

**Extending the Reach of the EU Commission:  
Eurogroup Subsidization and the Implementation  
Process**

**Dennis R. Palmieri**

Department of Political Science, Box 353530  
University of Washington  
Seattle, WA 98195  
palmieri@u.washington.edu

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*Comments are invited and encouraged!*

As Paul Pierson's recent work has illustrated, looking exclusively to the national interests and relative power of the member-states cannot completely explain the European Union as it is today. Rather, Pierson credits certain "gaps" between member state preferences and "conditions on the ground" as important factors in determining the extent and character of European integration<sup>3</sup>. This paper is centrally concerned with fleshing out the details of some of these "gaps" as concerns policy implementation. Specifically, I will argue that an ever increasing role for organized interests in EU policy implementation within the member states has augmented the reach of the Commission as an enforcement institution, and therefore contributed to a more autonomous and politically relevant actor--member state preferences notwithstanding.

As innumerable studies have noted, most EU member states boast a less than perfect record in complying with many Community regulations and directives. The European Commission's paltry resources have left national administrative and legal systems as the primary enforcers of Community law, which, no doubt, is precisely what the member-states intended. This situation however, appears to be changing. Partially as a result of the increasing policy competences of the supranational institutions, and partially the result of an activist European Commission, organized interests from throughout the Union have developed a formidable presence in Brussels. The Commission has used this dynamic to its advantage, both as a means of mustering more political clout, and as a tool for extending the reach of its enforcement capacities.

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<sup>3</sup> Pierson, Paul, *The Path to European Integration: A Historical Institutional Analysis*, *Comparative Political Studies*, April 1996.

This paper contends that this state of affairs counts among the “gaps” to which Pierson refers. Rather than maintaining control over monitoring and enforcement of Community law within their territory (as they clearly intended, otherwise they certainly would have provided the Commission with the tools reasonably necessary for the task), the member-states must now contend with an activist Commission, armed with a vast network of national and transnational NGOs to assist it. These groups can more effectively watchdog compliance with EU legislation, can apply domestic political pressure, and can even bring legal challenges in areas where the Commission might find such an endeavor politically untenable. This dynamic has been of particular importance in extending the implementation of environmental and equal rights legislation—once again, member state preferences notwithstanding.

My argument will proceed in Four sections. The first will review the central tenets of the major theoretical approaches to European integration, concluding that Pierson’s recent contribution represents a significant improvement. I will then briefly discuss Pierson’s application of *historical institutionalism*, and highlight the components most relevant to my discussion. Third, I will lay out the development of the implementation dynamic just introduced, explain the cultivation of the Commission-NGO relationships, and offer several examples dealing with Community environmental regulation to support these contentions. Finally, I will revisit the critical theoretical points of the historical institutionalist framework to demonstrate their relevance to the case of policy implementation.

## **II. The Theoretical Debate**

Where in the 1950's *neo-functional* integration theory offered a vision of European unity far more ambitious than most thought possible, in the 1990's the *liberal intergovernmentalist* perspective seems almost to deny the depth and complexity that integration has attained since the Treaty of Rome. *Neo-functionalism's* optimistic view of integration's potential was rooted in its conception of the independent central role of supranational institutions. These autonomous institutional actors were said to advance integration to greater depth in ever more issue areas through the process of technical spill-over, ideally resulting in a totally integrated transnational polity. However, after some early progress, the 1970's and early 1980's revealed a European Community in which states showed themselves to be far more resistant to such integrative pressures than *neo-functionalism* had predicted. Indeed, for a time it was thought that perhaps integration was dead...killed by the jealous hand of state sovereignty, made more vigilant by sustained economic downturn.

The mid to late 1980's though, brought a renewed effort at integration in Europe, resulting in a deeper and broader Community of 15 states constituting the European Union of the Maastricht Treaty. Scholars however, remained skeptical of many bold *neo-functional* claims, and looked instead to more conventional theoretical accounts. *Liberal intergovernmentalism* sought to simplify explanations of these phenomena by grounding them in the traditional international relations discourse of *states, preferences and power*, while also taking some account of the institutional setting that makes these complex cooperative interactions possible. By focusing on the grand bargains among the member states, *liberal intergovernmentalists* claim to have unlocked the key variables

that allow them to explain the progress of integration as a function of the preferences of the member states, qualified by the power each brings to the bargaining table in Brussels.<sup>4</sup>

While this approach seems to capture the essence of these grand bargains<sup>5</sup> in any given moment, claims that it ignores many subtle processes that have shaped the character and extent of integration (as well as member state preferences) are becoming ever more apparent. Additionally, as is the case with many dominant conventional theories, anomalies have begun to appear for which *liberal intergovernmentalism* has not been able to account. Notably, the role of the European Court of Justice (ECJ) as an independent institutional actor, often promoting integration beyond the parameters of member-state preferences, cannot be explained by *liberal intergovernmentalism*, save the proverbial “ace up the sleeve” that would label it an idiosyncratic peculiarity born of the particular characteristics of European political circumstances<sup>6</sup>.

Until recently, *liberal intergovernmentalism* offered the only parsimonious theoretical alternative to the *neo-functional* vision, the latter now seen as useful for its foundational steps, but largely dismissed as a viable explanatory theory of European integration. However, in a recent article appearing in *Comparative Political Studies*, Paul Pierson has offered dissatisfied students of integration a third option coming under the

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<sup>4</sup> Moravscik, Negotiating the Single European Act, in Keohane and Hoffmann eds *The New European Community* 1992, Westview Press, 1991.

<sup>5</sup> Grand bargains refers to the most important intergovernmental agreements that form the cornerstones of the Community; the Treaties of Rome and Maastricht, and Single European Act, the results of Intergovernmental Conferences (IGC's), etc.

<sup>6</sup> See Moravscik, Andrew, “Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach,” *The Journal of Common Market Studies*, v31 n4 December 1993, p.512-513.

rubric of *historical institutionalism*. Pierson's work combines the most important elements of both the *neofunctionalist* and *intergovernmentalist* traditions, resulting in a theoretical framework that begins with the state preference and relative power assumptions needed to explain the EC's grand bargains, but that also includes the self-interested behavior of semi-autonomous supranational institutions, as well as other pressures that over time result in "gaps" in member state control over political outcomes in Europe. Pierson argues that the state of European integration cannot be adequately explained without consideration of these "gaps," with which the *intergovernmentalist* literature cannot reckon (save to label them anomalies). Thus, while *historical institutionalism* avoids the all too easy solution of ascribing full causal weight to exogenous state preferences and the (equally exogenous) distribution of power, it also resists overstating the autonomy and capacity of supranational institutions, and other aspects of the functionalist dynamic.

### **III. Historical Institutionalism**

This theoretical framework rests on the fundamental assumption that "social processes must be understood as historical phenomena...emphasiz[ing in turn] the significance of historical processes<sup>7</sup>." This is to say that any theory meant to explain social phenomena must account for the development of those phenomena over time, implying that change, in some form, is a likely result of the process of history. With this in mind, Pierson contends that explanations of the development of European integration must present not only a plausible and verifiable accounting of the establishment of the

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<sup>7</sup> Pierson, 1996, p.129.

institutional structures and political dynamics of the project, but must also demonstrate that those structures and dynamics persist along the same lines over time, according to the intention from which they were designed. It is here where this perspective finds fault with the *liberal intergovernmentalist* explanation.

While Pierson agrees that member state preferences and relative bargaining power are the most likely indicators of important negotiated outcomes, he asserts that “the expectation that [such] institutions embody the long-term interests of those responsible for their original design<sup>8</sup>” is not realistic. Gaps, he goes on to say (“which are significant divergences between the institutional and policy preferences of member states and the actual functioning of institutions and policies<sup>9</sup>”) are likely to emerge. In the context of European integration, Pierson’s application of *historical institutionalism* lists four factors that might reasonably lead to such gaps: 1) *the partial autonomy of EC institutions* (which assumes some capacity to act in their own self interest—e.g. maximizing their competence and autonomy); 2) *the restricted time horizons of political decision makers* (referring to member states’ ostensible emphasis on short-term interests at the expense of longer-term consequences, which can be heavily discounted); 3) *unanticipated consequences* (the result of complex social processes characterized by high issue density and numerous interactive effects); 4) *shifts in chief of government (COG) preferences* (the simple postulate that member state preferences may not be stable over time)<sup>10</sup>. Taken

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<sup>8</sup> Pierson, 1996, p.131.

<sup>9</sup> Pierson, 1996, p.131.

<sup>10</sup> The preceding paragraph offers only a simplification of these parameter, for the complete discussion, please refer to Pierson, 1996, pp.132-139.

together, these four factors offer significant reason to expect divergences between member state preferences and the actual functioning of the project.

Anticipating the obvious criticism that the sovereign member states might take notice of these gaps, Pierson goes on to offer three reasons to expect why filling them down the road might present considerable difficulty: 1) *the resistance of supranational actors* (who are semi-autonomous and self-interested, will resist divulging power back to states); 2) *institutional barriers to reform* (the grand bargains of the EU may be easily explained, but they are not easily crafted; change takes time, resources, and political capital); 3) *sunk costs and the rising price of exit* (path dependency, the significant adjustments made to accommodate the grand bargains, and the tremendous costs of leaving it all behind are significant impediments to filling gaps). Thus, notwithstanding the extent to which member states may be cognizant of developing “gaps” (which is not to say that they always will), there are significant reasons to expect that they will not be able to alter the courses on which they have begun.

In sum, while this model offers the same explanation of the member states’ grand bargains as does the *intergovernmentalist* school, it also addresses the more subtle processes of agency loss, the gradual influence of supranational actors, the evolution of preferences, and the element of unpredictability inherent in all social systems. By framing all of these factors as causes of the gaps that develop over time between member state preferences and the actual conditions in the Union, Pierson provides a richer explanatory model, able to account for a broader range of phenomena in the integration process, including the heretofore mentioned anomalies. Following my discussion of the politics of

implementation and enforcement in the European Union, I will revisit each of these factors that 1) lead to gaps, and 2) constitute barriers to reasserting state control, in order to show that each are at work in the creation of gaps between member state preferences for policy implementation, and the actual implementation and enforcement process apparent in the environmental sector.

#### **IV. The Commission, NGOs, and Policy Implementation**

As was stated in the opening paragraphs of this paper, the policy competencies of the Community level institutions have been successfully and incrementally expanded to touch most areas of daily concern...especially commercial and industrial concern<sup>11</sup>. This proliferation has resulted in Community legislation, regulation, and directives becoming an integral part of the corpus of laws within each of the member states. Where Community business began and ended only with the reduction of tariff and some non-tariff barriers to trade, the EU is now at the legislative center of such issues as environmental protection, equal rights, and social welfare, to say nothing of the single currency and some foreign policy programs. At the nexus of this increasingly complex supranational government is the European Commission, whose institutional role has grown dramatically in recent years.

Among the Commission's institutional prerogatives is the sole right of policy proposal (even member state initiatives must be channeled through the Commission before they can be formally addressed by the Community legislative process), the charge of drafting all Community legislation, as well as the responsibility for monitoring and enforcing the implementation of Community law within the member states. The

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<sup>11</sup> Majone, Giandomenico, *The Rise of the Regulatory State in Europe*, West European Politics, 1996

Commission though, is a relatively small bureaucracy given the enormity of its tasks (something akin to the Municipal Civil Service of Madrid—which speaks volumes about the status of the French Ministry of Culture!). Consequently, it comes as little surprise that the responsibilities for enforcing the implementation of Community law throughout the Union (now boasting 15 member states) should have long since surpassed the Commission’s reasonable capacity. Unfortunately however, the Commission does not have the power to increase the size of its staff, extend its enforcement powers, or even establish new enforcement agencies. All such decisions (which would alter the basic structure of the Community or its institutions) are the exclusive purview of the member states. Thus, we are forced to conclude that, barring any draft changes now being considered, the present institutional composition of the Community reflects the preferences of the member states: despite the Community’s growing legislative competencies, the member states wish to maintain control over all implementation and enforcement within their respective territories. For if they did not, they would have provided the Commission—or another of the institutions they created—with the tools for the job<sup>12</sup>.

The Commission though, being a self-interested opportunist,<sup>13</sup> has sought to expand the scope of its powers and influences beyond the limitations inherent in its design. Among

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<sup>12</sup> Additionally, it should come as little surprise that member state wish to retain control over implementation and enforcement, particularly if we are to grant any deference at all to the basic assumptions of *intergovernmentalism*, which would tell us that states jealously guard their sovereignty. Irrespective of any policy concessions they may make in international fora (such as the EU), implementation of those policies within their territory represents the most important aspect of control. Thus, where they are content to agree to policies on paper, they remain fully aware that those policies can be tailored to suit their interests “on the ground.”

<sup>13</sup> See for example, Cram, Laura, “Calling the Tune Without Paying the Piper? Social Policy Regulation : The Role of the Commission in European Social Policy, *The Journal of European Public Policy*, v21, n2, pp. 135-146. For a discussion of the of the principal agent framework (the core of the argument for the development of self-interested actorhood in institutions like the Commission, see Moe, Terry, “The New Economics of Organization, *American Journal of Political Science*, 28, pp.739-777; KiewietDR and

the many examples of this entrepreneurial behavior is the Commission's growing association with organized interests. Indeed, interest representation at the Community-level has increased dramatically in recent years; governing the transition to a single market for the various member states has required much detailed policy work, principally de- and re-regulation affecting myriad interests both public and private. Thus, it comes as little surprise that organized interests from all sectors, in many forms, and representing all points of view should begin to manifest themselves in Brussels in order to weigh into policymaking in the EU<sup>14</sup>. But what is perhaps an unexpected consequence of Commission-interest group relations is the extent to which the Commission has developed institutional ties to these non-governmental organizations (NGOs), and the ways in which it has used these relations to bolster its political clout...resulting in, among other advantages, an expanded capacity to implement and enforce Community policy within the member states.

The Commission, in its role as what Pierson calls "process manager,"<sup>15</sup> has been required to "consult" with organized interests as a matter of course<sup>16</sup>. What is more, the Maastricht Treaty on European Union has placed greater importance on including diverse Community interests in policy formulation by "placing emphasis on prior consultation at every stage in the decision-making process."<sup>17</sup> But the dramatic growth of NGO

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McCubbins, MD, *The Logic of Delegation: Congressional Parties and the Appropriation Process*, Princeton University Press, 1984.

<sup>14</sup> See Mazey, S and Richardson J eds. *Lobbying in the European Community*, Oxford University Press, 1993, and Greenwood and MacLaughlin, who give a figure of 3,000 groups with a permanent presence in Brussels, Management of Interest Representation in the European Union, *The Journal of Common Market Studies*, 33:1, March 1995 (p.149), Greenwood and Ronit, Interest Groups and the European Community, Newly Emerging Forms and Dynamics, *West European Politics*, 17:1, Jan 1994.

<sup>15</sup> Pierson, 1996, p.133

<sup>16</sup> deBony, Elizabeth, Lobbying the EU: The Search for Ground Rules, *European Trends*, 3<sup>rd</sup> Quarter, 1994. Also, Greenwood and Ronit, Interest Groups in the European Community: Newly Emerging Forms and Dynamics, *West European Politics*, 17:1 (Jan. 1994).

<sup>17</sup> deBony, 1994, p.74.

representation in at the Community level (at last estimate there were some 3,000 special interest groups in Brussels employing more than 10,000 people<sup>18</sup>) has strained the Commission's already thin resources. As a result, the Commission has adopted a de facto policy of encouraging the formation of Euro-groups as a practical manner in which to deal with group proliferation. Euro-groups are a kind of transnational peak association where all related organized interests within a given sector form a Community level umbrella organization within which they forge transnational links, exchange information and ideas, and ostensibly adopt common positions and interact collectively with the Commission. (eg: the European Environment Bureau federates several hundred environmental groups from throughout the Community, as the COPA provides a united organizational front for European agricultural producers). The Commission's developing relationships with these groups and organizations is demonstrated by the access they are granted in Brussels; indeed, according to a survey in the Financial Times, "...some environmental groups enjoy an influence which is way beyond what the unwary expect.<sup>19</sup>" Pointing to several groups in particular who enjoy unprecedented access to DGXI, it was suggested that such relationships are easily underestimated because the activities of many NGOs—"campaigning, exposing, protecting, conserving, and monitoring—are diffuse and difficult to measure.<sup>20</sup>,"

The Commission's interest in these groups however, does not stop at their valued legislative input, nor at the political clout its association with them provides. The

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<sup>18</sup> Greenwood and MacLaughlin, p.149.

<sup>19</sup> Financial Times, July 13, 1994, pg 20.

<sup>20</sup> Financial Times, July 13, 1994, pg.20.

Commission has come to rely on some of these groups to act as its eyes and ears within the member states. This effectively provides the Commission with increased monitoring capacities (capacities denied it by the states), which allow it to more effectively use other Community legal tools—the ECJ, political pressure, and even direct sanctions—to compel implementation of and compliance with Community policies. Consequently, the Commission has taken some steps to further institutionalize its relationships with NGOs: Euro-groups and other organized interests in Brussels now have formal standing, as well as registration and reporting requirements as per the Commission’s new policy on group management.<sup>21</sup> More significant still is the fact that the Commission often provides direct funding for these groups.

Despite the Commission’s oft cited lack of resources, the cultivation of relationships with Community NGOs has apparently been considered a worthwhile investment. The Commission, from its own organizational budget, operates numerous programs that provide direct funding to environmental, equal rights, and other public interest groups. The European Environment Bureau (EEB) for example, received in 1994 nearly one half-million ECUs in direct funding, mostly from Directorate General (DG) XI, with supplementary funding from other DGs as well.<sup>22</sup> Further, in 1994 the Commission announced an “invitation for the submission of applications for financial support for European organizations active in the environmental field.”<sup>23</sup> These grants offered to cover up to 30% of organizations’ operating costs, and were intended to

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<sup>21</sup> Greenwood and MacLaughlin,, 1995 deBony, 1994.

<sup>22</sup> *European Environment Bureau Annual Report of Activities 1994*, “EEB’s Funding 1994”, p.35. Commission funding as follows: DG XI=476,639ECU, other DG=2,136ECU.

<sup>23</sup> Official Journal of the European Communities, Commission Section No C68/26...(94/C.68/11)

“...promote the widespread dissemination among NGOs of detailed and effective information on Community policy in relation to the environment; promote general cooperation among NGOs and offer incentives for joint action in providing information and raising awareness on a European scale; promote cooperation and dialogue between the NGOs and the other partners involved in the 5<sup>th</sup> [Environmental] Programme.”<sup>24</sup>”

This program has apparently endured, as DGXI’s WWW home page (as of December 10, 1996) continues to publicize a call for applications for “financial support for European Environment Organizations,” listing 2 million ECUs in funding available, with another 4.5 million ECUs available for groups devoted to “environmental information and awareness raising activities,” specifically mentioning a focus on **“the application and implementation of Community environmental legislation...and the role of the European Union in environmental matters at an international level.”**<sup>25</sup>” Again, these funds are dispensed from the Commission’s own operating resources, and are listed as renewable, which suggests the continuing value it places on relationships with NGOs. This phenomenon is not limited to environmental issue areas; DGV has announced similar programs to be paid for out of the European Social fund (which it administers) to benefit NGOs working on Equal Opportunities matters and other social issues.<sup>26</sup>

In an apparent attempt to further institutionalize these arrangements, the Commission has submitted a formal “proposal for a Council Decision on a Community action programme promoting non-governmental organizations primarily active in the field of environmental protection”, in which it requests 8.4 million ECUs from the Council to cover up to 40% of the operating costs for qualifying organizations<sup>27</sup>. The Council has yet

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<sup>24</sup> Official Journal of the European Communities, Commission Section No C68/26, 94/C 68/11.

<sup>25</sup> Internet: <http://europa.eu.int/en/comm/dg11/env-proj/env/finansup.htm>

<sup>26</sup> Internet: <http://europa.eu.int/en/comm/dg05/esf/cft.htm>

<sup>27</sup> Commission of the European Communities, Com(95) 573, final; Brussels, 08.12.1995, p.1(seventeen pages of environmental and economic justifications follow the programme’s layout).

to take up the matter, but the Economic and Social Committee (ECOSOC) has issued an opinion supporting the measure, citing that "...in the past, Commission support for European environmental NGOs has proved to be both necessary and appropriate."<sup>28</sup>

Such substantial monetary and institutional investments made by the Commission are not, however, without their payoffs. The relationships the Commission has labored to cultivate with these many organizations have provided it with valuable political allies. The European Environment Bureau (mentioned above as the recipient of considerable Commission financial support) has been active in publicly praising the Commission for its green intentions and policies,<sup>29</sup> and has even taken it upon itself to lobby the Council of Ministers for increased funding for the Commission.<sup>30</sup> Most significantly however, are the benefits associated with enhanced monitoring capacities which allow for greater enforcement and implementation of Community policies. NGOs are in a far better position to monitor implementation and compliance within the member states than is the Commission. They are dispersed throughout the Community, often with branch offices and organizational affiliations spanning entire countries. They are experienced lobbyists with long-standing connections to national government agencies and prominent politicians, and, perhaps their greatest asset, they are on the ground in the member states "...campaigning, exposing, protecting, conserving, and monitoring"<sup>31</sup>.

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<sup>28</sup> Economic and Social Committee, Section for the Protection of the Environment and Public Health, 1996 OJ C 294.

<sup>29</sup> Europe Environment, Europe Information Service, March 3 1992, "CFCs: EEB Praises Commission's Speedy Reaction."

<sup>30</sup> Europe Environment, Europe Information Service, Sept. 17, 1991, *EEB: Call for More EEC Resources*; June 19, 1996, *NGOs Criticise Lack of Policy Coordination in EU*. "Among other statements: The Commission needs many more staff!"

<sup>31</sup> Financial Times, July 13, 1994, pg.20.

Perhaps the best example of a Commission supported NGO acting to further the implementation and enforcement of Community policies is the Royal Society for the Protection of Birds (RSPB). The RSPB is a non-profit British conservation organization affiliated with a number of other British and international environmental groups. It is a founding member of the EEB (which is supported by the Commission, which in turn supports the RSPB<sup>32</sup>), and is the largest and richest voluntary wildlife conservation organization in Europe, working on a variety of issues only distantly related to birds. The RSPB is active on all environmental issues including agricultural policy, coastal issues, the North Sea, and EU structural funds. With over 850,000 members, the RSPB is a formidable political presence with a keen capacity for monitoring, it is rated as one of the four most effective environmental lobbies in Brussels<sup>33</sup>. It has, in the last several years, been involved in a number of legal challenges to British policy, many based on EU law.

Perhaps the most well publicized instance of RSPB intervention is the case of the Scottish Duich Moss. Duich Moss, like Casis de Dijon, the angular curvature of zucchini, and the relative viscosity of French pasta, may not be the stuff of political legend, but it joins these honorable ranks for the Euro-precedent it has helped to set. The island of Islay, off the coast of Scotland, is home to Duich Moss, an environmentally important wetland that serves as the feeding ground for the endangered white-frontedgeese of Greenland. This

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<sup>32</sup> It is not yet clear whether or not the RSPB receives any direct Commission support, although I suspect that it does, the list of NGOs receiving Commission funding exists, but is unpublished. I have requested this information from Brussels, and I await their response. In any event, the RSPB definitely receives indirect Commission support through the EEB.

<sup>33</sup> "Business and Environment: Same Journey, Different Routes" The Financial Times, July 13, 1994, p.20.

wetland is prized as one of Britain's most pristine and undisturbed, and is internationally recognized for its ecological importance and diversity<sup>34</sup>.

But Duich Moss is also home to a particular kind of peat, which is quite valuable indeed. It seems that Scottish malt distillers use the peat, which they extract from Duich Moss and burn in the distilling process to lend Islay's malt whiskey its distinctive color and flavor.<sup>35</sup> Initially, United Distillers (a subsidiary of Guinness Corp.) requested to be allowed to take a large supply of the peat for the manufacture of its whiskey; the request was backed by the UK government's Scottish Office.<sup>36</sup> The RSPB however, protested that the peat extraction would damage the delicate wetland, and endanger the migratory pattern of the geese. When the UK government and local authorities refused to disallow the extraction, the RSPB informed the Commission of the ostensible breach of the *EC directive on the conservation of wild birds*; the Commission in turn filed a formal protest with the British government.

In this case, the Commission actually dispatched an official to the site (a rare move), whose leaked report indicated that there were sufficient grounds for proceedings in the ECJ to be brought against Britain. Ultimately, the case was resolved without referral to the Court; the Commission was able to force compliance with the directive,<sup>37</sup> resulting in a ban on peat extraction, a reclassification of Duich Moss as a protected habitat, and a L270,000 grant from the British government for the maintenance of the area....and the geese.

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<sup>34</sup> Of birds, bogs, and jobs, *Economist*, March 8, 1986

<sup>35</sup> L270,000 grant saves Islay bog for rare geese, *Daily Telegraph*, May 24, 1989, p.8

<sup>36</sup> A Truce between the Greenland Geese and Guinness, *Guardian*, July 2, 1987, p.4

<sup>37</sup> Haigh, Nigel, *The European Community and International Environmental Policy*, *International Environmental Affairs*, v3 n3 (Summer 1991), p. 163-180.

Duich Moss is not however, a solitary example of the RSPB's monitoring role. On the heels of the Commission's resolution of the latter, the RSPB filed another complaint over a local Scottish authority's decision to allow the construction of a ski slope on Glenshee, in the center of a nature preserve providing habitat for the dotterel, another endangered bird...this time a British one<sup>38</sup> More recently, the RSPB has challenged the construction of a funicular railway in the Aviemore ski area, citing again the EC's birds directive.<sup>39</sup> And in a case that has recently come down from the ECJ, the RSPB, backed by the Commission, has won an important precedent for future implementation and enforcement of Community environmental law.

Again concerned for certain species of wild birds and the destruction of their habitat, the RSPB and the Commission have brought the UK government before the ECJ to challenge its refusal to protect an area known as the Lappel Bank as part of a 4,600 hectare preserve. The UK government argued that "overwhelming economic reasons" justified the exclusion of the Bank from the Special Protection Zone (SPA) (a Community legal instrument). In a preliminary ruling, the Court has accepted the Commission's argument, and decided that economic justifications, no matter how extraordinary, cannot be considered in the national implementation of SPAs (which are Community law). This effectively removes much flexibility from national governments to tailor certain Community environmental laws to their own domestic interests, and represents another victory for the Commission and its NGO ally<sup>40</sup>. A host of other complaints against the British government

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<sup>38</sup> Of birds, bogs, and jobs, *Economist*, March 8, 1986, p.28.

<sup>39</sup> Highland rail plan gets go-ahead, *The Independent*, May 8, 1996, p.3

<sup>40</sup> Bird Haven Destroyed Illegally, *The Independent*, March 22, 1996; Judgment Day for Wildlife, *The Observer*, March 10, 1996, p.6.

have been filed with the Commission by the RSPB involving the Cardiff Bay Marina Project in Glasgow, plans for Salisbury Plain, and forestry planning initiatives at Glen Dye<sup>41</sup>.

Thus, where the Commission has legal standing and enforcement powers necessary to compel compliance with Community law, the member states have withheld from it the resources necessary to monitor implementation, and therefore to make full use of its institutional capacities. In response, the Commission has cultivated mutually beneficial relationships with a dense network of NGOs, in environmental and many other issues areas, offering access to Community policymaking forums, and even direct subsidization as tools to enhance its political clout and extend the reach of its enforcement capacities. NGOs in return can count on a champion in the implementation of their favored Community policies, access to policymakers in Brussels, and even monetary and operational resources from the Commission.

#### **IV. Conclusion: Historical Institutionalism and the Unintended Consequences of Implementation**

The preceding section lays out the details of a Piersonian gap between the institutional and policy preferences of the member states of the European Union, and the actual functioning of the Union's institutions and policies. Member states designed supranational institutions with the legal standing to implement Community law, but without the resources necessary to monitor

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<sup>41</sup> UK: Eurocourt threat over forestry on Deeside Moor, Scotsman, August 7, 1992; RSPB launches barrage at L150m bay scheme, The Herald(Glasgow), Dec 29, 1992.

or enforce compliance within their respective territories. The Commission, acting in its fabled entrepreneurial fashion, has found a way to overcome these intended deficiencies, much in the way *historical institutionalism* might predict. This section will briefly restate the four factors that lead to gaps, and comment on their relevance to the implementation case.

***A. The Partial Autonomy of EC Institutions:***

Pierson claims that some independent, self-interested behavior on the part of the Commission, ECJ and the European Parliament will likely contribute to the development of gaps. In the case of implementation, the Commission has put its partial autonomy to good use. By investing its discretionary funds and other institutional resources in relationships with Community NGOs, the Commission has developed for itself the remote eyes and ears it badly needs in order to more effectively monitor member state implementation of Community law. Had the member states preferred a Commission able to closely watch the extent to which they chose to apply supranational legislation, they would have provided one. The Commission's partial autonomy and self-interested behavior have contributed to this foundational divergence between state preferences and institutional outcomes, but it has done so in tandem with other factors.

***B. The Restricted Time Horizons of Political Decision Makers***

In order to achieve the shorter-term benefits of the development of the single market, the member states required a central institution capable of managing the implementation process. However, in equipping the Commission with the legal authority to implement Community policy, which they did in order to complete the single market

reforms as efficiently and quickly as possible, it could be argued that the member states did not fully weight the potential long-term consequences of constructing such an institution: a loss of control over implementation and enforcement within their respective territories on other issues.

### *C. Unanticipated Consequences*

There are many unanticipated consequences at work here, but I will focus on only one. The member states have long placed a premium on the of inclusion business interests in the Community policymaking process. After all, the EEC was fundamentally about making the European economy stronger, more competitive, and more productive. Consequently, input from business, industry, labor, and other societal actors has always been an important part of the Community legislation process. Gradually though, representative groups from many other sectors of society began presenting themselves in Brussels to be included in the process, even groups opposed to the preferences of the states. Later, when the so called “democratic deficit” became a public relations concern, the member states responded with a treaty revision (in the Treaty on European Union) mandating that the Commission include consultation with societal actors at every stage in the decision making process. These dynamics had the unintended consequence of providing the Commission with the additional resources (in the form of allied NGOs) it lacked in order to more effectively implement Community law.

### *C: Shifting COG Preferences*

The last of the factors that potentially lead to gaps is the subtle but important trajectory of state the preferences themselves, particularly as concerns implementation of

Community law. As was discussed above, the completion of the single market promised grand returns to the European economies in the late 1980's, and required the implementation of over 300 individual regulations, directives, and other legal instruments. In order to achieve their goals by the 1992 target date, the member states had little choice but to embark on a robust program of implementation. Now completed, the single market may carry with it some legacies that are no longer consonant with COG preferences in this European moment...e.g. aggressive implementation of Community law, and an inexorable expansion of "single market" umbrella.

#### ***D. Impediments to filling gaps***

Much as Pierson might predict, the member states are not (entirely) blind to these circumstances. Indeed, a recent decision of the ECJ in which the Court supported a British contention that the Commission did not have the legal authority to make certain payments to NGOs supporting the physically challenged (and their political agenda) would seem to represent the member state's concerns regarding some Commission activities<sup>42</sup>. Yet the member states cannot roll back time. They cannot undo decades of political network formation; they cannot suddenly repeal the volumes of Community law they have implemented; they cannot put the genie back into the institutional bottle. Member states can collectively, and have on occasion, reign in some Union activities, as the example above illustrates. But that is more akin to putting a few pebbles in a pothole

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<sup>42</sup> See The Press Association Limited, Press Association Newsfile, "Euro Court Backs Britain Over Grants Challenge," Sept 24, 1996.

than it is eliminating a significant divergence between member state preferences and politico-institutional reality.