# Delegation, agency, and agenda setting in the European Community

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Do supranational institutions matter—do they deserve the status of an independent causal variable—in the politics of the European Community (EC)?[1] Does the Commission of the European Communities matter? Does the European Court of Justice (ECJ) or the European Parliament? Is the EC characterized by continued member state dominance or by a runaway Commission and an activist Court progressively chipping away at this dominance? These are some of the more important questions for our understanding of the EC and of European integration. They have divided the two traditional schools of thought in regional integration, with neofunctionalists generally asserting, and intergovernmentalists generally denying, any important causal role for supranational institutions in the integration process.[2] By and large, however, neither neofunctionalism nor intergovernmentalism has generated testable hypotheses regarding the conditions under which, and the ways in which, supranational institutions exert an independent causal influence on either EC governance or the process of European integration.[3]

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1. On 1 November 1993, the European Community was encompassed by and became the "first pillar" of a new European Union, which also includes two strictly intergovernmental pillars: one on common foreign and security policy and the other on justice and home affairs. In this article, the focus is on the first pillar (the EC) and the roles of the supranational institutions within it. I therefore refer to the EC throughout.

2. For examples of the neofunctionalist view, see Haas 1958; and Lindberg and Scheingold 1970. For examples of the intergovernmentalist perspective, see Hoffmann 1966; Taylor 1983; and Moravcsik 1991 and 1993.

3. Properly speaking, we can distinguish between EC *institutions,* which establish the general decision rules for policymaking and institutional change, and EC supranational *organizations,* which are collective actors operating within the Community's institutional system. In this article, however, I follow conventional usage in referring to the Commission, the ECJ, and the EP as institutions. For a good discussion, see North 1990, especially 5.

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This article presents a unified theoretical approach to the problem of supranational influence, based largely on the new institutionalism in rational choice theory. Simplifying only slightly, this new literature is traceable to Kenneth Shepsle's pioneering work on the role of institutions in the U.S. Congress. Beginning with the observation by Richard McKelvey, William Riker, and others that in a system of majoritarian decision making, policy choices are inherently unstable, "cycling" among multiple possible equilibria, Shepsle argued that congressional institutions, and in particular the committee system, could produce "structure-induced equilibrium," by ruling some policy alternatives as permissible or impermissible and by structuring the voting and veto power of the various actors in the decision-making process.[4]

Shepsle's innovation, and the subsequent study of structure-induced equilibria in the U.S. Congress, created a number of offshoots. Thus, for example, Shepsle and others examined in some detail the "agenda-setting" power of the congressional committees that were the linchpin of his structure-induced equilibrium, specifying the conditions under which agenda-setting committees could influence the outcomes of congressional votes.[5] In another offshoot, students of the Congress examined the delegation of certain functions to a regulatory bureaucracy (and later to courts) and the efforts of Congress to control that bureaucracy.[6] Finally, in addition to examining these institutional or structure-induced equilibria, Riker, Shepsle, George Tsebelis, and others have tentatively turned their attention to the problem of "equilibrium institutions": namely, how actors choose institutions to secure mutual gains and how these institutions change or persist over time.[7]

In this article I join the growing number of scholars who have applied the insights of rational choice institutionalism to the study of the EC. Among the most important of these studies are Victoria Gerus's study of the Community's "comitology" procedures using principal-agent analysis[8]; Michelle Egan's study of Community standardization bodies and of the unique problems these pose for principal-agent models[9]; studies by Geoffrey Garrett, by Garrett and Barry Weingast, and by Bernadette Kilroy on the ECJ as an agent of the member states[10]; and studies of European Parliament agenda setting by Tsebelis and his colleagues.[11] I aim here to build on the insights of these works to construct an institutionalist account of European integration and European governance, and more specifically to generate a series of hypotheses about the conditions under which supranational institutions will

4. See McKelvey 1976; Riker 1980; and Shepsle 1979, 1986, and 1989.

5. See, for example, Shepsle and Weingast 1984 and 1987a; Riker 1986; Ordeshook and Schwartz 1987; and Tsebelis 1994.

6. See Weingast and Moran 1983; Moe 1987; McCubbins, Noll, and Weingast 1987 and 1989; McCubbins and Page 1987; and McCubbins and Schwartz 1987. For reviews of the principal-agent literature, see Moe 1984; and Shepsle and Weingast 1994.

7. See Riker 1980; Shepsle 1986 and 1989; Krasner 1988; and Tsebelis 1990.

8. Gerus 1991.

9. Egan 1994.

10. See Garrett 1992; Garrett and Weingast 1993; Garrett 1995; and Kilroy 1995.

11. See Tsebelis 1994; Tsebelis and Kreppel 1995; and Garrett and Tsebelis 1996.

be delegated authority and will enjoy autonomy from and exert influence on the member governments of the Community.[12] The primary virtue of the new institutionalism in rational choice theory, I argue, is that it allows us to transcend the intergovernmentalist-neofunctionalist debate by acknowledging the initial primacy of the member states and, proceeding from this point, to generate a series of hypotheses about supranational autonomy and influence more precise than those generated by either neofunctionalist or intergovernmentalist theory.

For the purposes of analysis, I divide the problem of supranational autonomy and influence into three subsets of questions. First, I ask about types of functions that member states might agree to delegate to supranational institutions. The analysis here is fairly conventional, drawing on functional theories of institutional design under conditions of imperfect information, which generally emphasize the importance of monitoring compliance, interpreting incomplete contracts, issuing secondary regulation, and formal agenda setting. Such functional theories, I argue, provide an excellent initial understanding of the powers of some EC institutions but not of others.

Second, I examine the extent to which supranational institutions are able to carry out their functions independent of the influence of the member states. In so doing, I survey principal-agent theory for various mechanisms of member state control over the agents they create. I argue that the "agency" or autonomy of a given supranational institution depends crucially on the efficacy and credibility of control mechanisms established by member state principals, and that these vary from institution to institution—as well as from issue-area to issue-area and over time—leading to varying patterns of supranational autonomy. More specifically, I argue that both monitoring and sanctioning are costly to member state principals as well as to their supranational agents, and that supranational agents can and do therefore exploit conflicting preferences among the member states to avoid the imposition of sanctions. In empirical terms, I focus primarily on the Commission of the European Communities and on the member states' capacity to control it. Among their control mechanisms are the comitology oversight procedures by the Council of Ministers, the possibility of judicial review by the ECJ, the periodic reauthorization of Council legislation, and the threat to amend the EC's constitutive treaties (the 1957 Treaty of Rome, the 1985 Single European Act, and the 1992 Maastricht Treaty on European Union). By contrast, I argue, EC member governments have fewer mechanisms available to control the ECJ or the European Parliament, which therefore enjoy greater autonomy from the member governments than does the Commission.

Third and finally, I turn to the problem of agenda setting, or the Commission's role in the legislative process. Here, I distinguish between formal or procedural agenda setting, on the one hand, and informal or substantive agenda setting, on the other. With regard to the former, I suggest that the Commission's formal agenda-setting

12. For general discussions of the ways in which EC institutions constrain member governments and shape a path-dependent process of European integration, see Pierson 1996; and Pollack 1996a.

power depends fundamentally on the voting and amendment rules in the Council of Ministers. Put simply, the Commission enjoys agenda-setting power when the Council can adopt a Commission proposal by a qualified majority vote but amend it only by unanimity. Moving to informal agenda setting, supranational institutions enjoy no formal monopoly on the right to set the Council's substantive agenda. Nevertheless, their policy expertise and institutional persistence can provide them with certain informational advantages vis-à-vis both competing agenda setters and the Council of Ministers in a setting of incomplete information.

For the purposes of this article, I illustrate these arguments for the case of the EC, which has the most developed and best studied supranational institutions of any international organization. In principle, however, the theory of delegation, agency, and agenda setting outlined here should apply to any and all international agencies and secretariats, providing theoretical leverage on the causal importance of these bodies as well. I begin, however, at the beginning, with the decision by member states to create a supranational institution and delegate authority to it.

## Why delegate?

### *The functionalist approach to delegation*

Generally speaking, delegation of authority by one or more principals (such as a group of domestic legislators or a group of member states) to one or more agents (such as a regulatory agency or a supranational institution) is a special case of the more general problem of institutional choice or institutional design: Why does a group of actors collectively decide upon one specific set of institutions rather than another to govern their subsequent interactions?[13] The basic approach of rational choice theory to the question of institutional choice is functionalist. That is to say, rational choice theory explains institutional choices in terms of the functions a given institution is expected to perform and the effects on policy outcomes it is expected to produce, subject to the uncertainty inherent in any institutional design. As Robert Keohane argues,

> In using rational-choice analysis to study institutions . . . we are immediately led toward a functional argument. . . . In general, functional explanations account for causes in terms of their effects. . . . So, for example, investment is explained by profit, as in the statement "The increased profitability of oil drilling has increased investment in the oil industry." Of course, in the temporal sense investment is the cause of profit, since profits follow successful investment. But in this functional formulation the causal path is reversed: effect explains cause. In our example, this inverse link between effect and cause is provided by the rationality assumption; *anticipated* profits lead to investment.[14]

13. For useful introductions to institutional choice or design, see Shepsle 1986 and 1989; and Hall and Taylor 1994.

14. Keohane 1984, 80, emphasis original.

Similarly, in the case of institutional design, the rationally anticipated effects of given institutions, subject to uncertainty, explain actor preferences for certain types of institutions, and the institutions ultimately adopted should reflect these preferences.

Students of U.S. congressional politics and public bureaucracy and students of international institutions have both adopted the functionalist approach to institutional design and to delegation of authority to an agent by a series of principals. Thus, for example, in Keohane's functional theory of international institutions or regimes, states agree to adopt certain institutions primarily to lower the transaction costs of international cooperation, thereby overcoming some basic collective action problems that might otherwise prevent such cooperation. Institutions, in this view, facilitate cooperation among rational actors by monitoring compliance, identifying transgressors, and reducing transaction costs of negotiations.[15] In much the same way, students of legislative institutions have argued that legislators adopt institutions such as the committee system for precisely the same reasons.[16] In both cases, institutions serve to facilitate mutually advantageous cooperation among rational egoists, most notably by providing information about the behavior of the various actors in a general setting of imperfect information.

Delegation of authority to an agent—whether a regulatory bureau (as students of U.S. politics have considered) or an international organization (as international relations theorists have)—is considered one particular aspect of the institutional design process. In general terms, principal-agent models of delegation have identified a number of functions for which principals might choose to delegate authority. For the sake of brevity, I focus here on four such functions emphasized in the literature. First, supranational agents may monitor member state compliance with or transgressions of their international treaty obligations. In a context of collective action under imperfect information, institutions can monitor compliance and can provide such information to all participants, in effect "painting scarlet letters" on transgressors. In such cases, institutional actors such as medieval law merchants or international secretariats might monitor the behavior of each actor, making this information available to all the actors, thereby reducing transaction costs and encouraging mutually beneficial cooperation. Furthermore, these institutions need not have power to enforce agreements through sanctions but need only provide information about compliance to facilitate decentralized sanctioning by participants.[17]

Second, supranational agents may solve problems of incomplete contracting. We can conceive of any institutional agreement—whether it be a log-rolling trade of votes among legislators, the establishment of a common market among member states, or an agreement between two firms regarding the future delivery of a product—as a contract. In such a contract, the various parties to the agreement

15. Ibid., chap. 6.
16. See, for example, Shepsle 1979; and Weingast and Marshall 1988.
17. See Keohane 1984; and Milgrom, North, and Weingast 1990.

pledge to behave in certain ways (vote, allow free trade, or deliver a product) in the future. However, as Oliver Williamson points out, all but the simplest contracts are invariably incomplete, since it would be impossible (or at least prohibitively costly) to spell out in explicit detail the precise obligations of all the parties throughout the life of the contract.[18] Hence, as Paul Milgrom and John Roberts describe, rather than attempting to write a complete contract that endeavors to anticipate all possible contingencies, "the contracting parties content themselves with an agreement that *frames* their relationship—that is, one that fixes general performance expectations, provides procedures to govern decision making in situations where the contract is not explicit, and outlines how to adjudicate disputes where they arise."[19] These various procedures may, but need not, involve the creation of an agent. If uncertainty is not too great, for example, the parties may simply choose to lay down rules governing future decision making and dispute arbitration. Alternatively, where uncertainty is great and future decision making is expected to be time consuming and complex, the parties may choose to delegate these activities to an agent, such as an executive or a court, that can fill in the details of an incomplete contract and adjudicate future disputes.

Third, supranational institutions, like U.S. regulatory bureaucracies, may be delegated authority to adopt regulations that are either too complex to be considered and debated in detail by the principals or that require the credibility of a genuinely independent regulator who, unlike the governments of the states in question, would have little incentive to be lenient with firms in a given member state.[20]

Fourth and finally, principals may have an incentive to delegate to an agent the power of formal agenda setting, that is, the ability of a given actor to initiate policy proposals for consideration among a group of legislators (or, in the case of the EC, among the member governments in the Council of Ministers). As McKelvey, Riker, and others have noted, any majoritarian system in which each and every legislator had the right to initiate proposals would encourage an endless series of proposals from disgruntled legislators who had been in the minority in a previous vote. In such a system, no decision would be an equilibrium, and the result would be endless cycling among alternative policy proposals. Thus any legislature would have a rational incentive to develop rules regarding which actors can initiate proposals, and when.[21]

Given the technical responsibilities of policy initiation, however, as well as the power of an agenda setter over policy choices, the choice of which actor is chosen as the agenda setter matters. In the U.S. Congress, this power is given largely to congressional committees. This procedure has two distinct benefits. First, it gives representatives disproportionate clout in areas of interest to their constituents, and, second, it provides groups of representatives with incentives to become "experts" in

18. Williamson 1985, 3.
19. Milgrom and Roberts 1990, 62, emphasis original.
20. For excellent discussions, see Majone 1994; and Gatsios and Seabright 1989.
21. See Shepsle 1979; and Kiewiet and McCubbins 1991, 23–24.

a given field and to make this information available to all representatives.[22] As we shall see presently, however, the formation of such committees within the Council of Ministers has proven impractical, leading the member states to delegate agenda-setting powers to a supranational agency, the Commission of the European Communities.

*Delegation to supranational institutions in the EC*

A complete survey of the functions delegated to EC institutions is, of course, well beyond the scope of this article. Nevertheless, for the purpose of assessing the accuracy of functionalist predictions about delegation, I present here a brief sketch of the powers delegated to the Commission, the ECJ, and the European Parliament, drawn from Neill Nugent's standard text on the subject. According to Nugent, the Commission's responsibilities include (1) proposing and developing policies and legislation; (2) executive functions, including secondary legislation, management of EC finances, and supervision of member state policy implementation; and (3) guarding the legal framework, that is, monitoring compliance with EC law. It serves as the EC's (4) external representative and negotiator, (5) its mediator and conciliator, and (6) is the conscience of the union.[23] The primary functions of the ECJ are (1) direct application of EC law in certain cases, as in disputes among EC institutions; and (2) interpreting the provisions of EC law for application in national legal systems.[24] Finally, Nugent divides the European Parliament's functions into three categories: (1) legislative powers, which vary among a number of legislative procedures (consultation procedure, cooperation procedure, etc.); (2) budgetary powers, including the power to propose amendments and adopt the final EC budget; and (3) control and supervision of the Commission of the European Communities.[25] To what extent do the four functions emphasized in the rational choice literature accurately describe the powers delegated to EC supranational institutions? Let us consider each of the four in turn.

First, with regard to monitoring compliance with EC legal obligations, both the Commission and the ECJ play important roles. The Commission, for example, performs a central monitoring function as guardian of the treaties, monitoring member state compliance with EC law, and, under Article 169 of the Treaty of Rome, initiating legal proceedings against member states found to be in noncompliance with their legal obligations. In addition to these treaty responsibilities, member states also have charged the Commission, in various pieces of secondary legislation, such as the various structural fund regulations, to monitor the implementation of specific EC programs in the member states. The ECJ, by contrast, does not actively monitor the behavior of member states, but it does, in response to Commission proceedings (Article 169) or "fire-alarm" complaints from private citizens (Article 177), play a

22. See Shepsle and Weingast, 1987b; and Krehbiel 1987 and 1991.
23. Nugent 1994, 85–122.
24. Ibid., 220–34.
25. Ibid., 174–205.

crucial role in identifying and painting scarlet letters on transgressors, thereby allowing for decentralized enforcement of treaty provisions.

Second, EC institutions provide a solution to problems of incomplete contracting. The ECJ, for example, has been delegated the authority to interpret the rather vague treaty language prohibiting "quantitative restrictions on imports and all measures having equivalent effect," which are defined only vaguely in Articles 30–36 of the Treaty of Rome. Similarly, where national regulations in areas such as the environment act as nontariff barriers to trade, the treaty does not provide a detailed remedy, but rather specifies a process of "harmonization" of national regulations, to be undertaken by the Council of Ministers on a proposal from the Commission, which may in certain circumstances adopt such harmonized regulations on its own authority.

In this sense, the Commission can be considered a regulatory bureaucracy—the third function emphasized in the literature on delegation. More specifically, the Commission plays a crucial role in setting down the basic lines of EC competition policy and engages in considerable implementing regulation and day-to-day management in areas such as agriculture and the internal market. Simplifying only slightly, the Commission's competition policy competences are laid down in Treaty of Rome Articles 85–94 and in the Merger Control Regulation of 1989. By contrast, the Commission's regulatory role in agriculture and the internal market is not spelled out explicitly in the treaties, which provide the Council with the obligation to "confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down." These implementing powers, however, may be subject to "certain requirements" laid down by the Council, which are discussed in some detail below.

Fourth and finally, EC member states have, in many but not all areas of policymaking, delegated formal agenda-setting authority, or the "exclusive right of initiative" to the Commission. As we shall see, this has provided the Commission with an important agenda-setting power in the Council of Ministers, especially where voting takes place by qualified majority, but it has the advantage to the member states of providing a series of relatively unbiased and well-informed policy proposals to the Council, which would otherwise have to rely on the rather unevenly distributed resources of the member states themselves.[26] The Commission's power of initiative, however, has been limited by the member states in a number of areas, including the second and third pillars of the European Union and the process of amending the EC's constitutive treaties. In addition, the Single European Act and the Maastricht Treaty allocated the European Parliament significant new legislative powers, including a conditional right to set the Council's agenda with the consent of the Commission.

### *The virtues and limits of the functional approach*

Even this cursory examination of delegation in the EC yields a striking dichotomy between the functions of the Commission and the ECJ, on the one hand, and those of

26. Moravcsik 1993, 512. For good theoretical discussions of formal agenda setting, see Shepsle 1979; and Kiewiet and McCubbins 1991, especially 23–24.

the European Parliament, on the other. Despite its simplicity, the functionalist model of delegation yields surprisingly accurate predictions regarding the functions delegated to the Commission and the Court, whose primary tasks do indeed concern monitoring, interpreting, and elaborating incomplete contracts, credible regulation, and agenda setting. It also calls our attention to the hybrid nature of the European Commission, which combines the agenda-setting power of congressional committees with the monitoring, incomplete contracting, and regulatory functions of U.S. regulatory bureaucracies—thereby allowing us to draw on both sets of literatures to model the Commission.

However, despite the accuracy of functionalist predictions regarding the Commission and the Court, the functionalist approach fails almost completely at predicting the functions delegated to the European Parliament, including both its budgetary and its legislative powers. Clearly, the functionalist model fails to account for the ideological concern for democratic legitimacy that has led member governments to assign increasingly significant powers to the Parliament in successive treaty amendments.[27] The Parliament, moreover, is not strictly speaking the agent of the member governments. Although member governments created, assigned powers to, and may collectively decrease or increase the power of the Parliament, the individual members of the European Parliament (MEPs) ultimately are selected not by member governments (as are EC commissioners and ECJ judges) but by their national parties and national electorates. Nevertheless, despite the unusual nature of the Parliament by comparison with standard principal-agent models, I will argue below that institutionalist analyses offer important insights into the autonomy of MEPs from member governments, as well as the nature of Parliament's agenda-setting powers under the EC's cooperation and codecision procedures.[28]

A second and more fundamental weakness of the functional approach to delegation is its assumptions that the institutions adopted are those that most efficiently perform the tasks set out for them by their creators and are chosen for that reason. As Keohane points out, the fact that an institution performs certain functions does not necessarily mean that the institution was designed with that purpose in mind[29]; rather, institutions such as the Commission and the ECJ might gradually take on new roles that were not foreseen at the time of their creation. Indeed, as Paul Pierson points out, and as neofunctionalists have long asserted, the institutions in existence at any point in time may reflect the "unintended consequences" of earlier institutional decisions made by actors with imperfect information and short time horizons.[30] Perhaps most important, the functions of supranational institutions may reflect not so much the preferences and intentions of their member state principals but rather the preferences, and the autonomous agency, of the supranational institutions themselves. It is to this problem of supranational agency that we now turn.

27. For a good discussion of the EC's "democratic deficit," see Williams 1991.
28. See, for example, Tsebelis 1994; Tsebelis and Kreppel 1995; and Garrett and Tsebelis 1996.
29. Keohane 1984, 81.
30. For examples, see Haas and Schmitter 1964, 273; and Pierson 1996.

## Agency and accountability: the mechanisms of member state control

*Agency losses, agency costs, and control mechanisms*

Under certain circumstances, therefore, member government principals might be expected to delegate authority to a supranational agent such as the Commission of the European Communities or the ECJ. However, this initial delegation immediately raises another problem: What if the agent, say the Commission, has preferences systematically distinct from those of the member governments and uses its delegated powers to pursue its own preferences at the expense of the preferences of the principals? As D. Roderick Kiewiet and Mathew McCubbins summarize the problem, "Delegation . . . entails side effects that are known, in the parlance of economic theory, as agency losses. There is almost always some conflict between the interests of those who delegate authority (principals) and the agents to whom they delegate it. Agents behave opportunistically, pursuing their own interests subject only to the constraints imposed by their relationship with the principal."[31] This "shirking," or bureaucratic drift, thus emerges as the primary source of agency losses and the central problem of principal-agent analysis. In addition, a second process, known as "slippage," occurs when the structure of delegation itself provides perverse incentives for the agent to behave in ways inimical to the preferences of the principals.[32]

The importance in this context of information, and of asymmetrically distributed information in particular, can scarcely be overstated. In any principal-agent relationship, the agent is likely to have more information about itself than others have, making control or even evaluation by the principal difficult. Without some means of acquiring the necessary information to evaluate the agent's performance, the principal seems to be at a permanent disadvantage, and the likelihood of agency losses seems large.

The principal, however, is not helpless in the face of these advantages. Rather, when delegating authority to an agent, principals can adopt various administrative and oversight procedures to limit the scope of agency activity and the possibility of agency shirking. *Administrative procedures* define *ex ante* the scope of agency activity, the legal instruments available to the agency, and the procedures it must follow. Such administrative procedures may be more or less restrictive, and they may be altered in response to shirking or slippage, but only at a cost to the flexibility and comprehensiveness of the agent's activities.[33] In the case of the EC, both the Commission and the ECJ generally have been given a broad mandate, while prior to the Single European Act, the European Parliament was restricted to a limited institutional role.

*Oversight procedures,* on the other hand, allow principals *ex post* to (1) monitor agency behavior, thereby mitigating the inherently asymmetrical distribution of

31. Kiewiet and McCubbins 1991, 5.
32. Ibid.
33. For examples, see McCubbins and Page 1987; and McCubbins, Noll, and Weingast 1987 and 1989.

information in favor of the agent, and (2) influence agency behavior through the application of positive and negative sanctions. Among the formidable array of sanctions at the disposal of legislative principals are budgetary control; control over appointments; and power to override agency behavior through new legislation and to revise the administrative procedures laid down in the agent's mandate.

If these control mechanisms were costless, we would expect principals to adopt a full range of administrative and oversight procedures to minimize or eliminate agency losses. These mechanisms, however, are not costless. As Kiewiet and McCubbins succinctly state: "Agency losses can be contained, but only by undertaking measures that are themselves costly."[34] Strict oversight procedures, for example, consume considerable resources, and sanctions may impose costs upon principals as well as agents, as we shall see. Hence, principals will adopt a given control mechanism only if its cost is less than the sum of the agency losses that it reduces.

In the pages that follow, I consider the various control mechanisms available to member state principals, in terms of both their costs and their ability to constrain supranational agents and thereby reduce agency losses. Throughout the discussion, I reject two extreme formulations of the principal-agent problem. In the first extreme position, dubbed "the abdication hypothesis" or the "runaway-bureaucracy thesis," the principal abdicates its policymaking role to an agent, which then becomes the central figure in policymaking, entirely unconstrained by the principal.[35] In this view, regulatory bureaus and other agents possess an incontrovertible informational advantage over their legislative principals, whose oversight procedures are lax and ineffective, leaving agents free to "run amok" in pursuit of their own policy preferences. The runaway-bureaucracy thesis has had a number of advocates among students of the U.S. regulatory bureaucracy, and among both advocates and critics of European integration, who typically attribute considerable independence to both the Commission and the ECJ.[36]

Largely in response to the runaway-bureaucracy school, a "congressional dominance" school has more recently argued that, rather than abdicating control to runaway bureaucracies, principals (be it the U.S. Congress or EC member states) retain total or near-total control over the actions of their agents. Weingast and Mark Moran, for example, argue forcefully that regulatory bureaus such as the Federal Trade Commission do not run amok but are instead clearly responsive to the preferences of congressional oversight committees, even in the absence of any overt intervention by these committees.[37] In his study of the EC, Garrett makes a similar claim about the ECJ, arguing that "the principles governing decisions of the

34. Kiewiet and McCubbins 1991, 27.

35. For good discussions, see ibid.; and McCubbins and Schwartz 1987.

36. For bibliographic reviews of the runaway-bureaucracy literature, see Kiewiet and McCubbins 1991, chap. 1; Weingast and Moran 1983, nn. 1 and 3; and McCubbins and Schwartz 1987, 435. For good discussions of the Court's independence, see Mancini 1991; Stein 1981; Burley and Mattli 1993; and Mattli and Slaughter 1995.

37. Weingast and Moran 1983.

European court and hence governing those of domestic courts following its rulings are consistent with the preferences of France and Germany."[38]

In the view of the congressional dominance and intergovernmentalist schools, therefore, agency independence may often be more apparent than real. More specifically, because principals often opt to use unobtrusive forms of political oversight (see below), and because agents may rationally anticipate the reactions of principals to certain types of behavior, agency behavior that at first glance seems autonomous may in fact be subtly influenced by the preferences of principals, making genuine agency autonomy exceedingly difficult to measure. Indeed, as Weingast and Moran point out, the more effective the control mechanisms employed by the principal, the less overt sanctioning we should see, since agents rationally anticipate the preferences of the principals—and the sanctions likely to be applied by them—and incorporate these preferences into their behavior.[39]

We should therefore be cautious about attributing autonomy to supranational agents without carefully examining the less obtrusive forms of control available to member states. However, as Terry Moe points out in an important critique of the congressional dominance view, theorists in this school tend to presuppose the complete efficacy of agency control mechanisms without theorizing explicitly how these mechanisms might work, their costliness to principals as well as agents, and the ability of agents to exercise some degree of autonomy within the constraints of imperfect control mechanisms. Moe therefore argues for a theory that explicitly models the control relationship, including the costs and difficulties of employing the control mechanisms whose efficacy is simply assumed in the congressional dominance literature.[40]

In the pages that follow, I take up Moe's challenge, discussing both the control mechanisms available to principals and the costs and difficulties associated with their use, which might limit the extent of principals' control over their agents. In contrast to both the runaway-bureaucracy and the congressional dominance schools, I hypothesize that agency autonomy is not constant but varies primarily with the efficacy and credibility of the control mechanisms (both administrative and oversight procedures) available to principals. Next, I examine the actual control mechanisms used by member state principals to supervise and control EC institutions and provide a preliminary assessment of the costs and credibility of these mechanisms in "reining-in" supranational agents such as the Commission and the ECJ. EC institutions, I suggest, neither run amok nor blindly follow the wishes of member governments but rather pursue their own preferences within the confines of member state control mechanisms whose efficacy and credibility vary from issue to issue and over time.

### *The variety of oversight procedures*

The essence of oversight procedures is that they allow principals to (1) *monitor* the activity of their agents to determine the extent of agency losses and (2) *sanction* their

38. Garrett 1992, 558.
39. Ibid., 69.
40. Moe 1987.

agents in light of the information thus provided. The first part of this definition refers to the (partial) correction of informational asymmetries in favor of the agent, while the latter allows principals to apply positive or negative sanctions and thus to reward agents' appropriate behavior and punish shirking. Both aspects present principals with considerable challenges.

In a seminal article, McCubbins and Thomas Schwartz argue that oversight mechanisms are of two types. The first type, which they call "police-patrol oversight," comprises (a congressional committee in their example) active monitoring of some sample of the agent's behavior by the principal "with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations."[41] Such procedures might include public hearings, field observations, and the examination of regular agency reports. Police-patrol procedures, they argue, can be effective in assessing agency conformity with legislative intent in at least a cross-section of agency activities, but only at a high cost to the principal. In the case of multiple principals, moreover, police-patrol oversight can be thought of as a public good (in the sense that a single principal, having expended resources in oversight activities, cannot exclude the other principals from the benefit of those activities) and is thus likely to be undersupplied. Police-patrol oversight, therefore, if effective, is at best a costly and problematic option for principals.

By contrast, a second type of oversight, which McCubbins and Schwartz call "fire-alarm oversight," requires less direct centralized involvement by the principals, who instead rely on third parties (citizens, organized interest groups) to monitor agency activity and, if necessary, seek redress through appeal to the agent, to the principals, or through judicial review. Such fire-alarm oversight mechanisms, they concede, are likely to produce patterns of oversight biased in favor of alert and well-organized groups, but from the perspective of the principals they have the double advantage of focusing on violations of importance to their political constituency and of externalizing the costs of monitoring to third parties.[42] As Moe points out, however, fire-alarm oversight covers only a subset of agency behavior, namely, those activities that are likely to mobilize politically powerful groups to protest. Outside of this subset, which may indeed be quite small, agency behavior may be essentially uncontrolled.[43]

Finally, in a variation on third-party oversight, Kiewiet and McCubbins argue that principals can efficiently monitor their agents through the use of institutional checks, in which a number of agencies are established with conflicting sets of incentives or organizational goals. In such a system, one agent, for example a comptroller, may be charged with monitoring the activities of another and reporting this information to the principals; or it may be given the power to veto or block the activities of another

41. McCubbins and Schwartz 1987, 427.
42. Ibid., 426–34.
43. Moe 1987, 485.

agent, limiting the ability of that agent to pursue its private interests at the expense of the interests of the principals.[44]

*Costs of sanctioning*

The foregoing analysis assumes not only the efficacy of monitoring procedures but also the ability of principals to apply negative sanctions against the agent in the event of shirking. As McCubbins, Roger Noll, and Weingast point out for the U.S. case, however, the costs to principals of sanctioning agents can also be quite high:

> Not only is the magnitude of sanctions for noncompliance limited, but most of the methods for imposing meaningful sanctions also create costs for political principals. Some forms of sanctions require legislation, which demands the coordinated effort of both houses of Congress and the president. The introduction of legislation creates the additional problem that it can reopen long settled, but still contentious, aspects of a policy that are unrelated to the compliance problem. To impose legislative sanctions, therefore, requires running the risk of other undesirable legislative outcomes from the perspective of any given elected official.[45]

The costs of sanctions to the principals may in turn limit the credibility of principals' threats to apply these sanctions against the agent, and thus increase the discretion available to agents.

In a later contribution, McCubbins, Noll, and Weingast elaborate on the problem of sanctioning by multiple principals, such as the President, the House of Representatives, and the Senate in the American political system, arguing that clashes of interest among these principals can be exploited by an agent to avoid sanctions and maintain a considerable degree of autonomy. That is to say, any effort by the principals to sanction their agent must enjoy the unanimous support of all three actors. If any one of the three principals is made better off by the agent's shirking, then that principal will block the application of sanctions—allowing the agent to pursue its own preferences without the risk of sanction.[46]

Applying McCubbins, Noll, and Weingast's analysis beyond the U.S. case suggests three more general points about the ability of multiple principals to apply sanctions *ex post,* and the implications of this ability for agency autonomy. First, and most obviously, the model draws our attention to the conflicting preferences among multiple principals and the ability of an agent to exploit these conflicts, as long as the agent's activities remain within the set of Pareto-optimal outcomes.

Second, the ability of an agent to exploit conflicting preferences among the principals also depends crucially on the decision rules governing the application of sanctions (or overruling legislation or changing an administrative procedure) against the principal. In McCubbins, Noll, and Weingast's model, the decision rule governing the application of sanctions is unanimity among the three institutional

44. Kiewiet and McCubbins 1991, 33–34.
45. McCubbins, Noll, and Weingast 1987, 252.
46. McCubbins, Noll, and Weingast 1989, 439.

actors (Senate, House, President), since any of the three can veto any application of sanctions. Put differently, it is not only the conflict of interest but also the relatively demanding decision rule of unanimity that the agent is able to exploit in order to shirk successfully within its legislative mandate.

Third, the ability of principals to sanction a shirking agent depends on what Fritz Scharpf calls the "default condition" in the event of no agreement among the principals. If the default condition is the status quo—the continuation of existing institutions and policies—Scharpf argues that these institutions and policies will persist indefinitely, rigidly unchanging in the face of an ever-changing policy environment, a phenomenon he calls the "joint-decision trap."[47] Extending Scharpf's argument to principal-agent relations, we can argue that a status quo default condition makes any revision of the agent's mandate more difficult, since it privileges the existing delegation of authority to the agent, thereby increasing the agent's autonomy. By contrast, a default condition under which the agent's mandate expires and must be reauthorized privileges would-be reformers among the principals, who may demand amendment of the agent's mandate as the cost of their support for such reauthorization; this should, ceteris paribus, limit the autonomy of the agent.

For all of these reasons, principals concerned with limiting bureaucratic drift might be expected to adopt legislation featuring strict administrative procedures, low institutional thresholds to the use of sanctions, and periodic reauthorization of the agent's mandate in order to minimize the risk of agency shirking. Once again, however, such decision rules are not without costs: the first two of these options would risk governmental paralysis, and the third could entail reopening a Pandora's box of delicate institutional bargains. The ultimate choice of decision rules should therefore reflect some trade-off among these considerations by member state principals. Whatever institutional rules finally are chosen, they should matter a great deal for the autonomy of an agent from its principals.

### *Mechanisms of member state control in the EC*

Although agency control mechanisms can reduce agency losses, they are often costly (and therefore noncredible) and are never perfectly effective. Furthermore, the difficulties that principals encounter in threatening and imposing sanctions on an agent are compounded in settings like the EC, where the institutional hurdles to the imposition of sanctions—typically a unanimous or qualified majority vote of the member states—are particularly high. This section examines the administrative and oversight procedures established by EC member states. As will be seen, these procedures encompass everything from intrusive police patrols to decentralized fire alarms, differing considerably from one supranational agent to another, from one issue-area to another, and over time. I focus in particular on the Commission of the European Communities and the various oversight mechanisms available to the

47. Scharpf 1988.

member governments in attempting to control its behavior: (1) the primary police-patrol method of oversight, namely, the comitology system of member state oversight committees; (2) various methods of fire-alarm oversight, mostly notably the EC legal system and the pivotal role of the ECJ; (3) the costs and credibility of overruling or sanctioning agency shirking; and (4) the costs and credibility of revising an agent's mandate in response to persistent shirking.

*Comitology as police patrols.* The most intrusive—and expensive—form of oversight, according to McCubbins and Schwartz's scheme, is police-patrol oversight. EC member states utilize such oversight in a number of issue-areas (such as agricultural and internal market policy) under the general rubric of comitology. As noted above, most of the Commission's executive powers are not laid down explicitly in the treaties but rather are specified in secondary Council of Ministers legislation. In practice, since the early delegation of executive powers to the Commission in the area of agricultural policy in the 1960s, the Council generally has made the exercise of these powers subject to oversight by one of several varieties of oversight committees, the nature of which is typically specified in the enabling legislation. After the ratification of the Single European Act in 1987, this system of committees was codified and rationalized in the famous Comitology Decision of 13 July 1987, which specified three types of oversight committees: advisory, management, and regulatory. In schematic form, the various procedures are as follows.

First, under the advisory committee procedure, the Commission must refer its proposed actions to the committee, which may "if necessary" proceed to a vote by simple majority on the Commission's proposals. The Commission is then obligated to take the "utmost account" of the committee's opinion but may nevertheless act as it sees fit. Of the three procedures, the advisory committee procedure provides the Commission with the greatest autonomy and member states with the weakest influence; it is used most commonly in the area of competition policy.

Second, under the management committee procedure, which originated and still predominates in EC agricultural policy, the Commission refers its implementing measures to the committee. The committee may initiate a vote by qualified majority within a deadline laid down by the Commission. If the committee delivers a favorable opinion or fails to deliver any opinion before the deadline, the Commission may adopt the measure with immediate effect. If, however, the committee adopts an unfavorable opinion by qualified majority vote, the Commission must communicate the proposal to the EC Council, which can take a different decision by qualified majority. The management committee procedure, therefore, is clearly more restrictive than the advisory committee procedure, yet even here a qualified majority vote is required to secure a referral to the Council, and a second such vote is required within the Council in order to overrule the Commission's decision. Failing this double qualified majority, the Commission proposal stands. To wit, the Commission can exploit differences among the member states to avoid any reference to the Council; hence it can ensure the implementation of its proposals in much the same way that

McCubbins, Noll, and Weingast's regulatory agencies exploit differences among the three branches of government to avoid sanctions.

Third and finally, under the regulatory committee procedure, which was explicitly designed to control the Commission more closely than the management procedure, the Commission may adopt only those measures that are approved by a qualified majority vote within the committee. In contrast to the management committee procedure, which requires a qualified majority to secure a reference to the Council, here a minority can secure such a reference. Council member states can then take a different decision by qualified majority vote, or, in some instances, block the Commission's proposal by vote of a simple majority.[48]

To what extent do these comitology procedures allow the member states to control the actions of the Commission? At first glance, the remarkably low rate of committee referrals to the Council—typically less than 1 percent of all Commission decisions—seems to suggest that committee oversight is perfunctory and that the Commission is largely independent in its actions. However, as the congressional dominance school points out with regard to regulatory bureaucracies, and as Gerus argues with specific reference to the EC's comitology procedures, rational anticipation of committee action by the Commission may mean that the Commission is effectively controlled by the member states, despite the startling rarity of sanctions against it.[49] As one Commission official explained, having one's proposal referred from a committee to the Council can cast a long shadow over the career prospects of a young *fonctionnaire*—a powerful incentive to rationally anticipate a proposal's reception in the relevant committee.[50]

The story, however, does not end there, for two reasons. First, as the thumbnail sketches above suggest, the procedures impose varying requirements on the Commission—and varying thresholds to overruling actions by the committee and the Council. Commission discretion, in other words, is not entirely eliminated by oversight procedures, but it is constrained to different degrees depending on the type of committee procedure selected. Indeed, this is why member states and the Commission often disagree on the choice of procedures, and it is why member states sometimes "tighten" committee procedures in response to Commission shirking.

Second, although regulatory committee procedures clearly provide the member states with the most effective control over the Commission, this control imposes costs on the principals as well as their agent, and more specifically presents the member states with a clear and explicit trade-off between member state control, on the one hand, and speed and efficiency of decision making, on the other. This trade-off between efficiency and control is reflected, for example, in the Council's procedural choices for various types of legislation: an advisory committee procedure is used for competition policy; a management committee procedure for agriculture; and a regulatory committee procedure for legislation regarding customs, veterinary

48. For an extended empirical discussion of comitology in the EC, see Docksey and Williams 1994.
49. For an extended discussion, see Gerus 1991.
50. Personal interview, EC Commission official, March 1995.

and plant health, and food. Although the latter procedure applies to a number of issue-areas, member states' willingness—in the interests of speed and efficiency—to afford the Commission the greater discretion associated with the advisory and management procedures in areas such as agriculture, competition policy, and regional policy is striking.

*Institutional checks, judicial review, and fire alarms.* In addition to active police-patrol oversight, member states also employ both institutional checks and fire-alarm oversight of the Commission. Indeed, almost every EC institution besides the Commission plays a role in monitoring and checking the Commission's behavior. The European Parliament, for example, enjoys the power to approve and to dismiss the Commission as a whole, although it may not sanction individual commissioners; the Court of Auditors monitors and reports on the Commission's implementation of EC policies; and the ECJ may, under Articles 173 and 174, review the legality of Commission acts, which may be declared void "on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or any rule of law relating to its application, or misuse of powers." In addition, under Article 175, the Court may also rule on the Commission's failure to act on its responsibilities under the treaties.

In terms of the principal-agent model sketched above, the provisions of Articles 173–75 create an effective system of fire-alarm oversight by allowing complaints to be brought not only by member states and EC institutions but also by any natural or legal person who can demonstrate that the Commission action is of "direct and individual concern" to him- or herself. Although the ECJ has interpreted the latter requirement narrowly, individuals nevertheless constitute the large majority of plaintiffs in Article 173 cases, and their ability to bring such cases has indeed created a system of fire-alarm oversight similar to that described by McCubbins and Schwartz.[51]

*The costs and credibility of ex post sanctions.* Member state principals, therefore, possess ample means of both police-patrol and fire-alarm oversight to monitor the behavior of their agents. However, as we have seen, such information is useful only if the principals can credibly threaten the agent with sanctions in the event of noncompliance; and such sanctions can be more or less costly to the principals as well as the agent. In addition, as we have seen, agents can exploit conflicting interests among the principals, as well as decision rules governing the application of sanctions, allowing them to shirk without incurring sanctions from the principals. Given these considerations, how "usable," or credible, are the possible sanctions available to member state principals? Simplifying slightly, the literature points to four possible avenues open to principals: cutting the agency's budget, dismissing or reappointing agency personnel, adopting new legislation that overrules

51. On the ECJ's interpretation of these provisions, see Kent 1992, 316–27. On the proportion of complaints brought by individuals, see Nugent 1994, 224.

agency action, and unilaterally refusing to comply with an agency decision. Let us briefly consider each in turn.

The first option, that of cutting agencies' budgets as a sanction, is widely cited in the congressional dominance literature, which argues that, through its power of the purse, Congress determines the very existence of an agency and therefore has considerable leverage over its behavior. As Moe points out, however, the use of budgetary cuts as a means of sanctioning is a blunt instrument:

> A fundamental problem here is that budgets play two roles—one that shapes the incentives of bureaucrats, one that provides a financial foundation for programmatic behavior—and these may often work at crosspurposes. Suppose, for example, that a committee wants substantially higher levels of regulatory enforcement but the agency refuses. . . . If the committee slashes the agency's budget as punishment, . . . it is simultaneously denying the agency the very resources it needs to comply with the committee's wishes. There is no clear solution. The budget is simply not a very dependable control mechanism.[52]

These difficulties apply equally to the EC where cuts in the Commission budget for, say, agriculture, could have adverse programmatic consequences for member governments' domestic constituencies.

A second option would be for the principals to dismiss or refuse to reappoint agency personnel perceived to be drifting from the preferences of the principals. A number of institutional obstacles that apply to all three EC supranational institutions stand in the way of using appointments as a sanction. In the case of the Commission, for example, each member state nominates one or two commissioners, and the member states collectively name a president of the Commission (by unanimity). Under the treaties, however, the Commission may not be dismissed during its five-year term of office, and in practice, member states have a say only over the reappointment of commissioner(s) they had nominated and of the president. ECJ judges hold longer terms than do commisioners (six years), but as in the case of commissioners, member states may not dismiss them during their tenure. Furthermore, judges are protected by the Court's tradition of unanimous rulings, which makes it difficult for member states to single out the views of individual judges for sanctioning. Finally, members of the European Parliament (MEPs) are no longer appointed by national parliaments but since 1979 have been directly elected and thus are responsible not to member governments but rather to their political parties and national electorates. (As Simon Hix and Christopher Lord point out, this provides member governments with influence on MEPs from their own political parties but not on those from opposition parties.)[53]

A third option—emphasized in the literature on the U.S. Congress and in Garrett's and Bernadette Kilroy's work on the ECJ—consists of overruling a Commission or ECJ decision through new Council legislation. Here once again, however, a member state unhappy with a Commission or Court action would need to assemble the

52. Moe 1987, 487.
53. Hix and Lord 1996.

necessary majority, or even a unanimous vote, in favor of such new legislation. Furthermore, the Commission may, through use of its sole right of initiative in many areas, complicate this task by proposing its own preferred legislation, which under Article 149(1) can be amended only by a unanimous vote of the member states. This is not to say that overruling is impossible, since a unanimous coalition can be put together through log-rolling in the Council; but the institutional barriers to new legislation are high and, once again, allow supranational agents to exploit differences among the member state principals.

Finally, a fourth and more drastic option is unilateral noncompliance with a decision of the Commission or the ECJ. This is indeed one of the central claims both of Kilroy and of Garrett and Weingast, who argue that the ECJ should be aware of the preferences of the larger member states in particular, since noncompliance by such a state could damage the reputation of the Court and render its rulings a dead letter. Here again, however, unilateral noncompliance has significant costs in terms of a member state's reputation among its partners. Furthermore, as a number of scholars have pointed out, the ECJ has a partner in its efforts to ensure national compliance: because national courts generally have accepted the supremacy of EC law over national laws, member governments seeking to avoid compliance would have to defy not only the ECJ but their own national courts as well, thereby raising the costs of noncompliance even higher.[54] This is not to say that noncompliance is impossible—indeed, in the case of de Gaulle's "empty chair policy" it proved exceedingly effective—but it is costly, and awareness of these costs by all actors may limit the credibility of a member state's threat of unilateral noncompliance.

*Revising the agent's mandate.* Perhaps the most effective sanction against a shirking agent is the revision of its mandate by amending the treaty or regulation that delegates authority to it. Once again, the ability of member states to control supranational institutions by reforming the administrative procedures in their mandate or its mix of oversight procedures depends crucially on the voting rules for institutional change and the default condition in the event that member states fail to agree on such a change.

The threat of treaty revision is, in some ways, the ultimate threat, but the institutional barriers to carrying the threat through—calling of an intergovernmental conference, agreement by unanimity, ratification by member states—are high. In addition, as noted above, the default condition for treaty provisions is the status quo, meaning that in the absence of a unanimous agreement on revision, the powers of the Commission, the ECJ, or the European Parliament stand. Indeed, in Scharpf's terms, the powers of EC institutions under the treaties constitute a model joint-decision trap, in that a single member state can indefinitely block any reform, reduction, or expansion of the powers of EC institutions. For this reason, the threat of treaty revision is essentially the "nuclear option"—exceedingly effective, but difficult to

54. For examples, see Burley and Mattli 1993; Stone 1995; and Alter 1996.

use—and is therefore a relatively ineffective and noncredible means of member state control.

Some of the Commission's executive powers, however, are established not by treaty provisions but by Council regulations with fixed expiration dates. Examples include the structural fund regulations and the European Strategic Program for Research and Development (ESPRIT). In these cases, the relevant regulations require periodic revision and readoption by the Council, meaning that the default condition is not the status quo but expiration of the program, and with it, the Commission's executive powers. The practical result of this need for Council revision, then, is that member states are periodically given the opportunity to "clip the Commission's wings" if it acts in a way that diverges from their interests. Just as important, the requirement of unanimity even for renewal of such regulations means that member states with grievances against the Commission can threaten to veto readoption of the regulation unless their concerns are addressed. Stated another way, where the default condition is expiration of the regulation, the decision rule of unanimity favors those member states who would cut back the executive powers of the Commission, not those who would seek to protect them. Such periodic revisions of the Commission's mandate are relatively commonplace in EC policymaking and are found in programs such as the ESPRIT, the Measures to Encourage Development of the Audiovisual Industry (MEDIA), and the Commission's management of the Community's structural funds.[55]

*Supranational autonomy and member state control.* I have thus far hypothesized that supranational autonomy is primarily a function of the control mechanisms established by member states to control their international agents—and that the costs and credibility of these control mechanisms vary considerably from agent to agent and from one issue-area to another for a given agent. If this hypothesis is correct, the implications for the autonomy of EC institutions are twofold.

First, the analysis presented above suggests that the autonomy and influence of the Commission should vary considerably across issue-areas and over time as a function of the varying administrative procedures, oversight mechanisms, and possibilities for sanctioning available to the member governments. A rigorous test of this hypothesis would require an extensive cross-issue comparison of the Commission's independence and influence across a range of issues such as competition policy, external trade policy, and monitoring of structural fund and Common Agricultural Policy implementation, which is beyond the scope of this article.[56]

A second implication of principal-agent analysis is that, ceteris paribus, the European Parliament and the ECJ should both be less constrained by the member governments than is the Commission. The reason for this is simple: while the Commission enjoys a large number of substantive responsibilities in areas ranging from trade and competition policy to agriculture and structural policy, it is also

55. For more on these programs, see Pollack 1995a, chap. 7.
56. For a preliminary effort, see Pollack 1996b.

subject to a large number of oversight procedures (including the EC's comitology oversight committees, judicial review, and monitoring by the European Parliament and the Court of Auditors) and is in many cases relatively easy to sanction or overrule through a qualified majority vote of the member governments. By contrast, the Parliament, although granted a more restricted range of legislative and budgetary powers, is seldom subject to explicit oversight and can be sanctioned only through the relatively difficult expedient of treaty amendment, requiring unanimous agreement among the member governments and ratification by national parliaments and electorates. Individual members of the European Parliament, moreover, are not appointed by the member governments, as are European commissioners, but are directly elected by their electorates, thus granting them an additional degree of independence from their national governments.

Similarly, the relatively weak control mechanisms available to the member governments would lead us to expect—and allow us to explain—the apparent autonomy of the ECJ in influencing the course of European integration. As Andrew Moravcsik argues, of the various powers delegated to supranational institutions by the member states, "only the enforcement power of the ECJ appears to have resulted in a grant of independent initiative to supranational bodies beyond that which is minimally necessary to perform its functions—and beyond that which appears to have been foreseen by governments."[57] In fact, the degree of ECJ independence is a matter of dispute in the literature on legal integration. Garrett, for example, argues that the Court's room for maneuver vis-à-vis the member states is extremely limited, since the Court must be concerned with its reputation; if legal integration has proceeded over the last three decades, therefore, it is because this development is in the interests of the member states. Anne-Marie Burley and Walter Mattli, by contrast, argue that the Court, along with subnational legal actors, has in fact been the prime mover in European integration, pursing its own agenda of legal integration at the expense of national sovereignty. The Court has been able to do so, they argue, largely because the technicality and seemingly nonpolitical nature of the Court's rulings have led the member states to pay little attention—at least until the establishment of EC legal supremacy had become a fait accompli. The first view presents the ECJ as the agent of the member states, on a short leash, while the latter presents it as a more independent and sophisticated strategic actor, exploiting the technical obscurity of its decisions to effect a legal revolution away from the political spotlight.

The analysis I present suggests that both of these accounts hold an element of truth. On the one hand, the ECJ is indeed a sophisticated strategic agent, as Burley and Mattli argue, pursuing its own agenda with considerable independence—and certainly with more independence than Garrett allows. On the other hand, the basic insight of Garrett's analysis, that the independence of the Court is limited by the principal-agent relationship, is also correct. The key to understanding the Court's independence, I argue, lies in the fact that the control mechanisms stressed by Garrett are limited in both scope and credibility. Thus, as we have seen, the power of

57. Moravcsik 1993, 513.

appointment is limited by the length of judges' appointments, the inability of member states to remove sitting judges, and the tradition of unanimous Court decisions. Similarly, Council overruling of Court decisions requires a qualified majority, and in many cases a unanimous vote; and revision of the Court's powers requires a revision of the treaties by unanimous vote and ratification by national parliaments. Finally, the costs of noncompliance to member governments are increased by the Court's effective co-opting of national courts. Put simply, the limited control mechanisms available to the member states, and the high institutional barriers to their use, have allowed the Court considerable latitude in its rulings, short of provoking a unanimous groundswell of member state resentment against it. These weaknesses, together with the informational asymmetries in favor of the Court resulting from the technical and legal obscurity of the latter's decisions, combine to provide the Court with considerable discretion—which it has indeed exploited with considerable sophistication.

## Agenda setting

This section focuses in detail on one particular aspect of supranational delegation and agency: the role of supranational institutions in setting the agenda for Community politics and policies. The analysis here is complicated, however, by the fact that different analysts use the term "agenda setting" to refer to two different types of activities. For the sake of analytic clarity, I distinguish between formal and informal agenda setting. Formal agenda setting consists of the Commission's right, and the European Parliament's conditional right, to set the Council's formal or *procedural* agenda by placing before it provisions that it can more easily adopt than amend, thus structuring the choices of the member states in the Council. By contrast, informal agenda setting is the ability of a "policy entrepreneur" to set the *substantive* agenda of an organization, not through its formal powers but through its ability to define issues and present proposals that can rally consensus among the final decision makers. In each case, I specify the assumptions underlying each model of agenda setting and the conditions under which supranational institutions will enjoy formal and informal agenda-setting powers, respectively.

### *Formal agenda setting*

Perhaps the most rigorous framework in which supranational influence on EC Council decisions can be understood is the rational choice literature on institutions and agenda setting, which focuses precisely on the power of agenda setters like the Commission to influence policy outputs even when the power to take the final decision lies elsewhere. The agenda-setting power of a policy initiator in such models depends on several key variables, namely, the institutional rules governing who may propose an initiative; the institutional rules governing voting; the institutional rules governing amendments; the distribution of actor preferences; and

the impatience of the various actors to secure agreement on a policy. Let us consider each of these factors briefly, applying them to the EC's supranational institutions.

The first, and most obvious, condition for the influence of an agenda setter is the institutional rule governing the power to propose legislation and to control the agenda of a legislative body. In the U.S. Congress, this power to propose is typically wielded by congressional committees and is arguably the source of their disproportionate influence within their respective jurisdictions. In the EC, by contrast, its governing treaties assign the sole "right of initiative" for Community legislation to the EC Commission (subject to the limitations cited above), placing the Commission in the role of the Community's formal agenda setter.

The right to propose, however, is not sufficient to assure agenda-setting power. The influence of an agenda setter will, ceteris paribus, be greatest where the voting rule is some form of majority vote and where the agenda setter's proposal is difficult to amend—in other words, where it is easier to adopt the agenda setter's proposal than to amend it. In the case of EC decision making, agenda power will vary with the voting and amendment rules governing a given piece of Community legislation. For most of the Community's history, legislation was adopted via the consultation procedure, subject to the Luxembourg Compromise of 1966, which committed member states to search for a unanimous consensus where "vital national interests" were at stake. Simplifying only slightly, this meant that the EC Commission enjoyed the sole right of initiative, after which legislation went to the European Parliament for a nonbinding consultation and thence to the Council of Ministers, where a unanimous vote was required either to amend or to adopt the Commission's proposal. Thus, although amending a Commission proposal was difficult, adopting the proposal was equally difficult: any member state could simply veto a proposal with which it was unhappy. The Commission's formal agenda-setting power was therefore minimal or nonexistent throughout most of the EC's history.

By contrast, the cooperation procedure established by the Single European Act (as well as the consultation procedure when practiced with qualified majority voting) seems to confer precisely the sort of agenda power that rational choice theorists assign to U.S. congressional committees and other agenda setters: the voting rule in both cases is qualified majority, meaning that the Commission need put forward only a proposal capable of garnering the support of a qualified majority of the member states. The amendment rule, however, is unanimity, making any amendments to a Commission proposal quite difficult. In addition, the cooperation procedure also provides some limited agenda-setting power to the European Parliament, which may propose amendments to the Council of Ministers' draft legislation. These amendments, if accepted by the Commission, then become part of the Commission's amended proposal and can as such be adopted by qualified majority but amended only by a unanimous vote. In other words, the European Parliament gains some agenda-setting power under the cooperation procedure, but the Commission remains the middleman in the procedure, without whose cooperation the European Parliament's amendments enjoy no special status.

Finally, the new codecision procedure established by the Maastricht Treaty establishes a similar agenda-setting power for both the Commission and the Parliament, with one important difference: in its final reading, the Parliament may by an absolute majority of its members reinsert amendments to the Commission's revised draft. The Council of Ministers may then accept the Parliament's amendments or else convene a "conciliation committee" that brings together delegations from both the Council and the Parliament to reconcile their differences in a final draft, which then returns to the two bodies for final approval. The net effect of this conciliation process (which took place in fourteen of the first thirty-two codecision procedures) is to remove the Commission as the intermediary between the Council and the Parliament. This both allows for direct bargaining between the two bodies and provides the Parliament with a possible veto of the final product, but it removes the formal agenda-setting power of the Commission in the process.[58]

Regardless of the procedure prescribed for a given piece of legislation, a fourth important factor in the power of an agenda setter is the distribution of preferences among the agenda setter and its legislative principals, which determines the legislative outcome of an agenda setter's proposal. Consider, for example, a situation in which the EC Commission's optimal outcome can garner a qualified majority in the Council of Ministers. In this case, the Commission need only propose its ideal draft policy, the Council will adopt it by qualified majority, and the equilibrium outcome will reflect the Commission's preferences. Yet, one can imagine a situation in which, despite the same institutional structure, the distribution of preferences is different, so that on a given question the preferences of the Council of Ministers (or at least of a blocking minority) run directly contrary to those of the Commission. In this case, the Council will reject not only the Commission's ideal point but indeed any proposal that the Commission prefers to the status quo. In this case, the Commission will make no proposal, yielding an equilibrium outcome of the status quo but leaving the Commission unable to improve, from its perspective, on that status quo. Between these extremes, of course, lie a number of possible preference distributions that would allow the Commission to improve on the status quo, short of its ideal point. The point here, however, is that, ceteris paribus, the agenda-setting power of the Commission and the location of the equilibrium policy choice depend fundamentally on both the Commission's preferences and the distribution of preferences in the Council, which the Commission must always take into account in making its proposals.

Fifth and finally, the power of an agenda setter over outcomes will also depend crucially on the relative time horizons, or impatience, of the agenda setter and its legislative principals. Put simply, the agenda-setting model sketched above assumes that member states, when confronted with a Commission proposal, will vote sincerely, that is, they will vote for any Commission proposal that leaves them better off than the status quo, even if that proposal is far from their ideal point.

58. For details on the codecision procedure, see Earnshaw and Judge 1996; and Garrett and Tsebelis 1996.

Unfortunately for the Commission, however, the member governments in the Council may vote strategically, for example, by blocking indefinitely the Commission's proposals in the hope of inducing the Commission to bring forward new proposals closer to their preferred positions. Such strategic voting, Garrett suggests, creates a waiting game, in which "the side which has the greater interest in achieving a compromise more quickly would have less influence on the outcome."[59] Most of the time, Garrett suggests, the Commission is more eager than the member states to secure passage of EC legislation, leading the Commission to propose legislation closer to the preferences of the member states and thereby reducing its agenda-setting power.

Impatience, however, can be a two-way street, and member states may also experience considerable costs associated with waiting for new legislation to be proposed. Thus Shepsle argues that the influence of the agenda setter is, all things being equal, greater when the decision makers are impatient, impatience being defined as "the deferral of gratification . . . while haggling takes place."[60] Note that impatience here is not a state of mind but rather arises from the costs of delaying a decision. These costs are related in turn to the expected costs and benefits of the proposed policy to the member states when compared with the status quo. Thus, if the member states (or a qualified majority among them) are dissatisfied with the status quo and eager for a new policy, then they are likely to adopt a final policy choice close to the Commission's proposal rather than engage in protracted haggling over amendments that must be decided by unanimity.

In sum, the literature on formal agenda setting suggests that the Commission may, under certain circumstances, enjoy considerable agenda-setting power in the Council of Ministers, namely, in those circumstances where it enjoys the exclusive right of initiative, where it is easier to adopt than to amend a Commission proposal, where differences in member state preferences can be effectively exploited, and where member states are dissatisfied with the status quo and impatient to adopt a new policy. To my knowledge, however, no study has systematically analyzed formal Commission agenda setting under the qualified majority voting provisions of the Single European Act. Until such an analysis exists, Commission agenda setting—like the conditional agenda setting posited for the European Parliament by Tsebelis—remains better theorized than documented.

### *Informal agenda setting*

Formal agenda setting, however, does not exhaust the claims made in the empirical literature for Commission influence. A number of authors have argued that, even where the decision rule among member states is unanimity, the Commission might nevertheless "set the agenda" by constructing "focal points" for bargaining in the absence of a unique equilibrium or by constructing policy proposals and

59. Garrett 1992, 552.
60. Shepsle 1989.

matching these to pressing policy problems in an environment of uncertainty and imperfect information.

Thus, for example, Garrett and Weingast, starting from the same basic assumptions as theorists of formal agenda setting, have suggested that under certain conditions an agenda setter such as the ECJ might have an independent causal influence even where member states vote by unanimity and have perfect information. In cases where a single coordination problem features multiple equilibrium solutions with no "objective" means of deciding among competing solutions, they argue, an agenda setter can put forward a proposal serving as a constructed focal point around which member state bargaining can converge. Note, however, that the ability of an agenda setter to construct such a focal point does not depend on its formal powers of initiative or on any particular set of voting or amendment rules. What is important here is only the provision of an idea around which bargaining can converge and in the absence of which no equilibrium position could be found. Thus, while retaining the formal assumption of instrumental rationality, Garrett and Weingast's model represents a significant departure from models of formal agenda setting.[61]

A more radical departure is made by John Kingdon, who explicitly rejects the assumptions of comprehensive rationality and perfect information, opting instead for an adapted version of the "garbage-can model" of organizational decision making in which actor preferences are loosely defined, information is incomplete, and actor participation in decision making varies across issue-area and over time. By contrast with the assumption of comprehensive rationality, which begins with the identification of a problem followed by a search for alternative solutions and a decision among these alternatives, Kingdon's adaptation of the model features three separate "streams": (1) the identification of problems, (2) the proposing of specific policies or policy alternatives, and (3) politics, within which political changes (for example, in the composition of Congress, the presidency, or even the national mood) suggest attention to certain agenda items rather than others. All three of these streams, he suggests, operate simultaneously and each stream according to its own particular logic. At certain times, Kingdon suggests, these streams—the rise of a particular problem to prominence, the existence of serious policy proposals, and the right political climate for their adoption—are combined or "coupled." This creates a "policy window" for the adoption of certain policies, during which a given agenda item is recognized as a problem in the problem stream, feasible policy alternatives have been proposed in the policy stream, and the chances for the adoption of a policy in the political stream are particularly propitious. At this window, Kingdon suggests, stands a policy entrepreneur to propose, lobby for, and "sell" a policy proposal to a decision-making body like the U.S. Congress.[62]

Applying Kingdon's view to the EC, we are faced with the stark observation that the EC's supranational institutions enjoy no monopoly on informal agenda setting, which depends more on expertise and persistence than on the formal right to propose

61. Garrett and Weingast 1993.
62. Kingdon 1984, 188.

or amend policies. Anyone can be a political entrepreneur, according to Kingdon, and in the case of the EC, Moravcsik has argued convincingly that member governments are fully capable of acting as entrepreneurs, providing ideas and brokering agreements with other member governments.[63] Nor do supranational institutions enjoy a unique incentive to set the Community's political agenda: in Kingdon's model, policy entrepreneurs can be motivated by a variety of motives, including material gain, bureaucratic territoriality, or ideological motives. The Commission and the other EC institutions may possess all of these motives, as might private-sector actors such as the European Round Table of Industrialists or EC member governments.

Nevertheless, EC institutions, if not the only political actors with an incentive to set the Community agenda, are often well placed to do so. Kingdon lists three characteristics of the successful policy entrepreneur: (1) the person must be taken seriously, as an expert or a leader; (2) the person must be known for her political connections or negotiating skills; and (3) the successful entrepreneur must be persistent and wait for the opening of a policy window. In varying degrees depending on particular times and commissioners, the Commission embodies all three characteristics of expertise, brokering skills, and institutional persistence and has the additional advantage of the formal right of initiative and well-developed policy networks. It is therefore true that the Commission has no monopoly over informal agenda setting, but it may nevertheless have a comparative advantage over other potential agenda setters, such as member governments or private actors. Both the ECJ and the European Parliament may also play similar entrepreneurial roles.

More specifically, the informal agenda-setting powers of the EC Commission (or the ECJ or the European Parliament) would seem to be greatest under four conditions. First, the influence of a supranational agent should be greatest where information is imperfect, uncertainty about future developments is high, and/or asymmetrical distribution of information between the agent and the member states favors the former. Thus, as Wayne Sandholtz suggests in his study of Commission entrepreneurship and the ESPRIT program, member states in a rapidly changing policy environment may settle around a Commission proposal as a constructed focal point because uncertainty about the effects of alternative proposals provides no clear basis for choice.[64]

Second, as Garrett and Weingast suggest in their discussion of constructed focal points, the influence of an informal agenda setter should be greatest when the distributional consequences of alternative policy proposals are the smallest.[65] Where alternative proposals have significant distributional consequences among the member states, by contrast, an agenda setter's proposals will be less important than the distribution of preferences and power among the member states.

Third, supranational influence is likely to be highest when the transaction costs of negotiating alternative policies and the costs of waiting are both high. In such cases,

63. Moravcsik 1995.
64. Sandholtz 1992.
65. Garrett and Weingast 1993, 186.

a supranational entrepreneur may influence policy outcomes both by constructing focal points for bargaining among member states impatient to reach agreement and by acting as a broker at the Council bargaining table.

Fourth and finally, the influence of a supranational entrepreneur will be greater to the extent that it builds policy networks, rallies subnational actors to support its proposals, and pressures member governments to do likewise. A number of studies of Commission entrepreneurship in the formulation and "selling" of the ESPRIT program and the 1992 internal market program emphasize the importance of such policy networks, mentioned only in passing by Kingdon.[66]

Case study evidence from EC history suggests that the Commission's informal agenda-setting power has indeed varied with the factors mentioned above.[67] John Peterson's study of the ESPRIT program, for example, found that the Commission, working together with executives of the "Big 12" European high-technology firms, was able to convince the Council to adopt its proposals for the ESPRIT pilot program in 1982 with very few changes. By the time this program came up for renewal in 1984, however, smaller member states such as Belgium had realized that the Commission's formula favored the Big 12 firms and their host member states, and the Belgians therefore insisted upon, and received in Council bargaining, a new category of ESPRIT funds that would benefit small and medium-sized enterprises such as those active in Belgium. In other words, increased information about the workings of the program over time led member states to change those aspects of the Commission's proposals to which they objected.[68]

A similar sequence occurred in both the 1984 plans for the Integrated Mediterranean Programs and the 1988 reform of the structural funds, when greater Commission expertise coupled with a general uncertainty about the future performance of new procedures led member states to adopt, with very few amendments, the Commission's proposals.[69] By 1993, however, the previous uncertainty about the workings of the institutions, and the Commission's informational advantage in this regard, had receded after five years of experience, and the Commission's proposals were therefore amended by member states, which had clear and precise preferences. The final policy choice thus reflected not simply the agenda of the Commission but also, and especially, the preferences of the largest (contributing) member states.[70]

Finally, the importance of information—and of agency strategy—is evident in perhaps the most famous case of Commission agenda setting, namely, the Commis-

66. Among these studies are Peterson 1992; Sandholtz 1992; Zysman and Sandholtz 1989; and Cowles 1993.

67. Although the analysis here focuses on the Commission, it is worth noting that the ECJ is credited with informal agenda-setting powers by Garrett and Weingast, who argue that the ECJ's doctrine of "mutual recognition" served as the touchstone for the EC's revived internal market program of the 1980s. Similarly, Richard Corbett has argued that the European Parliament has served as an informal agenda setter in the negotiations leading to the 1992 Maastricht Treaty, although the empirical record suggests that Parliament's influence on the negotiations was in fact quite limited. See Garrett and Weingast 1993; and Corbett 1994, respectively.

68. Peterson 1993.

69. For a good discussion of Commission entrepreneurship and issue definition, see Smyrl 1995.

70. Pollack 1995b.

sion's key role in devising the "1992" internal market program of Lord Cockfield's white paper and in proposing a number of draft provisions that served as the basis in 1985 for negotiating what was to become the Single European Act. In the case of the Single European Act, the Commission succeeded in setting the substantive agenda for the collective decision of the member states, which signed on to Lord Cockfield's internal market program as it stood and adopted the act along the basic lines proposed by the Commission. Similarly, Commission president Jacques Delors, working together with the EC's central bank governors, managed to set much of the agenda for the 1991 intergovernmental conference on economic and monetary union. In the 1991 intergovernmental conference on political union, by contrast, the institutional preferences of the member states were much clearer, and the Commission played a less central role in defining the terms of the negotiations, which were dominated by the larger member governments and the Luxembourg presidency. Delors, moreover, was widely perceived to have overreached in his political union proposals, just as then-President Walter Hallstein had overreached in the ambitious 1965 budgetary proposals that led to the "Empty-Chair Crisis," leading the member states in both cases to discard the Commission proposals as the basis of negotiation. Jean-Charles Leygues, a member of Delors's cabinet, aptly summarized the Commission's respective positions in the 1985 and 1991 intergovernmental conferences: "Before we could count on being ahead of other people strategically. We knew what we wanted and they were less clear, partly because they didn't believe that anything much would follow from the decisions we asked them to make. Now they know that we mean business and they look for all the implications of our proposals. There are huge numbers of new things on the table and it will be much tougher going from now on."[71] The Commission's influence as a policy entrepreneur, in short, seems to depend largely on member state uncertainty regarding the problems and policies confronting them and on the Commission's acuity in identifying problems and policies that can rally the necessary consensus among member states in search of solutions to their policy problems.

## Conclusions

In this article, I have attempted to model the principal-agent relationship between member government principals, on the one hand, and supranational agents such as the Commission of the European Communities, the ECJ, and the European Parliament, on the other. I argued, first, that a functionalist model of delegation does a remarkably good job of explaining the functions delegated to the European Commission and the ECJ but that such a model fails in explaining the powers of the European Parliament and almost certainly underestimates the importance of unintended consequences and supranational agency. In the second section, I examined this problem of supranational agency, theorizing that the autonomy of

71. Leygues is quoted in Ross 1995, 137.

institutions such as the Commission and the Court can be seen as a function of the efficacy and credibility of the control mechanisms established by the member states to monitor and sanction agency activity. Third and finally, I examined the conditions under which a supranational agent such as the Commission might enjoy formal and informal agenda-setting powers.

Throughout the discussion, four factors have emerged as the most important determinants of supranational autonomy. The first of these factors, familiar from Moravcsik's intergovernmentalism and from various rational choice analyses, is the distribution of preferences among member state principals and supranational agents. In all of their activities, I have argued, supranational institutions act within the constraints of member state preferences, which must be taken into account during all supranational executive, judicial, and legislative or agenda-setting functions. However, I have also argued that supranational agents may exploit differing preferences among the member states to avoid the imposition of sanctions against shirking and to "push through" legislative proposals via their formal agenda-setting powers. Thus, as we saw in the article's second section, agents like the Commission and the ECJ can exploit member state differences to shirk within certain limits, exploiting cleavages among the member states to avoid sanctions, Council overruling of decisions, or alteration of the agent's mandate. Similarly, as we have seen in the discussion of formal agenda setting, the Commission may in some instances exploit member state differences to push through those proposals closest to its own preferred policy that also can garner a qualified majority in the Council. In short, while supranational institutions cannot act without regard to the preferences of the member governments, they can operate creatively within the constraints of those preferences to act autonomously, avoiding sanctions from—and setting the agenda for—the member governments in the Council.

Second, as we have also seen, the ability of agents to exploit differing preferences among the member states depends in turn on the institutional decision rules established for applying sanctions, overruling legislation, and changing agents' mandates. These rules vary over time and across issue-areas, and with them, the autonomy of agents. Thus, for example, the administrative and oversight procedures established for the EC's supranational institutions vary considerably across the institutions, across issue-areas for a given institution, and over time, making supranational institutions more or less difficult to discipline and thereby leading to very different degrees of supranational autonomy. In addition, as we have seen, the formal agenda-setting powers of the Commission and the Parliament both depend on the specific decision rules established for the legislative process, and the influence of each institution varies from the consultation to the cooperation and codecision procedures. Once again, therefore, institutions matter, which is why member states and EC institutions argue about them.

Third, the role of incomplete information or uncertainty in principal-agent relationships can hardly be overstated. As we have seen, incomplete information influences the initial member state decision to delegate powers of monitoring and contract interpretation to supranational agents. Similarly, the autonomy of a

supranational institution is greatest when it has more information about itself than do others and when member states have difficulty monitoring its activities. Finally, in the case of informal agenda setting, the influence of a supranational entrepreneur is greatest when member governments have imperfect information and are uncertain of their own policy preferences and when supranational institutions possess more information and clear preferences; in these circumstances, entrepreneurial institutions may provide focal points around which the uncertain preferences of the member governments can converge.

Fourth and finally, the literature on supranational entrepreneurship emphasizes that the influence of supranational institutions is greatest in situations where those institutions possess clear transnational constituencies of subnational institutions, interest groups, or individuals within the member states, which can act to bypass the member governments and/or to place pressure directly on them. Indeed, I would argue, all three EC supranational institutions possess such transnational constituencies: interest groups and multinational firms in the case of the EC Commission, national courts in the case of the ECJ, and national electorates in the case of the European Parliament. In all three cases, national constituencies act both as a constraint on the freedom of action of the supranational institutions and as a counterbalance to the influence of the member governments. To take only one example, the ECJ is unquestionably constrained by the need to secure the voluntary acceptance by national courts of EC law; however, once such acceptance is secured, the costs of noncompliance to the member governments rise, and the autonomy of the Court vis-à-vis the member governments increases correspondingly. In other words, all three supranational institutions navigate constantly between two sets of constituents: the member government principals that created them and may still alter their mandates and the transnational constituencies that act both as constraint and resource in the institutions' efforts to establish their autonomy.

Taken together, these hypotheses suggest a fruitful agenda for empirical research, which has only begun to address systematically the questions raised by the rational choice literature on institutions and agency. As we have seen, such hypotheses about delegation and agency can be exceedingly difficult to test, in part because supranational institutions may rationally anticipate the preferences of the member states, giving their behavior the appearance of independence while in fact demonstrating the efficiency of member state control. In methodological terms, rational choice theorists have relied largely on statistical analyses of agency behavior to test their principal-agent models in the U.S. context.[72] As Moe and as Donald Green and Ian Shapiro have pointed out, however, many of these studies suffer from inadequate specification and operationalization of hypotheses and poor empirical testing of cases, which are typically selected precisely in order to confirm, rather than test, rational choice models.[73]

72. See, for example, Weingast and Moran 1983.

73. For excellent and extended discussions, see Moe 1987; and Green and Shapiro 1994, especially chap. 3.

These criticisms suggest both theoretical and methodological cautions for future research. In theoretical terms, the hypotheses generated above must be further specified and operationalized so as to focus on measurable variables such as decision rules. We should be careful not to manipulate assumptions about principal and agent preferences, since testing hypotheses can in practice become an exercise in "curve-fitting." In methodological terms, statistical analyses should be supplemented by case studies in order to allow better specification of actor preferences (both principals and agents), and a more nuanced and empirically accurate picture of the nature of the relationship between these actors. Only if we apply both methods can we reveal the fine-grained details of supranational delegation, agency, and agenda setting.

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