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**Sous la direction de Renaud Dehousse et Yves Surel**

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**Member States and International Institutions :  
Institutionalizing Intergovernmentalism in the European Union**

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The European Union (EU) represents the most ambitious experiment in institutionalized interstate cooperation in the world.<sup>1</sup> So extensive are its areas of competence, and so developed its institutional structures, that scholars have increasingly come to study it as if it were state-like. The academic literature on the EU has, in recent years, increasingly drawn on the analytical tools employed by students of domestic institutions in their attempts to theorize about the EU. Such work has provided numerous benefits in comparison to traditional theories of 'European integration'. However, Institutionalists have, as yet, failed to provide fully convincing explanations either of the way the EU has developed over time, or of how it currently functions.

This article offers an alternative institutionalist explanation of the relationship between states and international institutions. This alternative theoretical approach provides a palliative to two misconceptions that have characterized the study of the EU and which stem partly from the adoption of information-based approaches to delegation by students of the EU, and partly from the legacy of the neofunctionalist-intergovernmentalist debate that dominated the study of the EC/EU for many years.

First, existing theoretical accounts of the EU have tended overwhelmingly to assume that relations between member states and the so-called 'supranational' institutions are inherently conflictual. These relations are therefore conceptualized as a one dimensional struggle for power, with member states anxious, above all else, to preserve sovereignty and control over policy making from supranational institutions eager to prise these from them. Second, the majority of theoretical studies posit hugely static views of the interaction between the EU and its member states. Thus those writing in the intergovernmentalist tradition stress the perennial ability of member states to control developments in the EU, whilst their intellectual adversaries emphasize the continual ability of the supranational institutions to extend their own power at the expense of member states.

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The theoretical approach suggested here is based on two claims which are at odds with these longstanding and ubiquitous assertions. First, it is argued that EU politics are inherently multidimensional, which is to say that, apart from the struggle for competence between member states and the EU institutions, it also involves substantive issues of policy content with distributive implications for the member states. Distribution leads to different conception – member states against each other, with supranational institutions not neutral or seen as enemy of all, but used for advantage and sometimes allying with one state against others.

Second, process. Delegation leads to unintended consequences, so, contrary to intergovernmentalist line, supranational institutions may find way to increase competence at expense of member states. Crucial thing is distributive consequences – winners and losers. Two processes: Member states learn and feed learning into their interactions. So can respond to agents sick things. Also, as nature of system changes – stakes higher and veto stronger – incentives change – more important not to lose, so increasing incentives to rein in agents and avoid unintended consequences. Delegation and the pooling of sovereignty in the international realm both, on occasion, lead to unanticipated and indeed unintended consequences. These will be closer to the policy preferences of some states than of others. Member states dissatisfied with the outcomes generated by international institutions, however, have the capacity to learn from past experience and to use their significant resources to react to such outcomes in order either to reverse them, or to prevent their reoccurrence in the future.

In responding, states have far more resources at their disposal than neofunctionalist approaches claim. States are political organizations with tremendous resources at their disposal, resources that enable them to monitor closely and control to a significant extent the actions of international institutions. Moreover, member states also control appointments to international institutions, and are thus able to influence not only the behaviour of the latter, but also their preferences, thereby limiting conflict between international institutions and their creators.

Thus, the relationship between member states and international institutions is a dynamic one. It changes over time, and passes through different phases. The ability of member states to control the outcomes produced by international institutions tends to become *institutionalized*, in two discrete senses of the term. First, and consistent with the most generally understood notion of the term in the political science literature, in that the outcomes produced by these institutions is profoundly affected by their structure. Interstate competition over distributive outcomes is mediated by the institutional structures of the EU. Institutionalized also, however, in that the influence of member states within international institutions will tend to become both ubiquitous and embedded.

The article is divided into four sections. Section one reviews the recent Institutionalism literature on the European Union, noting both the advantages it offers over more traditional approaches, and its failings. Section two outlines a theoretical approach to international delegation and the pooling of sovereignty that addresses the major failings apparent in this literature. Section three spells out the theoretical claims and predictions that emerge from the preceding analysis. The final section tests these against the development of the EC / EU since the 1980s.

## INSTITUTIONALISM AND THE EUROPEAN UNION

Institutionalist studies of the EU vary widely in nature. They range from applications of sophisticated game theoretical tools (Garrett and Tsebelis 2000) to non-formalized applications of the 'new Institutionalism' literature (Bulmer 1993); from tests of Institutionalism theory using specific policy sectors (Smyrl 1998) or institutions (Garrett and Tsebelis 1996) to more general explanations of the history of the EC/EU (Pierson 1996).

Such approaches provide several benefits in comparison to the debates that dominated the field during the preceding four decades. First, by focusing on the inter-relationship between different institutions and actors, they avoid the danger of selection bias. Both Neofunctionalist and Intergovernmentalist scholars sought to explain developments resulting from the interplay of different EC/EU institutions in terms of the actions of only certain of them. Neofunctionalists, and those, sometimes termed 'supranationalists', who share their views concerning the importance of the supranational institutions, if not the neofunctionalist belief in the process of 'spillover' (Doleys 2000: 533), explain EU-generated outcomes as a function largely of the actions of 'supranational' institutions such as the European Commission and the European Court of Justice (ECJ) (Cram 1993, Alter 1996, Pierson 1996, Mattli and Slaughter 1998, Mutimer 1989, Tranholm-Mikkelsen 1991, Schmitter 1996, Stone Sweet and Sandholtz 1998, Matlár 1997a, 1997b, Burley and Mattli 1993). Intergovernmentalists, in contrast, formulate their rival explanations in terms of the actions of the member states (Moravcsik 1993, 1998).

However, the development of the EC/EU cannot be explained except in terms of the influence of both sets of actors. Thus, whilst the member states were responsible for signing the Single European Act (SEA), which launched the EC's Single Market, the ECJ and the Commission played pivotal roles both in creating the conditions for the SEA, and in challenging barriers to trade thereafter. It is a real strength of institutionalism, therefore, that it allows us to take account of the interactions between different institutions and actors.

Second, theoretical debates on the EU have traditionally been couched in a terminology that was somewhat obfuscatory. Much of the vocabulary used by 'integration theorists' – including notions such as 'supranational', or, indeed, 'integration' itself – is somewhat self-referential: language derived from describing the EU is used to explain its development. Moreover, different scholars have employed these concepts in different ways, which can engender confusion and hinder fruitful theoretical exchange.<sup>2</sup> Finally, terminological specificity – not to mention terminological confusion and contradictions – impede attempts at effective comparison with other social and political institutions and limit the accessibility of the sub-field to social scientists not versed in the unique lexicon of 'integration studies'.

In contrast, Institutionalism's conceptual tools are more clearly defined and precise. They allow us to think about the EU in terms readily comprehensible to social scientists in general, and facilitate comparative analysis and the generation of non-case specific hypotheses. This is perhaps most true of rational choice inspired Institutional accounts. Mark Pollack has noted that rational choice institutionalism 'holds the promise of re-examining old neofunctionalist topics like supranational agency, and doing so within a framework that provides ... a set of assumptions broadly consistent with other rationalist approaches' (Pollack 2001: 231).

Though valuable, however, current applications of institutional theory to the EU suffer from two major shortcomings. First, and in a manner redolent of the Neofunctionalist-Intergovernmentalist debates of old, they conceive of politics in international institutions as one-dimensional. According to such a view, all outcomes reinforce the power of either the EU institutions or all the member states. Politics, in other words, is a battle over competence.

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2. For example, many authors use the term integration in a generic way to refer to everything connected with the EC/EU, as in the ubiquitous phrase 'the development of integration'. Others are more specific. Hence for Moravcsik (1993: 479), integration refers to the scope of international policy co-ordination. In contrast, for Stone Sweet and Sandholtz (1998: 8) it is a term meaning the 'process by which the horizontal and vertical linkages between social, economic and political actors emerge'. Given the fact that most scholars seem (at least implicitly) to lean towards Moravcsik's definition, Stone Sweet and Sandholtz's (1998: 12) claim that 'rather than being the generator of integration, intergovernmental bargaining is more often its product' is misleading in that it does not imply what, at first sight, it might seem to.

However, much of the routine business carried out within the EU is allocative (or distributional) in nature and has few if any clear competence implications. Whether carbon dioxide emissions from automobiles are set at one level or another is not a question that obviously engages the competence of either the member states or the EU institutions (though the issue of who has the right to decide clearly is). In other words, the one-dimensional conception adopted by Institutionalists precludes effective explanation of many substantive policy outcomes, thereby severely limiting their explanatory capacity.

Second, the institutionalist literature shares many of the assumptions of the traditional theoretical debate concerning the relationship between member states and international institutions. First, and partly because of the focus on issues of competence, it assumes this struggle for competence between all the member states on the one hand and the supranational institutions on the other to be inevitable. Insofar as microfoundations for the EU institutions are provided, institutionalists generally base these on the assumption that their preferences will be at variance with those of all the member states

Recent rational choice Institutional work on the EU is a case in point. Much of it derives its insights from applications of the principal-agent model to the study of domestic, and particularly American, institutions (cf. Pollack 1997). The proliferation of powerful agencies created by Congress led some to propose an 'abdication hypothesis', according to which representatives have abdicated their functions to non-elected bureaucrats via delegation. According to this view, agencies represent a real threat to congressional power (Kiewiet and McCubbins 1991; McCubbins and Schwartz, 1987).

The basis of this analysis is the assumption of incentive incompatibilities between principals and agents as being 'an inherent feature of contracting relationships' (Doleys 2000: 537). Kiewiet and McCubbins (1991: 5) express this in particularly striking terms:

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. The opportunism that generates agency losses is a ubiquitous feature of the human experience. It crops up whenever workers are hired, committees are appointed, property is rented, or money is loaned. The message that we are all feckless agents of a Divine Principal is at the very heart of Judaeo-Christian theology.

Given these incentive incompatibilities, the major dynamic accounting for the possibility of agency drift is incomplete information concerning the possible actions of delegated agents is commonly referred to as the major dynamic accounting for agency drift (Weingast and Moran 1983). Consequent problems of moral hazard and adverse selection provide opportunities for agents to act in ways other than those intended by their principals (Mancho-Stadler and Pérez Castrillo, 1997; Kiewiet and McCubbins 1991: 25, Niskanen 1971; Holmstrom 1979; Arrow 1985). The combination of incentive incompatibilities and information asymmetries leads to the possibility of agents exploiting 'the costs of measuring their characteristics and performance to behave opportunistically' (Doleys 2000: 537)

When applied to the EU, such assumptions lead a view of the 'supranational' institutions as 'independent actors with their own preferences and goals' distinct from those of the principals (Doleys 2000: 537). Because of this, delegated agents in the EU have strong incentives to shirk, that is 'deliberately to pursue self-interested objectives in the knowledge that they differ from those of the principals.' (Elgie and Jones 2000: 3). Moreover, like in the case of relations between Congress and Federal Agencies, it is assumed that international agents possess a crucial advantage over the member states because 'in the EU...information is largely controlled by the supranational Commission' (Aspinwall and Schneider 2001: 7).

Yet, the historical record belies such assumptions. The very fact that certain member states choose to align themselves with one or other of the EU institutions against their competitors (for instance by taking other member states to the European Court of Justice) or that one EU institution rules in favour of member states against another such institution (as the Court has done on numerous occasions against the Commission) bears eloquent testimony to the fact that member state – EU competition is neither inevitable nor as clear cut as most theorists assert. Moreover, the relationships between EU institutions and the various member states have changed over time. Certainly, there have been periods – such as during the so-called ‘empty chair’ crisis of the 1960s, or the period immediately following the signing of the Maastricht Treaty in 1992 – when a broad conflict over competence between member states and one or all of the EU institutions was to the fore. Equally, however, other periods have been marked either by crosscutting alliances involving both member states and supranational institutions, or by a clear element of self-restraint on the part of those EU institutions, with member states coming to the fore.

This confronts us with the challenge of specifying an alternative means of conceptualizing the relationship between the member states and the EU. The following section argues that the roots of the problems highlighted above lie in the tendency of many theorists to draw assumptions (implicitly or explicitly) from the study of domestic institutions – a practice increasingly encouraged not only by students of the EU (Hix 1999b) but by political scientists more generally (Martin and Simmons 1998, Milner 1998). However, paying greater regard to the specific nature of international as opposed to domestic politics is a *sine qua non* of constructing a theoretical approach that will allow us more effectively to explain the development of international organizations – including the EU – over time.

## STATES AND INTERNATIONAL INSTITUTIONS

### *Delegation and Pooling*

There is little need here to describe in detail the reasons why states create institutions. A voluminous literature illustrates why rational states may choose to co-operate under circumstances characterized by repeated interactions, long time horizons and a sizeable expected utility of co-operation. (Axelrod 1984; Oye 1986; Axelrod and Keohane 1985). The creation of institutions can help overcome the problems that frequently beset international collective action by reducing informational asymmetries, monitoring compliance and clustering issues so as to reduce transaction costs (Keohane 1984).

International institutional arrangements vary in nature, particularly in terms of the effect they have on the ability of individual member states to control the outcomes they produce. There are two ways in which member states can reduce their individual ability to determine the nature of such outcomes. One is the pooling of sovereignty through, for instance, the introduction of majority voting. The other involves the delegation of certain specified tasks to one or several agents.

All things being equal, states eschew delegation or the pooling of sovereignty, preferring to retain formal control over decision-making processes in order to reduce the political risks associated with a loss of formal decision-making control. Yet there are several reasons why states may opt for pooling and delegation. When interactions are repeated, states’ time horizons are long, and the utility of co-operation is high, such arrangements can represent rational solutions to problems requiring co-operation (Garrett 1992). Pooling can provide more efficient interstate decision making. Delegation is a means of solving problems of incomplete contracting and ensuring compliance by principals. Delegation also provides a

means of achieving credible policy commitments that may not be possible in its absence (Pollack 1997, 1999). As Moravcsik puts it:

... the decision to adopt qualified majority voting or delegation to common institutions [is] the result of a cost-benefit analysis of the stream of future substantive decisions expected to follow from alternative institutional designs. For individual Member States carrying out such a cost-benefit calculation, the decision to delegate or pool sovereignty signals the willingness of national governments to accept an increased political risk of being outvoted or overruled on any individual issue in exchange for more efficient collective decision making on average.

(Moravcsik 1993: 509-10).

### *States as Actors*

Once the decision to create institutions has been taken, however, the question arises as to the nature of their relationship with their creators. As argued in the previous section, much Institutionalist literature derives its assumptions and hence its findings from work on American politics. Such claims, however, cannot simply be transposed to the relationship between states and international institutions. In attempting to make theoretical claims about the implications of international delegation, we need to be aware of the kinds of actors involved:

...we need to know something – quite a bit, actually – about each of the parties and about the context in which their relationship is embedded. This is a logical requirement of the principal-agent model. It is also what common sense suggests ought to be the case....If the principal-agent model tells us anything, it is that control is a two-way street: a relationship between two actors, both of whom must be well characterized and understood if their jointly determined behavioral outcomes are to be observed.

(Moe 1987 481-482)

The principals who create international institutions, and who delegate functions to them, are states. We should be wary of assuming that lessons from the study of delegation *within* states are applicable to the case of delegation in the international realm *by* states. The characteristics of these organizations render the nature of their interactions with international institutions qualitatively different to those pertaining between actors in domestic political settings.

By far the most important such characteristic is that major states are sovereign entities able to mobilize powerful resources. Even the smallest states have significant resources at their disposal, including often sizeable ministries to monitor developments in all aspects of public policy. As Andrew Moravcsik (1999) puts it, why:

should governments, with millions of diverse and highly trained professional employees, massive information-gathering capacity, and long-standing experience with international negotiations at their disposal, *ever* require the services of a handful of supranational entrepreneurs to generate and disseminate useful information and ideas?

In other words, even when states do create international agents to perform certain tasks, their resources mean that problems of adverse selection and moral hazard are mitigated, because national monitoring capacities limit informational asymmetries in favour of international institutions.

### *Distributional Conflict*

Scholars have recently stressed the importance of studying the distributional implications of institutions (Martin and Simmons 1998: 745). The creation of institutions does not imply an end to conflict between the actors responsible for their genesis. In particular, whilst they reflect agreement on the need for collective action, they do not necessarily represent a convergence of views amongst their creators concerning the distributional benefits they entail:

[T]here is generally more than one way to structure social institutions in order to produce gains from cooperation, coordination or exchange. And the major distinguishing feature of these different institutional forms is their distributional consequences. Although they all can produce gains from acting collectively, they distribute these additional benefits differently....The structuring of the various economic and political institutions that constitute the framework of social life can dramatically influence the fundamental distribution of economic and political success and failure in a community.

(Knight 1992: 26)

Institutions, therefore, are both the product of and venues for competition over distributive outcomes (Knight 1992, Dore 2000).

In the case of delegation to international institutions, distributional conflict between principals takes on an even greater importance. Unlike the analogy of the Congressional abdication hypothesis, international agencies, whilst representing a constraint on the member states, do not directly challenge their ultimate authority. Moreover, unlike participants in the complex economic exchange that leads to a need for third party enforcement (North 1990), states are functionally identical, which in itself lessens their resource dependence on others, and increases their proclivity to focus on distributive conflict between themselves rather than on a struggle for competence with their agents.<sup>3</sup> In other words, states will tend to base their judgements on the actions of international institutions on their perception of whether these actions further their own preferences, rather than on whether they represent some ill-defined threat to national sovereignty.

Delegation can provide not only a means of achieving credible policy commitments, and of dealing with potential problems of cheating or free riding, but also of enshrining substantive policy choices and imposing these on others. Delegation to international agencies allows some states either to export their preferences to others, or to impose restrictions on traditional practices elsewhere. Delegation, in other words, is not simply a means of ensuring the presence of a 'neutral referee', as integration theories have claimed. It is also a way of *institutionalizing partiality*. As a consequence, given multiple principals, an agency will act in ways which favour some more than others (Moe 1987: 482).<sup>4</sup>

The relationship between states and institutions therefore can be seen as falling within a two-dimensional policy space. The first concerns 'competence'. The second relates to policy content.<sup>5</sup> Examining the relationship between states and international institutions in this way

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3. This is not to say that all states are identical or have the same resources at their disposal. On the contrary, there are crucial differences between particularly large and small states in terms of the resources they can bring to bear to exert influence in international institutions (Menon 2001). The point is, rather, that the clear functional differentiation between actors which define many forms of domestic economic exchange and which were the basis on which economic approaches to institutions were founded is not necessarily present in the realm of interstate exchange.

4. This is true of all institutions. However, the argument here is that distributional conflict takes on a greater priority in the international realm for the reasons enunciated above. Moreover, most approaches to the study of the EU, because they are one dimensional, fail to address the distributional implications of international institutions.

5. I am grateful to Steve Weatherill for suggesting this neat terminology to me. The notion of content is deliberately preferred here to that of a 'left-right' dimension (Hooghe and Marks 1999; Hix 1998, 1999), which

enables us to take account of the very real conflicts that occur over matters of substance as well as over questions of competence. It also allows us to account for the cross-cutting alliances that often pit some member states, along with one or more EU institution, against others.

### *The Structure of International Delegation*

Not only are states tremendously well-resourced actors, therefore, but this reinforces the central importance of distributional conflict between them as opposed to conflict between them and delegated agents in the international realm. The third aspect of the relationship between states and international institutions that differentiates it from delegation domestically is the fact that, unlike in domestic politics, international institutions do not have to hand a ready supply of officials without links to the principals. Whilst the notion of staffing international institutions with non-member state nationals is an interesting one, it has not been attempted. The relationship between principals and the staff of international agencies, therefore, is unique.

As indicated above, arguments stressing the problems of delegation tend to assume that the very structure of principal-agent relationships implies a fundamental and inevitable conflict of interest between the two parties. In the case of international institutions, however, there is no natural or inevitable tendency towards agency drift insofar as the 'policy content' dimension is concerned. There is no particular reason why institutions dealing with issues that fall within this dimension will exhibit agency drift along this axis. Moreover, unlike in the American system, where the principal (Congress) may not enjoy the power of appointment (Moe 1987: 489), governments generally do enjoy this right over the staff of at least some international institutions. Whilst adverse selection problems still bedevil them, they are nonetheless in a position to be able to choose candidates whose preferences concerning 'policy content' are close to their own. Governments 'will appoint people who have internalized the goals of the states rather than the organizations even when they are not officially there as representatives' (Nicholson 1998: 85).

The picture is somewhat different when we turn to the 'competence' dimension. The literature on bureaucracies places great stress on the bureau-expanding behaviour of officials who attempt to increase the competence, predominantly via the budget of their own institution, often at the expense of their principals (Niskanen 1971). Yet once again, the international context of the institutions on which we are focusing makes the problem somewhat less irresolvable than it has proved to be within many domestic political systems.

The crucial issue here is incentives. Given the danger of shirking, principals try to 'introduce incentive structures into the agency relationship that encourage preference compatibility.' (Doleys 2000: 537), or, at least, to design an institutional arrangement which 'minimizes the opportunity for the [agent] to act in a self-interested manner' (Elgie and Jones 2000: 1). States have greater practical incentives to offer than many principals, which enable them to limit the potential for agency drift even along the 'competence' dimension. These include control over the prospects of those who wish to return to work within the national administration. To take the American example again, it is reasonable to assume that employees of a Federal Environmental Agency do not aspire to become Congressmen. Officials in international organizations, however, may well seek to prolong their careers in national administrations, or conceivably even national politics. In this case – particularly for those on short-term contracts – the home government enjoys a significant ability to ensure

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fails to capture the very real divergences over substantive preferences that exist in areas outside the socio-economic field.



loyalty. Herein lies another reason why EU institutions may not represent the kinds of purely impartial referees between states that some are wont to claim. Member states wield at least a degree of control over not only the behaviour but also the very preferences of the staff of international institutions. After all, for these officials, where one stands depends not only on where one sits, but also on where one wants to go.

Certainly, the degree to which governments can influence the behaviour of their nationals within international institutions is contingent on a host of factors. The power of appointment is crucial if governments are going to appoint individuals who share their preferences and have aspirations to return to the home administration. Almost as important, in order to avoid the danger of officials 'going native' in post, is the power of reappointment. The threat of non-reappointment can be used effectively to shape the behaviour of national officials in international posts. Third, different statutory conditions will lead to different levels of potential state control over their nationals. Are debates in the institution concerned publicized, allowing for effective monitoring? How strong are the statutory stipulations concerning independence? However, the fact that governments potentially do enjoy this kind of influence at all is enough to call into question the assumption of inevitable conflict between states and international institutions.

The ability of member states to at least aspire to wield a degree of influence over the officials who staff international institutions means that they are potentially able to influence the actions of the agent even within its domain of delegated powers. It also reinforces the arguments made above concerning both the resources of, and the fundamental importance of distributional conflict between, the member states. Clearly, the presence of nationals within the institution concerned – and nationals who may find it in their interests to cooperate closely with their home nation – further diminishes the problem of informational asymmetries confronting the member states. And as the danger of slippage along the 'competence' dimension recedes, so the centrality of matters of content increases.

## THE DYNAMICS OF INTERNATIONAL ORGANISATIONS

### *Unintended consequences*

Rational states may choose to create institutions. However, these institutions will not necessarily perform the functions expected of them in the ways anticipated by their creators. Given incomplete information – and the creation of institutions, whilst serving to reduce problems of information, does not resolve them completely – states are unable, when making their cost-benefit analysis of the expected benefits of pooling and delegation, accurately to predict their precise consequences:

Actors may be in a strong initial position, seek to maximize their interests, and nevertheless carry out institutional reforms that fundamentally transform their own positions...in ways that are unanticipated and / or undesired.

(Pierson 1996: 126, see also Hall and Taylor 1996: 952)

Thus whilst a rational decision may be taken to pool sovereignty or delegate tasks based on a strategic calculation that this will lead to future benefits, expectations may be confounded. In the case of pooling, it is impossible for member states accurately to predict how others will vote in the future. As for delegation, as Terry Moe, in a widely cited passage, points out:

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. The political game is different now: there are more players and more interests to be accommodated

(Moe 1990: 121)

There is no way of being certain, in other words, how this new actor will act in all circumstances. Moreover, the problems inherent in anticipating the outcomes of institutionalized co-operation are heightened in the context of delegation by multiple principals, if only because deliberate ambiguity may be a necessary price to pay for institutional creation in the first place. To put it another way, because of the need to secure agreement between principals with different interests and preferences, states will eschew contingent contracting, in favour of relational contracts that often do little more than simply 'frame' relationships (Doleys 2000 535-6; Milgrom and Roberts 1992: 131).

Despite their best efforts, and the significant resources they control which limit the problem of asymmetric information, states may find the institutions they create acting in such a way as to impede the effective pursuit of their preferences. Pooling might lead to unexpected voting outcomes, and unforeseen coalitions between member states. Delegation in conditions of imperfect information invariably gives rise to agency losses – resulting from the agent behaving in ways other than those which best serve the interests of the principals(s) (Kiewiet and McCubbins 1991: 5, 24-5). Consequently, the relationship between principals and agents changes over time, with principals attempting to maintain control over their agents (Wood and Waterman 1991: 803) in order to ensure that outcomes reflect their preferences.

There is a tendency to claim that accepting the possibility of unintended consequences is to adopt a more or less Neofunctionalist line, that unanticipated consequences produce a progressive increase in the powers of the EU institutions at the expense of the member states (Pierson 1996, Tsebelis 1999: 5-6). This, however, is not necessarily the case. For one thing, there is no theoretical reason why unanticipated consequences should consistently favour one actor or set of actors over another. If states can make mistakes, and fail to read the future accurately, surely this should be true of their agents as well? More substantively, the assumption that unanticipated consequences necessarily weaken all member states whilst strengthening delegated agents fails to take account of the ways in which states compete to shape institutional outcomes in order to maximize their own distributional gains at the expense, not of delegated agents, but of other states.

Crucially, and in keeping with the emphasis placed, in the preceding section, on distributional conflict between member states, unanticipated consequences will generally work in favour of some states and against others. Such developments alter the attitudes of states towards the institution in question. They will produce a desire to alter existing institutional arrangements on the part of the losers, while satisfied states may well have incentives to alter institutional arrangements in order to 'lock in' their gains. For them, 'the desirability of imposing checks on delegated authority...increases with the utility the principal derives from the status quo and with the amount of danger posed by inappropriate agency actions' (Kiewiet and McCubbins 1991: 34).

Moreover, the potential costs of delegation and pooling will increase as the issues dealt with in any specific institutional setting become more important. We would expect principals to restrict the autonomy of agents in direct proportion to the salience of the issue the latter is dealing with (Cox and Jacobson 1973). Finally, changes in the ability of principals to rewrite the contracts of agents – via, for instance, the creation of additional veto sub-groups (Kiewiet and McCubbins 1991: 34) as a consequence of expanding membership - may also alter the perceived risks involved in agency drift and increase the incentive of principals to limit the potential for agency slack.

Thus, unexpected and potentially unwanted consequences stemming from the creation of international institutions will alter the incentives to delegate and pool sovereignty, creating a dynamic relationship between member states and international institutions. Crucially, states have the ability to learn from experience (Kiewiet and McCubbins 1991: 35; McCubbins and Schwartz 1984), and to react to such dynamics.

## Learning

For economists, the implications of learning are profound. Thus Alchian (1950: 31) speaks of an 'evolutionary, adaptive, competitive system employing a criterion of survival' as a result of which uniformity emerges amongst institutional arrangements. Clearly, there are reasons to be skeptical about the applicability of such notions to politics. Competition between institutions is generally neither as clear-cut nor as intense in the political world as in the world of economics. Not least, this is because there is not a 'dense environment of competing organizations which will instantly capitalize on inefficient performance, swooping to carry off an organizations "customers" and drive it into bankruptcy' (Pierson 1996: 141). However, what one could reasonably expect even in the political world is that once 'the unanticipated consequences are understood, these effects will thereafter be anticipated and ramifications can be folded back into the organizational design' (Williamson 1993: 116-7).

Member state learning does not figure prominently in much of the literature on the EU. Indeed, in some cases just the opposite: certain of Intergovernmentalism's opponents have painted a picture of states as either blind, or incompetent, or both. Thus, as William Wallace (1982: 64-5) points out, the 'success of neo-functional approach depended upon national governments not noticing – in effect – the gradual draining away of their lifeblood to Brussels.' Whilst generally not explicitly denying the possibility of learning, much recent theoretical literature on integration downplays its significance. Simon Hix (1999a, see also Rasmussen 1999) argues that the European Parliament's discretion in interpreting the rules laid down for it at successive IGCs allowed it effectively to enhance its own powers. Yet he also acknowledges (1999a: 17) that 'governments learn from this experience – "update their information" – and so try to limit any further discretion by the EP' by insisting on greater specification of procedural rules at the next constitutional round. The logical conclusion of this, however, is surely that member states will contract more effectively in future, and eventually become expert at limiting possible EP discretion.

In theory, if member states successfully learn from past experience, they will use these lessons as a basis for reacting to the unintended consequences generated by international institutions. Several scholars, however, have argued that member states will find it very difficult to bring about changes in institutional structures so as to counter the effects of unanticipated consequences. They cannot, in other words, 'recapture ground in previously institutionalized fields of activity' (Pierson 1996: 146). There is much validity to such arguments. The ability of principals to anticipate problems and deal with them at the contracting stage (cf Kiewiet and McCubbins 1991: 27-8) may be limited because of the nature of political as opposed to economic delegation. Economists have devoted much time to investigating the ways in which principals might frame the incentives written into contracts in order better to be able to limit agency drift. In the context of politics, however, this is problematic. First, the potentially large scope and complex nature of the tasks agents may be required to perform in the political sphere tends to militate against the possibility of efficient contracting – already a difficult task in the world of economics (Williamson 1985). As one recent analysis puts it, 'intrinsic uncertainties make it impossible for parties to specify *ex ante* a contract that is immune from defection *ex post*.' (Doleys 2000: 535). Indeed, agents may be created precisely because of the need to deal with problems of incomplete contracting in agreements arrived at between member states.

Second, the *types* of agency problems dealt with in the world of politics differ from those generally confronting economists. Economists tend to be more concerned with the amount of work carried out by agents – their effort. In contrast, political scientists tend to be interested in the *type* of work carried out, the 'course of action the agent is to pursue' (Kiewiet and McCubbins (1991: 24, 33). Designing a contractual agreement such that the agent works

towards same ends as the principal is more complex and difficult than designing one that ensures an adequate return for the principal in terms of the agent's work rate.

Finally, the presence of multiple principals will provide delegated agents with opportunities to further their own preferences. Institutions can play off the various principals against each other, thereby gaining a room for maneuver that would otherwise not exist for them. Moreover, in the presence of multiple principals, a unanimity requirement, backed up by a status quo default condition (Scharpf 1988: 257) presents a powerful hurdle for those desirous of bringing about a change in the terms of delegation to overcome problems of agency drift. Recontracting will therefore be impossible in conditions where even one member state is satisfied with the outcomes generated as a consequence of previous decisions.

Despite such problems, several mechanisms are open to states desirous of redressing the implications of earlier institution building. For one thing, even states that have benefited from institutional structures may, as noted above, be in favour of recontracting as a way of locking in gains and inhibiting future agency drift that might prejudice them. Second, recontracting may be a price exerted by certain principals in return for an extension of institutionalized cooperation into other areas.

Learning, moreover, profoundly influences the attitudes adopted towards future delegation and pooling. Member states could reasonably be expected to pay more attention to the contracting process should the need for delegation arise again. If states have experienced negative effects from previous acts of delegation, they might adopt different forms of contracting in future, perhaps moving from relational to more contingent forms of contracting (Doleys 2000: 535-6). Another technique is to utilize probationary periods for new arrangements in order to ensure agency compliance are both possible solutions to agency problems. Thus we would expect to see in the contracts of agents created later in any process of institutionalized co-operation the evidence of the lessons learnt from earlier acts of delegation. We would also expect that principals would, where possible, attempt to introduce more sophisticated control mechanisms into contracts both when agents have shown a predisposition for slippage and when the stakes involved in international cooperation have risen.

Contractual changes are not the only means by which states may attempt to control 'their' agencies. Rather, principals can, if dissatisfied with agency performance, also signal their discontent and threaten future sanctions in order to constrain agency behaviour:

because of the costs of exercising tight control over agents, an optimal structure of delegation may be one with little active oversight or overt interference in the negotiating process from the principals. Agents rationally anticipate the responses of those they represent. The law of anticipated reactions suggests that we cannot infer a lack of political influence from a lack of observed oversight activity

(Martin 1993: 135, see also Garrett 1992: 558)

Given the disparity in resources and legitimacy that characterizes the relationship between states and international agencies, the argument possesses some intuitive merit and is, at the very least, worthy of consideration. Moreover because of the nature of international institutions – which generally lack coercive mechanisms able to ensure effective compliance, a prevalence of consensus-based approaches to international institutions means that such signaling cannot easily be overlooked.

Finally, evidence of an inability effectively to control delegated international agents may prompt states to reinforce the mechanisms for controlling them from within. The performance of these institutions will be monitored more closely. Moreover, as the stakes of international cooperation, and hence the dangers inherent in agency slack increase, appointments to posts within international institutions will become more politicized.

### *Institutionalising Intergovernmentalism in the European Union*

The final section illustrates empirically the theoretical argument made above by briefly examining the development of the EC/EU from the 1980s to the present day. The period nicely illustrates how the relationship between member states and the EU changes over time, representing, as it does, a shift from one phase to another. Considerations of space mean that this can only be a very general survey. However, it will suffice to show how shifting perceptions of the need for agency control on the part of member states led them to reassess their traditional strategies and fundamentally to change and expand the ways in which they seek to gain influence over EU-generated outcomes.

#### *Integration in the 1980s: development and legacy*

By the beginning of the 1980s, there existed a widespread belief that the European Community was in crisis. The oil shocks had hit Europe hard, and, faced with stagflation at home, member states turned away from integration as a means of resolving national economic problems.<sup>6</sup>

The signing of the Single European Act profoundly altered this situation. In its wake, Euro-pessimism was replaced by Euro-enthusiasm, private industry rallied behind a scheme intended to remove internal frontiers, and the EC took on a new dynamism. Two aspects of the Single European Act are worthy of note. First, it represented a conscious decision on the part of the member states to pool and delegate more authority than they had previously been willing to contemplate. Second, the bargain on pooling and delegation was, necessarily, predicated on deliberate ambiguity concerning distributive benefits and losses; the Single Market programme adopted left 'to the future the determination of the losers' (Hoffmann 1989: 36).

In the wake of the SEA, four profound changes occurred in the EEC. First, the supranational institutions awoke from their apparent stupor in part, in the case of the Commission, as a consequence of new powers granted to it under the Treaty reform. Second, increased reliance on majority voting limited the ability of individual member states to shape legislative outcomes in the Council of Ministers. Almost simultaneously, the addition of more veto players to the Union by means of successive rounds of enlargement reinforced the 'joint decision trap' (Scharpf 1988). Finally, the Single Market, combined with the monetary union agreed upon at Maastricht, ensured that virtually all aspects of economic and social life were affected by decisions reached in Brussels.

The combination of enhanced agency power, further pooling, an increase in veto points, and higher stakes was a potent one. Not only was it increasingly difficult for individual member states to control outcomes, but these outcomes mattered. As the Single Market developed, member states came to realize its distributional implications. In particular, they came to realize that those states favouring more interventionist policies were 'systematically disadvantaged in the process of European integration' (Scharpf 1999: 49; Menon and Wright 1998).

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6. Developments during the 1970s themselves cast an interesting light on how unanticipated consequences have shaped integration in ways other than via a simple reinforcement of the supranational institutions. After all, the 'founding fathers' of integration had envisaged that the success of the EEC would lead in time to the 'withering away' of the Council of Ministers and its progressive replacement by the Commission, roughly the opposite of what occurred during this decade. Moreover, the competition policy provisions of the Treaty, intended, at the time of their framing, to be fairly ambitious, did nothing to stymie the increasing flow of state aid to national champions during this decade.

The supranational institutions played a central role in bringing this about. As a consequence, their profile rose dramatically. No longer could the ECJ profit, in its fairyland hideaway, from the 'benign neglect' of the member states as it constitutionalised the EC. (Stein 1981: 1; for a similar argument, see Burley and Mattli 1993). The same was equally if not more true of the Commission, which had become a highly influential driving force behind integration. Specific incidents, such as the decision to veto the proposed merger between de Havilland and ATR in 1991, outraged certain member states both by their perceived audacity and as a function of their apparent neoliberal bias (Jones 1996). Moreover, the Commission also intervened in what had previously been seen as areas of exclusive member state competence. Delors' speech on the need for a European defence policy in London during the Maastricht negotiations was a case in point. The member states increasingly came to perceive the Commission as intent on not only liberalizing the single market, but also on expanding its own powers in every direction.

The early 1990s subsequently witnessed an increase in member state dissatisfaction with the supranational institutions. Both the German Chancellor and the British Government expressed dissatisfaction with the ECJ, dissatisfaction rooted partly in the fact that they perceived the Court to be acting ways not originally intended by its creators (*Europe* October 14, 1992, no. 5835; United Kingdom 1996). A French parliamentary report called for the curbing of the Commission's ability to rule on competition policy cases. Moreover throughout the EU, criticisms of the Commission's obvious – and to many excessive – ambition were voiced.

The consequence of all this was the creation of a member state coalition united around the desire to prevent further agency drift. Partly, this was a result of worry about the Commission's ambitions. Partly, it represented a marriage of convenience. For neo-liberal states, for whom 'most legitimate aspirations of economic integration are realized with the completion of the common market' (Scharpf 1999: 49), the priority was the preservation of the status quo. On the other hand, states who resented the neoliberal bias of the EC and who perceived the supranational institutions to be at the forefront of the neoliberal drive were keen to curb this trend. Anxieties, therefore, were related to a combination of 'content' and 'competence', with the latter taking on increasing weight, as the distributional implications of the single market became clear.

### *European Integration in the 1990s*

Member states reacted in a variety of ways in the face of such fears and discontents. For one thing, they began to take the EC institutions more seriously. The 'very success of...European integration...[meant] that EC policies now [affected] far more people than in the past. In consequence, EU reform proposals [were] considered much more seriously by national politicians...than in the past.' (Mazey 1997: 36). As Jean-Charles Leygues, a member of Delors' *cabinet*, commented ruefully in comparing the role of the Commission during the SEA and Maastricht negotiations:

Before we could count on being ahead of other people strategically. We knew what we wanted and they were less clear, partly because they didn't believe that anything much would follow from the decisions we asked them to make. Now they know that we mean business and they all look for the implications of our proposals.

(Cited in Ross : 137)

In response to perceptions of over-ambition and socio-economic bias in the actions of the Commission, the member states also mobilized greater administrative resources to track Community initiatives. Strikingly, since the mid-1980s, all of them have begun to alter and

strengthen the administrative arrangements in place to monitor EU activities and co-ordinate national policies towards the EU (Kassim, Peters and Wright 2000). Such a mobilization severely hampered attempts by the Commission to benefit from conditions of asymmetrical information. After all:

The Commission, Parliament, and the ECJ, though relatively large by international standards, still employ only a few thousand professionals – many orders of magnitude fewer than European governments. Almost none are technical specialists. Such bodies possess no national scientific and legal establishment. Commission and Parliament reports are generally based on official meetings at which experts from national governments are present, often as witnesses – thus diluting any possible informational asymmetry. Finally, the intergovernmental EC Council of Ministers concurrently sponsors more expert meetings than the supranational Commission.

(Moravcsik 1999b: 281-282)

Learning also affected contracting arrangements. Richmond and Heisenberg (1999) argue convincingly that the member states applied the painful lessons learnt from the broad and ambiguous mandate given to the ECJ under the Rome Treaty when creating the ECB. As a consequence, the tightly written contract that brought the latter into being rendered it difficult, if not impossible, for the ECB to expand its scope as the Court has so successfully managed to do.

Another indication that the lessons of the 1980s and early 1990s were well learnt and 'folded back' into organizational design was provided by Amsterdam Treaty innovations to the third pillar. The member states were conscious of the benefits of entrusting some policy initiating capacity to agents, even on highly sensitive issues such as Justice and Home Affairs (Pollack 1997). They were also, however, aware of the way in which the Delors Commission in particular had sought to use its powers as a basis for an increase in its own prerogatives. The Amsterdam Treaty therefore gave the Commission joint right of initiative with the member states, for those issues of JHA which it brought within the ambit of the EC, but initially only for a probationary period of five years. The issue of potential agency slack in highly salient policy sectors was therefore addressed directly.

Such was the scale of member state dissatisfaction with agency performance, moreover, that Treaty revision was also successfully used on several occasions as a means of reducing agency slack. The subsidiarity clause included in the European Union Treaty – however unsuccessful it turned out to be in practice – provided a clear example of a desire to limit the accretion of competence by the supranational institutions. More specifically targeted was the amendment introduced in the Amsterdam Treaty by means of Article 119(4) that effectively overruled an ECJ decision (Case C-450/93 *Kalanke v. Bremen*, [1995] ECR I-3051) which had outlawed the use of positive discrimination in favour of women. The very fact that IGCs became an almost routine part of EU decision making in the 1990s undermines the claim that 'the threat of treaty revision is essentially the "nuclear option" – exceedingly effective, but difficult to use – and is therefore a relatively ineffective and noncredible means of member state control' (Pollack 1997: 118-9). These particular nuclear weapons were kept at the highest stage of readiness and successfully employed on more than one occasion.

In areas where even Treaty reform was considered inadequate, member states on occasion resorted to the tactic of utilizing alternative institutions to achieve their objectives. Whilst certainly not amounting to the kind of competition amongst institutional forms referred to by economists, this represented a useful means of achieving the benefits of co-operation without facing the risk of unanticipated consequences within an EC setting characterized by far-reaching pooling of sovereignty and delegation. This occurred in the defence sphere, where concerns about the suitability of the EU to carry out such functions led to increased reliance on NATO as the forum within which European defence co-operation should be



fostered. EUREKA represented another example of member states choosing to co-operate on a purely intergovernmental basis outside the context of the EC (Peterson 1996). The creation of the pillared structure of the EU at Maastricht can itself be seen in a similar light, as a means of creating alternative institutions to carry out tasks too sensitive or important to subject to the dangers associated with the unanticipated consequences of pooling and delegation.

The steps taken by member states to rein in the EU institutions, along with the ever-present threat of future treaty reforms has, in accordance with the logic of anticipated consequences, served to dampen the ardor of the supranational institutions somewhat. The Presidency of Jacques Santer expressed this with the slogan 'do less better'. The change in mood and ambition was also evident at Amsterdam:

The Commission had tabled many ambitious proposals in the run up to the Maastricht Treaty, only to see them ignored and its own motives questioned – an unpleasant experience Commission officials were reluctant to risk repeating. Their discreet operating style in the negotiations self-consciously reflected their normative claim that the agenda ought not to be about extending Community competence – especially Commission competence

(Moravcsik and Nicolaïdes 1999: 70)

If anything, the role of the Commission at Nice was even more markedly low profile and ineffective.

The self-restraint exercised by the ECJ has been even more striking. One commentator has remarked that, since the late 1980s, 'the ECJ has exercised ever greater caution in challenging member states' interests' (Dehousse 1998: 148), whilst two former Court employees note that:

[Recent case law is] not only distinguished by restraint, but is also increasingly revisionist and not averse to blunting the conquests made in the previous decades. Much as generalizations are dangerous in dealing with changes of culture and mood, one is tempted to conclude that the Court has undergone a process of secularization. Realism is no longer a balance to passion; it has superseded passion and has become a synonym of minimalism

(Mancini and Keeling 1995: 406; see also Dehousse 1998: chapter 6)

However, even if the member states successfully restrict, or even, in some cases, reduce, the potential for agency slack, the ensuing situation is not neutral in terms of policy content. Since the inception of the Single Market project, integration has spawned winners and losers and it is increasingly difficult for member states individually to control outcomes. Legislative methods of overturning prior decisions are problematic because of the need to muster at least a qualified majority in support of the new proposals. Moreover, the Commission may well use its exclusive right of initiation to propose something corresponding to different sets of preferences (Pollack 1997: 115-6).

Hence the member states have also sought other means to achieve their preferred outcomes. Most notably, a strategy adopted has been infiltration of the Commission in order better to influence its choices on questions of policy content. This is by no means a new tactic. Michelmann (1978) details the problems that this caused during the 1970s. However, given the legislative output of the EC in recent years, the increased importance of that legislation, and the central role of the Commission in a situation where the Council votes by QMV, infiltration has increasingly become a central national strategy (Interviews, European Commission, Brussels; senior national officials, Paris and London).

National influences now permeate the Commission. The Commissioners themselves, selected by their national governments, clearly maintain close links with their national capitals. Given the need for Commission initiatives to be approved by a majority of the

Commissioners, national governments have frequently resorted to arm-twisting in order to secure a favorable vote from their Commissioners. In many cases, arm-twisting is not necessary. Particularly when it comes to questions of policy content, member states tend to have a good idea of the preferences of their nominees. Hence the British Government never had to cajole Leon Brittan to support free trade. In the late 1980s, both French Commissioners abstained in a vote on the recovery of state aid from a French firm – which had been given the money some years earlier by Finance Minister Delors himself. Commissioners often, in other words, have internalized national policy preferences prior to arriving in Brussels.

Moreover what cannot be accomplished through shared beliefs can sometimes be achieved via the use of incentives. It is noticeable, for instance, that the French have always tended to appoint to the Commission individuals for whom there remains the possibility of a successful political career at home. Raymond Barre, Claude Cheysson and, of course, Jacques Delors were all clear examples of this. Such individuals were fully aware of the need not to alienate powerful potential supporters at home.

The representative function of Commissioners has always been implicitly recognized. Increasingly, however, it is becoming more explicit. Moravcsik and Nicolaïdes (1999: 74) point to the conflict at the Amsterdam IGC between larger member states arguing in favour of a re-weighting of votes in the Council and the smaller member states anxious to preserve their right to nominate one Commissioner. These attempts at horse-trading influence in the Council against influence in the Commission point to the increasingly obvious recognition of the representative functions of Commissioners. Indeed, one senior official from a Benelux Permanent Representation remarked that: '[F]or my national capital, our Commissioner is infinitely more valuable than our Ambassador. Not only is he better informed about impending Commission initiatives, but he has a vote carrying the same weight as those of all the other Commissioners' (interview, Brussels, May 1999).

The *cabinets* of the Commissioners are also well known for the tight links they maintain with national capitals. Again, incentives serve to reinforce loyalty to home nations, as *cabinet* members are often officials from the national administration whose career paths will lead them back to their capitals. Moreover their role has changed since the SEA in such a way as to increase their ability to further national interests within their Directorates General. Originally, one of their key tasks was to keep Commissioners informed of developments outside his remit in order to allow him to perform more effectively in discussions within the College (Michelmann 1978: 482). As the workload of individual Directorates General has increased, however, the role of *cabinet* members has become increasingly vertical rather than horizontal. As a consequence, they tend to spend more time involved in the day-to-day affairs of their own administration. This allows *cabinet* member not only to act as potent sources of first hand information for their national administrations (Menon 2000), but also to try to secure greater influence for their own state within their DGs through, notably, interference in staffing issues at relatively low levels in the hierarchy. Several DG officials have complained of almost perpetual interference by *cabinet* members in staffing questions (Interviews, Brussels, May 1999).

Immediately below the *cabinets* are the senior – A Grade – Commission officials. Here again questions of nationality are crucial. At A1 level, an explicit quota system operates intended to ensure all member states are adequately represented. At less senior levels, the norm, under the so-called *fourchette* system has been to strive, if only informally, for a similar level of representative balance. Sometimes senior posts are even created to assuage concerns of under-representation of member states (Michelmann 1978: 481). Such national quotas have tended roughly to match staffing levels with national contributions. (Michelmann 1978: 479). Again, member states have increasingly realized the importance of getting the right people into the right posts. The system of *parachutage*, whereby senior national officials are placed

in senior administrative positions, is one way of ensuring this, not least because such individuals more often than not will want to return to their national administrations. Strikingly, one eighth of A Grade officials are secondees (Page 2000), a sufficient number, one would imagine, to mitigate the worst informational asymmetries between Brussels and the national capitals. .

Given the increasingly important role of the Commission in the legislative process, particularly following the extension of QMV which effectively enhances its agenda setting capabilities, member states have also realized the importance of exerting influence over lower levels of the Commission hierarchy. As one senior French Commission official put it, '*Les gens qui comptent sont ceux qui font les notes*'. (Interview, European Commission, Brussels, May 1999; see also Schmidt 1996: 237). Again, this is not new:

Member state representatives offices keep track of directorate general developments by contacting their compatriots, and member state administrations have attempted to influence policy formulation in the Commission during the early and important drafting stage by having their nationals in the organization introduce as their own work position papers drafted in national capitals.'

(Michelmann 1978: 486)

However, such practices appear to be more widespread now, as member states, unable to exercise a veto in the Council on most legislative matters, have learnt the importance of effective upstream lobbying and influencing legislative proposals at an early stage. Increasingly officials in Brussels talk about the creation of national fiefdoms within the Commission. Italian officials complained about the Franco-German cartel which, in their opinion, systematically biased outcomes over steel policy (Masi 1996). The French bemoan the 'Anglo-German conspiracy' that is DG4 (competition policy). Southern states dominate the DG responsible for regional aid, whilst Frenchmen headed DG6 (agriculture) from 1958 to 1999.

Recent studies have underlined the fact that member states are devoting more and more resources to ensuring that 'reliable' people within the Commission represent them. In order to assure this, two strategies have been adopted. First, the encouragement of national officials - who have presumably internalized the preferences and standard operating practices of their national administration - to sit the *concours* for admission as a *fonctionnaires*. The British fast stream programme is the clearest example of this, but one that is attracting interest, and imitation, in France (Menon and Wright 1998; Menon 2000).

Second, member states are beginning to realize the advantages of sending short-term secondees to Brussels. The French have an active programme of encouraging officials to spend short periods on secondment in Brussels, particularly in Directorates General where the administration feels under-represented. Gone are the days when General de Gaulle's Foreign Minister Maurice Couve de Murville could instruct a member of his staff to 'send the most stupid' French officials to Brussels (Menon 1999, Menon 2000; Menon and Wright 1998). There were some 1700 'external resource' officials in place in the Commission in 1998 (Page 2000)

Such 'nationalization' helps us better to understand the divisions within and inconsistency of a Commission which is often deeply divided on issues of regulation. On industrial policy, for instance, it 'is locked into persistent policy schizophrenia, oscillating between firm declarations in favour of a strong competition policy and hesitant advocacy of some European-level industrial policy, between brandishing of the stipulations of the Treaties and a political caution when applying them' (Wright 1995: 342). Taking account of the national influences within different DGs and the ways they shape the actions of these administrative units may go some way to providing an explanation for such phenomena

The 'Union's bureaucratic system', therefore, is 'shot through with national officials and influences' (Wright 1997: 161). Certainly this is not to claim that member states are now in a position to ensure outcomes that suit their preferences. Far from it. Problems of adverse selection and moral hazard remain, with national officials in Brussels acting in unexpected ways despite careful vetting (Lord Cockfield was not, contrary to expectations, re-appointed as Commissioner by Thatcher as he was accused of having 'gone native' in Brussels). However, the increasing proclivity of states to try to infiltrate the Commission certainly helps to mitigate such problems, providing national governments with potentially loyal eyes and ears within the Commission itself. Indeed, a further reason why infiltration does not guarantee success is the very fact that the practice is becoming more widespread. Increasingly, the Commission is being turned into an arena for interstate competition rather than, as in the traditional theoretical view, a referee adjudicating over such competition.

The Commission is clearly the institution within which the exercise of national influence is most likely. In contrast, the Court is that within which it is least. The judges appointed to the ECJ enjoy lengthy tenure (6 years), non-removability during their term, and their deliberations are carried out in secrecy. Certainly, they are not hermetically sealed from the outside world, or from their home nations. Moreover, national Governments still enjoy complete discretion over a highly secretive judicial selection process. Justices who annoy their Governments run the risk of not being re-appointed. Yet the particular arrangements of their own postings and of the way the Court functions insulate Justices from the kinds of overt national interference that characterizes the relations of member states with the Commission possible (Dehousse 1998: 6-16).

The case of the European Parliament is somewhat different. During the early 1990s it provided vivid proof of its intentions to use its new powers. Thus the EP voted by an absolute majority to reject the Council's common position on the 1994 Draft Directive on Open network provision in voice telephony (ONP). It thereby not only killed the legislation, but also accepted an outcome further from its ideal point than the preferred legislation in order to send a clear message to member states concerning their ability to challenge EP positions to set a precedent (Hix 1999a: 20). The Santer debacle, when the EP placed enormous pressure on the Commission to resign, was also a watershed in terms of the EP's ability to hold the Commission accountable to it.

Member state governments do have a degree of influence over MEPs from their own parties (Hix and Lord 1996). In keeping with the assertions made above about the importance of learning, moreover, there are signs that governments have learnt important lessons from the EP's activism in recent years, although it is still too early to draw any firm conclusions. In the first place, governments have started to take more seriously the need to try to control 'their' MEPs better. Tremendous pressure was placed on some MEPs prior to the censure vote on the Santer Commission particularly by member states such as Britain where the ruling party enjoys a large amount of leverage over European parliamentarians from within its ranks (interviews, Brussels July 1999). The introduction of a list system in Britain for the EP elections further illustrates a desire on the part of the Labour Government to ensure the selection of 'trustworthy' candidates. There are, however, distinct limits to such influence, not least as a function of the vagaries of the election process, which prevent states from making assumptions about the composition of the EP after elections (see Hix's 1999 criticism of Moravcsik and Nicolaïdes). Should the EP continue on its current activist course, one would expect to see Governments respond more robustly both by trying to increase and enhance ties with MEPs and by considering treaty revisions to reign the institution in.

### *Conclusions*

This article has sought to build on the insights offered by the new wave of Institutional literature about the European Union. Yet whilst reaffirming their insistence on the importance of inter-institutional interactions, and their emphasis on using general social science terminology to discuss the European Union, it has questioned some of the fundamental assumptions and assertions of that literature. By focusing on the specific character of relations between states and international institutions, on the importance of distributive conflict between states within such institutions and on a relationship driven by unanticipated consequences and member state learning, this article has proposed a dynamic theoretical explanation of the development of the EC/EU.

The EC/EU has passed through several phases since its inception in the 1950s. The brief survey of the period since the 1980s underlined the proposition that intergovernmentalism was institutionalized in the 1990s. Member states learnt from the experience of the second half of the 1980s when a combination of agency assertiveness, extended pooling, an increasing number of veto points hindering constitutional reform, and rising stakes led them to attempt to exercise control over the EU in numerous ways. In arguing that Intergovernmentalism has been institutionalized within the EU, this article has not claimed that institutions exercise no autonomous influence over outcomes or over the states within them. Rather, the intention has been to show both that institutional structures affect their members in profound and different ways, and that member states can react to institutions that do not suit their purposes. Moreover, in assuming states to be unitary actors, it has overlooked, out of necessity imposed by space constraints, perhaps the most important challenge facing states in their dealings with complex international institutions – that of co-ordinating their own actions so as to maximize their influence within such institutions (Menon 2001).

The key to the analysis presented here is that the nature of states profoundly affects their relations with institutions. In terms of their resources, and their ability to shape the incentives of their nationals who staff international agencies, states are a very different kind of principal to any other. As a consequence, they compete with each other over distributive outcomes more than with international agencies for power. And they enjoy multifarious means of preventing agency drift. Because politics between states is very different to politics between them, the notion that the EU is a polity like any other is questionable in the extreme. Often behind a façade of 'scientific' objectivity, many Institutional approaches to the EU are profoundly inductive in their use of insights and assumptions gleaned from the study of domestic institutions to theorize about the EU. This, however, is misleading, and serves to prompt analysts to misunderstand the nature of the EU, which, in many ways, 'exemplifies a distinctly modern form of power politics' (Moravcsik 1998: 5).

The above analysis also has implications for the future development of the EU. The stakes bargained over in Brussels have become higher than ever, not least because of the imminent launch of the euro and the incorporation of defence policy within the ambit of the EU. At the same time, there are plans afoot to enlarge the Union significantly in the near to medium term. The combination of high stakes and a significant increase in veto points will call into question still further the willingness of member states to countenance further delegation and pooling, at a very time when increasing numbers of commentators prescribe precisely these mechanisms to address the problems inherent in a system where decision making is increasingly slow and cumbersome. Member states will, however, simply not risk a reoccurrence of the events of the later 1980s when there is so much to lose, and less possibility than ever of potential future losses being recouped through recontracting. Given this, the future of the EU as a solution to the collective action problems that have bedeviled European states since the second world war appears far from rosy.

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