involved in translating the broad guidelines providing by the highest level into actual texts upon which agreement can be reached. In the following, we use the term ‘control room’ to refer to the highest political level, and ‘machine room’ for the lower-levels of negotiations in which ministers and civil servants flesh out actual agreements.

Drawing on PA theory and negotiation theories, Table 1 depicts the key functions that have to be provided by either institutions or governments at each level in EU constitutional

² - We do not discuss the Convention-model in this article, given that it has only been used twice (Charter on Fundamental Rights and the Constitutional Treaty) for relatively modest treaty amendments, and it is highly unlikely that it will be used again. In this format, the provision of leadership was much more complicated and spread amongst many more actors (see Beach, 2005).

negotiations (Tallberg, 2003; 2006; Kingdon, 2003; Carnevale and Arad, 1996; Young, 1991; Beach, 2005, 2010). Almost all of the functions are *formally* delegated to one or more institutional actor, but in practice there is often informal delegation and other forms of collaboration with other actors that take place in the performance of these functions (see next section). In the past, most of these leadership functions were formally delegated to the rotating Presidency (Tallberg, 2003, 2006), although in practice Presidencies often drew on the expertise of the Council Secretariat and/or Commission to assist them in managing the agenda (in particular in the machine room) and in drafting solutions (Beach, 2004, 2005). Additionally, France and Germany have been able to provide political guidance when their compromises neatly mapped onto the core cleavages splitting governments in the negotiations (Mazzucelli, Guérot and Metz, 2007).

Control room (heads of state and government - HOSG)	<ul style="list-style-type: none"> • Defining problems • Putting issues on the agenda • Finding potential areas of agreement • Provision of information to understand issues (legal and substantive) • Agenda management (overall and individual meetings)
Linkage between levels	<ul style="list-style-type: none"> • CR -> MR : direction for negotiations, legitimacy for engaging in constitutional reforms, resolving outstanding issues • MR -> CR : fleshing out of details of broad guidelines
Machine room (ministerial, representative and working group levels)	<ul style="list-style-type: none"> • Agenda management (structuring of overall process (timing, venues), individual meetings) • Drafting solutions • Brokering compromises

Table 1 – the leadership functions required in EU constitutional reform negotiations

At the highest level - the 'control room' - there is a need in early stages of negotiations to define problems and put issues formally on the negotiating agenda. This does not mean that governments necessarily agree on exactly which problems need to be fixed, nor how they should be fixed, but before solutions can be found there has to be some common recognition about the problems that need to be fixed through constitutional reforms. In shaping the agenda, it is also important for information to be collected from governments to attempt to find potential areas of agreement, and to keep unresolvable ('stinker') issues

off the agenda. At all stages of negotiations, it is also important that legal and substantive expertise be provided to help HOSG understand the issues and the implications of different potential solutions. Finally, agenda management is required to steer the negotiations at the control room-level, involving a range of actions like sequencing of issues, the use of deadlines, issue-addition/subtraction, and venue-shopping.

We use the term 'machine room' for all of the levels below the HOSG. This ranges from minister-level meetings in the Council to different working groups composed on national and EU experts. Given the different levels of negotiations, with ministers dealing with many medium importance political issues, and civil servant experts dealing with fleshing out the details of agreements, there is a strong demand for agenda management across different fora within the machine room. There is also a strong demand for drafting of actual legal texts (treaty articles or secondary legislation), and the brokerage of compromises.

Given the functional specialization of the levels in EU constitutional negotiations, there is a stronger need for linkage between the control and machine rooms than in normal EU law-making. The European Council is not strongly involved in most normal EU law-making processes. In contrast, in EU constitutional reforms the control room as the 'Master's of the Treaties' has to be intimately involved in the negotiations, resolving key political disagreements that could not be agreed at lower-levels, and providing legitimacy to the machine room when dealing with constitutional reforms. However, because the HOSG cannot actually negotiate complex constitutional deals, they are dependent on the machine room level to flesh out the details of the broad political outlines given to them. The linkage function was formally provided by the Presidency prior to the Lisbon Treaty. After the introduction of the post of the permanent President of the European Council, there is more pronounced lack of formal linkage between levels, as the European Council President does not manage the agenda at the machine room (Council and working group) level. We explore the implications of this lack of formal linkage in our case studies of leadership in EMU deepening later in the article.

Two ideal-typical models of institutional leadership in constitutional reform negotiations

Ideal types are analytical simplifications that can be used as heuristic tools to make sense of real-world complexities. The term 'ideal type' means, per definition, that it does *not* actually exist in its pure form in the real world. In the following we develop two ideal-typical models of institutional leadership in EU constitutional reforms that can be used as comparative metrics to make sense of the leadership functions performed by institutions. The first ideal-type, the 1985 facilitating model, is where institutions collaborate to help governments achieve their priorities; the other, the 1991 political champion model, is where an institution or institutions attempt to act as a political champion for much more ambitious outcomes than governments want, which creates a situation where other actors have to step in to provide facilitating leadership instead.

While the following focuses on the role of the Commission, we also highlight the importance of collaboration with the Presidency in the 1985 facilitating model, especially at the machine room level (see below). In the 1991 political champion model there was also collaboration; not by the Commission but instead between Presidencies and the Council Secretariat, especially at the machine room level. Further, while the cases they are developed from are both formal IGC's, through adaptation they are also relevant as ideal types for comparison to the new forms of institutional leadership in the post-Lisbon context that have taken place using more informal and implicit constitutional reforms.

Note that 'merely' assisting governments does not mean that institutional leadership is inconsequential; indeed as PA theory tells us, by providing even relatively technical leadership, agents also gain opportunities to push outcomes closer to what they want. But given that institutions here are acting based on informal mandates, there are also clear limits to how far they can push governments, meaning that at most institutional leadership can result in what Haas termed 'upgrading the common interest' (Haas, 1961: 368).

The first model is the *1985 facilitating model*. The role played by the Commission was one of informal *collaboration* with the Luxembourg Presidency in providing leadership at both the control and machine room levels, and in providing linkage between the levels. At the control room level, Commission President Delors did not attempt to act as an equal partner of governments in most situations, instead functioning more as a facilitator by

sounding out governments for what types of reforms they might be interested in even before he became President (Grant, 1994: 66). The Commission also helped frame the agenda for the Single European Act IGC in 1985 by convincing HOSG to put the White Paper of legislative reforms onto the EC agenda (Ibid). Delors also fed leaders in the 'control room' with detailed information about how things currently worked, and helped the Luxembourg Presidency steer the negotiations, but did not engage in lecturing of leaders intended to show that the Commission's way was the only way (Beach, 2005; Budden, 2002). More importantly, the Luxembourg Presidency informally delegated most of the tasks at the machine room level to the Commission, in particular in drafting texts in key policy areas (Beach, 2005: 53-58). The Commission was the crucial link between levels, helping to translate what governments in the control room wanted into actual treaty text at the machine room level. The result of Commission collaboration with the Presidency was extensive influence on the final constitutional reform in the form of a broader and more ambitious final treaty than would arguably have been agreed upon by governments by themselves (Beach, 2005: 58; Budden, 2002; Ross, 1995; Grant, 1994).

In contrast, the *1991 political champion model* is one where the Commission plays the role of *political champion* acting in its own right. While Delors was influential in the agenda-setting phases of the EMU IGC in 1989-1990 (Dyson and Featherstone, 1999), the Delors 1991 model is focused on the period in which the Commission shed its cloak of technicality and attempted to act as the champion of 'Europe', forgetting that governments are the 'Master's of the Treaties' (Beach, 2005: 93-94). Delors even rejected the invitation by the Luxembourg Presidency in early 1991 to take part in the lower-level drafting of texts, instead attempting to openly advocate their own pro-integrative positions, for example putting forward proposals in the Commission's name (even whole draft treaties, thereby implicitly usurping the legitimate role of governments in the negotiations). The results of Commission attempts to provide leadership were ineffective, and at times even counterproductive. The Delors Commission in 1991 simply misunderstood its role, attempting to act as a political actor in constitutional reforms alongside governments, fighting for extreme positions that were far outside what governments wanted. At the end of the negotiations, Delors was reduced to grumbling publicly about the lack of progress and ambition in the negotiations (Beach, 2005: 103-104).