

Delegation to Supranational Institutions: Why, How, and with What Consequences?

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The growth of governance beyond the nation state is one of the most pronounced political trends in recent decades. To address problems that cannot be dealt with effectively at the national level, governments jointly develop international governance structures. Increasingly, the design of such structures involves the delegation of decision making powers to institutions that are organisationally and politically independent from the founding states, and therefore conceived of as 'supranational'. In this respect, the evolution of international governance reflects a general development in politics: the delegation of political authority from representative organs to non-majoritarian institutions, which are neither directly elected by the people nor directly managed by elected politicians.

Delegation to supranational institutions raises a set of questions of general relevance in political science. Why do elected politicians and sovereign member states freely give up some of their right to govern? Why do governments prefer certain forms of institutional design instead of others in the delegation of political authority? What are the consequences of delegation to supranational institutions for the problem solving capacity and democratic legitimacy of international governance structures?

This article addresses these themes with specific reference to the European Union (EU).¹ The overarching question is why, how, and with what consequences national governments delegate political authority to the supranational institutions of the EU. In an international comparative perspective, one of the distinguishing features of the EU is the extensive degree of delegation to the supranational and non-majoritarian European Commission and European Court of Justice (ECJ). Slightly simplified, the Commission has been entrusted with the tasks of developing proposals for new EU policy, executing EU policy within some specified domains, and securing member state compliance with EU rules, whereas the ECJ has been delegated the power to interpret the EU treaties and to ensure that EC law is correctly applied in the member states.

A decade ago, an inventory of existing research on delegation to the EU's supranational institutions would have yielded a limited number of publications. Today, the field of EU studies boasts a considerable, and steadily growing, number of works that explore various aspects of these processes of delegation.² Two features distinguish this literature. First, this research is predominantly focused on the degree of discretion enjoyed by the supranational institutions, or, conversely, the degree of control exercised by EU governments. The historical origin of this focus is the debate between neofunctionalism and intergovernmentalism on the driving forces of European integration, where competing conceptions of the role of the supranational institutions are pitted against each other. Second, existing literature shares a common anchoring in rational choice institutionalism in general, and principal-agent (P-A) analysis in particular. Building on the work of rational choice institutionalists on the US Congress, international regimes, and regulation, students of European politics have turned to principal-agent and transaction-cost analysis when attempting to explain patterns of delegation in the EU.

The purpose of the present article is not to denounce the merits of existing research, which has reached a certain cumulative strength. Instead, the ambition is to explore the *dynamic linkages* between stages of the delegation process that too often are studied in splendid isolation. Why, how, and with what consequences are not three separate questions with three separate answers, as they are currently treated in the literature, but analytical themes that are best understood in relation to each other. The article integrates the rationale, design, and consequences of delegation into a coherent and dynamic framework, where institutional function is the central explanatory variable.

In the rational institutionalist argument presented here, the three stages of delegation are linked in a four-step causal chain, where (1) the expected consequences of delegation motivate EU governments to delegate certain functions to supranational institutions; (2) the nature of these functions influences the design of mechanisms for controlling the institutions; (3) institutional design shapes the consequences of delegation by facilitating or obstructing attempts by the institutions to implement private agendas; and (4) the consequences of previous rounds of delegation affect future delegation, institutional design, and interaction, through positive and negative feed-back loops. The article is structured in four substantive sections, each exploring one of the links in this dynamic framework.

THE RATIONALE OF DELEGATION

The first step in the process of delegation is the decision to confer political authority on supranational institutions. This decision involves both a choice in favour of delegation as the preferred way of solving a particular problem, and a choice between what powers to delegate. This section demonstrates how the authority conferred on the Commission and the ECJ can be linked to a set of common functional problems, often motivating delegation to political agents.

The Functional Basis of Delegation

Why do the elected politicians of sovereign member states decide to create, and delegate public authority to, supranational institutions beyond direct democratic control? Rational choice institutionalism offers an answer that is distinctly functional, bordering on tautological. Delegation is explained in terms of the anticipated effects for the delegating party, and is likely to take place when the expected benefits outweigh the expected costs.

The principal-agent model is the analytical expression of this functional logic, together with the notion of transaction costs. In the seminal article where the principal-agent imagery was first introduced, Stephen Ross describes how this relationship arises 'between two (or more) parties when one, designated as the agent, acts for, on behalf of, or as a representative for the other, designated the principal, in a particular domain of decision problems'.³ The principal and the agent enter into a contractual arrangement, in which the principal chooses to delegate certain functions to the agent in the expectation that the agent will act in ways that produce outcomes desired by the principal.

Delegation to supranational institutions constitutes an active choice between alternative governance structures.⁴ In effect, all principals face the choice of whether to perform the desired functions 'in house', or to 'out-source' them, to use modern management terminology. States can either attempt to address pressing problems on their own, in purely intergovernmental co-operation with others, or by delegating political authority to supranational institutions. This suggestive trichotomy illustrates that the decision facing principals is not one of either/or, but rather a choice between a large number of alternative governance structures, where no and full delegation merely mark the outer parameters.

Delegation involves both costs and benefits for the delegating party and, in a rational world, the relative attractiveness of alternative governance structures is determined by the balance between the two. In the P-A literature, the disadvantages of delegation are generally referred to as

agency costs, which arise from the setting up of agents, the construction of mechanisms to control agents, and the negative effects of agents straying beyond their mandates. The benefits of delegation lie in the reduction of political transaction costs, by providing solutions to collective-action problems that prevent efficient political exchange.

The benefits may be grouped in four general categories: (a) facilitating credible policy commitments, as agents allow politicians to jointly tie their hands; (b) reducing information asymmetries, as agents develop and employ policy-relevant expertise; (c) improving decision making efficiency, as agents manage detailed rule making, thus saving politicians' time and effort for more general policy decisions; and (d) shifting blame for unpopular decisions and policy failures, as agents get to carry the consequences, thus allowing politicians to escape electoral punishment.⁵ The four sets of benefits translate into hypotheses about what kind of functions states are likely to delegate to supranational institutions. That said, we should keep in mind that any specific case of delegation may involve more than one of these rationales.

The Delegation of Supranational Powers in the EU

The most stable finding of P–A analysis in the EU context is probably the close fit between the functionalist predictions of rational institutionalism and the actual powers of the EU's supranational institutions. As shown most comprehensively by Mark Pollack, the Commission and the ECJ have been delegated judicial and political competencies that serve to ameliorate the typical functional problems.⁶ Below, these observations are analysed according to the four functional purposes isolated above.

First, in an act of self-commitment, member states have entrusted both the Commission and the ECJ with enforcement powers that effectively encourage compliance, thus reducing the problem of credible commitments.⁷ In its role as the 'guardian of the treaties', the Commission has the power to initiate infringement proceedings against non-complying states. The ECJ has the final say in such proceedings, and ultimately determines whether a member state is in compliance or not. To the extent that states disregard the ECJ's infringement judgments, the two institutions jointly possess the power to sanction governments through economic penalties. In addition to these powers at the centralised EU level, the ECJ plays a crucial role in the decentralised enforcement of EC law by citizens in national courts.

Second, the Commission's powers of initiation and execution are both intimately bound up with the development of policy expertise. When producing proposals for new EU legislation, the Commission employs the technical expertise of its specialised directorates-general and its extensive

network of expert committees. When the Commission chisels out detailed implementation legislation, its policy expertise is exploited for decisions whose technical character make them unsuitable for the politicians in the Council. Moreover, the Commission's general level of policy expertise is used on an everyday basis in Council negotiations, when called upon to clarify the likely effects of possible changes to existing proposals. In all cases, the Commission generates and employs expert knowledge, thus mitigating information asymmetries that otherwise could have resulted in less informed policy making.

Third, both institutions have been delegated powers that enhance the efficiency of EU decision making.⁸ Rather than member governments negotiating the minute details of all policy proposals in the Council, they adopt rules and guidelines whose specific content is often worked out through the Commission's implementation measures. The Commission's executive authority to take certain administrative decisions independently similarly relieves EU governments of having to negotiate and decide on detailed and often insignificant matters. The Commission's traditional position as mediator in the Council, and more recent function as broker between the Council and the European Parliament, further enhances the efficiency of bargaining in the EU. The fact that the treaties of the EU are framework treaties, only spelling out the general principles that apply for decision making in the particular policy domains, rather than outlining all applicable substantive rules, grants the ECJ a key function in enhancing decision making efficiency. Through its interpretation of EU treaties and legislation, the ECJ fills in the fine print of these incomplete contracts.

Fourth, the Commission's and the ECJ's close involvement in the EU's political process offers extensive scope for blame shifting, to the advantage of EU governments.⁹ The blame for policy failures, as well as for uncomfortable but necessary decisions, can be shifted onto the supranational institutions, which often lack both the capacity and the interest to shift it back. In view of their preference for 'more Europe', and the absence of electoral pressure, the supranational institutions are ideal scapegoats for unpopular policy developments in the EU. By the same token, member governments can claim credit for popular policy developments, with only limited regard to their own involvement in bringing them about.

Rather than doing it themselves, the member states of the EU have delegated powers of initiation, execution, interpretation, and enforcement to the Commission and the ECJ in a wide range of policy domains. For each new treaty that has been concluded, the supranational institutions have either been delegated more far-reaching competencies in existing issue

areas, or had their functional tasks extended to new issue areas. In the section on the dynamics of delegation, the analysis focuses on how the experiences of previous rounds of interaction are integrated into later decisions about delegation, thus producing complex patterns of variation in delegation over time and across issue areas.

THE INSTITUTIONAL DESIGN OF DELEGATION

The decision to delegate political authority to supranational institutions is intimately linked to the question of institutional design, which constitutes a second analytical stage in the delegation process. The key question is how national governments go about ensuring that the supranational institutions act in ways that produce the outcomes motivating the delegation of powers. This section argues that the kind of functions delegated to the EU's supranational institutions heavily condition the control mechanisms that national governments can design and have designed.

The Principal's Control Problem

Every decision to delegate essentially involves two choices – what powers to delegate and what institutional control mechanisms to craft. The need for principals to establish control mechanisms flows from the central assumption in P–A analysis that all acts of delegation are inherently problematic, because of the simultaneous presence of conflicting preferences and information asymmetries at an analytical *ex ante* stage. Not only are agents likely to have preferences that diverge from those of their principals, but they also tend to know more about their own interests and actions than their principals do, granting them an informational advantage. The combined effect is a strategic setting offering both an incentive and an opportunity for agents to pursue their own preferences at the expense of principals' – to 'shirk', in the P–A vocabulary.

The essence of the principal's problem is the design of institutional control mechanisms that will induce the desired behaviour on the part of the agent. The P–A literature stresses monitoring and sanctions as the two main components of such an institutional design. Monitoring affects agent behaviour by making it less likely that shirking will go unnoticed. Sanctions, in turn, encourage the agent to fulfil its functions faithfully, by raising the costs of non-compliance.

What truly makes delegation a dilemma is the fact that its very rationale may prevent government principals from establishing effective control mechanisms. Certain functions commonly delegated require that agents enjoy substantive levels of discretion in the execution of their powers; that supranational agents to some degree are truly autonomous from their

member state principals. In this sense, the design of institutional control mechanisms is shaped by functional concerns, since the initial powers delegated to an agent heavily condition the oversight mechanisms that principals may employ.¹⁰

In relation to the four functions isolated in the previous section, the main dividing line is between powers that serve to reduce the problem of credible commitments, and powers whose purpose it is to provide technical expertise, enhance decision making efficiency, and shift blame for unpopular decisions. In the first case, the very rationale of delegation is for member states to collectively tie their hands by conferring authority on actors that cannot be directly controlled. The act of self-commitment is only meaningful to the extent that supranational agents enjoy extensive discretion in the execution of their functions and do not face the immediate threat of having their decisions overturned by government principals. To exemplify with one common form of political power that falls within this category, monitoring of compliance is of limited value if those whose compliance is being monitored in turn control the monitor. In the case of the other three reasons for delegation, control mechanisms do not necessarily compromise the agent's capacity to fulfil the functions it has been entrusted. Supranational institutions may build policy expertise, engage in detailed rule making, and attract blame even in the presence of some form of institutional control. For these reasons, we would expect member state principals to allow a greater degree of discretion when delegating powers that reduce problems of credible commitment, while tightening control mechanisms in all other cases.

The Functional Basis of EU Control Mechanisms

As predicted by the rational institutionalist perspective on delegation, EU governments have designed control mechanisms to ensure that the supranational institutions do not exploit the discretion they have been delegated. But more important than confirming the existence of control mechanisms is noting the distinct patterns of variation in the oversight instruments that apply to the Commission and the ECJ, even though both institutions were set up at the same time, by the same member states, and in the same spirit of supranationalism. These differences reflect the nature of the particular functions delegated to the two institutions.

The control mechanisms designed by member governments vary systematically depending on what functional problems the Commission and the ECJ have been set to mitigate or resolve. When enhancing the credibility of member state commitments, by enforcing compliance and safeguarding the basic constitutional treaty, the supranational institutions

are typically relieved of intrusive control mechanisms. When providing technical expertise or enhancing the efficiency of decision making by engaging in regulation, implementation, and policy interpretation, the Commission and the ECJ are subject to closer monitoring and more credible threats of sanctions. Below, a stylised account is provided of the primary means of control that pertain to the Commission's powers of policy initiation, execution, and enforcement, as well as the ECJ's powers of rule interpretation and enforcement.¹¹

The monopoly granted to the Commission in the initiation of new EU legislation is carefully matched by the control possibilities flowing from the requirement of member state approval in the Council. The need to mobilise support forces the Commission to seek informal contacts with member states in the preparation of legislation. This grants governments insight into internal Commission policy formulation and an ability to shape the outcome by signalling their preferences. The final presentation of a Commission proposal to the Council both decreases informational asymmetries and offers governments the possibility to sanction the institution by dismissing the initiative, if the Commission has not been sufficiently attentive to their preferences. Should member governments agree to a proposal whose long-term effects they do not understand at the time of adoption, they can always re-legislate, which in most cases only requires the support of a qualified majority. By any measure, the Commission is closely watched in its initiative function, and quite susceptible to *ex post* corrections by member governments.

When the Commission executes EU policy by taking decisions that implement Council legislation, the primary instrument of control is the comitology system of oversight committees.¹² The system was explicitly established to allow EU governments a voice in Commission implementation, and entails that the Commission must present its draft decisions for approval in the committees before adopting them. The degree of control differs depending on whether the policy area in question is subject to advisory committees, management committees, or regulatory committees. Whereas advisory committees can only counsel the Commission, management committees can block implementation measures by a qualified majority and thereby have them referred to the Council for decision. Regulatory committees, finally, must approve Commission acts by a qualified majority, or else they are referred to the Council. Slightly simplified, the more sensitive the policy area, the more likely it is to fall under a restrictive control procedure. This variation notwithstanding, the comitology committees offer an everyday system for monitoring and sanctioning the Commission in the execution of its implementation powers.

In contrast to its position in policy initiation and execution, the Commission is freed of control mechanisms when fulfilling its function as guardian of the treaties. No means or procedures exist by which EU governments are allowed a role in the Commission's monitoring of member state compliance. Acting on complaints from citizens or on the results of its own inquiries, the Commission independently decides whether to initiate infringement proceedings against states suspected of violating EU rules. Similarly, no form of member state approval is required when the Commission fixes the penalties that EU governments must pay if found guilty of not having implemented the ECJ's infringement judgments. By all accounts, member states have taken a hands-off approach in the institutional design pertaining to the Commission's enforcement function.

Governments' means for controlling the ECJ in its interpretation of EU rules closely reflect the alternative logics of credible commitments and efficient decision making. Depending on whether the ECJ interprets constitutional rules or EU legislation, it is subject to more or less intrusive control mechanisms. When interpreting the treaties and functioning as a constitutional court, the ECJ is relieved of control mechanisms. This absence of oversight instruments is typical of constitutional courts, which themselves interpret their procedural domain.¹³ By contrast, the ECJ is subject to a form of control when interpreting EU legislation and functioning as a statute-reviewing court. To the extent that member governments do not share the ECJ's reading of directives and regulations, they can always correct its interpretation by re-legislating, using the ordinary procedures and decision rules. In this function, the ECJ shares its relatively vulnerable position with other courts engaged in the judicial review of legislation, since the rewriting of statutes is one form of control instrument typically available to national legislatures.¹⁴

Similarly to the Commission, the ECJ can conduct its part in the enforcement of state compliance without any form of government control. Regardless of whether the ECJ assesses compliance with treaty rules or EU legislation, governments lack instruments for reversing its decisions, short of treaty revision. With the entry into force of the Maastricht Treaty in 1993, this act of self-commitment was further reinforced, as the ECJ was granted the power, without the need for government approval, to financially sanction states that neglect its infringement judgments.

In this rational institutionalist account, function constitutes the antecedent or underlying factor, shaping EU governments' design of control mechanisms. Variation in control mechanisms across the functions of the same institution is explained by the degree of discretion that is required to solve the functional problem in question, as is correspondence in control mechanisms between two institutions that differ in constitutive terms but

fulfil the same function. This basic logic carries further implications for our understanding of variation in control across individual institutions, such as the Commission and the ECJ.

Since many institutions are vested with more than one function, they should be thought of as functional composites, whose specific combination of functions shapes the overall level of control. This may explain why member governments are sometimes considered to enjoy more intrusive forms of control in relation to the Commission than with regard to the ECJ. The Commission is comparatively more engaged in providing policy expertise and facilitating decision making than in securing credible commitments. For the ECJ, the reverse is true. Though its contribution to the enhancement of efficiency should not be neglected, the functional emphasis is clearly on providing effective forms of self-commitment.

THE CONSEQUENCES OF DELEGATION

The third stage in the process of delegation is its consequences. Does the delegation of public authority to supranational institutions generate the political benefits that first motivated member states to take this step, or does it result in effects that were not foreseen? Just as function conditions the use of control mechanisms, the institutional design in turn shapes the consequences of delegation. In this section, it is contended that the control instruments established by EU governments have been insufficient to prevent the supranational institutions, especially the ECJ, from exploiting their discretion, with constitutional, substantive, and legitimacy effects.

Anticipated Benefits and Unwanted Shirking

Delegation is likely to result in both desired and undesired effects. The benefit of delegation is the value to EU governments of the functions performed by the supranational institutions on their behalf. These are the anticipated consequences that motivated the delegation of power in the first place. The undesired effects are those agency costs or losses that result when an agent pursues its own preferences at the expense of the principal's.

Rather than encouraging an assessment of the benefits of delegation – which are assumed to be positive – P–A theory directs out attention towards the problem of agents exploiting their discretion. Slightly simplified, any given decision by an agent may be of three kinds: in line with its principal's policy goals; different from the principal's policy goals; or different from the principal's policy goals, but reversed by the principal's control mechanisms.¹⁵ It is the second category of actions, where supranational agents succeed in pursuing their own agendas without being reined in by

member governments, that result in unwelcome consequences of delegation. What these consequences consist of in concrete terms depends on the political context and the agent's policy preferences.

The likelihood of negative consequences of delegation is shaped by the institutional design. Whether by economic logic, accident or design, member governments may have set up control mechanisms that are incapable of preventing or correcting shirking by their supranational agents. The analytically most interesting case is the form of deliberate abstention from intrusive control instruments that was discussed in the previous section. To facilitate credible commitments, government principals allow their agents an unusual degree of discretion, which in turn may be exploited by the supranational institutions for the purpose of pursuing their own political objectives. At a more general level, and regardless of what functions agents have been delegated, it also tends to be prohibitively costly for principals to operate control mechanisms that eliminate all forms of shirking. Indeed, in economic terms, it is only rational for principals to invest in control to the point where the marginal benefit of better agent compliance equals the marginal cost of running the mechanisms.

Supranational Discretion and Effects on Integration

Large parts of the existing research on European integration can be read as an analysis of the effects of sovereign states having delegated powers to joint supranational institutions. In fact, neofunctionalism and intergovernmentalism – the two dominating theoretical perspectives in the study of European integration – may be interpreted as two alternative answers to the question of delegation effects. Neofunctionalists generally suggest that EU governments, with the initial delegation of power, created a set of supranational institutions whose later actions have contributed to unanticipated integration effects.¹⁶ In positivistic jargon, the supranational institutions have exerted independent causal influence on the process of integration. Intergovernmentalists, by contrast, tend to conceive of the supranational institutions as essentially passive devices facilitating intergovernmental bargaining, by offering member states a possibility to secure credible commitments.¹⁷ The institutions simply fulfil the functions delegated to them by member governments, which remain firmly in control of the process of integration.

That the delegation of political power to the supranational institutions has been beneficial for co-operation in the EU is contested by neither neofunctionalists nor intergovernmentalists. Expressed in P–A terms, the point of contention is the magnitude of the agency costs. To what extent has delegation generated effects that are unanticipated and undesirable from the point of view of EU governments?

One of the primary merits of importing P–A analysis into the study of European integration has been its capacity to provide conditional answers to this question, by way of identifying and explaining variation in supranational influence.¹⁸ Owing partly to these efforts, few would disagree today with the assertion that the institutions at a number of historical occasions have exploited their discretion for purposes of advancing private interests. Among the best researched cases are the ECJ's transformation of the European legal system in the early 1960s, and the Commission's strategic launching of the internal market initiative in the mid-1980s.¹⁹

The ECJ's greater capacity to implement a private agenda is the most important finding in comparisons between the two supranational institutions.²⁰ This observation accords well with the predictions generated by P–A analysis on the likelihood of shirking under alternative institutional designs. The relative absence of intrusive control mechanisms grants the ECJ a degree of discretion which exceeds that of the more tightly controlled Commission, thus facilitating a comparatively bolder interpretation of the delegated mandate. It is equally symptomatic that the most widely cited cases of ECJ activism took place in the interpretation of constitutional treaty provisions, where member states' means of control are weaker than in the interpretation of secondary law.

The ECJ has learned to exploit diverging member state positions for the purpose of implementing agendas it knows governments cannot undo. To reverse the ECJ's treaty interpretations, all EU governments must agree on the suggested revisions of the Treaty at an intergovernmental conference (IGC), and all member states must ratify the new Treaty. Historically, no attempt to rewrite the ECJ's treaty interpretations, or to sanction the institution directly, has ever succeeded, though not for lack of trying.²¹ In essence, the ECJ has learned to count on the support of at least one member state, and, on this basis, developed techniques for introducing controversial doctrines that secure the institution against sanctions.²²

The Commission, by contrast, operates in a world with more immediate and credible threats of sanctions. Rationally anticipating the risk of having its legislative proposals dismissed by the Council, or of having its executive decisions referred to the Council from the comitology committees, the Commission tends to present only proposals with a high likelihood of adoption.²³ Interestingly, but hardly surprisingly, existing research shows that the Commission enjoys an unusual capacity to pursue private interests when drawing on the support of the less constrained ECJ.²⁴

When the supranational institutions succeed in pursuing their own interests, these private agendas not only diverge from member state preferences, but also translate particular political objectives into concrete

political effects. In an attempt to contextualise the unanticipated consequences of delegation, a distinction is made between constitutional effects, substantive effects, and effects on legitimacy. All three are direct consequences of political outcomes being biased in the orientation of the supranational institutions.

Constitutional effects are fundamental and lasting changes to relations of power and accountability in the EU. Acting on visions of a federal Europe, the supranational institutions have worked to promote developments in the direction of a European constitution, a European constitutional court, a European catalogue of rights, and a federal-type division of competencies between European, national, and regional levels. The most prominent case is the ECJ's transformation of the European legal system, and the associated promotion of itself to the position of a *de facto* constitutional court. By introducing the doctrines of direct effect and EC law supremacy in the early 1960s, the ECJ turned the EU's preliminary ruling system from a mechanism that allowed individuals to challenge EC law in national courts into a means for contesting national law and enforcing EC law in national courts. EC law not only trumped national law when in conflict, but also created legally enforceable rights for individuals. National courts became the linchpins of the European legal system and entered into a symbiotic relationship with the ECJ, where the European court interpreted EC law, while national courts referred cases to the ECJ and later applied its interpretation to the facts of these cases. The introduction of these doctrines by the ECJ turned the relationship between the 'international organisation' and the 'sovereign member state' on its head. But, in addition, it created the basis for future activism on the part of the ECJ, by ensuring a continuous flow of critical cases through the transformed preliminary ruling procedure.

Substantive effects are stable biases in policy output along salient dimensions of political contestation. In the EU case, supranational exploitation of discretion has produced discernible effects on at least three such dimensions: European integration vs. state autonomy, individual rights vs. state authority, and left vs. right. On the first dimension, independent influence by the supranational institutions has decidedly favoured policy solutions that place the locus of interest mediation at the European level, and involve binding EU rules rather than intergovernmental co-ordination. Existing research on the supranational institutions suggests that this may be the most pronounced substantive policy bias.²⁵ On the second dimension, supranational influence has tended to enhance the legal rights and opportunities of individuals and firms in relation to the state. In fact, much of the ECJ's case law can be read as a crusade to protect individuals' EU rights, for instance, by way of creating legal remedies that can be used

against member governments in national courts.²⁶ On the third dimension, it is considerably more difficult to isolate a stable policy bias, not least because of internal ideological conflict within the institutions.²⁷ Rather than promoting either regulation and positive integration or deregulation and negative integration, the EU's supranational institutions have espoused a form of regulated competition, which combines market liberalisation with re-regulation at the European level.²⁸

Legitimacy effects are changes in the popular perception of the legitimacy of delegation from national majoritarian organs to supranational non-majoritarian institutions. Though prominent in the discourse on democracy in the EU, legitimacy questions have so far taken a back seat in the scholarly debate on supranational agency. But to the extent that legitimacy effects constitute agency losses for national governments, they are relevant even in positive P-A analysis.²⁹ There are few indications, however, that the supranational institutions' exploitation of discretion has produced stable effects that diverge from underlying popular perceptions of the legitimacy of the EU as such. One interpretation in existing research stresses the lack of political attention paid to the ECJ, safely '[t]ucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with benign neglect by the powers that be and the mass media'.³⁰ The competing nature of input- and output-oriented legitimacy standards offers an alternative explanation.³¹ In simplified terms, the same act of supranational shirking may be interpreted in both positive and negative legitimacy terms, depending on the standards of evaluation. In an input-oriented perspective, delegation becomes less legitimate if supranational institutions, with no independent source of democratic legitimacy, stray beyond the mandates set by elected national governments. In an output-oriented perspective, by contrast, delegation may actually gain in legitimacy from supranational shirking, to the extent that the effects are more favourable – for individuals' EU rights for instance – than in the absence of independent supranational influence.

THE DYNAMICS OF DELEGATION

The final link in the causal chain joining the rationale, institutional design, and consequences of delegation is the feed-back loop from effects to new instances of delegation. While often portrayed as such, P-A relationships are seldom static. Rather, delegation tends to be an ongoing process, in general, as well as in the EU case. This section develops the notion of dynamic delegation and demonstrates how EU governments have integrated the lessons learned in previous interaction into future delegation, institutional design, and behaviour.

Feed-back Loops in P–A Relationships

In a functional world where the anticipated effects of delegation constitute the reason for conferring authority in the first place, the experiences of previous rounds of delegation invariably affect future rounds. In reality, P–A relationships are seldom a one-shot operation, where all relevant contracting action is concentrated to an *ex ante* stage, and where the agents' *ex post* behaviour is a direct consequence of how successful the principals were in providing adequate control mechanisms. Rather, principal–agent relationships tend to be dynamic and interactive, subject to bargaining and revision by the parties.³²

At the heart of this dynamism is the notion of strategic adaptation to unintended consequences. From the point of view of political principals, delegation may be flawed because it generates unexpectedly large agency costs, or because political agents, on the contrary, do not possess the powers or the discretion required to produce the desired effects. In this sense, the more general rational institutionalist argument that unintended and sub-optimal consequences of delegation can be corrected at later stages applies also to dynamic P–A relationships. As emphasised by Oliver Williamson: 'Once the unanticipated consequences are understood, those effects will thereafter be anticipated and the ramifications can be folded back into the organisational design. Unwanted costs will then be mitigated and unanticipated benefits will be enhanced. Better ... performance will ordinarily result.'³³

If principals and agents are rational, how is it that the consequences of delegation are not fully anticipated and prevented in the initial contract? In essence, why do they need to learn? In a rational institutionalist reading of dynamic delegation, principals and agents are conceived of as boundedly rational, acting on the basis of available rather than full information. Even if government principals realise that the supranational institutions they set up and empower are likely to develop their own private agendas, they are unable to foresee the exact shape of the strategic setting. Moreover, structural changes, such as increases or decreases in the number of principals, may cause shifts in the strategic environment over time.

The integration of previous experiences may both affect future behaviour in the same area where they were generated, and feed into strategic judgements about new instances of delegation. Moreover, the experiences may pertain to both the appropriateness of delegating powers or the effectiveness of existing control mechanisms in producing the desired effects.

Dynamic Delegation in the EU

In view of the EU's half-century-long history of delegation, involving a number of renegotiations of the original treaties, this empirical context ought to be rife with examples of feed-back loops, to the extent that the propositions about dynamic interaction are valid. A closer look at historical junctures in European integration supports such an interpretation. Below, three kinds of feed-back loops that are particularly prominent in the EU are distinguished: (1) member governments integrating the experience of unwelcome supranational exploitation of discretion into the delegation and institutional design in new policy areas; (2) EU governments boosting the powers of the supranational institutions in existing policy areas, in response to the incapacity of previous delegation to achieve the desired effects; and (3) national governments adapting to a strategic political context in which the basic rules of the game have been dislocated by supranational shirking.

Given the EU's history of occasional supranational shirking, it is not surprising that one of the identifiable feed-back effects is the search by national governments for means of preventing this from happening again. Because of the joint-decision trap identified by Fritz Scharpf, these efforts tend to influence delegation and institutional design in new areas of co-operation, rather than in the areas afflicted by supranational shirking.³⁴ When EU governments decide to co-operate in a new policy area, those in favour of less far-reaching delegation and stricter control mechanisms are privileged by the requirement of unanimous approval, whereas the situation is the opposite in existing areas of co-operation.

Two excellent examples of this kind of feed-back loop are the institutional arrangements established in the area of justice and home affairs in 1991, and the recent creation of the 'open method of co-ordination' for co-operation in employment, social affairs, and education. In both cases, existing research tends to explain the adoption of these particular institutional arrangements with the reluctance among member states to compromise, and risk further violations of, national sovereignty.³⁵

Despite the fact that these policy areas fall under the general rubric of regulation, which otherwise is synonymous with the full delegation of powers to the institutions, EU governments settled for less ambitious and more constraining arrangements. When justice and home affairs was first brought into the EU framework as an area of common interest in the Maastricht Treaty, the Commission was given no right of initiative in the most sensitive areas, and only shared initiative in the others. The ECJ, for its part, was given no role whatsoever in this area. Similarly, the open

method of co-ordination, first introduced in the employment chapter of the 1997 Amsterdam Treaty, grants but a limited role of initiation and supervision to the Commission, and no authority at all to the ECJ. In both cases, the capacity to prevent unwanted effects was further enhanced by the requirement of unanimous approval of the Commission's proposals and the non-binding character of the legal instruments in these areas.

A second and opposite form of learning effect consists of national governments realising that they have been too restrictive in the delegation of powers. Rather than limiting the institutions' powers, EU governments extend them, after having experienced that the desired effects cannot be achieved unless more far-reaching powers are delegated. Two particularly revealing cases are the subsequent changes to the institutional arrangements in justice and home affairs in 1997, and the up-grading of the Commission's and the ECJ's enforcement powers in the early 1990s.

The second chapter in the story about delegation in justice and home affairs is EU governments' correction in the Amsterdam Treaty of mistakes committed when first setting up the institutional arrangements in Maastricht. To use an analogy from the world of monetary policy, EU governments had managed to overshoot the target when taking measures to limit supranational shirking, thereby stifling meaningful policy progress in the area. Through an exceedingly elaborate arrangement, the Amsterdam Treaty moved in the direction of greater supranational involvement, by allowing the Commission a more prominent position in the initiation of proposals and the ECJ a restricted role in the interpretation of rules. At the same time, the up-grading of powers was coupled with new and intricate control mechanisms.³⁶

EU governments' decision in Maastricht to boost the supranational institutions' enforcement powers constituted a similar reaction to the inadequacy of existing arrangements.³⁷ In this case, the enforcement powers originally delegated to the institutions in 1957 had gradually become insufficient to fulfil the function of securing credible commitments. With the completion of the internal market, and the increasing incentives for member states to free-ride, non-compliance with EU rules had spiralled. To ameliorate these problems, EU governments agreed to delegate the power to financially sanction non-complying member states, despite the obvious encroachments on national sovereignty.

The third form of feed-back effect consists of member governments adapting to a strategic context in which the basic rules of the game have been dislocated by supranational shirking.³⁸ Supranational actions with constitutional dimensions fundamentally reconstruct the political environment in which principals and agents operate and interact. In simple terms, the political world will never become the same again, and this is a

reality to which governments adjust, for instance, by ratifying the moves of the supranational institutions and transforming national regimes. The ECJ's constitutionalisation of the treaty is the primary source of such dynamic effects, which alter the formal relationship between government principals and supranational agents.

This feed-back loop may take a number of forms, as evidenced by existing research on the European constitutionalisation process. The ECJ can reinterpret treaty provisions so as to enhance its own powers and those of its allies, be they national courts or the Commission, henceforth reducing the relative position of member governments in the EU political system. The most prominent example is the previously mentioned transformation of the preliminary ruling procedure into a means for contesting national law and enforcing EC law in national courts. Whereas, initially, many national governments and higher national courts opposed the ECJ's interpretation, the recalcitrance gradually gave away to the realisation that this new judicial and political order had already become institutionalised, could not be undone, and essentially constituted a fact of life.³⁹

A related form of feed-back effect results when the ECJ constitutionalises the provisions of an EU directive, that is, interprets these provisions as being inherent in the treaty. The Council is thereby displaced as the site of future rule reversal in this policy domain, since only governments reassembled as a constituent assembly at an intergovernmental conference can change the ECJ's treaty interpretations. Instead, member governments frequently amend EU directives and national law to conform to the ECJ's rulings. As Alec Stone Sweet and James Caporaso note in a study tracing the evolution of EU social policy:

the Court has supplanted the Council as the locus of lawmaking on more than one occasion, enacting legislative provisions that had stalled in the Council under unanimity voting. Lacking the unanimity necessary to reverse the Court in this area, the member-state governments have been forced to adjust to the Court's case law, by ratifying the ECJ's policy choices in Council directives and by revising national legal regimes.⁴⁰

Finally, the ECJ alters the conditions for future interaction when interpreting Treaty provisions so as to give new rights to individuals, since this recasts the enforcement environment and EU governments' capacity to get away with non-compliance. When conferring enforceable rights on individuals, the ECJ opens up the possibility of decentralised enforcement through individuals securing their EU rights in national courts, next to centralised enforcement through Commission infringement proceedings. The ECJ's establishment of the principle of state liability in 1991 is a case

in point.⁴¹ By granting individuals the right to financial compensation for damage suffered as a result of state non-compliance, the ECJ introduced a decentralised form of sanctions that force governments to think twice about violating EC law and about agreeing to legislative proposals they actually oppose.

CONCLUSION

This article has explored the dynamic character of delegation by developing the functional logic that links the different stages of the delegation process to each other. In four steps, it has demonstrated (1) how the promise of effective solutions to collective action problems motivated the delegation of political authority to supranational institutions; (2) how the particular functions delegated influenced EU governments' design of the mechanisms for controlling the Commission and the ECJ; (3) how the design of control mechanisms conditioned the effects of delegation by leaving comparatively greater scope for independent influence on the part of the ECJ; and (4) how the consequences of delegation through complex feed-back loops fed into new rounds of delegation, institutional design, and principal-agent interaction.

In conclusion, two points related to the general explanatory power of this rational institutionalist perspective can be raised. They both suggest areas for further research on delegation. First, is the P-A approach capable of addressing processes of international institutional design outside the EU context? While the predominant focus of the recent wave of P-A analysis has been the EU, the theoretical contribution of this literature may reach beyond this particular empirical context. The EU is not the only case where governments have set up and delegated functions to supranational institutions, simultaneously creating a potential control problem. Secretariats and dispute-settlement bodies of international organisations, such as the WTO, the IMF, the UN, and the IAEA, generally enjoy certain powers of representation, initiation, execution, and supervision.⁴² What makes the EU institutions unique in this comparative perspective is the range of the powers delegated, not the act of delegation itself. Though serious gaps in control are less likely to be found elsewhere, there is nothing inherent in P-A analysis that limits the use of this theoretical approach to the study of the EU. Rather, it may be employed to explain delegation decisions, design, and consequences whenever governments confer powers to international institutions.

But the rational institutionalist perspective on delegation may also generate important insights in cases where delegation *does not* take place, or only takes place gradually. As Andrew Moravcsik notes,

'governments often refuse to assume the political risk of delegation, preferring instead imperfect enforcement and inefficient decision-making, to the surrender of sovereignty'.⁴³ The relationship between functional demands for delegation and concerns for national sovereignty is an area that begs further exploration. Process tracing of shifts over time in the underlying costs and benefits of alternative governance structures is likely to be particularly rewarding. Equally relevant are cases where delegation never occurs despite strong functional demands; cases where entirely new supranational institutions are set up, such as the International Criminal Court currently in creation; and cases that involve gradual extensions of delegation, such as the transformation of the GATT/WTO dispute-settlement mechanism.

Second, to what extent can processes of delegation – in general, as well as in the EU – be explained by competing theoretical perspectives? P–A analysis has so far been largely unchallenged as an explanation of delegation, which neither lends credibility to the claims of P–A theorists, nor encourages theoretical refinement. Given that delegation constitutes a form of institutional choice and design, sociological institutionalism may be conceived of as an alternative to the functional perspective. In a sociological institutionalist reading, the spread of delegation to non-majoritarian institutions would be conceptualised as a case of isomorphism, resulting from social processes of emulation and diffusion, where politicians replicate organisational models collectively sanctioned as appropriate and legitimate.⁴⁴

While full assessments of the explanatory power of sociological institutionalism in the EU case should be a topic for future research, preliminary observations yield mixed results. The original delegation of powers to the EU's supranational institutions took place at a time when strictly intergovernmental co-operation was the standard organisational model, resulting in post-war institutions such as the Council of Europe, the Organisation for European Economic Co-operation (OEEC), Nato, and Efta. Rather than an additional example of generally embraced forms of institutional design, the EU was an odd bird, whose supranational character even succeeded in deterring a range of natural partners from joining.

If little speaks in favour of isomorphism as an explanation of the original delegation of powers in the EU, there are greater reasons to examine its role in the growing international popularity of delegation today, which may or may not be linked to the experiences of regional integration in Europe. Over the years, the EU has clearly become a less unique case of delegation. Is this pattern best explained by the functional demands of governance beyond the nation state, or by social processes of emulation? The design of control

mechanisms constitutes yet another area where sociological institutionalism might offer interpretations that diverge from those privileged in this article. While, again, predicting the same outcome, sociological institutionalists would explain the observed similarity between the ECJ on the one hand, and constitutional and statute-reviewing courts on the other, by the diffusion of models of institutional design, rather than functional concerns. These are areas that should claim the attention of future work, and where contributions based on alternative theoretical perspectives could add to the expanding body of research on delegation.

NOTES

For comments on earlier versions of this article, I am grateful to Marian Döhler, Kathleen McNamara, Mark Pollack, Alec Stone Sweet, Mark Thatcher, Stephen Wilks, an anonymous reviewer, and members of the International Relations seminar at Lund University.

1. In this article, I refer to the EU by its current name, except where I relate explicitly to its law, which is referred to as EC (European Community) law.
2. See, e.g., A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Perspective', *Journal of Common Market Studies* 31/4 (1993), pp.473–524; A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press 1998); M. Pollack, 'Delegation, Agency, and Agenda-Setting in the European Community', *International Organization* 51/1 (1997), pp.99–134; M. Pollack, 'The Engines of Integration? Supranational Autonomy and Influence in the European Union', in W. Sandholtz and A. Stone Sweet (eds.), *European Integration and Supranational Governance* (Oxford: Oxford University Press 1998); K. Alter, 'Who are the "Masters of the Treaty"? European Governments and the European Court of Justice', *International Organization* 52/1 (1998), pp.121–47; A. Stone Sweet and J. Caporaso, 'From Free Trade to Supranational Polity: The European Court and Integration', in Sandholtz and Stone Sweet (eds.), *European Integration and Supranational Governance*; J. Tallberg, 'Supranational Influence in EU Enforcement: The ECJ and the Principle of State Liability', *Journal of European Public Policy* 7/1 (2000), pp.104–21; J. Tallberg, 'The Anatomy of Autonomy: An Institutional Account of Variation in Supranational Influence', *Journal of Common Market Studies* 38/5 (2000), pp.843–64; T. Doleys, 'Member States and the European Commission: Theoretical Insights from the New Economics of Organization', *Journal of European Public Policy* 7/4 (2000), pp.532–53; S. Stetter, 'Regulating Migration: Authority Delegation in Justice and Home Affairs', *Journal of European Public Policy* 7/1 (2000), pp.80–103; S.K. Schmidt, 'Only an Agenda Setter? The European Commission's Power over the Council of Ministers', *European Union Politics* 1/1 (2000), pp.37–61; F. Franchino, 'Control of the Commission's Executive Functions: Uncertainty, Conflict, and Decision Rules', *European Union Politics* 1/1 (2000), pp.63–92.
3. S. Ross, 'The Economic Theory of Agency: The Principal's Problem', *American Economic Review* 63/2 (1973), p.134.
4. For an excellent conceptualisation of delegation as a choice between alternative governance structures, see D. Epstein and S. O'Halloran, *Delegating Powers: A Transaction Costs Politics Approach to Policy Making under Separate Powers* (Cambridge: Cambridge University Press 1999).
5. See the introduction to this volume by M. Thatcher and A. Stone Sweet, but also Epstein and O'Halloran, *Delegating Powers*; G. Majone, 'The Regulatory State and its Legitimacy Problems', *West European Politics* 22/1 (1999), pp.1–24.
6. Pollack, 'Delegation, Agency'; M. Pollack, 'Delegation, Agency, and Agenda Setting in the Treaty of Amsterdam', *European Integration Online Papers* 3/6 (1999).

7. On the delegation of enforcement powers to solve problems of credible commitments, see also G. Garrett, 'International Cooperation and Institutional Choice: The European Community's Internal Market', *International Organization* 46/2 (1992), pp.533-60; Moravcsik, *The Choice for Europe*; Tallberg, 'Supranational Influence'.
8. On delegation to the ECJ for purposes of enhancing the efficiency of EU decision making, see also Garrett, 'International Cooperation'.
9. On delegation as a way of facilitating blame shifting, see also M. Smith, 'The Commission Made Me Do It: The European Commission as a Strategic Asset in Domestic Politics', in N. Nugent (ed.), *At the Heart of the Union: Studies of the European Commission* (Basingstoke: Macmillan 1997); Majone, 'The Regulatory State'; Moravcsik, *The Choice for Europe*.
10. On institutional function as a factor shaping the design of control mechanisms, see also the introduction by Thatcher and Stone Sweet, and Tallberg, 'The Anatomy of Autonomy'.
11. The comparison is stylised because it isolates the general instruments of control (or absence thereof) pertaining to each of the institutions' functions, without due regard to the specific arrangements in certain policy sectors, or to means of control that apply to all EU institutions all the time, such as the threat of Treaty revision. For discussions of EU governments' control mechanisms, see Pollack, 'Delegation, Agency'; Alter, 'Who are the Masters'; Stone Sweet and Caporaso, 'From Free Trade'; J. Tallberg, 'Making States Comply: The European Commission, the European Court of Justice, and the Enforcement of the Internal Market' (Ph.D. dissertation, Lund University 1999).
12. For a good analysis, see Franchino, 'Control of the Commission'. Note, however, that the comitology system also has been interpreted as deliberation rather than control. See C. Joerges and J. Neyer, 'From Intergovernmental Bargaining to Deliberative Political Process: The Constitutionalization of Comitology', *European Law Journal* 3 (1997), pp.273-99.
13. See A. Stone Sweet's contribution in this special issue.
14. See M. Shapiro's contribution in this special issue.
15. See the introduction to this special issue for a more elaborate discussion.
16. E.g., W. Sandholtz and J. Zysman, '1992: Recasting the European Bargain', *World Politics* 42/1 (1989), pp.95-128; A.-M. Burley and W. Mattli, 'Europe before the Court: A Political Theory of Legal Integration', *International Organization* 47/1 (1993), pp.41-76; Sandholtz and Stone Sweet, *European Integration*.
17. E.g., Garrett, 'International Cooperation'; Moravcsik, *The Choice for Europe*.
18. For discussions about methodology and P-A analysis, see Pollack's contribution in this volume and Pollack, 'The Engines of Integration?'. For discussions about the merits of P-A analysis in the debate between neofunctionalists and intergovernmentalists, see Pollack, 'Delegation, Agency'; Stone Sweet and Caporaso, 'From Free Trade'; Tallberg, 'Making States Comply'; Doleys, 'Member States'.
19. On the ECJ's transformation of the European legal system, see, e.g., E. Stein, 'Lawyers, Judges, and the Making of a Transnational Constitution', *American Journal of International Law* 75 (1981), pp.1-27; J. Weiler, 'The Transformation of Europe', *Yale Law Journal* 100 (1991), pp.2403-83; Alter, 'Who are the Masters'. On the Commission's part in the internal market initiative, see, e.g., Sandholtz and Zysman, '1992: Recasting'; D. Cameron, 'The 1992 Initiative: Causes and Consequences', in A. Sbragia (ed.), *Euro-Politics: Institutions and Policymaking in the 'New' European Community* (Washington, DC: Brookings 1992).
20. This theme is further developed in Tallberg, 'The Anatomy of Autonomy'.
21. The most serious attempt to sanction the ECJ was the attack on the institution at the 1996-97 intergovernmental conference, when the UK, followed by Germany and France, sought to reduce the ECJ's powers and to reverse, or limit the effects of, a number of controversial judgments. See Tallberg, 'Supranational Influence'.
22. For discussions of such techniques, see, e.g., T. Hartley, *The Foundations of European Community Law* (Oxford: Clarendon Press 1994); Alter, 'Who are the Masters?'.
23. Pollack, 'Delegation, Agency'; Pollack, 'The Commission as an Agent', in N. Nugent (ed.), *At the Heart of the Union: Studies of the European Commission* (Basingstoke: Macmillan 1997); Tallberg, 'Making States Comply'.
24. Cf. Schmidt, 'Only an Agenda Setter?'; Tallberg, 'Making States Comply'.
25. The literature is close to unanimous on the pro-integration nature of the supranational

- institutions' preferences. See, e.g., Hartley, 'The Foundations'; G. Majone, *Regulating Europe* (London: Routledge 1996); L. Cram, *Policy-Making in the EU: Conceptual Lenses and the Integration Process* (London: Routledge 1997); Pollack, 'Delegation, Agency'.
26. See J. Weiler and N. Lockhart, "'Taking Rights Seriously" Seriously: The European Court and its Fundamental Rights Jurisprudence – Part I', *Common Market Law Review* 32/1 (1995), pp.51–94; J. Weiler and N. Lockhart, "'Taking Rights Seriously" Seriously: The European Court and its Fundamental Rights Jurisprudence – Part II', *Common Market Law Review* 32/2 (1995), pp.579–627; A. Stone Sweet, *Governing with Judges. Constitutional Politics in Europe* (Oxford: Oxford University Press 2000).
 27. On the left-right dimension in EU politics, and the difficulties of isolating stable preferences along this dimension for the supranational institutions, see S. Hix, 'The Study of the European Community: The Challenge to Comparative Politics', *West European Politics* 17/1 (1994), pp.1–30; Pollack, 'The Engines of Integration?'; and contributions by K. McNamara, S. Hix, L. Hooghe, and M. Pollack in the forum on 'Integrating Left and Right: Studying EU Politics', *ECSA Review* 11/3 (1998).
 28. Cf. Majone, *Regulating Europe*; K. Armstrong and S. Bulmer, *The Governance of the Single European Market* (Manchester: Manchester University Press 1998).
 29. On the problem of democratic legitimacy as an agency cost, see Majone, 'The Regulatory State'.
 30. Stein, 'Lawyers, Judges', p.1. But see also, e.g., J. Weiler, 'A Quiet Revolution: The European Court of Justice and Its Interlocutors', *Comparative Political Studies* 26/4 (1994), pp.510–34; Alter, 'Who are the Masters'.
 31. For works which illuminate these tensions, see M. Höreth, 'No Way Out for the Beast? The Unsolved Legitimacy Problem of European Governance', *Journal of European Public Policy* 6/2 (1999), pp.249–68; F. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press 1999); Majone, 'The Regulatory State'.
 32. On the notion of dynamic relationships in the economic P–A literature, see J. Pratt and R. Zeckhauser, 'Principals and Agents: An Overview', in J. Pratt and R. Zeckhauser (eds.), *Principals and Agents: The Structure of Business* (Boston: Harvard Business School Press 1985); B. Holmström and J. Tirole, 'The Theory of the Firm', in R. Schmalensee and R. Willig (eds.) *Handbook of Industrial Organization*, Vol. 1 (Amsterdam: North Holland 1989); D. Sappington, 'Incentives in Principal–Agent Relationships', *Journal of Economic Perspectives* 5/2 (1991), pp.45–66.
 33. O. Williamson, 'Transaction Cost Economics and Organizational Theory', in O. Williamson (ed.), *Organization Theory: From Chester Bernard to the Present and Beyond* (New York: Oxford University Press 1995), p.216.
 34. F. Scharpf, 'The Joint-Decision Trap: Lessons from German Federalism and European Integration', *Public Administration* 66 (1988), pp.239–78.
 35. Stetter, 'Regulating Migration'; J. Goetschy, 'The European Employment Strategy', *ECSA Review* 13/3 (2000), pp.4–6; J. Mosher, 'Open Method of Coordination: Functional and Political Origins', *ECSA Review* 13/3 (2000), pp.6–7.
 36. For a P–A analysis of the Amsterdam Treaty, see Pollack, 'Delegation in the Treaty of Amsterdam'.
 37. The analysis of this process is developed in Tallberg, 'Making States Comply'.
 38. I am indebted to Alec Stone Sweet for the conceptualisation of this feed-back effect.
 39. Cf. Alter, 'Who are the Masters'; A. Slaughter, A. Stone Sweet and J. Weiler (eds.), *The European Courts and National Courts: Doctrine and Jurisprudence* (Oxford: Hart Publishing 1998).
 40. Stone Sweet and Caporaso, 'From Free Trade', p.127.
 41. The analysis of this process is developed in Tallberg, 'Making States Comply'; Tallberg, 'Supranational Influence'.
 42. For a recent attempt to analyse the independent influence of a range of international organisations, see B. Reinalda and B. Verbeek (eds.), *Autonomous Policy Making by International Organizations* (London: Routledge 1998).
 43. Moravcsik, 'Preferences and Power', p.509.
 44. See the contribution by K. McNamara in this special issue, as well as general sociological



institutionalist arguments as developed in P. DiMaggio and W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields', *American Sociological Review* 48 (1983), pp.147–60; W. Powell and P. DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press 1991); W. Scott and J. Meyer *et al.*, *Institutional Environments and Organizations: Structural Complexity and Individualism* (Thousand Oaks: Sage 1994).

