Negotiator Discretion and Winning Concessions in International Negotiations: The Case of EU Decision-Making

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Abstract

Governments can delegate varying degrees of discretion to their representatives in international negotiations. I argue that under different circumstances, delegating different levels of discretion will help a government best achieve its policy preferences in negotiated agreements. These circumstances depend on key characteristics of the bargaining structure, which foster different types of bargaining processes. When the decision rule gives individual states veto power in the negotiation, delegating little discretion to a negotiating agent can help a government receive concessions in the negotiation process that unfolds. In contrast, when the decision rule does not require unanimity and the issues on the table are valued differently by the negotiating states, delegating a more significant degree of discretion to a negotiating agent can help a government win greater concessions in the negotiation. I demonstrate this argument using a quantitative analysis of multiple negotiations that took place between the states of the European Union (EU). The results provide insight into the question of agent discretion in international negotiations.

State representatives that participate in international negotiations are often analyzed as "agents" of their government (the "principal") that are delegated authority to act on the government's behalf in the negotiation process.[1] Their delegated task is to forge agreements at the international level that reflect, to the greatest degree possible, their government's policy preferences. However, while tasked with forwarding the interests of their government, agents also have their own interests that they have an incentive to forward. Principals therefore work to constrain their agents in order to help ensure that the outcomes those agents negotiate are the best that the principal can achieve.[2] However, constraining negotiators is not always the best way for a principal to achieve its interests in the resulting negotiated agreement (Fisher and Davis 1999; Nicolaïdis 1999). In some cases, delegating a greater degree of discretion to its negotiating agent can help a government get an agreement that better reflects it interests than if it delegated its agent less discretion.[3] The "right" delegation structure – i.e., the one that will best help a government achieve its interests – varies depending on the political environment within which agents act (Huber and Shipan 2000), as the structure of the delegation of power to negotiating agents impacts negotiation behavior and the resulting outcomes in important ways (Docherty and Campbell 2014). This raises an interesting question: in the context of international negotiations, under what conditions will constraining a negotiating agent be likely to lead to outcomes that best serve a government's interests and under what conditions will delegating a negotiating agent discretion lead to outcomes that best serve the government's interests?[4]

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[1]For examples of works that analyze negotiators in this principal-agent context, see the works in Mnookin and Susskind's (1999) edited volume. For a specific analysis of diplomatic negotiators involved in intergovernmental negotiations as agents of their governments, see Nicolaïdis (1999).

[2]For an exemplary discussion of the need for principals to constrain their agents in the principal-agent relationship, see Kiewiet and McCubbins (1991). Hawkins, et al. (2006) and the contributors to their edited volume also discuss the importance of constraining agents, specifically applying it to an international relations context.

[3]An agents' "discretion" is sometimes also referred to as an agent's "autonomy." However, following Hawkins, et al. (2006), I treat these two terms differently. As Hawkins, et al. (2006) define these terms, "Discretion is something the principal intentionally designs into its contract with the agent; autonomy is an unavoidable by-product of imperfect control over agents" (Hawkins, et al. 2006, 8). I am analyzing the degree of authority a government intentionally delegates to its negotiating agent, and therefore use the term "discretion."

[4]As Elsig (2010) argues, the connection between agent discretion and performance is an important ques-

To analyze this question, it is important to recognize that different negotiations are characterized by different types of interactions. Some negotiations are more conflictual and competitive while others are more cooperative in nature (e.g., Lax and Sebenius 1986; Hopmann 2001; Elgström and Jönsson 2000; Odell 2000; Dür and Mateo 2010a, 2010b; McKibben 2010; Carbonneau and Vahidov 2014),[5], and different types of tactics are likely to be effective in winning concessions in these different types of processes. The type of negotiation process likely to result is influenced in important ways by characteristics of the negotiation's *structural* characteristics (McKibben 2013; 2015). Competitive negotiations are likely to occur when the decision rule governing how an agreement must be reached requires support from all states involved in the negotiation – i.e., when individual states have veto power. In this type of setting, hard bargaining tactics are likely to be effective in winning concessions. I argue that constraining a negotiating agent in negotiations governed by this type of decision rule is likely to result in a government winning concessions, as being constrained lends credibility to negotiators that seek to use hard bargaining tactics (Putnam 1988). In contrast, cooperative negotiations are likely to occur when the decision rule is governed by a type of majority rule, and when the issues over which states are negotiating are valued differently by the negotiating states – i.e., when the opposing states place most value in winning on different issues in the negotiation. In this type of setting, exchanging concessions is a key strategy likely to be effective in securing concessions in more cooperative negotiations. I argue that delegating discretion to a negotiating agent in these types of negotiations is likely to result in a government winning greater concessions than if it tightly constrained its agent,

tion that remains to be answered. Also, note that Elsig (2010) discusses this in the context of the Secretariat of the World Trade Organization (WTO) as an agent. I focus my analysis here on negotiating agents, but the question still stands.

[5] While they all capture the same idea of a competitive versus a cooperative process, these different types of negotiations are labeled in different ways in the literature. For example, they are sometimes described as "distributive" versus "integrative" bargaining (e.g., Lax and Sebenius 1986; Odell 2000), sometimes described in terms of negotiations characterized by "claiming" versus "creating" value (Lax and Sebenius 1986), sometimes described as "hard" versus "soft" bargaining (e.g., Dür and Mateo 2010a, 2010b; McKibben 2010), sometimes described as "competitive" versus "cooperative" (Carbonneau and Vahidov 2014) and sometimes described as "bargaining" versus "problem-solving" (e.g., Hopmann 2001; Elgström and Jönsson 2000)

as providing negotiators with discretion allows them to engage in the cooperative concession exchange that leads to the receipt of concessions.

I test this argument using a quantitative analysis of multiple negotiations that took place between the states of the European Union (EU), evaluating the degree of discretion allotted to the representatives acting on behalf of their government within those negotiations and how that discretion relates to the concessions received by states. Focusing on EU negotiations allows me to hold the institutional setting and actual negotiators constant while, at the same time, analyzing negotiations governed by both a majority voting rule and a unanimity rule, and to do so across a wide variety of issue areas. The negotiations also include interactions characterized by competitive processes as well as interactions characterized by cooperative processes.[6] Analyzing the concessions states received in these negotiations, I show that constraining negotiators is not always the best way for a government to have its interests reflected in the negotiated outcome. The level of concessions a government is likely to receive varies based on the degree of constraint it places on its negotiating agents; and the level of constraint that leads to the receipt of more concessions varies based on the decision rule governing the negotiation and the degree to which the negotiating states value the issues on the table differently. I conclude by discussing the implications that these results have for our understanding of international negotiations, more generally.

The Discretion of Negotiators

International negotiations involve the interaction of representatives of state governments. These representatives are "agents" of the government they represent – their "principal" (Nicolaïdis 1999).[7] They are expected to pursue their governments' interests in their inter-actions with other state representatives in order to forge international agreements that best

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[6]While EU negotiations are sometimes assumed to be cooperative, several scholars show that there is actually significant variation in the cooperative nature of the negotiations among the EU member states (e.g., Elgström and Jönsson 2000; Niemann 2004; Dür and Mateo 2010a, 2010b; McKibben 2010). There is therefore significant variation in EU bargaining processes to explain.

[7]For more on a general discussion of negotiators as "agents," see Mnookin and Susskind 1999.

reflect their governments' policy preferences.

At the same time, agents have interests of their own (Kiewiet and McCubbins 1991; Hawkins, et al. 2006). In the context of international negotiations, several agent interests are important to consider. First, some negotiators have an interest in building trust with negotiators on the other side with whom they will likely interact in the future (Rubin and Sander 1991; Nicolaïdis 1999). As interviews with international negotiators highlight, "We see each other all the time, and therefore, personal relations matter." In addition, international negotiators often have an interest in "being effective" and forging agreements. "There is a culture that things should be resolved. We need to find solutions." Negotiators therefore sometimes have an interest in "mediating" between the interests of their government and the interests of opposing states (Nicolaïdis 1999). As a negotiator in the European Union described, "There is a tendency that, in [our negotiations], you try to accommodate others' positions."[8] These interests can potentially conflict with the government's interests when they create an incentive for a negotiator to accept an agreement even if it does not reflect her government's interests to the greatest degree possible.

Recognizing the potential for such agency "slippage" (Hawkins, et al. 2006), principals work to constrain their agents by instituting various control mechanisms (Kiewiet and McCubbins 1991; Hawkins, et al. 2006).[9] – both *ex ante* and *ex post* (Pollack 2006). In the context of international negotiations, governments provide their negotiators with instructions laying out the policy outcomes their negotiators must pursue. They also sometimes provide explicit process-oriented instructions from which the negotiator cannot deviate without permission, constraining the actual tactics their negotiators can use in their interactions with other negotiators. Governments can also institute regular reporting requirements to ensure that their negotiators are holding to these instructions. Governments also exercise the power of appointment, allowing them to choose representatives that they feel will best pursue their

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[8]These quotations come from original interviews conducted with state representatives in the EU's intergovernmental decision-making process. 146 interviews were conducted from 2005 through 2010.

[9]For a discussion of these control mechanisms in the context of delegation to EU institutions by the EU member states, see Pollack (2006).

policy interests, and they can exercise their appointment power to threaten to "un-appoint" negotiators that they feel are not effectively representing their interests.[10] Constraining a negotiating agent in this way limits her behavior in the negotiation process, as well as the range of agreements she can accept. Doing so helps to ensure that a government's negotiators act in a way that best represents its interests.

However, tightly constraining its negotiators might not always best serve a government's interests. The level of discretion allotted to agents that will best fulfill a principal's interests depends on the political context within which the agents act (Huber and Shipan 2000). In some cases, providing negotiating agents with discretion can better serve a government's interests (Fisher and Davis 1999; Nicolaïdis 1999). When will one delegation tactic be better than the other? Standard principal-agent theory puts forth two key conditions under which agents are likely to be delegated greater discretion: when the issue area under consideration is characterized by a greater degree of uncertainty, and when principals face the problem of credibly committing to act in line with present policy choices in the future (Epstein and O'Halloran 1999; Moravcsik 1998; Majone 2001; Pollack 2006). While enlightening, these conditions are discussed in the context of the delegation of power to regulatory, bureaucratic agents. However, negotiating agents have very different tasks. Bureaucratic agents act to execute policies (often policies created by the principals) while negotiating agents work to create those policies for the principals. The same conditions under which delegating discretion is likely to help fulfill a principal's interests therefore likely differ.

The question therefore remains: in the context of delegating power to state representatives in international negotiations, when will delegating greater discretion to an agent better serve a government's interests? Nicolaïdis (1999, 148) offers prescriptive advice that in today's complex international system, diplomatic state representatives involved in international negotiations should be allotted a fairly significant degree of discretion in the negotiation process. Fisher and Davis (1999) prescribe that a principal should allow its agent little discretion

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[10]For more on the constraint mechanisms principals employ vis-á-vis their agents, see Hawkins et al., (2006).

at the outset of a negotiation, but increase that discretion as the negotiation progresses. In both cases, this advice is general in nature – designed to apply across different negotiations.

Yet not all negotiation processes are the same. As the literature shows, some negotiations are more conflictual, competitive, and zero-sum in nature, while other negotiation processes are more cooperative and characterized by an open exchange of concessions (e.g., Lax and Sebenius 1986; Hopmann 1995; Elgström and Jönsson 2000; Odell 2000; Dür and Mateo 2010a, 2010b; McKibben 2010; Carbonneau and Vahidov 2014). These processes involve different types of bargaining strategies. More conflictual processes are characterized by "claiming value" – i.e., working to "dominate the other party" (Pruitt 1999) and "win the largest share of the disputed goods" (Lax and Sebenius 1986). To do so, negotiators use tactics such as delaying agreement, threatening to veto the agreement, or threatening to walk away absent the receipt of concessions (McKibben 2015). In contrast, more cooperative processes are characterized by "creating value" – i.e., working to find "win-win" solutions (Lax and Sebenius 1986) and "logrolling," or engaging in compromise (Pruitt 1981). To do so, negotiators use tactics such as offering concessions in order to receive concessions in return (McKibben 2015).

These different types of negotiations do not simply arise out of nowhere. The structure of the negotiation exerts important effects on the type of process likely to occur (McKibben 2013; 2015). Some structural factors foster a conflictual/competitive process characterized by a the use of concession-extracting tactics, while other factors foster a cooperative process characterized by an exchange of concessions.

Structural Factors and Negotiator Discretion

I argue that when different structural factors are present and different bargaining processes are therefore likely to result, delegating agents different degrees of discretion will help a government to win greater concessions from the other side, and thus have its interests best reflected in negotiated international agreements. In particular, two key characteristics of the

bargaining structure should interact with a the discretion delegated to a negotiating agent to affect the degree to which a government receives concessions from its bargaining opponents: (1) the decision-rule governing how an agreement must be reached, and (2) characteristics of the issues on the table.[11]

A first key characteristic of the bargaining structure that influences the bargaining process is the decision rule governing how an agreement must be reached. Two main types of decision rules govern the creation of international agreements. In some negotiations, individual states have veto power, while in other negotiations, a type of majority rule governs how an agreement must be reached, preventing individual states from blocking an agreement from moving forward.

If the decision rule governing a negotiation provides a state with veto power, I argue that constraining its negotiator at the international level can help a government win concessions from its bargaining opponents and best achieve its interests. Constraining a negotiator prevents her from accepting agreements that only weakly reflect her governments policy preferences, even if she has an individual interest in reaching an agreement. More importantly, constraining a negotiator at the international level provides her with bargaining power (Putnam 1988), helping her use value-claiming strategies such as threatening to delay or veto the agreement to secure concessions from her opponents. Veto power provides her with the ability to carry out the threat, and lacking the authority to accept an agreement that only weakly reflects her government's policy preferences provides her with the incentive to do. The threat is therefore credible. If negotiators on the other side want to reach an agreement, they therefore have to give greater concessions to the constrained negotiator in order to secure her consent, which is required for an agreement to be reached. Constraining a

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[11]It should be noted that Lingo, Fisher, and McGinn (2014) show that another feature of the bargaining structure – the "representation structure" – shapes the bargaining process that takes place. They describe the representation structure in terms of three possibilities – principal-principal, agent-agent, and team-team. I am only examining agent-agent negotiations, and therefore am holding the representation structure constant in my analysis. With no variation in the representation structure, the variation the negotiation process that I analyze is not likely to be driven by the structure of representation, but rather the structural factors that I highlight.

negotiator can therefore help a government win concessions when it has veto power.

In contrast, delegating a negotiator significant discretion limits her ability to use a threat to veto an agreement that only weakly reflects her government's preferred policy position. She has the authority to accept weaker agreements, and the threat to veto these agreements is therefore not likely to be seen as credible by her bargaining opponents. This is especially likely to be the case when she, herself, has an interest in reaching an agreement. The lack of constraint therefore significantly limits a negotiator's ability to use a veto threat effectively, and win concessions from her bargaining opponents.[12] In addition, opposing negotiators that are more constrained can exploit the discretion of an unconstrained negotiator in order to extract their own concessions in the negotiation process.

Constraining its negotiating agent when the decision rule provides a state with veto power is therefore likely to help a government to win concessions and best achieve its interests, while delegating significant discretion to its agent can reduce the degree of concessions a government is likely to receive and result in an agreement that does not reflect its interests as strongly as it could have if the negotiator was more constrained.[13] This argument leads to the following testable hypothesis:

HYPOTHESIS 1: *When the decision rule governing a negotiation gives individual states veto power, delegating a negotiator a greater degree of discretion will result in a state receiving a lesser degree of concessions, all else constant.*

When the decision rule requires only some type of majority of states to reach an agreement, individual negotiators cannot use conflictual, veto-threatening tactics to win conces-

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[12]As Cutcher-Gershenfeld and Watkins (1999) argue, when a negotiator has a greater degree of discretion, it is more difficult for her to "claim value" in a negotiation.

[13]I recognize that Cartell and Peterson (2006) and Alter (2006) show that unanimity decision rules are associated with agency slack while agents are more constrained under majority rule. However, they are speaking to a very different aspect of the principal agent relationship than the one I analyze here. They find this key effect with regard to the method of aggregation of the preferences of multiple principals. I focus, instead, on the decision rule governing the *agents'* interactions in the context of international negotiations.

sions. They do not have the ability to carry out the (non-credible) threat, and it is therefore likely to be disregarded by other negotiators. More cooperative strategies are therefore needed for an agreement to be reached. However, whether or not these strategies can be effective in winning concessions depends on a second key characteristic of the structure of the negotiation – the degree to which the issues on the table are "differently valued" by the states involved in the negotiation. In some negotiations, different states place most value in winning on different issues in the negotiation (i.e., the issues on the table are "differently valued"), while in other negotiations, different states place most importance in winning on the same key issue(s) (i.e., the issues on the table are "not differently valued"). A cooperative, concession-exchange process is fostered when the issues on the table are differently valued, as this opens up the possibility for states to trade concessions across the issues they value differently (McKibben 2013, 2015).

I argue that when the decision rule does not provide states with veto power and the issues on the table are differently valued, having discretion in the negotiation process is important for a negotiator. To engage in the concession exchanging process likely to take place under this type of bargaining structure, a negotiator needs to have the flexibility to offer concessions to opposing states in order to receive concessions in return – the key characteristic of any concession exchange process. To do so effectively, a negotiator needs to be delegated the discretion to be able to read the situation, prioritize interests, and respond to the situation by offering concessions in a way that will be most effective in receiving concessions on the issues that are most important to her government. As a state negotiator involved in the EU decision-making process argued, "You try to have flexibility in your instructions, because you need room to maneuver to find a solution with other member states."

If a negotiator is highly constrained in what she can offer to other states and she does not have veto power, the other negotiators can leave her out of the cooperative, concession-exchanging process that takes place.[14] The other, flexible negotiators can simply draft an

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[14]As Cutcher-Gershenfeld and Watkins (1999) argue, when a negotiator has little discretion, it is difficult for her to engage in a "value creating" process.

agreement characterized by an exchange of concessions amongst themselves without having to deal with the inflexible negotiators. Under the majority decision rule, inflexible negotiators cannot prevent such an agreement from going through. Having their negotiators left out of the concession exchanging process, the governments of inflexible negotiators are therefore not likely to receive significant concessions in the process, and thus not have their interests strongly reflected in the resulting agreement.

Having a degree of discretion regarding what she can give to other states and the types of agreements she can accept is therefore important for a negotiator when the decision rule does not provide individual states with veto power and the issues on the table are differently valued. This argument leads to the following testable hypothesis:

HYPOTHESIS 2: *When the decision rule governing an international negotiation does not provide individual states with veto power, and when the issues on the bargaining table are more differently valued, delegating a negotiator a greater degree of discretion will result in a state receiving a greater degree of concessions, all else constant.*

Empirical Analysis

I argue that a government is more likely to receive concessions from its bargaining opponents, and thus have its interests best reflected in the resulting agreement, by delegating different degrees of discretion to its negotiating agents. The level of agent discretion most likely to result in a government winning concessions depends on key characteristics of the negotiation structure. To test this argument, I draw on a dataset of EU negotiations constructed by McKibben (2013; 2015), carrying out statistical analyses evaluating the relationship between the degree to which a government received concessions in a given negotiation and the level of discretion it delegated to its negotiating agent in that negotiation. The data covers 13

different EU negotiations with 23 different phases, covering a wide variety of issue areas –
including trade policy, environmental policy, foreign policy, and policies related to criminal
justice.

Dependent Variable

To capture the concessions a state received in a given negotiation, I draw on McKibben's
(2013; 2015) measure of the concessions states offered to their bargaining opponents in each
phase of a negotiation included in the dataset. I code the "concessions received" by a state
as the average level of concessions offered by all of that state's bargaining opponents on
each of the key issues in the negotiation. Each time state 2 is on the opposite side of an
issue from state 1, the concessions offered by state 2 are included in the average that yields
an overall measure of the concessions received by state 1. I adopt this coding rule because
different coalitions of states could exist on different issues in the same bargaining phase. For
example, consider a simple negotiation phase with two issues involving three states – the
United Kingdom, France, and Germany. The United Kingdom could be on one side of issue
1 with France and Germany on the other, while the United Kingdom and France could be
on the same side on issue 2, with Germany on the other. The concessions received by the
United Kingdom would be coded as the average of the concessions offered by France plus
two times the concessions offered by Germany. This allows me to capture concessions by all
opposing states while taking into account the fact that coalitions can vary across issues.

Key Independent Variables

The first key independent variable included in the model measures the discretion delegated to
each state's negotiator. It is coded based on data from McKibben (2013; 2015) that measure
the flexibility states had in their positions on the various issues in a given negotiation. I code
a negotiator's discretion as the maximum degree of flexibility a state had in its position across
the various issues included in a negotiation. For example, if a state had a "small" degree of

flexibility in its position on issue 1, but a "large" degree of flexibility in its position on issue 2, that state's negotiator is coded with a "large" degree of discretion, as that negotiator was delegated the flexibility to give a fairly significant degree of concessions on at least one of the issues in the negotiation. If that state had a "small" degree of flexibility in its position on both issues, its negotiator is coded with a "small" degree of discretion because she had very little leeway to give on any of the issues in the negotiation.

The second key independent variable measures the degree to which the set of issues on the table were differently valued by the negotiating states. Following the argument in the literature that having more differently valued issues on the table creates a larger zone of agreement, this variable is measured as the average size of the zone of agreement created across all pairs of states on all issues in a given negotiation phase. Larger values of the variable indicate that the issues on the table are more differently valued. The data for this measure come from McKibben (2013; 2015).

The third key independent variable captures the decision-rule governing how an agreement must be reached – whether unanimity is required or whether an agreement could be reached without the agreement of all EU states. This is a dichotomous variable coded 1 if all states do not have to agree for an agreement to be reached and 0 if unanimity support is required for an agreement. Because in the EU case it is a "qualified majority" rule that governs negotiations in which not all states are required for an agreement, I label this variable "qualified majority rule."

The final key independent variables involve the interactions of these three variables – a measure of the interaction of all three variables together, as well as the multiple component interactions.[15]

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[15]Before continuing, it is important to address the potential endogeneity problem present in the argument – i.e., that the discretion delegated to agents affects their bargaining behavior, and thus the cooperative/conflictual nature of the process likely to result. I do not dispute the possibility of such a relationship. However, the focus of my analysis is on the *structural factors* that govern the negotiation – the decision rule and the interests of the states on the issues being negotiated. These structural factors are not affected by the discretion delegated to agents. While I suggest that the mechanism driving the relationship between agent discretion and these structural factors and the level of concessions a state is likely to receive is the cooperative/conflictual nature of the process likely to stem from the negotiation structure, the actual hy-

Controls

In addition to the key independent variables, I include several additional variables in the model to control for possible confounding effects. First, I include measures of state power – both bargaining power and material power. The measure of bargaining power comes from McKibben's (2013; 2015) data on the value of a state's best alternative to a negotiated agreement (BATNA). It is measured as a four-category variable, with greater values indicating that a state had less "need" to reach an agreement, and thus a better BATNA to fall back on. Having a better BATNA yields a state greater bargaining power (e.g, Nash 1953; Fisher and Ury 1981; Hopmann1996; Morrow 1999; Voeten 2001; McKibben 2013, 2015). I measure a state's material power by including a measure of a state's GDP.[16] I include these measures because a state's power is likely to affect both the dependent and key independent variables. Governments of states with greater power are more likely to receive concessions than weaker states (McKibben 2013; 2015), and expecting greater concessions, they might be more likely to delegate their negotiators less discretion. Indeed, as Elsig's (2010) analysis of the delegation of power to state representatives in the World Trade Organization shows, control from the capital is far less stringent and creates greater discretion for the ambassadors in weaker states.

Second, I include a measure of the level of publicity a given negotiation received. When a negotiation is more public, states are likely to offer fewer concessions to their bargaining opponents (McKibben 2013). States are therefore likely to receive fewer concessions in the negotiation. In addition, when negotiations are more public, a government is likely to give its negotiators less flexibility in the negotiation process. Indeed, as Elsig (2010, 356) argues, we can understand the degree of discretion of an agent as a function of politicization of its delegated tasks. Data for the measure of publicity come from McKibben's (2013; 2015) data. It is coded as a dichotomous variable with 1 indicating a negotiation received significant

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potheses and test focus on the (exogenous) structural factors themselves, not the nature of the process. The key independent variables are therefore not endogenous to the discretion delegated to agents.

[16]I log this measure to account for skewness and potential non-linearity of the effect.

public attention and 0 indicating it received little public attention.

Finally, I include a measure to capture the fact that negotiations are made up of multiple phases. The main model (Model 1) includes a measure of the level of concessions a state received in previous phases of a given negotiation,[17] in order to capture the fact that the previous level of concessions received by a state is likely to be related to the level of the concessions it received later in the process. Moreover, receiving concessions in an earlier phase might affect the level of discretion a government delegates to its negotiators in later phases. Because the level of concessions received in previous phases is likely to affect both the dependent and key independent variables, I include it as a control variable in the model. As a robustness check to ensure that the choice to code previous concessions to take into account the multiphase nature of the process does not drive the results, Model 2 includes a measure that is simply a dichotomous variable indicating that the particular phase of the negotiation process being analyzed is not the first phase of the bargaining process – i.e., it is a "later phase."[18]

Description of Models

Models 1 and 2 are both run as multilevel models, capturing the fact that states' strategies (level 1) are clustered together within each bargaining phase (level 2), which are clustered together within each overall negotiation process (level 3). The multilevel models include random effects at these different levels to control for this clustering. Models 1 and 2 include random effects at both levels.[19] As a robustness check, Models 3 and 4 re-run Models 1 and 2, clustering only at the level of bargaining phase.[20]

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[17]This measure follows the analysis of McKibben (2013), and uses the average of the overall concessions received in a given negotiation in the first phase of a negotiation.

[18]Using this measure follows the analysis of McKibben (2015).

[19]This follows the analysis of McKibben (2015).

[20]This follows the analysis of McKibben (2013).

Results

The results show that the level of discretion delegated to a negotiator does affect the degree to which a government is likely to receive concessions in the negotiation process. To identify the effect of agent discretion, it is important to note that its effect is dependent on the decision-rule governing the negotiations and the degree to which the issues on the table are differently valued by the negotiating states. The actual effect of a negotiator having more discretion on the level of concessions she is likely to receive for her state is therefore captured by the "discretion" variable, as well as the multiple interactions that include the discretion variable. The results therefore cannot be directly interpreted from the table, but involve combined coefficients of these multiple variables, the value of which depends on the decision rule and degree to which the issues on the table were differently valued.

Figures 1 and 2 plot these combined coefficients, thus illustrating the effect of a negotiator having more discretion under different decision rules and at different values of the differently-valued nature of the issues being negotiated.[21] Figure 1 plots the effect of having more discretion when the decision rule requires unanimity for an agreement to be reached, illustrating this effect both for when the degree to which the issues on the table are differently valued takes on its minimum value and its maximum value in the dataset – i.e., when the issues on the table are not differently valued versus when they are differently valued. Figure 2 plots the effect of having more discretion for these different levels of differently valued issues when the decision rule requires only a qualified majority for an agreement to be reached.

If the argument presented above holds, we would expect that giving a negotiator greater discretion would *decrease* the level of concessions a state receives when the decision rule requires unanimity, regardless of the degree to which the issues on the table are differently valued. In other words, we would expect that the combined coefficient capturing the effect of giving a negotiator greater discretion will be negative across the board in Figure 1. Con-

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[21]The results used for these models come from Model 1. The results are consistent across all four models.

versely, we would expect that giving a negotiator greater discretion would *increase* the level of concessions a state receives when an agreement can be reached when the decision rule requires a qualified majority of states, but *only when* the issues on the table are differently valued. In other words, we would expect the combined coefficient capturing the effect of giving a negotiator greater discretion will be positive in Figure 2 when the issues on the table are differently valued.

Figures 1 and 2 here

The results reported in Figures 1 and 2 support these predictions. In Figure 1, the effect of giving a negotiator greater discretion when the decision rule is unanimity *decreases* the level of concessions a state is likely to receive. This is true *regardless of the degree to which the issues on the table are differently valued.* This is demonstrated by the fact that the combined coefficient capturing the effect of negotiator discretion is negative in Figure 1 when the issues on the table are not differently valued as well as when they are. This result is consistent with the argument that when the decision rule requires unanimity, inflexibility can actually help a state receive concessions. Inflexibility requires other states to make concessions to that state if they want to push forward an agreement, while being more flexible might allow other states to take advantage of it.

In Figure 2, the effect of giving a negotiator greater discretion when the decision rule requires only a qualified majority of states *increases* the level of concessions a state is likely to receive *when the issues on the table are differently valued*, and a cooperative, concession-exchanging process is therefore fostered. This is demonstrated by the fact that the combined coefficient capturing the effect of delegating a negotiator greater discretion is positive in Figure 2, but only when the issues on the table are differently valued. This result is consistent with the argument that when any given state cannot block an agreement to win concessions, being flexible can help a negotiator foster concession-offering by other states by showing she is willing to give something in return. This is only likely to be true, however, when a

cooperative, concession-exchanging process is likely to be fostered, which is the case when the issues on the table are differently valued.

Overall, the results of the analysis of EU decision-making show that constraining a negotiator can help a government to ensure that it receives greater concessions from its bargaining opponents. However, this is not always the case. Under certain circumstances, giving a negotiator a greater degree of discretion can help a government to receive concessions. Key characteristics of the bargaining structure – the decision rule governing how an agreement must be reached and the degree to which the issues on the table are differently valued by the negotiating states – affect the level of agent discretion that is likely to help a government best have its interests reflected in negotiated agreements.

Conclusion

In this paper, I argued that a government is more likely to receive concessions from its bargaining opponents, and thus have its interests best reflected in the resulting agreement, by delegating different degrees of discretion to its negotiating agents. The level of discretion likely to help a government win the greatest degree of concessions possible depends on key characteristics of the bargaining structure. When the structure of the negotiation fosters a conflictual, competitive process, delegating little discretion to a negotiating agent will help a government receive a greater degree of concessions than it would receive if it delegated a greater degree of discretion to its agent. This is likely to occur when the decision rule requires unanimity, allowing any given state to threaten to veto the agreement. In contrast, when the structure of the negotiation fosters a cooperative process, delegating a more significant degree of discretion to a negotiating agent will lead to agreements that better reflect the governments interests. This is likely to occur when the decision rule does not require unanimity and the issues on the table are differently valued, thus fostering an exchange of concessions. The results show that this process does, indeed, characterize the degree to which governments

receive concessions in international negotiations.

It is important to note, however, that the empirical analysis focused on intergovernmental negotiations in the EU decision-making process. For purposes of research design, focusing on these negotiations allowed me to hold many potentially mitigating factors constant – the actual negotiators involved in the process, the institutional setting, and relationship between the negotiating states – while also analyzing negotiations governed by different decision rules and characterized by different types of negotiation processes across a range of substantive issues.

While beneficial for purposes of research design, focusing on EU decision-making also leaves open several questions regarding the way the delegation of discretion to negotiating agents affects the degree of concessions governments are likely to win in international negotiations. First, some important international negotiations such as those in the United Nations Security Council are characterized by a decision rule that gives some states veto power, but only requires a qualified majority of other states. How does this mix of decision rules – i.e., the fact that some states have veto power while others do not – influence the way delegating discretion to negotiating agents affects the receipt of concessions. Does my argument apply in this type of setting, such that allotting little discretion to negotiators with veto power but more discretion to those who are part of the majority group still lead to the receipt of greater concessions? Or does some other process drive when and why states receive concessions in these types of settings? In addition, negotiations that are not highly institutionalized allow for the possibility that certain states can "go-it-alone" (Gruber 2000) – i.e., the possibility for certain states to move forward with an agreement while leaving other negotiating states out of that agreement altogether. Does this type of negotiation, where the losing states are not a part of the negotiated agreement follow the same qualified majority type of process I describe, where the agreement still applies to losing states? Or is there another type of delegation process that is at work in this type of negotiation? Finally, some negotiations are bilateral in nature, thus effectively giving each side veto power. Does my argument about

discretion under a unanimity rule apply in this case, or might the relationship between the two states matter more in the negotiation process?

Overall, this paper took an important step forward in understanding the discretion of negotiating agents in international negotiations, examining negotiations that require unanimity or are governed by a type of majority rule. However, it also raises many questions for future work to address regarding negotiations characterized by other, more complex decision rules.

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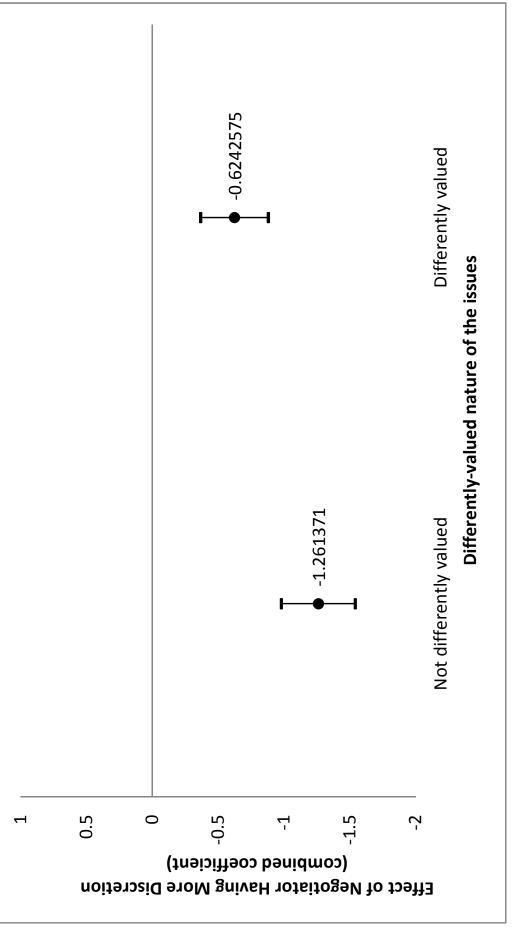
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Figure 1: Effect of Delegating a Negotiator More Discretion when Decision Rule Requires Unanimity (95 percent confidence intervals indicated)
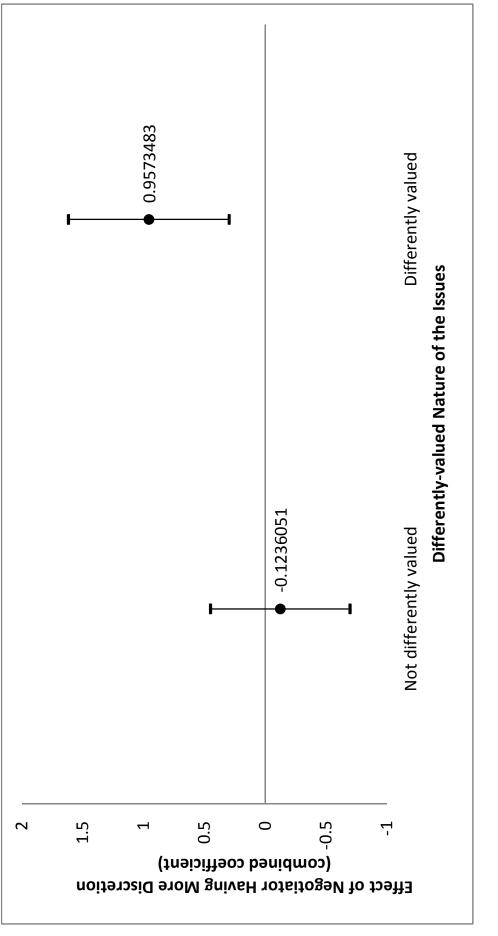
Figure 2: Effect of Delegating a Negotiator More Discretion when Decision Rule Requires Only a Qualified Majority (95 percent confidence intervals indicated)

Table 1: Analysis of Concessions Received in EU Negotiations

	Model 1	Model 2	Model 3	Model 4
Discretion×Qualified majority rule× Differently-valued issues	.658 (.950)	.678 (1.007)	-.007 (.867)	.149 (.941)
Discretion× Qualified-majority rule	1.376 (.136)	1.391 (.146)	1.465 (.132)	1.341 (.142)
Discretion× Differently-valued issues	.944 (.370)	.352 (.389)	.988 (.362)	.355 (.389)
Qualified majority rule× Differently-valued issues	1.174 (.527)	1.794 (.587)	1.161 (.495)	.326 (.542)
Discretion	-.919 (.057)	-.891 (.058)	-.933 (.054)	-.905 (.058)
Differently-valued issues	2.036 (.274)	1.925 (.306)	2.558 (.270)	2.558 (.302)
Qualified majority rule	-.622 (.099)	-.661 (.104)	-.656 (.095)	-.680 (.103)
GDP (logged)	.014 (0.158)	.020 (.007)	.012 (.007)	.019 (.008)
Beneficial BATNA	.099 (.015)	.153 (.015)	.085 (.015)	.153 (.015)
Publicity	.446 (.032)	.002 (.036)	.248 (.029)	.270 (.033)
Lagged DV	.401 (.036)	—— ——	.512 (.035)	—— ——
Later phase	—— ——	.155 (.038)	—— ——	.396 (.032)
Constant	1.342 (.113)	1.983 (.107)	1.195 (.111)	1.727 (.108)
N (level 1 units)	588	588	588	588
level 2 units	23	23	23	23
level 3 units	13	13	——	——
log likelihood	-134.666	-162.398	-126.571	-159.248
Variance at level 1	.081 (.005)	.087 (.005)	.079 (.005)	.091 (.005)
Variance at level 2	.264 (.018)	.041 (.007)	.106 (.006)	.196 (.014)
Variance at level 3	.154 (.021)	.239 (.021)	—— ——	—— ——