

## Delegation, Agency and Agenda Setting in the Treaty of Amsterdam

**Mark A. Pollack**

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### Keywords

agency theory, agenda-setting, comitology, European Commission, European Court of Justice, European Parliament, IGC 1996, institutionalism, Amsterdam Treaty, political science

### Abstract

This paper applies a principal-agent model of delegation, agency and agenda setting to the 1996 intergovernmental conference and the Treaty of Amsterdam, in order to understand both the delegation of powers to supranational organizations in the new Treaty, and the efforts of such organizations to set the agenda for the conference. At Amsterdam, the member governments of the European Union delegated new powers to the Commission, the Court of Justice, and especially the European Parliament; these new powers, however, are carefully hedged with elaborate mechanisms to control, if not eliminate, supranational autonomy in the future. In the intergovernmental conference, moreover, the EU's supranational organizations attempted to influence the outcome of the negotiations as informal agenda setters, but they were limited in their ability to do so by the information-rich content of the IGC. However, while the influence of the Commission, Court and Parliament was indeed limited in the intergovernmental conference and at Amsterdam, we should beware of generalizing from IGCs to the day-to-day workings of EU politics, where the powers of the supranational organizations are far greater than in any intergovernmental conference.

### Kurzfassung

Dieses Papier wendet auf die Regierungskonferenz 1996 und den Vertrag von Amsterdam ein *principal-agent*-Modell der Befugnisübertragung, des Handelns und des Agendasetting an, um sowohl die Übertragung von Befugnissen auf die supranationalen Organe im neuen Vertrag als auch die Bemühungen solcher Organe, die Agenda der Konferenz zu bestimmen, zu verstehen. In Amsterdam übertrugen die EU-Regierungen neue Befugnisse auf die Kommission, den Gerichtshof und im besonderen auf das Europäische Parlament; diese neuen Kompetenzen sind allerdings sorgfältig durch ausgeklügelte Mechanismen begrenzt, um die supranationale Autonomie in Zukunft zu kontrollieren, wenn nicht sogar zu beseitigen. Darüber hinaus versuchten die supranationalen Organe der EU in der Regierungskonferenz das Ergebnis der Verhandlungen als informelle Agendasetter zu beeinflussen, waren jedoch darin durch die Informationsdichte der IGK behindert. Obwohl der Einfluß der Kommission, des Gerichtshofs und des Parlaments in der Regierungskonferenz und in Amsterdam in der Tat sehr beschränkt war, sollte nicht der Fehler gemacht werden, von IGKs auf die Alltagsgeschäfte der EU-Politik zu schließen, da die supranationalen Organe dort bei weiten einflußreicher sind als in einer IGK.

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Intergovernmental conferences, such as the 1996 IGC that culminated in the Treaty of Amsterdam, are by definition dominated by the member governments of the European Union. Yet the supranational organizations of the Union – the Commission, Court of Justice and European Parliament – are clearly involved with intergovernmental conferences, both as the *objects* of delegation and as *subjects* attempting to influence the outcome of the negotiations. In this paper, I apply a principal-agent model of delegation, agency and agenda-setting to the 1996 IGC and the Treaty of Amsterdam in order to understand both the delegation of powers to supranational organizations at Amsterdam and the efforts of such organizations to set the agenda for the conference.

The paper is arranged in four parts. In the first part of the paper, I summarize briefly a principal-agent model of delegation to, and agency and agenda setting by, supranational organizations like the Commission, Court, and Parliament. The second part of the paper then examines EU supranational organizations as the objects of delegation in the Amsterdam Treaty, surveying both the delegation of new powers to the EU's supranational organizations and the new control mechanisms established by the member governments to limit the autonomy of these organizations. In Part III, the focus shifts to the Commission, Court and Parliament as subjects – or, in the terms of principal-agent analysis, as informal agenda setters – attempting to influence the outcome of the negotiations. Finally, in Part IV, I examine the implications of the Amsterdam Treaty for principal-agent analysis of the European Union, arguing that such an analysis allows us to make sense of the member governments' delegation of new powers to supranational agents, the new and byzantine control mechanisms created to limit supranational autonomy, and the very limited causal influence of EU supranational organizations as

agenda setters in the negotiations.

## I. Delegation, Agency, and Agenda Setting in the EU

Principal-agent analysis is derived from, and is a specification of, rational choice institutionalism. Principal-agent analysis is a middle-range theory, which, as applied to international institutions such as the EU, focuses specifically on three questions: (1) why do member-state principals delegate powers to supranational agents? (2) how and to what extent can member states control the behavior of the agents they create? and (3) how and to what extent can supranational agents set the agenda for their member-state principals? In this section I analyze each of these questions in turn.

### 1. Why do member governments delegate?

The first step in understanding supranational organizations is to understand why member states – understood here as the primary actors or *principals* – create and delegate powers to organizations like the Commission, Court and Parliament – their *agents* – in the first place(1). Principal-agent analysis provides a useful theoretical framework for understanding such an act of delegation. The basic approach of principal-agent models to the question of delegation is *functionalist*. That is to say, principal-agent analysis explains the choice to delegate powers to an agent in terms of the functions that the agent is expected to perform and the effects on policy outcomes it is expected to produce(2). In general terms, principal-agent models of delegation have identified four functions for which principals might choose to delegate authority to an agent such as the supranational organizations of the European Union.

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First, supranational agents may *monitor member state compliance* with international treaty obligations. In the context of collective action under imperfect information, supranational agents can monitor compliance and provide information to all participants, in effect “painting scarlet letters” on member states that fail to comply with their treaty obligations.

Second, supranational agents may solve problems of “*incomplete contracting*.” If we consider international treaties as a contract, we can say that the parties to that Treaty (i.e. the member states) pledge in the contract to behave in certain ways in the future. However, as Oliver Williamson (1985) points out, all but the simplest contracts are invariably incomplete, since it would be impossible (or at least prohibitively costly) to spell out in detail the precise obligations of all the parties throughout the life of the contract. For this reason, member state principals may decide to create an agent, such as a court, to fill in the details of the contract and adjudicate disputes about its meaning.

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

Fourth and finally, principals may have an incentive to delegate to an agent the power of *formal agenda setting*, that is, the ability of a given actor to initiate policy proposals for consideration by the principals. As McKelvey, Riker and others have shown, any majoritarian system in which each and every participant had the right to initiate proposals would lead to an endless series of proposals from disgruntled participants who had been in the minority in a previous vote. To avoid such “cycling,” they argue, actors might decide to delegate formal agenda setting power to a single actor, who would

be responsible for bringing forward proposals for consideration. As we shall see below, however, formal agenda setting responsibilities also convey considerable power to the agenda setter, even if that agenda setter is formally a mere “agent” of the principals.

In a previous article, I surveyed the powers delegated to the EU’s supranational organizations in the 1957 Treaty of Rome, the 1986 Single European Act, and the 1992 Maastricht Treaty on European Union, arguing that the functional model yields strikingly accurate predictions regarding the functions delegated to the Commission and the Court, whose primary tasks do indeed concern monitoring, interpreting and elaborating incomplete contracts, credible regulation, and agenda setting. However, the functionalist model fails almost completely at predicting the powers delegated to the European Parliament, including its legislative and its budgetary powers. Clearly, the functionalist model fails to account for the ideological concern for democratic legitimacy that has led member governments to assign increasingly significant powers to the Parliament in successive Treaty amendments (Pollack 1997: 106-107). Later in this paper, we shall see that this pattern also holds for the new powers delegated to the Commission, Court and Parliament at Amsterdam.

## 2. Control mechanisms and supranational agency

Under certain circumstances, therefore, member state principals might be expected to delegate – and indeed have delegated – authority to supranational agents such as the Commission, Court and Parliament. However, this initial act of delegation immediately raises another problem: What if the agent behaves in ways that diverge from the preferences of the principals – a problem referred to as “shirking”? In the European Union case, what if the various supranational organizations were to develop an independent preference for greater integration, as indeed a number of scholars have suggested they have (Cram 1993; Ross 1995: 14), and used their delegated powers to advance the integrationist cause beyond the preferences of the member states that created them? This is the central problem of principal- agent analysis, namely the conditions under which agents are free to act on their own preferences, rather than those of their principals.

Fortunately – at least for the principals – principal-agent models point out that the principals are not helpless in the face of this dilemma. Rather, when delegating authority to an agent, principals can also adopt administrative and oversight procedures to limit the scope of agency activity and the possibility of agency shirking. *Administrative procedures* define *ex ante* the scope of agency activity, the legal instruments available to the agent, and the procedures to be followed by it. Such administrative procedures may be more or less restrictive, and they may be altered in response to shirking, but only at a cost to the flexibility and comprehensiveness of the agent’s activities.

*Oversight procedures*, on the other hand, allow principals *ex post* to (a) monitor agency behavior, looking for any possible instances of shirking, and (b) influence agency behavior through the application of positive and negative sanctions. With regard to monitoring, for example, McCubbins and Schwartz (1984) suggest that principals may use any of a number of oversight mechanisms, including the “police-patrol” method of standing oversight committees, and the “fire-alarm” oversight offered by individual constituency complaints and judicial review of agency behavior. As for sanctioning, the literature points out that principals enjoy a formidable array of sanctions, including control over budgets, control over appointments, overriding of agency behavior through new legislation, and revision of the agency’s mandate. Through the use of such monitoring and the application of sanctions, much of the literature argues, both shirking and slippage by agents can be minimized, if not eliminated.

However, as Moe (1987) points out, both administrative and oversight procedures can be quite costly for principals as well as agents, and these costs can create some limited room for agency autonomy from principals. Monitoring, for example, can consume significant time and resources, and yet fail to cover more than a small cross-section of agency activities. Perhaps more importantly, the application of sanctions by principals is not automatic, but generally requires a positive decision by the principals, and it is here that the agent can exploit *conflicting preferences* among its principals to escape sanctions and pursue its own preferences – in the EU case, integrationist preferences – within limited bounds. Thus, for example, if a decision to sanction a supranational agent requires a majority (or even a unanimous) vote among member state principals, then the agent may drift considerably from the Council's ideal point, as long as it does not call forth the requisite majority (or unanimity) required for the imposition of sanctions. In practical terms, for example, it is possible that the Council of Ministers might, in response to agency shirking by the Commission, sanction the Commission or overturn its decision by qualified majority, and examples of such sanctioning can indeed be found in the day-to-day business of EU policymaking (Pollack 1998). By contrast, the revision of the Commission's mandate in the Treaty is considerably more difficult, requiring unanimous agreement among the member governments and ratification by national parliaments and electorates. For this reason, Treaty revision is essentially the “nuclear option” – exceedingly effective, but difficult to use – and is therefore likely to be used only rarely and only in cases of flagrant supranational shirking against the unanimous will of the member states.

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For the purposes of the current paper, the foregoing analysis generates two general hypotheses about intergovernmental conferences such as the 1996 IGC. First, to the extent that the member states delegate new powers to the EU supranational organizations, we should expect them to adopt administrative and oversight mechanisms to control shirking by their supranational agents, particularly in sensitive areas in which governments wish to avoid the creeping extension of EU competence. Second, the model presented above also suggests that member governments are likely to attempt to use intergovernmental conferences as a means to sanction supranational agents, but that such attempts are unlikely to be successful given the need for a unanimous vote among the member governments. We shall examine both of these questions in some detail below, but first, we need to move on to the third part of the theory, namely the issue of agenda setting.

### **3. Agenda setting by supranational actors**

Much of the literature on the EU's supranational organizations focuses on their purported ability to “set the agenda” for the member states of the Union. This literature often runs into conceptual confusion, however, because different analysts use the term “agenda setting” to refer to two different types of activities. For the sake of analytic clarity, therefore, I distinguish between *formal* and *informal* agenda setting. Put simply, formal agenda setting refers to the ability of an actor to set the *procedural* agenda of a legislature by placing before it legislative proposals that can be adopted more easily than they can be amended, thus structuring and limiting the choices faced by a group of legislators. Informal agenda setting, by contrast, is the ability of a “policy entrepreneur” to set the *substantive* agenda of an organization, not through its formal powers, but through its ability to define issues and present proposals which can rally consensus among the final decisionmakers. Let us consider each, very briefly, in turn.

#### **Formal agenda setting**

In the terms established by rational choice theories, formal agenda setting relies most basically on the right of certain institutional actors to propose legislation for a vote in a legislative body. In the US



Congress, this power to propose is typically wielded by Congressional committees, and is arguably the source of their disproportionate influence within their respective jurisdictions. In the European Community, by contrast, the Treaties assign the sole “right of initiate” for most (but not all) Community legislation to the Commission, placing the Commission in the role of the Community’s formal agenda setter(3).

The right to propose, however, is not sufficient to ensure agenda setting power. The influence of an agenda setter will, *ceteris paribus*, be greatest where the voting rule is some sort of majority vote, and where the amendment rule is restrictive – in other words, where it is easier to adopt the agenda setter’s proposal than to amend it. Applied to the Community, this analysis of agenda power with different voting rules and amendment rules yields varying results depending on the rules governing a given piece of Community legislation. In the Community pillar of the EU, the Commission almost invariably possesses the sole right of initiative, and the Council always requires a unanimous vote in order to amend a Commission proposal. However, the voting rule in the Council, and the role of the European Parliament, vary considerably depending on the legislative procedure specified for a given issue-area.

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For example, under the consultation procedure, both the amendment rule and the voting rule in the Council are unanimity. Thus, although it is difficult for the member states to amend a Commission proposal, it is equally difficult to adopt the proposal, and any member state may veto a proposal with which it is unhappy. The Commission’s agenda setting power under the consultation procedure is, therefore, minimal or non-existent. Similarly, the European Parliament must be consulted, but the Council is under no legal obligations to take its proposed amendments into account.

By contrast, the cooperation procedure established by the Single European act confers upon the Commission a considerable agenda setting power. Under the cooperation procedure, the amendment rule remains unanimity, making a Commission proposal difficult to amend; but the voting rule is qualified majority, meaning that the Commission need only put forward a proposal capable of garnering the support of a qualified majority in the Council in order to secure its preferred outcome. In addition, the cooperation procedure also provides some limited agenda setting power to the Parliament, which may propose amendments to the Council’s draft legislation. These amendments, if accepted by the Commission, then become part of the Commission’s amended proposal, and can be adopted in the Council by QMV, but rejected only by unanimity. In other words, the EP gains some “conditional” agenda setting power under the cooperation procedure (Tsebelis 1994), but the Commission remains the middle-man in the procedure, without whose cooperation the Parliament’s amendments enjoy no special status.

Finally, the co-decision procedure created at Maastricht establishes a similar agenda setting power for the Commission and Parliament, with one important difference: In its second reading, the Parliament may by an absolute majority of its members re-insert amendments to the Commission’s revised draft. The Council may then accept the Commission’s amendments, or else convene a “conciliation committee” bringing together delegations from both the Council and the Parliament to reconcile their differences in a final draft, which then returns to the two bodies for approval. Under the Maastricht Treaty, both bodies would then need to approve the final draft, unless the Council reaffirmed its original position in its “third reading” by a unanimous vote. Thus, beyond its original agenda setting role, the Parliament gained the right to veto legislation, unless the Council was unanimous in its position.

### **Informal agenda setting**

By contrast with the byzantine and technical requirements for formal agenda setting power, informal agenda setting does not rely on the formal powers of an organization, but rather on the ability of a “political entrepreneur” like the Commission to set the substantive agenda for the member states, by identifying policy problems, proposing and “selling” policy proposals, and brokering compromises among the member states on the terms of the policies ultimately adopted. This model of informal agenda setting derives largely from Kingdon’s (1984) seminal work in the American context, which relies fundamentally on the existence of *imperfect information* among policymakers. That is to say, when policymakers have difficulties identifying policy problems and solutions – or indeed, identifying their own preferences on a given issue! – a policy entrepreneur may secure the adoption of a policy, and influence its content, by stepping forth at the right time (a “policy window”) with a proposal that identifies a common problem and proposes an acceptable solution.

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According to Kingdon, a successful policy entrepreneur should have three main characteristics: (1) the person (or organization) should be taken seriously, as an expert or leader; (2) the person must be known for her political connections or negotiating skills, and (3) the successful entrepreneur must be persistent and wait for the opening of a policy window. In the EU context, the role of policy entrepreneur can therefore be played by member governments, by non-governmental actors such as the European Round Table of Industrialists, or by the EU’s supranational organizations, to the extent that they possess these characteristics. All else being equal, Kingdon’s model would lead us to suspect that the informal agenda setting power of supranational organizations is greatest where information is imperfect, uncertainty about future developments is high, and the asymmetrical distribution of information between supranational organizations and member governments favors the former.

Applied to the Amsterdam Treaty, the foregoing discussion of formal and informal agenda setting clarifies, and specifies the conditions for, supranational agenda setting by the Commission, Court and Parliament. In an IGC, supranational organizations possess *no formal agenda-setting powers of any kind*. Thus, to the extent that they might wish to influence the outcome of the conference, each of these organizations would have to behave as a political entrepreneur, identifying problems and proposing solutions that might rally a unanimous consensus among the governments participating in the conference. Their ability to do so, however, is dependent on the existence of imperfect information or unclear preferences among the member states, and on an asymmetrical distribution of information in favor of supranational organizations. These criteria are clear and demanding – and they were not met in the 1996 IGC, as we shall see presently.

## II. Delegation and Agency in the Treaty of Amsterdam

Summing up the previous section, the principal-agent approach to supranational organizations provides us with a compelling set of questions, and a preliminary set of hypotheses, about (1) the sorts of functions likely to be delegated in an intergovernmental conference like the 1996 IGC; (2) the sorts of control mechanisms likely to be established by member states when they delegate, and the difficulty of using Treaty amendment as a control mechanism to sanction previous behavior; and (3) the (limited) ability of supranational organizations to act as informal agenda setters for the member governments in an IGC.

In this section, I examine the first two questions of “delegation” and “agency,” analyzing the nature of the powers delegated to supranational organizations at Amsterdam and the control mechanisms established by states to control their supranational agents. My argument here is twofold. First, as with the earlier treaties, the functional model seems to fit the new powers of the Commission and Court

quite well, but the powers of the European Parliament appear to make sense only in terms of the wider consideration of democratic legitimacy. Secondly, however, the member governments accompanied this delegation of new powers with new and byzantine administrative and oversight mechanisms designed to limit supranational activism in the future, especially in the “communitarized” pillar three issues of visas, immigration and asylum. A complete account of the IGC negotiations is, of course, beyond the scope of this short paper, but consider, very briefly, the new powers delegated to, and the new control mechanisms imposed upon, each of the three primary supranational organizations.

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## Commission

At first glance, the Treaty provisions dealing with the Commission seem modest. If we examine the Treaty provisions relating directly to the Commission, the most notable changes are the slight increase in the powers of the Commission President, whose nomination will be confirmed directly by the European Parliament, and who will have a greater role in selecting and apportioning portfolios to his fellow Commissioners. In other articles of the Treaty, however, the member governments opted to delegate to the Commission a range of new powers which can be grouped under the rubrics of monitoring and agenda setting, respectively.

In terms of monitoring, the Commission has traditionally played the role of “guardian of the Treaties,” in particular through its ability to challenge member states for non-compliance with EU law before the European Court of Justice (Article 169 EC). Under the Amsterdam Treaty, the Commission’s role as the guardian of EU law is extended both to the “communitarized” issues of free movement, asylum and immigration, and to a lesser extent to the remaining third-pillar issues of police and judicial cooperation, where the Commission will share with the member governments the ability to challenge the acts of the Union before the Court of Justice.

The Commission’s formal agenda setting role is also enhanced in a number of areas, although the extent of Commission power, and the control mechanisms established to prevent shirking, vary across four sets of articles:

- First, there are a number of first-pillar areas in which the Commission’s agenda setting power is increased by the adoption of qualified majority voting in the Council. In these areas – which include a few existing provisions such as research and technology policy as well as new articles relating to employment, social exclusion, and equal opportunities for men and women – the Commission will enjoy the formal agenda setting powers described above.
- Second, for the “communitarized” issues of free movement, immigration and asylum, the Commission has been granted a *joint right of initiative* with the member states during the first five years after the Treaty takes effect, during which time the member states will vote by unanimity in the Council. During these first five years, therefore, the Commission’s formal agenda-setting powers will be nonexistent, since its proposals will enjoy no special status in the Council. After five years, the Commission will gain its sole right of initiative, and the member states *may* decide, by a unanimous vote, to move to qualified majority voting in the Council, which would provide the Commission with the sort of formal agenda-setting powers it enjoys elsewhere in pillar one. Thus, for the first five years of the new Treaty, the Commission will effectively be “on trial” in its proposals to the Council, which will weigh its decision to move to QMV accordingly.
- Third, in the remaining third pillar issues of police and judicial cooperation, the Commission also gains *joint right of initiative* alongside the member states. In third-pillar issues, therefore,



the Commission may now propose legislation for consideration by the Council, but again the Commission's proposals enjoy no special status, and its formal agenda setting powers are therefore minimal or nonexistent.

- Fourth and finally, the Commission gains an important new agenda setting power in the new Treaty provisions on flexibility or "enhanced cooperation" in the first and third pillars. In the first pillar, member states may present a request to the Commission, which will submit a proposal only if it believes that all the criteria established in the Treaty are met. In effect, the Commission, as the guardian of the Treaties, is granted both agenda setting and *gatekeeping power*, i.e. the ability to prevent certain proposals from being considered if, in the Commission's opinion, those proposals would weaken the institutional coherence of the Union. In the third pillar, by contrast, the Commission does not enjoy a formal gatekeeping role, but even here the Commission must present an Opinion to the Council regarding the proposed "enhanced cooperation."

In this context, it is also worth noting that several member states put forward proposals to the IGC that would have weakened the Commission's agenda setting powers in existing Treaty articles, either by extending the right of initiative to member states, or by allowing Commission proposals to be amended by a qualified majority vote in the Council. In the end, however, these proposals met with strong resistance from several member states (including especially the smaller member states, which regard the Commission's right of initiative as insurance against domination by the larger members), and none of these proposals survived in the final text of the Treaty (Petite 1998; interview with Carlo Trojan, February 1999).

Summing up the new Treaty provisions on the Commission, the member governments continued in Amsterdam to delegate monitoring and agenda-setting powers to the Commission, as in earlier Treaties. However, the degree of agenda setting power delegated to the Commission varies sharply depending on the sensitivity of the issue-area, and the proliferation of new formulae (joint right of initiative, the five-year trial period) reflect member-state concern to limit the Commission's autonomy in these new and sensitive areas.

## The European Court of Justice

In terms of the functions specified in the principal-agent analysis above, the primary function of the European Court of Justice is to solve problems of incomplete contracting, by interpreting the incomplete provisions of primary and secondary EC law and by arbitrating disputes among the member states, supranational organizations, and private citizens asserting their rights under EC law. The Treaty of Amsterdam extended these traditional functions to the "communitarized" issues of free movement, asylum and immigration, and to the remaining "third pillar" issues of police and judicial cooperation, respectively. The delegation of new powers to the Court is most extensive in the communitarized issues, but in both areas the delegation of new powers is accompanied by new and novel mechanisms to limit judicial discretion:

- In the communitarized issues of free movement, asylum, and immigration, the Court will enjoy its traditional powers to interpret the Treaty and arbitrate disputes, but with three significant restrictions (spelled out in Article 73p). First, within the new communitarized issues, preliminary rulings may be sought only by the highest courts in each member state, not by lower courts as in the existing Article 177; this provision was designed nominally to avoid flooding the Court with immigration and asylum cases, but in effect it closes off access to the ECJ by lower courts, which have played a vital role in the expansion of EC law over the past four

decades. Second, the Court's jurisdiction explicitly excludes any measures "relating to the maintenance of law and order and the safeguarding of internal security." Third and finally, the Council, Commission, or Member States may request the Court to give a ruling on the interpretation of the Treaty provisions or of any acts based on these provisions, but the ruling of the Court "shall not apply to judgements of courts or tribunals of the Member States which have become *res judicata*." In this way, the Treaty guards against functional creep of ECJ jurisprudence from areas of free movement into areas of criminal law and internal security.

- In the remaining third pillar issues of police and judicial cooperation, the Court is given limited jurisprudence to interpret the Treaty provisions and subsequent decisions taken under the third pillar; however, the safeguards and limitations on the Court are even more byzantine, reflecting the sensitive nature of third-pillar issues. Thus, the Court gains the right to review the legality of decisions taken under the third pillar, as well as jurisdiction to rule on disputes between member states or between the Commission and member states on the interpretation of third-pillar decisions; put differently, the Court gains the power to interpret the incomplete contract of Article K, which governs the operation of the remaining third pillar. However the right to bring such cases is restricted to the Commission and the member states, and excludes both the European Parliament and private actors. Furthermore, the new Article K establishes only a weak, optional version of the preliminary ruling procedure, whereby Member States *may* issue a declaration stating that they accept the jurisdiction of the Court, in which case national courts *may* (but need not) request preliminary rulings from the Court in third-pillar areas.

Here again, then, we see continued delegation of new powers to the Court to solve problems of incomplete contracting and adjudicate future disputes about the interpretation of the Treaty and of future provisions in the area of Justice and Home Affairs, coupled with the adoption of new and byzantine control mechanisms to limit the judicial activism of the Court of Justice and its reach into the various national legal orders. The second pillar, furthermore, remains outside of the Court's legal purview. Nevertheless, despite the plethora of new control mechanisms imposed on the Court in the area of Justice and Home Affairs, the United Kingdom delegation failed in its early and well-publicized attempt to roll back the powers of the Court in established areas (c.f. Alter 1998), and there was no repeat of the "Barber Protocol" in the Maastricht Treaty, in which the member states explicitly and deliberately used the IGC to overturn a controversial ruling of the Court. Thus, while the Court's *new* powers are hedged around with restrictions, its *existing* powers under the EC Treaty were left untouched and inviolable at Amsterdam.

## The European Parliament

By all accounts, the European Parliament emerged as the clear "winner" of the Amsterdam Treaty, with a considerable extension of Parliamentary powers relating to EU legislation and to oversight of the Commission. The new powers delegated to the Parliament are wide-ranging and have been well catalogued elsewhere (c.f. Falkner and Nentwich 1997; Duff 1997: 142-151; European Parliament 1997; Petite 1998), and so we need cover only the highlights here.

The first and arguably the most important Treaty provisions regarding the Parliament concern the extension of the co-decision procedure to some 23 new and existing articles, including public health, research and development, the environment, equal opportunities and equal treatment, measures to counter fraud, incentive measures for employment, and a number of provisions relating to the internal market. In addition, the Council may, in five years and by a unanimous vote, decide to extend the co-decision procedure to the communitarized issues of free movement, asylum, and immigration. These provisions effectively eliminate the cooperation procedure (which remains only in the Treaty articles

on EMU), and more than double the number of articles in which the Parliament enjoys the power of co- decision.

A second and related change in Amsterdam is the rewriting of the co-decision procedure, which is simplified considerably with streamlined procedures and new time limits to ensure speedy decision-making. The most important of these changes is the elimination of the so-called “third reading” in which the Council could reaffirm its position if conciliation failed. This provision had been widely attacked by the Parliament for introducing an imbalance in the institutional positions of the Parliament and Council, and its removal effectively makes the EP and the Council equal partners in the legislative process where co-decision applies.

A third important change in the Amsterdam Treaty is the change to Article 158(2) EC, according to which the European Parliament gains the right to approve the nomination of the incoming Commission President. Under the Maastricht Treaty, the Parliament possessed the right to approve (and to sack) the Commission as a body, but could not approve the President individually. According to the new Treaty, the Parliament will now approve – and no doubt hear testimony from – the nominee for President, who will then select his colleagues in cooperation with the member states; the Parliament will then hold a second vote on the Commission as a college. This amended nomination process, together with the Parliament’s existing power to sack the Commission as a body, is likely to ensure a Commission more attentive to the concerns of Parliament as well as of the member states.

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Examining these new powers of the Parliament, only the last (i.e., controlling the Commission) appears to fit among the functions predicted by principal-agent models of delegation. The extension and simplification of co-decision, by contrast, is surprising in terms of principal-agent models, and is explicable only in terms of the ideological preferences of the member states for democratic control of EU institutions, just as I have argued in a previous analysis (Pollack 1997), and as Moravcsik and Nicolaidis (1998) conclude in their analysis of the Treaty.

Nevertheless, the importance of democratic ideology should not be overemphasized. Moravcsik and Nicolaidis argue that the effects of delegating co-decision power to the Parliament are uncertain, and it is this uncertainty which leaves room for ideological considerations to play a role. Yet the likely effects of delegation to Parliament are not *entirely* uncertain, nor were the member states indiscriminately ideological in their delegation of new powers to the EP. Thus, at the same time that the member states were expanding considerably the reach of the co-decision procedure, they deliberately limited the powers of Parliament in other areas. For example, the original consultation procedure, which gives the Parliament no formal agenda-setting powers vis-a-vis the Council, was not only retained for existing Treaty provisions, it was also adopted for a number of *new* provisions, including the new Article 6A on non-discrimination, various articles relating to the communitarized issues of asylum and immigration, several provisions of the new title on employment, the new flexibility arrangements under the first pillar, and most of the remaining third-pillar issues. The EP is, moreover, excluded entirely from a number of provisions regarding flexibility, immigration, employment policy, the social chapter, and – perhaps most importantly – the future amendment of the Treaties, where the Parliament had requested the right to assent to all future Treaties under Article N of the Union Treaty. Even among the articles governed by the co-decision procedure, the Council opted to maintain unanimous voting in the Council for four sensitive areas (freedom of movement and residence; social security for migrant workers; rules governing professions; and culture). Finally, the IGC failed to address two issues which had been put on the agenda by inter-institutional agreements at EP insistence, namely the reform of comitology and of the budgetary process (Falkner and Nentwich 1997: 2). In sum, the member states were clearly motivated primarily by democratic

ideology in their decision to delegate new powers to the Parliament at Amsterdam; yet even here member states were careful to calculate the likely consequences of delegation, and to withhold additional powers where the Parliament could be expected to be significantly more activist than the Council.

What then can we conclude from the pattern of delegation and agency at Amsterdam? Four findings emerge clearly from the above analysis. First, the member states at Amsterdam continued their pattern of delegating new powers to the Commission and Court for the functions of monitoring, agenda setting, and interpreting incomplete contracts. Second, the member states seem to have been motivated once again by ideological concerns in their delegation of significant new powers to the European Parliament, although the member states were careful to withhold significant delegation of powers where the EP could be expected to diverge systematically from member-state preferences. Third, the member states accompanied this new delegation of powers with the most complex system of administrative and oversight mechanisms in EU history, in order to minimize, if not eliminate, supranational activism in the future. Fourth and finally, however, disgruntled member states were unable to win the unanimous agreement of the IGC to retrench the powers of the Commission or the Court of Justice: the nuclear option went unused at Amsterdam.

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### III. Supranational Agenda Setting at Amsterdam

As the *objects* of delegation, therefore, all of the EU's supranational organizations gained new powers in Amsterdam, notwithstanding the elaborate control mechanisms established to minimize the risks of supranational agency in the future. But how did the Commission, Court, and Parliament influence the negotiations as *subjects*, as political entrepreneurs seeking to set the agenda for the decisions ultimately taken by the fifteen member governments?

If we return to principal-agent analysis, we can see that the question of supranational agenda-setting in IGCs is not a binary question of influence or no influence – as it has often appeared in the debate between neofunctionalists and intergovernmentalists – but a question of predicting the *conditions* under which supranational organizations like the Commission, Court and Parliament are likely to be able to set the agenda for the member states. The prediction of principal-agent analysis in this case is clear: by contrast with the everyday legislation process in the EU, intergovernmental conferences provide supranational organizations with no formal agenda setting powers at all: not only do member governments take the final decision on the contents of the Treaty (as they do in everyday legislation), but the proposals of the Commission, Parliament and Court have no special status in the negotiations; the Parliament and Court are excluded from the negotiations entirely; and none of the supranational organizations possesses the *ex post* power of assent over the outcome. Under these circumstances, the agenda-setting powers of the EU's supranational organizations are strictly informal, and rely on the ability of such organizations to propose “focal points” around which member governments can converge in an environment of imperfect information and unclear member state preferences.

In the case of the Single European Act, these conditions were met. In the run-up to the negotiation of the Single Act, Jacques Delors and his Internal Market Commissioner Lord Cockfield strategically selected the completion of the Internal Market (rather than Delors' sincere preference for EMU) as the project most likely to rally the unanimous approval of the member governments; presented the “1992” program to the member governments as a coherent package; and mobilized a transnational coalition of multinational corporations in favor of the initiative. The Commission also presented to the hastily convened 1985 intergovernmental conference a detailed and pragmatic set of proposals which served as the basis for negotiation among the member governments. The Single Act, therefore, most



closely approximates the ideal type of entrepreneurial agenda setting by a Commission with clear preferences and a sophisticated strategy, facing member states with varying and unclear preferences toward the internal market, institutional reform, high-tech cooperation, and the menu of other policy options facing the member governments in the mid-1980s(4). As Moravcsik (1998) points out, however, we should beware of generalizing from the Commission's success in the Single Act to the question of supranational agenda setting more broadly. By contrast with the stunning success of the Delors Commission in 1984, for example, the European Parliament's sincerely federalist "Draft Treaty on European Union" appears to have made little impression and had little influence on member governments which did not share the Parliament's federalist theology.

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Similarly, if we move from the negotiation of the Single Act to the Maastricht Treaty, we see a more complex and less clear-cut instance of Commission agenda-setting. For example, many scholars have pointed to the entrepreneurial activities of Jacques Delors in the late 1980s in pressing for Economic and Monetary Union, and later in chairing the Delors Committee of central bankers which produced the basic three-stage blueprint of EMU as it eventually appeared in the Maastricht Treaty (c.f. Ross 1995; Endo 1999). Here again, however, Moravcsik correctly points out that Delors' influence on EMU was limited by the technically expert central bankers who made up the majority of the Delors' committee, and above all by the clear and dominant preferences of the German government, which essentially dictated the terms of EMU as it appears in the Treaty. Faced with technically expert central bankers and member states with clear preferences, Delors was able to exert a leadership role as the chairman of the Delors Committee, but he was not able to influence significantly the content of the Treaty provisions, which represent the "monetarist" views of the German Bundesbank rather than Delors' own "economist" views.

The second 1991 IGC on political union was an even less propitious environment for the Commission, since it was called with little advance notice by the member governments rather than by any supranational organization; in this context, the Commission responded late and overreached in its proposals, and was consequently marginalized in the negotiations (Moravcsik 1998: 432-471). The changed dynamic between the Single Act and Maastricht was perhaps best summarized by Jean-Charles Leygues, a member of Delors' cabinet, who characterized the differences as follows:

Before we could count on being ahead of other people strategically. We knew what we wanted and they were less clear, partly because they didn't believe that anything much would follow from the decisions we asked them to make. Now they know that we mean business and they look for all the implications of our proposals. There are huge numbers of new things on the table and it will be much tougher going from now on (quoted in Ross 1995: 137).

How about Amsterdam? To what extent were the supranational organizations of the EU able to act as entrepreneurial agenda-setters for the 1996 intergovernmental conference?

At first glance, it might seem as if the Commission, Court and Parliament were highly effective agenda setters in the 1996 IGC. By comparison with past intergovernmental conferences, the Commission, the Parliament and (to a lesser extent) the Court were given numerous opportunities to influence the preparation and negotiation of the Amsterdam Treaty. During the first half of 1995, all three organizations (plus the Council of Ministers and the European Court of Auditors) presented reports on the working of the Maastricht Treaty in preparation for the IGC (Commission 1995; European Court of Justice 1995; European Parliament 1995). Later, during the second half of 1995, the Commission and the European Parliament were both represented on the Reflection Group of member state representatives appointed to prepare the agenda of the conference. The European Parliament



was subsequently excluded from the IGC itself (at the insistence of Britain and France), yet the Commission was represented at all levels in the IGC, and a Parliamentary delegation was briefed on a monthly basis by the Council Presidency on the state of the negotiations.

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Throughout these stages of the conference, moreover, the Commission and Parliamentary representatives are widely considered to have behaved in a responsible, realistic, and pragmatic manner. For example, Michel Petite, the head of the Commission's IGC Task Force, characterized the Commission's strategy as "setting its sights on the upper range of what it considered realistic" (Petite 1998: Introduction). Rather than sincerely proposing its preferred outcome regardless of the preferences of the member governments, the Commission acted *strategically*, anticipating the preferences of the member governments and proposing Treaty provisions which it believed might attract their unanimous support. Similarly, the European Parliament generally eschewed the visionary federalism of the 1984 Draft Treaty in favor of more moderate and pragmatic resolutions in advance of the conference. The EP's representatives to the Reflection Group, Elizabeth Guigou (PES-France) and Elmar Brok (EPP- Germany), were also widely praised for their pragmatic contribution to the Reflection Group(5). The Court of Justice was similarly restrained in its report to the Reflection Group, limiting itself to a few modest proposals on the judicial system of the EU, and insisting on the independence of the judiciary and the inviolability of the preliminary reference procedure in Article 177 (European Court of Justice 1995). Put simply, the Commission, Court, and Parliament had learned from previous IGCs that grandiose federalist proposals would simply be ignored by the member states, and that only practical proposals capable of garnering the unanimous agreement of the member states would be taken seriously by the conference. In the language of rational choice theory, all of the EU's supranational organizations behaved strategically, rather than sincerely, in their proposals to the 1996 IGC.

Yet, if the Commission, Court and Parliament approached the 1996 IGC with greater pragmatism and sophistication than past IGCs, they did so in an information-rich context relatively un conducive to entrepreneurial agenda setting. *Pace* scholars such as Lord and Winn (1998) and Mazey and Richardson (1996), the member governments of the EU had years of advance notice regarding the approach of the 1996 IGC, and therefore possessed relatively good information about the workings of the Maastricht Treaty and their own broad preferences regarding the new treaty to be negotiated. As Moravcsik and Nicolaidis (1998) point out, the member states therefore had remarkably clear and stable *preferences* over the outcome of the Treaty, even if they waited in some cases until the end-game of the negotiations to present specific negotiating *positions* on secondary issues. In this information-rich context, the opportunities for entrepreneurial agenda-setting by supranational organizations were correspondingly weak, as predicted by principal-agent analysis.

Not surprisingly, then, there are few if any "smoking guns" of Commission, Court or Parliament influence on the negotiation of the Amsterdam Treaty. To be sure, the Commission and Parliament in particular were *active* throughout the preparation and negotiation of the Treaty, offering opinions, holding hearings, and taking part in formal and informal discussions with member-state representatives in the Reflection Group and in the conference itself. But *activity is not influence*, and we should beware of attributing a causal role to supranational institutions too readily. Indeed, if we adopt Moravcsik's standard that supranational organizations must make proposals to the conference that were "both unique and successful," then there is little direct evidence of supranational influence on the Treaty. By and large, the proposals of the Commission, Court and Parliament were designed to capitalize and build upon an emerging consensus among the member states on the various issues, with the result that supranational proposals often reproduced the welter of proposals submitted by the member states to the IGC, rather than serving as the "constructed focal point" around which

member-state preferences might converge in a situation of uncertainty or incomplete information.

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Consider, for example, the Commission's Opinion to the IGC, put forward on the eve of the conference in February 1996. In his 1998 assessment of the Treaty, Michel Petite points out the similarities between the Commission's Opinion and the Amsterdam Treaty in areas such as employment, social policy, Justice and Home Affairs, and the role of Parliament – yet it would be a mistake to adduce from this correlation that the Commission actually influenced the negotiations in these areas. Indeed, because the Commission was (by Petite's own account) acting strategically and rationally anticipating the likely positions of the member governments, it is more plausible that the Commission's Opinion reflected member-state views than vice-versa<sup>(6)</sup>. Furthermore, as Moravcsik and Nicolaidis (1998) point out, the Commission failed to secure some of its key objectives for the conference in areas such as qualified majority voting, the number of Commissioners, the weighting of votes in the Council, and the Commission's failed bid to include services and intellectual property rights within the ambit of Article 113. Even where the conference did adopt new provisions in areas suggested by the Commission, moreover, the *content* of those provisions – whether in social policy, employment, or Justice and Home affairs – was often much weaker than the proposals put forward by the Commission.

The causal role of the European Parliament and Court of Justice are similarly difficult to establish with any certainty. The European Parliament, for example, received a considerable extension of powers, as we have seen, making it a “winner” in the process of Treaty reform; yet here again it is difficult to argue that the new Treaty provisions are attributable to the Parliament as a *subject* and agenda-setter, rather than as the *object* of delegation by member states concerned about democratic legitimacy. The Parliament, moreover, like the Commission, failed to achieve a number of its key aims for the Treaty, and its initial reaction to the Amsterdam Treaty was one of disappointment. The European Court of Justice, finally, arguably established the *status quo ante* for the conference as a result of its rulings on subjects such as fundamental rights, positive discrimination, and the Community's common commercial policy (c.f. Niemann and Edwards 1997; Meunier and Nicolaidis 1998); yet the Court's 1995 Report seems to have had little impact on the actual negotiation of the Treaty.

This is not to say that supranational organizations had no impact at all on the negotiation of the Amsterdam Treaty. Within the intergovernmental conference, most of the negotiations took place on the basis of papers prepared by the Presidency, with the support of the Council Secretariat and, to a lesser extent, the Commission (McDonagh 1998: 209). In this context, one senior Commission official has argued that the Commission did play a significant behind-the-scenes role in defeating any attack on the Commission's right of initiative, and in shaping the Treaty provisions on employment and on the “communitarized” issues of asylum, visas and immigration (interview with Carlo Trojan, 16 February 1999). This sort of behind-the-scenes interaction with a sympathetic Presidency may indeed have provided a channel of influence to the Commission, as well as to the Parliament, which also met regularly with the Presidency throughout the conference. However, final judgment about such influence should be reserved pending further research and interviews with both supranational and governmental officials.

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Summing up this section, it seems reasonable to conclude that, despite the professionalism and activity of the Commission and the European Parliament prior to and during the 1996

intergovernmental conference, there is (as yet) little evidence that any of the EU's supranational organizations played more than a secondary agenda-setting role in the Treaty of Amsterdam – an assessment shared, in large part, by the Commission and Parliamentary officials involved in the negotiations (interviews with Commission and European Parliament officials, July 1997, October 1998, and February 1999). This outcome, however, should not be considered surprising in light of the principal-agent model outlined earlier in the paper. By contrast with the day-to-day workings of EU politics, intergovernmental conferences provide supranational organizations with none of the formal agenda-setting powers that the Commission and the Parliament enjoy in most EU legislation. Put simply, intergovernmental conferences stack the deck in favor of member governments at the expense of the Commission, the Parliament, and the ECJ, which can only attempt to influence the outcome as informal agenda setters on the sidelines of the conference. We should, therefore, beware of generalizing from the outcome of a single intergovernmental conference to the broader universe of principal-agent interactions in the EU – a point to which I shall return presently.

## IV. Conclusions

What can we conclude from this necessarily cursory examination of delegation, agency, and agenda-setting in the 1996 intergovernmental conference and the Treaty of Amsterdam? First, in terms of delegation, the member governments of the EU continued at Amsterdam to delegate new powers to the Commission, the Court of Justice, and most strikingly to the European Parliament. Once again, as in previous treaties, the delegation of powers to the Commission and Court fall within the functions outlined in principal-agent models, but the delegation of legislative powers to the European Parliament is explicable only in reference to the ideological concern for democratic legitimacy in a number of member states. Second, however, this new delegation of powers was in each instance circumscribed by a number of new and novel control mechanisms, including new provisions for shared a Commission- Council right of initiative, new limitations on the ability of lower courts to refer cases to the Court of Justice in “communitarized” third-pillar issues, and other limits on ECJ jurisdiction in the remaining third pillar issues. Third and finally, the Commission, Court and Parliament all experienced great difficulty in influencing the agenda of the Amsterdam Treaty in the information-rich context of the 1996 IGC, in contrast to the extraordinary role played by the Delors Commission in the negotiation of the Single European Act.

More generally, the progression of events from the Single Act to the Amsterdam Treaty demonstrates that both the member states and the supranational organizations of the EU are strategic actors: thus the EU's supranational agents, having learnt from the mistakes and overreaching of the Maastricht Treaty, moderated their demands (if not their underlying preferences) in the 1996 intergovernmental conference, in order to avoid being marginalized; similarly, the member governments also learned from previous principal-agent interactions, delegating new powers to their supranational agents while at the same time limiting the ability of these agents to pursue an integrationist agenda that diverges significantly from their own.

Finally, let us return to the inter-paradigm, or rather multi-paradigm, debate within the field of European integration studies. To what extent does the rational-choice, principal-agent approach taken in this paper “fit” with the approaches adopted by other analysts of the 1996 IGC and the Amsterdam Treaty? In terms of its *theoretical assumptions*, the approach taken here fits most closely with the liberal intergovernmentalist approach of Moravcsik (1998) and Moravcsik and Nicolaidis (1998). Like liberal intergovernmentalism, the principal-agent approach is rationalist in its assumptions and places the member governments at the center of the analysis, although clearly more attention is directed at the relationship between those member governments and their supranational agents. Furthermore, like

Moravcsik and Nicolaidis, I find that member governments in the 1996 IGC were well informed about their own and each other's preferences, placing limits on the ability of the Commission, Court, and Parliament to act as entrepreneurial agenda-setters.

However, to generalize from the 1996 IGC that supranational organizations are causally unimportant would represent a particularly egregious case of selection bias. Intergovernmental conferences are only one step in an ongoing sequence of principal-agent interactions, and they are a highly atypical step, in which the "hand" of the member governments is strongest, and that of the EU's supranational organizations is weakest. In this context, it is hardly surprising that the Commission, Court and Parliament struggled to influence the 1996 IGC on terms set by the member governments, or that the member governments established control mechanisms to minimize agency slack in future delegation of powers. Rather, in principal-agent terms, what is most striking is the willingness of member governments to delegate new powers – especially to the European Parliament – and the failure of disgruntled member governments to use the IGC as a tool to rein in an activist Commission and Court. More generally, one might argue that the real test of supranational autonomy and influence will come not in the 1996 IGC itself, but rather in the use made of the new treaty powers by the Commission, Court and Parliament in day-to-day EU policymaking. Thus, a real test of supranational autonomy and influence would need to examine a representative sample of principal-agent interactions in the EU, not simply the occasional, and unusual, IGCs, in which the member governments play the game with a home-team advantage.

In this regard, the principal-agent approach adopted here shares *empirical* interests with the neofunctionalist, multi-level governance, and garbage-can approaches, all of which focus on the role of supranational actors in day-to-day EU politics. Yet, in spite of their common interest in the empirical phenomenon of supranational agency, I would argue that the neofunctionalist, multi-level governance, and garbage-can approaches are all characterized by significant theoretical and methodological weaknesses. Neofunctionalist theory, for example, pioneered concepts such as supranational entrepreneurship and cultivated spillover; yet the theory fails to specify *conditions* for supranational influence. Similarly, multi-level governance is arguably the most descriptively accurate model, in the sense that it directs our attention to the full range of national, supranational and subnational actors involved in the EU policy process and the IGCs. Yet here again, the model fails to specify which actors, at which levels, will be causally important, and when; it is this question that the principal-agent approach seeks to answer. Lord and Winn's garbage-can approach, finally, nicely points up the importance of imperfect information and weak preferences and the opportunities that these phenomena create for supranational agenda setters. In the case of the Amsterdam Treaty, however, Lord and Winn overstate the radical indeterminacy of member state preferences. Indeed, as Moravcsik and Nicolaidis point out, the underlying preferences of member governments in the 1996 IGC were remarkably stable over time (the occasional electoral shift notwithstanding), and there is little empirical evidence to support the claim that member governments "discover" their preferences through interaction at the EU level.

In short, the neofunctionalist, multi-level governance and garbage-can approaches all direct our attention at important empirical phenomena, but each has theoretical and methodological problems which make those approaches questionable places to begin our analysis. By contrast, the principal-agent approach taken here begins with the parsimonious microfoundations and state-centrism of liberal intergovernmentalism, and works from this basis to build an institutionalist theory capable of generating testable hypotheses about the complex interactions of the various actors – governmental as well as supranational – that constitute European Union politics.

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## References



Alter, Karen J., "Who are the 'Masters of the Treaty'? European Governments and the European Court of Justice," *International Organization*, Vol. 52, No. 1 (Winter 1998), pp. 121-148.

Commission of the European Communities, 1995. *Commission Report for the Reflection Group* (Luxembourg: Office for Official Publications of the European Communities).

Commission of the European Communities, 1996. *Commission Opinion: Reinforcing Political Union and Preparing for Enlargement*, reproduced as a supplement to *European Report* No. 2112, March 2.

Commission of the European Communities, 1998. *1996 Intergovernmental Conference Retrospective Database*, Europa Home Page, <http://europa.eu.int/en/agenda/igc-home/index.html> [contains texts of all the major documents, including the Treaty itself, the reports of the supranational organizations, and the negotiating positions of the member states].

Cram, Laura, 1993. "Calling the Tune without Paying the Piper? Social Policy Regulation: The Role of the Commission in European Community Social Policy," *Policy and Politics*, Vol. 21, No. 2, pp. 135- 46.

Dehousse, Renaud, and Giandomenico Majone, 1994. "The Institutional Dynamics of European Integration: From the Single Act to the Maastricht Treaty," in S. Martin, ed. *The Construction of Europe* (Kluwer Academic Publishers), pp. 91-112.

Duff, Andrew, 1997. *The Treaty of Amsterdam: Text and Commentary* (London: Sweet & Maxwell).

Endo, Ken, 1999. *The Presidency of the European Commission Under Jacques Delors : The Politics of Shared Leadership* (New York: St. Martin's).

European Court of Justice, 1995. *Report of the Court of Justice on Certain Aspects of the Application of the Treaty on European Union*, available on the Europa web site at [http://www.cec.lu/en/agenda/igc-home/eu-doc/justice/cj\\_rep.html](http://www.cec.lu/en/agenda/igc-home/eu-doc/justice/cj_rep.html).

European Parliament, 1995. *European Union Treaty and Intergovernmental Conference: Resolution on the Functioning of the Treaty on European Union with a View to the 1996 Intergovernmental Conference – Implementation and Development of the Union*, available on the Europa web site at <http://www.cec.lu/en/agenda/igc-home/eu-doc/parlment/resol.html>.

European Parliament, 1997. *The European Parliament as it Would Be Affected by the Draft Treaty of Amsterdam of 19 June 1997*, available on the European Parliament web site at <http://www.europarl.eu.int/dg7/en/epchange.htm>.

European Policy Centre, 1997. *Making Sense of the Amsterdam Treaty* (Brussels: European Policy Centre).

European Social Observatory, 1997. *Analytical Review of the Treaty of Amsterdam*, Working Paper, European Social Observatory, Rue Paul Emile Janson 13, B-1050 Brussels.

George, Stephen, 1996. "The Approach of the British Government to the 1996 Intergovernmental Conference of the European Union," *Journal of European Public Policy*, Vol. 3, pp. 45-62.

Kingdon, John W., 1984. *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown).

Lord, Christopher, and Neil Winn, 1998. "Garbage Cans or Rational Decision? Member



Governments, Supranational Actors and the Shaping of the Agenda for the IGC,” unpublished paper.

Mazey, Sonia, and Jeremy Richardson, 1997. “Policy Framing: Interest Groups and the Lead Up to the 1996 Intergovernmental Conference,” *West European Politics*, Vol. 20, No. 3 (July 1997), pp. 111-133.

McCubbins, Mathew, and Thomas Schwartz, 1984. “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” *American Journal of Political Science*, Vol. 28, pp. 165-179.

McDonagh, Bobby, 1998. *Original Sin in a Brave New World: The Paradox of Europe: An Account of the Negotiation of the Treaty of Amsterdam* (Dublin: Institute of European Affairs).

Meunier, Sophie, and Kalypso Nicolaidis, 1998. “Who Speaks for Europe? The Delegation of Trade Authority in the European Union,” paper prepared for delivery at the 1998 Annual Meeting of the American Political Science Association, September 3-6.

Moe, Terry M., 1987. “An Assessment of the Positive Theory of Congressional Dominance,” *Legislative Studies Quarterly*, Vol. 12 (November), pp. 475-520.

Moravcsik, Andrew, 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press).

Moravcsik, Andrew, and Kalypso Nicolaidis, 1998. “Explaining the Treaty of Amsterdam: Interests, Influence, Institutions,” unpublished paper.

Nentwich, Michael, and Gerda Falkner, 1997. “The European Parliament: Winner or Loser of the Amsterdam Treaty? A Preliminary Assessment,” paper prepared for the IPSA seminar, “Amsterdam and Beyond: The European Union Facing the Challenge of the 21st Century,” July 9-12, European Parliament, Brussels. <much extended version to be found in *European Integration online Papers* Vol. 1 No. 15 at: <http://eiop.or.at/eiop/texte/1997-015a.htm>>

Niemann, Arne, and Geoffrey Edwards, 1997. “A Revised Neofunctionalist Approach,” paper presented at the BISA Conference, Leeds (Panel 15: IGC and the State of European Integration Theory), 15-17 December.

Petite, Michel, 1998. *The Treaty of Amsterdam*, Harvard Jean Monnet Chair Working Papers Series No. 2/98, <http://www.law.harvard.edu/Programs/JeanMonnet/papers/98/98-2-.html>.

Pollack, Mark A., 1997. “Delegation, Agency and Agenda Setting in the European Community,” *International Organization*, vol. 51, pp. 99-135.

Pollack, Mark A., 1998. “The Engines of Integration? Supranational Autonomy and Influence in the European Union,” in Wayne Sandholtz and Alec Stone Sweet, eds., *European Integration and Supranational Governance* (New York: Oxford University Press, 1998), pp. 217-249.

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

Tsebelis, George, 1994. “The Power of the European Parliament as a Conditional Agenda Setter”, *American Political Science Review*, Vol. 88, pp. 129-142.

Williamson, Oliver, 1985. *The Economic Institutions of Capitalism: Firms, Markets, Regional Contracting* (New York: Free Press).

Zysman, John, and Wayne Sandholtz, 1989. "Recasting the European Bargain," *World Politics*, Vol. 41, No. 1, pp. 1-30.

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## Endnotes

(1) For an extended discussion of the issues raised in this section, see Pollack 1997.

(2) In this regard, the analysis here is similar to Moravcsik's (1998) discussion of "credible commitments," but is more explicit about the specific types of functions or powers likely to be delegated to supranational agents.

(3) By contrast, the Commission has not had the sole right of initiative in the second and third pillars of the EU, with which it has been only loosely associated.

(4) Good Commission-centric accounts of the Single European Act can be found in Zysman and Sandholtz (1989); Dehousse and Majone (1994); and Ross (1995).

(5) McDonagh, for example, characterizes "The Parliament's strategy [as] at once upbeat and realistic involving a targeted focusing on key issues rather than a scatter-gun approach. The Parliament's striking sensitivity to the concerns of all Member States... enhanced its credibility" (McDonagh 1998: 59).

(6) In fairness, Petite himself admits that "It is difficult to assess the importance of this formal statement of position by the Commission" (Petite 1998: Introduction).

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