

Institutional Change in the European Union: Maastricht and the European Parliament

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Abstract

The Maastricht Treaty introduced substantial reforms in numerous directions; analysts and practitioners have yet to be agreed, however, on the implications of many of those innovations. One important example is the co-decision legislative procedure. Contrary to the original 'conventional wisdom', recent 'revisionist' scholarship has suggested that co-decision may have significantly weakened the law-making role of the European Parliament. In this paper, I examine these alternative claims. Drawing on both a spatial model of European legislative bargaining and empirical evidence from the actual operation of co-decision, I argue that the revisionist claims are unsupported. Implications of these findings for the current and future status of the Parliament, as well as for the study of institutional change in the EU more generally, are evaluated in the conclusion.

Acknowledgements: The author would like to thank Anthony Mughan, Dean Lacy, Janet M. Box-Steffensmeier, two anonymous readers, members of the Political Science Departments at the University of Nebraska, Georgia State University, and Trinity College Dublin, and members of the Government Department at the LSE for comments on the ideas developed in this paper.

More than five years after the signing of the Treaty on European Union (TEU) at Maastricht, the motives behind the Treaty, and its ultimate implications, remain a matter for considerable dispute. Some scholars, echoing the concerns of more 'Euro-sceptical' voices elsewhere, have seen the Treaty as constituting a decisive move towards a federal European state (McKay 1996). Many more have been inclined to view the treaty as forming another distinct, but limited advance in the evolving political and economic integration of much of Europe (Baun 1996; Dinan 1994; Lodge 1993; Scully 1997d). Few have been willing to accept the claims of the British government, made immediately after the conclusion of the negotiations, that Maastricht had been a decisive defeat for those with federalist ambitions for the continent.

In one area, however, this view of the TEU has received surprising support. Several of the institutional innovations of the treaty had implications for the European Parliament (EP). The Parliament was granted the right of approval over the Commission nominated by the national governments.¹ It also gained in influence as a result of the cooperation and assent legislative procedures (see below for details) having new items of law placed under their competence. Finally, and to many eyes most significantly, the 'co-decision' procedure was created, to cover about one-third of European laws. Co-decision, for the first time, granted Parliament an absolute right of veto over legislation. Most observers and practitioners have regarded this as constituting a substantial advance in the EP's legislative status (Duff 1994; Smith 1995). Indeed, a central part of the EP's lobby to the current Inter-Governmental Conference (IGC) reviewing Maastricht has been an attempt to have the procedure extended over most other EU laws - a reflection of Parliament's belief that co-decision strengthens the policymaking role of the EU's only elected institution.

The basis for this developing 'conventional wisdom' regarding the co-decision procedure, however, has been strongly questioned. A vigorous 'revisionist' school of thought has recently entered the fray. Headed by George Tsebelis and Geoffrey Garrett, and employing some of the methodology of the rational-choice variant of the new institutionalism, these scholars have argued that the introduction of co-decision likely weakened, rather than strengthened, the legislative influence of the EP. Specifically, they suggest that while the procedure enhanced the *nominal* powers of the chamber via the granting of a veto, in practice, it greatly diminished the Parliament's *effective* role by depriving it of the opportunity to engage in 'legislative agenda-

setting' (Garrett 1995; Garrett and Tsebelis 1996; Tsebelis 1994, 1995, 1996; Tsebelis and Garrett 1997).

The debate between these alternative viewpoints is important for several reasons. First, it questions understandings of the current institutional balance in the EU. How significant an actor is the EP - does the widely-posed 'democratic deficit' still persist (indeed, was it extended by co-decision), or did Maastricht mark a major advance for the chamber? Second, and relatedly, it raises the issue of how the TEU - or at least that element pertaining to co-decision - should be interpreted. Did those signing the treaty ever intend to increase the Parliament's powers, did they perhaps diminish them by accident, or was co-decision, as George Tsebelis has implied, an elaborate sleight-of-hand, perpetrated to diminish the EP's real powers under the cover of apparently extending them?² In that respect at least, were the British claims about Maastricht correct? Thirdly, the debate is of direct relevance to the 'Maastricht II' IGC. The Parliament has sought to persuade the conference to extend co-decision across the vast majority of European legislation. If the revisionist case is well-founded, the EP risks scoring a spectacular 'own goal'. Fourth and finally, there is the question of how what are the most appropriate means by which to study institutional changes in a setting like the EU.

In this paper, I address these issues by examining the on-going debate regarding co-decision. I explore the internal logic of the revisionists' models of EU legislative bargaining, but also examine their external validity via available empirical data on the operation of co-decision in the last four years. This leads me to take issue with Garrett and Tsebelis on two counts. First, I show the formal model they specify of the co-decision procedure to be incomplete and seriously flawed. Second, their argument is shown not to stand up to empirical test. Thus, neither theoretical nor empirical grounds can be found to support the contention that co-decision diminishes the EP's legislative influence. To the contrary, it enhances the EP's power relative to the other EU governing institutions. The implications of these findings for the EP and its future, as well as for the study of institutional change, are discussed in the conclusion.

Co-Decision in Context: Legislative Procedures in the EU³

Understanding the controversy about the implications of co-decision requires a knowledge of the

various procedures under which EU legislation is processed.⁴ Prior to the 1986 Single European Act (SEA), all EU legislation used 'consultation'. Under this procedure, after the Commission proposed an item of legislation, the EP was entitled to offer its opinion before the Council of Ministers came to a final decision on it. The Council could approve the Commission version by a Qualified Majority (roughly 5/7 of the weighted votes in the Council), but only amend it by unanimity.⁵

The requirement that the EP's opinion be received before legislation passed was made explicit in the 1980 *Isoglucose* ruling of the Court of Justice, which stated that "consultation of the Parliament in the cases provided for by the Treaty therefore constitutes an *essential* formality, disregard of which means that the measure concerned is void".⁶ This appeared to give Parliament a delaying power - it could simply refuse indefinitely to offer its opinion - which with skillful use was potentially more than trivial. The Parliament might delay offering its opinion until the Commission agreed to modify its proposals in line with the EP's wishes. Nugent indicates that this power has, in fact, been employed on several occasions (1994:176), while Corbett et al document an example of the Commission changing a proposal (on the issue of economic and monetary union) in the face of a threatened Parliamentary delay (1995: 193). However, the EP's ability to exploit this potential to its fullest may in practice be limited, as Smith notes, by the fact that: "MEPS are generally in favour of further integration and do not want to be seen as putting a brake on Community legislation" (Smith, 1995:83). In addition, a more recent judgement of the Court of Justice has stated that indefinite delay is not a legitimate Parliamentary tactic on legislation designated as 'urgent' by the Council (Corbett 1996:39-40). But the more general point is that under the consultation procedure the EP had no formal means other than delay to alter influence legislation. To exert further influence required *persuasion* of the Commission or national governments in the Council.

After the SEA, the legislative arena became more complex. While consultation was retained for the majority of bills, two new procedures were introduced for some legislation. For most items relating to the 'single market' initiative (totalling around one-third of legislation at the time), the 'cooperation' procedure was to be used. While the Commission retained its monopoly of proposal, and the EP still had the potential to delay legislation, other aspects of this procedure differed from consultation. Legislation now proceeded through two readings. The

first was similar to consultation except that the Council's decision now constituted only a 'common position' from which to work, rather than the final outcome. In a second reading, this common position was re-considered by the EP, which could approve it (in which case it became law), propose amendments (which, if approved by the Commission, could be overturned only by a unanimous Council but could be accepted by a qualified majority of member states), or reject the common position (in which case the legislation would fail unless the common position was re-affirmed unanimously in Council).⁷ While many in the EP had hoped for more ⁸, this procedure was clearly a step forward for the Parliament as a legislative actor, allowing it on many occasions to significantly influence important legislation (Corbett 1989; Tsebelis 1994).⁹

The SEA also introduced the 'assent' procedure, in which the EP had no delay or amendment ability, but did get a straight approval/disapproval power over a few items of legislation. These could not enter into law without the positive endorsement of the EP. The scope of the assent procedure was, as indicated earlier, widened by the TEU, and now encompasses eight areas of law, mostly relating to association agreements with third countries and the accession of new member countries to the Union (Corbett 1994:225).

After Maastricht, however, much legislation was now to be processed under a fourth procedure, 'co-decision'. Co-Decision laws were, unlike previously, designated as joint Acts of the Parliament and Council (rather than of the Council alone). The procedure operated in a similar manner to cooperation, unless, in the second reading the EP rejected the common position outright, or proposed amendments which, after consideration by the Commission, failed to be accepted by the Council.¹⁰ Under these circumstances, a Conciliation Committee would be established to try to reach a compromise. (The Conciliation Committee is composed of 15 members of the EP and representatives of the 15 member state governments, who are generally joined by the Commission member responsible for the legislation (Miller 1995)). If a compromise was reached, then it would require ratification separately by both Parliament and (via qualified majority vote if necessary) the Council of Ministers. If agreement could not be reached in the committee, then the Council had the power (by qualified majority) to re-affirm its earlier common position, although possibly itself amending this to include some of the amendments put forward by the EP at second reading. This re-affirmed common position would then become adopted as law unless the Parliament explicitly rejected it within six weeks.

Interpreting the Implications of Co-Decision: The Revisionist Argument

George Tsebelis has claimed that four main effects result from the use of the co-decision procedure instead of cooperation (Tsebelis 1995). The first, (and the only one seen as enhancing the powers of the EP), is that under co-decision the Parliament has an absolute power of veto, whereas under the cooperation procedure it required the support of at least one member state in the Council to have the veto upheld.¹¹ The second is that disagreement between Council and Parliament in second reading over a single amendment to a bill leads to the conciliation committee being created under co-decision, whereas under cooperation the Council could only modify EP amendments supported by the Commission when it was unanimous. Third, in some areas put under co-decision (law relating to culture, and research and development), the Council can only approve legislation by unanimity, therefore ensuring, as Tsebelis puts it, that the EP must, "seek agreement with the *least favourable member of the Council*, instead of disregarding it and trying to come to terms with a qualified majority".¹² Finally, and most importantly, he states that at the end of the co-decision procedure, the Council can make a 'take-it-or-leave-it' offer to the EP, thus giving the Council the agenda setting power that, under cooperation, had belonged to the EP (subject to approval by the Commission). Tsebelis concludes that:

While most of the literature makes much of the unconditional veto power attributed by Maastricht to the European Parliament...this veto was offered at the expense of agenda setting powers of the Parliament...the trade-off leaves the Parliament weaker under the co-decision procedure instituted by Maastricht than under the cooperation procedure instituted by the Single European Act (Tsebelis, 1995:5).

This argument has been supported (partially) by Corbett (1994:209-210), Marks et al (1996:364) and (more wholeheartedly) by Garrett, who goes so far as to suggest that, "While it would be inappropriate to characterize co-decision as the effective return to pure intergovernmentalism in the EU, it is nonetheless likely that the new procedure will put a brake on the pace of market integration in the coming years" (Garrett 1995:291; see also Garrett and Tsebelis 1996; Tsebelis and Garrett 1997).

These are strong and important claims. They run totally counter to the conventional wisdom after the signing of the TEU, which was that co-decision constituted a considerable

advance for the EP. Duff, for example, opined that, "Maastricht marks the point in the Community's development at which the Parliament became the first chamber of a real legislature... The co-decision procedure means that it has now come of age as a law-making body" (Duff, 1994:31). In making their claims, Tsebelis and Garrett not only reject this viewpoint, but they also imply that the EP has been completely wrong-headed in attempting to have co-decision extended in place of cooperation in the current IGC. These claims demand further scrutiny.

The Revisionist Argument Assessed

Tsebelis and Garrett's argument is grounded in their contention that the veto power possessed by the EP under co-decision will be of little practical importance, as that veto will most often only be available in circumstances where using it would leave the EP worse off. I will address the different elements of their argument in turn, before exploring whether it has any empirical support.

First, there is Tsebelis' suggestion that the EP is disadvantaged by the Conciliation Committee created to address Parliament-Council disputes on the second reading of legislation. This appears to be advancing an argument that is manifestly misleading. In both cooperation and co-decision second readings, EP amendments that win support from the Commission must then be accepted by a qualified majority in the Council if they are to become law. The important distinction between the two procedures, however, is surely that under cooperation, when a qualified majority in favour of an amendment could not be generated and unanimous agreement could not be found in the Council to overturn the amendment, legislation could not go anywhere - and after three months it would become void. In similar circumstances under co-decision, this stalemate can potentially be avoided. The legislation is passed to the Conciliation Committee to attempt to reach an agreement. It seems perverse to label this as a *reduction* in the EP's powers. Indeed, whereas under cooperation the EP's influence was entirely conditional on it winning agreement from the Commission, the conciliation committee is made up of EP and Council representatives, with the Commission being largely uninvolved in the process.¹³

On Tsebelis' second point, it is the case - quite obviously - that it will generally be more difficult for the EP to win agreement from all Council members on those co-decision matters

requiring unanimity, than it would be to achieve accord with a qualified majority. But the force of this aspect of his argument - that the unanimity requirement for certain co-decision items thereby weakens the EP's ability to secure desirable legislative outcomes - is entirely dependent on a counter-factual claim which Tsebelis does not (indeed, *cannot*) show to be valid. This claim is that the issues which are placed under this restricted form of co-decision would otherwise be under the original version of cooperation, with majority voting in the Council of Ministers. This seems highly unlikely. Given that the member states have insisted on retaining their right of veto over this legislation, the relevant comparison must be with other legislative procedures where a national veto power exists - such as some of the items processed under consultation, or a revised cooperation procedure in which unanimity were required. Seen in this light, the restricted version of co-decision, which also grants Parliament a veto over legislation, can hardly be regarded as a diminution of the EP's influence.

These, however, are less important matters. The core of the Tsebelis and Garrett thesis is their claim that the co-decision procedure allows the Council of Ministers to make the Parliament a 'take-it-or-leave-it' offer. Under these circumstances, they suggest, "it is unlikely that the Parliament will veto Council decisions" (Garrett 1995:295). To understand how this conclusion is reached, I will replicate their formal model of legislative decision making, and their examination of the co-decision procedure.¹⁴

The model posits legislation as being the outcome of sequential interactions between the Council, Commission and Parliament. These are conceptualized as involving bargaining along a uni-dimensional issue space, with each actor having fixed, euclidean preferences around a given ideal point.¹⁵ The Commission and Parliament are modelled as single actors; the Council is simplified into 7 members, with a qualified majority being achieved when any five out of the seven agree to a proposal.¹⁶ The model also includes a position for the status quo. Actors are presumed to agree to any option that makes them better off (ie. is closer to them in the issue space) than the status quo, and when choosing between options, to select that which is closest to their ideal point.¹⁷

The main portion of Garrett and Tsebelis' analysis employs the following distribution of preferences among the actors:

Figure 1 about here

The authors argue that, "Using this analytic framework, it is the *last two stages* of each EU decision making process that are pivotal: *which actor makes the final proposal? to whom? under what voting rules?*" (Garrett and Tsebelis 1996:281. Emphasis added). Their argument is grounded in a more general view, based in part on implications drawn from the 'social choice' literature, that greater power often devolves to the agent who can make a final proposal or select the options for choice - the agenda setter - than one who is able to choose only among given, and thus perhaps unfavorable, options (Tsebelis 1995; Riker 1982).

Tsebelis' earlier argument - that under the cooperation procedure the EP is able to set the agenda (subject to approval by the Commission) - is then re-iterated.¹⁸ The Parliament and Commission, it is suggested, should act strategically to secure the best outcome that will be approved by a qualified majority in the Council. Given the actor preferences represented above, this would mean the EP (supported by the Commission) putting forward amended legislation (in second reading) equivalent to a position slightly to the left of the ideal point of actor 6 - "the most integrationist policy that the pivotal government 3 prefers to the status quo" (Garrett and Tsebelis 1996:285). This would be approved by actors 3-7, as it is closer to their ideal point than is the status quo. The Council could not offer an alternative proposal, as that would require unanimity, and clearly, there is no point that would be preferred by all Council members to the EP/Commission proposal. The cooperation procedure thus appears to offer the chance for the EP to achieve an outcome substantially closer to its ideal point than that pertaining beforehand.

As regards co-decision, Garrett contends that, "the roles of the Council and Parliament are effectively reversed from the cooperation procedure. In the co-decision endgame, if the conciliation committee cannot agree to a joint text, agenda setting power reverts to the Council which can make a proposal to the Parliament which it must accept or reject unconditionally" (Garrett 1995:303; see also Garrett and Tsebelis 1996:289-93). In other words, it is the Council, and not the Parliament, which gets to act as the legislative agenda-setter now. He goes on to argue that, "power reverts to the pivotal government in the Council... government 3". The outcome under co-decision will thus, it is suggested, be at the ideal point of 3, a proposal which the EP would not reject, as it would be preferred by a majority of EP members to the

status quo. Nonetheless, this outcome is obviously much less favourable for the Parliament than that demonstrated for cooperation.

Were Garrett and Tsebelis' argument to be sound, it might provide a spectacular rebuttal of the conventional wisdom regarding co-decision. However, their argument is flawed - and not just because their model presents what is obviously a highly simplified version of EU decision making. As important, the result claimed is invalid even *within* the logic of Garrett and Tsebelis' own model. Demonstrating this requires a somewhat fuller representation of the co-decision procedure than Garrett and Tsebelis present. Specifically, one needs to go back two stages further, to the formation of the Council's 'common position' at the end of the first reading. This is crucial, because if the Council does attempt to set the agenda at the end of the procedure, it *must* do so by re-affirming its previous common position. At the third reading stage, there is no 'clean slate' for the national governments to work with (Scully 1997b). Rather, they have but three choices - deciding not to press on with legislation and thus accepting the status quo, proposing their former common position unamended, or proposing it in a form amended to include some EP second reading proposals (Corbett et al 1995:199-202; Nugent 1994:316-322). Thus, it is essential to understand how the common position might be agreed earlier on.

Retaining the original positioning in the model of the actors and of the status quo, and assuming similar motives on the part of each of the actors, one can demonstrate that under these circumstances the common position will *never* be agreed at the ideal point of actor 3. The Commission/Parliament proposal in first reading can be agreed by the Council by qualified majority, or amended by unanimity. So again, the Commission and Parliament should make a proposal just to the left of actor 6. Actors 5, 6 and 7 will prefer this outcome to one at the ideal point of 3 and so should support it. Actor 3, whose support is needed for a qualified majority to be formed, prefers this outcome to the status quo, which is the only available alternative to it, as there is not point which could be agreed by all Council members with which to replace the Commission/Parliament proposal. Actor 3 should then accept the proposal. Thus, on the logic of this model, there is no possibility for the common position to be agreed at the ideal point of 3. A 'take-it-or-leave-it' offer by the Council to the Parliament on such terms cannot, therefore, be made.¹⁹

But the problems with their use of the model go still deeper. This is because, (again on their own assumptions about actor behavior), even if a common position *could* ever be agreed at the ideal point of 3, the final legislative outcome would likely still not be the one that Garrett and Tsebelis predict. Under this scenario, as legislation enters the second reading, the EP and Commission should, as before, coalesce behind an amendment slightly to the left of actor 6. What Garrett and Tsebelis' argument requires the Council to do at this stage is to reject the EP/Commission proposal, and then re-affirm the earlier common position by qualified majority after failure in the Conciliation Committee. Yet, on their own model's logic, this is improbable. Actors 6 and 7 (and probably 5, depending on the precise location of the common position) will not wish to re-affirm the common position, as they prefer the EP/Commission proposal, and so would wish to amend the common position. Actor 1 will not support the common position, because it prefers the status quo. So a qualified majority to re-affirm may well be unattainable. The Council members will split three ways between the status quo, the common position and the EP/Commission proposal. In these circumstances, there may be a stalemate situation in the Council - one cannot predict the outcome for certain.

The upshot of this is that the model used by Tsebelis and Garrett offers no theoretical support for their claim that co-decision will lead to less favourable outcomes for the EP than would cooperation. Their use of the model to predict legislative outcomes under co-decision rules is simply incorrect, because they have failed to address what those rules actually allow. Their model suggests that the common position will be agreed at a similar point to that in the cooperation procedure, but that the EP has the additional security of a veto to prevent the passage of any legislation it is unhappy with.

A more general evaluation of the co-decision procedure suggests a number of other reasons to dispute the Tsebelis and Garrett view. First, their argument about the agenda setting power of the Parliament under cooperation glosses over the fact that this power is *entirely* dependent on the EP winning support from the Commission. While the model indicates this as being likely, in practice the Commission has consistently failed to endorse over half of the Parliament's second reading amendments under this legislative procedure.²⁰

Second, the positioning of the actors' ideal points and the status quo in the model seems almost designed to play down the fact that the absolute veto power given the EP under co-

decision ensures that it can never be made *worse* off, whereas under cooperation this could occur by unanimity in the Council (or even qualified majority if the EP had failed to win Commission support). A positioning of the actors like that shown in Figure 2 would imply very different things about the relative worth of cooperation and co-decision to the EP.

Figure 2 about here

With this ordering of preferences, the Parliament would be very grateful for its veto power, as a decision even by a unanimous Council would be likely to make it substantially worse off.²¹

Finally, it must be re-iterated that any 'take-it-or-leave-it' offer from the Council can only ever be made after other stages of possible agreement have been gone through. Accord on legislation may be reached during the second reading by a qualified majority in Council supporting the common position as amended by the EP, or if the Parliament accepts the common position unamended. Agreement can also occur in the Conciliation Committee. Only if these avenues fail may the Council re-affirm the common position - doing so either with or without some of the EP's various second reading amendments included. And the EP can still veto any legislation with which it is unhappy. Council members should realize, therefore, that any attempt to make a 'take-it-or-leave-it' offer would require them to risk the benefits they would gain by accepting legislation at an earlier stage, in the hope that the EP will not veto it. In a world much more uncertain than Garrett and Tsebelis' model, national governments may often find it simply not worth the risk.

Empirical Evidence on Co-Decision

Garrett and Tsebelis originally eschewed the use of empirical evidence to support their argument - commenting that "Unfortunately it is not possible at this time to test [our] argument empirically...as yet there are no documented accounts of legislation passed pursuant to it" (1996:291). More recently, they have presented a highly incomplete analysis of the relative success of EP legislative amendments with the Commission and Council under co-decision from 1993-95 compared to the cooperation procedure between 1987 and 1991. Nonetheless, there is a growing body of empirical evidence from the first four years of the operation of co-decision.

Perhaps not surprisingly, the evidence available offers scant support for the revisionist case.

This evidence comes in several forms. First there is aggregate data on the passage of laws under co-decision. Of the first 49 draft laws successfully completing the procedure, 30 were agreed in second reading without the Conciliation Committee ever being convened. The other 19 cases witnessed the Committee reaching agreement on a text which was then approved by both the Council and Parliament.²² By contrast, in only *one* instance in the first two and a half years of the operation of the procedure did the Council attempt to re-affirm its common position after failure in the Conciliation Committee, and thus seek to present the EP with a 'take-it-or-leave-it' proposition. The EP's response was to reject the legislation (on a proposal to liberalize European voice-telephony regulations) by an overwhelming majority.²³

Second, the introduction of co-decision does appear to have increased the Parliament's success in having its legislative amendments accepted by the Commission and the Council. Corbett et al state that "early indications are that [the rate of adoption of amendments] is considerably higher [under co-decision]" (Corbett et al 1995:204); Tsebelis and Garrett (1997) are unable to offer convincing contrary evidence.

This is strong evidence against the Tsebelis and Garrett argument. Nonetheless, one potential counter-argument is that the *threat* of the EP being presented with a 'take-it-or-leave-it' option could have an effect in making the EP more likely to back down once the conciliation stage has been reached.²⁴ In other words, the evidence presented above might be distorted by a degree of 'anticipatory compliance' on the part of the Parliament, in the face of the potential threat. However, if this were true, then one would presumably expect to see the Parliament giving way consistently in conciliation. Yet this is not the pattern witnessed in the committee. In his analysis of the first 26 conciliation committees, Miller finds that the agreed text predominately corresponds to the common position on 12 occasions (or 46%), to the EP second reading version 6 times (23%), and was a genuinely joint text in the other 8 instances (31%). While it would be unwise to draw firm conclusions from a relatively small number of cases, the Council does not appear to be dominant in the Conciliation Committee. Individual cases, such as the Packaging Directive, where the EP insisted on, and achieved, 19 amendments in the committee, provide further support for this conclusion.

MEPs certainly appear to believe that co-decision increases their legislative powers.

Within the chamber, a study of participation levels has revealed that even after other factors (like the scheduling of votes, and the importance of particular policy issues) have been taken into account, MEPs still turn out in greater numbers for co-decision votes than for cooperation ones (Scully 1997a). Furthermore, the EP's own Committee on Institutional Affairs has recommended that the procedure be extended to cover many areas of legislation currently under cooperation and consultation.²⁵ Meanwhile, the only national government in the current IGC which originally refused to countenance any extension of co-decision was the UK, that government which was most hostile to closer integration generally, and greater powers for the EP in particular.²⁶ Unless Tsebelis and Garrett would suggest that these countries are practicing some extreme form of strategic misrepresentation of their true preferences, or that both they and EP members possess an ignorance in matters of institutional design which fits very oddly with the sophisticated behavior they are expected to show when passing legislation, it would appear that four years experience with co-decision has led practitioners to a position directly contrary to that held by the revisionist scholars. The empirical evidence thus does nothing to support the Tsebelis and Garrett case, or to rebut the theoretical arguments against it advanced above. The co-decision procedure clearly marks an advance in the powers of the Parliament, and MEPs wishing to strengthen the Parliament's influence are surely correct to argue for its extension over more areas of law.

Conclusion

The Maastricht Treaty had a major impact on the European Parliament by increasing its powers in several respects. The development of the co-decision procedure was clearly a part of that process, rather than the step backwards for the EP that Garrett and Tsebelis have claimed it to be. Tsebelis has asked "Will Maastricht Reduce the Democratic Deficit?". Insofar as the EU's 'democratic deficit' is understood as including the absence of powers for the elected Parliament, the conclusion must be a 'yes'. Changes to the co-decision procedure itself, such as making the QMV requirements in the Council less stringent, and preventing the Council from ever making any form of 'take-it-or-leave-it' offer to the EP, which are also being discussed at the IGC, might enhance the Parliament's position yet further. Nonetheless, a definitive analysis of any such reforms, as with other example of institutional change, must be grounded in a careful

analysis of all available evidence; it cannot be based purely on abstract applications of basic notions of 'agenda-setting'.

As far as the EP is concerned, if one measures the powers of a legislature by its ability to influence the passage of legislation put to it - what Blondel et al termed 'viscosity' (1970) - it is possible to argue that the European Parliament now actually exercises greater sway over laws than do at least some of the national legislatures of the EU's members countries. For example, the lack of power of the French National Assembly in the Fifth Republic is often noted (Frears 1990), while the British House of Commons is generally considered more effective in providing an 'arena' for public debate than in operating as a chamber which regularly 'transforms' the legislative proposals presented to it (Mezey 1979; Cowley and Norton 1996). While the EP still lacks co-decision power on some two-thirds of EU law, and would obviously like to improve this position, the major problem facing the EP today may be less one of policy powers - it appears to be clearly now in the ranks of the 'policy influencing' chambers of the world (Norton 1984). A more serious problem for it, as for the EU as a whole, appears to be its inability to connect with the European citizenry, and to develop public knowledge, understanding or support for it and its work (Wallace and Smith 1995; Springer 1994; Niedermayer and Sinnott 1995). Building popular backing for its now significant policy role may be the most important single task facing the European Parliament in the years ahead.

Figure 1

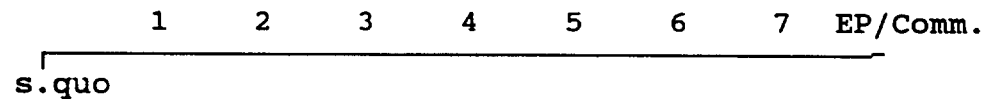
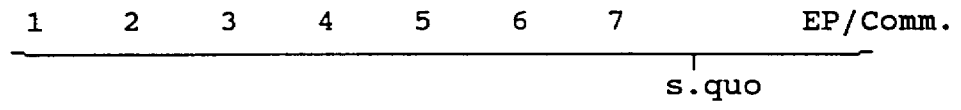


Figure 2



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NOTES

1. The EP exercised its approval power over the Commission in two stages: an initial vote over the appointment of Jacques Santer as Commission President, and a later ballot on the entire Commission. In both cases the outcome was positive, but only narrowly so for Santer - 260-238, with 23 abstentions - as many MEPs protested the lack of Parliamentary input into the nomination, which was made by the national governments in closed session at an EU summit meeting. As one of their suggested amendments to the TEU, the EP has argued that it should be able to choose the Commission President from a short-list agreed by the Council (Hix and Lord 1996:76).
2. "The European parliament has been short-changed by the introduction of the co-decision procedure by the Maastricht Treaty. It had to give up the meat of conditional agenda setting in order to receive the bone of unconditional veto. I wonder whether an increase or a *decrease* of the powers of the Parliament was in the minds of the signatories of the Maastricht Treaty" (Tsebelis 1995:6. Emphasis in original).
3. This section draws heavily on the accounts given in Nugent (1994), Corbett (1994), and Corbett et al (1995).
4. The legislative procedures discussed here are distinct from that which is used to pass the EU's budget. For a discussion of this, and the influence which the EP is able to exert over the budget, see Corbett et al (1995: 224-244).
5. These rules operated except for certain matters of legislation on which unanimous agreement had to be reached. At present, ie. after the ratification of the TEU, these matters include citizenship policy, transport, indirect taxation, and environmental policy. Moreover, prior to the SEA, legislation was also frequently subject to the 'Luxembourg compromise' - the agreement, reached in 1966, that a country could veto any measure if an issue of 'vital national interest' was at stake (Urwin, 1991:113-115).
6. Cited in Corbett et al (1995: 191. My emphasis).
7. One additional factor of note is that if the EP wished to amend or reject the legislation in second reading, then it had to do so by a vote supported by an absolute majority of its membership. This 'majority requirement' did not apply if the Parliament simply wished to approve the law. A similar requirement was imposed for the assent procedure, and is also in place for the second and third readings on co-decision matters.
8. In its Draft Treaty on European Union, passed in February 1984, the Parliament had called for full co-legislative powers with the Council of Ministers.
9. For a detailed list of the areas of law which are now (ie. subsequent to the TEU) processed under cooperation, see Corbett (1994:226).
10. A further small difference between the cooperation and co-decision procedures was that EP amendments approved by the Commission are submitted individually to the Council under co-decision, rather than being incorporated into a revised Commission text submitted *en bloc* to the Council, as occurs in cooperation (Corbett 1994:211). This point is somewhat misunderstood by Garrett and Tsebelis (Garrett 1995:303; Garrett and Tsebelis 1996:289) who claim, quite incorrectly, that EP amendments are no longer submitted to the Commission for approval under co-decision.
11. Of course, the expansion of the EU in 1995 from 12 to 15 members makes the EP's veto under cooperation that much more difficult to override.
12. Tsebelis (1995:5). Emphasis in original.

13. It is true, as stated earlier, that the Commissioner responsible for the legislation, and some Commission officials, will usually be involved in the work of the conciliation committee. However, the important point for now is that the approval of the Commission is not required for the Parliament to exercise influence, whereas under cooperation, the EP's influence is entirely conditional on the Commission.

14. The model I replicate is that given in Garrett (1995). A virtually identical model is given in Garrett and Tsebelis (1996).

15. For an explanation of these concepts, and many others involved in spatial and other formal models, see Ordeshook (1986).

16. This representation of the Council is obviously a gross over-simplification. Not only does it reduce the Council from 15 states to 7, but it fails to allow for the fact that votes in the Council are not weighed equally: the larger member states have more votes (eg. Germany has 10), so that the actual number of *states* whose agreement is needed to form a qualified majority depends on which states take which side. In fact, a qualified majority may comprise as few as 8 countries, but it can require 13. However, the use of the much simpler 5-out-of-7 version in the model is justifiable for its simplification value, provided that it is interpreted only heuristically, and not as a literal representation.

17. This model is thus very similar to that employed by Tsebelis (1994) in his analysis of the EP's powers under cooperation. The main difference is that Tsebelis' earlier work employed a two-dimensional model. However, as Garrett (1995) notes, the basic results from the one-dimensional model do in fact generalize to the two-dimensional version.

18. See Tsebelis (1994); for a critique of this argument, see Moser (1996), and response, Tsebelis (1996).

19. Tsebelis and Garrett (1997) suggest that such an argument goes against notions of 'backwards induction', a basic concept in extensive form game-theory (Morrow 1994:121-160). This is, of course, incorrect. A central feature of extensive-form games is that, by using backwards induction and acting strategically, actors can foreclose certain potential outcomes in games with multiple possible end-points. The analysis of co-decision I conduct is based precisely on this premiss: by making their first reading proposal, the EP and Commission, can prevent the outcome suggested by Garrett and Tsebelis ever being a possibility.

20. Westlake (1994:265) lists the number of amendments put forward by the Parliament under the cooperation procedure from 1987 (when the procedure was first used) until the end of 1993. Of 1074 EP amendments put forward at second reading, only 475 (or 44.2%) were taken up by the Commission, with 253 finally accepted by the Council. The overall picture is somewhat more encouraging for the Parliament than that. The EP only puts forward second reading amendments, "to restore the Parliament's first reading position, were the result of a compromise agreement between the Council and the Parliament or sought to amend a part of the common position which differed substantially from the text on which the Parliament had originally been consulted: (Westlake 1994:141). However, even if one takes into account that some second reading amendments are simply re-iterations of unsuccessful first reading amendments, the cumulative percentage of EP proposals that are endorsed by the Commission on *either* first or second reading is still substantially less than two-thirds - rather than the three-quarters that is claimed by Garrett and Tsebelis (1996:285).

21. This indeed is acknowledged by Garrett and Tsebelis (1996:291).

22. *Agence Europe*, July 11, 1996.

23. *Commission Report for the Reflection Group, Intergovernmental Conference 1996*. The common position on voice telephony legislation was rejected by the EP by 375 votes to 45, with 13 abstentions in July 1994. In March 1995, the EP actually rejected a draft law (on biotechnology) which had been agreed in the Conciliation committee. These cases, along with a directive on packaging waste, are discussed by Miller (1995). Golub (1996) focuses more closely on the packaging waste directive, and the role of the institutions in its passage.

24. Much rational choice work, particularly extensive-form game theory, assumes that actions may reflect the current anticipation of future possibilities, due to some form of 'backwards induction' process.

25. See: "Eager European Parliament Prepares for the 1996 IGC", *European Report*, 28 February 1995; and pp.64-5 of *European Parliament (1995)*. In the latter document, the EP calls for simplification to co-decision, including the elimination of any ability for the Council to re-affirm its common position. Nonetheless, EP members also supported the replacement of cooperation by co-decision even in the event that the co-decision procedure remains unaltered.

26. See: European Parliament Task Force on the Inter-Governmental Task Force, *Briefing on the Co-Decision Procedure (first update)*, March 14, 1996.