Institutions serve a purpose for their members. To withhold compliance, thus to weaken them, means losing something valuable. Members have an incentive to care about institutional preservation and, as a result, institutions have force.

—Peter Gourevitch

Why do governments carefully design formal rules, and then jointly act in ways that seemingly contradict the rules’ purpose? What do practices of informal governance tell us about why and how international organizations work?

In this chapter I present a theory of informal governance. At its core is the argument that uncertainty about future political pressure against cooperation generates a demand for what might be called a norm of discretion among governments. This norm states that governments that face unexpectedly strong domestic pressure for defection ought to be accommodated when their noncompliance threatens to diminish the overall value of the institution. The norm antecedes formal rules in that it adds flexibility to the formal institutional design when member states need to resolve unexpected and potentially disruptive conflicts that their cooperation may suddenly generate at the domestic level. It manifests itself in practices of informal governance as governments collectively circumvent formal rules in order to exercise added discretion.

Because the norm emphasizes what has been called the “liberal” insight in International Relations—that for international institutions to be effective, they constantly have to be reembedded in the interests and values of the member states’ societies—it will henceforth be referred to as Liberal Regime Theory.

This chapter introduces the theory in five steps. The first step explains why states choose to cooperate within a formal institutional framework. The second discusses why these formal rules may suddenly prove inadequate and require added situational discretion. The third explains why this situational flexibility is provided by means of informal governance, rather than through formal
mechanisms. The fourth discusses how, given that demands for added flexibility might be ambiguous, the member states delegate the authority to assess whether formal rules or informal governance apply in a specific situation to a trustworthy government. The final step considers alternative views and two rival explanations for informal governance—power-based institutionalism and classical regime theory—and explains how these theories can be tested against each other.

Why States Demand Formal Institutions

In situations of interdependence, where the realization of an actor’s interests is dependent on another actor’s behavior, institutions can help ensure that actors capture gains from cooperation. A key aspect to understanding how institutions operate is uncertainty about the future. If one suspects a cooperating partner will renege on the promise to reciprocate in the mutual adjustment of policies, cooperation becomes untenable even when keeping your promise today promises great payoffs tomorrow and even more the day after or, in Robert Axelrod’s terminology, when cooperation takes place under “a long shadow of the future” (Weingast 2002, 672; Axelrod 1984).

This problem is particularly acute if we allow for state preferences changing over time. Following public choice theory, domestic political support determines the welfare of incumbent politicians. Governments consequently choose the policy that maximizes their political support measured as the weighted sum of electoral support for welfare gains (e.g., lower consumer prices in response to economic liberalization) and rents from interest groups in exchange for protection from change (e.g., protection from more competitive foreign imports) (Grossman and Helpman 1994, 836). Rents in that context are resources spent in order to increase one’s share of existing wealth, instead of using these resources to create wealth, and they can range from illegal bribes, campaign contributions, to public endorsements of incumbents or other forms of political support.

The politicians’ opportunism subjects a government to constant pressure from various social groups to pursue the policy that most closely matches their diverse interests. The strength and composition of this pressure depends on a variety of factors that affect actors’ economic opportunities, the politics of their collective action, and the responsiveness of political institutions to special interests. In any case, its result is time-inconsistent preferences as governments respond to changes in public demands for economic integration or special interests’ demands for protection from market forces. The fact that governments know that each of them is tempted to give in to varying societal demands renders their pledges to
cooperate with one another dubious. Cooperation becomes untenable and all
governments consequently end up worse off.

For governments to reap joint welfare gains under conditions of time-
inconsistent preferences, they need to bolster the credibility of their commitments.
In other words, for a government to begin making adjustments to cooperation,
it needs reassurance that their cooperating partners will stick to their part of
the bargain too. They do this by means of formal institutional rules that reduce
uncertainty about one another’s future behavior. Precise rules that specify con-
duct in contingent situations enable states to discriminate more clearly between
what constitutes cooperative behavior and what can be considered a violation of
the agreement. These rules lend credence to commitments to cooperate, because
they enable the monitoring of compliance and the punishment of defection
(Abbott et al. 2000, 412–15). Rules that delegate authority to international orga-
nizations to make and enforce common policies enhance the credibility of com-
mitments as well. They insulate decision makers from domestic ad hoc pressure
(Hawkins et al. 2006, 18–19), and they limit the range of policy instruments
available to governments to renege on cooperation.¹ The codification of these
rules signals this commitment widely beyond the circle of cooperating govern-
ments to markets and third states, which allows these actors to plan ahead and
allocate resources more efficiently.²

Both types of formal rules—those that specify conduct and those that dele-
gate authority to international organizations—align otherwise time-inconsistent
preference ex ante in favor of cooperation. Crucially, common knowledge about
the rules’ effects allows all states to form stable expectations about one anoth-
er’s future behavior and, thus, to engage in cooperation at the outset. Because it
removes governments’ temptations to defy the rules unilaterally, the institution
can be said to be in equilibrium.

Why States Demand Flexibility

Lacking a monopoly of violence, international institutions have to be self-
enforcing to be sustainable. An institution’s effect therefore has to be such as
to constantly reproduce states’ interests in adhering to it. Yet exactly because
governments are unable to predict what societal groups will want and lobby
for in the future, which gives rise to a demand for formal commitment, they
are also unable to predict how precisely their institution will affect the future
patterns of their societal interdependence.³ As Ken Shepsle (1989, 141) puts
it, “What can be anticipated in advance is that there will be unforeseen con-
tingencies.” This gives reason to doubt that international institutions have a
lasting, independent effect on state behavior. Once they are set up, institutions experience changes in their environment that may suddenly alter their effect on the costs and benefits of international cooperation both among and within countries. The reasons for this environmental change are manifold, complex and not predictable in their entirety. They range from technological innovation, shifts in consumer preferences and other shocks to supply and demand, to broader changes in political institutions. Therefore, once an institution has begun operation, situations inevitably arise in which a strict adherence to the formal rules, even if beneficial for the society as a whole, generates a distributional shock in which a segment of society bears much of a country’s costs of adjusting to cooperation.

In situations like these, where a domestic group suddenly shoulders the concentrated adjustment costs of economic integration, formal rules fail to reproduce states’ interest in adhering to them. The reason lies in the politics of collective action. Groups who incur concentrated losses have political advantages over larger groups with diffuse benefits—like the general public—since the marginal gains from collective action are much higher for members of small groups than for members of large ones (Olson 1965, chaps. 1 and 6). A domestic group that suddenly faces concentrated costs from cooperation therefore unexpectedly overcomes initial barriers to mobilization.

Now, recall that governments are expected to adopt policies that maximize their domestic political support. When groups unexpectedly mobilize to voice their interests in the political arena, they are increasingly able to affect their government’s policy toward delaying, obstructing, or even openly withholding compliance with international law or the decisions of international organizations. This problem is henceforth referred to as political uncertainty (Downs and Rocke 1995, 130; Rosendorff and Milner 2001, 831; Howse and Teitel 2010, 132–33).

Crucially, political uncertainty is problematic not just because the sudden defiance of a formal commitment means that the defiant government and its cooperating partner forego the potential gains of cooperation. More important than that, an unexpected noncompliance with the formal rules is costly for all member states, because unauthorized defection creates doubts about the credibility of states’ commitment to cooperation. As established above, it is the credibility of one another’s commitment to cooperation that motivates governments to make adjustments to cooperation to begin with. Unauthorized defection consequently sets off a process that all governments would rather avoid: the credibility of mutual commitments sustains damage, the stability of states’ expectations about one another’s future behavior crumbles, and mutually beneficial cooperation unravels. The institution is no longer in equilibrium, since
governments are increasingly motivated unilaterally to defy the rules. It is worth citing the chapter-opening quote by Peter Gourevitch on this topic at length:

> The power of an institution arises not just, or even principally, from its capacity to use physical force. Rather, it emerges from the benefits members derive from participation in them. Institutions do things for members that they cannot obtain without them. Members acquire incentives to preserve institutions. The test of the power of an institution is thus its utility, not its coercive force. Institutions serve a purpose for their members. To withhold compliance, thus to weaken them, means losing something valuable. Members have an incentive to care about institutional preservation and, as a result, institutions have force. (Gourevitch 1999, 138)

Put differently, because unauthorized defection, be it in the form of delay, obstruction, or outright noncompliance, damages the general value of the institution, all governments have an incentive to prevent it. If all of them attach high value to the international institution, they prefer to add situational flexibility to the formal rules in order to prevent or resolve situations in which governments are tempted to defy an agreement even in the face of punitive sanction. This flexibility allows them to uphold a highly beneficial level of cooperation that they would otherwise not be able to sustain.

**Why Flexibility Remains Informal**

Why would governments refrain from codifying the use of flexibility in these situations? Some institutions do officially authorize departures from formal rules in the event of unforeseen developments. For example, Article XIX of the General Agreement on Tariffs and Trade (GATT) authorizes temporary protection when “as a result of unforeseen developments” a sudden surge in imports causes or threatens “serious injury to domestic producers.” Also, the EU treaties contain a number of derogations on grounds of public morality, public order and safety, and the like (e.g., Article 36, Treaty of Lisbon).

However, none of these formal measures captures the situations that constitute the aforementioned threat to the institution’s balance. Such a threat arises not because public goods are in jeopardy, per se, or because domestic groups require temporary protection from exogenous shocks. It is rooted in political factors that are endogenous to the domestic situation (Pelc 2009, 354). Thus, the same import surge can prompt unmanageable political pressure in one country,
while in another country domestic producers adjust to it smoothly. Damage to the institution is imminent—and flexibility, therefore, is pertinent—only in the first scenario.

In short, flexibility is necessary not on grounds of economic efficiency, or equity, or because a public good is considered worth protecting. States find it necessary to provide flexibility when the imminent damage to the value of the international institution is considered more severe than the collective bending of rules for political reasons.

The political roots of political uncertainty explain why governments refrain from codifying the provision of flexibility in these situations. Putting into writing mechanisms that allow for the provision of flexibility for domestic political reasons quite simply contradicts the purpose of the institution’s formal rules and, more generally, of the rule of law itself.

Although legal rules may be interpreted broadly and according to a number of different legal principles, the rule of law does require that these legal principles be applied consistently. Accordingly, the rule of law reaches its limits when it comes to the demand for flexibility for domestic political reasons, which are so manifold and peculiar to the domestic situation so that no single legal norm could ever capture them. Similarly, supranational actors that are pledged to the rule of law cannot use their room for maneuver for concessions to governments that are tempted to defy the law for mere domestic political reasons. Even if they had broad discretion, they are required to use it in a consistent manner. The informal norm of discretion, however, allows for a variable, political interpretation of formal rules’ applicability.

Moreover, the codification of reasons and situations that justify the suspension of the formal rules might generate the behavior that the formal rules are supposed to prevent in the first place. More so than informal norms, codified rules convey to private actors that they will receive protection in the event that they demand it loudly enough. These actors can consequently be expected to mobilize in anticipation of receiving concessions where they would otherwise have adjusted to cooperation (Goldstein and Martin 2000, 622; Kohler and Moore 2001, 53; Pelc 2010, 636; Sykes 1991, 259).

If formal flexibility mechanisms are inadequate to deal with the problem of political uncertainty, is it possible to provide flexibility tacitly? Let’s assume that the conditions that prompt domestic pressure are perfectly obvious to all cooperating actors. In this situation, as discussed above, all governments prefer to prevent a cooperating partner from caving in to unmanageable pressure, even without an explicit quid pro quo, because its unauthorized defection damages the overall value of their institution. Thus, governments have an incentive to
provide flexibility without being legally obliged to do so, because it serves to sustain a level of highly beneficial economic integration that would otherwise prove impossible to uphold (Bagwell and Staiger 1990).  

There are a variety of ways to prevent or mitigate a distributional shock that would prompt domestic pressure (Pelc 2011). For example, governments can diffuse adjustment costs that are concentrated on a small group over a larger group (e.g., through compensation), they can diffuse it over time (e.g., by phasing in regulation), or they can delay the occurrence of adjustment costs until they are less politically susceptible to domestic pressure (e.g., until after an election). At any rate, the provision of these various kinds of flexibility will manifest itself in practices of informal governance as governments collectively depart from the formal rules in order to accommodate cooperating partners under strong domestic political pressure.

**How Governments Sustain the Norm of Discretion**  

In reality, the conditions that demand flexibility may not be entirely unequivocal. Emerging under conditions of political uncertainty, the norm of discretion is necessarily vague and requires a great deal of judgment to be operational (Obstfeld 1997). Informality adds ambiguity, since uncodified agreements are more open to misconceptions and reinterpretation than their codified counterparts (Abbott and Snidal 2000, 422). If, moreover, states are not fully informed about one another’s domestic situation, they have an incentive to exaggerate the need for informal governance when it benefits them. This causes a classic problem of moral hazard, in that the norm’s vagueness and the lack of information might tempt governments to demand flexibility when they are, in fact, perfectly able to keep their commitment.

Consider the example of fire insurance: the outbreak of a fire may be largely uncontrollable, but the probability is somewhat influenced by carelessness and, obviously, arson. If the cause of a fire is difficult to observe, complete coverage then induces the insured to behave more carelessly or, in the extreme case, to set fire to a house in order to receive the insurance sum (Arrow 1963, 961). Similarly, without information about a government’s actual temptation to cave in to domestic pressure, governments face an incentive to exploit the norm of discretion by demanding flexibility merely to reap political support at home at the expense of their cooperating partners.

If the informal norm of discretion is prone to abuse, the provision of flexibility through informal governance might, in fact, undermine cooperation. Recall that it is the purpose of formal rules to enhance the credibility of commitments and, thus, to stabilize states’ expectations about one another’s future
cooperative behavior. Collective departures from formal rules under ambiguous circumstances undermine this very purpose. Doubts about the justification for the use of informal governance in a specific case nurse more general doubts about the credibility of states’ commitments to cooperation that gradually erode the stability of their expectations. To resolve this tension between the formal rules’ credibility and informal flexibility, governments need to find a way to discriminate between false and legitimate demands for informal governance.

The economic literature suggests two solutions to this problem of moral hazard: incomplete coverage and observation (Shavell 1979). The idea behind incomplete coverage is to make the insured bear a proportion of the costs of the loss in order to prevent abuse of the policy. Medical patients, therefore, are often required to contribute to the treatment of conditions that are partly caused by an unhealthy lifestyle.

The same rationale lies behind suggestions regarding the optimal design of legal escape clauses. George Downs and Peter Rocke (1995, 77), for example, propose to establish sanctions for noncompliance that are “low enough to allow politicians to break the agreement when interest group benefits are great,” but also “high enough” to commit states to obey the agreement most of the time. However, this solution seems infeasible for our purposes. By definition, political uncertainty lies beyond what states can know at the time of institutional creation. A preset penalty or level of sanction that, similar to incomplete coverage, is designed to prevent an abuse of the norm will necessarily prove inadequate.

The second solution, observation, seems more promising. The idea here is to collect situational information in order to discriminate between false and legitimate insurance claims. In the case of car insurance, for instance, insurance companies often send experts on-site in order to investigate the cause of an accident. Similarly, Peter Rosendorff (2005, 391) suggests that the World Trade Organization’s legal tribunal, the Appellate Body, performs precisely this information-providing role when it assesses the legitimacy of a country’s use of the GATT escape clause.

Though appropriate in the particular case of the World Trade Organization (WTO), this legal solution for the problem of moral hazard is once again inadequate for our purposes. Recall that the norm of discretion applies where the rule of law reaches its limits, because it allows for the interpretation of rules according to political rather than legal standards. In other words, governments need to know whether an imminent damage to the institution justifies the accommodation of a government that is prone to defect for domestic political reasons. Institutional actors, like legal bodies that derive their authority from their pledge to enforce the rule of law, would jeopardize their reputation by recommending the use of informal governance.
To sustain the norm of discretion, therefore, governments require a political equivalent to the WTO’s Appellate Body to adjudicate on ambiguous demands for flexibility. Its judgment then has to be based on situational information about a particular government’s actual temptation to cave in to domestic pressure. By rendering informative judgments about the actual demand for informal governance, such a body enables states to depart from the formal rules without undermining the credibility of the commitment that these rules embody. As a result, formal rules and the informal norm of discretion may complement one another to sustain a level of economic integration that neither formal rules nor the informal norm alone permit.  

Testable Implications

So far, we have argued that political uncertainty generates a demand for an informal norm of discretion to add flexibility to the formal rules—a flexibility that serves to resolve potentially disruptive conflicts that cooperation may suddenly generate at the domestic level. Although this norm is invisible by nature, it generates two aspects that can be observed. First, the norm manifests itself in practices of informal governance as governments collectively depart from the formal rules in order to accommodate a government that faces unmanageable domestic pressure. Second, to prevent moral hazard, governments delegate the authority to adjudicate on demands for informal governance to a trustworthy political actor. We can specify these implications and evaluate them in light of rival explanations.

Variation in Informal Governance

If political uncertainty generates a demand for a norm of discretion that manifests itself in practices of informal governance, then these practices will vary systematically with the extent of political uncertainty over time and across issue areas. Thus, governments can be expected to adopt practices of informal governance where political uncertainty is high and, conversely, to follow formal rules more frequently where political uncertainty is low. But under what circumstances is political uncertainty high, and where is it low?

Political uncertainty is not very tractable for two reasons. The first is that when institutions are designed to reduce uncertainty, uncertainty does not materialize in any other way except through the institution itself. This opens the door wide for the post hoc ergo propter hoc fallacy, which is to explain the emergence of an institution on the basis of its function, when it actually emerged
for entirely adventitious reasons. The other reason is particular to the problem at hand. Political uncertainty lies by definition beyond what governments know at the time of institutional creation, which means that it is generally difficult to develop an exact measure of political uncertainty.

Since it is impossible to measure political uncertainty directly, we need to find a proxy for this variable that allows the theory to be subjected to a proper test. In our case, a proxy for political uncertainty is available in the form of welfare provisions. Recall that the threat to the commitment occurs when a group experiences unexpected adjustment costs, because these costs induce the group to overcome initial barriers to mobilization and pressure its government for protection. Political uncertainty, therefore, depends also on the determinants of collective action.

As mentioned above, the literature on collective action emphasizes that small groups are more likely to mobilize than large groups, since a member’s marginal utility of mobilization is much higher in the former than in the latter case (Olson 1965). Concentrated adjustment costs are therefore more likely to generate domestic recalcitrance than diffuse costs borne by the society as a whole. Welfare provisions, however, comprise publicly funded social insurance such as health or unemployment insurance that disperse unforeseen costs incurred by individuals (e.g., in the event of unemployment, ill health) over a larger group of people (e.g., the taxpayers). It follows that their presence reduces a group’s propensity to mobilize in the event of a distributional shock by lowering group members’ marginal utility of collective action. Welfare provisions may be used as a proxy for political uncertainty because even though their existence affects the level of political uncertainty across countries or issue areas, they themselves vary largely independently of this variable. All else being equal, political uncertainty and, therefore, the demand for the norm of discretion is consequently relatively lower in the presence of welfare provisions than where welfare provisions are absent. Informal governance will vary accordingly.

The way in which welfare provisions affect the level of political uncertainty is depicted in the following figure. Governments formulate their policy as a weighted sum of electoral support for welfare gains from liberalization and of rents from special interests in return for protection. This equation changes (bottom part of the figure) when a distributional shock upsets the domestic politics of collective action at home. As the left-hand side of the figure shows, formal rules may then suddenly fail to align governments’ incentives to stick to their commitment. The result is a demand for an informal norm of discretion that nips situations like this in the bud. The right-hand side shows how welfare provisions buffer the effect of distributional shocks on the politics of collective action at home. The politics of collective action at the domestic level and, thus, future domestic demands for protection are largely predictable.
FIGURE 1  Variation in political uncertainty
Chapter 2 specifies this hypothesis for the empirical context of the EU. It argues that political uncertainty must be considered particularly low in the EU’s Common Agricultural Policy, which is deliberately designed to protect European farmers from unexpected adjustment costs. The design of this policy makes it easier to predict the timing and extent of farmers’ pressure than it is to predict the pressure of relevant groups in any other sector. The demand for the norm of discretion and practices of informal governance vary accordingly.

Coping with Moral Hazard

Since the norm of discretion is vague and prone to abuse, states need to find a way collectively to discriminate between false and legitimate demands for informal governance. As explained above, most conventional solutions to this moral hazard problem, such as penalties or legal adjudication, are inadequate for our purposes. The most promising solution consists of delegating the authority to adjudicate on ambiguous demands for informal governance to a trustworthy political body.

What kind of political body is required to elicit the kind of information that is necessary for governments to discriminate between false and legitimate demands for discretion? Obviously, this arrangement does not work when the political body consists of governments that demand informal governance (the claimants), since their incentive to exaggerate the need for accommodation gives rise to the problem of moral hazard in the first place. For the same reason, adjudicatory authority cannot lie with governments that stand to gain from the accommodation of a cooperating partner, since both governments have an incentive to collude. The delay of an unpopular decision or exemptions for certain sectors, for example, may reduce the domestic pressure on one government and, at the same time, be politically advantageous for other governments as well. In this case, it would be difficult for everyone else to trust the judgment of a government that stands to gain from delaying a decision.

The authority to adjudicate on ambiguous demands for flexibility, therefore, has to lie with a government that does not personally benefit from accommodating its cooperating partner. Its judgment can be trusted, because the only reason for this government to recommend the use of informal governance must be that it seeks to prevent damage to the commitment (Calvert 1985, 552).

The point here is not that this government itself collects information about the domestic pressure that the claimant is facing. Rather, its adjudicatory authority induces other actors with a stake in the outcome to increase the
level of information in order to prevent the adjudicator from rendering a false judgment.\textsuperscript{20} This arrangement is consequently able to prevent moral hazard and sustain both the norm of discretion and the institution at large.

Considering the institutional context of the EU, chapter 6 in this book spells out this theory in more detail and argues that the member states adapted the existing institution of the EU Council presidency, a position rotating among member states on a six-month interval, to enable it to perform this adjudicatory function.

**Alternative Explanations for Informal Governance**

In addition to multiplying the theory’s testable implications and specifying them for the institutional context of the EU, the findings can be further corroborated when they are contrasted with the implications of two alternative explanations for informal governance. The first alternative explanation says that informal governance is the result of powerful states unilaterally escaping from their commitment. The second holds that informal governance serves to reduce the relative costs of transaction among states. Finally, I will look at three further perspectives on informal governance that complement rather than contradict these theories.

**Power-Based Institutionalism**

Randall Stone provides an elegant power-based explanation for practices of informal governance, which emphasizes that institutional design is mainly a matter of balancing power and interests. At its root is the following commitment problem: because large states typically have more viable outside options to institutionalized cooperation that at a given point they may be tempted to exercise, the argument goes, small states offer large states a deal that keeps them on board in the long run.\textsuperscript{21} In exchange for more favorable formal voting rights, small states agree to tolerate practices of informal governance through which large states shake off institutional constraints when they consider their vital interests jeopardized. Small states, in turn, set a cost that will be imposed each time the dominant state uses informal governance to override a policy (Stone 2011, 33–34).

What distinguishes the two approaches is an emphasis on different disruptive forces, the relative importance of which varies with the strategic situation. In both cases, power is determined by the countries’ asymmetric interdependence (Keohane and Nye 1977, chap. 1). The power-based approach describes
a situation of asymmetric interdependence, in which a large state is less dependent on the cooperation of small states than the other way around. To sustain cooperation, small states therefore accommodate the large one when this state is tempted to pursue its interests outside of the international organization (Voeten 2001). The domestic-politics approach adds institutions to the equation. If the pursuit of one state’s interests depends on other states’ cooperation, all states have an incentive to sustain their common institution’s capacity to induce compliance with its rules. They consequently accommodate a partner whose unauthorized defection threatens to dash beliefs in this effectiveness and, as a result, threatens to trigger the erosion of cooperation. In this situation, power is the capacity to unsettle stable expectations. Thus, informal governance should also occur in situations of symmetry, especially if the institution is very beneficial for all members, and governments are susceptible to changes in domestic pressure.

Chapter 2 discusses how power-based institutionalism applies to the EU’s empirical context. This theory expects the small and large member states to strike these deals in issue areas that are predictably of high sensitivity to large states. The chapter argues, in line with EU historiography, that informal governance should occur in the Common Agricultural Policy, which is a policy of predictable sensitivity that has caused almost every major crisis in the history of European integration. With regard to the second hypothesis about adjudication, power-based institutionalism does not expect large states to subject their use of informal governance to the judgment of another government holding the EU Council presidency.

**Classical Regime Theory**

From the perspective of classical regime theory, institutions enable cooperation by reducing the relative costs of transactions in, for instance, the exchange goods and services or—in the political context—support. Money, for example, massively reduces the costs of exchanges that traders would otherwise incur in a barter economy.

Institutions become inefficient when exogenous factors alter the transaction costs after formal rules have entered into force. In this case, states are expected to restore efficiency by adapting the formal rules through additional informal institutional elements. All states use these elements because they serve to reduce frictions in state interaction that are caused by the use of formal rules.

The main difference between classical regime theory and Liberal Regime Theory is that each theory emphasizes different types of cooperation problems, and
formal or informal institutions. Although the term “transaction costs” is arguably vague (Gilligan 2009, 61), studies that build on this classical approach typically focus on the costs that arise among states at the systemic level. International institutions reduce the costs in state interaction through the centralization of, for example, dispute resolution or the collection of policy-relevant expertise and other types of information (Koremenos, Lipson, and Snidal 2001b, 771–72). Liberal Regime Theory, in contrast, emphasizes solutions to cooperation problems that are rooted in state-society interaction. Rather than centralizing resources, informal governance primarily adds flexibility in order to sustain commitments to cooperation where governments would otherwise respond to domestic pressure to defy cooperation.

A second difference follows. Since informal governance from the perspective of classical regime theory does not suspend commitments, there is no need to avert moral hazard by making its use conditional on the payment of a cost or on adjudication. Informal institutional elements are effective by virtue of their efficiency-enhancing effect.

Applying the theory to the institutional context of the EU, I argue in chapter 2, in line with EU historiography, that the transaction costs in state interaction increased heavily with a leap in day-to-day legislative activity in the late 1960s and the first enlargement of the Community in the early 1970s. To restore the efficiency of decision making, Jonas Tallberg (2006, 4) argues, member states centralized agenda setting and brokerage power in the hands of the Council presidency. Since these developments affected all issue areas in the same way, classical regime theory predicts a significant variation in informal governance over time rather than across issue areas. With regard to the second hypothesis, classical regime theory expects governments holding the presidency to command authority by virtue of its asymmetric control of procedures and information, and not because other governments trust its judgment.

Supranational Autonomy, Experimentation, and Nonstrategic Interaction

Three further explanations might be adduced to account for the phenomenon of informal governance. Historical institutionalism maintains that informal governance is an unintended consequence of cooperation that tends to result in greater supranational autonomy. Another perspective maintains that informal governance reflects constant institutional innovation and experimentation in the search for best practices. Finally, sociological and constructivist approaches
regard informal norms among governments as the result of socialization and deliberation in dense institutional settings. Although these views of informal governance as the outcome of supranational autonomy, experimentation, and nonstrategic interaction greatly contribute to our understanding of policy making in the EU, they often relate to different phenomena and are on closer inspection largely indeterminate.

Historical institutionalism is an umbrella approach for theories that focus on institutional effects that transpire over time (Hall and Taylor 1996, 938–42; Mahoney and Thelan 2010). Based on the premise that modern societies are complex and cooperation among them fraught with uncertainty, it emphasizes that institutions are bound to have effects that were not intended at the time of institutional creation. Furthermore, historical institutionalists tend to be skeptical about states’ capacity to respond to these situations. Paul Pierson (1996, 135; 2000, 261), for instance, argues that short time horizons, distributional conflicts or institutional barriers to reform, among other things, make it difficult for governments collectively to reform an institution when it would otherwise produce initially undesired consequences.

Students of the EU subsequently used this insight to make sense of various unforeseen institutional developments. For example, Karen Alter (1998, 139–40; see also Burley and Mattli 1993; Weiler 1991) argues that because judges of the European Court of Justice have longer time horizons than EU governments, they could formulate bold legal doctrines with significant long-term consequences without provoking governments to gang up against them. Simon Hix (2002, 271) argues that the European Parliament advanced to a genuine co-legislator, because it reinterpreted the 1993 Treaty of Maastricht in its favor and threatened to block important legislation unless the member states codified this new interpretation.23 In this vein, informal governance arises from reinterpretations of formal rules that result in further supranational autonomy. Given that these gaps in the member states’ control of supranational actors are unintended and, hence, rather difficult to predict, the most coherent implication one might derive from this perspective is that there will be no systematic patterns in the occurrence of informal governance.

Again on the basis of the premise about the complexity of modern governance, others emphasize that informal governance reflects the willingness of EU bureaucrats and governments to experiment with new procedures and policy instruments. Adrienne Héritier (1999) argues that the Commission frequently adopts innovative strategies of “subterfuge” in instances where following the formal rules would otherwise result in deadlock. Similarly, Charles Sabel and Jonathan Zeitlin (2008, 271–78) describe the EU as an experimentalist architecture
that is characterized by peer review and deliberation about best practices. The constant search for better ways to meet common objectives implies permanent institutional revision, which only creates the impression of informalism.

For sociological institutionalists and constructivist scholars, informal governance reflects the fact that decision makers in the EU transcend a strategic mode of interaction. Conceiving of institutions as social environments instead of mere sets of rules, sociological institutionalists emphasize that governments often develop and follow shared norms and expectations as a result of their socialization into a new institutional context (March and Olsen 1998, 947). Jeffrey Lewis (2005, 939–43; see also Hurd 1999, 380; Wendt 1999, 44) finds that the dense institutional context of the EU’s Council of Ministers led government representatives to internalize group norms that have become part of an “expanded conception of the self.” Informal norms such as the reflex to adopt decisions by consensus instead of majority voting are not simply grounded in the governments’ strategic calculation. They evolve and persist because the actions they suggest are considered appropriate or legitimate.24 Given that norms evolve in densely institutionalized contexts independently of the interests represented across policies, this approach would not expect any issuespecific systematic variation in patterns of informal governance practices.

Because the three perspectives on informal governance as supranational autonomy, experimentation, or nonstrategic interaction rarely specify scope conditions and testable propositions, it is often difficult to evaluate them against rival theories and generalize from their findings. Where a perspective does make a prediction about informal governance patterns, they are at a first glance not borne out by evidence. I therefore decided to refrain from a systematic evaluation of these three approaches. Nevertheless, each chapter in the empirical analysis of this study will report to what extent the observed practices of informal governance can be considered consistent with any of these alternative views.

Formal institutions are necessary for states to reap gains from cooperation. By reducing uncertainty about the credibility of states’ commitments, formal rules enable cooperation by allowing states and private actors to form stable expectations about each other’s future behavior. Yet precisely because we cannot know what the future holds, institutions are bound to face situations where formal rules fail to reproduce states’ interest in adhering to them. Specifically, following the letter of the law, even if it is beneficial for a society as a whole, may generate concentrated adjustment costs for a domestic group that induce it to pressure its government into defection. Since noncompliance not only generates deadweight costs but, more important, undermines the credibility of mutual commitments to cooperation, all governments have an incentive to prevent it.
Uncertainty about future domestic demands for protection consequently generates a demand for a norm of discretion, which states that governments should accommodate cooperating partners when they are tempted to defy the letter of the law. The norm adds situational flexibility to the formal institutional design—a flexibility that allows the member states to resolve unexpected and potentially disruptive conflicts at the domestic level that a uniform application of legal norms may generate. It consequently affords governments the ability to permanently align domestic interests in favor of cooperation.

The theory has two implications that can be observed. First, the norm manifests itself in practices of informal governance in parallel to formal rules as governments collectively exercise discretion. Second, because the norm is prone to abuse by its members, the authority to adjudicate whether informal flexibility is pertinent or formal rules apply is delegated to a political body that has no incentive to collude with the claimant. These hypotheses and its rival explanations are summarized in the following table. The remainder of this study specifies and evaluates them for the empirical context of the EU.

<table>
<thead>
<tr>
<th>IMPLICATION</th>
<th>LIBERAL REGIME</th>
<th>POWER-BASED INSTITUTIONALISM</th>
<th>CLASSICAL REGIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>INFORMAL GOVERNANCE</td>
<td>Informal governance arises where political uncer-</td>
<td>Informal governance emerges</td>
<td>Informal governance arises where trans-</td>
</tr>
<tr>
<td></td>
<td>tainty is high.</td>
<td>in areas of predictable</td>
<td>action costs rise ex post.</td>
</tr>
<tr>
<td>ADJUDICATORY</td>
<td>The authority to adjudicate on ambiguous demands</td>
<td>The authority to invoke</td>
<td>There is no final authority to decide on the use</td>
</tr>
<tr>
<td>AUTHORITY</td>
<td>for discretion lies with a trustworthy political</td>
<td>informal governance lies,</td>
<td>of informal governance.</td>
</tr>
<tr>
<td></td>
<td>body.</td>
<td>after the payment of a cost,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>with the dominant state.</td>
<td></td>
</tr>
</tbody>
</table>

TABLE 1 Summary of general hypotheses