

The Principal–Agent Framework and Independent Regulatory Agencies

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Abstract

The goal of this contribution is to discuss the application of the principal–agent framework to the study of interactions between elected politicians – the principal – and independent regulatory agencies – the agent. Through a review of recent research we suggest that the principal–agent framework, despite its parsimony and analytical leverage, requires considerable refinement to make sense of these relations. Indeed, evidence on the functioning of independent regulatory agencies shows that some of their key practices tend to deviate from expectations based on the principal–agent framework. First, principals do not necessarily seek to exert control over agencies. Second, relations which structure the principal–agent mechanics other than those with elected principals are decisive in shaping the behaviour of regulators. Third, agencies can acquire political power over time and eventually subvert the logic of delegation. It is time to recognise that these deviations should not be conceived as anomalies but rather as systemic features that characterise post-delegation relations between elected politicians and independent regulators.

Keywords

credible commitments, delegation, independence, principal–agent, regulatory agencies

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The Principal–Agent Framework in Political Science

The principal–agent (PA) framework originated in economic theory and, more specifically, in theories of the firm, insurance and credit market economics to describe contract-based interactions between a ‘principal’ – such as an employer – and an ‘agent’ who acts on the principal’s behalf – such as an employee (Miller, 2005: 204–206). While the principal exerts formal authority over the agent, the latter benefits from an informational advantage about the real use of its abilities and about the correctness of its behaviour that

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could result in so-called adverse selection and moral hazard problems: there is a risk that tasks are not delegated to the right people, in that the agent's behaviour does not conform to the principal's expectations because agents have their own preferences and agendas.

Over time, the PA framework has been adopted in other disciplines – especially in political science – and it has been extended and reformulated in many ways. Most importantly, for the argument of this article, its impact on the analysis of politico-administrative relations has been huge. A PA perspective was first applied to the study of public administrations to analyse the control mechanisms the US Congress exerts over bureaucrats. Today, this framework has become inescapable when studying delegation relations and, in particular, the interactions between elected politicians – the principal – and public officials – the agent. It is frequently used to make sense of the issues at stake when power is delegated, and it is almost invariably invoked as a background concept to frame politico-administrative relations. Parliamentary democracies, for instance, are regarded as chains of delegation from a principal to an agent (Strøm, 2000: 266–275), that is, from citizens to legislators, to the prime minister, to the heads of different executive departments and to civil servants. Corresponding to the chain of delegation there is a parallel chain of accountability that runs in the opposite direction and allows principals to control their agents.

In the early 1990s, the growing prominence of independent central banks and the worldwide diffusion of independent regulatory agencies (IRAs) led to a reformulation of the mechanics of the PA framework with respect to politico-administrative relations involving an agent that enjoys formal independence from the principal. The key functional rationale for delegating regulatory tasks to an independent agent is to provide a guarantee that the rules of the game do not change over time or, in other words, to secure credible commitments to market players and other stakeholders (Gilardi, 2008: 31–46).¹ Given this logic of delegation, the key problem to solve is no longer inducing the agent to act in the principal's interests, as in the baseline version of the PA framework. On the contrary, the structure of delegation should ensure that the agent is *unresponsive* to those interests (Miller, 2005: 218–223). This relation between incumbents and independent bodies has been described as being of the 'fiduciary' rather than of the pure 'delegate' type (Majone, 2001: 116–119): independent bodies are expected to act on the basis of their own (expert) judgement within the boundaries of their statutory mission as broadly defined by decision-makers, not on the basis of day-to-day instructions, and the incumbents trust that their judgement will be appropriate (Pollack, 2002: 208–209; Thatcher and Stone Sweet, 2002: 5–7).²

The goal of this contribution is to discuss a number of recent pieces of research whose conclusions should induce us to question the PA framework in this specific context; that is, when it is applied to study the delegation of public authority from policy-makers to IRAs. We suggest that recent empirical work on IRAs, as well as contributions on international organisations and in European studies, can be used to refine the way the PA framework depicts the actual organisational behaviour of IRAs. In particular, a fine-tuning of this framework seems necessary to make sense of some crucial features characterising *post*-delegation relations. In this regard, we observe that such relations tend to deviate from core expectations based on the PA framework. Although PA is better understood as a wide-ranging analytical framework and a heuristic device to capture the dynamics of delegation and control, one should nevertheless recognise that it is often applied as an internally coherent set of assumptions from which predictions about the behaviour of actors are directly derived. For example, PA usually views the agent as an opportunistic actor who wants to shirk. Consequently, it is rational for principals to strive

to control agents, who are considered particularly problematic actors because of their opportunism (Sobol, 2015).³

The three points that we discuss in this article are the following. First, while it is assumed that the principal seeks to exert control over the agent so as to minimise ‘agency losses’, we point to the literature showing that principals rarely activate the existing control and accountability mechanisms. Second, we argue that relationships other than those between the principal and the agent (in this case, IRAs) are also relevant to understanding the behaviour of the latter, and sometimes even more so. Third, we suggest that IRAs can acquire political power by developing a policy agenda and actively shaping the policy process, turning the PA structure of delegation upside down. All this goes beyond mere ‘agency losses’ as defined by the PA framework, which apply to situations in which the agent abuses its discretion in the accomplishment of its mandate.

This article is structured around our three criticisms. We conclude by discussing the implications of our arguments, and we sketch some reflections on a refinement of the model to make sense of post-delegation politico-administrative relationships.

Forum Shirking and Forum Paralysis

Much theoretical and empirical literature on the PA framework has focused on devising the appropriate contractual and institutional settings for the principal to exert control over the agent’s efforts and outcomes without engaging too much in costly monitoring activities (Braun and Guston, 2003: 303–304; Lupia, 2003: 44–51; Waterman and Meier, 1998: 194–197). In a very influential article, Weingast and Moran (1983) showed that Congress shapes bureaucratic behaviour not through constant monitoring but through the threat of *ex post* sanctions in the form of congressional hearings and investigations. Shortly after this seminal article, McCubbins and Schwartz (1984: 171–173) added a crucial insight by pointing out that this system works because members of Congress do not have to engage proactively in top-down monitoring activities in the form of ‘police patrols’. Instead, when their constituencies do not receive the services they want from the bureaucracy, they activate ‘fire alarms’, consisting of repeated complaints transmitted by citizens and organised interests, which provide members of Congress with the relevant information on what to react to and where to focus their oversight efforts.

Mark Pollack (2007: 9–12) argues that the distinction between agents and trustees mentioned in our introduction should be conceived not as a qualitative difference but as a continuum along which the latter simply enjoy the highest degree of agent discretion. Indeed, even in the case of IRAs enjoying formal independence, politicians do have some tools for steering and control. However, contrary to the beliefs of the proponents of the PA framework, several studies on IRAs have consistently shown that the principal does not necessarily want to exert its powers to control the agent. Mark Thatcher (2005: 355–363) points out that politicians do not use the formal instruments available to them to limit agency losses. Indeed, his analysis of four large European countries between 1990 and 2001 shows that elected officials rarely used their powers to appoint party politicians in IRAs, to force the early departure of IRA members, to reverse IRA decisions or to reduce IRA budgets and powers. This is not the behaviour anticipated of a principal, who is expected to oversee and try to steer the agent to ensure that it sticks to the original mandate. Thatcher offers two hypothetical reasons for this self-restraint. Perhaps elected politicians do not use their formal controls because the existence of close informal relationships with IRAs, notwithstanding legal prescriptions and organisational separation, offers them a

less visible but more effective means to steer the behaviour of IRAs. This argument of observational equivalence is similar to the argument put forward by Weingast and Moran (1983: 766–770), according to which inaction could be due to the fact that the principal is already exerting considerable control. Alternatively, Thatcher conjectures that elected politicians do not choose to use their control because agency losses are outweighed by the benefits of IRA autonomy and the costs of activating formal controls.

The phenomenon described by Thatcher has been observed repeatedly and has led to the emergence of the concept of ‘forum shirking’ or ‘forum drift’ (Schillemans and Busuioc, 2015), which may occur when the principal is reluctant to exert its prerogatives. In the case of the Swiss Financial Market Supervisory Authority (FINMA) during the 2008–2011 financial crisis, for example, the government did not engage its responsibility but left this agency alone (Biela et al., 2011). In other words, the principal did not use its control powers, not even *ex post*, mainly because any intervention in the FINMA operations, such as removal of the agency’s head, would have been interpreted as a signal of less independence from the government. It is precisely this perceived independence that allows the government to shift the blame for unpopular decisions to an arm’s-length organisation to which regulatory power has been delegated. Firing its head and undermining its independence do away with the option of blame shifting so that forum shirking may be a rational conduct on the part of the government, whereas more intervention by the principal was actively requested by the agent itself. Schillemans and Busuioc (2015: 206–207) put forward a possible explanation for the lack of interest and deliberate disregard by principals in activating control mechanisms which is at odds with basic expectations drawn from the PA model. In essence, they contend that oversight processes depart from these expectations mainly because some of the ‘accountability forums’ (Bovens, 2010: 951) – such as courts – do not on their own constitute ‘a real principal’ which has delegated authority and has a stake in delegated regulatory activities. Instead, they receive delegated monitoring powers from the original principal. Therefore, these forums cannot be expected to have a direct interest or incentive in controlling the agency.

Furthermore, the passive attitude of principals can be explained by a lack of organisational capacity and expertise regarding regulation, whereby over time the bulk of technical knowledge is concentrated in the hands of independent regulators. For example, a study of European agencies by Madalina Busuioc (2010) shows that the principal frequently lacks the cognitive capacity to monitor the agency. EU agencies are accountable for their performance to their management boards (among others). The latter tend to be very large, comprising a representative from each member state as well as (depending on the agency) representatives from the European Commission, the European Parliament and stakeholders.⁴ Interestingly, the study shows that the provision of information to boards by agencies – a necessary condition for accountability – is adequate. However, the boards have problems in processing this information, and debate on the information provided is not satisfactory, usually because the boards are too big and even plethoric (Busuioc, 2010: 95). This is probably one reason why several board members attend meetings passively but do not actively participate. Weak control in such cases does not result from deliberate inaction. Unlike cases of ‘forum shirking’, which is a deliberate choice resulting from an assessment of the relative costs of control compared to opportunities for blame shifting or a lack of salience of the specific issue, the accountability forum is simply unable, not just unwilling, to play its role. In other words, passivity is a sign of weakness. Hence, it is more appropriate to speak of ‘forum paralysis’, which prevents principals from playing their role as ‘accountability forums’. True, the PA

framework acknowledges that there may be limits to the control potential of principals. For instance, Terry Moe (1985: 1100) highlights that (as a result of the separation of powers, the prevalence of partisan politics and the presence of contentious interest groups that lobby the legislature) the political ‘principal’, unlike in the theory of the firm, is in fact a multifaceted collective entity composed of actors that ‘struggle with one another for jurisdiction and influence’. However, the PA framework tends to focus too narrowly on collective action problems due to preference heterogeneity or to power asymmetries among principals (Sobol, 2015: 6–7).

The Multidimensionality of Agency Relations

The mechanics of the PA framework are characterised by a vertical relation running in both directions, whereby the principal delegates a grant of public authority and the agent enjoys discretion in implementing regulatory provisions, while *ex ante* design and *ex post* controls exerted by the former on the latter should ensure that the official mandate is properly executed. Our second point aims at questioning the idea that delegation relations are the unique crucial feature of a ‘political contract’ that determines agency behaviour (Lane, 2007: 281–284). In essence, the PA analysis of politico-administrative relations focuses on vertical interactions unfolding between the principal and the agent and treats the environment of the latter as an exogenous factor. In the PA model, agency loss is explained by the agent’s preference system and the agent’s informational advantages, but there is no reference to the agent’s behaviour being dictated, or at least influenced, by relations with actors other than the principal. This is surprising as it ignores the findings of seminal studies of bureaucratic behaviour, such as Philip Selznick’s (1949) work on the Tennessee Valley Authority or Michael Lipsky’s (1980) work on street-level agents. In other fields, such as those on the role of the EU in international negotiations, the organisational and institutional environment of the agent (that is, EU institutions, while member states are the principals) is starting to receive more attention. Maher et al. (2009) show that the relation between the EU and international organisations is often under-articulated when adopting a PA perspective because PA fails to account for the complexity of policy-making and legal dynamics involving a plurality of actors at different levels. This often results in a more activist role for the ‘agent’ that can only be understood if one considers the specific context of international negotiations.⁵

Decentred approaches to regulation – which emphasise fragmentation, complexity and interdependence – have long recognised the polycentric nature of agency relations, namely, of interdependence and accountability (Black, 2008; Scott, 2000). However, they have been little incorporated into the PA framework, which still fails to recognise that hierarchical relations reach ‘a state of continued tension and fluidity’ (Lodge and Stirton, 2010: 415). Instead, the concept of regulatory space has been used to make sense of this multidimensionality, which corresponds to an environment defined by a range of regulatory issues subject to decision in specific sectors at the national (Hancher and Moran, 1989), regional (Levi-Faur, 2011) and international levels (Vibert, 2014). Regulatory spaces are occupied by participants in the regulatory process who are involved in cooperation as well as bargaining and power struggles in regulation, configuring a variety of regulatory regimes with the IRA at the centre in a way that depends on institutional design and sector-specific actor constellations.

There are indeed a variety of actors that interact with IRAs within regulatory spaces and influence their behaviour. However, they are not included in the PA model because

IRAs are not involved in a PA relation with them. Instead, they interact without configuring a hierarchical relation and without necessarily holding pre-defined roles. Besides the political principal, the most important actors are the regulatees, co-regulators, peer agencies, tribunals and the media. The regulatees are the members and representatives of the sectors targeted by regulation. Their potential role in shaping agency behaviour has long been recognised in the regulatory capture literature.⁶ Co-regulators correspond to other domestic authorities that share regulatory competencies with sector-specific IRAs in a given jurisdiction, such as executive agencies and competition agencies (Ingold et al., 2013), and can thereby enable or constrain an agency's regulatory reach. Next, groups of peer agencies – that is, sector-specific regulators in charge of regulating the same sector in other jurisdictions – can exert pressures that affect the behaviour of agencies, particularly through close and continual interaction in transnational networks (Maggetti and Gilardi, 2014). Courts and auditors can hold agencies legally liable by handling grievances when they have the power to review the actions of the regulator (Curtin, 2005; Scott, 2000). Finally, the media can help monitor independent regulators and provide 'fire alarms' to the principal (as originally suggested by McCubbins and Schwartz, 1984).

Several studies have shown that horizontal inter-organisational relations that do not fit within the PA framework are nonetheless very important, sometimes even more than vertical interactions operationalised as PA relations of delegation. This is clearly visible in the case of agency accountability: agency behaviour is scrutinised by various actors that do not correspond to principals, and such controls are important in constraining agency behaviour. In the context of new public management reforms, Michels and Meijer (2008: 168–171) argue that the trend towards a horizontalisation of structures triggers a corresponding stronger emphasis on horizontal accountability mechanisms, such as reporting to, consultation with and supervision by peers. A case study of public sector organisations in the Netherlands reveals that new accountability arrangements – where the accountability holders are not hierarchical superiors but clients, stakeholders or peers – are created as remedies for the vertical accountability deficit of agencies (Schillemans, 2008: 182–184). Another recent case study on the accountability regime of the German *Bundesnetzagentur* (the regulator in charge of electricity, gas, telecommunications, postal services and railway markets) shows that the accountability relations of this agency depend on the kind of activities involved and that cooperation between 'forums' matters for accountability effectiveness (Biela and Papadopoulos, 2014). The agency's accountability regime is a system composed of multiple (partially) interdependent forums, and this system includes forums typical of a situation of multi-level governance (the European Commission and the Body of European Regulators for Electronic Communications) and mechanisms of legal and administrative accountability in which some forums (typically administrative courts) act as 'surrogates' (Rubenstein, 2007) for the accountability holders.

At the end of the day, it appears that accountability chains are much more complex than the chain of delegation and that political principals are not necessarily the main 'forum' that controls agencies. The hierarchical relation between agencies and their principals is only one relation among others and sometimes not even the most important constraint on the behaviour of regulators. In the post-delegation period, interactions between the regulator and other actors and institutions spill over different levels (Eberlein and Grande, 2005) and evolve over time (Coen and Heritier, 2005). To summarise, the PA framework does not adequately capture the importance of horizontal relations and, more generally, the complex evolving interactions between agencies and their environment.

The Agent as Legislator

The literature on bureaucratic behaviour comprises prominent studies on agents trying to expand their mandate. Following William Niskanen's (1971) budget-maximising model, rational bureaucrats will always try to increase their budgets in order to increase their own power, while according to the bureau-shaping model they seek more generally to shape their organisation so as to maximise their personal utility from their occupation (e.g. concentrate on the most stimulating and rewarding tasks) (Dunleavy, 1992). However, scholars in the PA-oriented literature have paid little attention to the implications of these observations for post-delegation relationships. One might consider that PA is flexible enough to incorporate such an extension, and Hawkins and Jacoby (2006: 225–228) correctly argue that the strategic interactions between agents and principals are multifaceted and that one should avoid having a too 'thin' view of agent behaviour. However, there is a risk of stretching the model further and reaching a point where the core of the PA framework becomes indistinct and elusive, with the consequence that considerable analytical leverage is lost. Accordingly, our third criticism refers to the observation that independent regulators do not necessarily behave as a delegate of their principal. In this context, the 'contract' metaphor of the PA framework appears particularly weak.

To begin with, as Daniel Carpenter notes, agencies are actually players in the 'game' of policy creation, wherein 'whether or not they can shape policies to their liking at the policy-making stage as well as the administrative stage is an empirical question' (Carpenter, 2001b: 116). This point is supported by evidence about the role of agencies in legislative processes in European countries. According to a comparative study on the Netherlands, Sweden and Switzerland (Maggetti, 2009), independent regulators were highly central in the course of each political decision-making process under scrutiny. They were not only crucial in the implementation phase, but they also actively participated in the entire process, especially in agenda setting and pre-parliamentary discussions. Another study (Bach, 2012) with a broader focus on all the federal agencies in Germany comes to analogous conclusions. Agencies are strongly involved in policy formulation along with the ministries in charge. The more active agencies in this stage of policy-making are found to be those with a formal mandate to provide policy advice, together with service delivery agencies, which possess 'street-level' expertise and offer crucial feedback about the evaluation of public policies. Finally, a case study on the EU's pharmaceutical framework – more precisely on the 2004 Directive on Traditional Herbal Medicines – sheds further light on how regulators can influence the policy process (Littoz-Monnet, 2014: 2–4). Domestic regulators were able to act as first movers in their fields so as to strategically frame the problem and choose the most favourable venue to achieve their favoured policy reforms. They did so by claiming superior technical expertise in order to shape the first step of the policy process, which was presented as highly technical but was nonetheless also highly policy-relevant. In this way, they were able to identify issues that required action, prepare solutions and offer interpretations of existing legislation so as to shape policy at a crucial early stage.

What is more, over time IRAs are able to acquire additional political influence as a result of their unique regulatory expertise and their frequent interactions with the industries regulated. In a careful historical analysis of the US Food and Drug Administration (FDA), Carpenter (2010: 9–15) shows that the FDA was able to build a reputation of credibility that allowed it to position itself as a protector of the public good and acquire a legitimate role in the policy process. According to Carpenter, the legislator had originally

only charged the FDA with the task of guaranteeing the safety of drugs. However, over time, FDA officials also started to include efficacy requirements in their decisions, arguing that safety judgements cannot be separated from efficacy evaluations. These additional requirements were eventually incorporated into legislation by Congress since it was very difficult for legislators to challenge the authority of the FDA. This longitudinal perspective allows it to be hypothesised that time helps agencies to expand their expertise and enhance their credibility, which in turn facilitates a ‘mission creep’ that may even exceed the large formal competencies that are delegated to them.

Again, the PA model fails to meaningfully integrate the time dimension and dynamics. After delegation, the ‘agent’ may become an active ‘player’ in domestic politics. To be sure, PA theory acknowledges that agents may have their own distinct set of preferences and is even seriously preoccupied with the consequences associated with such a risk. However, the repertoire of actions of independent agencies goes far beyond mere ‘shirking’. For instance, legislative influence is something very different from mere creative implementation by agents of decisions made by principals, and such an influence is likely to increase over time, thanks to the reputational capital accumulated by agents.

Concluding Remarks

The PA framework has repeatedly proven useful for the study of delegation and has been extensively applied to IRAs. However, some of its core assumptions and expectations seem questionable in the study of politico-administrative relationships in a post-delegation context, whereby independent regulators are confronted with forum shirking and paralysis, are embedded in complex multi-dimensional relations of interdependence and can acquire political power in legislative processes. It is interesting to note that these emerging features mirror recent research on bureaucratic autonomy which points to a dynamic and relational nature of organisational autonomy that unfolds within multi-actor and multi-level actor constellations (Maggetti and Verhoest, 2014: 244–246). It could well be that the suitability of the PA framework for modelling the behaviour of IRAs is inversely related to the degree of independence of the latter. There is indeed evidence of an association between the de facto independence of regulators and their participation in regulatory networks and on the role of de facto independence as a determinant of their influence in policy-making (Maggetti, 2012: 74–99, 101–140). These are two sides of the same coin, but the precise ways in which regulatory independence may reconfigure PA relations deserve specific attention in further research.

The point is that, once in place, IRAs may take on a life of their own and evolve in an environment defined by their interactions with many actors other than the principal so that they can even act counter to its interest, similarly to international organisations that undergo institutional transformation over time at the initiative of the organisation itself and eventually distort the PA relation (Guzman, 2013).⁷ This goes much beyond ‘agency losses’ as described by the PA framework, especially as the principal is likely to remain inactive in the post-delegation phase. Therefore, a considerable refinement of the PA framework seems necessary to capture the essence of post-delegation relationships between IRAs, elected politicians and the organisational environment of IRAs.

Reputational approaches could offer a way forward. Reputation, broadly defined as a set of beliefs about an ‘organisation’s capacities, intentions, history and mission that are embedded in a network of multiple audiences’ (Carpenter, 2010: 33), is a key concern both for the principal and, above all, for the agent. It is no accident that reputation is

constantly cultivated by IRAs through communication and reaction to media coverage (Maor et al., 2013). Indeed, reputation is crucial to maintain broad-based support for a regulator (Krause and Douglas, 2005: 283–284). More precisely, organisational reputation allows agencies to build networks and coalitions, to exert political influence, to increase their room for manoeuvre vis-à-vis elected politicians and accountability forums and to reinforce their position in relation to those being regulated (Carpenter, 2001a). In this regard, Busuioac and Lodge (2016) identify a misfit between predictions of the PA framework and empirical findings on public accountability which relates to the fact that accountability should really be understood as a process of managing one's reputation vis-à-vis different audiences and not a hierarchical procedure shaped by information asymmetry and goal-conflict problems. In line with these observations, the reputational perspective can provide the missing link to make sense of the three deviations from the PA framework outlined above.

First, forum shirking and paralysis could be explained by the fact that, on one hand, a high reputation of an agent generates trust (or even deference) on the part of the principal and thereby a limited need to activate control mechanisms. On the other hand, any interventionism by the principal would leave less room for manoeuvre for blame shifting; and if blame shifting no longer works, the reputation of the principal can be damaged in the case of regulatory failure. Second, the presence of many actors in regulatory spaces probably means that the agent cares about its reputation not only with respect to the principal but also with regard to other actors, such as the regulatees or their 'surrogates' (like the media). Indeed, the goodwill of regulated industries is a crucial condition for obtaining support, collecting relevant information and eventually ensuring effective supervision. Third, and finally, agents can become active in law-making when their reputation makes their activism legitimate in the eyes of policy-makers and public opinion.

These reputational elements should be included more explicitly in the PA framework. They apply to the principal (such as in the case of blame shifting) but, above all, to the agent, whose behaviour may be constrained by reputational concerns. It may also be facilitated in the case of a well-established reputation that can be used as a resource to create legitimacy, which generates consent. Furthermore, we suggest a fine-tuning of the reputational perspective itself. Implicitly or explicitly, reputation is usually considered a resource, a social capital that involves a risk of being depleted. In this perspective, a regulator which has reputational concerns is primarily seen as a rational actor behaving strategically and animated by a consequential logic. In other words, the regulator is deemed to invest in reputation and expects returns from the investment. However, reputation may not only have an instrumental value but be intrinsically valued too. Regulators may also have internalised the norm that reputation is a positive value and a source of pride – in other words that it is normatively appropriate to have a high personal or organisational reputation, according to a logic of 'appropriateness' (March and Olsen, 2008). Therefore, there are different paths leading to reputation concerns, and their coexistence confirms the pervasiveness of such concerns.

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Notes

- 1 Non-functional rationales for delegation have also been highlighted, most prominently, organisational mimicry (McNamara, 2002: 59–66) and the opportunity to shift the blame in the case of adverse consequences of the decisions made (Fiorina, 1982: 46–52). However, given space constraints, we do not elaborate on this.
- 2 Note that Edmund Burke's classic doctrine of electoral representation suggested a similar role for members of parliament, who should not be instructed by their constituencies but should be given room to deliberate for the common good.
- 3 This is not to say that such predictions should be considered to mechanically follow from the assumptions of the principal–agent (PA) framework. Although asymmetrical information to the detriment of the principal can favour agency slack as a possible outcome, there is no necessity in such a mechanism.
- 4 Many board members are not elected politicians, but administrators who represent the national governments that act as principals when delegating authority to European agencies.
- 5 For instance, Billiet (2009) considers PA quite inappropriate to make sense of the growing role of the Commission in the case of the intellectual property litigation before the World Trade Organization (WTO) despite the Council's firm opposition. Similarly, Niemann and Huigens (2011: 425–434) are able to show that for several reasons the role of the Commission within the Group of Eight (G8) evolved much further beyond the mandate intended by the principals, up to a point where the original structure of delegation became hardly recognisable.
- 6 See the recent edited collection by Carpenter and Moss (2013).
- 7 Recent work has also shown that international bureaucrats actively shape the design of new international organisations (Johnson, 2014). They often strive to insulate new institutions against the mechanisms by which states steer, monitor or reverse organisational activities. In some cases, such pivotal players even manage to produce bodies that powerful countries (principals) initially opposed.

References

- Bach T (2012) The Involvement of Agencies in Policy Formulation: Explaining Variation in Policy Autonomy of Federal Agencies in Germany. *Policy and Society* 31 (3): 211–222.
- Biela J and Papadopoulos Y (2014) The Empirical Assessment of Agency Accountability: A Regime Approach and an Application to the German Bundesnetzagentur. *International Review of Administrative Sciences* 80 (2): 362–381.
- Biela J, Maggetti M and Puppis M (2011) Finanzregulierer in der Krise. *Die Volkswirtschaft* 1 (2): 59–62.
- Billiet S (2009) Principal-Agent Analysis and the Study of the EU: What about the EC's External Relations? *Comparative European Politics* 7 (4): 435–454.
- Black J (2008) Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes. *Regulation & Governance* 2 (2): 137–164.
- Bovens M (2010) Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism. *West European Politics* 33 (5): 946–967.
- Braun D and Guston DH (2003) Principal-Agent Theory and Research Policy: An Introduction. *Science and Public Policy* 30 (5): 302–308.
- Busuioc EM and Lodge M (2016) The Reputational Basis of Public Accountability. *Governance: An International Journal of Policy, Administration and Institutions* 29(2): 247–263.
- Busuioc M (2010) European Agencies: Pockets of Accountability. In: Bovens M, Curtin D and 't Hart P (eds) *The Real World of EU Accountability: What Deficit?* Oxford: Oxford University Press, pp.87–116.
- Carpenter DP (2001a) *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928*. Princeton, NJ: Princeton University Press.
- Carpenter DP (2001b) The Political Foundations of Bureaucratic Autonomy: A Response to Kernell. *Studies in American Political Development* 15 (1): 113–122.
- Carpenter DP (2010) *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA*. Princeton, NJ: Princeton University Press.

- Carpenter DP and Moss DA (2013) *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. Cambridge: Cambridge University Press.
- Coen D and Heritier A (2005) *Refining Regulatory Regimes: Utilities in Europe*. Cheltenham: Edward Elgar.
- Curtin D (2005) Delegation to EU Non-Majoritarian Agencies and Emerging Practices of Public Accountability. In: Gerardin D, Munoz R and Petit N (eds) *Regulation through Agencies in the EU: A New Paradigm of European Governance*. Cheltenham: Edward Elgar, pp.88–119.
- Dunleavy P (1992) *Democracy, Bureaucracy and Public Choice*. New York: Harvester Wheatsheaf.
- Eberlein B and Grande E (2005) Beyond delegation: Transnational regulatory regimes and the EU regulatory state. *Journal of European Public Policy* 12 (1): 89–112.
- Fiorina MP (1982) Legislative Choice of Regulatory Forms: Legal Process or Administrative Process? *Public Choice* 39 (1): 33–66.
- Gilardi F (2008) Delegation in the Regulatory State: Independent Regulatory Agencies in Western Europe. Northampton, MA: Edward Elgar.
- Guzman A (2013) International Organizations and the Frankenstein Problem. *European Journal of International Law* 24 (4): 999–1025.
- Hancher L and Moran M (1989) *Organizing Regulatory space*. Oxford: Oxford University Press.
- Hawkins DG and Jacoby W (2006) How Agents Matter. In: Hawkins DG, Lake DA, Nielson DL, et al. (eds) *Delegation and Agency in International Organizations*. Cambridge: Cambridge University Press, pp.199–228.
- Ingold K, Varone F and Stokman F (2013) A Social Network-Based Approach to Assess De Facto Independence of Regulatory Agencies. *Journal of European Public Policy* 20 (10): 1464–1481.
- Johnson T (2014) *Organizational Progeny: Why Governments Are Losing Control over the Proliferating Structures of Global Governance*. Oxford: Oxford University Press.
- Krause GA and Douglas JW (2005) Institutional Design versus Reputational Effects on Bureaucratic Performance: Evidence from US Government Macroeconomic and Fiscal Projections. *Journal of Public Administration Research and Theory* 15 (2): 281–306.
- Lane JE (2007) *Comparative Politics: The Principal-Agent Perspective*. London: Routledge.
- Levi-Faur D (2011) Regulatory Networks and Regulatory Agencification: Towards a Single European Regulatory Space. *Journal of European Public Policy* 18 (6): 810–829.
- Lipsky M (1980) *Street-Level Bureaucracy; Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.
- Littoz-Monnet A (2014) The Role of Independent Regulators in Policy Making: Venue-Shopping and Framing Strategies in the EU Regulation of Old Wives Cures. *European Journal of Political Research* 53 (1): 1–17.
- Lodge M and Stirton L (2010) Accountability in the Regulatory State. In: Baldwin R, Cave M and Lodge M (eds) *The Oxford Handbook of Regulation*. Oxford: Oxford University Press, pp.349–370.
- Lupia A (2003) Delegation and Its Perils. In: Strom K, Muller WC and Bergman T (eds) *Delegation and Accountability in Parliamentary Democracies*. Oxford: Oxford University Press, pp.33–54.
- McCubbins MD and Schwartz T (1984) Congressional Oversight Overlooked: Police Patrols versus Fire Alarms. *American Political Science Review* 28: 165–179.
- McNamara K (2002) Rational Fictions: Central Bank Independence and the Social Logic of Delegation. *West European Politics* 25 (1): 47–76.
- Maggetti M (2009) The Role of Independent Regulatory Agencies in Policy-Making: A Comparative Analysis. *Journal of European Public Policy* 16 (3): 445–465.
- Maggetti M (2012) *Regulation in Practice: The De Facto Independence of Regulatory Agencies*. Colchester: ECPR Press.
- Maggetti M and Gilardi F (2014) Network Governance and the Domestic Adoption of Soft Rules. *Journal of European Public Policy* 21 (9): 1293–1310.
- Maggetti M and Verhoest K (2014) Unexplored Aspects of Bureaucratic Autonomy: A State of the Field and Ways Forward. *International Review of Administrative Sciences* 80 (2): 239–256.
- Maher I, Billiet S and Hodson D (2009) The Principal-Agent Approach to EU Studies: Apply Liberally but Handle with Care. *Comparative European Politics* 7 (4): 409–413.
- Majone G (2001) Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance. *European Union Politics* 2(103): 103–122.
- Maor M, Gilad S and Bloom PB-N (2013) Organizational Reputation, Regulatory Talk, and Strategic Silence. *Journal of Public Administration Research and Theory* 23 (3): 581–608.
- March JG and Olsen JP (2008) The Logic of Appropriateness. In: Moran M, Rein M and Goodin RE (eds) *The Oxford Handbook of Public Policy*. Oxford: Oxford University Press, pp.689–708.

- Michels A and Meijer A (2008) Safeguarding Public Accountability in Horizontal Government. *Public Management Review* 10 (2): 165–173.
- Miller GJ (2005) The Political Evolution of Principal-Agent Models. *Annual Review of Political Science* 8: 203–225.
- Moe TM (1985) Control and Feedback in Economic Regulation: The Case of the NLRB. *American Political Science Review* 79 (4): 1094–1116.
- Niemann A and Huigens J (2011) The European Union's Role in the G8: A Principal-Agent Perspective. *Journal of European Public Policy* 18 (3): 420–442.
- Niskanen WA (1971) *Bureaucracy and Public Economics*. Chicago, IL: Aldine-Atherton.
- Pollack MA (2002) Learning from the Americanists (Again): Theory and Method in the Study of Delegation. *West European Politics* 25 (1): 200–219.
- Pollack MA (2007) Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications and Empirical Disputes. Bruges Political Research Papers no. 2, February 2007. Belgium: European Political and Administrative Studies.
- Rubenstein J (2007) Accountability in an Unequal World. *Journal of Politics* 69 (3): 616–632.
- Schillemans T (2008) Accountability in the Shadow of Hierarchy: The Horizontal Accountability of Agencies. *Public Organization Review* 8 (2): 175–194.
- Schillemans T and Busuioic M (2015) Predicting Public Sector Accountability: From Agency Drift to Forum Drift. *Journal of Public Administration Research and Theory* 25 (1): 191–215.
- Scott C (2000) Accountability in the Regulatory State. *Journal of Law and Society* 27 (1): 38–60.
- Selznick P (1949) *TVA and the Grass Roots: A Study in the Sociology of Formal Organization*. Berkeley, CA and Los Angeles, CA: University of California Press.
- Sobol M (2015) Principal-Agent Analysis and Pathological Delegation: The (Almost) Untold Story. *Governance: An International Journal of Policy, Administration and Institutions* 29 (3): 335–350.
- Strøm K (2000) Delegation and Accountability in Parliamentary Democracies. *European Journal of Political Research* 37: 261–289.
- Thatcher M (2005) The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe. *Governance: An International Journal of Policy, Administration and Institutions* 18 (3): 347–373.
- Thatcher M and Stone Sweet A (2002) Theory and Practice of Delegation to Non-majoritarian Institutions. *West European Politics* 25(1): 1–22.
- Vibert F (2014) *The New Regulatory Space: Reframing Democratic Governance*. Cheltenham: Edward Elgar.
- Waterman RW and Meier KJ (1998) Principal-Agent Models: An Expansion? *Journal of Public Administration Research and Theory* 8 (2): 173–202.
- Weingast BR and Moran MJ (1983) Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission. *The Journal of Political Economy* 91 (5): 765–800.

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