

Obedient Servant or Runaway Eurocracy?  
Delegation, Agency, and Agenda Setting in the European Community

Mark A. Pollack  
Harvard University, Center for European Studies  
27 Kirkland Street  
Cambridge, MA 01238

e-mail: mapollac@fas.harvard.edu

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Abstract

Do supranational institutions matter - do they deserve the status of an independent causal variable - in EC policymaking? Does the Commission matter? Does the European Court of Justice? Does the European Parliament? Is the European Community 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 most important questions for our understanding of the European Community and of European integration, and have divided the two traditional schools of thought in regional integration, with neofunctionalists [Haas 1958; Lindberg & Scheingold 1970] generally asserting, and intergovernmentalists [Hoffmann 1966; Taylor 1983; Moravcsik 1991, 1993] generally denying, any important causal role for supranational institutions in the integration process. 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.

This paper 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 can be traced to Shepsle's [1979] pioneering work on the role of institutions in the US Congress. Beginning with the observation by McKelvey [1976], Riker [1980] and others that, in a system of majoritarian decisionmaking, 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 decisionmaking process.

Shepsle's innovation, and the subsequent study of structure-induced equilibria in the US Congress, created in turn a number of offshoots. Thus, for example, Shepsle and others examined in some detail the "agenda setting" power of the congressional committees which were the linchpin of Shepsle's structure-induced equilibrium, specifying the conditions under which agenda setting committees could influence the outcomes of votes on the floor [Shepsle and Weingast 1984; Riker 1986; Ordeshook and Schartz 1987; Shepsle and Weingast 1987a, 1987b; Tsebelis 1994]. In another offshoot, students of the Congress examined the delegation of certain functions to a regulatory bureaucracy (and later courts), and the efforts of Congress to control that bureaucracy [Weingast and Moran 1983; Moe 1984; McCubbins and Schartz 1987; McCubbins and Page 1987; Moe 1987; McCubbins, Noll and Weingast 1987, 1989; Kiewiet and McCubbins 1991]. Finally, in addition to examining these institutional, or structure-induced, equilibria, Riker [1980], Shepsle [1986, 1989], Tsebelis [1990] and others have tentatively turned their attention to the problem of "equilibrium institutions," namely how institutions are chosen by actors in an effort to secure mutual gains from exchange or cooperation and how these institutions change or persist over time.

In this paper I join the increasing number of scholars who have applied the insights of rational choice institutionalism to the study of the European Community. Among the most important of these are Gerus' [1991] study of the Community's "comitology" procedures using principal-agent analysis;

Egan's [1994] study of Community standardization bodies and of the unique problems these pose for principal-agent models; Garrett and Weingast's [1993] study of the ECJ as an agent of the member states; and Tsebelis' [1994] study of agenda setting by the European Parliament. My aim here is to build on the insights of these studies in order to generate a new definition of supranationality, and new hypotheses about the conditions under which supranational institutions will be delegated authority and will carry out their delegated functions independent of member state control. The primary virtue of rational choice institutionalism as a methodological approach, I argue, is that it allows us to transcend the intergovernmentalist-neofunctionalist debate by acknowledging the initial primacy of the member states as a starting point, but then generating a series of hypotheses about supranational influence more precise than those generated by neofunctionalist theory.

For the purposes of analysis, I divide the problem of supranational influence into three subsets of questions. First, I ask about types of functions which 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 "first-cut" at the powers of some EC institutions, but not others.

Second, I examine the extent to which supranational institutions are able to carry out these functions independent of the influence of the member states, surveying principle-agent theory for various mechanisms of member state control over the agents they create. I argue that the 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 these sanctions. In empirical terms, I focus in particular on the "comitology" procedures of Council oversight, the possibility of judicial review by the ECJ, the periodic reauthorization of Council legislation, and the threat of Treaty revision.

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 demonstrate that the Commission's agenda setting power relies fundamentally on the decision rules governing Council voting, with the Commission's power greatest when the decision rule is qualified majority and the amendment rule is unanimity, and weakest when, as in the case of Treaty amendments and many EC policies, the decision rule is unanimity and the Council can amend Commission proposals as easily as it can adopt them. Moving to informal agenda setting, on the other hand, the Commission enjoys no formal monopoly on the right to set the Council's substantive agenda (as Kingdon puts it, anyone can be a policy entrepreneur), but its unique policy expertise can provide the Commission with certain informational advantages vis-à-vis both competing agenda setters and the Council in a setting of incomplete information.

In short, I argue that "supranationality" can be redefined for international institutions in terms of the functions delegated to such institutions, the mechanisms available for the collective member state control of their conduct, and their ability to set the agenda for the member states. Supranationality, to put it even more simply, is the amount of autonomy allowed to international institutions in the conduct of their delegated activities. From this basic definition, I then conclude by generating a series of more specific hypotheses about delegation, agency, and agenda setting by supranational institutions, and discussing how researchers might go about testing such hypotheses. I begin, however, with the decision by member states to create a supranational institution, and delegate authority to it.

## 1. Why Delegate?

### 1.1 The functionalist approach to delegation

Generally speaking, delegation of authority by a group of principals<sup>2</sup> (such as a group of domestic legislators or a group of member states) to an agent (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 do a group of actors collectively decide upon one specific set of institutions rather than another to govern their subsequent interactions<sup>3</sup>? The basic approach of rational choice theory to the question of institutional choice is functionalist. That is to say, institutional choices are explained in terms of the functions which 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<sup>4</sup>. As 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 [1984, p. 80].

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.

The functionalist approach to institutional design, and to delegation of authority to an agent by a series of principals, has been adopted both by students of American Congressional politics and public bureaucracy, and by students of international institutions. Thus, for example, in Keohane's functional theory of international institutions or regimes, states agree to adopt certain institutions primarily to lower the transactions costs of international cooperation, thereby overcoming some basic collective action problems which might otherwise prevent such cooperation. Institutions, in this view, facilitate cooperation among rational actors by monitoring compliance, identifying transgressors, reducing transactions costs of negotiations, etc. [1984, chapter 6]. 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<sup>5</sup>. In both cases, institutions serve to facilitate mutually advantageous cooperation among rational egoists, most notably through the provision of information about the behavior of the various actors in a general setting of imperfect information.

The delegation of authority to an agent--whether a regulatory bureau in the case of students of American politics, or an international organization in the case of IR theorists--can be considered as one particular aspect of this institutional design process. In general terms, principle-agent models of delegation have identified a number of functions for which principals might choose to delegate authority to an agent. For the sake of brevity, I focus here on four such functions emphasized in the literature: (1) monitoring compliance and transgression, and more generally supplying information necessary to identify and punish free riders in collective action situations; (2) solving problems of incomplete contracting; (3) increasing the credibility and impartiality of regulation in the case of regulatory agencies; and (4) setting the parliamentary agenda, so as to avoid the endless "cycling" of policy alternatives which would result from the possession of agenda-setting power by the principals themselves. Let us consider each of these functions in turn, before turning to an empirical examination of delegation in the EC.

#### 1.1.1 Monitoring compliance and transgression

Consider a typical collective action problem, in which a group of actors--be they medieval traders [Milgrom, North and Weingast 1990], vote-trading congressmen [Shepsle 1979; Weingast and Marshall 1988] or sovereign states establishing free trade amongst themselves [Keohane 1984]--would enjoy mutual benefits from cooperation, but are prevented from doing so by concerns about non-compliance, or free-riding, by their would-be partners. If we assume further that each actor has only incomplete information about the compliance of other actors, or indeed of what constitutes compliance or transgression, then this uncertainty will act as an additional transaction cost inhibiting cooperation among the actors.

In this context of collective action under imperfect information, institutions can serve to monitor compliance, and 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 the transactions costs and encouraging mutually beneficial cooperation. Furthermore, these institutions need not be given the power to enforce agreements through sanctions, but need only provide information about compliance to facilitate decentralized sanctioning by participants [Keohane 1984; Milgrom, North and Weingast 1990].

### 1.1.2 Incomplete contracting

An 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--can be theorized as a contract. In such a contract, the various parties to the agreement pledge to behave in certain ways (vote, allow free trade, or deliver a product) in the future. However, as Williamson [1985] points out, all but the simplest contracts are invariably incomplete, i.e. they do not spell out in explicit detail the precise obligations of all the parties throughout the life of the contract. The main reason for this is once again uncertainty, or incomplete information, about future conditions, which makes the specification of future responsibilities impossible, or at least prohibitively costly. Hence, rather than attempting to write a complete contract which attempts 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 [Milgrom and Roberts, p. 62].

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 arbitrate their disputes, but leave it to the parties themselves to undertake these activities. 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, which can fill in the details of an incomplete contract and adjudicate future disputes.

### 1.1.3 Credibility and impartiality of regulation

There are numerous reasons why political principals might choose to delegate authority for regulation to an agent. Perhaps the classic explanation of delegation to a regulatory bureaucracy is the complexity and the technical nature of much economic regulation, which makes such activities more appropriate to a specialized bureaucracy than to a legislative body [McCubbins and Page, p. 409; Majone 1994]. An alternative explanation is provided by Fiorina [1982], who explains such delegation as an effort to "shift the responsibility" for painful regulations from political principals to an agent, which acts as a lightning rod for political discontent.

A third reason for delegating regulatory authority is provided by Gatsios and Seabright [1989] and Majone [1994], who emphasize the need for credible regulation of industry in a common market such as the EEC. In cases where national activity produces externalities (either transboundary pollution or international distortions to competition, as in state aids), Majone argues, each member state has a political incentive to regulate its national industries leniently, leading to weak and non-credible legislation, and a proliferation of transboundary externalities. National legislation in such cases is, in other words, a prisoner's dilemma, and the result is regulatory failure. In this context, he argues, delegation of regulatory authority to a supranational bureaucracy such as the Commission, which unlike national governments has an incentive to regulate national firms rigorously, can overcome the prisoner's dilemma and produce credible regulation, thereby improving firms' behavior and minimizing externalities.

### 1.1.4 Formal agenda setting, or the power to propose

Formal agenda setting consists in 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 Council. The power of a formal agenda setter is, as we shall see in section 3 below, greatest where the voting rule is some variant of majority voting. In such cases, any actor with the exclusive right to initiate policy proposals could strategically select the proposal closest to its own preferences which could also secure the necessary majority in the legislating body.

And yet, despite this potentially dictatorial power of a formal agenda setter, there are reasons why a group of principals might choose to delegate this authority to an agent. The reasons for such a delegation are twofold. First, 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 [cf. Shepsle 1979; Kiewiet and McCubbins 1991, pp. 23-24].

Secondly, given the technical responsibilities of policy initiation, 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, which has the dual benefit of giving representatives disproportionate clout in areas of interest to their constituents [Kiewiet and McCubbins, p. 2], and of providing groups of representatives with incentives to become "experts" in a given field and make this information available to representatives on the floor [Krehbiel, 1991]. 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.

## 1.2 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 paper. Nevertheless, for the purpose of assessing the utility 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 a standard textbook on the subject [Nugent, 1994]. According to Nugent, the Commission's responsibilities include:

- proposer and developer of policies and legislation;
- executive functions, including secondary legislation, management of EC finances, and supervision of member state policy implementation;
- guardian of the legal framework, i.e. monitoring compliance with EC law;
- external representative and negotiator;
- mediator and conciliator;
- conscience of the union [pp. 85-122].

Nugent also summarizes the primary functions of the ECJ, as follows:

- direct application of EC law in certain cases, as in disputes among EC institutions;
- interpreting the provisions of EC law for application in national legal systems [pp. 220-234].

Finally, the European Parliament's functions are broken up into three categories:

- legislative powers, which vary among a number of legislative procedures (consultation procedure, cooperation procedure, etc.);
- budgetary powers, including the power to propose amendments and adopt the final Community budget;
- control and supervision of the Commission [174-205].

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.

### 1.2.1 Monitoring and enforcement of agreements

The Commission, although frequently referred to as the "executive" of the Community, does not generally execute or administer Community policies "on the ground," a task usually left to member state bureaucracies. The Commission does indeed, however, perform a central monitoring function as "guardian of the treaties," monitoring member state compliance with EC law and, under Article 169, initiating legal proceedings against member states found to be in noncompliance with their legal obligations. In addition to these Treaty responsibilities, member states have also charged the Commission, in various pieces of secondary legislation, such as the various Structural Fund Regulations, to monitor the implementation of specific Community programmes 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 crucial role in identifying and painting scarlet letters on transgressors, thereby allowing for decentralized enforcement of the provisions of the treaties.

### 1.2.2 Incomplete contracting and secondary legislation

The EEC Treaty is a best an incomplete contract for the creation of a Common or Internal Market, for at least two reasons. First, the Treaty in Articles 30-34 prohibits "quantitative restrictions on imports and all measures having equivalent effect," but provides only vague guidelines on what sorts of national measures constitute "measures having equivalent effect." Similarly, in Article 36 the Treaty explicitly allows restrictions that can be justified on the grounds of public security, public health, protection of national treasures, and a series of other justifications, as long as such restrictions do not constitute "a means of arbitrary discrimination or a disguised restriction on trade between Member States," but it provides no specific definition of "arbitrary discrimination" or "disguised restriction on trade." Second, and related to this first point, where member states adopt legitimate national regulations which might nevertheless serve as non-tariff barriers to trade, such as those allowed under Article 36, the Treaty cannot prescribe in detail how the free movement of goods, services, labor and capital is to be restored.

For both of these reasons, the Treaty therefore provides mechanisms for "filling in" the details of the incomplete contract. With regard to the first problem, that of identifying national measures which might restrict intra-Community trade and ruling on their legality, the Treaty delegates authority to the European Court of Justice to interpret the provisions of Articles 30-36, and of the Treaty more generally.

With regard to the second problem, namely what to do where legitimate national measures interfere with free movement, perhaps the most obvious solution is to create a set of institutions responsible for the adoption of new EC regulations [Majone 1994]. In this EC, this responsibility for EC regulation has been divided between the Council of Ministers, which may adopt common or "approximated" Community regulations under the "harmonization" procedure of Article 100, and the Commission, which enjoys the sole right of initiative in the harmonization process and which may in certain circumstances adopt implementing legislation itself.

### 1.2.3 The Commission as regulatory bureaucracy

The Commission can therefore be conceived of as a regulatory bureaucracy, insofar as it 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 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 option (under Article 155) or the obligation (under Article 145 as amended in the SEA) 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.

### 1.2.4 Agenda setting and the Commission's exclusive right to propose

Agenda setting in domestic legislatures, such as the US Congress, is typically done by committees. In the Community, however, where number of member states is small (only Six in 1957), a committee structure is impractical. Instead, member states delegate policy initiation to a supranational agent, thereby ensuring that policy proposals are the product of competent technical study, and are not systematically biased against any particular member states. As Moravcsik writes,

Most states are likely to consider a supranational body to be more neutral than even a randomly chosen national government. Delegating the preparation of proposals to the Commission thereby reduces the risk to national governments that decisions will be delayed by an inconclusive struggle among competing proposals or that the final decision will be grossly unfair - a matter of particular importance to small countries, which often lack the administrative means to prepare or assess proposals [1993, p. 512].

In fact, however, the Commission, like any agent, is not by nature neutral, but rather possesses preferences of its own, leading to the various problems of agency discussed below. Hence we should expect the member states to limit delegation of agenda setting power to the bare minimum necessary for the proper functioning the common market.

Under the provisions of the Treaty of Rome, the Commission possesses the exclusive power to propose legislation for consideration by the Council of Ministers in a number of areas. This power, however (about which I shall say more in section 3 below) is not unlimited. Thus, for example, while the Commission retains the sole right of initiative over most EC legislation within "Pillar 1" of the Treaty on European Union, it is merely "associated" with the activities of Common Foreign and Security Policy (Pillar 2) and Justice and Home Affairs (Pillar 3). Similarly, the Commission shares powers of initiative with member states in the amendment of the Treaties (Article 236), in the establishment of new treaties (Articles 113 and 238), and in the proceedings of the European Council. Finally, although the Commission formally enjoys the sole right of initiative in many areas, the Council of Ministers and the European Council may, and regularly do, request that the Commission draw up proposals on a given issue (Article 152). In short, although the Commission does enjoy a formal right of initiative under the treaties, the scope of this right should not be exaggerated.

### 1.3 Conclusion

Even this cursory examination of delegation in the EC yields a striking dichotomy between the functions of the Commission and the Court on the one hand, and those of 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, interpretation and elaboration of incomplete contracts, credible regulation, and agenda setting<sup>6</sup>. 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 American regulatory bureaucracies-- thereby allowing us to draw on both sets of literatures to model the Commission.

Despite this compellingly good "first cut" at the Commission and the Court, however, the functionalist approach to delegation fails almost completely at predicting the functions delegated to the European Parliament, including both its budgetary and legislative roles<sup>7</sup>. This is not to say that rational choice institutionalism cannot be profitably used to examine how the Parliament exercises its delegated powers (indeed, Tsebelis [1994] has done so), simply that a purely functionalist model of institutional choice fails to explain either the individual preferences or the collective choices of member states is delegating such functions to the Parliament in the first place. In addition, the analysis to this point has ignored the question of whether these various supranational institutions are autonomous, and how, if at all, the member states may control their behavior. It is to this question, the problem of agency, that I now turn.

## 2. Agency and Accountability: The Mechanisms of Member State Control

### 2.1 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 or the Court of Justice. 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 McCubbins and Kiewiet 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 [1991, p. 5].

Agency losses come in two forms: slippage and shirking [McCubbins and Page 1987, pp. 410-11]. Slippage occurs when the constraints or incentives provided by the principals for the agent induce the agent to behave in ways systematically different from those preferred by the principals. Shirking, on the other hand, occurs when an agent pursues its own preferences rather than, or to the detriment of, the preferences of the principals<sup>8</sup>. This shirking, or bureaucratic drift, therefore, emerges as the primary source of agency losses, and the central problem of principal-agent analysis.

Agency shirking is a problem insofar as the agent has both an incentive, and the ability, to pursue its own preferences. As Terry Moe argues, these incentives and abilities can be quite considerable:

A new public agency is literally a new actor on the political scene. It has its own interests, which may diverge from those of its creators, and it typically has resources--expertise, delegated authority--to strike out on its own should the opportunities arise [Moe, 1990, p. 121, quoted in Pierson 1995].

The importance in this context of information, and of asymmetrically distributed information in particular, can scarcely be overstated. In any principal-agent relationship, information about the agent and its activities is likely to be asymmetrically distributed in favor of the agent, making control or even evaluation by the principal difficult. Thus, for example, the agent is likely to have better information than its principal regarding its own expenditure of effort and performance, its budgetary needs, the technical requirements of a given policy proposal, and so on. Without some means of acquiring the necessary information to evaluate the agent's performance, therefore, the principal seems to be at a permanent disadvantage, and the likelihood of agency losses seems large<sup>9</sup>.

The principal, however, is not helpless in the face of these advantages. Rather, when delegating authority to an agent, principals can also adopt various control mechanisms which can rectify, or at least mitigate, the informational asymmetries in favor of the agent through various forms of monitoring, and constrain and shape the incentives of the agents through the use of positive and negative sanctions. These control mechanisms can be divided into two broad categories: *ex ante* administrative procedures and *ex post* oversight procedures. Administrative procedures, or what McCubbins and Page call "structural arrangements," define more or less narrowly the scope of agency activity, the legal instruments available to the agency, and the procedures to be followed by it. By contrast, oversight mechanisms, which McCubbins and Page call "management arrangements," consist of the various mechanisms which principals can use to (a) monitor agency behavior, thereby correcting the inherently asymmetrical distribution of information in favor of the agent, and (b) influence agency behavior through the application of positive and negative sanctions<sup>10</sup>. Among the formidable array of sanctions at the disposal of legislative principals are control over budgets, control over appointments, overriding of agency behavior through new legislation, and revision of the agency's mandate [McCubbins and Page, p. 414; and Weingast and Moran, 1983].

If these control mechanisms were costless, we would expect the principals to adopt a full range of administrative and oversight procedures, in order 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" [p. 27]. Strict administrative controls, for example, such as defining narrowly the scope and flexibility an agent possesses in the execution of its functions, tend to produce rigid and inefficient policies. Oversight procedures may similarly consume considerable resources, and sanctions may impose costs upon



principals as well as agents, as we shall see. There are, in other words, two types of agency problems: the agency losses resulting from slippage and shirking, and agency costs of control mechanisms to minimize agency losses. Hence, a given control mechanism will be adopted only if its cost is less than the sum of the agency losses which it reduces. By the same token, principals will delegate authorities to an agent only if the benefits of such a delegation are greater than the sum of agency losses and agency costs.

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 principle-agent problem. In the first extreme position, dubbed "the abdication hypothesis" [Kiewiet and McCubbins] or the "runaway-bureaucracy thesis" [McCubbins and Schwartz], the principal abdicates its policymaking role to an agent, which then becomes the central figure in policymaking, entirely unconstrained by the principal. 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 amuck" in their pursuit of their own policy preferences. The runaway-bureaucracy thesis has had a number of advocates among students of the American regulatory bureaucracy<sup>11</sup>, and among both advocates and critics of European integration, who typically attribute considerable independence to both the European Commission [see e.g. Ross 1995] and the Court of Justice [see e.g. Mancini 1991; Burley and Mattli 1993].

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 US Congress or EC member states) retain total or near-total control over the actions of their agents [Weingast and Moran, 1983; McCubbins and Schwartz, 1987; Garrett and Weingast, 1993]. Thus, for example, Weingast and Moran [1983] argue forcefully that regulatory bureaus such as the Federal Trade Commission do not run amuck, but are instead clearly responsive to the preferences of Congressional oversight committees, even in the absence of any overt intervention by these committees.

In the study of the European Community, intergovernmentalist scholars make a similar argument. In its purest form, the intergovernmentalist case begins with the argument that principals delegate authority, not instead of achieving their desired outcomes, but in order to achieve those outcomes; and proceeds from there to argue that the resulting policy outcomes invariably reflect the preferences of the principals, or of some subset of principals. In his study of the European Court of Justice, for example, Garrett makes the bald claim that "the principles governing decisions of the European court and hence governing those of domestic courts following its rulings are consistent with the preferences of France and Germany" [1992, p. 558]<sup>12</sup>.

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 which at first glance seems autonomous may in fact be subtly influenced by the preferences of principals, making genuine agency autonomy exceedingly difficult to measure [Weingast and Moran, 1983; McCubbins and Schwartz, 1987; Garrett and Weingast, 1993; Martin, 1993]. Indeed, as Weingast and Moran point out [p. 69], 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.

In short, we should be cautious about attributing autonomy to supranational agents, without carefully examining the less obtrusive forms of control available to member states. However, as Moe [1987] 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 which 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.

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 control of principals over their agents. In contrast to both the "runaway bureaucracy and the congressional dominance schools, I hypothesize that agency autonomy should be considered a variable, which varies primarily with the efficacy and credibility of the various control mechanisms available to principals. Next, in section 2.2, 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 amuck 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. I begin with administrative procedures.

### 2.1.1 Administrative Procedures

Administrative procedures are generally set out in the legislation delegating authority to an agent, and specify the scope of the delegation, the instruments available to the agent (regulation, economic incentives, direct provision of public goods, etc.), and the procedures which the agent is obligated to follow in carrying out its delegated functions. All else being equal, the autonomy of the agent should be greatest when the scope of delegation is wide, the choice of instruments is broad, and the procedural requirements minimal. By contrast, the ability of the principal to control agency behavior should be greatest where the scope of delegation and the range of available instruments is narrow, and where the procedural requirements governing agency action are detailed and constraining.

In an early paper [1987], McCubbins and Page theorize that the administrative procedures established by principals should reflect both the degree of uncertainty surrounding the policy area in question, and the degree of conflict among the principals regarding the policy area. Thus, *ceteris paribus*, with increasing uncertainty and/or increasing conflict, principals should delegate a broad scope of authority and a flexible range of instruments to agents, allowing the agents to respond to changing circumstances over time, but principals should then limit the discretion of the agents by prescribing detailed and constraining administrative procedures.

McCubbins, Noll and Weingast [1987, 1989] carry this argument a step further. Like McCubbins and Page, they argue that under conditions of policy uncertainty, principals can provide for both flexibility and control by delegating authority broadly, but specifying detailed procedural requirements. They then focus in some detail on the ways in which these procedural requirements can produce policy choices in accordance with the preferences of the principals--even where the principals themselves are uncertain about their preferred policy! Procedural requirements induce such behavior by the agent in two ways. First, they require the agent, when formulating a policy, to disclose information to the interested parties, thereby decreasing the informational asymmetry between the agent and its sponsors, and facilitating "fire-alarm" monitoring of agency behavior (see next section). Second, and perhaps more importantly, administrative procedures may require the agent to consult, and take into account the preferences of, the most important political constituents of the principals (industrialists, consumers, environmentalists, etc.), thus "stacking the deck" in favor of these actors in subsequent agency activities. Furthermore, these procedures, insofar as they are made explicit in the legislative mandate of the agency, can then be enforced in the courts by judicial review--although, as the authors also note, the use of judicial review creates the additional possibility of shirking by the courts as well as by the original agent [1987, p. 272].

However, lest it be thought that administrative procedures such as the ones described above are anathema to agents, McCubbins, Noll and Weingast point out that procedures such as advance notification and consultation with politically relevant groups can also be in the interest of the agent, insofar as they allow the agent to avoid drifting into politically dangerous territory and thereby incurring costly sanctions from the principals [1987, pp. 273-74]. In addition, as Majone [1994] argues, widespread consultation and the construction of "policy networks" can strengthen the position of an agent vis-à-vis principals by providing the agent with independent sources of information. From the perspective of the agent, therefore, administrative procedures may be costly and cumbersome, but they are also a source of political and technical information, and a means to avoid the possibly higher cost of being sanctioned by principals. We should therefore expect agents to pursue some degree of advance notification and consultation voluntarily, although the precise procedures chosen by an agent are likely to be less formal, and produce a shorter paper trail, than those selected by its principals.

### 2.1.2 The Variety of Oversight Procedures

The essence of oversight procedures is that they allow for (a) monitoring of the activity of the agent, to determine the extent of agency losses, and (b) sanctioning of the agent 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 for the principals to apply positive or negative sanctions against the agent so as to reward appropriate behavior and punish shirking. Both aspects present principals with considerable challenges.

In a seminal article, McCubbins and Schwartz have argued that oversight mechanisms can be divided into two types. In the first type, which they call "police-patrol oversight," a principal, such as a congressional committee, actively monitors some sample of the agent's behavior, "with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations" [1987, p. 427]. Examples of such procedures might include public hearings, field observations, and the examination of regular agency reports. Such 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 therefore likely to be undersupplied [Kiewiet and McCubbins 1991]. 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, to 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 [1987, pp. 426-434]. As Moe points out, however, under fire-alarm oversight covers only a subset of agency behavior, namely those activities which 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 [1987, p. 485].

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 series 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 agent, limiting the ability of that agent to pursue its private interests at the expense of the interests of the principals [pp. 33-34].

Monitoring procedures such as the ones specified above, and the sanctions which presumably follow upon the discovery of shirking by an agent, are strictly post hoc measures. However, as McCubbins, Noll and Weingast point out, the existence of monitoring procedures and the possibility of sanctions can affect the incentives of agents:

If defection and punishment are sufficiently likely, and the magnitude of the punishment sufficiently great, a noncomplying action can be deterred. Thus, the presence of sanctions, by forcing administrators to anticipate political reactions to their policy decisions, provides some measure of protection from noncompliance [1987, p. 249].

Thus, as was noted earlier, the rational anticipation of monitoring and sanctioning by agents means that principals may in fact structure the incentives and control the behavior of their agents without the need for visible public hearings or the actual application of sanctions.

### 2.1.3 The Costs of Sanctioning

However, 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, Noll, and Weingast point out, 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 [1987, p. 252].

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 [1989], McCubbins, Noll and Weingast elaborate on the problem of sanctioning by multiple principals, such as the President, the House 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. In their example, illustrated in Figure 1, the President, House and Senate each have an ideal policy preference, depicted as points P, H, and S, respectively, relative to the status quo policy, Qo. In the illustration, the triangle PHS thus contains all the Pareto optimal outcomes, i.e. those policy choices which cannot be changed without making one of the three actors worse off. Ip, Ih and Is represent the indifference curves of the President, House, and Senate, respectively.

Figure 1 Not Available

Now suppose that the President, the House and the Senate agree on the need for a new policy to replace Qo. Because each of the three actors has a veto over the final choice, the new policy choice must appear within the "lens" defined by Qo, A, C, and D, any point within which would make all three actors better off relative to Qo; the specific point chosen within that lens should, in turn, reflect the relative bargaining power of each of the three actors. In the authors' example, point Bo is chosen as the result of bargaining, and an agent is delegated the authority to implement policy Bo.

The most important implication of this for principal-agent analysis is that, given the distribution of preferences and decisionmaking rules specified above, the agent may drift considerably from point Bo without risking sanctions from the principals. More specifically, "as long as the agency stays within the triangle PHS, no legislative correction or punishment is possible. Any policy outcome within the triangle (that is, within the Pareto optimal set) must be preferred by at least one of the three parties to the original agreement to enact Bo. Hence, because all three actors have a veto, one of the three will not agree to an action that forces the agency back to Bo" [p. 439]. This analysis suggests important limits on the ability of multiple principals to sanction agents.

Moving beyond the relatively rigid assumptions of their model, McCubbins, Noll and Weingast's analysis suggests three more general points about the ability of multiple principals to apply application of 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 it remains within the set of Pareto-optimal outcomes.

Second, however, the authors assume that the game between principals and agents (passing of legislation by principals, implementation by agent, sanctioning by principals) is played only once. In repeated play, however, it is quite likely that a shirking agent might behave, or threaten to behave, in ways inimical to the preferences of all the actors. For risk-averse legislators, therefore, the benefits gained by agency shirking on a given policy issue are likely to be outweighed by the risks of random deviation by an agent, and all the principals should therefore have an incentive to rein in the agent. In the long view, therefore, sanctions may not be as difficult to apply as the single-play model indicates.

Third, 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 a

change in mandate) against the principal. In McCubbins, Noll and Weingast's model, the decision rule governing the application of sanctions is unanimity among the three institutional 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 which the agent is able to exploit in order to shirk successfully within its legislative mandate.

In this sense, the analysis by McCubbins, Noll and Weingast bears striking similarities to Scharpf's [1988] analysis of the "joint-decision trap," which develops further the implications of various decision rules for institutional reform. In Scharpf's analysis, certain federal systems such as the Federal Republic of Germany and the European Community are, by virtue of the decision rules governing decisionmaking, prone to what he calls a "joint-decision trap," which makes both policy reform and institutional reform difficult or impossible. The relevant decision rules, he argues, are three. First, any reform of policy or institutions must be decided intergovernmentally, and cannot be imposed from above at the federal level. Second, as in the McCubbins, Noll and Weingast model, voting among governments is by unanimity, meaning that any single government can by itself veto a policy or institutional reform favored by the rest of the states in the system. Third, Scharpf identifies a "default condition" in the case of no agreement on policy or institutional reform. If the default condition is the status quo, or 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.

Scharpf's argument about institutional decision rules and institutional reform suggests, in turn, two important points about agency control. First, institutional reform--and, by extension, the sanctioning of an agent or change in its mandate--is uniquely difficult where the decision rule is unanimity, granting any single actor veto power over such decisions, as we saw in the McCubbins-Noll-Weingast model above. Less demanding decision rules such as a simple or qualified majority of the principals, by contrast, would make institutional reform, and hence sanctioning of the agent, correspondingly easier, and thus restrict the autonomy of the agent.

Second, and equally important, Scharpf argues that a status-quo default condition makes institutional reform--and, by extension, revision of the agent's mandate--more difficult, by privileging the existing delegation of authority to the agent. By contrast, a default condition under which the agent's mandate expires and must be reauthorized privileges would-be reformers among the principals, which may demand amendment of the agent's mandate as the cost of their support for such reauthorization.

For both of these reasons, member states concerned with limiting bureaucratic drift might be expected to adopt legislation featuring low institutional thresholds to the use of sanctions, as well as periodic reauthorization of the agent's mandate. Once again, however, such decision rules are not without costs, as the first would risk paralysis of EC decision making, and the second could entail re-opening a "Pandora's box" of delicate institutional bargains. The ultimate choice of decision rules, therefore, should therefore reflect some tradeoff between these considerations by member state principals. Whatever institutional rules are finally chosen, however, these rules should matter a great deal for the autonomy of an agent from its principals.

#### 2.1.4 Agency Concern for Reputation

Finally, beyond the specification of precise mechanisms of control, Garrett and Weingast emphasize the concern of certain agents, and in particular courts, for their reputation as a factor limiting the discretion of agents. More specifically, they suggest that courts whose rulings are consistently overturned may find their independence and legitimacy weakened, and that this concern for legitimacy makes courts sensitive to the likely political repercussions of legal decisions [1993, pp. 199-201]. Concern for legitimacy, in this view, may constrain agency discretion even more effectively than the existence of formal control mechanisms [Kilroy 1994].

This is a powerful argument, but its implications for agency behavior are not unambiguous, for two reasons. First, institutional concerns for reputation can occasionally lead courts or regulatory agencies to rule against the most powerful principals, rather than in their favor. Consider, for example, the case of EC competition policy, where the Commission's credibility as a regulator among private firms rests with its willingness to apply competition rules impartially, even against the wishes of powerful member states [see Majone 1994]. If the Commission is seen by either member governments

or by private industry to be slavishly following the wishes of the most powerful member states--as for instance in the recent controversy over Commission approval of a FF20 billion state aid to Air France--then its reputation will suffer among these actors, and the Commission will face pressure to "stiffen its backbone" in confronting powerful member states in the future<sup>13</sup>. What this example suggests is that the Commission's independent policy preferences are constrained at both ends, so that an overly rigid application of the rules could alienate member states and trigger Council retaliation, but too lax an application could tarnish the Commission's reputation among firms as an impartial regulator. The Commission, therefore, must constantly manoeuvre between the member state Scylla and the private sector Charybdis, and we would therefore expect the nature of its rulings to vary over time, depending on the pressure from each direction.

The second point to be made about Garrett and Weingast's discussion is that the concern for reputation in PPT is motivated, at least in part, by the possibility that principals may invoke the agency control mechanisms discussed in previous sections. Put differently, we should expect that an agent's concern for its reputation will be largely (although not entirely) a function of the control mechanisms available to the principals, directing our attention once again to the study of these mechanisms.

### 2.1.5 Institutional choice: Selecting a mix of control mechanisms

Control mechanisms, therefore, may help reduce agency losses, but they are not a panacea. Each of these mechanisms is imperfect, and each imposes costs on the principal. The selection of a mix of control mechanisms, like the decision to delegate authority to an agent in the first place, therefore constitutes a problem of institutional choice, and one about which the literature has produced only a series of fragmentary and vague hypotheses. Kiewiet and McCubbins, for example, argue that principals select "the mix of mechanisms that is most effective and least costly" in a given case, but provide no theoretical guide for the selection of such a mix [p. 38]. Other authors provide somewhat more specific predictions. McCubbins [1985], for example, argues that greater delegation of authority to agents should correspond with greater use of control mechanisms; McCubbins and Page [1987] argue that, *ceteris paribus*, with increasing uncertainty and increasing conflict among multiple principals, those principals will generate broader scope and instruments of regulatory authority to agents, but limit the discretion of those agents accordingly; and McCubbins and Schwartz [1987] predict a general preference among principals for fire-alarm oversight mechanisms, for the reasons sketched out above. In addition, I have argued above that the choice of decision rules governing the application of sanctions and the changing of an agent's mandate will reflect a tradeoff between institutional stability on the one hand, and member state control on the other.

Finally, as Kiewiet and McCubbins point out, principal-agent interaction is not a single-play game, but a continuous process of strategic interaction between the two (sets of) actors: "Agencies seek out loopholes in their contracts. Principals counter by altering existing arrangements or by designing new ones." As a result, we should observe the principals' mix of control mechanisms changing over time, in response to learning and adaptation [pp. 34-35]<sup>14</sup>. It is, however, worth noting in this regard that Kiewiet and McCubbins' argument depends crucially on the ability of the principals to alter the relevant control mechanisms relatively easily; and this condition is not always met in the context of EC institutions.

## 2.2 Mechanisms of Member State Control in the EC

Agency control mechanisms, therefore, can reduce agency losses, but these control mechanisms are often costly and therefore non-credible, and never perfectly effective. Furthermore, the difficulties that principals encounter in threatening and imposing sanctions on an agent are compounded in settings, like the European Community, where the institutional hurdles to the imposition of sanctions--typically a unanimous or qualified majority vote of the member states in Council--is particularly high.

It is precisely these sorts of institutional hurdles which are at the heart of Pierson's historical institutionalist account, in which Pierson argues that member state preoccupation with short-term considerations, the ubiquity of unintended consequences, and the "lock-in" effects of past decisions all create "gaps" in the ability of member states to control the process of integration. As these gaps appear, Pierson argues, member governments may develop a clear preference for institutional reform, but will encounter institutional obstacles to such reform:

Just as has always been true in domestic politics, new governments in member states now find that the dead weight of previous institutional and policy decisions at European level seriously limits their capacity for maneuver. Indeed, in many respects the constraints on government mobility are greater in the EC. The rules of the game within the Community inhibit changes of course. The same unanimity requirement that makes initial reform difficult also makes previously enacted efforts hard to undo, even if they come to be perceived as unexpectedly costly or an excessive infringement on state sovereignty. The Commission's monopoly over initiative constitutes another important constraint<sup>15</sup>.

Pierson's analysis is a compelling one, but it goes wrong in assuming that all delegation in the EC constitutes a joint-decision trap, i.e. that the decision rules for "reining-in" an agent are always intergovernmentalism and unanimous voting, and that the default condition governing the agent's delegated powers is invariably the status quo. If all delegation of powers to supranational institutions were governed by these decision rules, then supranational institutions would indeed have considerable independence, and member governments would indeed lose much of their control over the integration process. In fact, however, the decision rules governing delegation in the EC, and the control mechanisms created by member governments to control supranational agents, both vary considerably by policy and over time, meaning that the situation for the member states is neither as rosy as Garrett implies, nor as bleak as Pierson implies.

The empirical discussion which follows will, therefore, focus largely on member state methods of monitoring and information gathering, but also, crucially, on the costs and difficulties of imposing sanctions on an agent found to be shirking or drifting from the preferences of the principals. Once again, however, I begin with administrative procedures.

### 2.2.1 Administrative procedures

There exists, to my knowledge, no scholarly work on the use of administrative procedures as a means by which member states control their supranational agents, and a thorough discussion of this question is clearly beyond the scope of this paper. I will therefore limit myself to two observations. First, there exists in the European Community no equivalent of the Administrative Procedures Act or the Freedom of Information Act, both of which lay down minimum standard administrative procedures for the conduct of American regulatory bureaucracies. By contrast with the American experience, as Majone indicates, European Community legislation is characterized by a tremendous diversity of administrative procedures, which differ from one piece of enabling legislation to another. In recent years, however, the Commission itself, in response to post-Maastricht criticism of the "democratic deficit," has moved to adopt consistent policies regarding "openness" and "transparency" in its interactions with private interest groupings [Mazey and Richardson 1994]. Second, a number of observers have noted an increasing tendency of member states, in response to earlier "drift" by the Commission and the Court of Justice, to draft new Community legislation with greater precision, to prevent an exceedingly broad interpretation of that legislation in the future.

### 2.2.2 Oversight Procedures

The oversight procedures established by member states over their supranational agents run the gamut of the procedures discussed above, from intrusive police patrols to decentralized fire alarms, although these procedures differ considerably from one supranational agent to another, and indeed from one issue-area to another and over time for any given agent. In the analysis that follows, I focus on (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 Court of Justice; (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.

#### 2.2.3.1 Comitology as police patrols

The most intrusive, and expensive, form of oversight, according to McCubbins and Schwartz's scheme, is police-patrol oversight, and 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 in section 1, most of the Commission's executive powers are not laid down explicitly in the Treaty, but are rather specified in the Council legislation that gives rise to these powers. In practice, since the early delegation of executive powers to the Commission in the area of agricultural policy in the early 1960s, the Council has generally 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<sup>16</sup>. In schematic form, the various procedures are as follows:

First, under the advisory committee procedure, the Commission is obligated to 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. The advisory committee procedure, therefore, provides the Commission with the greatest autonomy, and member states with the weakest influence, of the three procedures, and 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 committee, which may vote on the measures by qualified majority vote 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 QMV, the Commission must communicate the proposal to the Council. At this point, there are two variants to the procedure. Under variant (a), which is widely used in agricultural policy as well as for the Community Initiatives under the Structure Fund Regulation of 1993, the Commission may, but does not have to, defer implementation of the procedure pending its reconsideration by the Council, which has a month to take a different opinion by qualified majority; if it fails to do so, the Commission's proposals take effect. Under the stricter variant (b), employed, for example, for Commission action under the PHARE program, the Commission must defer implementation of the measure, and the Council then has up to three months to take a different decision, again 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 in order to secure a referral to the Council. Furthermore, under the management committee procedure, overruling the Commission's proposal requires not only a negative vote on the Commission's proposal in committee, but also a positive Council decision, again by qualified majority, on an alternative; failing this double qualified majority, the Commission proposal stands. In other words, the Commission can exploit differences among the member states to avoid any reference to the Council, and hence 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 allows, the Commission may only adopt measures which are approved by a qualified majority vote within the committee. In other words, by contrast with the management committee procedure, where a qualified majority is required to secure a reference to the Council, here a minority can secure such a reference by blocking a favorable opinion. Furthermore, in the absence of such a favorable opinion, the Commission must defer application of the measure, which is referred to the Council, where there are once again two variants of the procedure.

Under variant (a), which is used for customs legislation, the Council has up to three months in which to either amend the Commission's proposal by unanimity, or to accept or reject it by qualified majority. If the Council fails to take the decision within the deadline, however, the measure returns to the Commission, which may then adopt the proposed measures itself. Variant (a), therefore, guarantees that some decision will be taken. Under variant (b), by contrast, the Council may decide, by a simple majority, to block the Commission's proposed measure. This provision, known as the "safety net," thus provides the member states with the most effective guarantees against Commission



shirking, but in so doing it removes the guarantee, provided by the "net" of variant (a), that a decision will indeed be taken.

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 [Gerus, pp. 6-7] would seem to suggest that committee oversight is perfunctory, and the Commission largely independent in its actions. However, as the Congressional dominance school points out with regard to regulatory bureaucracies, and as Gerus [1991] 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. 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<sup>17</sup>.

The story, however, does not end there. Two additional points can be made here. First, as the thumbnail sketches above suggest, each of these various procedures imposes varying requirements on the Commission--and varying thresholds to overruling actions by the committee and the Council. Thus, as we have seen, the advisory committee procedure imposes few concrete responsibilities on the Commission, and even the widely used management committee structure allows the Commission considerable latitude in its proposals, short of provoking a qualified majority against its proposals in both the committee and the Council. Commission discretion, in other words, is not entirely eliminated by oversight procedures, but it is constrained to varying degrees depending on the type of committee procedure selected. Indeed, this is why member states and the Commission disagree on the choice of procedures, and it is why member states "tighten" committee procedures in response to Commission shirking [Pollack 1995].

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 tradeoff between member state control on the one hand, and speed and efficiency of decision-making on the other. This tradeoff between speed and efficiency is reflected, for example, in the member states' Declaration at the 1985 IGC, which explicitly called on the Council "to give the Advisory Committee procedure in particular a predominant place in the interests of speed and efficiency," on the one hand; and in the adoption of the Comitology Decision of 1987, which maintained the regulatory committee and various other safeguard options, on the other. The same tradeoff can also be seen in the varying choice of committee procedures adopted by the Council in implementing legislation, which specifies, for example, an advisory committee procedure for competition policy, whereas management committee procedures are retained for agriculture, and regulatory committee procedures for legislation regarding customs, veterinary and plant health, and food. Although the latter procedure has indeed been maintained for a number of areas, it is nevertheless striking that the member states have been willing, in the interests of speed and efficiency, to afford the Commission the greater discretion associated with the less constraining advisory and management procedures in areas such as agriculture, competition policy, and regional policy [Docksey and Williams 1994, p. 126].

### 2.2.3.2 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 as well. Indeed, almost every EC institution besides the Commission plays a role in monitoring and checking its (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 select out individual Commissioners for sanctions; the Court of Auditors is assigned to monitor and report on the Commission's implementation of Community policies; and the Court of Justice may, under Articles 173-174, review the legality of acts of the Commission, 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.

The role of judicial review is particularly important, for two reasons. First, as McCubbins, Noll and Weingast point out, it provides for the enforcement of the "essential procedural requirement[s]" of

EC administrative law. Second, and perhaps more importantly, the provisions of Articles 173-175 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 Court has interpreted the latter requirement narrowly [Kent 1992, pp. 316-27], individuals nevertheless constitute the large majority of plaintiffs in Article 173 cases [Nugent 1994, p. 224], and their ability to bring such cases has indeed created a system of fire-alarm oversight similar to that described by McCubbins and Schwartz.

### 2.2.3.3 The costs, and credibility, of post hoc sanctions

Member state principals, therefore, possess ample means of both police-patrol and fire-alarm oversight, so as to monitor the behavior of its agents. However, as we have seen, such information is useful only if the principals can credibly threaten the principal 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 overruling 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, on the other hand, 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 [1987, p. 487].

These difficulties are exacerbated in the European Community, where multiple principals interact with a single regulatory bureaucracy, the Commission; as a result, the principals cannot play multiple agents one against the other, as they arguably can in the American system.

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. There are, however, a number of institutional obstacles to the use of appointments as a sanction, in all three EC supranational institutions. 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 is non-dismissable during its five-year term of office<sup>18</sup>, and in practice member states have a say only over the reappointment of "their own" Commissioner(s) and the President. In the case of the Court of Justice, judges are appointed for longer (six-year) terms, and dismissal during a judge's tenure is once again off-limits to member states. Furthermore, judges are protected by the Court's tradition of unanimous rulings, which makes it difficult for member states to single out individual judges' views for sanctioning. Finally, in the case of the European Parliament, the ability of national parliaments to appoint delegations to the EP has since 1979 been replaced by direct elections, making MEPs responsible to a different principal--their national electorates.

A third option, emphasized in the American literature and in Garrett's and Kilroy's work on the ECJ, consists of overruling a Commission or Court decision through new Council legislation. Here once again, however, a member state unhappy with a Commission or Court action would need to assemble the necessary majority, or even a unanimous vote, in favor of such new legislation. Furthermore, the Commission may, through the 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 the supranational agents to exploit differences among the member state principals.

Finally, a fourth, and more drastic, option which sidesteps the problem of securing a necessary majority in favor of overriding is unilateral noncompliance with a decision of the Commission or the Court of Justice. This is, indeed, one of the central claims 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. 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 that awareness of these costs by all actors may limit the credibility of a member state's threat of unilateral noncompliance.

#### 2.2.3.4 Revising the agent's mandate

Perhaps the most effective sanction against a shirking agent is the revision of its mandate, in the treaties or regulations which delegate authority to those institutions. Once again, the ability of member states to control supranational institutions by reforming the administrative details of their mandate or the 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 IGC, 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 Treaty revision, the powers of the Commission or the Court 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 use--and is therefore a relatively ineffective and non-credible means of member state control.

In a novel decision, however, the member states decided at Maastricht to hold an additional IGC on institutional questions in 1996, effectively lowering the institutional threshold to Treaty revision, and giving both the Commission and the Court an incentive to follow the preferences of the member states to avoid any reduction in their competencies in 1996. Indeed, one might argue that, insofar as member states are keen to maintain a credible threat of Treaty revision to keep EC institutions in line, they should agree to periodic intergovernmental conferences to review the workings of the institutions, which would raise a continual spectre of discipline for EC institutions (albeit at the nontrivial risk of periodically reopening Pandora's box). Even here, however, one should not overestimate the danger: An IGC will indeed be held in 1996, but the default condition remains the status quo, and the decision rule remains unanimity: So long as one or more countries prefers the status quo to any possible change, therefore, the powers of the Commission and Court remain secure.

Some of the Commission's powers, however, are established not by Treaty provisions but by Council Regulations with a fixed expiration date, as with the Structural Fund Regulations or the Regulations governing the Community's Framework R&D programme. In these cases, the relevant Regulations require periodic revision and re adoption in the Council, meaning that the default condition is not the status quo, but the expiration of the program, and with it the Commission's executive powers. The practical upshot 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 importantly, the requirement of unanimity for renewal of such Regulations means that member states with grievances against the Commission can threaten to veto the re adoption of the Regulation unless their concerns are addressed. In other words, where the default condition is expiration of the Regulation, the decision rule of unanimity favors those member states which would cut back the executive powers of the Commission, not those who would seek to protect them. Rational anticipation of this possibility might then be expected to provide the Commission with an incentive to

take member state interests into account. Alternatively, if the Commission strays consistently from the Council's mandate, the Council may be expected to amend and limit the Commission's mandate at the next revision of the regulation. This is, indeed, what took place in the 1993 revisions of the Structural Fund Regulations [Pollack 1995].

### 2.3 Supranational Autonomy and Member State Control: Conclusions

The burden of this section has been 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 varies 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 two-fold.

First, differences in the principal-agent control relationships for the Commission and the Court of Justice would lead us to expect, and allow us to explain, the apparent autonomy of the Court in influencing the course of European integration. As 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 [1993, p. 513].

In fact, the degree of independence of the ECJ is a matter of dispute in the literature on legal integration. Garrett and Weingast, for example, argue, as above, that the Court's room for manoeuvre 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. Burley and Mattli, by contrast, argue that the Court, along with subnational legal actors, has in fact been the prime mover in European legal integration, pursuing 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 non-political 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 Court as the agent of the member states, on a short leash, while the latter presents the Court 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 [Caporaso and Keeler, 1995].

The analysis presented here, I would argue, suggests that there is an element of truth in both of these accounts. 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 and Weingast allow. On the other hand, the basic insight of Garrett and Weingast's analysis, that the independence of the Court is limited by the principle-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 and Weingast are limited in both scope and credibility. Thus, as we have seen, the power of appointment is limited by the length of judges' appointments, the inability of member states to remove sitting judges, and by 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 Treaty by unanimous vote and ratification by national parliaments. 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 [Stein 1981; Mancini 1991; Burley and Mattli 1993].

The second point to be made, following from the previous discussion, is that we should expect the Commission's independence to be considerably more constrained than that of the Court, because of the multiplicity of control mechanisms available to the member states, including: administrative procedures; the power of appointment; the various comitology procedures; judicial review; legislative

overruling; and the revision of the Commission's mandate. As we have also seen, however, the precise mix of these control mechanisms, and their credibility, varies wildly from one Commission function to the other and over time; this in turn implies that Commission autonomy also varies over time and across issue-areas, as a function of these varying control mechanisms. 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, monitoring of Structural Fund and CAP implementation, and the right of initiative across various policy areas, which is clearly beyond the scope of the current paper. I shall return to the question of how to test hypotheses about agency autonomy in the conclusion.

Before moving on to the conclusion, however, we need to consider one particularly important function performed by the European Commission, namely legislative agenda setting, and the conditions under which the Commission may exert an independent causal influence on policy choices ultimately taken by the member states.

### 3. Agenda setting

In this section, I focus in some detail on one particular aspect of supranational delegation and agency, namely the Commission's role 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, therefore, I distinguish here 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 which can be adopted more easily than amended, thus structuring the choices of the member states in 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 which can rally consensus among the final decisionmakers. As we shall see, analysts have made considerable claims for the Commission as both a formal and informal agenda setter, and I shall therefore consider both types of agenda setting in this paper<sup>19</sup>. In each case, I attempt to specify the assumptions underlying each model of agenda setting, and specify a number of conditions under which the Commission will enjoy formal and informal agenda-setting powers, respectively. I begin with formal agenda setting.

#### 3.1 Formal agenda setting

Perhaps the most rigorous framework in which the Commission's influence on 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, as noted above, 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 to secure agreement on a policy, which places limits on the use of sophisticated voting by voters to overcome the power of the agenda setter. I consider each of these variables briefly in the following sections.

##### 3.1.1 The power to propose

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. In the American 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 European Community, by contrast, the Treaties assign the sole "right of initiative" for Community legislation to the Commission (subject to the limitations cited in section 1), placing the Commission in the role of the Community's formal agenda setter.

##### 3.1.2 Voting rules and amendment rules.

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 amendment rule is restrictive--in other words, where it is easier to adopt the agenda setter's proposal than to amend it. Consider, for example, a vote in the U.S. Congress, in which a Congressional committee (a) enjoys the exclusive right to propose a bill (b) to be decided on the floor by simple majority vote, (c) subject to a "closed rule" for amendments, which requires a straight up-or-down vote by the Congress with no amendments allowed. In such cases, McKelvey and others have demonstrated, agenda setters have quasi-dictatorial powers to select policy proposals which maximize their own gain while at the same time commanding the assent of only a simple majority of legislators<sup>20</sup>.

Not surprisingly, a number of factors may mitigate the dictatorial power of formal agenda setters, including variation in both the voting and amendment rules. Thus, for example, where the voting rule is not some form of majority but unanimity, each actor or legislator retains a veto over the final decision, and can force some sort of compromise as its cost of agreement. In such cases, the agenda setter loses its ability to "push through" its proposals by majority vote, and with it much (if not all) of its formal agenda setting power.

Variation in the amendment rule is equally important. At the opposite extreme from "closed rule" is the "open rule," where amendments to committee drafts are allowed without restriction and by simple majority vote. In such cases, the power of the agenda setter is severely diminished. In fact, of course, closed rule and an "anything-can-happen" open rule are the extremes on a continuum from the most restrictive to the most open rule: in between these extremes we find "germaneness" rules governing the types and number of amendments allowed; "rules of recognition" governing the order in which amendments are recognized and voted upon [Weingast 1989]; or else an open amendment rule coupled, however, with a more demanding voting rule for amendments than for the agenda setter's unamended proposal. This latter arrangement, of course, characterizes Council voting under the cooperation procedure, where the Council may adopt a Commission proposal by qualified majority, but adopt it only by unanimity. There is, in other words, no single "open rule," and these variations on the amendment rule have different effects on the power of the agenda setter.

Applied to the Community, this analysis of agenda power with different voting rules and amendment rules yields varying results depending on the rules governing a given piece of Community legislation. Under the consultation procedure, for example, both the amendment rule and the voting rule are both unanimity. Thus, although it is difficult to amend the Commission's proposal, it is equally difficult to adopt the proposal, and any member state may veto a proposal with which it is unhappy<sup>21</sup>. By contrast, the cooperation and codecision procedures seem to confer precisely the sort of agenda power that rational choice theorists assign to Congressional committees and other agenda setters: The voting rule in both cases is qualified majority, meaning that the Commission need only put forward a proposal capable of garnering the support of a qualified majority (54 of 76 votes in the Council's weighting scheme) of the member states. Furthermore, the amendment rule, although not strictly a closed rule, is unanimity, making it quite difficult to amend a Commission proposal<sup>22</sup>. Under these circumstances, rational choice theory would predict considerable agenda power for the Commission, i.e. independent Commission influence over the outcome of Council votes.

### 3.1.3 Distribution of Member State preferences

Given a specified agenda setter and a set of institutional rules governing voting and amendment control, Shepsle [1979] demonstrates that the ability of institutional structure to induce an equilibrium outcome does not depend on any particular assumption about the distribution of preferences among the legislators. The precise location of that equilibrium, however, does depend upon the preferences of both the legislators and the agenda setter, in our case the member states in Council and the Commission, respectively.

Consider, for example, a situation in which the Commission's optimum outcome can garner a qualified majority in the Council. 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. On the other hand, one can imagine a situation in which, despite the same institutional structure, the distribution of preferences was different, so that on a given question the

preferences of the Council (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 which the Commission prefers to the status quo. The Commission, in this case, 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 which 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, depends fundamentally on both the Commission's preferences and the distribution of preferences in the Council.

### 3.1.4 Strategic Voting and Time Horizons

At this point, we need to introduce the concepts of sincere (or myopic) and sophisticated (or strategic) voting behavior, by both agenda setters and legislators, which have important implications for the power of an agenda setter. The terms are usefully defined by Krehbiel:

A voter who employs a sincere strategy when faced with two alternatives always votes for the alternative he prefers, even though its winning at the immediate stage of voting may in effect ensure its replacement by some inferior proposal at some subsequent stage. In contrast, the sophisticated voter votes for the alternative that he thinks will ultimately lead to the selection of a preferable alternative. Sophisticated strategies therefore often prescribe ostensible misrepresentation of one's preferences at some stages of voting [1987, p. 390].

For our purposes, the important thing about sincere and sophisticated voting is that they help determine the success of an agenda setter in structuring the choices of legislators and thereby influencing outcomes, or conversely of legislators in defeating the dictatorial power of an agenda setter. Let us consider each in turn.

First, the influence or effectiveness of an agenda setter, such as a congressional committee or the Commission, depends in part on its sophistication in selecting a specific policy proposal for consideration on the "floor." As Krehbiel [1987] puts it, a sophisticated agenda setter will not automatically propose its ideal policy choice, but will ask itself, before making its proposal, whether that proposal can win, or whether it will be amended, under the rules of the legislature. If its ideal proposal is likely to be rejected or amended unacceptably, then a sophisticated agenda setter will not propose its ideal proposal, which will be doomed to fail, but will modify that proposal, proposing instead a strategic choice which is closest to its own preferences while at the same time able to garner a (qualified) majority, with no unacceptable amendments, on the floor. Furthermore, if there is no proposal which the agenda setter prefers to the status quo and which will be adopted on the floor with no unacceptable amendments, then the agenda setter will obstruct, refusing to propose a bill whose passage is, for it, worse than the status quo [Krehbiel, 1987].

Consider, for example, a hypothetical case in which the Commission is proposing a draft Directive on harmonizing auto emissions in the EC, and the Commission's preferences are for uniformity and high standards. A sincere Commission in these circumstances might propose that all the member states move immediately to implement U.S. emissions standards; but such a proposal would then fail to garner a qualified majority in the Council, gaining the votes only of Denmark, the Netherlands and Germany. A sophisticated Commission, on the other hand, would propose some variation of its ideal point, which would be preferred to the status quo by a qualified majority of "green" member states. In such a case, the Commission is not able to impose its ideal point on a reluctant Council, but it can influence which proposal, out of the numerous possible proposals which might garner a qualified majority in Council, will actually be chosen.

Unfortunately for the Commission, the member governments in Council may also 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" [Garrett 1992, p. 552]. 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, *ceteris paribus*, greater when the decision-makers are impatient, impatience being defined as "the deferral of gratification... while haggling takes place" [Shepsle, 1989; see also Baron and Ferejohn 1989]. Note that impatience here is not a state of mind, but 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 which must be decided by unanimity.

### 3.1.5 Conditions for formal agenda setting by the Commission

In sum, rational choice institutionalism predicts considerable agenda-setting power, and therefore an independent causal impact on policy choices, for the Commission, under certain circumstances. These include:

- the Commission's sole right of initiative;
- qualified majority voting rule;
- a closed or restricted amendment rule;
- the distribution of member state preferences; and
- member state impatience, or costs of delay.

Where these conditions are fulfilled, we should observe policy outcomes close to the Commission's own preferences; where one or more of these conditions is not fulfilled, on the other hand, we should observe member states freely amending or rejecting the Commission's proposals, thereby limiting or eliminating the Commission's agenda setting power.

## 3.2 Informal agenda setting

Formal agenda setting, however, does not exhaust the claims made in the empirical literature for Commission influence [cf. Zysman and Sandholtz 1989; Peterson 1991; Sandholtz 1992; Marks 1993]. A number of authors have argued that, even where the decision rule among member states is unanimity (as with the old Article 100, Article 235, or Treaty revisions under Article 236), the Commission might nevertheless "set the agenda" by constructing "focal points" for bargaining in the absence of a unique equilibrium [Garrett and Weingast 1993], or by constructing policy proposals and matching these to pressing policy problems [Kingdon 1984] in an environment of uncertainty and imperfect information.

Thus, for example, Garrett and Weingast [1993], starting from the same basic assumptions as theorists of formal agenda setting, have suggested that, under certain conditions, an agenda setter such as the Commission 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 such as the Commission 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 her formal powers of initiative, or on any particular set of voting or amendment rules: What counts here is not formal rules, but 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.

A more radical departure is made by Kingdon [1984]. Like rational choice theorists, Kingdon is interested in explaining agenda setting, but Kingdon's theoretical approach and assumptions are different, as indeed is his definition of agenda setting itself. Thus, whereas in the rational choice literature the term "agenda" refers to the agenda of a parliamentary body (i.e. the ability of certain actors to initiate policy proposals, the sequence of votes, amendment rules, etc.), and the power of the agenda setter arises from the agenda setter's institutional right to propose legislation and structure the



voting and amendment rules governing decision making, in Kingdon's work the term "agenda" refers to the list of substantive problems occupying the attention of governmental decision makers, and the power of an agenda setter or policy entrepreneur lies in the persuasiveness and timeliness of its policy proposals.

With regard to assumptions, Kingdon 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 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 stream political changes (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," creating 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 US Congress<sup>23</sup>.

The role of policy entrepreneur is notably missing from the rational choice literature on agenda setting. By contrast with the institutional role of a formal agenda setter, the power of which results from the institutional right to put specific proposals to a vote, policy entrepreneurship does not rely on a formal or informal institutional role: Anyone, regardless of her institutional position or lack thereof, can be a policy entrepreneur. The essence of policy entrepreneurship in Kingdon's account is the proposing or advocacy of a saleable, and possibly innovative, policy proposal to a problem which has been identified as important by political actors. Not surprisingly, this role of entrepreneur is less evident in models which assume perfect information. As Schneider and Teske point out, the neoclassical approach to economics neglects entrepreneurs

because its core concept of market equilibrium assumes full information, leaving the entrepreneur little scope for innovative activity... In the neoclassical approach, entrepreneurs are "called forth" by conditions in the market in a systematic, if not necessarily predictable, process [p. 738].

The rational choice literature on agenda setting, which indeed grows out of neoclassical economics, makes similar assumptions, and therefore, like neoclassical economics, leaves little room for innovative policy proposals from political entrepreneurs. By contrast, Kingdon's "garbage can" model features imperfect information, not to say chaos; in this context, the role of the policy entrepreneur is to match policies to problems and to political possibilities. In addition to such advocacy, Kingdon's policy entrepreneur is also a broker in subsequent negotiations leading up to the adoption of the policy.

Applying Kingdon's view to the Commission, we are faced with the stark observation that the Commission enjoys no monopoly on informal agenda setting, which, unlike formal agenda setting, does not depend on an actor's institutional position. Nor does the Commission 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 certainly can be considered to possess all of these motives, but so might private sector actors such as the European Round Table of Industrialists [Cowles 1993] or EC member governments [Moravcsik 1991].

On the other hand, the Commission, if not the only political entrepreneur with an incentive to set the Community agenda, is nevertheless particularly 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.

Kingdon's view, therefore has much to recommend it. Yet his "garbage can" assumptions would seem to make Kingdon's approach incompatible with that of the other theorists discussed in this paper. In fact, however, I would argue that many of the insights of Kingdon's model can be retained without resorting to "garbage can" assumptions. The most important assumptions of Kingdon's model, I would argue, concern imperfect information, search costs of identifying alternatives, and transactions costs of negotiating agreements--all of which are consistent with the approach taken in the rest of this paper, thereby allowing us to integrate many of Kingdon's fundamental insights about information, innovation, and policy entrepreneurship into the broader analysis of the Commission's role.

### 3.2.1 Conditions for Informal Agenda setting in the EC

The Commission (and any other actor), therefore, may (but will not necessarily) exert an independent causal effect on policy outcomes, different from what might be predicted from a model of intergovernmental bargaining reflecting only the power and preferences of the member states, even where it has no formal agenda setting powers. Under what conditions might such informal agenda setting take place? Once again, a complete list of necessary and sufficient conditions is beyond the realm of this preliminary paper, but the literature cited above suggests at least four conditions which might facilitate informal agenda setting. First, 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 [p. 186]. Where alternative proposals have significant distributional consequences among the member states, by contrast, the Commission's proposals will be less important than the distribution of preferences and power among the member states.

Second, Commission influence should be greatest where information is imperfect, uncertainty about future developments is high, and/or asymmetrical distribution of information between the Commission and the member states favors the former. Thus, as Sandholtz suggests in his study of Commission entrepreneurship and the ESPRIT programme, 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 [1992]. Or, alternatively, the Commission may possess greater technical knowledge about a given subject than any one of the member states, making it difficult for the latter to construct feasible alternatives to Commission proposals (because of high search costs). This seems to have been the case in the 1984 plans for the Integrated Mediterranean Programmes 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. 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 with clear and precise preferences; in this case, the final policy choice reflected, not the agenda of the Commission, but rather the preferences of the largest (contributing) member states, just as intergovernmentalists would suggest.

Third, Commission influence is likely to be highest when the transactions costs of negotiating alternative policies, and the costs of waiting, are both high. In such cases, the Commission may influence the outcome both by constructing focal points for bargaining among member states impatient to reach agreement, and though its informal role as "broker" at the Council bargaining table.

Fourth and finally, the Commission's influence will be greater to the extent that it builds policy networks and rallies subnational actors to support its proposals and pressures member governments to do likewise. The importance of such policy networks, mentioned only in passing by Kingdon, is emphasized by Peterson and Sandholtz in the case of the Esprit and other technology programmes, and by Cowles and Zysman and Sandholtz in the "selling" of the 1992 Internal Market programme.

In sum, the informal agenda setting influence of the Commission should be greatest under the following conditions:

- distributional consequences of Commission proposals are low;
- information is incomplete, or asymmetrically distributed in favor of the Commission; and
- the transactions costs of negotiating alternative agreements, and the costs of delay while negotiations continue, is high.
- the Commission establishes policy networks with politically influential actors within member states, who "sell" their national governments on the Commission's proposal.

In this context, the differences among neofunctionalists and intergovernmentalists on the question of informal agenda setting might be rephrased in terms of an excessive concentration on these conditions by neofunctionalists, who tend to attribute to the Commission a near-monopoly on information, innovation, and brokerage skills; and an insufficient analysis of them by intergovernmentalists, who implicitly or explicitly assume perfect information, low transactions costs of bargaining, and minimal interaction of the Commission with actors in the member states.

### 3.3 Commission Agenda Setting, and Further Delegation or Integration

Finally, we can bring the analysis full circle, by pointing out that the Commission, having been delegated powers by the member states and enjoying independent preferences within certain constraints, may propose to the Council institutional or policy proposals which involve the further delegation of authority to itself, as in the Commission proposals for the Internal Market in 1985 and the Structural Fund reforms in 1988. This is, indeed, the logic of "political spillover" in neofunctionalist theory, which predicted a snowball process of unintended consequences from the initial creation of independent supranational institutions. In response to these predictions, and to their apparent falsification in the 1960s, intergovernmentalists responded by pointing out the reluctance of member states to consent to the further delegation of sovereignty, regardless of the preferences of the Commission.

What the preceding analysis suggests, however, is that both of these extremes are exceedingly dogmatic, and poor predictors of both Commission agenda setting and Council delegation. The analysis presented above suggests that the Commission may be able to use its agenda setting powers to secure further delegation of sovereignty from member governments to itself, but that its ability to do so will be extremely limited, for several reasons. First, as a general rule, we should expect the member states to delegate to the Commission authority to perform the functions described above, but not to go beyond these; and we should expect such delegation of authority to be accompanied by at least minimal administrative and oversight procedures to limit agency shirking.

Second, major institutional reform in the EC generally takes place by a unanimous vote, as under Article 235, or through Treaty revision, in which decisions are taken by unanimous vote and the Commission shares the right of initiative with all of the member states. In such cases, the Commission's formal agenda setting powers are effectively non-existent. Nevertheless, there remains the prospect that the Commission may exploit its informal agenda setting power to secure additional delegation of authority to itself. According to the analysis of informal agenda setting presented above, the Commission's ability to do so will be greatest where uncertainty is high, where informational asymmetries favor the Commission over the member states, and where the search costs of finding, and the transactions costs of negotiating, alternative institutional arrangements are high.

## 4. Conclusions

This paper is part of a larger project which draws upon institutionalist theory in an attempt to transcend the, in my view, sterile debate between intergovernmentalists and neofunctionalists regarding the true nature both the EC as a system of governance, and of the integration process. The aim of this project is not simply to demonstrate that "institutions matter," a claim which would find few dissenters within the field of EC studies. The aim, rather, is to understand why member states adopt the institutions they do (institutional choice) and why they amend these institutions over time (institutional change); and how these institutions, once adopted, structure subsequent decisionmaking, affect the power and influence of member governments in the Community system and in their own domestic political systems, and empower more-or-less autonomous supranational actors to play an

independent role in EC policymaking and integration. The promise of rational choice institutionalism, in this context, is its ability to transcend the competing claims of intergovernmentalism and neofunctionalism, and generate specific, testable hypotheses. In this closing section, I focus on these various hypotheses, on possible methodological approaches to testing them, and on the normative implications of the current study.

#### 4.1 Formulating hypotheses.

Applying the insights of rational choice institutionalism to the EC context, we can generate five more specific hypotheses about the relationship between member state principals and their supranational agent:

H1: Member state principals, when engaging in a project of collective action, such as the construction and maintenance of a common market, may delegate authority to supranational agents to: monitor compliance and transgression by member states; interpret and apply incomplete contracts; issue complex and credible regulation; and set the collective agenda of the Community. Beyond these basic functions, member states should resist delegation of authority to supranational institutions.

H2: In delegating authority to supranational institutions, member state principals adopt control mechanisms (administrative procedures and oversight procedures) which minimize agency losses (shirking) while producing the lowest agency costs (inflexibility, costs of monitoring and sanctioning). Drawing on the literature, we can then add several corollaries to this hypothesis:

Corollary 1: *Ceteris paribus*, the extensiveness of control mechanisms adopted by principals should vary with the extensiveness of the functions delegated to an agent: The more delegation, the more extensive the control mechanisms [McCubbins 1985].

Corollary 2: *Ceteris paribus*, the design of both administrative procedures and oversight mechanisms will be determined, at least in part, by the degree of uncertainty in a given policy area, and the degree of conflict among principals, in the following way:

- (1) With increasing uncertainty and/or conflict, member states delegate a broader scope of authority and wider choice of instruments, but also more constraining administrative procedures;
- (2) With increasing uncertainty and/or conflict, member states create more constraining oversight procedures to govern agency behavior [McCubbins and Page 1987].

Corollary 3: *Ceteris paribus*, member state principals will prefer to control the activities of their agents through the use of administrative procedures and fire-alarm oversight, rather than through the use of costly police-patrol oversight [McCubbins, Noll and Weingast 1987, 1989; McCubbins and Schwartz 1987].

Corollary 4: Member state principals may, in the light of experience with a given mix of control mechanisms and their effectiveness in minimizing shirking, periodically adjust these mechanisms [Kiewiet and McCubbins 1991], to the extent that institutional rules make this adjustment possible.

H3: The independence or autonomy of a supranational institution is a function of the control mechanisms (administrative procedures and oversight procedures) established to constrain a given agent in a given function, and more specifically of their costliness and credibility in shaping the incentives of the agent.

Corollary 1 [Information]: The autonomy of a supranational agent is greatest where the informational asymmetries (either technical information or hidden information regarding the agent's behavior) favoring the agent over its political principals are greatest, and where these asymmetries are least diminished by member state monitoring.

Corollary 2 [Costs of sanctions]: The autonomy of a supranational agent is greatest where member state conflicts of interest, demanding decision rules, and/or a status-quo default condition make sanctions and overruling difficult and costly for the member states as well as the Commission.

H4: The Commission's formal agenda setting power is greatest under the following conditions: the Commission has the sole right of initiative; the voting rule in the Council is qualified majority; the amendment rule in the Council is a closed or restricted rule (e.g. unanimity); and the costs of delay to the member states is comparable to or greater than the costs of delay to the Commission. In addition, the "location" of the equilibrium policy choice will depend crucially on the distribution of member state preferences on the issue in question.

H5: The Commission's informal agenda setting power is greatest under the following conditions: the distributional consequences of Commission proposals are low; information is incomplete, or asymmetrically distributed in favor of the Commission; the transactions costs of negotiating alternative agreements, and the costs of delay while negotiations continue, is high; and the Commission establishes policy networks with politically influential actors within member states, who "sell" their national governments on the Commission's proposal.

The first two hypotheses concern institutional choice: The choice to delegate, and the choice of a mix of control mechanisms to minimize agency shirking. Both of these hypotheses, however, are less than satisfactory. Hypothesis 1, for example, provides reasonably accurate predictions about the powers delegated to the Commission and the Court of Justice, but provides little leverage on the powers delegated to the European Parliament. Similarly, Hypothesis 2 and its corollaries provide multiple, somewhat imprecise, and possibly conflicting predictions about the mix of control mechanisms selected by principals in particular circumstances. This suggests that a functionalist explanation of institutional choice is inadequate to explain delegation in the EC, and should be replaced by a model of institutional design in which the institutional preferences of the member states are treated as endogenous, and made the study of detailed empirical study [see e.g. Tsebelis 1990].

Given a particular set of institutional rules, however, Hypotheses 3, 4, and 5 generate somewhat more specific and testable hypotheses about the conditions for supranational autonomy and for formal and informal agenda setting. Thus, for example, Hypothesis 3 and its corollaries suggest that supranational autonomy is not a constant, but rather varies widely depending on the ability of member states to monitor their supranational agents, and to credibly threaten sanctions in case of shirking; while hypotheses 4 and 5 specify the distinct conditions for formal and informal agenda, respectively.

Three factors in particular run through all five hypotheses as important determinants of supranational delegation, autonomy and agenda-setting in the European Community. First, the role of incomplete information or uncertainty can hardly be overstated. As we have seen, incomplete information plays a role in the initial member state delegation to delegate powers of monitoring, contract-interpretation, secondary regulation, etc. to supranational agents; similarly, imperfect or asymmetrically distributed information can provide the agent with an advantage in the principal-agent relationship, which may be mitigated, but not eliminated, at a cost to the principal for monitoring; and information asymmetries may also increase the formal and informal agenda power of the European Commission<sup>24</sup>.

Second, as we have seen in sections 2 and 3, the autonomy and the agenda setting powers of an agent depend crucially on its ability to exploit conflicting preferences among member state principals. Thus, as we saw in section 2, agents like the Commission and the Court of Justice 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 which can also garner a qualified majority in the Council.

Third, as we have also seen, the ability of agents to exploit these differences depends in turn on the institutional decision rules established for the application of sanctions, the overruling of legislation, and changes in agents' mandates. These rules vary over time and across issue-areas, and with them the autonomy of agents. Thus, for example, the rules established in the comitology procedure vary from advisory to management to regulatory committees, making the alteration or blocking of Commission proposals more or less difficult; and the voting rules and default conditions for changing agents' mandates differ as well. Similarly, with regard to agenda setting, the ability of the Commission to push through its preferred policy choice depends crucially on the voting rule of qualified majority, as

in the cooperation and codecision procedures, and on the unanimous amendment rule established in Article 149(1). Once again, therefore, institutions matter, which is why member states, and EC institutions, argue about them.

#### 4.2 Testing hypotheses

This raises the question of how one might go about testing these hypotheses. In their early empirical test of the Congressional dominance theory, Weingast and Moran make two important points. First, they argue that because of the preference of principals for unobtrusive forms of oversight, the absence of open, conflictual oversight procedures and sanctions is actually consistent with both the congressional dominance and the runaway bureaucracy view, and cannot therefore be our guide. Secondly, they suggest that a proper test of the congressional dominance view should consist of a statistical analysis regressing some measure of the principals' views on the one hand, with an indicator of agency output on the other. They carry out such an analysis for the Federal Trade Commission, and find a statistically significant correlation between Congressional ideology and FTC case loads, which they argue provides strong evidence for the congressional dominance hypothesis.

In an extended critique of the congressional dominance view, however, Moe [1987] finds both theoretical and methodological problems with Weingast and Moran's analysis. In theoretical terms, Moe argues that the theory of congressional dominance focuses almost exclusively on Congress and congressional preferences, essentially ignoring FTC preferences, the precise mechanisms of congressional control, and alternative sources of influence over FTC policymaking; it also fails to specify and operationalize a precise definition of "congressional control," so that any observed correlation between principal preferences and agency behavior is adduced as evidence of "control". Just as importantly, Moe raises a number of objections to the statistical analysis used in the Weingast and Moran article, the most important of which is that the analysis fails to control for alternative explanations for the change in FTC behavior, such as Presidential influence or judicial review. If we control for such alternative factors, Moe argues, the strong correlation between congressional ideology and FTC behavior essentially disappears. In addition, Moe questions the use of case-load mixes as an indicator of consumerism in FTC activity.

Green and Shapiro [1994] carry Moe's critique farther and apply it to the field of rational choice more generally, arguing that work in this tradition typically suffers from poor specification and operationalization of hypotheses and sloppy empirical testing of cases, which are typically selected on the dependent variable precisely in order to confirm, rather than test, rational choice models. Such arguments might, indeed, be directed at the five hypotheses sketched out above, in particular the first and second. Given these potential pitfalls of rational choice theory and methodology, how might we begin to test hypotheses about agency, delegation and agenda setting?

In theoretical terms, it seems clear that the hypotheses generated above should be further specified and operationalized, so as to focus on measurable variables such as decision rules; and we should be careful not to manipulate assumptions about principal and agent preferences so that testing hypotheses becomes in practice an exercise in "curve-fitting." In methodological terms, I would argue that statistical analyses should be supplemented with the use of case studies, for two reasons. First, as Moe points out, the Weingast and Moran study fails to consider, and hence control for, the internal workings of the FTC and the actions of the courts in affecting the FTC's case-load mix--factors whose likely importance becomes immediately evident in Moe's short case study of the FTC. The use of careful case studies alongside statistical analysis, by identifying such alternative explanations, can help ensure that statistical results are not in fact spurious. Secondly, quantitative analyses tend to be most effective in demonstrating that agents are not completely independent, but in fact respond to the preferences of the principals. As I have argued in this paper, however, the question of supranational autonomy is not so much about polar extremes, but about degrees of independence within more or less constraining sets of control mechanisms. Indeed, the typical claim of a substantive student of the Commission or the ECJ is not that these institutions "run amuck," but rather that they are "two steps ahead" of the member-state consensus, gradually bringing along the member states to more integrative decisions, as in the case of the Delors Commission's proposals for the 1992 Internal Market programme, or the more aggressive use of the Commission's competition policy powers under Commissioner Peter Sutherland in the mid-1980s. Using quantitative methods of member state positions and agency behavior, such behavior would almost certainly register as "member state

control," insofar as the Commission or Court attempts in these cases to capitalize and build upon an emerging consensus among the member states.

For both of these reasons, I would argue that future studies of supranational autonomy and agenda setting should rely, at least in part, on careful case studies of Commission policymaking and agenda setting, and of ECJ rulings, as well as on quantitative studies of the kind that Kilroy [1994] has undertaken for the Court. Only through the application of both methods are the fine-grained details of supranational autonomy and agenda setting likely to be brought out.

#### 4.3 Normative Implications

In this paper I have attempted to formulate a positive theory of supranational institutions, and of their autonomy and influence over policy choices and institutional choices. Reference should be made in closing, however, to the normative implications of principal-agent relationships in the European Community setting. In the traditional principal-agent literature--which emphasizes principal-agent relationships such as those between employers and employees, or between democratically elected legislators and the public bureaucracies they create--the normative implication is that agency shirking is either inefficient (in the case of employees) or undemocratic (in the case of runaway bureaucracies), and that such shirking can and should be minimized through the use of the control mechanisms discussed above.

In this context, perhaps the most curious aspect of the existing literature on EC institutions is the favorable normative evaluation by many (although certainly not all) students of European integration of autonomous or "runaway" supranational institutions. The reason is simple: EC institutions, including the European Parliament as well as the European Commission and the Court of Justice, are often seen as the "engines" of integration, prodding the member states along the road to further integration by stealth, cunning, or example [c.f. Haas 1958; Ross 1995; Stein 1981; Mancini 1991]. Thus, for advocates of European integration, the autonomy, or indeed "leadership," of European institutions on the road to further integration is a political and moral good, and member state principals seeking to exert control over their agents are seen as reactionary nationalists, attempting to turn back the clock of integration. For advocates of European integration, therefore, the question of Commission or ECJ autonomy presents a normative tradeoff between integration, which would seem to be furthered by Commission and ECJ discretion, and democratic control, which argues for reining these institutions in. This tradeoff is a real one, which, it seems to me, many advocates of European integration have yet to face<sup>25</sup>.

Regardless of the normative connotations which one attaches to supranational autonomy, however, our positive understanding of the conditions of that autonomy is undertheorized and untested. The burden of this paper has been to demonstrate that rational choice institutionalism, despite its shortcomings, appears to offer the most promising approach to our understanding of the relationship between the unelected agents which serve as the engines of integration, and the reluctant, but democratically elected, member governments which seek to rein them in.

#### References

Baron, David and John Ferejohn, 1989. "Bargaining in Legislatures," *American Political Science Review*, Vol. 83, pp. 1181-1206.

Bradley, Kieran St Clair, 1992. "Comitology and the Law: Through a Glass, Darkly," *Common Market Law Review*, Vol. 29, pp. 693-721.

Burley, Anne-Marie and Walter Mattli, 1993. "Europe Before the Court: A Political Theory of Legal Integration," *International Organization*, Vol. 47, No. 1 (Winter), pp. 41-76.

Caporaso J. and John Keeler, 1995. "The European Community and Regional Integration Theory," in Carolyn Rhodes and Sonia Mazey, eds., *The State of the European Union* (Boulder: Lynne Rienner/Longman, forthcoming).

- Cowles, Maria Green, 1993. "The Politics of Big Business in the Single Market Program," paper presented to the European Community Studies Association Third Biennial International Conference, 27 May 1993, Washington, DC.
- Docksey, Christopher and Karen Williams, 1994. "The Commission and the execution of Community policy," in Edwards and Spence, eds., pp. 117-45.
- Edwards, Geoffrey and Spence, David, eds., 1994. *The European Commission* (Harlow: Longman Current Affairs).
- Egan, Michelle, 1994. "Regulating European Markets: Mismatch, Reform and Agency," paper presented at the Harvard University Graduate Student Workshop, "Governing Europe: Power, Process and Legitimacy After Maastricht," 1-4 December 1994.
- Fiorina, Morris, 1982. "Legislative Choice of Regulatory Forms: Legal Process or Administrative Process?" *Public Choice*, Vol. 39, pp. 33-66.
- Garrett, Geoffrey, 1992. "International Cooperation and Institutional Choice: The European Community's Internal Market," *International Organization*, Vol. 46 (Spring), pp. 533-60.
- Garrett, Geoffrey and Barry Weingast, 1993. "Ideas, Interests, and Institutions: Constructing the European Community's Internal Market," in Judith Goldstein and Robert O. Keohane, eds., 1993. *Ideas and Foreign Policy* (Ithaca: Cornell University Press), pp. 173-206.
- Gatsios, Konstantine and Paul Seabright, 1989. "Regulation in the European Community," *Oxford Review of Economic Policy*, Vol. 5, No. 2, pp. 37-60.
- Gerus, Victoria, 1991. "Comitology within the European Community's Policy-Making Process: A Mechanism of Political Control in the Inter-Institutional Relations of the Council of Ministers and the Commission," unpublished manuscript, Harvard University, September.
- Green, Donald P., and Ian Shapiro, 1994. *Pathologies of Rational Choice Theory* (New Haven: Yale University Press).
- Haas, Ernst B., 1958. *The Uniting of Europe* (Stanford: Stanford University Press).
- Hall, Peter A., and Rosemary C.R. Taylor, 1994. "Political Science and the Four New Institutionalisms," paper presented at the Annual Meeting of the American Political Science Association, New York, 1-4 September.
- Hoffmann, Stanley, 1966. "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe," *Daedalus*, 95, 3.
- Kent, Penelope, 1992. *European Community Law* (London: Pitman).
- Keohane, Robert O., 1984. *After Hegemony* (Princeton: Princeton University Press).
- Kiewiet, Roderick, and Mathew D. McCubbins, 1991. *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: University of Chicago Press).
- Kilroy, Bernadette, 1994. "Member State Control or Judicial Independence: the Politics of Policymaking in the European Court of Justice," paper presented at the Harvard University Graduate Student Workshop, "Governing Europe: Power, Process and Legitimacy After Maastricht," 1-4 December 1994.
- Kingdon, John W., 1984. *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown).



- Krehbiel, Keith, 1987. "Sophisticated committees and structure-induced equilibria in Congress," in McCubbins and Sullivan, eds., pp. 376-402.
- Krehbiel, Keith, 1991. *Information and Legislative Organization* (Ann Arbor: University of Michigan Press).
- Lindberg, Leon N., and Scheingold, Stuart A., 1970. *Europe's Would-Be Polity* (Englewood Cliffs, NJ: Prentice-Hall).
- Majone, Giandomenico, 1994. "The Rise of the Regulatory State in Europe," *West European Politics*, Vol. 17, No. 3 (July), pp. 77-101.
- Mancini, G. Federico, 1991. "The Making of a Constitution for Europe," in Hoffmann and Keohane, eds., pp. 177-194.
- Martin, Lisa L., 1993. "International and Domestic Institutions in the EMU Process," *Economics and Politics*, Vol. 5, No. 2 (July), pp. 125-44.
- Mazey, Sonia, and Jeremy Richardson, 1994. "The Commission and the lobby," in Edwards and Spence, eds., pp. 169-201.
- McCubbins, Noll and Weingast, 1987. "Administrative Procedures as Instruments of Political Control," *Journal of Law, Economics, and Organization*, Vol. 3, No. 2, pp. 243-77.
- McCubbins, Noll and Weingast, 1989. "Structure and Process, Policy and Politics: Administrative Arrangements and the Political Control of Agencies," *Virginia Law Review*, Vol. 75, pp. 431-82.
- McCubbins, Mathew, and Talbot Page, 1987. "A Theory of Congressional Delegation," in McCubbins and Sullivan, eds.
- McCubbins, Mathew D. and Terry Sullivan, eds., 1987. *Congress: Structure and Policy* (New York: Cambridge University Press).
- McKelvey, Richard, 1976. "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control," *Journal of Economic Theory*, Vol. 12
- Milgrom, Paul, Douglass North and Barry Weingast, 1990. "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges and the Champagne Fairs," *Economics and Politics*, Vol. 3, No. 1, pp. 1-23.
- Milgrom, Paul, and John Roberts, "Bargaining Costs, Influence Costs, and the Organization of Economic Activity," in James Alt and Kenneth Shepsle, eds., *Perspectives on Positive Political Economy* (New York: Cambridge University Press, 1990), pp. 57-89.
- Moe, Terry M., 1984. "The New Economics of Organization," *American Journal of Political Science*, Vol. 28, pp. 739-777.
- Moe, Terry M., 1987. "An Assessment of the Positive Theory of Congressional Dominance," *Legislative Studies Quarterly*, Vol. 12 (November), pp. 475-520.
- Moe, Terry, 1990. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy," in Oliver Williamson, ed., *Organization Theory from Chester Barnard to the Present and Beyond* (New York: Oxford University Press), pp. 116-53.
- Moravcsik, Andrew, 1991. "Negotiating the Single European Act," in Keohane and Hoffmann, eds., *The New European Community* (Boulder: Westview Press), pp. 41-84.

Moravcsik, Andrew, 1993. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies*, Volume 31, No. 4 (December), pp. 473-524.

Nugent, Neill, 1994. *The Government and Politics of the European Union* (Durham: Duke University Press).

Ordeshook, Peter C. and Thomas Schwartz, 1987. "Agenda and the Control of Political Outcomes," *American Political Science Review*, Vol. 81, pp. 179-200.

Peterson, John, 1991. "Technology Policy in Europe: Explaining the Framework Programme and Esprit in Theory and Practice," *Journal of Common Market Studies*, Vol. 29, No. 3, p. 287.

Pierson, Paul, 1995. *The Path to European Integration: A Historical Institutional Perspective*, Minda de Gunzburg Center for European Studies, Working Paper #58.

Pollack, Mark A., 1995. "Regional Actors in an Intergovernmental Play: The Making and Implementation of EC Structural Policy," in Sonia Mazey and Carolyn Rhodes, eds., *The State of the European Union*, Vol. 3. (Boston: Lynne Rienner, forthcoming).

Riker, William, 1980. "Implications from the Dis-equilibrium of Majority Rule for the Study of Institutions," *American Political Science Review*, Vol. 74, pp. 432-47.

Riker, William H., 1986. *The Art of Political Manipulation* (New Haven: Yale University Press).

Ross, George, 1995. *Jacques Delors and European Integration* (New York: Oxford University Press).

Sandholtz, Wayne, 1992. "ESPRIT and the Politics of International Collective Action," *Journal of Common Market Studies*, Vol. 30, No. 1 (March), pp. 1-22.

Scharpf, Fritz W., 1988. "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration*, Vol. 66 (Autumn), pp. 239-78.

Schneider, Mark and Paul Teske, 1992. "Toward a Theory of the Political Entrepreneur: Evidence from Local Government," *American Political Science Review*, Vol. 86, No. 3 (September), pp. 737-747.

Shepsle, Kenneth A., 1979. "Institutional Arrangements and Equilibrium in Multidimensional Voting Models," *American Journal of Political Science*, Vol. 23, pp. 27-60.

Shepsle, Kenneth A., 1986. "Institutional Equilibrium and Equilibrium Institutions," in Herbert Weisberg, ed., *Political Science; The Science of Politics* (New York: Agathon).

Shepsle, Kenneth A., 1989. "Studying Institutions: Some Lessons from the Rational Choice Approach," *Journal of Theoretical Politics*, Vol. 1, No. 2, pp. 131-147.

Shepsle, Kenneth A. and Barry R. Weingast, 1984. "Uncovered Sets and Sophisticated Voting Outcomes with Implications for Agenda Control," *American Journal of Political Science*, Vol. 28, pp. 49-74.

Shepsle, Kenneth A. and Barry R. Weingast, 1987a. "The Institutional Foundations of Committee Power," *American Political Science Review*, Vol. 81, pp. 85-104.

Shepsle, Kenneth A. and Barry R. Weingast, 1987b. "Why are Congressional Committees Powerful?" *American Political Science Review*, Vol. 81, pp. 935-45.

- Shepsle, Kenneth and Barry Weingast, 1994. "Positive Theories of Congressional Institutions, Legislative Studies Quarterly, (May), pp. 145-179.
- Stein, Eric, 1981. "Lawyers, Judges, and the Making of a Transnational Constitution," American Journal of International Law, Vol. 75 (January), pp. 1-27.
- Taylor, Paul, 1983. The Limits of European Integration (New York, Columbia University Press).
- Tsebelis, George, 1990. Nested Games: Rational Choice in Comparative Politics (Berkeley: University of California Press).
- Tsebelis, George, 1994. "The Power of the European Parliament as a Conditional Agenda Setter," American Political Science Review, Vol. 88, No. 1 (March), pp. 129-142.
- Weingast, Barry R., 1989. "Floor Behavior in the U.S. Congress: Committee Power Under the Open Rule," American Political Science Review, Vol. 83, No. 3 (September), pp. 795-815.
- Weingast, Barry R., and Mark Moran, 1983. "Bureaucratic Discretion or Congressional Control? Regulatory Policy-making by the Federal Trade Commission," Journal of Political Economy, Vol. 91, No. 5, pp. 765-800.
- Weingast, Barry R. and William J. Marshall, 1988. "The Industrial Organization of Congress: or Why Legislatures, Like Firms are not Organized as Markets," Journal of Political Economy, Vol. 96, No. 1, pp. 132-63.
- Williamson, Oliver, 1985. The Economic Institutions of Capitalism: Firms, Markets, Regional Contracting (New York: Free Press).