

INDEPENDENCE AND THE IRISH  
ENVIRONMENTAL PROTECTION AGENCY:  
A COMPARATIVE ASSESSMENT

# Studies in Public Policy

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ENVIRONMENTAL PROTECTION  
AGENCY: A COMPARATIVE  
ASSESSMENT

Charles Shipan

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# Contents

LIST OF FIGURES AND TABLES	vii
EXECUTIVE SUMMARY	viii
ACKNOWLEDGEMENTS	xi
1 INTRODUCTION	1
1.1 Introduction	
1.2 Policy objectives	
1.3 Research methodology	
1.4 Paper structure	
2 THE ENVIRONMENTAL PROTECTION AGENCY AND INDEPENDENCE	7
2.1 Environmental regulation in Ireland prior to the creation of the EPA	
2.2 Creation of the EPA	
2.3 Agency functions	
2.4 A call for independence	
2.4.1. Why independence?	
2.5 Initial justifications for independence	
2.5.1 Benefits of independence: shifting the responsibility	
2.5.2 Benefits of independence: credible commitment	
2.5.3 Benefits of independence: expertise	
2.5.4 Summary of benefits	
2.6 Costs of independence: accountability?	
2.7 Conclusion	
3 THE STRUCTURAL INDEPENDENCE OF THE EPA	30
3.1 Introduction	
3.2 Agencies and structural independence	
3.2.1 Measuring the relationship between formal structure and the independence of an agency	
3.3 The EPA: structure and independence	

3.3.1	Personnel	
3.3.2	Relationship between the EPA and the government	
3.3.3	Financial and organisational autonomy and regulatory competencies	
3.4	Conclusion	
4	COMPARING THE EPA TO OTHER INDEPENDENT AGENCIES	38
4.1	Introduction	
4.2	How does the EPA compare with other independent agencies in Ireland?	
4.3.	How does the EPA compare with independent international environmental agencies in Europe and the USA?	
4.4	Conclusion	
5	CONTEMPORANEOUS INFLUENCE	43
5.1	Introduction	
5.2	Overview of work on contemporaneous influence	
5.3	Contemporaneous influence and the EPA	
5.3.1	EPA enforcement activities	
5.3.2	Data collection	
5.4	Trends in EPA enforcement activities	
5.5	Conclusion	
6	DISCUSSION AND CONCLUSIONS	55
6.1	Introduction	
6.2	Overview	
6.2.1	Other factors affecting independence	
6.3	Accountability	
6.3.1	The EPA and accountability	
6.4	Policy implications and concluding comments	
	APPENDIX A	62
	Formal independence of regulatory agencies, from Gilardi (2003)	
	BIBLIOGRAPHY	66

## List of figures and tables

Table 1:	Government actions with ‘pollution’ in the title	10
Table 2:	Irish independent regulatory agencies	18
Table 3:	Number of IPC licences issued by the EPA	47
Figure 1:	Formal independence scores for Irish regulatory agencies	39
Figure 2:	Independence scores of international environmental agencies	40
Figure 3a:	Monitoring visits and inspections, per licence	47
Figure 3b:	Audits and notices of non-compliance, per licence	48
Figure 3c:	Prosecutions, per licence	48
Figure 4a:	Comparing monitoring and inspections with Oireachtas grants in adjusted euros	49
Figure 4b:	Comparing monitoring and inspections with Oireachtas grants as a percentage of GNP	50
Figure 4c:	Comparing monitoring and inspections with Oireachtas grants per licence	51
Figure 5:	Comparing monitoring and inspections with complaints	53

# Executive summary

## Overview

In a speech given on 25 November 2004 at the Public Affairs Ireland Conference, the Taoiseach, Bertie Ahern TD, considered a wide variety of issues related to regulation by independent agencies. He touched on the establishment of new agencies, whether there are too many regulators, and whether the government should consider the creation of a single regulatory authority that would act as a sort of ‘super regulator’. Ahern specifically addressed the issues of structure, policymaking, and accountability as they pertain to regulation and regulatory agencies:

I think we need to have a debate about this issue of regulatory architecture ... how many regulators we want, what their mandates should be and how we can make them more accountable.<sup>1</sup>

Many of Ahern’s comments focused on the idea of a super regulator. But it is important to note that the general theme behind such consideration – one made explicit in this quote – is the central importance, for regulation and policymaking, of the structure of independent regulatory agencies.

Moreover, the Taoiseach’s speech fits nicely with Regulating Better, a broad government initiative launched in January 2004 with the goal of generating a deeper understanding of regulation. Much of this initiative, of course, is geared toward an analysis of how regulation can be improved, with special attention paid to regulatory impact analysis. But throughout various government reports associated with the Regulating Better initiative, attention is paid to the sorts of issues that the Taoiseach raised in his speech – issues related to the structure of regulatory agencies, the relationship between these agencies and the government, the role of independence, and the potential tradeoffs between independence and accountability (see for example Department of the Taoiseach, 2002). Analysis of regulatory outputs is certainly an important part

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<sup>1</sup> The speech is available at <http://www.betterregulation.ie/index.asp?docID=68>.



of this overall assessment of regulation. But in order to truly understand regulation, it is also essential to have a clear knowledge of regulatory institutions. Why do regulatory agencies have the structures that they do? What benefits do these structures promise to the politicians who created these agencies? Are agencies formally independent? What, if any, downsides are there to this much-lauded idea of independence? These are the questions that this study addresses.

### **Goals and findings**

This paper focuses on a specific agency, the Environmental Protection Agency (EPA). We now have more than ten years of experience with the agency, which provides a good opportunity to take stock of issues relating to its structure and independence.

The study begins by providing an overview of environmental regulation in Ireland prior to the creation of the EPA. This overview introduces a variety of topics that help to set the stage for the more in-depth analysis of the EPA that follows. Key issues include: how prominent was environmental policy in Ireland prior to the 1990s?; which political institutions were involved in regulation prior to the EPA and what difficulties did they face? The analysis highlights, for example, the problems that arose as a result of the local authorities' role in regulating environmental issues.

Against this background, the study then describes the creation of the EPA and provides a discussion of the agency's functions and responsibilities. When politicians were debating the creation of this agency, the notion of independence was of central concern and was raised, in positive tones, by nearly all politicians who took part in the debate. In view of this consensus, the current study examines what benefits independence holds for politicians, as well as considering potential costs. The available evidence supports the idea that the creation of an independent EPA promised three potential benefits to politicians – it would keep the difficult decisions related to environmental issues at arm's length, it would allow for more consistent development of policy over time, and it would create a situation in which issue-specific expertise could take hold and flourish. It is also clear, however, that with independence comes a potential cost, that of a lack of accountability. That is, to the extent that politicians make an agency independent, they may also be making it less accountable to either themselves or to the general public.

The concept of independence is then given concrete form, in two respects. First, a measure of the EPA's formal level of independence is developed and discussed. The measure is first analysed on its own, with reference to the provisions in Irish law that created the EPA and gave the agency its specific regulatory structure. This level of independence for the EPA, based on the formal regulatory structure, is then assessed in comparison to two groups of agencies – first, other major regulatory agencies within Ireland and, second, independent environmental agencies located in other European countries and the US. The evidence indicates that the EPA does indeed enjoy a good measure of formal independence from the government, greater than that found in independent environmental agencies in many other countries.

Second, the analysis examines whether the EPA shows other signs of independence. While the earlier sections of the paper examine the agency's formal (i.e. structural) independence, this next part of the analysis investigates trends in agency activities over time. The contribution of this section is, first, to show what sorts of activities the agency has been involved in, and how the level of these activities has changed over time (information that has not been collected or presented elsewhere); and, second, to see whether these changes can be tied to any signals the agency receives from the government. In particular, the analysis looks at these activities in the light of the grant that the agency receives from the Oireachtas. The conclusions of this section are more tentative than those drawn from the previous section, but the analysis does indicate that, by most measures, the agency appears to be acting independently of the government.

The final section summarises the evidence presented and suggests future avenues for research into agency independence, most notably examining the procedural provisions that legislatures often use to keep the agency in check and also how statutes, through the use of specific guidelines that tell agencies what to do, can affect agency independence. The concept of accountability is also discussed – is the agency accountable and, if so, to whom and for what? Accountability issues can arise in inverse proportion to independence, and so this final section also considers how reforms that affect accountability relate to independence and, more generally, the structure and incentives of political institutions.

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All errors and views expressed in this paper are the responsibility of the author alone.



# Introduction

## 1.1 Introduction

In July 1993 the Irish Environmental Protection Agency (EPA) began its work as the primary environmental regulatory body in Ireland. Although the idea that the agency should be independent was in many ways the core motivation for its creation, this desire for independence was not based on any extensive prior experience with independent agencies. At the time it was created, the EPA was one of only a handful of independent regulatory agencies in Ireland. In addition, although it was established during a wave of creation of independent agencies across Europe, the EPA was, when created, one of only a few independent regulatory agencies dedicated to the environment to be found anywhere in Europe. Still, the idea that the agency should be independent was perhaps the most dominant goal of those who supported its creation.

This study draws upon a number of recent developments in political science and economics in order to assess the independence of the EPA. In order to provide some orientation for readers who are unfamiliar with the EPA, the study begins by describing environmental regulation and policymaking in Ireland prior to the creation of the EPA and provides a brief description of the responsibilities of the agency. The paper then turns to an examination of the political motivations behind the creation of the agency, giving special attention to the role of independence. More specifically, the paper examines why independence was seen as such a crucial feature of this agency.

Against this background of information on and discussion of the importance of independence the paper provides an analysis of the EPA's level of independence. Here it draws upon recent approaches in political science and economics to provide insight into the EPA's *level* of independence. First, it examines the ways in which the agency's formal *structural features* affect its independence. As part of this examination it provides an in-depth look at the structural features delineated by the legislative act that created the EPA.

Second, it compares the EPA to other independent agencies in Ireland and to other environmental agencies across Europe and in the US. Third, it investigates the agency's monitoring and enforcement activities over time in order to determine whether there is any evidence that the agency is subject to *contemporaneous influence* from the government.

In addition to this primary focus on independence, the paper also considers the issue of accountability. Although an examination of accountability is not the central concern of the paper, independence and accountability are inextricably linked and, as a result, the concept of accountability arises at several points throughout the paper. Hence, the concluding section of the paper returns to this important concept in order to provide a road map for how future studies might further assess accountability.

## 1.2 Policy objectives

An examination of the origins and nature of the EPA's independence, along with its accountability, is important for a variety of reasons. First, and most basically, in order to comprehend how policy is made, it is essential to have a firm understanding of the institutions that make policy. A focus on the EPA's independence provides insight into why the agency was given its specific institutional form, along with an appreciation of both the costs and benefits that this specific form produces, in terms of how policy is made. This understanding is developed further by a comparison of the EPA to other Irish regulatory agencies and to other environmental agencies across western Europe and in other advanced industrial countries.

Second, one of the issues involved in regulatory policymaking concerns responsibility. If policies are not working, who should be blamed? Should it be the bureaucrats themselves, because they are the ones who implement policies? Or should it be the elected politicians who designed and can exert influence over the agency? To the extent that agencies are truly independent and act autonomously, they are responsible for the outcomes of their actions; but to the extent that elected politicians maintain control over these agencies, the responsibility turns back to them. The general point, then, is that we cannot know how much credit or blame to assign for policy outcomes unless we have a solid understanding of who is responsible for decisions; and we cannot

know who is responsible for decisions unless we have a firm grasp of the structural and institutional features that either enhance or limit independence.

Third, and perhaps most importantly, Ireland is currently in the midst of analysing its regulatory institutions and policies overall. It has set up a Law Reform Commission to assess law and policies in general, and to focus on certain areas – such as judicial review – that have obvious implications for regulation by independent agencies. More directly relevant to the topic of environmental regulation, in 2004 the Irish government released a White Paper entitled *Regulating Better* as part of an overall assessment, known as the ‘Better Regulation’ initiative, of the current state of regulation in Ireland.<sup>2</sup> The White Paper, along with a number of other documents and reports issued by government working groups and departments, aims both to provide a better understanding of how regulation works in Ireland and to discuss potential reforms. As such, the White Paper focuses on issues such as the necessity of regulation, whether regulations are proportional and fair, and whether the regulatory process is transparent. The document also examines the notion of accountability in the regulatory process, as well as how such accountability might be strengthened.

In addition, some of the documents associated with the Better Regulation initiative (for example Department of Public Enterprise, 2000) explicitly recognise that certain matters are ‘particularly pertinent in a discussion of governance and accountability ... (1) [the] relationship between regulators and Ministers, the Oireachtas, the Courts and the general public’. In other words, these documents, which are part of a broad package of regulatory reforms, recognise the central importance of agency structure, and of understanding the foundations and implications of structural choices and features (such as independence). As such, they recognise that any discussion of regulatory reform, or analysis of independence or accountability, must be built on a foundation that demonstrates how government structures and processes are created and how they actually work. Put somewhat differently, it is well recognised that normative changes must be based on positive theories. Thus, in order to advance arguments or theories of reform, one first needs to have a

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<sup>2</sup> The Law Reform Commission can be found at <http://www.lawreform.ie/>, while the White Paper on regulation can be accessed at <http://www.betterregulation.ie/index.asp?locID=22&docID=-1>.

firm grasp of current regulatory arrangements and why they are set up the way they are. The analysis in this paper provides such a foundation.

### **1.3 Research methodology**

Following the approach taken by Westrup (2002), the research in this study utilises a variety of approaches. Like Westrup's analysis of the financial regulatory structure in Ireland, the research methodology employed here included a literature review, a comparative analysis, and interviews. In addition, the methodology included a comprehensive review of primary historical documents.

The literature review consisted of three related parts. The first part was an enquiry into environmental policy in Ireland, both prior to the creation of the EPA (in order to gain an appreciation of the politics that led to the creation of the EPA and the justifications for this new agency) and during the creation itself. The second consisted of an investigation of the general literature on regulation, including studies of the role of agency structures and processes and how these features relate to policymaking and accountability, as well as accounts of why regulatory agencies are created in the first place. The third part focused on the newly-emerging (and now burgeoning) literature on regulation in Europe, including recent studies and reports on regulation in Ireland.

The in-depth review of primary historical documents constituted the second, and in some ways the most important, facet of the research methodology. Two sets of document were particularly important here – first, the transcripts of all Oireachtas hearings and debates on the creation of the EPA and, second, all relevant laws, most notably the 1992 Act that created the EPA.

The comparative analysis draws heavily on pioneering work on regulatory agencies in Europe conducted by Fabrizio Gilardi, as discussed in Chapter 4. In particular, using a set of questions developed by Gilardi, the specific features of the Irish EPA were coded, based on a reading of the relevant laws. This coding allowed for an initial analysis of the EPA on its own, then a comparison of the EPA with both other prominent Irish regulatory agencies and environmental agencies in other countries.

Finally, the work was informed by a series of interviews with eleven people, including legislators and staff members in the Dáil, members of the EPA and its advisory committee, the Department of



the Environment, Heritage and Local Government, and academic experts on environmental politics, regulation, and the Irish political system. Interviews in social science research often consist of long, structured series of questions. The interviews here ranged from shorter, in-depth discussions on specific points to longer, semi-structured interviews. Unlike situations in which the results of interviews constitute the primary data and evidence for a research project, in this project the interviews were used to generate and assess the arguments put forth in this study, as well as to gain greater insight into the specific politics surrounding the EPA.

#### **1.4 Paper structure**

The remainder of the paper is structured as follows:

- Chapter 2 describes the state of environmental policymaking in Ireland prior to the creation of the EPA. It then turns to an analysis of the creation of the EPA, focusing in particular on the motivations for creating an *independent* agency. In addition, the chapter outlines three prominent explanations for the creation of independent agencies in general and also outlines the potential cost, in terms of accountability, of creating an independent agency.
- Chapter 3 analyses the structural independence of the EPA. More specifically, this chapter presents an in-depth investigation of the EPA's structure, based on its statutory foundation, in order to gain a deeper understanding of the choices that were made when setting up the agency and how these choices can act to either increase or decrease the overall level of independence.
- Chapter 4 uses the data introduced in Chapter 3 to compare the EPA's level of independence to that found in other regulatory agencies. First, the EPA is compared to other Irish independent regulatory agencies and second, it is compared to other environmental agencies across Europe and in the US.
- Chapter 5 approaches the notion of independence from a different angle by examining the sensitivity of the agency to its political surroundings. More specifically,

the chapter examines whether the agency's actions can be seen as responsive to other factors, such as the level of government financial support and the number of complaints that are filed each year.

- Chapter 6 concludes by considering other factors that might influence independence and by discussing the accountability of the EPA.

## The Environmental Protection Agency and independence

This chapter:

- describes environmental regulation in Ireland prior to the creation of the EPA
- describes the primary responsibilities of the agency
- examines the political motivations behind the creation of the agency
- focuses in particular on the importance of independence and how independence allowed politicians to benefit by shifting responsibility, making credible commitments, and providing for expertise.

### 2.1 Environmental regulation in Ireland prior to the creation of the EPA

In order to appreciate the politics behind the creation of the EPA, it is first necessary to understand the politics of environmental policy prior to the 1990s.<sup>3</sup> Environmental issues have of course always existed in Ireland, but they rarely occupied a central place on the political agenda in the first forty or so years following the founding of the Irish state in 1922. To begin with, there was little pressure from the public to give a place of prominence to environmental policy – public opinion surveys generally showed the citizens of Ireland as trailing nearly all other EU countries in terms of their level of environmental concern (Coyle, 1994; Whiteman, 1990). In part, this lack of interest in environmental issues was due to the high levels of unemployment.<sup>4</sup> In addition, there had not yet

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<sup>3</sup> The arguments and information in this section draw primarily on the detailed accounts found in Scannell (1995), Taylor (2001) and Harney (1991), as well as other studies that are cited herein.

<sup>4</sup> Grossman and Krueger (1995) demonstrate that there is a u-shaped relationship between economic development and environmental quality, with environmental quality decreasing as the economy grows in poor countries and

developed in Ireland or elsewhere a strong scientific consensus on the causes or consequences of environmental pollution. In either case, the lack of public pressure for action meant that politicians felt little pressure to pass laws that dealt with environmental issues, albeit with some exceptions (see for example Maguire, O'Reilly and Roche, 1999). Still, political action on the environment tended to be infrequent.

This lack of activity began to change, beginning in the 1960s. First, environmental groups began to take steps to increase public awareness of environmental issues, both by drawing media attention to issues and by increasing their lobbying activities (Coyle, 1994). Their actions were abetted by environmental crises and disasters, including oil spills, severe smog in Dublin, increases in fish kills caused by water pollution, and other environmental problems.

Second, by 1990 there was a general loss of confidence on the part of the public in the ability of the local authorities to protect the environment (Harney, 1991). Some observers attribute this loss of confidence to the perception of the growing power of industry and agriculture (see for example Taylor, 2001). In a related vein, others suggest that financial problems associated with the local authorities were the basis for the loss of confidence, noting that 'it is difficult to ignore the observation that a significant number of problems ... could be traced back to the failure on the part of the central government to provide adequate finance' for the local authorities (Taylor and Murphy, 2002:81). Overall, observers such as Frank McDonald, the environmental correspondent for *The Irish Times*, observed that the public's loss of confidence in the local authorities' ability to effectively regulate pollution could be tied not only to the factors just mentioned, but also to the complicated nature of environmental regulation:

It was precisely because the public had lost confidence in the ability of local authorities to police increasingly complex areas of production, such as the pharmaceutical industry, that a commitment was made just over four years ago by the then Fianna Fáil-Progressive Democrat coalition to establish an environmental protection agency (McDonald, 1993:2).

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<sup>4</sup> *contd.* increasing as the economy grows in rich countries. Prior to 1990 Ireland was most likely not yet categorised as a 'wealthy country', where increases in GDP produce higher interest in, and evidence of, higher environmental quality.

This statement echoed many that were issued during the Seanad debates about the creation of the EPA, such as the following comment made by Deputy O'Donovan (Fianna Fáil):

... I think the setting up of this agency will certainly help to allay the fears of the public. The truth is that the general public had lost confidence in the local authorities, particularly in Cork County Council (Seanad Éireann, Volume 127, 6 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).<sup>5</sup>

Third, and more significantly, Ireland was in effect forced to do more in the area of environmental policy with the development of the European Commission's actions and initiatives in the area of environmental regulation (Freestone and McLoughlin, 1998; Doyle, 2003).<sup>6</sup> In response to EC Directives, Ireland has passed a number of laws, including those that can be considered the cornerstones of Irish environmental policy, such as the Local Government (Water Pollution) Act of 1977 and the Air Pollution Act of 1987. One measure of the trend towards more political activity on environmental issues can be seen by simply counting the number of legislative acts and statutory instruments that include the word 'pollution' in the title – admittedly a rough measure, but one that nonetheless captures well the increase in activity. Table 1, on page 10, shows this trend.

Despite the increased attention to environmental matters and the corresponding increase in policymaking activity, however, Ireland's basic structure for dealing with environmental issues remained the same throughout the 1980s. Two main sets of actors were predominant in this area. One such was the Department of the Environment, now known as the Department of Environment, Heritage and Local Government, which had the responsibility for setting regulatory priorities and making environmental policy. In addition, local authorities across Ireland were responsible for the implementation and enforcement of environmental policy, under the Local Government Acts of 1963, 1976 and 1977 and the Air Pollution Act, 1987.

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<sup>5</sup> All Seanad debates referenced in this study were found online at <http://www.oireachtas-debates.gov.ie>.

<sup>6</sup> The incentives to take a more active role in regard to the environment were similarly increased by Ireland's decision to join the European Union in 1973 and by its promotion of the EU presidency in 1990 as the 'green' presidency.

*Table 1: Government actions with 'pollution' in the title*

<i>Decade</i>	<i>Acts</i>	<i>Statutory Instruments</i>
1920s	0	0
1930s	0	0
1940s	0	0
1950s	1	9
1960s	1	17
1970s	2	12
1980s	2	23
1990s	5	55

*Note:* 'Acts' are statutes that are voted into law by the Oireachtas; 'statutory instruments' are regulations issued by the government.

*Source:* Compiled by the author from the Oireachtas website (<http://www.oireachtas.ie>)

The involvement of the local authorities was associated with a number of problems (Scannell, 1995; Taylor and Murphy, 2002). To begin with, each of the thirty-three local authorities could set its own policies, giving rise to a situation where policies could vary dramatically from one area to another. From one perspective this might not have been a problem, because each local authority could deal with issues specific to its area. But more generally, dividing policy responsibilities among this many agents gave rise to inefficient duplication, which led to higher overall costs for regulation. From an industry perspective, the problem can be seen as one of unexpected variance. More specifically, given the high level of fragmentation inherent in a system with thirty-three local authorities each setting its own policies, firms could adjust to these local variations but would incur high costs in doing so, with the potential result that they would be deterred from investing in worthwhile projects.

In addition, local authorities were simply unable to keep up with the flood of policies coming at this time from the European Commission, partly because they lacked the funding to implement all of the new laws that were being adopted and partly because they lacked the expertise to keep abreast of the latest policy developments (Harney, 1991). After all, unlike the current EPA or the Department of the Environment at the time, local authorities

were not staffed with members who spent all of their time developing expertise in the specific area of environmental policy. Finally – and in the eyes of many, most importantly – local authorities had a serious conflict of interest. As Coyle described the situation:

The authority of local government in environmental control has been compromised by the fact that local authorities are, themselves, major polluters. This has led to a widespread disregard for pollution laws. Ultimately, there is a conflict of interest between the developmental role of local authorities and the control function assigned to them under environmental legislation. Local authorities act as both gamekeepers and poachers in respect of water quality and waste disposal since, under existing arrangements, they are responsible for the environmental impact and control of their own operations (1994:73; see also Taylor and Murphy, 2002).

These problems led to a situation that was, from several points of view, untenable. Local authorities certainly must have recognised that they were overwhelmed and lacked the capability to address all the issues within their jurisdiction, and that their role as regulators was in conflict with their need to increase business. Industry and agriculture suffered from having to deal with unexpected and unpredictable variance from one region to another, and also had to deal with the local authorities' lack of expertise. Environmentalists were frustrated by the fact that the political institutions with the primary ability to monitor and regulate on environmental issues were faced with a cross-incentive *not* to do these things. In short, nearly everyone involved in this issue found some reason to be dissatisfied with the existing arrangement.

## 2.2 Creation of the EPA

Given the swirl of dissatisfaction with the status quo, the Fianna Fáil-Progressive Democrats coalition began to address the issue of environmental regulation soon after taking office in 1989. Led by Mary Harney TD, the Progressive Democrat who served as Minister of State with special responsibility for Environmental Protection, the government began to consider proposals for a new agency that would be dedicated completely to environmental issues. These

proposals met with wide-ranging approval. In the Seanad, for example, which had the first hearing of a Bill to create the EPA, E. Ryan (Fianna Fáil) voiced his strong support for the creation of the agency:

The Bill before the House tonight is perhaps one of the most significant and necessary pieces of legislation to appear in a very long time. The establishment of the Environmental Protection Agency is long overdue. In contemporary Ireland the preservation of the environment and the country's natural assets are assuming ever increasing importance .... The establishment of the Environmental Protection Agency will play a meaningful role in acting as an independent objective invigilator in seeking to achieve managed and sustainable protection and conservation of our physical environment (Seanad Éireann, Volume 127, 27 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

Shortly thereafter, a Fine Gael Senator, Avril Doyle, expressed a similar view:

I welcome the Environmental Protection Agency Bill before us. It is limited in some respects but I think we are all delighted to see much promised legislation finally reach the Houses of Parliament (Seanad Éireann, Volume 127, 6 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

Numerous other legislators chimed in with similar sentiments. There was a near consensus among policymakers and participants, across political parties, regarding the need for a new environmental agency.

### 2.3 Agency functions

The Environmental Protection Agency Bill was enacted on 23 April 1992; the agency itself was formally established on 26 July 1993.<sup>7</sup> Sections 52 (1) and 52 (2) of this Act clearly stated the agency's main responsibilities. The agency, for example, was to:

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<sup>7</sup> Throughout the paper, references to 'the 1992 Act', 'the EPA Act', and 'the Act' refer to this Act of 23 April 1992.



- promote and co-ordinate environmental research
- promote environmentally sound practices
- provide advice to the central government as well as the local authorities on environmental issues
- serve as the liaison to the European Environment Agency.

In addition to the responsibilities listed above, the Act provided the agency with some very significant and specific powers. Most noteworthy were two provisions laid out in Section 52:

- 52.— (1) The functions of the Agency shall, subject to the provisions of this Act, include—
- (a) the licensing, regulation and control of activities for the purposes of environmental protection,
  - (b) the monitoring of the quality of the environment, including the establishment and maintenance of data bases of information related to the environment and making arrangements for the dissemination of such information and for public access thereto.<sup>8</sup>

The first of these provisions – in Section 52 (1) (a) – relates to the Agency’s work in the area of environmental licensing. This provision was especially significant because it made the EPA responsible for regulating activities with significant polluting potential and provided the basis for the new Integrated Pollution Control (IPC) system.<sup>9</sup> Under this system, any person or company involved in certain large-scale or complex industrial processes with significant polluting potential was required to have an IPC licence, and all types of pollution emitted by a facility would be considered together, rather than in a piecemeal fashion, as had been the case previously. Thus, with the power to issue licences, the EPA could consider all the kinds of pollution that might be produced by a facility, removing the incentive for the firm to reduce one type of

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<sup>8</sup> The text of the Act can be found at [http://www.irishstatutebook.ie/1992\\_7.html](http://www.irishstatutebook.ie/1992_7.html).

<sup>9</sup> On 12 July 2004, the IPC licensing regime was replaced by the Integrated Pollution Prevention and Control (IPPC) licensing system. This new system was based on guidelines from the EU, many of which had already been anticipated by the IPC system.

pollution that was being examined while at the same time increasing another.<sup>10</sup> This provision, then, allowed the agency to take a more comprehensive view of pollution by taking into account the overall level of pollution a facility would produce.

The second of these provisions gave the EPA the responsibility to monitor the quality of the environment. To comply with this provision, the agency would need to keep track of the amounts of different kinds of pollutants, study the changes in these amounts over time, and report on the amounts and changes to the public. Taken together with the previous provision, however, this provision set the stage for the agency to monitor and enforce the terms of the licences that it issued, a responsibility addressed later in this paper.

Hence, overall the 1992 Act gave the agency a great deal of power. In addition to charging the agency with general powers to give advice and assistance in environmental matters to local authorities, and the other powers listed at the outset of this chapter, the Act also spelled out the agency's key responsibilities. In particular, the agency's main power was that it would license, and then monitor, control, and enforce, any activities (such as, for example, factories) with the potential to emit significant amounts of pollution.

#### 2.4. A call for independence

While there was a general consensus on the need for a new agency dedicated to environmental protection, there were still some contentious issues, such as the relative weight that the agency should place on the potential costs of controlling pollution.<sup>11</sup> In addition, as the records of the debates show, the debates over the creation of the bill could sometimes be heated, intense, and even personal. But one matter on which there was almost universal agreement was that the agency should be *independent*. Mary Harney TD, who at the time was Minister of State with special responsibility for Environmental Protection, and who was, by most all accounts,

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<sup>10</sup> Formerly, when pollution was treated in a piecemeal fashion, firms could decrease one type of pollution by increasing another, thereby merely shifting, and not reducing, the overall amount of pollution. The IPC system, by treating all pollution together, was designed to prevent firms from taking such actions.

<sup>11</sup> Much to the chagrin of many environmentalists (see Coyle, 1994), Section 5 (1) of the Act specifically directed the agency to adopt a standard of requiring facilities to use the 'best available technology not entailing excessive costs'. Environmentalists opposed this standard because it seemed both too weak and too vague.

the driving force behind the creation of the agency, put the matter succinctly:

With such a wide range of functions and powers it is essential that the Agency ... possess a strong and *independent* management (Harney, 1991: 31).<sup>12</sup>

Similar calls for independence were sprinkled regularly throughout the Dáil and Seanad hearings that addressed the creation of the agency. During an early hearing in the Dáil, for example, Ruairí Quinn TD (Labour) emphasised the Labour Party's perspective on the necessity of independence:

Labour believes that it is absolutely essential for the future that the management of the environment be entrusted to an *independent* agency, with adequate resources and powers. The Environmental Management Agency we propose would be statutorily established. It would have a representative council with an *independent* secretariat and executive staff (Dáil Éireann, Volume 394, 13 December, 1989; Private Members' Business: Environment Protection Agency Bill, 1989: Second Stage (Resumed)).

Mr Fallon, a Fianna Fáil member of the Seanad, agreed on the need for independence:

I am impressed with the Minister's determination to ensure that from the outset the EPA will be *independent* of the Department of the Environment and of the Government .... It is generally agreed that if the EPA are [sic] to be effective in restoring public confidence in the monitoring and control of pollution they must be *independent* (Seanad Éireann, Volume 127, 23 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

Avril Doyle stated the matter quite directly:

Above all else, it must be *independent*. It must be *independent* in its decisions. It must be financially *independent* and not crying out

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<sup>12</sup> In this and in all future quotations used in the paper, emphasis is added for effect and was not present in the original transcript of the remark.

that it cannot afford to do this or do that. It must be able to stand financially on its own two feet. Above all, the scientific integrity of the body must be beyond reproach. To me, if there is any question of lack of scientific integrity or lack of independence as a body, we may stop now and go home because we are wasting our time. (Seanad Éireann, Volume 127, 7 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

During these hearings, Mary Harney TD sought to assure legislators that the newly created agency would indeed be independent:

If the new agency is to have the full confidence of the general public it must be tough, *independent* and fair in all its dealings and it must be seen to be so.

The independence of the agency is guaranteed by a number of important elements. First, the executive board is selected by an *independent* committee. The agency will also have an effective and expert staff and the freedom to act of its own volition. It will have sole and direct responsibility for licensing a wide range of activities and, lastly, it will be an offence under this Act to lobby any member of the board or employee of the agency with the intention of influencing improperly a matter to be decided by the agency (Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

The requirement of independence continued to be seen as the most essential element of the agency even in the months after it began its work:

If there is any good to come out of the two fires at Ringaskiddy last week it will hopefully be that the authorities and politicians finally recognise the necessity of giving the Environmental Protection Agency sufficient powers to carry out its functions not just comprehensively but *independently* (*The Irish Times*, 1993: 11).

Could politicians have spoken out *against* independence? The answer to this question is clearly 'Yes'. As the following section will demonstrate, independent agencies were a relatively new entity in

Ireland and did not yet enjoy the widespread acceptance they have today. Politicians could have pushed for regulation to be maintained by government (that is to say, within the Department of the Environment) or could have given responsibility to an agency that was tightly controlled by the government. Yet there was widespread agreement among politicians on the need for independence. Indeed, a perusal of all the legislative debates about the agency reveals a nearly uniform consensus on the desirability of independence. Thus, independence was more or less taken as a given and asserted as a beneficial, desirable attribute, with few downsides, by nearly all who spoke on this issue.

#### *2.4.1 Why independence?*

Why was independence seen as so important, so valuable and so attractive to so many people? After all, Ireland had little prior experience with independent agencies in general, let alone in the growing area of environmental policy. Indeed, Table 2, which lists the primary independent regulatory agencies in Ireland by sector, shows that at the time that politicians were considering the creation of the EPA, they could not have been doing so based on a wide range of positive experiences with such agencies, because most of these other agencies were created after the EPA. In addition, there was already a government department in place with formal responsibility for this policy area and which could have subsumed the powers given to the EPA. The creation of an independent agency to regulate environmental policymaking was therefore a surprising and, in many ways, bold move to make.

Ireland could, however, look towards other countries and other policy areas to gain information about independent agencies. In the United States, for example, regulation by independent agencies began in the mid-1800s at the state level and in the 1880s at the national level with the creation of the first major national independent agency, the now-defunct Interstate Commerce Commission. Since that time, the US has gained considerable experience with such agencies. Early in the twentieth century, the US created agencies such as the Federal Trade Commission and the Federal Radio Commission. The remainder of the twentieth century saw two peaks in the creation of independent agencies. The first came in the 1930s. Some of the agencies created at this time, such as the Securities and Exchange Commission and the National Labor

Relations Board, were direct responses to the Great Depression and the economic problems the US faced in the 1930s. Others, such as the Federal Communications Commission, a successor to the Federal Radio Commission, were not actually part of the New Deal approach, but benefited from the new acceptance of the view that government should play a more active role in regulating the economy. The second peak came in the 1960s and 1970s, with the creation of more socially oriented agencies, such as the Consumer Product Safety Commission and, more relevant for this study, the US Environmental Protection Agency (US EPA). Thus, throughout much of the twentieth century, regulation by independent commissions was an accepted and growing part of the American government.

*Table 2: Irish independent regulatory agencies*

<i>Sector</i>	<i>Agency</i>	<i>Year Formed</i>
Competition	The Competition Authority	1991
Electricity	Commission for Energy Regulation (CER) (originally the Commission for Electricity Regulation)	1999
Environment	Environmental Protection Agency (EPA)	1992
Financial Markets	Central Bank and Financial Services Authority of Ireland	1942
Food Safety	The Food Safety Authority of Ireland	1998
Pharmaceuticals	Irish Medicines Board	1995
Telecommunications	Commission for Communications Regulation (ComReg) (originally Office of Director of Telecommunications Regulation, ODTR)	1996

Across western European countries, however, regulation by independent commission was not nearly so common. Government ministries tended to maintain jurisdiction over policy areas, and there was little call for the creation of new and independent

agencies. A change began to occur in the 1980s. Heralded by Majone (1994, 1996) as the 'rise of the regulatory state', the last three decades have seen a dramatic increase in the number of independent regulatory agencies in countries across Europe.<sup>13</sup> Some are economic agencies, designed to regulate purely economic policy areas such as financial services or electricity. Others focus more on what are usually considered social issues, such as food safety or the environment. The Irish EPA clearly belongs in this latter group.

## 2.5 Initial justifications for independence

Rather than being part of a government or executive department, independent agencies exist, to varying degrees, on their own, outside of the sphere of legislative and executive institutions. The question this leads to, then, is why? What is it about independence that is so attractive that countries across Europe have adopted this new and fundamentally different approach to the economy and to regulation? Which of these explanations best fits the Irish EPA?

Theoretical arguments in favour of independence reach back a hundred years or so, drawing in particular on the 'scientific management' school that developed in the US and Europe. According to this line of thinking, especially prominent in the Progressive Movement in the US, politics and administration needed to be separated. Good administration, freed from the taint of politics, could be called on to solve public policy problems in an unbiased manner. One way to free administration from politics would be to create administrative agencies that existed outside of the traditional political institutions that were run by elected politicians who were likely to pander to political interests rather than seek the best policy. Over time, then, the idea that politics and administration needed to be separate became an orthodoxy (Seidman and Gilmour, 1998), one that found its purest expression in the creation of regulatory agencies that were formally independent of the executive branch of government.

Thus the basic reason that scholars of public administration have used to explain the existence of independent agencies is that such independence removes agencies from politics, thereby allowing

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<sup>13</sup> For example, Majone notes that independent agencies in France grew from only a handful in the late 1970s to nearly twenty by the early 1990s. Gilardi (2004, 2005) presents similar evidence cross-nationally.

these agencies to make better (that is, less biased and less political) policy decisions. This is, however, a purely normative argument, and as such represents an ideal more than an explanation. Over time, scholars have realised that independent commissions serve a number of other functions and have provided other, non-normative (that is to say, positive) explanations for the creation of independent agencies.<sup>14</sup> Most generally, regulation by independent commission is seen as a solution to a problem, or series of problems, and as such, it provides specific political benefits. More specifically, the creation of independent agencies can allow politicians to *shift responsibility* for difficult policy decisions; to create *credible commitments* regarding future policy actions; and to provide for the development of *expertise* in complex policy areas (see for example Thatcher and Stone Sweet, 2002). The following sections discuss each of these functions, or solutions, both in abstract terms and in the concrete case of the EPA, with the purpose of seeing whether these explanations, which have been used to explain the creation of a variety of independent agencies in a wide range of countries, can also provide insight into the creation of the Irish EPA.

### 2.5.1 *Benefits of independence: shifting the responsibility*

Politicians want to take credit for good public policy and also for policies that please their constituents. At the same time, they want to avoid making bad policy decisions, and they especially want to avoid those decisions that make their constituents and powerful interest groups unhappy. So what is a politician to do when faced with a difficult public policy problem, especially one on which there is a broad consensus that ‘something’ needs to be done? One answer is that she can delegate this problem to an independent agency, one that is not under her direct control. Then, if the agency makes a ‘good’ public policy decision, one that pleases the politician’s constituents, she can rightly point out that she was in part responsible for delegating policymaking authority to this agency, and thus deserves a part of the credit. On the other hand, if the agency makes a poor decision, she can empathise with her constituents, note that the agency is ‘out of control’, reproach the

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<sup>14</sup> This section refers explicitly to explanations of why regulatory agencies should be independent. A separate, although related, question is why independent agencies should regulate the economy. While this is a rich topic, and one with a long history of academic investigation, it is beyond the scope of this study.



agency for making such a poor decision, and perhaps even intervene to alter the agency's action.

This *shift-the-responsibility* model, which is developed most fully in the work of Fiorina (see for example 1977; see also Weaver, 1986), has generated a fair amount of scepticism, in part because of its rather cynical take on politics (see for example Kelman, 1987). At the same time, however, there does seem to be something to this argument. Indeed, case studies of agency policymaking are often replete with quotes decrying the out-of-control nature of independent agencies (see for example Ferejohn and Shipan, 1989a). Politicians regularly castigate independent agencies for the decisions that these agencies make. They do so even though it was these politicians who delegated responsibility to the agency in the first place, who have various controls and mechanisms of influence over the agency, and who can pass laws to alter what the agencies have done.

Does the EPA seem to be a case in which politicians were motivated to shift responsibility? Obviously no politician is likely to go on record as saying 'we created this agency so we could take credit for good actions and shift the blame for bad ones'. But while direct evidence along these lines is not likely to exist, shifting responsibility remains a plausible motive for the creation of the EPA, one that many observers have noted. Taylor (2001), for example, contends that the creation of the EPA has allowed the government to give the appearance of acting to improve the environment, while actually moving towards a system in which economic costs are given more weight than environmental costs. In effect, according to Taylor's sceptical view, the EPA allows the government to look like it is acting in a strongly pro-environmental fashion while actually placating industrial and agricultural interests. McGowan points out a related problem for politicians, one central to the notion of shifting the responsibility: that politicians may be caught between 'consumers and environmental lobbies on the one hand and commercial and agricultural lobbies on the other' (1999:165). In such situations, as noted earlier, politicians can use independent agencies to avoid being caught in the crossfire between different sets of interest groups and constituents. This notion – that independent agencies can provide a shield for politicians – came up in a number of interviews conducted with policymakers and observers of the EPA for this study. Opposing parties in particular can find the

existence of the agency frustrating, because the government can use the agency as a way to simply avoid having to deal with an issue, saying, for example, 'I can't comment, as this is a matter for the EPA'.

None of this, of course, should be taken as proof that politicians created the EPA simply in order to avoid responsibility. Politicians generally are not angels who seek only to further the public good, regardless of whether doing so benefits them politically. But nor are most politicians sole-minded in pursuing selfish political benefits at the expense of the public good. Clearly the agency was not created primarily in order to allow politicians to shift responsibility for difficult decisions. But equally clearly, such an explanation is at least a plausible, if incomplete, part of the story.

### 2.5.2 *Benefits of independence: credible commitment*

The *credible commitment* argument, developed in studies by both economists and political scientists, holds that politicians will delegate to independent agencies in order to demonstrate their credibility on a policy issue (Majone, 1997; Gilardi, 2004). If these politicians were to maintain control over policy themselves, they might not be able to credibly commit to a specific policy course, because politicians are subject to the vicissitudes of public opinion. In effect, a government might say, at some point in time, what sort of policies or approaches will exist in the future; but there is often no mechanism that forces the same government to follow such a course of action. Furthermore, the government might be replaced by a different government, which might take a completely different approach to the policy in question. In effect, then, it is not credible for a politician to claim 'here is the policy that I am going to take, and I will continue to follow this policy over time', because political circumstances may change, leading to a new policy.

The best way to commit to a certain course is to hand policymaking responsibility over to an independent agent. The policy area in which this notion of credible commitment has been developed most fully and explicitly is in the development of central banks to control monetary policy (see for example Bernhardt, 1998, 2002; Kydland and Prescott, 1977; Elgie, 1998; although see McNamara, 2002 for a dissenting view). In particular, if politicians do *not* delegate responsibility for monetary policy to an independent central bank, they then will have the incentive and ability to manipulate the economy in ways that will provide short term benefits, producing

votes and increasing their chances of re-election, but will do so at the expense of the longer-term health of the economy.

The credible commitment approach can also be used to explain delegation to independent agencies other than central banks. One problem that can occur in regulation is when there is a mismatch between the capabilities of the agency that is supposed to carry out regulatory functions and the number and complexity of tasks that it is required to carry out (Majone, 2000). When such a gap is large, the system suffers from a problem of credibility. Regulation – specifically, regulation by an independent agency – should result in less political interference in decision-making, more predictability, and hence more credibility.

Producing a more consistent and predictable footing for environmental policy was unmistakably one of the primary goals behind the creation of the EPA. As mentioned earlier, there were too many local authorities involved, with too few resources, and dealing with too many new policies and demands. By one count, the number of directives coming from Europe increased dramatically during the 1970s and 1980s, from one in 1969 to 10 in 1975, 13 in 1980, 20 in 1982, 23 in 1984, 24 in 1985, and 17 in the first few months after the Single European Act in 1987 (Majone, 1994).<sup>15</sup> Local authorities, through no fault of their own, were not equipped to keep up with this level of growth. There simply were too many laws and issues for them to handle (Harney, 1991).

This situation threatened to create an unstable environment for businesses in Ireland. Faced with the danger of businesses locating elsewhere because of the vicissitudes caused by such a decentralised, inconsistent policymaking arrangement, political leaders evidently saw a potential benefit in creating a single agency that could put forward a more consistent and predictable policy. Business leaders saw the advantages of such a system with equal clarity. In 1992, for example, Winifred Pedersen, the project director for a major pharmaceutical plant being constructed in Cork at the time, agreed that the establishment of the EPA would greatly

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<sup>15</sup> This was true not just in Ireland, of course. As Majone has written: ‘The growth of administrative regulation in Europe owes much to this newly articulated perception of a mismatch between existing institutional capacities and the growing complexity of policy problems [like] reducing environmental pollution’ (1994:85). Still, this problem was exacerbated in Ireland because the large numbers of local authorities involved meant that their institutional capacities were especially stretched and taxed by the continual changes in policy.

improve the situation for companies that were considering locating in Ireland. For companies planning to locate in Ireland, the uncertainties created by having to abide by different standards set down in different counties, along with the lack of clear standards and procedures, was a serious roadblock. The situation would change for the better, he contended, 'when the new EPA is up and running, and I think its arrival will be welcomed by industry' (Hogan, 1992).

In general, then, the establishment of the EPA would help to solve the credibility problem – that is, that government policies were neither predictable nor consistent – in a number of ways. It would allow for consistent enforcement. It would create a set of clear and predictable standards. It would ensure that adequate resources would be provided to address environmental issues. In short, it promised a more credible way to deal with the environment.

### *2.5.3 Benefits of independence: expertise*

Elected legislators are expected to deal with a vast array of policy issues, ranging from telecommunications to health policy to transportation. Some of these issues are more complex than others, but all require some level of expertise. One way that legislatures have attempted to deal with the ever-increasing complexity of the world is to delegate internally, to committees that then develop expertise.

Another way is to delegate to agencies that are staffed with people who are experts in the specific policy area. Thus, an agency like ComReg, which regulates communications policy in Ireland, is staffed with people who have expertise in telecommunications, the EPA is staffed by people who have expertise in various facets of environmental policy, and the Central Bank of Ireland is staffed by experts in monetary policy.

Expertise obviously plays a role in credible commitment, because part of what makes delegation credible is the notion that policymaking responsibility has been passed along to a knowledgeable group of experts. Similarly, it can play a role in shifting the responsibility, since an agency filled with experts is likely to make good decisions, allowing the politician to claim credit for having delegated to the agency in the first place. But even in the absence of credibility and shifting the responsibility, complexity is a central problem for politicians, one that delegation to an

independent agency can help solve. Simply put, elected politicians in government are generalists who must deal with all sorts of policy issues. Moreover, those hired as civil servants at government departments are often also generalists – government departments in Ireland are often limited in their ability to attract and retain the necessary technical staff in order to foster a high level of expertise. Thus, while government departments could, in principle, build up a high level of expertise, institutional forces may work against this happening.

At the same time, institutional forces at independent agencies would directly favour the development of expertise among staff. Most importantly, bureaucrats at independent agencies are hired as specialists who focus on a specific policy area. Their very independence allows them to utilise their expertise, to act in ways that can produce good outcomes in their policy area without having to take into account broader government concerns.<sup>16</sup> They will, for example, be much more informed about the likely outcomes associated with any regulatory actions, or with the complexities of issues attached to a policy decision. Politicians in turn benefit from this arrangement, not only because it gives them a warehouse of expertise they can draw on, but because it means policies can be implemented more accurately.

There is no question that expertise was to the fore and a central consideration during the creation of the EPA. Mary Harney, for example, noted at the time that not only was there a need for the setting and consistent application of standards, but '[t]here was need also for a high level of expertise ... for monitoring modern developments, to ensure compliance with these standards' (1991:28). Other members of the Oireachtas chimed in with similar appeals to the need for a high level of expertise, as the following quotes from Seanad hearings demonstrate:

Wexford County Council welcome the provisions of the new Bill, particularly the Environmental Protection Agency's role in providing advice and assistance with a high level of *expertise* to

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<sup>16</sup> Etain Doyle (1997:7) made exactly this point in an address about telecommunications regulation to the Institute of Public Administration, recognising the 'need to set up dedicated independent bodies dealing with their industry, delivering their services unaffected by general Government constraints and other priorities'.

deal with the complex environmental issues of today and the future (Avril Doyle; Seanad Éireann, Volume 127, 7 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

The 33 major local authorities in Ireland are charged with the implementation of this legislation and, by and large, they have performed this task well. Recently, however, difficulties have begun to arise. Environmental protection in the area of licensing of new and existing development has become increasingly complex and specialised. It has become more and more difficult for each local authority to provide the expertise necessary to carry out their licensing functions. Problems of public confidence and the need for a more uniform decision-making process have made it clear that these functions should now be carried out by one *expert* body. The idea of an Environmental Protection Agency has been born out of the need for such a body (Mary Harney; Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

The agency to be established must, above all, command respect. They must command respect for their powers, their scientific *expertise* and their political or, if you like, non-political credibility. That respect will be the essence of the agency (Professor Murphy (Independent); Seanad Éireann, Volume 127, 23 January, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

Policymakers agreed, then, that the new environmental agency would have to possess a high level of expertise. This expertise was obviously important in its own right, which is why so many participants at the time saw the need to create an agency that would function as a repository of expertise. But expertise also works hand in hand with independence, because an independent agency is one in which specialists will be free to draw on their expertise. Similarly, it works together with credible commitment, because policies will be more credible and predictable when they are selected by experts rather than by politicians.

#### 2.5.4 *Summary of benefits*

As the preceding sections demonstrate, regulation by independent commission provides a number of political benefits. Viewed from a slightly different angle, independent commissions can be seen as solutions to a number of political problems. One problem often faced by politicians is the need to act on issues that may prove controversial, where some action needs to be taken but there is a strong likelihood that any decision will anger some influential groups or constituents. In such cases, independence provides a solution because it allows politicians to shift responsibility. Another problem is that existing policies might be inconsistent, or unpredictable. Here independence provides a solution by allowing politicians to commit to a specific approach. Furthermore, because the agency is independent, the politicians will not have the opportunity to meddle and manipulate outcomes. In effect, the solution is one of credible commitment. A final problem is that politicians simply may not have enough knowledge to fully understand a policy area. In such cases, independence represents a solution because it creates an environment in which expertise can flourish, allowing for better responses to emerging problems.

All three of these incentives were clearly present during the creation of the EPA, and all help to provide a general theoretical portrait that explains why it was created as an independent agency. There are undoubtedly other theoretical and substantive explanations that also apply. Many scholars (for example Derthick and Quirk, 1985; Thatcher, 2002) have written of the importance of political entrepreneurs, a label that unmistakably fits Mary Harney. In addition, some scholars argue that politicians use independence to place agencies out of reach of their opponents (see for example Moe, 1989); and Harney, who had just left Fianna Fáil to help form the Progressive Democrats, would have had an incentive to keep the new agency out of Fianna Fáil's reach. Leaving this possible motivation aside, the primary theoretical explanations for the creation of an independent agency have been that such agencies allow politicians to shift responsibility, commit credibly to a course of action, and develop expertise. This paper argues that the creation of the EPA provides clear evidence of each of these political motivations.

## 2.6 Costs of independence: accountability?

At the heart of democratic theory is the idea that there should be a link between the citizens of a country and the policies in that country. When citizens elect representatives to make policy, there is still a strong link between citizens and policy, due to the nature of elections – if politicians create policies that citizens like, they can be kept in office, but if they create policies that citizens do not like, they can be voted out of office. Thus, although the link is indirect, flowing through the intermediary of elected politicians, there still exists a recognisable and continuous chain moving from citizens to policies. Because of the existence of this link, policy is ultimately *accountable* to citizens (Pollack, 2002).

If, however, politicians hand over all authority to an agency, completely ceding responsibility, this link may be severed. In such a case, if the agency is taking actions that are not in accord with the preferences of the polity, and if the politicians have limited controls over the actions of this agency, then the link between citizens and outcomes is broken. Notably, this is true even if an agency is staffed by experts who are making a policy that is, according to some objective criteria, a ‘good’ policy.

Hence, the fundamental conundrum of delegation to expert, independent agencies is that the very actions that allow for independence strike a blow at accountability and, more broadly, at democratic theory, while the actions that would best guarantee accountability act to subvert independence and expertise. What is the best way to allow an agency to draw on its expertise? Make it independent, removed from political pressures, and able to draw on its expertise when it makes decisions. This, however, leads to actions and outcomes that may be only coincidentally in agreement with the wishes of the public, and thus cannot co-exist with the notion that policymaking should be fundamentally accountable. What is the best way to ensure accountability? Ensure that policymaking is completely controlled by elected politicians, who are the agents of the public, because then the bureaucrats would be perfect agents of the politician. But when this takes place, experts are not independent and cannot draw freely on their expertise when making policy.

The key point here is that any decision about delegation necessarily will involve some tradeoffs. At one extreme, policymaking might be uninformed if knowledgeable experts are



not given discretion to make decisions within their purview. At the other extreme, policymaking might be unaccountable if experts are allowed to act without being subject to political controls. Politicians thus have incentives to give agencies independence; but there is a potential cost to doing so.

## **2.7 Conclusion**

The EPA was created amidst a swirl of dissatisfaction with the previous system of environmental regulation in Ireland. The central and most desired feature of the new agency, according to most observers and participants, was its independence. Although politicians might have chosen a different form of regulation – for example, an agency that was closely tied to, and dependent on, the Department of the Environment – they chose to create a new, independent agency.

Three benefits of independence were especially prominent, echoing themes and justifications that have been provided for independent regulatory agencies in other countries: independence would keep difficult environment decisions at arm's length; it would ensure the credibility and consistency of environmental policy; and it would enhance the expertise, and thus hopefully the decisions, of the new agency. At the same time independence can come with the cost of a loss of accountability because, after all, the most accountable agency is one that is completely dependent on, and thus tied to, elected politicians.

## The structural independence of the EPA

### 3.1 Introduction

Independence promises several potential benefits, although with the potential cost of a loss of accountability. Addressing how politicians deal with the issues of independence and control, and the tradeoffs inherent in these aspects of regulation, has become something of a cottage industry in political science over the past two decades. Political scientists have identified a number of approaches that politicians can use to attempt to have the best of both worlds – that is, both to delegate to experts and to maintain control over policymaking. Politicians can begin by creating independent agencies but can then affect the level of independence by the specific *structural features* they give to the agency. They can also influence outcomes by attempting to exert *contemporaneous influence* over an agency, thereby influencing the agency's actions on an ongoing basis. Through these mechanisms, politicians can delegate to experts, shift responsibility, and credibly commit to a course of action, whilst maintaining some degree of control over what the agencies are doing.

The following sections provide an empirical examination of the EPA's level of independence. Determining whether an agency is independent or not is a difficult task – how would we know it if we saw it? Yet by examining structural features and contemporaneous influence, we can get a better understanding of this critical issue.

### 3.2 Agencies and structural independence

All agencies have a certain formal structure that is spelled out in the legislation (or regulation) that creates the agency. These formal structures are not of course determinative; by themselves they do not lead directly to specific policy outcomes. But at the same time these structures have political and policy implications, because they can cause agencies to lean in one direction rather than another, to place weight on specific factors rather than others, and to favour certain groups and choices over others. Evidence of the importance

of these structures can be seen in the debates and political fights over the location of agencies.

In the US, for example, the institutional locations of the Interstate Commerce Commission (ICC), the Federal Radio Commission (FRC), and the Occupational Safety and Health Administration (OSHA), among others, were topics of serious debates (see for example Moe, 1989; Shipan, 1998). In two of those cases – the ICC and the FRC – proponents of independence won out, and the agencies eventually were located outside of the executive branch, in part to prevent the president from having too much control over the agency. In the case of OSHA, however, organised labour preferred to have the agency located in an executive agency, but within a specific agency that was seen as favourable to their goals, and in the end it was placed in such an agency, the Department of Labor.

Many studies of the formal, structural independence of agencies have consisted of in-depth analyses of specific agencies, such as the ones mentioned above, as well as dozens of others across the world. A similar approach can be used to analyse the EPA. It meets the most basic definition of an independent agency, given its location outside of the Department of the Environment, Heritage and Local Government. That provides a starting point. But given this starting point, how else does its formal structure affect its actual independence?

### *3.2.1 Measuring the relationship between formal structure and the independence of an agency*

Until recently, gaining any sort of context for such a question would have been difficult, if not impossible. Most studies of independent agencies were case studies of single agencies, rather than comparative studies, which made it difficult to have a context for evaluating the agency's level of independence or to make comparisons across either countries or policy areas. Fortunately, in a recent series of impressive papers, Fabrizio Gilardi (2002a, 2002b, 2003, 2004, 2005) has taken a major first step toward addressing this gap. As part of a broad and ambitious overall project to examine regulatory agencies across Europe and to assess arguments such as the credibility hypothesis (which has been generally accepted but rarely rigorously tested), Gilardi has created the first cross-national database of independent agencies. In one paper published in the *Journal of European Public Policy*, Gilardi (2002a) focused on

independent regulators in five policy areas – electricity, telecommunications, financial markets, food safety, and pharmaceuticals – across seven countries (Belgium, France, Germany, Italy, Netherlands, Sweden and the UK).<sup>17</sup> Notably, as a part of this paper and his broader project, Gilardi developed a method to operationalise the concept of agency independence. That is, he developed an index, based on a series of questions, that can be used to derive a specific ‘independence score’ for each agency. This score, which ranges from 0 (no independence) to 1 (complete independence), focuses on five aspects of the agency’s formal structure:

- 1 *Agency head status* – for example what is the term of office for the agency head?; who appoints the head?; under what conditions can s/he be dismissed?, etc.
- 2 *Management board members’ status* – for example what is the term of office for board members?; who appoints them?; under what conditions can they be dismissed?, etc.
- 3 *Relationship with government and parliament* – for example is the independence of the agency formally stated?; what are the formal obligations of the agency to the government and the parliament?, etc.
- 4 *Financial and organisational autonomy* – for example what is the source of the agency’s funding?; who controls the budget?; who controls personnel decisions?, etc.
- 5 *Regulatory competencies* – for example does the agency share regulatory duties with other agencies?

Fortunately, because Gilardi published the exact set of questions that he uses, it is possible to replicate his work and also to compare scores across agencies. Of course his questions, as well as his scale, are open to question – for example he assumes equal weighting for all five categories and equal weighting for each question within each category. But he is refreshingly candid about these choices, noting that others might choose to weight things differently but that in the absence of any sort of theoretical guidance on this issue, he has decided to proceed with the simplest approach. Moreover he

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<sup>17</sup> In updates of this study Gilardi (2003, 2004) expands his analysis to seven sectors and seventeen countries, as detailed below.

rightly points out that because no previous scores have ever been computed – indeed, even *lists* of independent agencies were hard to come by before his work – this should be seen not as a final word, but as a starting point for measuring independence, one that is malleable and can be adapted to the specific goals of other researchers.<sup>18</sup>

### 3.3 The EPA: structure and independence

The following sections adopt Gilardi's scoring approach in order to compare the Irish EPA to other independent regulatory agencies within Ireland, to other environmental independent regulatory agencies across Europe, and to the US EPA. First, however, it is useful to take a detailed look at the 1992 Environmental Protection Agency Act, which spells out the agency's structure. This is done by examining each of the five separate categories that Gilardi identifies (see Appendix A which reproduces Gilardi's questionnaire and the list of questions for each of these categories). The next section examines his first two categories, agency head status and board member status, which are grouped together for the purposes of this paper under the heading 'Personnel'. The section following that looks at the agency's relationship with the government. The third section examines the final two categories, financial and organisational autonomy and regulatory competencies.

#### 3.3.1 *Personnel*

The 1992 Act makes explicit provision for the selection of the Director General (DG) as well as the four other directors, including the Deputy Director General. The government is responsible for choosing the DG and the other directors. It makes its choice from recommendations put forward by a committee that consists of the Secretary to the Government, the Secretary of the Department of the Environment, the Chairperson of the Council of An Taisce, the National Trust for Ireland, the Managing Director of the Industrial Development Authority, the General Secretary of the Irish Congress of Trade Unions, and the Chief Executive of the Council for the

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<sup>18</sup> Gilardi also acknowledges that his design of the questionnaire is indebted to similar work developed by Cukierman, Webb and Neyapti (1992) to explain the independence of central banks. For a similar and new undertaking in telecommunications and electricity regulation in developing countries, see Wallsten et al (2004).

Status of Women.<sup>19</sup> Once selected, the DG remains in office for seven years, and the other directors for five. All of the directors, including the DG, can be re-appointed and all can be dismissed. The section of the law that addresses dismissal reads as follows:

Section 21 (16). The Director General may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions and, in case the Director General is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

Two interpretations of this section are possible. One, which would emphasise the 'ill-health' and 'misbehaviour' clauses of the section, would imply that the government's removal powers are somewhat limited and are relegated to events unrelated to policy decisions. A DG who commits a crime, for example, or suffers an incapacitating illness can easily be replaced under this interpretation. A second interpretation, however, which relies on the next clause – 'or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions' – is also possible. This second interpretation makes dismissal appear easier, which would increase the government's power over the DG and other directors (who are subject to the same removal provisions under Section 24 (12)).<sup>20</sup>

### 3.3.2 *Relationship between the EPA and the government*

The third item in Gilardi's scale concerns the relationship between the agency and the government (and parliament). Although the Act does not contain the word 'independent' (or any variants of that word), it

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<sup>19</sup> Why these groups, and not others, were formally included represents an obvious target for future research. See Balla and Wright (2001) for a related analysis of advisory groups and environmental policy in the US.

<sup>20</sup> Gilardi adopts the former interpretation. Although a DG has never been dismissed by the government, the latter interpretation, which acknowledges the power of a potential dismissal, seems more appropriate. The result is that Gilardi assigns an independence score that is perhaps slightly higher than it should be.

clearly intends that the EPA will be independent. In part, it does this by omission – it does not locate the agency within any government department. More actively, the Act seeks to set the agency off from other parts of government. Sections 35 and 36, for example, state that if a director (or other agency employee) accepts a position in another political institution, such as the government, the Seanad, the European Parliament, or a local authority, he or she must give up his or her position at the agency. In addition, Section 40 stipulates that it is illegal for others to attempt to initiate communication ‘for the purpose of influencing improperly ... consideration of any matter which falls to be considered or decided by the Agency, committee or consultative group’. Furthermore, if a member of the agency is so contacted, it is ‘his duty not to entertain the communication further’ and he must report this communication, in writing, to the agency. Thus, the Act attempts to secure independence by making it illegal to attempt to influence agency actions.

The Act also requires the agency to make an annual report to the government, and specifies some of the items that need to be covered in this report, such as which consultants it has used (Section 42), its accounts and audits (Section 50), any suggestions it has for dealing with environmental issues (Section 55), and its monitoring activities (Section 58). More generally, the agency is required to report to the Oireachtas and the government, as spelled out in Section 51.

- 1 As soon as may be after the end of each financial year, but not later than six months thereafter, the Agency shall cause a report on the performance of its functions during that year to be laid before each House of the Oireachtas.
- 2 The Agency shall supply the Minister with such information relating to the performance of its functions as he shall from time to time request.

In addition, the government may, at its discretion, require the agency to issue other reports on environmental issues.

### *3.3.3 Financial and organisational autonomy and regulatory competencies*

The final two items in Gilardi’s scale concern the financial and organisational autonomy of the agency and its regulatory

competencies. On the latter point, the EPA obviously has to share jurisdiction over environmental policy with the Department of the Environment, Heritage and Local Government. At the same time, however, its powers are fairly well delineated in the legislation, in particular in the area of licensing, which the EPA itself, in its annual reports on IPC licensing and control, highlights as its most important power, and where it acts alone. Although local authorities are also involved in some of these policy areas, the agency clearly has primary responsibility for the allocation of licences.<sup>21</sup> On the former point, the EPA, like all agencies, must receive funding in order to operate. In the case of the EPA, about 40% of the agency's funding comes from fees and charges for services it provides, while the rest comes in the form of an Oireachtas grant, the amount of which is determined by the Department of the Environment, Heritage and Local Government. Also, if the EPA wants to hire additional staff members, it must obtain permission to do so from the Minister for the Environment, Heritage and Local Government.

### 3.4 Conclusion

Overall, the record is mixed as to the EPA's formal independence from the government. In some respects, the agency clearly has formal, structural independence. It is not housed within a government department; it receives part of its funding from sources outside of the national government; it has primary, and perhaps even sole, authority to regulate in many of its areas; and it has limited responsibilities to report to the Oireachtas. Furthermore, the Director General and the other directors are chosen from a list of potential appointees that is created by a committee from outside the government. These directors serve long terms that may outlast the government, they cannot be members of the government or the Oireachtas, and they generally cannot be dismissed without cause. These features begin to paint a picture of an agency that has a strong measure of independence from the government.

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<sup>21</sup> More generally, as the EPA states on its website, '[t]he Local Authorities are still the main bodies with responsibility for environmental protection in their own areas [while the] EPA is charged with ensuring that Local Authorities carry out their environmental protection functions .... In the event that the Local Authority fails to act without adequate cause the EPA can do the work itself and recover the costs from the Local Authority'. This information is set out in Section 63 of the 1992 EPA Act.



Other aspects of the agency's formal structure, however, point away from independence and toward an agency that, while formally independent, actually exhibits a fair measure of dependence on the government. Two features in particular stand out. First, as discussed above, it appears that the EPA Act presents the government with the option of dismissing any of the directors. Second, the agency is dependent for staff and money on the Minister for the Environment, Heritage and Local Government who must approve any staff increases and who is responsible for a large part of the EPA's budget. The potential problems associated with this arrangement were raised numerous times during the hearings on the Act. Avril Doyle, for example, argued that

The Minister deals in the Bill with funding, grants, approved borrowing, fees and charges. I am a little worried about the charges and I will come back to them again on Committee Stage. I make this plea, the funding should be such that the Environmental Protection Agency are never reduced to the begging bowl for any of the actions or practices they will have to carry out or that they can never use lack of money for not doing something that has to be done ... They must never be compromised either through lack of funds or lack of manpower to do what we now will be charging them to do and the extra charges they will get in the future. I urge that that be put on the record of the House and that the Minister would ensure that that situation will never arise (Seanad Éireann, Volume 127, 7 February, 1991; Environmental Protection Agency Bill, 1990: Second Stage (resumed)).

## **Comparing the EPA to other independent agencies**

### **4.1 Introduction**

Although an in-depth look at the agency's structure provides perspective on its independence, it is useful to provide a comparative context. As mentioned earlier, regulation by independent commission is an important new feature of the political landscape in Europe. This makes it possible to compare the EPA's level of independence with other domestic and European regulatory agencies, including agencies that regulate other sectors of the economy in Ireland and those that regulate the environment in other countries.

### **4.2 How does the EPA compare with other independent agencies in Ireland?**

Ireland has independent agencies in seven sectors: electricity, telecommunications, financial markets, food safety, pharmaceuticals, competition, and the environment. Table 2, shown earlier in Section 2.4.1, lists these agencies, along with the sector they regulate and the year in which they were formed.

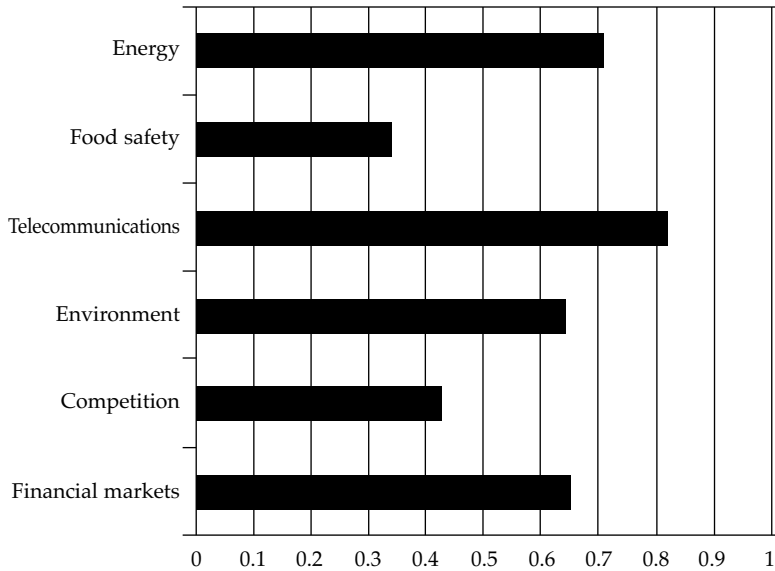
By drawing on Gilardi's work, it is possible to compare the level of independence for these agencies. Figure 1 depicts each agency's level of independence on a scale of 0 to 1, where 0 represents complete dependence and 1 represents complete independence.

Three key pieces of information emerge from Figure 1 and Table 2. First, Ireland has a rather active programme of regulation by independent commission. As discussed below, most other western European countries do not have independent agencies acting as regulators in all of these sectors.

Second, the EPA, with its creation at the start of the 1990s, was clearly in the early part of the wave of regulation by independent commission that Majone (1994) and others (for example Gilardi, 2005) have noted was taking place in Europe at this time. Third, compared to the other major independent agencies in Ireland, the

EPA falls right into the middle of the scale in terms of formal independence. Its independence score is very similar to that of the Central Bank, while being well above the Food Safety Authority and the Competition Authority and slightly below the CER and ComReg.<sup>22</sup> Interestingly, in cross-national perspective this is somewhat unusual. In most other countries that use independent agencies to regulate the environment, the independence score for the environmental agency usually is lower than that of most, if not all, other independent agencies in that country.<sup>23</sup> Only in Norway and the UK do environmental agencies fall in the middle of the pack, while in Austria, Denmark, France and Sweden these agencies have less formal independence than any of the other independent agencies (Gilardi, 2004).

Figure 1: Formal independence scores for Irish regulatory agencies



Source: Gilardi (2003)

<sup>22</sup> The relevant data was not available for the Irish Medicines Board.

<sup>23</sup> No analysis has been provided as to why environmental agencies would have levels of independence lower than those of other types of agencies. One possibility is that these countries already have government departments or

### 4.3. How does the EPA compare with independent international environmental agencies in Europe and the USA?

Another way to gain comparative perspective on the EPA is to compare it not to other agencies within Ireland, but rather to independent environmental agencies in other countries. Figure 2 presents independence scores for other independent environmental regulatory agencies in Europe, including Ireland. In addition, to gain additional comparative perspective, Figure 2 also includes the US EPA.<sup>24</sup>

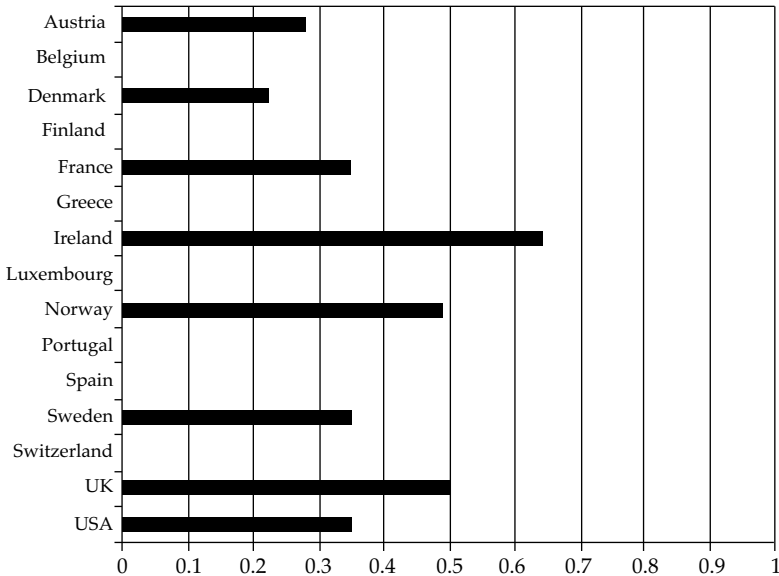


Figure 2: Independence scores of international environmental agencies

Source: Compiled by the author and Gilardi (2003)

<sup>23</sup> *contd.* ministries that deal with environmental issues and that would have been reluctant to grant too much independence to new agencies. While this is a possible theory, Ireland also had a government department devoted to the environment, and granted more independence than is seen in other countries.

<sup>24</sup> The author wishes to sincerely thank Fabrizio Gilardi for graciously sharing his data on European countries for the purposes of this paper. To create the independence score for the US EPA, the author contacted a number of experts on this agency and asked them to score that agency according to Gilardi's approach. Their answers were combined with the author's to create an overall score for the US EPA.

One item that immediately leaps out from this table is that relatively few European countries have independent agencies that deal with environmental issues, with Austria, Denmark, France, Norway, Sweden and the UK having such agencies while Belgium, Finland, Greece, Luxembourg, Portugal, Spain and Switzerland do not.<sup>25</sup> Thus, at a minimum, environmental regulation in Ireland is more independent than regulation in other countries, in part because independent environmental agencies do not even exist in most other countries.

The second, and more striking, piece of information that comes from this table is that the Irish EPA has far more formal, structural independence than any of its counterparts in Europe or the US. Indeed, none of the other agencies is particularly close to the Irish EPA; the UK, with a score of 0.50, is a distant second to the Irish EPA's score of 0.64. It is possible, of course, that the large difference between the Irish EPA and the agencies in other countries is an artefact of Gilardi's coding scheme. In particular Gilardi weights each of the five major categories – agency head status, management board members' status, relationship with government and parliament, financial and organisational autonomy, and regulatory competencies – equally. Perhaps if these were weighted differently, the Irish EPA would not be notable for having so much more independence than the other agencies. To test this, the independence scores were disaggregated and countries compared by each of the five categories listed in section 3.2. In three of the categories, the independence score for the Irish EPA is far higher than that assigned to any other country. In a fourth (regulatory competencies) the Irish EPA ties with several other countries for the highest score. In the remaining category, the agency head status, the Irish EPA receives a score that is only marginally behind its British counterpart and considerably ahead of any other country's agency. Thus, the greater independence of the EPA, as shown in Figure 2, is not simply an artefact of the coding approach or the way in which categories are combined.

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<sup>25</sup> Data were missing for agencies in three countries – Germany, the Netherlands and Italy – that have agencies that are at least partially independent. Impressionistic evidence suggests therefore that the Irish EPA is more independent than the agencies in these other countries.

#### **4.4 Conclusion**

It bears repeating that formal structure is not deterministic, that looking at an agency's formal structure gives only a partial picture of its independence. At the same time, formal structure represents a very important part of that picture. Countless political battles have been fought over structural details, indicating their importance to politicians and interest groups. And as Gilardi demonstrates, a measure of formal independence can be extremely useful in analysing other significant political topics, such as the credibility hypothesis.

While we cannot say that the EPA is a completely independent agency, we can say that it is similar to other independent agencies in Ireland, in terms of its formal independence, and that it has far more formal independence than nearly any other environmental regulator in other countries, at least within its spheres of influence.

## Contemporaneous influence

### 5.1 Introduction

Structural features can affect an agency's level of independence and can set the agency along one regulatory course rather than another. All of this is done through legislation that may be, and usually is, written before the agency has taken a single action or made a single decision. Because of this timing, structural means of control are often referred to as *ex ante* controls. But legislatures and governments also have other tools that they can use to influence agencies *contemporaneously*, as the agency is going about its business.

In the case of the EPA, as noted earlier, those outside of the agency are expressly forbidden to attempt to influence the agency as it is making decisions. Even the government – or perhaps, *especially* the government – cannot intervene behind the scenes, for example to attempt to sway the agency in a licensing decision. Yet the legislature and the government have other tools that they can use to attempt to influence agency outcomes. Some of these tools, such as writing reports or holding hearings, can be quite subtle. Others, such as making strategic appointments and setting the budget, are stronger and blunter.

### 5.2 Overview of work on contemporaneous influence

The general idea behind this approach to agency policymaking is that the legislature and government – the agency's *principals*, in the language of principal-agent analysis – can use these tools in order to send a signal to the agency. The agency picks up on this signal and, because it does not want to face the repercussions that it might suffer if it ignores the signal, it adjusts its activities and actions so they are in accord with the preferences of the legislature and government. The agency could, of course, ignore the signals that its principals are sending. But if it does, it might suffer consequences – its budget might be cut, reorganisations or the creation of new agencies might take away some of its power, the legislature might pass new laws that limit the agency's discretion, or the government

might not approve requests for additional staff. Fear of these repercussions thus causes the agency to anticipate the legislature's and government's preferences and to adjust its actions accordingly.

Most of the empirical analyses along these lines have focused on US agencies, with some focusing on executive branch agencies (for example Carpenter, 1996; Shipan, 2004), others focusing on independent agencies (for example Weingast and Moran, 1983; Moe, 1982; Ferejohn and Shipan 1989a, 1989b; Shipan, 1998), and still others focusing on independent agencies that are located within the executive branch, which is how the US EPA is usually described.<sup>26</sup> Generally these studies proceed by identifying two important variables. First, they identify some measure of the principal's preferences, something that the agency can observe as a meaningful signal of what the principal wants the agency to do. Second, they identify some measure of agency activity, which is designed to act as a surrogate for the agency's overall level of activism. In Wood's (1988) pioneering analysis of the US EPA, for example, the author looks at the agency's monitoring and enforcement activities over time, arguing that these are good measures of the agency's activism and attitude towards environmental regulation. The expectation is that if the agency is responding to these signals, however subtle they might be, the actions of the agency should shift in response to changes in the preferences of the principals.

### 5.3 Contemporaneous influence and the EPA

What sorts of surrogates can we use to measure the EPA's level of activism? Before defining and explaining these surrogate measures, it is useful to have some background information about the workings of the EPA. As mentioned earlier, the primary function that the 1992 Act assigns to the EPA is responsibility for the Integrated Pollution Control (IPC) licensing of facilities (e.g. firms and industries) and other activities that have the potential to release large amounts of pollution into the air, water or land. The first step for the agency is to determine whether a licence should be issued. The agency's job, however, does not end there. Instead, at that point the agency's responsibility shifts to enforcement of the terms of the licence.

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<sup>26</sup> See Huber and Shipan (2004) for a recent review of this literature.



### 5.3.1 EPA enforcement activities

The agency engages in several enforcement activities. To begin with, it visits IPC facilities in order to *monitor*, or measure, air, water and noise emissions. The agency also conducts *inspections*, during which it reviews the operations of the facility, again to determine whether it is acting within the terms set out in the licence.<sup>27</sup> Finally, the agency conducts *audits*, which consider in much more detail whether the licensee is acting in accord with the conditions of the licence.

In addition to these monitoring activities, the agency also has enforcement powers. One of these is a *notice of non-compliance*, which occurs when the agency, through its monitoring activities, determines that a facility is violating some terms of its licence. In response, the first action taken by the agency is usually to issue a notice that informs the facility of the violation, a notice that requires the facility to design an appropriate corrective action. If, after receiving this notice, the facility still is not in compliance, the agency has other powers it can use, the most forceful of which are *prosecutions* to force compliance and to issue fines. The agency can pursue these prosecutions through the courts when IPC facilities are in breach of the terms of their licence, in breach of legislation, or for specific incidents of pollution.

### 5.3.2 Data collection

For this part of the study, data were obtained on the number of these monitoring and enforcement activities, which took place during the years in which the agency issued licences.<sup>28</sup> To the extent that the agency is taking an increasingly activist view over time of its role as an environmental regulator, we would expect to see more of each of these activities over time. Unfortunately, one problem is that the agency has only engaged in these activities since 1995 – therefore, the data are not sufficient for a fully-fledged statistical analysis. However, it is possible to examine the data to see whether it is possible to discern any particular trends.

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<sup>27</sup> During these visits, EPA inspectors also can take samples, which are returned to the agency's headquarters and analysed. These actions allow the agency to determine whether the facilities are keeping the level of emissions within the limits set by the terms of their licences.

<sup>28</sup> The data for these activities were culled from the EPA's 'Report on IPC Licensing and Control' which was issued annually through 2002, and EPA annual reports.

A second problem concerns the measurement of preferences. If the EPA is sensitive to the preferences of its principals, then we might expect that as membership in the government shifts, so should the actions of the agency. However, there have been limited changes in the Irish government during the period in which the EPA has conducted its monitoring and enforcement activities. In addition, unlike in the US, where the differences between the two major parties on environmental issues are large and growing larger (Shipan and Lowry, 2001), the differences between the major parties in Irish government coalitions over the past ten years – Fianna Fáil and Fine Gael – are not very large (Benoit and Laver, 2003).<sup>29</sup> As an alternative to general measures of preferences, however, we can rely on what is potentially the clearest signal that the government can send: the budget (Carpenter, 1996). As discussed earlier, control over the agency's budget is the strongest formal structural control that the government has over the agency. The government can increase the budget, leading to increased activities by the agency; or it can cut the budget if it wants the agency to reduce its activities. Thus, if the agency, despite its formal independence, were responding to the government's signals, then we would expect that when the budget increases, the agency should become more active in the areas of monitoring and enforcement.

#### 5.4 Trends in EPA enforcement activities

Figures 3a to 3c show how the agency's levels of monitoring and enforcement have changed over time. Because the agency can only monitor and enforce licences that have already been issued, each case is controlled for the total number of licences. Thus, each measure of agency activity – monitoring visits, inspections, audits, notices of non-compliance, and prosecutions – is divided by the cumulative number of licences that had been issued by the end of that year. The levels of monitoring and enforcement activities are displayed in Figure 3a, 3b and 3c while Table 3 presents the number of new IPC licences that the agency issued each year, along with the cumulative number of licences.

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<sup>29</sup> Using a computer analysis of party manifestos in 2002, Benoit and Laver (2003) calculate Fine Gael's position as 11.54 and Fianna Fail's as 13.18, scores similar to an expert survey conducted in 1997, which produced scores of 13.03 and 13.50, respectively. The scores on various policy areas range as high as 18; the low (that is, the most pro-environmental) position in Ireland is held by the Green Party, who received a score of 1.53 on the manifesto and 1.70 on the expert survey.

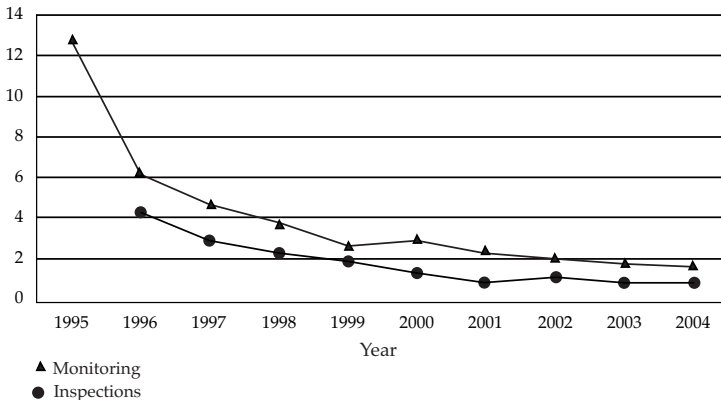
Table 3: Number of IPC licences issued by the EPA

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
New	22	60	109	136	82	65	48	39	40	41
Cumulative	22	82	191	327	409	474	522	561	601	642

Source: Compiled by author from EPA annual reports.

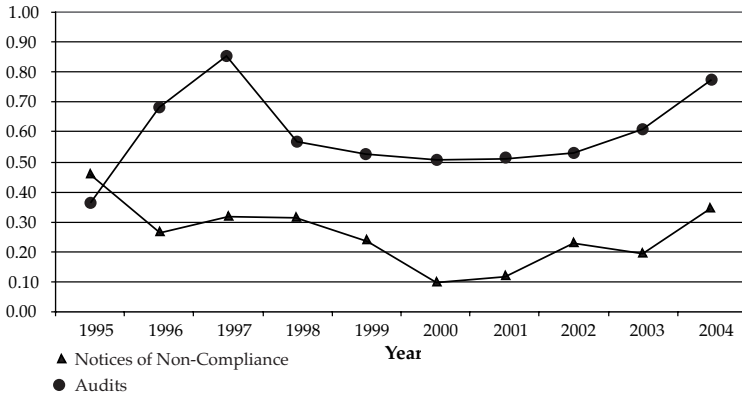
As seen in Figures 3a, 3b and 3c, enforcement activities generally showed an initial decrease, followed by a levelling out. Notices of non-compliance and audits have shown a slight upward movement in the past two years, but these followed years of either downward or stable trends. Prosecutions (see Figure 3c) show an overall decline over time. In particular, the number of monitoring and inspection visits (see Figure 3a) show a consistent decrease over the past ten years, with a steep decline initially followed by a much smaller but still clear decrease in recent years. Of course, in the first year or two of monitoring and inspections, there were fewer facilities to inspect. Furthermore, it would be expected that these initial actions might be more frequent, due to the energy of a new agency and in order to set an example for the future. Still, even over the last several years, we see evidence of a small, but steady, drop in monitoring and enforcement activities, once the number of licences is controlled for.

Figure 3a: Monitoring visits and inspections, per licence



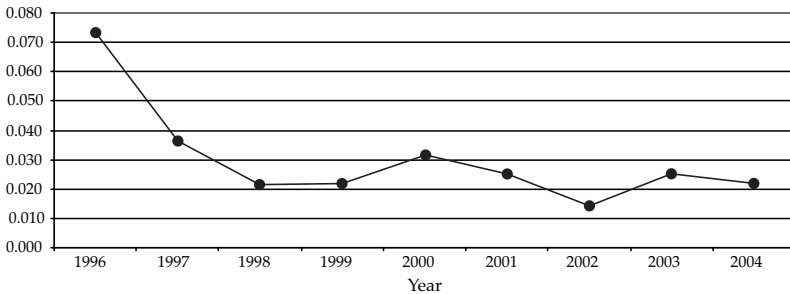
Source: Compiled by the author from EPA reports

Figure 3b: Audits and notices of non-compliance, per licence



Source: Compiled by the author from EPA reports

Figure 3c: Prosecutions, per licence



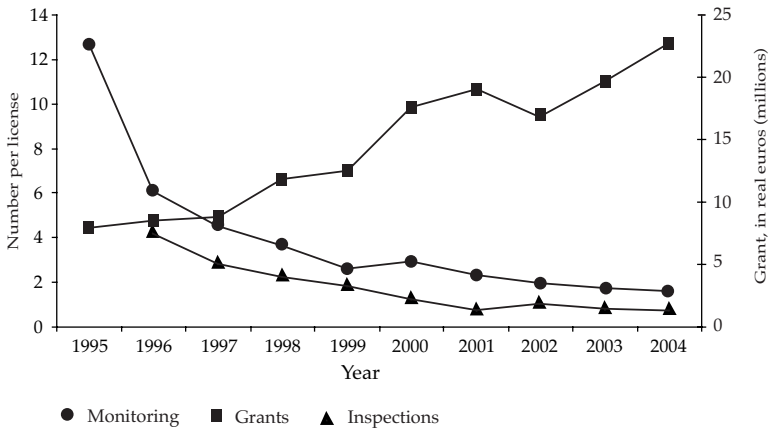
Source: Compiled by the author from EPA reports

What we need, in order to assess whether the agency has acted independently of the government, and of the signals it receives from the government, is a comparison between these activities and the budget, which the government can use to send a signal. Figures 4a, 4b and 4c present a comparison of the trends in the EPA's budget over time with the trends in two prominent agency activities, monitoring and inspections. Each of the graphs in this figure presents a different adjustment for the budget. In Figure 4a, the budget is translated into constant 2002 euros, based on the

consumer price index. In Figure 4b, the budget is taken as a percentage of GNP. In Figure 4c, the adjusted budget is divided by the total number of licences, in order to give a picture of how much money the agency has received per facility that it needs to monitor.

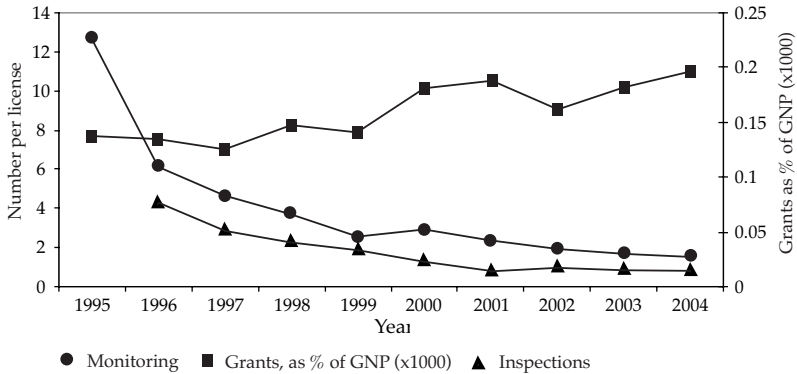
Figures 4a and 4b show similar trends, with the budget moving steadily upward. Interestingly, these trends contrast with the monitoring and inspection trends, which slope downward over time. The results are similar even if controls other than GNP, such as overall government expenditures (for example if we look at the budget as a percentage of total expenditures) or other economic measures (for example average weekly earnings for industrial workers) are used. Thus, Figures 4a and 4b give credence to the idea that the agency is acting independently, because the budget is moving in the opposite direction from the monitoring and enforcement activities.

Figure 4a: Comparing monitoring and inspections with Oireachtas grants in adjusted euros



Source: Compiled by the author from EPA reports

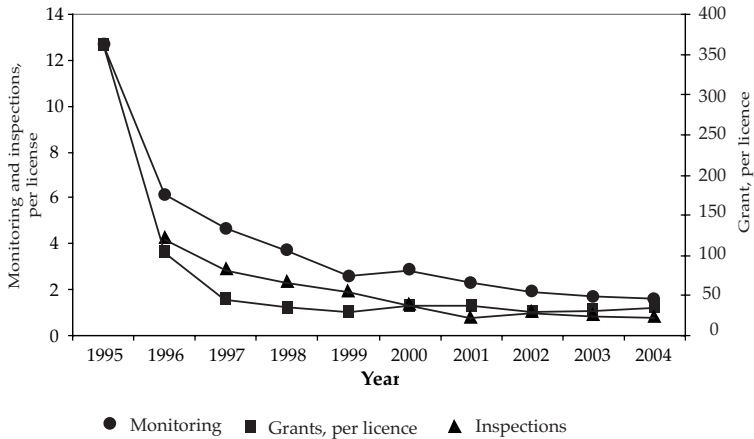
Figure 4b: Comparing monitoring and inspections with Oireachtas grants as a percentage of GNP



Source: Compiled by the author from EPA reports

Figure 4c, however, presents an alternative picture. In this figure, the adjusted budget is divided by the number of licences, which captures the amount of money, in constant euros and per licence, that the agency had at its disposal. This curve corresponds strikingly well to the trends for monitoring and inspections, as the figure demonstrates. Unlike the previous two figures, then, this figure is compatible with the idea that the agency was responding to the budgetary signals sent by the government. That is, government grants on a per licence basis demonstrated an initial drop, followed by a period of steady or slightly declining levels; and the agency's primary actions of monitoring and inspections, in return, showed the same pattern on a per licence basis. This does *not*, of course, mean that the government was telling the agency exactly how many monitoring and enforcement activities to conduct. Rather, the government can use the budget to place a constraint on the agency, if it wishes the agency to be less aggressive in its monitoring and enforcement activities; and in this case the agency actions have reflected the patterns in government grants.

Figure 4c: Comparing monitoring and inspections with Oireachtas grants per licence



Source: Compiled by the author from EPA reports

Such behaviour is consistent with the argument made earlier that the government's control over the budget could be an impediment to the agency's independence. For several reasons, however, such a conclusion should be tentative. First, whether the agency's behaviour mirrors the trends in the budget depends on which measure of the budget is most appropriate. While a strong argument can be made for the adjustments made in Figure 4c (i.e. that looking at the amount of money the agency receives on a per licence basis makes the most sense), cases can be made for the appropriateness of using the budget adjustments depicted in Figures 4a and 4b. Such cases might be weak; but they would be plausible. And to the extent that one believes that these adjustments made in Figures 4a and 4b are the appropriate ones to make, the data shore up the case that the agency is independent.

Second, it is worth repeating that the money the agency receives from the Oireachtas grant represents only a portion of the money that comes into the agency. Additional funds come from fees and charges that the agency receives from its activities. In 2003, for example, the agency received €20,356,707 in the form of an Oireachtas grant, but also received another €8,768,175 from the

following sources: surveys, advisory surveys and tests, income from regional laboratories, licensing activities (IPC and Waste), and sundry receipts. Hence, 69.9% of the EPA's total income came from Oireachtas grants while the remaining 30.1% came from other sources, a ratio similar to that found in 2002 (69.2%) and 2004 (71.4%). The budget amounts used in these figures therefore represent only part of the money that the agency receives, but it is the major part of their funding. In addition, the Minister for the Environment, Heritage and Local Government sets the amount of money that the agency receives from licence fees, which constitute by far the biggest portion of the other sources of income (e.g. 78.1% of non-grant income in 2002), so the non-grant portion of the agency's income is not entirely independent of the government. Overall, the existence of such additional monies does not undermine the idea that the government can use the budget to send an implicit signal to the agency.

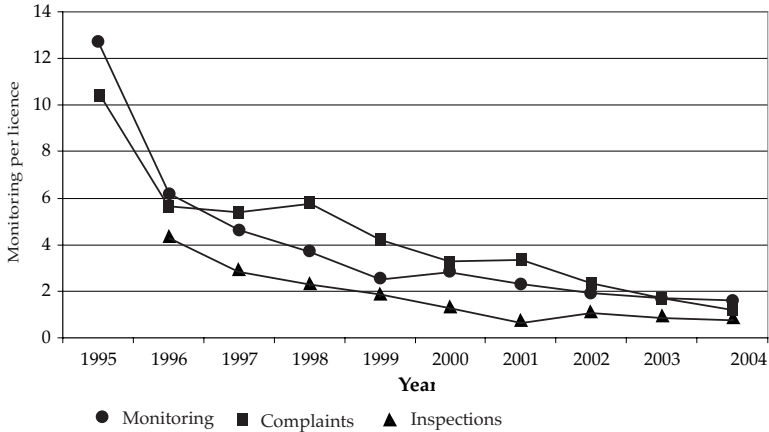
Third, the money that the agency receives from the government is not earmarked for specific purposes. Thus the agency would be free to spend more money each year on monitoring and enforcement, even if it was receiving less money from the government, and could do so by simply spending a higher proportion of its budget on these activities. To the extent that it does so, such actions would confirm the agency's independence. But the data in Figure 4 do not show evidence of such actions. Finally, while it does appear, from Figure 4c, that the agency initially became less active and then more or less flattened out in response to the budgetary signals it receives from the government, perhaps there are external factors driving the agency's decreased activity. Figure 5 presents evidence of such a possibility.

Figure 5 once again presents the monitoring and inspections activities of the agency over time. In addition, it includes a new set of data: the number of complaints the agency has received in each year, on a per licence basis. As in Figure 4c, there is a striking correspondence between the curves. Thus, while Figure 4c presents evidence suggesting that there is a connection between the budget and the agency's activities, Figure 5 presents an alternative explanation, one that holds that the agency is engaged in fewer activities because firms are complying with the terms of their licences. In other words, the agency might be engaging in fewer regulatory actions not because of a reduced budget, but rather



because facilities are in compliance with the terms of their licences and, as a result, there is less need for aggressive monitoring and enforcement.

Figure 5: Comparing monitoring and inspections with complaints



Source: Compiled by the author from EPA reports

## 5.5 Conclusion

Does the evidence indicate that the EPA is being influenced by the budgetary signals it receives from the government? The evidence is mixed. On the one hand, the overall level of the budget has increased, a pattern that holds whether we control for inflation, the overall size of the economy, the level of government expenditures, or wages. And despite this increase, most EPA enforcement activities decreased over time (with the exception of a number of other activities that have increased in recent years). Thus, it does not appear that the EPA has responded to its increased budget by adopting a more activist attitude toward enforcement, which is what theories of contemporaneous influence would indicate.

At the same time, one other measure of the budget, which controls for the number of licences, does seem to indicate at least a strong relationship between the budgetary measure and the level of monitoring and inspections, with monitoring correlated with this budgetary measure at  $r=0.96$  and inspections correlated at  $r=0.85$ .

Yet perhaps there are other explanations for the trends in these enforcement variables, such as the concomitant decrease in the number of complaints, as seen in Figure 5; indeed, the correlations of complaints with monitoring and inspections reach the equally high levels of  $r=0.94$  and  $r=0.83$ . Hence, although one measure of the budget could be taken to indicate some level of dependence, other factors cannot be ruled out. At the current time, then, there is no way to sort out these competing explanations; more data, over more time, may help. But for now, it is safest to say only that the evidence indicates that the government may be able to use the budget to influence the agency's activities, and thus limit its independence; but that other factors may also be at work.

## Discussion and conclusions

### 6.1 Introduction

This concluding chapter begins by summarising the evidence that has been presented in the preceding five chapters. Next, it introduces other factors that can influence independence, with the goal of suggesting research approaches for those who wish to look further into the important topic of regulatory independence. Finally, it returns to a concept that has appeared through the study, that of accountability, in order to more seriously consider the issue of what it means to be accountable and how the agency fares in this regard.

### 6.2 Overview

The distinguishing feature of the EPA, foremost at its creation ten years ago and still prominent today, is its independence. This paper has examined independence from three distinct, albeit related, angles. First, it explored the political motivations behind independence, emphasising the reasons why an independent agency was seen as an attractive option. Second, it investigated the structural features of independence, both by focusing specifically on the statute that created the EPA and also by comparing the EPA's level of independence with that of other independent agencies in Ireland and environmental agencies in other countries. Third, it analysed the extent to which the EPA has been subject to contemporaneous control by the government. The goal has been to provide an objective assessment of whether the agency is independent. It should be stressed, however, that such a normative assessment is not clear-cut. That is, it is not automatically 'better' to have an agency that functions independently. Such an assessment would depend on several other factors, including whether the agency is accountable (a point to which the paper will return shortly) or whether the agency's decisions are transparent (see for example Huber and Shipan, 2002; Lodge, 2003).

### 6.2.1 *Other factors affecting independence*

While the study has focused on significant ways in which to assess independence, there are clearly other factors that affect independence. Legislatures can, for example, write specific procedures into statutes – these procedures may compel an agency to act in certain ways and not others and therefore increase the likelihood of some actions and not others. Some of these may be specific procedures that the agency itself must follow (see for example McCubbins, Noll and Weingast, 1987, 1989; Moe, 1989). Others may be procedural provisions that relate to the ways in which the courts will hear appeals of agency actions (see for example Shipan, 1997, 2000). An appraisal of the procedural provisions in statutes relevant to the EPA, and of how these affect the actions of the agency, is obviously beyond the scope of this study. A quick look at these statutes, however, reveals that they are full of such procedures; what remains is for an analysis to determine their effects and implications.<sup>30</sup> At the same time, environmental legislation in Ireland contains very little in the way of procedural instructions relating to the courts. In the US, for example, Congress has often written provisions into law that make it easier for a citizen to challenge the US EPA in court (Smith, forthcoming). In Ireland, however, no such provisions exist. The lack of such provisions, however, is consistent with the relationship between courts and agencies in Ireland, where courts generally defer to the expertise of agencies.<sup>31</sup>

Legislatures and governments can also rely on statutes and statutory instruments (SIs) in order to constrain agencies and thereby limit their independence. This is a double-edged sword for legislatures and governments, because when they write more detailed laws and regulations this means that the agency – which was established partly in order to develop expertise – might be

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<sup>30</sup> Taylor (2001) and Taylor and Murphy (2002) outline a number of arguments consistent with the idea that these procedures bias the agency in a pro-industry, rather than pro-environment, direction.

<sup>31</sup> It is worth noting that there is a recent trend in Irish regulatory legislation to create non-judicial appeals panels that are intended to make such appeals easier to bring and quicker to complete. See, for example, Regulation 3 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulation 2003. Still, while some agencies, most notable ComReg and its predecessor, ODTR, have been repeatedly subject to judicial review, such review has not to-date played a significant role in environmental policy.

constrained from drawing on its expertise. But recent comparative research has demonstrated that legislatures often write detailed laws that restrict agency actions. Furthermore, this research has demonstrated that a useful and valid, if rough, measure of constraint can be gained by counting the number of words in legislation, since more words denote more detail, which acts to constrain an agency (Huber and Shipan, 2002). This same research also shows that some features of Ireland's political landscape, such as the common occurrence of coalition governments or the emergence of stronger corporatism since the late 1980s, increase the likelihood that an agency will be constrained by detailed statutes. Again, a detailed analysis of statutory constraints on the EPA will need to wait for another study. Some preliminary evidence, however, does suggest that the Irish government has rather frequently given specific instructions to the agency, instructions that have usually come in the form of SIs. Since 1993, the government has issued more than one hundred SIs that focus on environmental issues. Of course, many of these SIs were mandated by EU directives, so a simple count does not tell us much. More revealing is the fact that these SIs contained a combined total over 170,000 words of legislation.<sup>32</sup> While much work would need to be done to put these numbers in context, they do provide some face validity to the idea that the government has acted to place statutory constraints on the actions of the EPA.

Finally, the focus on this paper has been on independence but, as mentioned earlier, accountability is a necessary and unavoidable concern whenever an agency is independent. Hence, this conclusion

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<sup>32</sup> Four comments are relevant at this point. First, the search focused on SIs rather than statutes because Ireland has had so few of the latter. To identify these regulations a search was conducted for all SIs that contained 'waste', 'pollution', or 'environmental protection agency' in the titles. A sufficient amount from each of these SIs was then read to make sure that it was about an issue related to the EPA – those that were not relevant were excluded from the analysis. The bias here would be downward; that is, if anything, the numbers shown in the text reveal an undercount, rather than an overcount, of both SIs and their length. Third, although these SIs might have been prompted by EU directives, each country has considerable leeway in how to transpose such directives into national law. Thus, countries can write long and detailed or short and vague SIs based on these directives. For a helpful and interesting general analysis of SIs, see Page (2001). Fourth, this finding runs counter to the argument proffered by Moe and Caldwell (1994), which holds that governments in Westminster systems are likely to adopt vague and general legislation, rather than specific laws that constrain agencies.

returns to the notion of accountability in order to begin and advance a discussion of accountability at the EPA.

### 6.3 Accountability

As a starting point we need to consider two specific dimensions along which we could assess the notion of accountability. Along the first dimension the question that needs to be asked is: accountable *to whom*? If we think about the nature of democratic theory, which holds that policymaking should be accountable to citizens, then one obvious answer to this question is that the agency needs to be accountable to citizens. But government naturally involves a string of delegation, from citizens to the legislature, from the legislature to the government, and from the government to the agency (Pollack 2002). Thus accountability can be considered not only in terms of citizens, but in terms of the other links in this chain – the legislature and the government. Finally, courts can be used to hold agencies accountable. The question ‘to whom?’ has therefore four potential answers: citizens, the legislature, the government, and the courts.<sup>33</sup>

Along the second dimension, the relevant question is: accountability *for what*? On the one hand, the answer to this seems fairly obvious. Agencies should be accountable for policy outcomes. In the case of an environmental agency like the EPA, for example, we might want to assess whether the actions of the EPA have resulted in a cleaner environment. Certainly there is something to this notion, because we want to make sure that agencies that are constituted in order to undertake a specific task are actually doing that task well. But at the same time this is at best only a partial answer to the ‘for what’ question. The other part of the answer is concerned more with process than with outcomes. Agencies after all are created by political leaders, who assign the agency specific tasks and instructions. Suppose these tasks are carried out well – that is, the agency does exactly what the government and legislature tells it to do – but the outcome is not favourable. As an example suppose the EPA does exactly what it is told to do, but the quality of the environment worsens. In such a case it is the politicians, not the agency, who made the poor decisions that led to an inferior outcome, and it is the politicians rather than the agency who should

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<sup>33</sup> For a similar treatment see Westrup (2002), who addresses the ‘to whom’ question by looking separately at politicians and citizens and by dividing oversight into *ex ante* and *ex post* categories.

be blamed, and who can, through the mechanism of elections, be held accountable and sanctioned. In this view the agency itself, as a creature of politicians, should be held accountable only for doing what it is told to do. More generally, this example demonstrates that the question of 'for what' has two different, and plausible, answers: for *actions* and for *outcomes*.

A discussion of the accountability, then, would need to consider whether the agency is accountable to citizens, the legislature, the government and the courts; and whether the agency is accountable for its decisions and its actions. In essence, then, there would be a two-by-four matrix, with eight separate cells. The answer to the question of whether the agency is accountable could vary dramatically depending on which cell we focus on.

### 6.3.1 *The EPA and accountability*

How does the agency fare on these issues? To begin with, it seems very accountable to the courts, for example in terms of its actions; but not at all in terms of outcomes. Similarly citizens have the right to participate in agency actions; but have little recourse for appeal if the outcomes run counter to their preferences, a feature of the agency that has led to many complaints over the years (see for example McDonald, 1993; Coyle, 1994; Taylor, 2001; Taylor and Murphy, 2002).<sup>34</sup> Others view the agency as too remote from the public (McGowan, 1999).

The highest level of accountability appears to be to the government, which requires the agency to report on its actions and which can change the agency's structure, or its jurisdiction, budget, staff, or procedures, if it does not like the agency's actions or the repercussions of these actions. At the other end of the spectrum, however, there appears to be little evidence that the agency is accountable to the Dáil. In part this is as much a function of the structure of the Dáil, and of parliamentary government more generally, than of anything else. In most strong legislatures in the world, oversight of agencies takes place primarily through strong committees; and while the Dáil does have a Committee on the Environment its role could be reasonably described as being more reactive than active. Furthermore, as Gallagher (1999) has pointed

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<sup>34</sup> See also the comments made by Mrs Jackman (Fine Gael) during the Seanad hearings, including references to the Confederation of Irish Industry and various environmental groups.

out, and as Westrup (2002) has shown in his fine study of financial services regulation in Ireland, it is unlikely that the government will give strong oversight power to committees, since doing so would strengthen the hand of the parties in the minority.

#### **6.4 Policy implications and concluding comments**

The preceding discussion gives us some sense of how to proceed in approaching the question – or, more accurately, questions – about accountability. But accountability is important precisely because the agency is independent, and to conclude this paper it is worth returning to the primary focus – an examination of the agency’s independence.

Ireland’s creation of an independent EPA was, in many ways, a bold move. At the same time it was also a political response to political problems. The creation of an independent environmental regulator allowed the government to build a repository of expertise while at the same time providing evidence of credible commitment and also potentially allowing the government to shift responsibility when needed. Although the agency does have limits on its independence – in particular in terms of the ability of the government to set the agency’s budget – there are other provisions that work to ensure the agency’s independence. As a result, the agency achieves a high level of independence, especially relative to other similar agencies.

Independence naturally then leads to potential problems of accountability. Allowing for a greater role by the courts, as has taken place in other regulatory policy areas (and as was mentioned in the preceding section), provides one mechanism that can be used to help ensure accountability. Indeed, the *Regulating Better* White Paper highlights the need to improve accountability through improved appeals procedures as one of the primary goals of regulatory reform. As the introductory chapter of this paper made clear, however, any reform needs to be based on a positive understanding of the existing structure of regulation. In the case of easier appeals, it needs to be recognised that facilitating appeals can have the effect of restricting independence. Indeed an analysis of communications regulation in the US has demonstrated exactly how groups can manipulate judicial appeals in order to gain political advantage (Shipan, 1997). In Ireland, business groups are already wary of allowing for easier appeals, in part because if citizens have easier access to the courts



they may be able to use this access to introduce delay – unnecessary and unwanted delay from the standpoint of the industry – into the regulatory process (Department of the Taoiseach, 2002). Hence increased access to judicial appeals presents one way in which the regulatory process can be made more accountable, but reformers should be aware that this too would involve tradeoffs, in terms of introducing additional delay.

A second potential reform that takes into account independence and accountability concerns the role of parliament. Some participants in the regulatory process, such as IBEC and Bord Gáis Éireann, suggest that all regulatory agencies undergo periodic statutory review, with the possibility that the Oireachtas could disband any independent regulator that is no longer needed (Department of the Taoiseach, 2002). While it may be the case that in some sectors, once competition is flourishing, there may no longer be the need for a regulatory authority, it is hard to imagine this being the case in the area of environmental policy. Still, periodic statutory review would have the salutary aspect of allowing the agency to maintain its formal independence while at the same time ensuring that the Oireachtas takes a serious look at its workings, its activities, and its output – in short, it would make the agency more accountable.

## Appendix A

### Formal independence of regulatory agencies, from Gilardi (2003)

#### A) Agency head status

##### 1) *Term of office*

- over 8 years 1.00
- 6 to 8 years 0.80
- 5 years 0.60
- 4 years 0.40
- no fixed term under 4 years or at the discretion of the appointer 0.20
- no fixed term 0.00

##### 2) *Who appoints the agency head?*

- the management board members 1.00
- a complex mix of the executive and the legislature 0.75
- the legislature 0.50
- the executive collectively 0.25
- one or two ministers 0.00

##### 3) *Dismissal*

- dismissal is impossible 1.00
- only for reasons not related to policy 0.67
- no specific provisions for dismissal 0.33
- at the appointer's discretion 0.00

##### 4) *May the agency head hold other offices in government?*

- no 1.00
- only with permission of the executive 0.50
- no specific provisions 0.00

##### 5) *Is the appointment renewable?*

- no 1.00
- yes, once 0.50
- yes, more than once 0.00

6) *Is independence a formal requirement for the appointment?*

- yes 1.00
- no 0.00

## **B) Management board members' status**

7) *Term of office*

- over 8 years 1.00
- 6 to 8 years 0.80
- 5 years 0.60
- 4 years 0.40
- fixed term under 4 years or at the discretion of the appointer 0.20
- no fixed term 0.00

8) *Who appoints the management board members?*

- the agency head 1.00
- a complex mix of the executive and the legislature 0.75
- the legislature 0.50
- the executive collectively 0.25
- one or two ministers 0.00

9) *Dismissal*

- dismissal is impossible 1.00
- only for reasons not related to policy 0.67
- no specific provisions for dismissal 0.33
- at the appointer's discretion 0.00

10) *May management board members hold other offices in government?*

- no 1.00
- only with permission of the executive 0.50
- no specific provisions 0.00

11) *Is the appointment renewable?*

- no 1.00
- yes, once 0.50
- yes, more than once 0.00

- 12) *Is independence a formal requirement for the appointment?*
- yes 1.00
  - no 0.00

### **C) Relationship with government and parliament**

- 13) *Is the independence of the agency formally stated?*
- yes 1.00
  - no 0.00

- 14) *Which are the formal obligations of the agency vis-à-vis the government?*
- none 1.00
  - presentation of an annual report for information only 0.67
  - presentation of an annual report that must be approved 0.33
  - the agency is fully accountable 0.00

- 15) *Which are the formal obligations of the agency vis-à-vis the parliament?*
- none 1.00
  - presentation of an annual report for information only 0.67
  - presentation of an annual report that must be approved 0.33
  - the agency is fully accountable 0.00

- 16) *Who, other than a court, can overturn the agency's decision where it has exclusive competency?*
- no one 1.00
  - a specialised body 0.67
  - the government, with qualifications 0.33
  - the government, unconditionally 0.00

**D) Financial and organisational autonomy**

- 17) *Which is the source of the agency's budget?*
- external funding 1.00
  - government and external funding 0.50
  - government 0.00
- 18) *How is the budget controlled?*
- by the agency 1.00
  - by the accounting office or court 0.67
  - by both the government and the agency 0.33
  - by the government 0.00
- 19) *Who decides on the agency's internal organisation?*
- the agency 1.00
  - both the agency and the government 0.50
  - the government 0.00
- 20) *Who is in charge of the agency's personnel policy?*
- the agency 1.00
  - both the agency and the government 0.50
  - the government 0.00

**E) Regulatory competencies**

- 21) *Who is competent for regulation in the sector?*
- the agency only 1.00
  - the agency and another independent authority 0.75
  - the agency and the parliament 0.50
  - the agency and the government 0.25
  - the agency has only consultative competencies 0.00

*Note:* The higher the code, the more independent the agency. For the cumulated index each dimension counts for 1/5.

## Bibliography

- Balla, S. J. and J. R. Wright (2001), 'Interest Groups, Advisory Committees, and Congressional Control of Bureaucracy', *American Journal of Political Science* 45 (4): 799-812.
- Benoit, K. and M. Laver (2003), 'Mapping the Irish Policy Space: Voter and Party Spaces in Preferential Elections', *Irish Political Studies* 18(1): 97-107.
- Bernhard, W. (1998), 'A Political Explanation of Variations in Central Bank Independence', *American Political Science Review* 92 (2): 311-327.
- Bernhard, W. (2000), *Banking on Reform: Political Parties and Central Bank Independence in the Industrial Democracies*, Ann Arbor: University of Michigan Press.
- Carpenter, D. P. (1996), 'Adaptive Signal Processing, Hierarchy, and Budgetary Control in Federal Regulation', *American Political Science Review* 90: 283-303.
- Coyle, C. (1994), 'Administrative Capacity and the Implementation of EU Environmental Policy in Ireland', in Baker, S., K. Milton and S. Yearly (eds), *Protecting the Periphery: Environmental Policy in Peripheral Regions of the European Union*, Ilford: Frank Cass.
- Cukierman, A., S. B. Webb and B. Neyapti (1992), 'Measuring the Independence of Central Banks and Its Effects on Policy Outcomes', *World Bank Economic Review* 6 (3): 353-398.
- Department of Public Enterprise (2000), 'Governance and Accountability in the Regulatory Process: Policy Proposals 2', available at <http://www.betterregulation.ie/index.asp?docID=70>.
- Department of the Taoiseach (2002), 'Reports on submissions received arising from public consultation on *Towards Better Regulation*', available at <http://www.betterregulation.ie/index.asp?docID=42>.
- Department of the Taoiseach (2004), *Regulating Better: a Government White Paper setting out six principles of Better Regulation*, Dublin: Stationery Office.
- Derthick, M. and P. J. Quirk (1985), *The Politics of Deregulation*, Washington, DC: The Brookings Institution Press.
- Doyle, A. (2003), 'Environmental Law: Integrated Control of

- Pollution?', in *Irish Perspectives on EC Law*, M.C. Lucey and C. Keville (eds), Dublin: Round Hall Ltd.
- Doyle, E. (1997), 'Independent Regulation: Governance and Accountability', available at [http://www.comreg.ie/\\_fileupload/publications/odtr9714.pdf](http://www.comreg.ie/_fileupload/publications/odtr9714.pdf).
- Elgie, R. (1998), 'Democratic Accountability and Central Bank Independence: Historical and Contemporary, National and European Perspectives', *West European Politics* 21 (3): 53-76.
- Ferejohn, J. and C. Shipan (1989a), 'Congressional Influence on Administrative Agencies: A Case Study of Telecommunications Policy', in *Congress Reconsidered* (4th edn), L.C. Dodd and B. I. Oppenheimer (eds), Washington, DC: CQ Press.
- Ferejohn, J. and C. Shipan (1989b), 'Congress and Telecommunications Policymaking', in *New Directions in Telecommunications Policy*, vol. 1, P.R. Newberg (ed.), Durham, NC: Duke University Press.
- Fiorina, M. P. (1977), 'The Case of the Vanishing Marginals: The Bureaucracy Did It', *American Political Science Review* 71: 177-181.
- Freestone, D. and A. McLoughlin (1998), 'EC Action and Initiatives in Environmental Protection', in *Beyond the Market: The EU and National Social Policy*, D. Hine and H. Kassim (eds), London: Routledge.
- Gallagher, M. (1999), 'Parliament', in *Politics in the Republic of Ireland*, J. Coakley and M. Gallagher (eds), London: Routledge.
- Gilardi, F. (2002a), 'Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis', *Journal of European Public Policy* 9 (6): 873-893.
- Gilardi, F. (2002b), 'Delegation to Independent Regulatory Agencies: Insights from Rational Choice Institutionalism', *Swiss Political Science Review* 8 (1): 96-102.
- Gilardi, F. (2003), 'Delegation to Independent Regulatory Agencies in Western Europe: A Cross-Sectional Comparison', paper prepared for the workshop on Delegation in Contemporary Democracies, ECPR Joint Sessions of Workshops, Edinburgh, 29 March to 2 April.
- Gilardi, F. (2004), *Delegation to Independent Agencies in Western Europe*, Unpublished PhD Dissertation, Universite de Lausanne.
- Gilardi, F. (2005), 'The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies

- in Western Europe', *Annals of the American Academy of Political and Social Science* 598: 84-101.
- Grossman, G. M. and A.B. Krueger (1995), 'Economic Growth and the Environment', *Quarterly Journal of Economics* 110 (2): 353-377.
- Harney, M. (1991), 'The Environmental Protection Agency', in *Environment and Development in Ireland*, J. Feehan (ed.), Dublin: The Environmental Institute, University College Dublin.
- Hogan, D. (1992), 'Plant Chief Backs Protection Agency', *The Irish Times*, December 1, p. 2.
- Huber, J. D. and C. R. Shipan (2002), *Deliberate Discretion: The Institutional Foundations of Bureaucratic Autonomy*, New York: Cambridge University Press.
- Huber, J. D. and C. R. Shipan (2004), 'Politics, Delegation, and Bureaucracy', working paper, University of Iowa.
- Kelman, S. (1987), *Making Public Policy: A Hopeful View of American Government*, New York: Basic Books.
- Kydland, F. E. and E.C. Prescott (1977), 'Rules Rather Than Discretion: The Inconsistency of Optimal Plans', *Journal of Political Economy* 85 (1): 473-491.
- Lodge, M. (2003), 'Keeping a Watchful Eye: Doctrines of Accountability and Transparency in the Regulatory State', working paper, The Policy Institute, Trinity College, Dublin, downloaded at [www.policyinstitute.tcd.ie](http://www.policyinstitute.tcd.ie).
- Maguire, B., M. O'Reilly and M. S. Roche (1999), *Irish Environmental Legislation*, Dublin: Round Hall Sweet and Maxwell.
- Majone, G. (1994), 'The Rise of the Regulatory State in Europe', *West European Politics* 17: 77-101.
- Majone, G. (1996), *Regulating Europe*, London: Routledge.
- Majone, G. (1997), 'Independent Agencies and the Delegation Problem: Theoretical and Normative Dimensions', in *Political Institutions and Public Policy*, B. Steuemberg and F. van Vught (eds), Dordrecht: Kluwer Academic Publishers.
- Majone, G. (2000), 'The Credibility Crisis of Community Regulation', *Journal of Common Market Studies* 38 (1): 273-302.
- McCubbins, M. D., R. G. Noll and B. R. Weingast (1987), 'Administrative Procedures as Instruments of Political Control', *Journal of Law, Economics, and Organization* 3 (2): 243-277.
- McCubbins, M. D., R. G. Noll and B. R. Weingast (1989), 'Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies', *Virginia Law Review* 75: 431-482.



- McDonald, F. (1993), 'Environment Agency Gets Green Light At Last', *The Irish Times*, 3 August, 1993, p. 2.
- McGowan, L. (1999), 'Environmental Policy', in *Political Issues in Ireland Today*, N. Collins (ed.), Manchester: Manchester University Press.
- McNamara, K.R. (2002), 'Rational Fictions: Central Bank Independence and the Social Logic of Delegation', *West European Politics* 25 (1): 47-76.
- Moe, T.M. (1982), 'Regulatory Performance and Presidential Administration', *American Journal of Political Science* 26: 197-224.
- Moe, T.M. (1989), 'The Politics of Bureaucratic Structure', in *Can the Government Govern?*, J. E. Chubb and P. E. Peterson (eds), Washington, DC: The Brookings Institution.
- Moe, T.M. and M. Caldwell (1994), 'The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems', *Journal of Institutional and Theoretical Economics* 150: 171-195.
- Page, E. C. (2001), *Governing by Numbers: Delegated Legislation and Everyday Policy-Making*, Oxford: Hart Publishing.
- Pollack, M. A. (2002), 'Learning from the Americanists (Again): Theory and Method in the Study of Delegation', *West European Politics* 25 (1): 200-219.
- Scannell, Y. (1995), *Environmental and planning law in Ireland*, Dublin: Round Hall Press.
- Seidman, H. and J. Gilmour (1998), *Politics, Position, and Power: The Dynamics of Federal Organization* (5th edn), New York: Oxford University Press.
- Shipan, C. R. (1997), *Designing Judicial Review: Interest Groups, Congress, and Communications Policy*, Ann Arbor: University of Michigan Press.
- Shipan, C. R. (1998), 'Keeping Competitors Out: Broadcast Regulation from the Federal Radio Act of 1927 to the Telecommunications Act of 1996', in *A Communications Cornucopia*, M. E. Price and R. G. Noll (eds), Washington, DC: The Brookings Institution.
- Shipan, C. R. (2000), 'The Legislative Design of Judicial Review: A Formal Analysis', *Journal of Theoretical Politics* 12 (3): 269-304.
- Shipan, C. R. (2004), 'Regulatory Regimes, Agency Actions, and the Conditional Nature of Political Influence', *American Political Science Review* 98 (3): 467-480.

- Shipan, C. R. and W.R. Lowry (2001)', *Environmental Policy and Party Divergence in Congress*, *Political Research Quarterly* 54 (2): 245-263.
- Smith, J. (forthcoming), 'Judicial Procedures as Instruments of Political Control: Congress' Strategic Use of Citizen Suits', *Legislative Studies Quarterly*.
- Taylor, G. (2001), *Conserving the Emerald Tiger: The Politics of Environmental Regulation in Ireland*, Galway: Arlen House.
- Taylor, G. and C. Murphy (2002), 'Environmental Policy in Ireland', in *Issues in Irish Public Policy*, G. Taylor (eds), Dublin: Irish Academic Press.
- Thatcher, M. (2002), 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation', *West European Politics* 25 (1): 125-147.
- Thatcher, M. and A. Stone Sweet (2002), 'Theory and Practice of Delegation to Non-Majoritarian Institutions', *West European Politics* 25 (1): 1-22.
- Wallsten, S, G. Clarke, L. Haggarty, R. Kaneshiro, R. Noll, M. Shirley and Lixin Colin Xu (2004), 'New Tools for Studying Network Industry Reforms in Developing Countries: The Telecommunications and Electricity Regulation Database', World Bank Policy Research Working Paper 3286.
- Weaver, R. K. (1986), 'The Politics of Blame Avoidance', *Journal of Public Policy* 6 (4): 371-398.
- Weingast, B. R. and M. J. Moran (1983), 'Bureaucratic Discretion or Congressional Control: Regulatory Policymaking by the FTC', *Journal of Political Economy* 91: 765-800
- Westrup, J. (2002), *Financial Services Regulation in Ireland – the Accountability Dimension*, Dublin: The Policy Institute, Trinity College Dublin.
- Whiteman, D. (1990), 'The Progress and Potential of the Green Party in Ireland', *Irish Political Studies* 5: 45-58.
- Wood, B.D. (1988) 'Principals, Bureaucrats, and Responsiveness in Clean Air Environments', *American Political Science Review* 82: 213-234.