

**The Path to European Integration:  
A Historical Institutional Perspective**

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**Abstract**

Many European and American observers of the EC have criticized "intergovernmentalist" accounts for exaggerating the extent of member state control over the process of European integration. This essay seeks to ground these criticisms in a "historical institutionalist" account that stresses the need to study European integration as a political process which unfolds over time. Such a perspective highlights the limits of member-state control over long-term institutional development, due to preoccupation with short-term concerns, the ubiquity of unintended consequences, and processes that "lock in" past decisions and make reassertions of member-state control difficult. Brief examination of the evolution of social policy in the EC suggests the limitations of treating the EC as an international regime facilitating collective action among essentially sovereign states. It is more useful to view integration as a "path-dependent" process that has produced a fragmented but still discernible "multitiered" European polity.

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The evolution of the European Community has long fascinated political scientists. For four decades, some of the world's most enduring nation states have conducted an extraordinary political experiment. Progressing sporadically but in a consistent direction, the member states of the European Community have created prominent collective institutions and "pooled" increasing areas of policy authority. The process which these decisions set in motion has transformed the nature of European politics.

How the evolution of these arrangements can be explained and the nature of the current system understood remain matters of considerable controversy. Within American political science, it has been students of international relations who have maintained the most theoretically-driven discussions of the EC. Despite significant internal disputes, the dominant position of the past decade regards European integration as the practice of ordinary diplomacy under conditions creating unusual opportunities for the provision of collective goods through highly institutionalized exchange.<sup>1</sup> From this "intergovernmentalist" perspective the EC is essentially a forum for interstate bargaining. Member states remain the only important actors at the European level; societal actors exert influence only through the domestic political structures of member states. Chiefs of Government ("COGs") are at the heart of the EC, and policy-making is made through negotiation among member states or carefully circumscribed delegations of authority. Either way, each member state seeks to maximize its own advantage. Debate within this perspective has concerned such questions as why member states desired certain observed outcomes, which member states have the most influence on collective decision-making, and which alignment of member state interests can best explain policy or institutional development in the EC.<sup>2</sup>

This perspective has not been without its challengers. European scholars have generally depicted the EC as a more complex and pluralistic political structure, less firmly under member state control. Much of this scholarship is not particularly concerned with theory, stemming instead from the detailed investigation of day-to-

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<sup>1</sup>For good examples see Geoffrey Garrett, "International Cooperation and Institutional Choice: The European Community's Internal Market," *International Organization*, Vol. 46, No. 2, Spring, 1992, pp. 533-58; and Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies*, Vol. 31, No. 4, December, 1993, pp. 473-524.

<sup>2</sup>E.g., do EC institutions favor large or small member states? For contrasting views see Andrew Moravcsik, "Negotiating the Single Act: National Interests and Conventional Statecraft in the European Community," *International Organization*, Vol. 45, Winter 1991, pp. 19-56; and Lisa L. Martin, "International and Domestic Institutions in the EMU Process," *Economics and Politics*, Vol. 5, No. 2, July 1993, pp. 125-44.

day policy development in areas where the EC's role is prominent. From this perspective, the Community looks more like a single (if highly complex and fragmented) polity than the site of diplomatic maneuvering among autonomous member states. Within Europe, analyses that treat the European Community as a quasi-federal system -- "an obvious reference point for the European Community" in the words of one prominent analyst -- are now quite common.<sup>3</sup>

This is equally true within the growing cohort of comparativists who have turned their attention recently to the European Community.<sup>4</sup> The principal reason for this new interest is revealing: students of a wide range of policy areas -- industrial policy, regional development, social policy, environmental policy -- have found that they can no longer understand the domestic policy processes that interest them without including a substantial European component. Their investigations, again, portray a complex and pluralistic political process, not firmly under member state control and not explicable in terms of simple diplomatic bargaining. Coming from the detailed investigations of particular domestic policy arenas to address a strikingly new phenomenon, these analysts possessed few theoretical tools that appeared directly applicable. Like European analysts, they have tended to depict the Community as a quasi-federal, "multi-level" or "multi-tiered" political system.<sup>5</sup> Yet these terms are used more to describe the current state of affairs than to explain it.

If a growing body of detailed research reveals considerable unease about the dominant IR models of EC politics, critics have so far had little to offer as an alternative to intergovernmentalist accounts. European

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<sup>3</sup>Renaud Dehousse, "Community Competences: Are there Limits to Growth?" in Renaud Dehousse, ed., *Europe After Maastricht: An Ever Closer Union?* (Munich: Beck), 1994, pp. 103-25, p. 103. Prominent examples include Fritz W. Scharpf, "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration*, Vol. 66, Autumn 1988, pp. 239-78; and Giandomenico Majone, "Regulatory Federalism in the European Community," *Environment and Planning C: Government and Policy*, Vol. 10, 1992, pp. 299-316.

<sup>4</sup>For an overview of this work see Jeffrey Anderson, "The European Community in the 1990s: Perspectives on Integration and Institutions," *World Politics*, forthcoming.

<sup>5</sup>See for example Alberta M. Sbragia, "Thinking About the European Future: The Uses of Comparison," in Alberta M. Sbragia, ed., *Europolitics: Institutions and Policymaking in the 'New' European Community* (Washington, D.C.: Brookings Institution Press), 1992, pp. 257-91; Gary Marks, "Structural Policy and Multilevel Governance in the European Community," in A. Cafruny and G. Rosenthal, eds., *The State of the European Community* (Boulder: Lynne Rienner Publishers), 1993, pp. 391-410; and Paul Pierson and Stephan Leibfried, "The Dynamics of Social Policy Integration," in Leibfried and Pierson, eds., *European Social Policy: Between Fragmentation and Integration* (Washington, D.C.: Brookings Institution Press), forthcoming.

research traditions have often had little interest in examining causal processes; the "tool kit" of comparativists was seemingly designed for other purposes. In this context, the critics of IR approaches have responded in two ways. Some have continued to investigate particular policy areas, content to portray the density and pluralism of actual policymaking while simply observing that the IR focus on grand diplomacy among sovereign member states does not square with what is actually occurring "on the ground." However, it is almost always possible, *ex post*, to posit some set of member state preferences that reconcile observed outcomes with the image of near total member state control.<sup>6</sup> Absent a theoretically-based explanation for the constraints on member states, these "on the ground" investigations are unlikely to be persuasive to proponents of IR theories.

Others have drawn on aspects of the "neo-functionalism" tradition in international relations, showing how "spillover" processes and the autonomous actions of transnational actors (including the Commission and European Court of Justice) contribute to European policymaking. In developing my own arguments, I will rely in part on recent efforts to resurrect and improve neo-functionalism, which have successfully highlighted important limitations in intergovernmentalist accounts. Yet neo-functionalism has serious problems as well. Its microfoundations are inadequate. Given the strong institutional position of member states in the EC, neo-functionalists seem to posit greater autonomy of supranational actors than can plausibly be sustained. Although neo-functionalism arguments about the independent action of the Commission and Court of Justice have some merit, there is little doubt that the member states, acting together in the Council, remain the central decision-makers. In most cases, it seems equally probable that those making these decisions do so in an effort to maximize their own interests, whatever those are deemed to be. These "principals" retain the authority to reign in their "agents" if they feel that their interests are not being served. Thus *at any given point in time* the key propositions of intergovernmentalist theory are likely to hold.

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<sup>6</sup>Where policy outcomes do not conform to the expected preferences of member states, they may be explained as part of a "nested game" or as an instance of side payments. With such tools, it is usually a simple matter to posit a set of policy preferences and interrelationships that are compatible with observed outcomes. A good example (among many possible ones) is Peter Lange: "The Maastricht Social Protocol: Why Did They Do It?" *Politics and Society*, Vol. 21, No. 1, March, 1993, pp. 5-36. Lange may well be correct in arguing that poor member states signed the Protocol because of side payments, but he provides no actual evidence that this was the case. For the ways in which these techniques make rational choice arguments difficult to test, see Donald P. Green and Ian Shapiro, *Pathologies of Rational Choice: A Critique of Applications in Political Science* (New Haven: Yale University Press), 1994.

This essay seeks to lay the foundation for a more persuasive alternative. My focus is on the limited degree of member state control over the evolution of European public policies, the reasons why that control is limited, and the room this creates for other actors to exert influence on the process of European integration. The basis for this challenge to intergovernmentalism lies in insights from what I will term "historical institutionalism."<sup>7</sup> The term covers a diverse range of scholarship, much of it with little theoretical focus. Indeed, a principal goal of this essay is to strengthen the theoretical foundations of historical institutionalism. There are, however, two unifying themes within this broad body of research. This scholarship is *historical* because it stresses that political development must be understood as a process that unfolds over time. It is *institutionalist* because many of the contemporary implications of these temporal processes are embedded in institutions -- whether these be formal rules, policy structures or norms.<sup>8</sup>

Attempts to cut into on-going social processes at a single point in time produce a "snapshot" view that is distorted in crucial respects. When the process of European integration is examined over time a quite different story emerges. Most important, the gaps in member state control appear far more prominent than they do in intergovernmentalist accounts. First, gaps may appear because in democratic polities COGs often apply a high discount rate to the consequences of their decisions. They make decisions to maximize their own interests, which are likely to center as much or more on short-term electoral consequences as on the long-term implications for national sovereignty. In this context, it is quite possible for COGs to be indifferent to, or even to favor, policies that will severely constrain their own long-term position or that of their successors. As Lange and Garrett put it, "institutions invariably outlive the constellations of interests that created them ..."<sup>9</sup>

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<sup>7</sup>For use of the term and illustrative research see Sven Steinmo, Kathleen Thelen, and Frank Longstreth, eds., *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press), 1992. In many respects my own argument draws as much on the analysis of rational choice theorists who have investigated the historical evolution of institutions. Cf. Douglass R. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press), 1990; and Jack Knight, *Institutions and Social Conflict* (Cambridge: Cambridge University Press), 1992.

<sup>8</sup>Throughout, I rely on North's definition of institutions: "... the rules of the game in a society or, more formally, ... the humanly devised constraints that shape human interaction." North, *Institutions*, p. 3.

<sup>9</sup>Geoffrey Garrett and Peter Lange, "Internationalization, Institutions and Political Change," unpublished manuscript, 1994.

Second, gaps occur because of unintended consequences. Decision-makers operate with limited information in highly complex and interdependent environments where feedback loops and interaction effects of various kinds are ubiquitous.<sup>10</sup> In such contexts, widespread unintended consequences are a certainty. These dynamics, moreover, are far more important in the European Community than in a typical international regime. The scope of policymaking is far greater in the EC, as is the degree of intervention in areas of domestic economic and social activity which are very tightly-coupled. The more policy activity there is in a particular area and the longer the time period involved, the greater the scope for unanticipated effects of previous decisions.

Gaps may also occur because the policy preferences of COGs change over time. For a variety of reasons (of which electoral turnover is perhaps the most important), one cannot expect the preferences of member state decision-makers to remain constant. New COGs may utilize previously-created (but dormant) options in unexpected ways. Perhaps more often, they will find that their distinctive policy preferences cannot be implemented because of previous institutional development. They are immobilized by the dead weight of past initiatives. In the EC, this is the significance of what is called the *acquis communautaire*.

Finally, gaps in control can occur because the historical evolution of policy increases the cost of exercising previously available options. Social actors respond to government actions. These responses will include the making of long-term commitments which increase the costs involved in any major policy reversal. These "sunk costs" can dramatically reduce a member state government's room for maneuver. In the EC, one can see this development in the growing implausibility of member state "exit threats." While sovereign member states engaged in diplomatic bargaining remain free to tear up treaties and walk away at any time, the constantly increasing costs of exit in a densely integrated polity have rendered this option virtually unthinkable for EC member states. Rather than reflecting the benefits of institutionalized exchange, continuing integration could easily reflect the rising costs of "non-Europe."

The crucial claim I derive from historical institutionalism is that actors may be in a strong initial position, seek to maximize their interests, and nevertheless carry out institutional reforms that fundamentally

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<sup>10</sup>Robert Jervis, "Systems and Interaction Effects," in Jack Snyder and Robert Jervis, eds., *Coping with Complexity in the International System* (Boulder, CO: Westview Press), 1993[?], pp. 25-46.

transform their own positions (or those of their successors) in ways that are unanticipated and/or undesired. Institutional evolution is rarely subject to tight control. Two historical examples can illustrate this point. Creating the United States required state ratification. Of necessity, the interests of states received considerable attention in the process of institutional design. The Senate was intended to serve as a strong support of state interests -- members were appointed by state legislatures, and were expected to serve as delegates representing states in the formation of policy.<sup>11</sup> By the early 1900s, however, the enactment of the 17th Amendment requiring popular election of senators only ratified a lengthy process through which Senators had gradually succeeded in detaching themselves from state oversight.

The Canadian experience provides another example. The designers of the Canadian federation sought a highly centralized form of federalism -- in part as a reaction to the ways in which decentralization contributed to the horrors of the American Civil War. Yet the Canadian federation is now far less centralized than the American one. Among the reasons: the Canadian federation left to the provinces sole responsibility for many activities that were then considered trivial but turned out to be of tremendous importance with the growing role of government in social policy and economic management.<sup>12</sup> In both cases, the current functioning of institutions cannot be derived from the aspirations of the original design.

What one makes of the EC depends on whether one examines a photograph or a moving picture. Just as a film often reveals meanings that will be hard to discern from a single photograph, a view of Europe's development over time gives us a richer sense of the nature of the emerging European polity. At any given time, the diplomatic maneuvering among member states looms large, and an intergovernmentalist perspective makes considerable sense. Seen as an evolutionary process, however, the realm of member state authority appears far more circumscribed, and the importance of other actors and the growing constraints of rule-based governance more considerable.

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<sup>11</sup>These arrangements echo the EC's emphasis on participation of the constituent units in collective deliberations.

<sup>12</sup>On the U.S. case see William H. Riker, "The Senate and American Federalism," *American Political Science Review*, Vol. 49, 1955, pp. 452-69; on Canada see Ronald L. Watts, "The American Constitution in Comparative Perspective: A Comparison of Federalism in the United States and Canada," *Journal of American History*, pp. 769-91, pp. 774-75.

My argument is developed in four stages. In the first, I review the main features of intergovernmentalist analyses of the EC. In the second, I develop the historical institutionalist critique. In the third, I contrast my analysis with the most well-developed theoretical challenge to intergovernmentalism -- neo-functionalism -- highlighting points of compatibility, synergy, and divergence. In section four I briefly apply these historical institutionalist arguments to one aspect of European integration, the development of social policy. This is hardly intended as a full test of my approach. Nonetheless, historical institutionalism's applicability in an area where intergovernmentalist analysis ought to be on strong ground provides further evidence of its plausibility.

### **I. Intergovernmentalist Theories and Member State Autonomy**

The accelerated activity of the EC in the past decade has coincided with a growing focus among international relations scholars on international regimes -- institutionalized collective action on the part of nation-states.<sup>13</sup> While some analysts of European integration have continued to echo the earlier IR literature on neo-functionalism, the dominant "intergovernmentalist" perspective has treated the EC as a standard (albeit unusually well-developed) international regime. It would be unrealistic to attempt a thorough review of this diverse and highly-sophisticated literature here. Instead, I wish to focus on three core features of intergovernmentalist views of the EC: the emphasis on member state sovereignty concerns, the depiction of institutions as instruments, and the focus on "grand bargains" among member states.

*Member State Preoccupation with Sovereignty Issues.* Scholars working within an intergovernmentalist framework offer divergent accounts of member state preferences. Intergovernmentalism itself generally takes member state preferences as given, focusing instead on how member states seek to maximize those preferences.<sup>14</sup> Yet despite this apparent openness, intergovernmentalist accounts tend to stress member state preoccupation with preserving sovereignty. As Keohane puts it, "... governments put a high value on the maintenance of their own

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<sup>13</sup>For a good overview see Stephan Haggard and Beth A. Simmons, "Theories of International Regimes," *International Organization*, Vol. 41, No. 3, Summer, 1987, pp. 491-517.

<sup>14</sup>Thus, Moravcsik has attempted to outline a "liberal intergovernmentalist" view in which "liberal" theories of member state preference formation are used to supplement intergovernmentalist theories of member state bargaining. Moravcsik, "Preferences and Power in the European Community."

autonomy, /so/ it is usually impossible to establish international institutions that exercise authority over states."<sup>15</sup>

Much of the writing on international regimes, of course, arose as a reaction against realist perspectives that were seen as putting *too much* weight on sovereignty concerns -- suggesting that collective action among states should almost never be possible. Regime theorists have argued that in contexts where security concerns have diminished, nation states may care about absolute gains as well as relative ones. Nonetheless, for current purposes what is striking is the focus on sovereignty that carries over from realist accounts. Most intergovernmentalist analyses suggest that member state preferences include a heavy weighting towards preserving sovereignty, leading Chiefs of Government to be vigilant guardians of national autonomy in evaluating proposals for international cooperation. The issue is often posed in principal-agent terms.<sup>16</sup> The principals (member states) may delegate certain responsibilities to agents (international regimes), but only with the strictest oversight. The core calculation is whether the benefits of collective action outweigh any possible risk to autonomy. According to Moravcsik, "[i]n the intergovernmentalist view, the unique institutional structure of the EC is acceptable to national governments only insofar as it strengthens, rather than weakens, their control over domestic affairs..."<sup>17</sup>

*The Instrumentality of Institutions.* Work on international regimes has drawn heavily on the insights of Transaction Cost Economics, which sees the role of institutions in functional terms.<sup>18</sup> As Moravcsik summarizes, "modern regime theory views international institutions as deliberate instruments to improve the efficiency of

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<sup>15</sup>Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press), 1984, p. 88.

<sup>16</sup> For a good introduction to principal-agent theory with discussions of the need to modify these arguments when discussing political institutions, see Terry Moe, "The New Economics of Organization," *American Journal of Political Science*, 28 (1984), pp. 739-77; and Terry Moe, "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy," in Oliver E. Williamson, ed., *Organization Theory: From Chester Barnard to the Present and Beyond* (Oxford: Oxford University Press), 1990, pp. 116-53. For an example of the application of principal-agent arguments to EC institutions see Garrett, "International Cooperation and Institutional Choice."

<sup>17</sup>Moravcsik, "Preferences and Power," p. 507. See also Moravcsik, "Negotiating the Single European Act."

<sup>18</sup>On TCE approaches to institutional formation and development see Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York: Free Press), 1975; North, *Institutions*. For a clear application to international regimes see Keohane, *After Hegemony*.

bargaining between states."<sup>19</sup> Collective action among autonomous nation states is often desired yet enormously difficult. A critical issue concerns problems of information. Uncertainty about each other's preferences, intentions, and reliability make agreements difficult to execute and enforce. Institutions can help surmount these problems, reducing information asymmetries, monitoring compliance, creating linkages across issues that diminish the prospects of defection. According to Keohane:

"Far from being threats to governments (in which case it would be hard to understand why they exist at all), they permit governments to attain objectives that would otherwise be unattainable. They do so in part by facilitating intergovernmental agreements. Regimes facilitate agreements by raising the anticipated costs of violating others' property rights, by altering transaction costs through the clustering of issues, and by providing reliable information to members. Regimes are relatively efficient institutions, compared with the alternative of having a myriad of unrelated agreements, since their principles, rules, and institutions create linkages among issues that give actors incentives to reach mutually beneficial agreements."<sup>20</sup>

In intergovernmentalist accounts, institutions are created by self-conscious, maximizing actors (member states) who are attracted to the opportunities that institutions create for surmounting collective action problems and achieving gains from exchange. International institutions can best be understood by identifying the functions that they fulfill, especially the lowering of bargaining costs and the reduction of uncertainty through the provision of "a forum and vocabulary for the signalling of preferences and intentions."<sup>21</sup>

*The Centrality of Intergovernmental Bargains.* Students of the EC frequently distinguish between the intermittent "grand bargains" (e.g. the Treaty of Rome, the Single European Act, Maastricht) that establish basic features of institutional design and the "day-to-day" policy-making in the Community that occurs between these agreements. For intergovernmentalists, the grand bargains are where the action is. Since, as Moravcsik puts it, "functional regime theory view/s/ ... international institutions as passive, transaction-cost reducing sets of rules" it is the design of those rules that is central. The EC, he adds, "has developed through a series of celebrated intergovernmental bargains, each of which set the agenda for an intervening period of *consolidation*. The most

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<sup>19</sup>Moravcsik, "Preferences and Power," p. 507.

<sup>20</sup>Keohane, *After Hegemony*, p. 97.

<sup>21</sup>Alec Stone, "What is a Supranational Constitution? An Essay in International Relations Theory," *Review of Politics*, Vol. 56, No. 3, Summer, 1994, pp. 441-74, p. 456.

fundamental task facing a theoretical account of European integration is to explain these bargains."<sup>22</sup> Intergovernmentalist research has clearly reflected this line of thinking. Recent intergovernmentalist analyses have overwhelmingly focussed on explaining aspects of two grand bargains: the Single European Act and the Maastricht Treaty.<sup>23</sup> Political developments during the periods between these bargains, or that concern matters that are not hotly-contested during those bargains, have received almost no attention.

These three positions are clearly connected in intergovernmentalist accounts. A functional view of regimes follows from a depiction of member states as profoundly concerned about the long-term foundations of sovereignty. Given such concerns, the institutional underpinnings for cooperation will only be created or extended after a careful weighing of costs and benefits. The "benefits" are the functions that regimes perform, while the costs most often relate to any risk of lost autonomy. Similarly, the focus on member state bargains follows logically from the intergovernmentalist analysis of institutions. If the EC is an international regime in which member states have consciously created passive instruments to allow them to carry out collective goals, periods of "consolidation" are likely to be of little interest. The "post-bargain" period simply plays out the implications intended in the grand bargains. It is the bargains themselves that create or change the rules of the game, and that therefore demand attention. Together, these three positions have contributed to a powerful argument about the roots of European integration. As I suggest in the next section of this essay, however, all three are open to serious challenge.

## II. An Historical Institutional Critique

"Historical institutionalism" is a loose term governing a range of scholarship that has tried to combine social science concerns and methods with a recognition that social processes must be understood as historical

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<sup>22</sup>Moravcsik, "Preferences and Power," p. 508, 473, emphasis added.

<sup>23</sup>On the SEA see Moravcsik, "Negotiating the Single European Act"; and Garrett, "International Cooperation and Institutional Choice." On Maastricht see Garrett, ""; Lange, "The Social Protocol"; and Martin, "International and Domestic Institutions."

phenomena.<sup>24</sup> This perspective contrasts with a more common view in the social sciences, which accepts the notion of "historical efficiency." This view, as March and Olson observe, holds that "institutions and behavior ... evolve through some form of efficient historical process. An efficient historical process ... is one that moves rapidly to a unique solution, conditional on current environmental conditions, and is independent of the historical path." Given this orientation, Skocpol notes, "analysts typically look only for synchronic determinants of policies -- for example, in current social interests or in existing political alliances. In addition, however, we must examine patterns unfolding over time ..."<sup>25</sup>

Recent research focusing on institutional evolution and path dependence has cast serious doubts on the expectation that institutions can be understood as embodying the long-term interests of those responsible for institutional design. Among the factors likely to create considerable "gaps" between the direct goals of institutional creators and long-term institutional effects are the restricted time horizons of political decision-makers, the large potential for unintended consequences, the ways in which cumulative institutional restrictions constrain decision-makers when their policy preferences change, and the rising costs of exit resulting from micro-level adaptations and commitments to newly-established institutional arrangements. Each of these factors requires more detailed discussion.

*The Restricted Time Horizons of Political Decision-makers.* Many of the implications of political decisions only play out in the long-run. This is especially true for those implications related to complex interventions or major institutional reforms. Yet political decision-makers are usually most interested in the short-term consequences of their actions; long-term effects are likely to be heavily discounted. The reason is simply the logic of electoral politics. Keynes once noted that in the long-run we are all dead; for politicians in democratic polities, electoral death can come much faster. Since the decisions of voters that determine political success are taken in the short-

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<sup>24</sup>My own usage cuts across the usual sharp dichotomy between rational choice and non-rational choice work, drawing instead on elements within both traditions that emphasize the significance of historical processes. Thus it includes rational choice analyses, such as those of North and Knight, that consider issues of institutional evolution and path dependency crucial, while excluding much "historical" research in political science that uses history only as a technique for widening the universe of available cases.

<sup>25</sup>James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press), 1989, pp. 5-6; Theda Skocpol, *Protecting Mothers and Soldiers: The Political Origins of Social Policy in the United States* (Cambridge: Belknap Press of Harvard), 1992, p. 58.

run, politicians have a strong incentive to pay attention to long-term consequences only if these become politically salient or when they have little reason to fear electoral retribution.<sup>26</sup>

The gap between short-term interests and long-term consequences is often ignored in arguments about institutional design and reform. Many (though not all) choice-theoretic treatments of institutions make an intentionalist or functionalist fallacy, arguing that the long-term consequences of institutions explain why decision-makers introduce them.<sup>27</sup> Instead, institutional effects are often the by-products of political actions taken for other reasons. The evolution of the Congressional committee system in the United States -- a central institutional feature of contemporary American governance -- is a good example. As Kenneth Shepsle notes, Henry Clay and his supporters introduced the system to further their immediate political goals without regard to long-term consequences: "/T/he lasting effects of this institutional innovation could hardly have been anticipated, much less desired, by Clay. They were by-products (and proved to be the more enduring and important products) of self-interested leadership behavior."<sup>28</sup> The current functioning of the system was not the goal of the actors who created it; the reasons for its invention cannot be derived from its contemporary effects.

Recognizing the importance of policy-makers' high discount rates raises a challenge for intergovernmentalist theories. As noted above, most IR approaches to political integration stress the tenacity with which nation states cling to all aspects of national sovereignty. The collective design of institutions is assumed to reflect this preoccupation. Yet in democratic polities, sustained power requires electoral vindication. Under most circumstances, the first concern of national governments is not with sovereignty *per se*, but with creating the conditions for continued domestic political success. At the same time, *functional* arguments that are central

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<sup>26</sup>A statement attributed to David Stockman, Reagan's budget director, typifies this view and is unusual only for its candor. Asked by an advisor to consider pension reforms to combat social security's severe long-term financing problems, he dismissed the idea out of hand, exclaiming that he had no interest in wasting "a lot of political capital on some other guy's problem in [the year] 2010..." Quoted in William Greider, *The Education of David Stockman and Other Americans* (New York: Dutton), 1982, p. 43. For an elaboration of this point see Garrett and Lange, "Internationalization, Institutions, and Political Change."

<sup>27</sup>For more on this point see Knight, *Institutions and Social Conflict*; and Peter A. Hall and Rosemary C. R. Taylor, "Political Science and the Four New Institutionalisms," Paper Presented at the American Political Science Association Meetings, New York, September, 1994.

<sup>28</sup>Kenneth Shepsle, "Studying Institutions: Lessons from the Rational Choice Approach," *Journal of Theoretical Politics*, Vol. 1, No. 2, 1989, pp. 131-47, p. 141.

to transaction-cost views of international regimes also come into question. Rather than being treated as the goals of policymakers, long-term institutional effects should be considered in part the *by-products* of their purposive behavior.

*Unintended Consequences.* Gaps in member state control occur not only because long-term consequences tend to be heavily discounted. Even if policymakers *do* focus on long-term effects, unintended consequences are likely to be widespread. While social scientists possess limited tools for dealing with such outcomes, many models -- ranging from the prisoner's dilemma to the core neo-classical arguments about market systems -- are based on them.<sup>29</sup> Complex social processes involving large number of actors always generate elaborate feedback loops and significant interaction effects which decision-makers cannot hope to fully comprehend.

Unanticipated consequences are likely to be of particular significance in the European Union because of the presence of high *issue density*. In sharp contrast to any existing international organization, the range of decisions made at the European level runs almost the full gamut of issues traditionally considered by sovereign states, from the setting of agricultural prices to the regulation of auto emissions and fuel content to the negotiation of international trade agreements. The sheer scope of this decision-making limits the ability of member states to firmly control the development of policy.

There are two distinct processes here, each of which limits the ability of member states to control the pace and direction of integration. Both are connected to the massive expansion of EC decision-making (primarily but not exclusively because of the single market project). First is the problem of overload. As European level decisionmaking becomes both more frequent and more complex, it creates growing demands on the "gate keepers" of member state sovereignty. In this context, time constraints, scarcities of relevant information, and the need to delegate decisions to those with expertise may promote unanticipated consequences and lead to considerable gaps in member state control. Member state scrutiny is likely to be extensive in the formation of the grand inter-state bargains which are the favorite subject for intergovernmentalists, such as the Treaty of

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<sup>29</sup>For some provocative discussions see Fred Hirsch, *The Social Limits to Growth* (Cambridge: Harvard University Press), 1977; Thomas Schelling, *Micromotives and Macrobehavior* (New York: Norton), 1978; Phillippe Van Parijs, "Perverse Effects and Social Contradictions: Analytical Vindication of Dialectics?" *British Journal of Sociology*, Vol. 33, 1982, pp. 589-603; Charles Perrow, *Normal Accidents* (New York: Basic Books), 1984; and Jervis, "Systems and Interaction Effects."

Rome, the Single European Act, and the Maastricht Treaty. In the intervals between these agreements however, when flesh is added to the skeletal frameworks and much policy actually evolves, the ability of member states to control the process is likely to be weaker. As Gary Marks has put it, "[b]eyond and beneath the highly visible politics of member state bargaining lies a dimly lit process of institutional formation..."<sup>30</sup> This is especially true when member states must contend with organizations such as the Commission and ECJ, which are eager to take advantage of any opportunity to extend their authority. In the development of complex regulatory judgments and the legal determination of what previous decisions actually require, essential policy-making authority is often in the hands of bodies of experts, where the Commission plays a crucial role, or in the hands of the Court.<sup>31</sup>

The second dynamic connected to issue density is the oft-cited process of spillover: the tendency of tasks adopted to have important consequences for realms outside those originally intended, or to empower actors who generate new demands for extended intervention.<sup>32</sup> One of the key arguments in much writing on contemporary political economies stresses precisely the embeddedness of economic action within networks of tightly-coupled social and political institutions.<sup>33</sup> Efforts to integrate some aspects of complex modern societies without changing other components may run into problems because the sectors to be integrated cannot be effectively isolated. McNamara, for example, has demonstrated the significance of such interaction effects in the cases of monetary and agricultural policies.<sup>34</sup> In Section IV, I will suggest similar connections between the single

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<sup>30</sup>Marks, "Multilevel Governance," p. 403. For example, Marks notes the Commission's ability to exploit its more detailed knowledge of the policy process and its "process manager" role to generate influence over the structural funds that the British government failed to anticipate.

<sup>31</sup>This is, of course, one of the central points of principal-agent theory. Agents can use their greater information about their own activities and the requirements connected to their work to achieve autonomy from principals. *Asymmetrical access to information*, which is ubiquitous in complex decision-making processes, provides the foundation for influence. I will return to this issue in Section III.

<sup>32</sup>Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957* (Stanford, CA: Stanford University Press, 1958).

<sup>33</sup>Peter Hall, *Governing the Economy: The Politics of State Intervention in Britain and France* (Cambridge: Polity Press), 1986; North, *Institutions*; Garrett and Lange, "Institutions, Internationalization and Policy Change." On how "tight coupling" increases the prospects for unintended consequences see Perrow, *Normal Accidents*.

<sup>34</sup>Kathleen R. McNamara, "Common Markets, Uncommon Currencies: Systems Effects and the European Community," in Snyder and Jervis, eds., *Coping with Complexity*, pp. 303-25.

market initiative and social policy development. As the density of EC policymaking increases, such interaction effects are likely to become more prevalent.

To some extent, transactions cost approaches to institutions accept the significance of unintended consequences. After all, TCE is based in large part on how uncertainty and information asymmetries promote particular organizational responses.<sup>35</sup> Yet these are considered theoretically unproblematic. Should unintended consequences produce outcomes that are undesired from the perspective of principals, two paths to restored efficiency are possible. First, competitive pressures in a market society mean that new organizations with more efficient structures will emerge, eventually replacing suboptimal organizations. Second, learning processes within the organization lead to correction. According to Williamson:

"... the 'far-sighted propensity' or 'rational spirit' that economics ascribes to economic actors permits the analysis of previously neglected regularities to be taken a step further. Once the unanticipated consequences are understood, these effects will thereafter be anticipated and the ramifications can be folded back into the organizational design. Unwanted costs will then be mitigated and unanticipated benefits will be enhanced. Better economic performance will ordinarily result."<sup>36</sup>

Both these "correctives", however, are of limited applicability when one shifts from Williamson's focus on firms in private markets to the world of political institutions.<sup>37</sup> This is clearest for the case of competitive pressures. Within Europe, there is nothing like a marketplace competition among international regimes where new market entrants can demonstrate that their efficiency (however that might be defined and measured) is greater than the EC's.

Learning arguments might seem more applicable. Indeed, Gary Marks, who has emphasized the significance of unintended consequences in limiting member state control, concedes that the use of such arguments "is tricky in the context of ongoing political relationships where learning takes place."<sup>38</sup> Yet the

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<sup>35</sup>Williamson has, however, acknowledged that TCE has emphasized intended effects to the neglect of unintended ones. Oliver E. Williamson, "Transaction Cost Economics and Organization Theory," *Industrial and Corporate Change*, Vol. 2, No. 2, 1993, pp. 107-56, p. 116.

<sup>36</sup>Ibid, pp. 116-17.

<sup>37</sup>On the difficulties of transferring TCE arguments from economics to politics see Moe, "The Politics of Structural Choice."

<sup>38</sup>Marks, "Multilevel Governance," p. 403.

learning argument depends crucially on the freedom of member states to fold new understandings "back into the organizational design." Put differently, once "slack" occurs because of unintended consequences, how easy is it for principals to regain control? My next two points suggest that in the world of *political* institutions generally (and the case of the EC in particular) this is no simple task. To the extent that unintended consequences are significant and learning does not provide a sufficient basis for correction, member state control will be constrained.<sup>39</sup>

*Shift in COG Policy Preferences and the Significance of the *acquis communautaire*.* Intergovernmentalist theories tend to treat member state policy preferences as relatively stable. However, especially when one moves from traditional foreign policy issues such as national security towards the traditionally "domestic" concerns where the EC has become quite significant, this is a doubtful premise. Policy preferences may shift for a number of reasons. Altered circumstances or new information may lead governments to question previous arrangements. Changes in government occur frequently, and different governments often have quite distinct views on policy matters dealt with at the EC level.

However, member states do not inherit a blank slate that they can remake at will when their policy preferences shift. A central fact of life for member states is the *acquis communautaire*, the corpus of existing legislation and practice. As Michael Shackleton notes, "[h]owever much Member States might deplore certain aspects of Community policy, there is no question that all find themselves locked into a system which narrows down the areas for possible change and obliges them to think of incremental revision of existing arrangements."<sup>40</sup>

The extent to which member states are in fact "locked in" has recently been questioned. Where it was once understood that participation in the EC was an all-or-nothing proposition, Maastricht has enhanced the prospects for a Europe "à la carte," or a Europe of "variable geometries." Britain and Denmark received opt-outs

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<sup>39</sup>An alternative way to discount the significance of unintended effects would be to treat them as random "noise." Yet while this may be appropriate in studying mass populations (e.g., the dynamics of public opinion), it seems inappropriate when single unintended effects may be quite large and processes may be path dependent. There is little reason to think that such effects will somehow "balance out", leaving an analyst free to study the "systematic" elements. To take an example discussed later in this essay, it would be difficult to examine the dynamics of gender issues in Europe by treating the role of Article 119 as "noise."

<sup>40</sup>Michael Shackleton, "The Delors II Budget Package," in Neill Nugent, ed., *The European Community 1992: Annual Review of Activities* (Oxford: Blackwell Publishers, 1993), pp. 11-25, p. 20.

on monetary union; the eleven other member states circumvented the British veto by opting "up and out" with the social protocol. As Jeff Anderson summarizes the new situation, "[a]s of Maastricht, the acquis communautaire is negotiable for a standing member ... the threat of exclusion [from the Union] has lost much of its power to drag members into a collective, uniform, and binding decision."<sup>41</sup> This new flexibility, however, refers only to *additional* treaty obligations. Member state governments may be able to obtain opt-outs from future treaty provisions. They are not, however, free to review and discard the commitments of previous governments, including those with quite different policy preferences.

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

*Sunk Costs and the Rising Price of Exit.* Work on path dependency has emphasized the ways in which initial institutional or policy decisions -- even suboptimal ones -- can become self-reinforcing over time.<sup>42</sup> These initial choices encourage the emergence of elaborate social and economic networks, greatly increasing the cost of adopting once-possible alternatives and inhibiting exit from a current policy path. Major initiatives have major social consequences. Individuals make important commitments in response to government actions. These commitments, in turn, may vastly increase the disruption caused by policy shifts or institutional reforms, effectively "locking in" previous decisions.

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<sup>41</sup> Anderson, "The European Community in the 1990s," pp. 29-30 [manuscript pagination]

<sup>42</sup> On this point see Stephen A. Krasner, "Sovereignty: An Institutional Perspective," in James A. Caporaso, ed., *The Elusive State: International and Comparative Perspectives* (Newbury Park, CA: Sage Publications, 1989), pp. 69-96; North, *Institutions*; and Paul Pierson, "When Effect Becomes Cause: Policy Feedback and Political Change," *World Politics*, 1993, pp. 595-628.

Work on technological change has revealed some of the circumstances conducive to path dependence.<sup>43</sup> *Large set-up or fixed costs* are likely to create increasing returns to further investment in a given technology, providing individuals with a strong incentive to identify and stick with a single option. Substantial *learning effects* connected to the operation of complex systems provide an additional source of increasing returns. *Coordination effects* occur when the individual receives increased benefits from a particular activity if others also adopt the same option. Finally, *adaptive expectations* occur when individuals feel a need to "pick the right horse" because options that fail to win broad acceptance will have drawbacks later on. Under these conditions, individual expectations about usage patterns may become self-fulfilling.

As North has argued, all of these arguments can easily be extended from studies of technological change to other social processes. Path-dependency is likely to be pervasive in institutional and policy development.<sup>44</sup> Contexts of complex social interdependence will often generate high fixed costs, learning effects, coordination effects, and adaptive expectations. For example, housing and transportation policies in the United States after World War II encouraged massive investments in particular spatial patterns of work, consumption, and residence. Once in place, these patterns sharply constrained the alternatives available to policymakers on issues ranging from energy policy to school desegregation.<sup>45</sup> Many of the individual commitments that locked in suburbanization were literally cast in concrete, but this need not be the case. Institutions and policies may encourage individuals to develop particular skills, make certain kinds of investments, purchase particular kinds of goods, or devote time and money to certain kinds of organizations. All these decisions generate sunk costs. That is to say, they create commitments. In many cases, initial actions push individual behavior onto paths that

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<sup>43</sup>See especially Paul David, "Clio and the Economics of QWERTY," *American Economic Review*, Vol. 75, May, 1985; W. Brian Arthur, "Self-Reinforcing Mechanisms in Economics," in Philip W. Anderson, Kenneth J. Arrow, and David Pines, eds., *The Economy as an Evolving Complex System* (Reading, Mass.: Addison Wesley), 1988; and W. Brian Arthur, "Competing Technologies, Increasing Returns, and Lock-In by Historical Events," *Economic Journal*, Vol. 99, March, 1989. For a good summary and discussion of the broader application of these arguments, see North, *Institutions*, pp. 93-5.

<sup>44</sup>For the argument that policies, like formal political institutions, constitute crucial systems of rules and constraints see Pierson, "When Effect Becomes Cause," pp. 607-8.

<sup>45</sup>Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (Oxford: Oxford University Press), 1985, esp. chap. 11; Michael N. Danielson, *The Politics of Exclusion* (New York: Columbia University Press), 1976.

are hard to reverse.

Thus, the evolution of EC policy over time may "lock-in" member states not only because institutional arrangements make a reversal of course *difficult* when member state policy preferences change. Individual adaptations to previous decisions may also generate massive sunk costs that make policy reversal *unattractive*. When actors adapt to the new rules of the game by making extensive commitments based on the expectation that these rules will continue, previous decisions may "lock-in" member states to policy options that they would not now choose to initiate. Put another way, social adaptation to the existing set of EC institutions and policies drastically increases the cost of exit for member states.

These "lock-in" arguments have received relatively little attention within political science. One reason why is that these processes have a tendency to depoliticize issues. By accelerating the momentum behind one path, they render previously viable alternatives implausible. The result is often not the kind of conflict over the foregone alternative (which political scientists would generally be quick to identify), but the absence of conflict. In Bachrach and Baratz's terms, "lock-in" leads to "non-decisions."<sup>46</sup> This aspect of politics can only be captured through historical investigation.

Indeed, the need to examine political processes over time is the crucial feature linking all the arguments presented in this section. Gaps in member state control occur because policymakers discount the future consequences of their actions, because over time there are likely to be a growing number of unanticipated consequences, because once taken their decisions cannot easily be reversed at a later date even if their preferences change, and because social actors make long-term commitments based on governmental actions. None of these processes are likely to be captured by a "snapshot" view.

The crucial contrasts between an intergovernmentalist and historical institutionalist account can be seen in Figure I. While intergovernmentalists focus on the initial bargain, an historical institutionalist perspective emphasizes the need to trace the consequences of that bargain over time. Tracing these consequences reveals the potential for considerable gaps in member state control. When the time of the next "grand bargain" arrives,

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<sup>46</sup>Peter Bachrach and Morton Baratz, "Two Faces of Power," *American Political Science Review*, Vol. 56, 1962.

member states will again be central actors, but in a context that has undergone considerable change. Member states may dominate decision-making in these intergovernmental bargains, and actively pursue their interests, but they do so within constraints (often hardly visible) created by their predecessors and the micro-level reactions to those preceding decisions.

[Figure I about Here]

### III. "Neo-Functionalism" and Historical Institutionalism

The most sustained challenge to intergovernmentalist accounts of the EC has been grounded in "neo-functionalism." In this section, I discuss the connections between the historical institutionalist arguments advanced in Section II and the main propositions of neo-functionalism. There are many points of compatibility. Like neo-functionalism, an historical institutionalist account suggests that unintended consequences, including spillover, are likely to be significant for institutional development. In line with more recent neo-functionalist accounts, Historical institutionalism also rejects functionalist arguments about spillover that imply a steady movement towards heightened integration. The most important point of compatibility, however, concerns the role of supranational actors. Arguments about the autonomous role of supranational actors, such as the Commission and ECJ, have been at the center of recent neo-functionalist accounts. What has been missing -- and what historical institutionalist arguments can help to supply -- is a clear analysis of why considerable "slack" is likely to occur in member state control over the integration process.

Because the significance of spillover has been discussed in the preceding section, there is little need for elaboration here. Neo-functionalists have long emphasized the complexity of the integration process, and the extent to which the EC, unlike most international regimes, is active in policy areas that are "tightly coupled." One of the great criticisms of arguments about spillover is that they utilize a functionalist logic in which certain developments create "needs" to which a system is "required" to respond. While early accounts often implied that unanticipated effects would create a "need" for greater integration, neo-functionalist analysts gradually

acknowledged that this view was hard to defend.<sup>47</sup> The historical institutionalist perspective advanced here is equally skeptical of functional explanations. Unanticipated linkages and feedback loops are of great significance, but they need not lead in any particular direction. "Pressures" alone do not create policies. They may, however, focus the attention of those actors who do produce policy, as well as altering the balance of influence among actors. Thus "functional" spillover *can* generate "political" spillover. The argument concerning sunk costs advanced above suggests a *tendency* for such unanticipated effects not to generate steps away from integration. How decision-makers will respond, however, must be considered an open question.

Increasingly, neo-functional analysis emphasizes the autonomous role of supranational actors, especially the Commission and the Court. The problem can be cast in terms of the same principal-agent framework used in many intergovernmentalist accounts. Member states created the European Community, and they did so to serve their own purposes. In order to carry out collective tasks, however, the member states felt compelled to create new institutions. As Terry Moe has argued, the results are predictable: "A new public agency is literally a new actor on the political scene. It has its own interests, which may diverge from those of its creators, and it typically has resources -- expertise, delegated authority -- to strike out on its own should the opportunities arise. The political game is different now: there are more players and more interests to be accommodated."<sup>48</sup> The political organs of the EC are not simply the tools of the member states.

In the European context, two considerations complicated the member states' problem: (1) the need to create arrangements that would allow reasonably efficient decision-making and effective enforcement despite the involvement of a large number of governments with differing interests; and (2) the need to take into account the possibility that future governments might be eager to overturn their designs. These considerations had predictable implications: pressure to grant those who run these institutions considerable authority. As Moe adds, the designers of agencies

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<sup>47</sup>See for example Philippe Schmitter, "A Revised Theory of Regional Integration," *International Organization*, Vol. 24, 1970. For a devastating critique of functionalism see Jon Elster, "Marxism, Functionalism, and Game Theory," in Sharon Zukin and Paul DiMaggio, eds., *Structures of Capital: The Social Organization of the Economy* (Cambridge: Cambridge University Press, 1990), pp. 87-118.

<sup>48</sup>Moe, "The Politics of Structural Choice," p. 121.

... do not want "their" agencies to fall under the control of opponents. And given the way public authority is allocated and exercised in a democracy, they often can only shut out their opponents by shutting themselves out too. In many cases, then, they purposely create structures that even they cannot control.<sup>49</sup>

Over time, EC organizations are likely to use grants of authority for their own purposes, and especially to expand their autonomy. The result is an intricate, on-going struggle that is well-known to students of the European Union but would also be familiar to American observers of, say, relations between congressional parties and congressional committees, or between congressional committees and administrative agencies.<sup>50</sup> Member states generally (but not always) seek to reign in EC institutions. They recognize, however, that these crucial collective organizations cannot function without significant power, and that the authority required must grow as the tasks addressed at the European level expand and become more complex. For their part, European institutions such as the Commission, the European Court of Justice, and the European Parliament are always looking for opportunities to enhance their powers.

Neo-functionalist analyses have emphasized the significant successes of these supranational actors. The Council, to be sure, continues to stand watch over proposed legislation, and actively protects member state interests. Yet both the Commission and Court possess considerable ability to advance policy initiatives. For the Commission, two assets are particularly important.<sup>51</sup> The first concerns the setting of agendas. Choosing which proposals to consider is a tremendously important (if often unappreciated) aspect of politics, and here the Commission has primacy. Obviously, this power is far from unlimited; the Commission cannot expect to pass proposals that ignore the preferences of member states. Yet an entrepreneurial Commission can frame issues, design packages, and structure the sequence of proposals in ways that maximize its room for independent initiative.<sup>52</sup> The expansion of qualified majority voting has widened the range of possible "winning coalitions,"

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<sup>49</sup>Ibid, p. 125.

<sup>50</sup>See for example D. Roderick Kiewiet and Mathew D. McCubbins, *The Logic of Delegation: Congressional Parties and the Appropriations Process* (Chicago: University of Chicago Press), 1991.

<sup>51</sup>George Ross, *Jacques Delors and European Integration* (Oxford: Polity Press), 1994.

<sup>52</sup>Ibid. For a classic statement, see William H. Riker, *The Art of Political Manipulation* (New Haven: Yale University Press, 1986).

further increasing the Commission's influence. The Commission, neo-functionalists argue, has effectively used its agenda-setting powers to advance aspects of European integration and to increase its own role in policy reform.

The Commission's second major asset is its role as what Volker Eichenher calls "process manager."<sup>53</sup> Policy-making at the EC level, as many have noted, is often a matter of regulation -- a type of policy-making with its own distinctive qualities.<sup>54</sup> The development of complex social regulations requires the assembly and coordination of dense networks of experts. This task falls to the Commission, and with it comes additional room for influence. Especially in the labyrinths of regulatory policy-making, this role may give the Commission significant power.

The European Court is at least as significant. If the United States in the nineteenth century had a "state of courts and parties," the EC looks at times like a "state of courts and technocrats."<sup>55</sup> In the process of European integration, the European Court has taken an active, even forcing stance, gradually building a remarkable base of authority and effectively "constitutionalizing" the emerging European polity.<sup>56</sup> The Court has more extensive authority of judicial review than most of its national counterparts, and fewer impediments to action than other EC decision-making bodies. If the Council is prone to gridlock, the necessity of deciding cases

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<sup>53</sup>Volker Eichenher, "Social Dumping or Innovative Regulation? Processes and Outcomes of European Decision-Making in the Sector of Health and Safety at Work Harmonization," EUI Working Paper No. 92-28, European University Institute, January, 1993. See also B. Guy Peters, "Bureaucratic Politics and the Institutions of the European Community," in Alberta Sbragia, ed., *Euro-politics: Institutions and Policymaking in the "New" European Community* (Washington, D.C.: Brookings, 1992), pp. 75-122; and Peter Ludlow, "The European Commission," in Robert Keohane and Stanley Hoffmann, eds., *The New European Community: Decisionmaking and Institutional Change* (Boulder, Co.: Westview Press, 1991), pp. 85-132.

<sup>54</sup> On the general point, the classic statement is Theodore J. Lowi, "American Business, Public Policy Case Studies, and Political Theory," *World Politics*, 16 (1964), pp. 667-715. For a discussion of this issue with respect to the EC see Majone, "Regulatory Federalism."

<sup>55</sup>The description of the United States is from Stephen Skowronek, *Building a New American State* (Cambridge: Cambridge University Press) 1982; the description for the EC is from Stephan Leibfried, "Towards a European Welfare State? On Integrating Poverty Regimes into the European Community," in Zsusa Ferge and Jon Eivind Kolberg, eds., *Social Policy in a Changing Europe* (Boulder, CO: Westview, 1992), pp. 245-79, p. 249.

<sup>56</sup>See especially Joseph Weiler, "The Transformation of Europe," *Yale Law Journal*, 1991; and Anne-Marie Burley and Walter Mattli, "Europe Before the Court: A Political Theory of Legal Integration," *International Organization*, Vol. 47, 1993, pp.

inclines the ECJ to action. This inclination is enhanced by rules allowing simple majority decisions, and by a secrecy (neither actual votes nor dissenting views are made public) that shelters judges from member state and popular pressures. ECJ judges also share a professional background, common legal culture (at least on the continent), and a sense of mission that seems to effectively limit the influence of the member states in judicial decision-making.

Neo-functionalist accounts of these supranational institutions have certainly demonstrated their prominent role in the EC, as intergovernmentalists have been forced to concede.<sup>57</sup> Yet their significance for policymaking and future institutional development remains uncertain. To what extent are these organizations simply acting as agents, fulfilling monitoring, information-gathering, and implementation roles within firm member states control? As Lisa Martin, among others, has suggested, autonomy may be more apparent than real:

Politicians and academic observers often infer from such a pattern autonomy of the Commission and/or of government leaders. However, consideration of institutional constraints leads us to examine delegation of authority. ... because of the costs of exercising tight control over agents, an optimal structure of delegation may be one with little active oversight or overt interference in the negotiating process from principals. Agents rationally anticipate the responses of those they represent. The law of anticipated reactions suggests that we cannot infer a lack of political influence from a lack of observed oversight activity.<sup>58</sup>

Thus, what appears to be autonomy may simply reflect the principals' deft use of oversight. Relying on the disciplining power of anticipated reactions and the use of "fire alarms" -- signals based on reporting requirements or interest group activity -- to identify significant problems, member states can stay in the background while remaining firmly in control. Again, given the ease of assembling plausible *ex post* accounts of why outcomes were in member state interests, this position is difficult to refute.<sup>59</sup>

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<sup>57</sup>Consider for instance Moravcsik's striking acknowledgment of the growing power of the ECJ: "... the decisions of the Court clearly transcend what was initially foreseen and desired by most national governments. The 'constitutionalization' of the Treaty of Rome was unexpected. It is impossible, moreover, to argue that the current system is the one to which all national governments would currently consent, as recent explicit limitations on the Court in the Maastricht Treaty demonstrate." Moravcsik, "Preferences and Power," p. 513.

<sup>58</sup>Martin, "Institutions in the EMU Process," p. 135. See also Garrett, "International Cooperation and Institutional Choice."

<sup>59</sup>On "fire alarms" and effective oversight see Matthew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science*, Vol. 28, 1984, pp. 165-79. For an example of how the plasticity of accounts of member state preferences make such claims of oversight hard to disprove see the exchange between Geoffrey Garrett and Walter Mattli and Ann-Marie Burley

Here, the insights of historical institutionalism can make a crucial contribution. Historical institutionalism provides a clear account of the constraints on member state authority. The gaps in control discussed in Section II indicate the possibility of agency "slack." Historical institutionalism thus offers explanations for why the control of principals is likely to be far from complete. Member states are likely to be preoccupied with short-term outcomes. Their decisions are certain to produce all sorts of unanticipated consequences. The preferences of member states may also shift, leaving them with formal institutions and highly-developed policies that do not fit their current needs. All of this slack creates room for autonomous action by supranational actors, which may in turn produce political resources that make them more significant players in the next round of decision-making.

At least as important, historical institutionalism provides a coherent account of why "fire alarms" may not be sufficient to prompt the reassertion of member state control. If member states decide that their agents have misused available "slack", they may well seek to reign them in. Yet two important barriers stand in their way. First, the preceding institutional steps of EC development make reversals hard to execute. As Moe put it, in shutting out their opponents, they often have shut themselves out as well. Agreement on institutional reforms to regain authority will require a *unanimous* vote of the member states -- a far cry from the simple majority that a congressional committee must assemble to bring a rogue agency to heel. The rules of the EC also put the power of initiative in the hands of the Commission -- an additional constraint on policy reversal. Second, the proliferation of sunk costs may make the price of reasserting control too high. Over time, as social actors make commitments based on existing institutional arrangements, the cost of "exit" from existing arrangements tends to rise. In trying to stem the power of Court and Commission, member states must ask themselves if this can be done without, for instance, jeopardizing the single market project. Thus, reigning in slack may be no easy matter. Williamson's confident assertion that firms can adjust to unanticipated consequences by "learning" applies far less well to an analysis of politics. Member state learning from past events may lead, as it did at Maastricht, to greater restrictions on supranational actors in *new* initiatives. Recapturing ground in already

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in *International Organization*.

institutionalized fields of activity, however, will often be quite difficult.<sup>60</sup>

In short, historical institutionalist analysis greatly strengthens and expands the analytical foundations of neo-functionalism. To the key intergovernmentalist challenges -- why would member states lose control and even if they did why would they not subsequently reassert it -- historical institutionalism gives clear and plausible answers. Studying processes of policy and institutional change over time reveals that "slack" is frequently extensive and the prospects for recapturing lost control quite limited. As the next section demonstrates, this has been true in at least one significant (and unexpected) area of European policy development.

#### IV. The Case of European Social Policy

Social policy is widely considered to be an area where member state control remains unchallenged. There has appeared to be little need for action at the European level, and member states have been quite sensitive to intrusions on what is widely seen as a core area of national sovereignty. Accounts of European social policy generally present a minimalist interpretation of European Union involvement. The European Commission's direct attempts to construct a significant "social dimension" -- areas of social policy competence where uniform or at least minimum standards are set at the EC level -- have occurred in fits and starts during the past few decades. It has been a saga of high aspirations and modest results, marked by "cheap talk" produced in the confident knowledge that the requirements of unanimous European Council votes meant that ambitious blueprints would remain unexecuted.<sup>61</sup>

The obstacles to an activist role for Brussels in social policy development have always been formidable. EC institutions make it much easier to block reforms than to enact them. Generally, only narrow, market-related openings for social legislation have been available, and even on this terrain reform requires a super-majority.

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<sup>60</sup>On the Maastricht case see Dehousse, "Community Competence."

<sup>61</sup>Hugh G. Mosley, "The Social Dimension of European Integration", *International Labour Review* 129 (no. 2, 1990) pp. 147-164; Wolfgang Streeck and Philippe C. Schmitter, "From National Corporatism to Transnational Pluralism: Organized Interest in the Single European Market," *Politics and Society*, 19 (No. 2, 1991), pp. 133-64; Peter Lange, "The Politics of the Social Dimension," in Sbragia, ed., *Euro-politics*.

The social forces most sympathetic to European-level activity -- labor unions and social democratic parties -- have had relatively little influence in the past fifteen years. The member states themselves, which serve as gatekeepers for initiatives that require Council approval, jealously protect social policy prerogatives. Economic and geopolitical changes since World War II have gradually diminished the scope of national sovereignty in a variety of domains. The welfare state remains one of the few key realms of policy competence where national governments still appear to reign supreme. Given the popularity of most social programs, national executives will usually resist losses of social policy authority.

Yet even in this area -- where an intergovernmentalist account seems highly plausible -- a historical institutionalist perspective casts the development of European policy in quite a different light. While a thorough discussion is impossible here, I discuss four significant aspects of policy development which point to significant initiatives outside the firm control of member states: (1) interventions on issues of gender equality; (2) the expansion of health and safety regulations; (3) growing restrictions on national welfare states growing out of the single market project; and (4) the recent enactment of the "Social Protocol." Each of these initiatives illustrates important aspects of an historical institutionalist account.

*The EC and Gender Equality.* One area where the European Community has become tremendously important concerns policies to promote gender equality. The EC's current expansive role must be considered an unintended by-product of the Community's original institutional design. The key development was the inclusion of Article 119 of the Treaty of Rome, requiring member states to "... ensure and maintain the application of the principle that men and women should receive equal pay for equal work." The provision grew out of a lengthy fight between Germany and France over the need to harmonize social policy, which Germany eventually won. Article 119 was considered "merely hortatory" -- a face-saving concession to France rather than a basis for policy.<sup>62</sup> Indeed, Article 119 lay dormant for almost two decades.

Its broad wording, however, created the potential for a significant opening. In the 1970s -- during the

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<sup>62</sup>Catherine Hoskyns, "Women, European Law and Transnational Politics," *International Journal of the Sociology of Law*, Vol. 14, 1986, pp. 299-315, p. 305. For documentation of the reasons for Article 119's inclusion, along with the expectation of member states that it was of no significance, see Alan S. Milward, *The European Rescue of the Nation-State* (Berkeley: University of California Press), 1992, pp. 209-16, and Moravcsik, "Why the EC Strengthens the State," p. 27.

high tide of social democratic sentiment in the EC and at a time when women's movements were gathering strength in many countries -- politicians eagerly sought some cheap symbolic response to these new demands. In this context, the Council agreed to a number of directives which gave the "equal treatment" provision some content. Catherine Hoskyn's summarizes the atmosphere at the time:

.... directives were passed without much awareness of their consequences. Time and again interviews with national officials have shown that those who negotiated the original provisions had no idea what force they would prove to have or the legislative upheaval they would provoke. This is undoubtedly one of the reasons why governments have been so reluctant since 1978 to adopt new directives in this field.<sup>63</sup>

This growing reluctance also reflected the shift in policy preferences that accompanied a rightward shift in the ideological complexion of member state governments after 1980. If the Council soon became hesitant, however, its own initiatives had pushed the EC further down a path that member states could not fully control.

The passage of the directives, backed by the now far from symbolic Article 119, transferred considerable influence over gender policy to the ECJ. Over the past fifteen years, the European Court of Justice (ECJ) has played a crucial activist role, turning Article 119 and the directives into an extensive set of requirements and prohibitions related to the treatment of women workers. These rulings have required extensive national reforms of social security law and corporate employment practices. The impact on one member state was described by Ireland's Joint Committee on Secondary Legislation of the EC:

The Community has brought about changes in employment practices which might otherwise have taken decades to achieve. Irish women have the Community to thank for the removal of the marriage bar in employment, the introduction of maternity leave, greater opportunities to train at a skilled trade, protection against dismissal on pregnancy, the disappearance of advertisements specifying the sex of an applicant for a job and greater equality in the social welfare code. After farmers, Irish women in employment have probably benefited most from entry to the EEC.<sup>64</sup>

This conclusion is not atypical. To take just one broad example, ECJ decisions have had a dramatic impact on

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<sup>63</sup>Hoskyns, "Women and European Law," p. 306. For a detailed review of the various directives see Ilona Ostner and Jane Lewis, "Gender and European Social Policy," in Leibfried and Pierson, eds., *European Social Policy*.

<sup>64</sup>Joint Committee on the Secondary Legislation of the EC, *Report on Proposals relating to Equality of Opportunity* (Dublin: The Stationary Office), 1984, quoted in Ita Mangan, "The Influence of EC Membership on Irish Social Policy and Social Services," in Seamus O Cinneide, ed., *Social Europe: EC Social Policy and Ireland* (Dublin: Institute of European Affairs), 1993, pp. 60-81, p. 72.

public and private pension schemes. The Court's insistence on equal retirement ages in public pension schemes forced reform in a number of countries. When in *Barber* the ECJ made a similar ruling for occupational pensions, fear that the ruling might be applied retroactively to private pensions (at a cost estimated at up to £40 billion in Britain and 35 billion DM in Germany) fueled "what is probably the most intense lobbying campaign yet seen in Brussels."<sup>65</sup> It took a lot -- a unanimous agreement to add a "Barber protocol" to the Maastricht Treaty -- to limit the damage. Even so, the prospective impact of the Court's rulings remains dramatic.<sup>66</sup>

There remain considerable limits to EC gender policy. As with much European regulation, it is significantly constrained by its connection to the "market-building" project. Member states retain the capacity, as in the case of *Barber*, to reign in outcomes when they are so unacceptable that they mobilize unanimous member state opinion. Such compensatory steps, however, are likely to be rare. While member states may well wish that the Community had never become active in pursuing issues of gender equality, it is quite another thing to publicly stop or reverse such efforts once they are underway.

The current outcome -- where the EC plays an expansive role in the development of policies related to gender issues, and where the ECJ plays a central part in determining what EC rules require -- cannot have been the intended or desired outcome of either the makers of the Treaty or the current COGs of member states. Institutional designers were often preoccupied with the short-term political consequences of their actions; many long-term effects were either ignored or unanticipated. Shifts in member state preferences at later dates led to unexpected and hard to reverse shifts in course. Other actors (notably the ECJ but also the Commission and European women's groups) were quick to seize on the available slack, and member states have found that slack difficult to recapture. Indeed, the case of gender equality reveals all of the features of institutional evolution stressed in Part II of this essay.

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<sup>65</sup>Sonia Mazey and Jeremy Richardson, "Introduction: Transference of Power, Decision Rules, and Rules of the Game," in Sonia Mazey and Jeremy Richardson, eds., *Lobbying in the European Community* (Oxford: Oxford University Press, 1993), p. 15.

<sup>66</sup>The ECJ upheld the solution found in Maastricht in *Ten Oever* (Case 109/91 of October 6, 1993). Estimated costs of full retroactivity for Germany are from Claus Berenz, "Hat die betriebliche Altersversorgung zukünftig noch eine Chance?" *Neue Zeitschrift für Arbeitsrecht*, 11 (no. 9/10, 1994), pp. 385-390 (part 1), 433-438 (part 2), pp. 437; for Britain, from Mazey and Richardson, "Transference of Power," p. 15.

*Workplace Health and Safety*. Another instance of gaps in member state control can be seen in the case of health and safety regulations.<sup>67</sup> Openings for health and safety regulation came with the Single European Act, which allowed Qualified Majority Voting on these issues. Policymakers were concerned that national restrictions could be trade barriers in disguise. The expansion of EC activity in this domain has been remarkable. Equally surprisingly, a very high level of standards has generally been achieved -- often higher than that of any member state. To be sure, the use of qualified majority voting has been crucial. Yet the outcome of high harmonization is impossible to explain in terms of simple intergovernmental bargaining. Constructing the single market might require harmonization of health and safety standards for *products*. There is, however, no clear need for harmonized standards for production *processes*. Here as well, however, the European Union has been highly interventionist. Nor is it clear why member states with low standards should accede to significantly higher ones.

As Eichener documents, the Commission's "process manager" role -- a delegation of authority required to pursue complex regulatory policies -- appears to have been critical in this low-profile environment. Much of the crucial decision-making took place in committees composed of policy experts. Representatives within these committees were often interested in innovation, having gravitated towards Brussels because it seemed to be "where the action is" on regulatory issues. In this technocratic context, "best practices" from many member states (and from other countries such as Sweden) were pieced together to form a quite interventionist structure of social regulation. At the same time, the Commission played a central part in joining together the work of different committees and incorporating concerns of other actors such as the European Parliament -- all the while actively promoting particularly innovative proposals. Thus while the Commission, like other actors in the EC, operates under considerable constraints, the complexity of regulatory policy-making in a setting of high issue density may give it considerable slack to advance its own agenda.

Throughout, the member states appear to have played only a loose supervisory role. This was especially true for the low-standard states of the EC's southern rim. These states had the most to lose from the enactment of high standards, since their adjustment costs would be highest. Yet these member states found their limited supplies of specialists either co-opted in the "consensual" committee process or overwhelmed by the enormity

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<sup>67</sup>The following account draws heavily on Eichener, "Social Dumping or Innovative Regulation."

of the regulatory task.

*The Single Market and Constraints on National Welfare States.* Lost amidst the noisy fights over Social Charters and Social Protocols has been the quiet advance of cumulating EC constraints on social policy connected with market integration. The last three decades, and especially the most recent one, have witnessed a gradual if incremental expansion of Community-produced regulations, and, especially, court decisions that have seriously eroded national welfare state sovereignties. Political scientists have paid scant attention to this area of "low politics." The topic has been left to a small set of European welfare lawyers who have monitored an emerging center of policymaking: the courts.

The ECJ has delivered more than three hundred decisions on social policy coordination -- enough to incite pleas for a specialized EC welfare court for which the ECJ would function as a court of appeals. The ECJ's overall caseload has been growing rapidly, from 34 cases filed in 1968 to 280 in 1980 and 553 in 1992. Social policy cases account for a growing share (from 3.3% to 8.1%) within this rising total. A comparison with core common market topics - customs union and free movement of goods, competition (including taxation), and agriculture -- is instructive. While social cases accounted for only 6.3% of the total in these four categories in 1968, that share had increased to 22.8% in 1992 and was growing at by far the fastest rate.<sup>68</sup>

The EC's social dimension is usually discussed as a potential corrective or counter to the construction of the single market, but the EC's impact on social policy has grown in part as a largely unanticipated by-product of the market-building process. The nexus between the market and social policy was at least partially acknowledged at the outset, where social policy in the Community was addressed largely in relation to the problem of reducing restrictions on labor mobility. Articles 48-51 of the Treaty deal with the freedom of movement, with Article 51 providing: "The Council shall, acting unanimously on a proposal from the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers ..."

The impact of a labor mobility regime of "coordination" on national sovereignty was neither very visible

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<sup>68</sup>Figures from James A. Caporaso and John T.S. Keeler, "The European Community and Regional Integration Theory," Paper Presented at the Third Biennial International Conference of the European Community Studies Association, Washington, May, 1993, Table 1.

nor contentious, since an already entrenched *intergovernmental* consensus existed on which the Treaty could build: by- and multi-lateral social security treaties, drafts of a European Coal and Steel Community Social Security Treaty for miners and steel workers, and standards of the International Labor Organization.<sup>69</sup> These embedded international legal norms facilitated fast and silent *supranationalization*. The new regulations, along with the obligations they created for member states, gradually became institutionalized -- mostly in the quiet of the Court's chambers. It was not until the end of the 1980s that member states began to wake up to the full import of "coordination" and to struggle with it.

Intra-European migration remains limited, but the numbers have surpassed the "critical mass" necessary to generate continuously increasing litigation at the ECJ level. Individuals as litigants and national courts who remit cases to the ECJ are, together with the ECJ itself, the central actors in shaping this policy domain. They have instigated a large corpus of national and, especially, supranational adjudication since 1958. A detailed review of this case law cannot be attempted here.<sup>70</sup> Over a period of thirty years, a complex patchwork of regulations and court decisions has partially suspended the principle of member state sovereignty over social policy in the interest of European labor market mobility, limiting national capacities to contain transfers "by territory."<sup>71</sup> To summarize the key implications, member states generally: (1) cannot limit social benefits to their own citizens; (2) cannot insist that their benefits only apply to their own territory and can only be consumed there; (3) cannot entirely exclude other member states' social policy regimes (e.g., in vocational training) from directly competing on their territory; and (4) do not have exclusive administrative control over their own social policy caseloads. If complete *de jure* authority in these respects is what sovereignty in social policy is all about,

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<sup>69</sup>Cf. Frederico Romero, "Migration as an Issue in European Interdependence and Integration: the Case of Italy," in Alan S. Milward, Frances M. B. Lynch, Frederico Romero, and Vibeke Sorensen, *The Frontier of National Sovereignty: History and Theory, 1945-1992* (London: Routledge), 1993, pp. 33-58, 205-208; Bernd Schult, "Sozialrecht," in Carl Otto Lenz et al, eds., *EG-Handbuch, Recht im Binnenmarkt* (Berlin: Verlag Neue Wirtschafts-Briefe), 1994, pp. 407-478.

<sup>70</sup>For details see Stephan Leibfried and Paul Pierson, "Semi-Sovereign Welfare States: Social Policy in a Multi-tiered Europe," in Leibfried and Pierson, eds., *Fragmented Social Policy*. I draw heavily on that account in this section.

<sup>71</sup>Bernd Baron v. Maydell, "Einführung in die Schlussdiskussion," in Schulte and Zacher, eds., *Wechselwirkungen*, pp. 229-36, p. 231; cf. Eberhard Eichenhofer, ed., *Die Zukunft des koordinierenden Europäischen Sozialrechts* (Koln: Carl Heymanns), 1992.

it has already ceased to exist in the EC.

This has been a complex process, in which supranational efforts to broaden access and national efforts to maintain control go hand in hand, are calibrated from conflict to conflict, and court-case by court-case. This transformation has not occurred without member state resistance. Individually, member states have balked at implementing particular facets of coordination, although they have been effectively taken to task for this by the ECJ. Collectively, the member states have recently sought to roll back some aspects of co-ordination, unanimously agreeing to revisions that will allow member states to restrict the portability of benefits in a somewhat broader range of cases following proper "notification."<sup>72</sup> The impact of this step is unclear, though if it passes muster with the ECJ it may partially offset some loss of sovereignty. Nonetheless, coordination has become the entering wedge for an incremental, rights-based "homogenization" of social policy. Neither "supranationalization" nor "harmonization" seems an appropriate label for this dynamic, since each implies more policy control at the center than currently exists. The process is more like a marketplace of "coordination," with the ECJ acting as market police, enforcing the boundaries of national autonomy. It structures the interfaces of twelve (now fifteen) national social policy systems, with potentially far-reaching consequences for the range of policy options available to national welfare states.

In line with the goal of market integration, the EC also has an original competency to regulate and assure the freedom to provide and consume services (Articles 59-66). At first sight this does not seem very relevant to social policy, and the Treaty's signatories saw no real connection between the freedom of services and their control over their own welfare states. But recent developments have shown that this constitutional principle and its implementation may have a significant impact on national social policy regimes, guaranteeing both the freedom of movement to consumers of social policy to "shop" where they want, and the right of service providers to deliver their services "across the border" into another welfare state. In the future this spillover from the market integration process may become a major terrain for European conflicts over social policy reform.

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<sup>72</sup>"Notification" requires unanimous member state approval, although so far there seems to be a "gentleman's agreement" to allow such self-exemptions. To date, these have been exercised largely by the "Latin Rim" countries and by Britain. Cf. R. Schindler, "Anderungen der Verordnungen (EWG) Nr. 1408/71 und 574/72," *Kompass* (1992), pp. 446-49.

The scope of this influence remains relatively opaque. While labor mobility issues have been worked out in hundreds of ECJ decisions spanning almost four decades, the influence of the "free movement of services" really surfaced only with the passage of the Single European Act. So far, it has generated only a few leading cases and comparatively little secondary Community law. Nevertheless, judging from the general impact of the Single Market and from the considerable agitation in the specialist literature, there appear to be significant prospects for the remolding of national policies in the social services, especially in the area of health care.<sup>73</sup>

Even by looking only at issues of labor mobility and freedom of services, one can see a wide range of "market compatibility requirements", through which either EC regulations or ECJ decisions impinge on the design and reform of national social policy. To take just one example, attempts to create a minimum pension benefit in Germany during the 1980s foundered in part because of concerns that the benefit would be "exportable" to non-German EC citizens who had worked for some time in Germany.<sup>74</sup> Examples related to the single market could easily be multiplied -- for example, restrictions related to firm subsidies. In Italy, for instance, the central government has been using abatements of social insurance taxes as a strategy to attract investment to the Mezzogiorno. While the Commission agreed to permit this until the end of 1993, it is now initiating ECJ proceedings against the continuation of the practice on grounds of "unfair competition."<sup>75</sup> The broader point is clear. While welfare states and the single market were originally treated as unrelated, a whole range of social policy designs that would be available to sovereign welfare states are prohibited to member states as a result of the growth of the single market.

*The Maastricht Social Protocol.* A final illustration of the dynamics of institutionalization can be seen in the "Social Protocol" enacted as part of the Maastricht Treaty negotiations. The Social Protocol grew out of continuing efforts to modestly increase the capacity for activist social policy at the EC level. The Protocol itself allows qualified majority voting on a range of important issues, including working conditions, gender equality

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<sup>73</sup>Cf. Bernd Schulte, "Einführung," pp. 237-52; Bieback, "Harmonization."

<sup>74</sup>Manfred Zuleeg, "Die Zahlung von Ausgleichszulagen über die Binnengrenzen der Europäischen Gemeinschaft," *Deutsche Rentenversicherung* (no. 2), 1993, pp. 71-75.

<sup>75</sup>EUROREPORT, 1994 (5), p. 9.

with regard to labor market opportunities and treatment at work, and the integration of persons excluded from the labor market. Already, the Commission has used the Social Protocol track to push through the long-stalled European Works Council Directive.

While it is impossible to know at this stage how the Social Protocol will play out, this exercise in institutional design again supports key parts of the historical institutionalist argument. The enactment of the Social Protocol is very difficult to reconcile with a simple model of intergovernmentalist bargaining among sovereignty-focused member states.<sup>76</sup> Britain was expected to sign a much-watered-down clause on social policy, but the Major government rejected all proposed versions. Faced with the prospect that British intransigence would prompt a disastrous breakdown of the Maastricht conference, the member states adopted (at Delors' suggestion) a last minute solution. The hastily-cobbled together agreement excluding Britain committed the other eleven member states to a much more ambitious, earlier draft on social policy. This version had been designed as a bargaining position in the expectation that Britain would eventually agree to a contentless compromise. Member states that had exploited Britain's expected position to engage in cheap talk suddenly found themselves exposed.

That Britain preferred to opt out rather than accept the largely symbolic compromise that was waiting in the wings is equally instructive. It illustrates how the long-term institutional consequences of the Protocol should be seen as the by-products of an agreement made to meet various short-term domestic objectives. Had Major truly wished to preserve social policy autonomy, a solution was readily available. Britain's refusal to agree appears to have had less to do with some long-sighted views of sovereignty than with Major's need to placate right-wing Tories by taking a tough public stance. Choosing the Protocol option means that Britain will not participate in decisions that it will have to abide by if a future government joins the Protocol. Assuming that the Conservatives continue to resist doing so while Labour would reverse that choice, the status quo can be maintained only if it is ratified at every British election. A *single* Labour victory would produce an institutional change that could not subsequently be reversed without provoking a constitutional crisis in Europe. In short, the Major government accepted a considerable long-term threat to British sovereignty in return for an important

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<sup>76</sup>For an account see George Ross, *Jacques Delors*, p. 191.

short-run symbolic victory.

Finally, the Social Protocol leaves tremendous room for unanticipated consequences.<sup>77</sup> Rather than being an example of Williamson's "far-sighted propensity" in institutional design, the arrangement clearly reflects a harried and desperate effort to keep the Maastricht negotiations from coming unravelled altogether. Legal ambiguities abound. Not only is the whole legal basis of the Protocol open to challenge, but, as Martin Rhodes notes, "the boundaries are quite blurred between areas subject to QMV, those subject to unanimity and those where the Community (of eleven) has no competence at all."<sup>78</sup> It is, of course, the ECJ that will determine how these ambiguities are resolved. Further uncertainties include whether and when Britain will "opt-in" to the agreement, and what the consequences will be if it remains on the outside. Even with several years hindsight, these uncertainties remain -- they were clearly very much a part of the atmosphere in the short period during which the Protocol agreement was reached.

It is too soon to study the stream of consequences flowing from the Protocol's enactment -- an important aspect of an historical institutionalist investigation. Yet the process of institutional design itself appears to be quite in line with the general framework advanced in this essay. Indeed, the case (along with the earlier discussion of Article 119) reveals that historical institutionalist arguments are relevant not only during the day-to-day activities between the "grand bargains", but for understanding the grand bargains themselves.

An examination of social policy development thus provides powerful illustrations of the institutional dynamics posited in Section II of this essay. In a number of instances, the short-term preoccupations of institutional designers have led them to make decisions that undermined long-term control. Unanticipated consequences have been widespread, especially as the density of EC activity has grown. Shifts in member state preferences led to unexpected exploitation of opportunities created earlier (e.g., Article 119 in the 1970s) as well as growing frustration with previous commitments (the Gender Equality Directives in the 1980s). The responses of individual actors to the single market has helped to produce a large body of European case law that has

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<sup>77</sup>For an excellent discussion see Martin Rhodes, "A Regulatory Conundrum: Industrial Relations and the 'Social Dimension,'" in Leibfried and Pierson, *European Social Policy*.

<sup>78</sup>Ibid, p. 34.

gradually impinged on member state options in social policy. In short, even though social policy is widely seen as an area of firm member state control with a minimal EC role, a broad historical perspective highlights the growing significance of European policy, the influence of actors other than member states, and the mounting constraints on member state initiative.

## V. Conclusion

The arguments advanced in this essay present major challenges for an intergovernmentalist account of European integration. By providing explicit micro-foundations for an analysis that places much more emphasis on member state constraint, historical institutionalism increases the pressure on intergovernmentalists to provide evidence that the causal processes they have identified are actually at work. Rather than simply inferring preferences *post hoc* from an examination of outcomes, intergovernmentalists will need to show that the desire to achieve these functional outcomes actually motivated key decision-makers.<sup>79</sup> In principle, important aspects of an historical institutionalist analysis could be integrated with intergovernmentalism. While this has rarely been true in practice, many intergovernmentalist arguments could incorporate a temporal dimension -- e.g., the possibility that COGs anticipate the potential for preference shifts in successor governments.<sup>80</sup> Other challenges, however, such as the possibility that COGs employ a high discount rate in making decisions about institutional design, that unintended consequences are ubiquitous, and that slack is hard to recapture, seem harder to reconcile with intergovernmentalist analyses.

The challenge for those attracted to the historical institutionalist account is just as daunting. The

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<sup>79</sup>Moravcsik, "Negotiating the Single European Act," provides a good example of such an effort. For a critique, see David Cameron, "The 1992 Initiative: Causes and Consequences," in Sbragia, ed., *Euro-politics*, pp. 23-74. Historical institutionalist arguments, however, suggest the need to go beyond even Moravcsik's ambitious attempt to supplement intergovernmentalism with a "liberal" theory of COG preference formation. Moravcsik's account considers only the synchronic domestic sources of COG preferences, ignoring the possibility of significant feedback effects from previous rounds of institutionalization.

<sup>80</sup>For instance, Keohane has argued that COG awareness that subsequent governments may not share their policy preferences may encourage institutional initiatives to lock-in preferred alternatives. Keohane, *After Hegemony*, p. 117. In this respect, his analysis converges with Moe, "Structural Choice." When one allows for the significance of unintended consequences, however, the implications for member state control may be quite different than those Keohane suggests.

hypotheses outlined here would have to be very carefully refined to generate testable propositions concerning such matters as when we should expect policy-makers to have short time-horizons or anticipate that unintended consequences will be widespread. To develop the historical institutionalist line of argument requires equally difficult efforts to trace the motivations of political actors, in order to separate the intended from the unintended. It is often hard to determine the significance of sunk costs in influencing current decision-making. Studying political arenas in detail over long periods of time is arduous, and vulnerable to the critique that the cases examined are unrepresentative. The purpose of the current investigation is simply to start this project by identifying plausible causal processes that can lead to growing constraints on COGs over time. While only the first step, such an effort can set the agenda for empirically-grounded research.

Yet the first step is a significant one. Historical institutionalist arguments can provide a compelling account for a remarkable development that is widely accepted by European scholars and most Americans working in the field of comparative politics: the European Community is no longer simply a multilateral instrument, limited in scope and firmly under the control of individual member states. Instead, the EC possesses characteristics of a supranational entity, including extensive bureaucratic competencies, unified judicial control and significant capacities to develop or modify policies. Within Europe, a wide range of policies classically seen as "domestic" can no longer be understood without acknowledging the European Community's role within an increasingly integrated yet highly fragmented polity. Historical institutionalism provides the analytical tools for thinking of the EC not as an international organization, but as the central level -- albeit still a weak one -- of an emergent multi-tiered system of governance. The power of the member states is not merely "pooled" by the EC but increasingly constrained.

This view contrasts with the usual depiction among American political scientists of the EC as essentially an international organization, albeit an unusually important one. The disagreement is more than semantic. At its core, it concerns the extent to which member states continue to control the exercise of authority within the EC, and the manner in which their authority is exercised. While the member states remain extremely powerful, tracing the process of integration over time suggests that their influence is increasingly circumscribed, and embedded in a dense, complex institutional environment that cannot easily be described in the language of inter-

state bargaining. It would be folly to suggest that the member states do not play a central part in policy development within the European Union. Rather, my point is that they do so in a context that they do not (even collectively) fully control. Arguments about intergovernmental bargaining exaggerate the extent of member state power. In their focus on grand intergovernmental bargains, they fail to capture the various processes unleashed by a very complex and ambitious agenda of shared decision-making. These processes serve to empower other actors while considerably curtailing the autonomy of member states.



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