

Credibility is in the Eye of the Beholder: the Heuristics of Bureaucratic Reputation in the EU

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Abstract

The power of non-majoritarian institutions depends on their credibility. This well-accepted claim has structured the debate on regulatory agencies for the last 25 years and is now seminal to the increasingly popular field of bureaucratic reputation. This paper pursues this ongoing scholarship and addresses the causal mechanisms of reputation on regulatory powers. Reputation is a set of beliefs about an organization's capacities, intentions and tasks that are embedded in its audiences. The literature on reputation and European agencies focuses on strategies adopted by regulators to sustain and develop their credibility but does not identify how credibility affects the exercise of regulatory powers. This theoretical paper addresses this gap by answering the question: what reputational mechanisms explain variation (or lack thereof) in the regulatory powers exercised by European agencies? The claim defended here is that reputation is a heuristic mechanism: it informs the principal's judgement vis-à-vis different organizational arrangements, a possible modification of the delegation of powers or simply giving its assent to a form of bureaucratic drift.

Keywords: Credibility, European Agencies, Bureaucratic Reputation, Heuristics

1 Introduction

Bureaucratic reputation is a burgeoning scholarship which has over the last 10 years gained considerable traction in the study of European agencies (Busuioc and Lodge 2015, 2016; Busuioc 2016; Baekkeskov 2017; Rimkutė 2018; Maggetti and Papadopoulos 2018). Bureaucratic reputation is defined as a set of beliefs about an organization's capacities, intentions, history, and tasks that are embedded in a network of multiple audiences (Carpenter 2002, 2010). This notion relates to the idea that the agency must demonstrate an ability to fulfil an assigned role and provide a type of information found nowhere else in the polity (Carpenter 2000). Logically, the question of credibility is central to the scholarship of bureaucratic reputation. The credibility – or credible commitment – thesis posits that the creation of non-majoritarian institutions is an important safeguard against 'factionalism', be it sectoral or national, and relies on the legitimacy of expertise (Majone 2002). Rather than relating to the principal's needs, the agency signals a credible commitment to solving regulatory problems. Following this logic, the independence of agencies is a sign of credibility, but the downside is that agencies are at risk to be blamed for regulatory problems (Hood 2010). Some of the literature on bureaucratic reputation however takes the argument of credibility further: a reputation of credibility is not only the guarantee of the exercise of regulatory powers, but can grant regulatory powers (Carpenter 2010).

Reputational approaches have only been applied to the case of European agencies to a limited extent. Crucially, these studies tackle the relationship between credibility and power only peripherally. European agency scholars have built on bureaucratic reputation to assess whether the logic of credible commitment carries from the decision to create a new agency, to actual practices (Busuioc, Curtin, and Groenleer 2011), while also drawing conclusions on the institutionalization of the agencies (Martens 2010; Groenleer 2009) as well as to understand how agencies build strategies to maintain their reputation (Christensen and Lodge 2016, Busuioc and Lodge 2015). However bureaucratic reputation may offer more conceptual leverage on European agencies than currently discussed. This paper pursues this ongoing scholarship and addresses the

causal mechanisms of reputation on regulatory powers. The literature on reputation and European agencies focuses on strategies adopted by regulators to sustain and develop their credibility but does not identify how credibility affects the exercise of regulatory powers. The claim defended here is that reputation is a heuristic mechanism: it informs the principal's judgement vis-à-vis different organizational arrangements, a possible modification of the delegation of powers or simply giving its assent to a form of bureaucratic drift.

This claim is informed by Carpenter's seminal study on reputation investigates the case of the Food and Drugs Agency (FDA) (Carpenter 2010). In this in-depth study, Carpenter underlines that the most important factor at play is the strategy of the FDA itself. Carpenter shows that the FDA built a reputation of credibility that allowed it to position itself as a protector of the public good and acquire a legitimate role in the policy process. The legislator had initially charged the FDA with the responsibility to guarantee drug safety. Over time, the FDA engaged in a form of mission creep, adding efficacy requirement to their decisions. These additional requirements were eventually incorporated into legislation as it had become too difficult for legislators to challenge the authority of the FDA (Maggetti and Papadopoulos 2018, 178–79). The mechanisms suggested by Carpenter are insightful as long as the case studied is a powerful agency with a success story. In this case, reputation is a powerful cause setting the agency on a path of expanding powers: reputation reinforces the role of FDA among regulates, reputation makes it politically impossible to not formally delegate further task. But the effects of reputation are depicted as so clearly powerful that it eschews the possibility to explore a finer understanding of causal mechanisms. Carpenter explains how reputation is formed and how it offers a rationale for the expansion the FDA's regulatory powers. But the precise causal mechanisms at play remain uncertain if one wants to identify other mechanisms than the agency's behaviour. The question of power is central to the case of the FDA, because the FDA used a reputation of credibility to extend its prerogatives. However, this behaviour would not have paid-off would the legislator have not been eventually receptive to these efforts and let mission creep happen.

Yet, the argument that reputation affects what the agencies is *de facto* allowed to do is logically sound. It links the perception of the organizational environment of an agency to the limits of its power. But a “snapshot” of an institution’s reputation cannot explain everything about the extent of its power, or why the principal would delegate more. In the causal mechanism between reputation and power a question remains unresolved: how does reputation become instrumental in the principal’s decision to reconsider the extent of powers and tasks delegated to an agency?

A crucial aspect of delegation in the EU revolves around the normative assumption that delegation of regulatory powers to independent European agencies threatens the institutional balance in the EU¹ (Majone 2002). The phenomenon of agencification in the EU constitutes an extreme case (Gerring 2006) for credibility since the delegation of regulatory powers follows a more informal path. The European Medicine Agency (EMA) for instance does not legally regulate the entry on the market of medicines but its opinions on drugs are strictly followed by European Commission. The stakes of credibility are quite high for EMA as its ability to *de facto* regulate can potentially be revoked. EU agencies are thus a fascinating case to investigate further the mechanism that is central to the relationship between power and regulation: as European agencies’ regulatory powers are based on more informal arrangements, the extent of power exercised is subject to variations without legal changes.

The purpose of this paper is to formulate the causal mechanism that articulates the relationship between reputation and power. To understand this mechanism a rejuvenated ontology of reputation must be developed. The claim defended here is that the causal relation between power and credibility has yet to be precisely unveiled. As a theoretical contribution, the limits of reputational approaches applied to European agencies are first discussed. Following-up, the core theoretical assumptions of bureaucratic reputation are laid out. In order to create the necessary theoretical leverage, I then turn the literature on reputation beyond political science and articulate a causal mechanism based on the cognitive process of heuristics.

¹ As laid out in the Meroni doctrine, developed by the European Court of Justice in the case Meroni v High Authority (1958)

2 Reputational Approaches to European Agencies

In the field of EU agencies, bureaucratic reputation has been largely investigated in terms of gains and losses, with for the most part, the literature focusing on strategies to cultivate and enhance reputation. Reputation can explain the micro foundations of an agency: reputation gains are incentives to adopt specific behaviours (Busuioc and Lodge 2015, 2016; Busuioc 2016; Rimkutė 2018). These reputational accounts focus on the set of various strategies that agencies will adopt to maintain, enhance or even correct a given reputation.

A first branch of the literature investigates reputation as a mean to manage accountability relationships. Christensen and Lodge (2016) propose that reputation is the micro-foundation of agencies' choices in giving an account of their activities. Busuioc and Lodge (2015) suggest that reputation structures accountability relationships. Reputational stakes condition the demand and the supply of accounts between account-holders and account-givers: the higher the reputational stakes, the more they will invest in reputational strategies in the relationship of accountability. The conclusions serve more specifically a refinement of the notion of accountability as developed further by Busuioc and Lodge (2016).

A second branch of the literature investigates the autonomy of agencies. This is the research agenda developed by Busuioc, Curtin, and Groenleer (2011), in their analysis of the interactions between autonomy and accountability in the functioning of the European Police Office (Europol). Credible commitments might explain the creation of a new agency but these commitments have to be sustained in the process of agency design and in actual practice for regulatory powers to be autonomously yielded by European agencies. Martens (2010) uses the concept of institutionalization to analyze how European agencies develop after their creation and if they behave autonomously in practice. He develops this approach using the case of the European Environment Agency (EEA), underlining the importance of trust and being a loyal partner. Groenleer (2009) compares variations in six European agencies– the EMA, the European Food Safety Agency (EFSA), the EEA, the European Monitoring Centre on racism and xenophobia (EUMC), the

European Union Agency for Law Enforcement Cooperation (*Europol*) and the EU's Judicial Cooperation Unit (Eurojust) to show that the genuineness of credible commitments affect the functioning of European agencies beyond agency design. Credible commitments have to be carried on beyond the delegation phase for an autonomous functioning of agencies, which raises question regarding the relationship of accountability between the principal and the agent. The study of accountability is thus primarily focused on the discrepancies between formal powers and observed practices of control (Busuioc 2009)

The literature on autonomy and accountability revolves for the most part around testing the principal's commitment. It underpins questions of power struggle over the mandate and tasks of an agency. However, whether focusing on autonomy or accountability, this literature only offers a partial leverage regarding the relationship between power and reputation. It does not investigate how the principal thinks and reflects upon the delegation of powers. In order to find a more comprehensive leverage on the causal mechanism, I suggest to leave the field of European agencies and turn to the literature which consolidated the reputational approach.

3 Bureaucratic Reputation as a Cause of Credibility and Power

Beyond EU agencies, the growing body of literature on bureaucratic reputation emphasizes a direct relationship between power and reputation (Carpenter 2001, 2010; Carpenter and Krause 2011). It builds on the idea that agencies' ability to perform regulatory tasks depends on credibility which, in turn, depends crucially on a unique reputation. "Uniqueness" in a reputational approach emphasizes the distinctive characteristics of an agency that differentiates it from similar organizations and establishes the exclusive character and unique activities of an agency. Uniqueness depends on the agency's functions and actions being widely acknowledged on the basis of its distinct performance (Carpenter 2010; Carpenter and Krause 2011) and the capability of the agency to deliver outputs that cannot be provided by another organization

(Carpenter 2001; Maor and Sulitzeanu-Kenan 2016). “Uniqueness” is a concept that is relative to the organizational environment of an agency. It logically follows that agency cannot thrive or survive in an environment in which conditions prevent the sustainability of a reputation of uniqueness. As Wilson notes “an organization is like a fish in a coral reef: To survive, it needs to find a supportive ecological niche” (Wilson 1989, 188). Building on this core idea reputational incentives have been used as the cause for an important array of bureaucratic behaviour: prioritization of tasks (Carpenter 2002), jurisdiction claiming (Maor 2010), the strategic use of communication (Gilad et al. 2013; Maor et al. 2013) as well as the agency’s defensive behaviour regarding its distinctive “jurisdiction/mission” (Wilson 1989, p. 182) or “regulatory dominion” (Maor 2010, p. 136). The concept of turf was also applied to European agencies (Busuioc 2015). Reputational concerns explain agencies’ behaviour to ensure their survival but do not account for how over time an agency’s powers will vary. “Reputation may not only have an instrumental value but be intrinsically valued too. Regulators may also have internalised the norm that reputation is a positive value and a source of pride – in other words that it is normatively appropriate to have a high personal or organizational reputation, according to the ‘logic of appropriateness’” (Maggetti and Papadopoulos 2018, 180). At most, reputation management reflects on ways an organization can mitigate the effects of its reputation – but it does not unveil how reputation has an effect on power. An agency’s “intentions” offer limited insights (Wagenaar 2017). Intentions to groom a reputation are fairly relevant to organizations but may not have the expected effect on expanding power. I thus suggest to turn to the seminal work of Carpenter on the FDA (2010) which links more clearly reputation and power.

The reputation of an agency is defined by the beliefs audiences have on the tasks an agency can (not) or should (not) perform. These beliefs in return enable or prevent the agency from performing those tasks. Organizational reputation is thus an analytical lens that informs us on the discrepancies between the *de jure* and the *de facto* tasks of an agency. It is in its essence a notion best apprehended by interpretive research designs in the sense that beliefs and images of the agency are magnified in the analysis, as opposed to empirical studies that measure relationships of control, accountability or independence. Early on, borrowing

from the social identity theory of psychology, organizational reputation has been described as taking its roots in image and esteem. Carpenter (2000) suggests that a reputation of uniqueness is what maintains the power of an agency. Without it principals are tempted to find alternatives to the agency's plans (Carpenter 2001). Reputational uniqueness is argued to be a guarantee of legitimate power of the agency. Later on, Carpenter (2010) developed more explicitly the causal link between power and organizational reputation in a detailed study of the development of the US Food and Drugs Administration (FDA). Through an analysis of the narratives that surround the agency throughout its history, Carpenter gives an account of the development and maintenance of the FDA's power. His book brings evidence to the claim that reputation, rather than regulatory arrangements explain the extent of the regulatory tasks of the agency and why regulatees observe rules and decision made by the FDA. While strategies of reputation maintenance are well known when the book comes out, the intricate link between power and reputation is an important contribution for the literature as it posits that audiences' beliefs condition both behaviour and power.

While measurements of reputation have been subsequently developed, using a large n in a comparative fashion (Lee and Ryzin 2019), Carpenter does not rely on a measurement of reputation. His understanding of the notion is that it is inherently studied within one case. Variations can be observed across audiences: regulatees and principals are both audiences but might have radically different images of the agency. But more importantly, variations are observed over time. An increase in esteem, for instance, is perceived comparatively to the image audiences previously had of the agency. Reputation is about symbols that structure of the organization's relationship. An account of an agency's reputation without prior knowledge of the specific organizational and regulatory contexts, does not produce the necessary leverage to understand power: two agencies with an extremely high esteem across all of their respective audiences, might not benefit from a similar power endowment with similar powers due to differences between their regulatory environments, their expected roles and the contingency of events.

Carpenter's epistemology is more articulate regarding the formation of reputation than it is regarding its effects on regulatory powers. In his work of the FDA, he developed four dimensions of reputation which

give an indication of the esteem audiences hold, even though it does not measure the causal effects of reputation:

- *Performative reputation* – Can the agency do the job?
- *Moral reputation* - Is the agency wary of the interests of the audiences?
- *Procedural reputation* - Does the agency proceed according to rules and norms?
- *Technical reputation* – Independently of performative considerations, does the agency have the capacity to deal with complex environments?

Carpenter posits that the four dimensions cannot be at their highest point at the same time, as each dimension is a facet of reputation that jeopardize another one. The argument proffered by Carpenter is that specific “formula” of those four dimensions can increase the agency’s power, if they are well-suited to the context. For instance, a high esteem for the procedural dimension of an agency, might not engage audiences to follow the rules, if they give more importance to the moral dimension of reputation. Another example: in a very dense organizational environment, with an important number of regulatees, the technical dimension might be of paramount importance to audiences who want rules to be made fast, therefore scoring high for an agency in the performative dimension might thus not increase nor maintain power. In sum, the four dimensions are what *makes* an agency credible or not, but this approach leaves an important gap: the mere existence of a reputation of credibility is not sufficient to be a convincing mechanism.

The ontology and the epistemology of reputation must be reconsidered in order to overcome the shortcomings of Carpenter’s approach. Reputation is not a scholarship limited to political science and has indeed raised the interest of scholars in Philosophy (Origgi 2012, 2017), economics (Kreps and Wilson 1982) and Communication (Martini 2017). Their approaches, while not discussing power present the concept of reputation under a new light, underlining the nature of reputation as a form of information. Building on this new episteme, useful expectations regarding the causal mechanism can be inferred from how this relates a heuristic process.

4 Heuristics of Bureaucratic Reputation

4.1 Ontology of Reputation

Reputation has been defined as a form of social distinction (Bourdieu 1984), with a focus on reputability as a desirable end to reach. A similar understanding is found in the concept of honour (Post 1986). More recently reputation has been described as an effective mechanism of social control in natural societies, both in cooperative and in competitive settings, with many evaluative properties of reputation can be attributed to groups or organization (Páez 2018, 471). Arguably, the concept of bureaucratic reputation as used by European agencies scholars is the closest to Axelrod's use of the concept (1985) as a cooperative strategy that encourages other players to reciprocate cooperative behaviour. Yet, as developed earlier, and with regards to regulatory powers this understanding of reputation is limited in its explanatory leverage.

Reputation in the social sciences originates in Adam Smith's liberal social theory. For Smith a "good reputation" signals potential business partners that one is trustworthy. While this conceptual approach assists in adopting a specific strategic behaviour, it offers more ontological depth. Smith sees reputation as a type of information readily available to agents who need to make-up a judgement. In this sense, reputation is a form of evaluated information (Origgi 2017) that surmise the many judgements and interpretations emitted about a specific economic actor. In the recent work of Gloria Origgi the notion of reputation is given a crisp and comprehensive definition: "Reputation is a special kind of social information about the value of people, systems and processes that release information" (Origgi 2012, 401).

Reputation, seen as a type of information offers the key to articulate a causal mechanism on regulatory powers. Reputation is social information that informs what credibility should be given to the knowledge produced by the agency. It is arguably used by all audiences who have knowledge of the work of the agency. I thus suggest to learn from cognitive sciences to understand the cognitive process of judgements based on reputation. Cognitive sciences, especially social psychology can be very insightful to the study of public

policy. The development of research expectations regarding institutions from theories based on individual behaviours is well accepted today, due to the convincing approach laid out by Jones (2001, 2002, 2017). While organizations can be seen as an expansion of human capacities, there is no reason to believe that they would not channel many facets of human cognition. Organizations process information from their environment in a similar fashion than humans. Their interpretation of the information is not so much bounded by organizational limits (albeit a possible factor) as they are by human ones (Jones, 2001: Chapter 6). A comprehensive epistemology of reputation should thus focus on the cognitive processes at play when judgements are made about the agency, I thus explore the heuristic aspect of reputation.

4.2 The Heuristics of Reputation

Heuristics are the principles, processes and sources of cues for judgement (Kahneman 2003). Studying reputation as a cause of variations in power revolves around the heuristic process that occurs when one draws conclusions about what the agency should be able to do (Tversky and Kahneman 1974; Kahneman, Slovic, and Tversky 1982). This form of heuristics is found in attribution theory, which is concerned with the cognitive process individuals go through as they witness events and the role played by protagonists. In a way it is a theory of naïveté: it posits that individuals process information in an intuitive manner and draw inferences about actors and their social environments (Ross and Anderson 1982). Attribution theory was first fleshed-out by Heider (1958), developed by Jones and Davis (E. E. Jones and Davis 1965) as well as Weiner (1974). Judgements are thus based on a social inference: “The observer of an episode forms inferences about the attributes or properties of the situations” (Ross and Anderson 1982, 130). But reputation can only be precisely linked to power if this information is “used” to make a judgement that informs organizational change. To imply causality on power, the individual or institution going through this process must have the power to act upon organizational change that will affect the agency. Therefore a comprehensive epistemology of reputation should not be exclusively concerned with why is a reputation

good or bad, but with how reputation becomes the basis of a judgement regarding organizational and regulatory change.

While the initial work of Tversky and Kahneman was solely focused on heuristic in the domain of judgement about uncertain events, the concept was more recently extended to *attributes*, with the heuristic process of *attribute substitution* (Kahneman and Frederick 2002). “A judgement is said to be mediated by a heuristic when then individual assesses a specified target attribute of a judgement object by substituting a related heuristic attribute that comes more readily to mind [...] The word *heuristics* is used in two senses in the new definition. The noun refers to the cognitive process and the adjective in *heuristic attributes* specifies the attribute that is substituted in a particular judgement” (Kahneman 2003, 707). The reputation of an agency, as form of information assists in forming judgements regarding the future of the agency, is a *heuristic attribute*. The cognitive process at play here is forming a judgement regarding an organization by using a *heuristic attribute*, reputation which is shaped by the multiple interpretations’ audiences make of said organization.

The claim here is that a specific heuristic process occurs for reputation to have an effect on power: the principal relies on reputation as a heuristic attribute to draw conclusions on the extent of delegation that is adequate. In this sense specific form of heuristics can be inferred: reputational heuristics, a process by which reputation is a useful type of knowledge about an institution in order to form a judgement of what the agency *should* be able to do. Reputation cannot, on its own, change the nature or the extent of the powers an agency is endowed with. For the causal mechanism to be set in motion, reputation is the information that the principal uses to draw conclusions regarding what can be made out of an agency.

Two cognitive processes are thus important to explore bureaucratic reputation as a cause of power:

1. Audiences make social inferences to formulate a judgement about the agency. These form different images (Carpenter 2010) which consider as whole forms reputation, a form of social knowledge about the agency.

2. The principal of the agency uses this social knowledge as a heuristic attribute to formulate its own judgement about the agency and draw conclusions vis-à-vis different organizational arrangements, a modification of the delegation of powers or simply giving its assent to a form of bureaucratic drift.

5 Discussion: Credibility and Reputation as a Means for the Principal

Credibility and reputation taken as a form of social information are means to make-up judgements vi-a-vis agencies, a specific form of heuristics. These reputational heuristics take further the logic of credibility. Where the principal delegated regulatory powers to mark credible commitments, reputational clues informs the principal on how to adjust delegation to keep commitments credible. But, the principal may have a variety of motivations to engage in reputational heuristics. The maintenance of credible commitments over time might be one of them, but the issue of credible commitments does not have to be central to reputational accounts of European agencies. *Per se*, variation in reputation does not force the occurrence of the causal mechanism, but informs the decision-making process of the principal, who may due to a shift in reputation surmise that change is necessary, for instance, following a sequence of events in which the agency is at the center stage. The principal can also decide that over time, a regular re-evaluation of an agency is agreeable and thus rely on reputational heuristics. But the principal may also consider that in spite of reputational cues, change is not welcome. Reputational cues do not inform the micro-foundations of the principal's behaviour but the only the cognitive process that explains this behaviour. While the causal mechanism is firmly grounded in the principal's cognitive processes, reputational cues do not preclude the micro-foundations of the principal's behaviour, only the heuristics that characterize this behaviour.

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