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DISTRIBUTIVE VERSUS REGULATORY: HOW DOES POLICY TYPE AFFECT THE INFLUENCE OF THE EUROPEAN PARLIAMENT?[1]

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ABSTRACT

In recent years there has been a growth in the literature seeking to determine how and why the European Parliament (EP) exercises legislative influence. However, much of the debate has focussed either upon rational choice new institutionalist models of decision-making, or statistical analysis of the adoption of EP amendments. Consequently, the other key body of literature on EP influence, which focuses upon qualitative case studies, has become rather neglected. There has been a tendency for this latter work to be criticised and dismissed because it does not engage in systematic theoretical development and rigorous testing of hypotheses. As a result, the claims made by authors located in this branch of the literature have not been subject to the same scrutiny and testing as the work of authors such as Tsebelis and his various collaborators[2]. This paper seeks to redress this imbalance in the literature by testing the claims made by Shackleton (2000) that a key variable affecting the EP's ability to shape legislation is the type of policy under consideration - distributive or regulatory - and the distribution of costs and benefits arising from it. Using data from several case studies the paper explores the problems associated with trying to define such costs and benefits. It is argued that the key determinants of the EP's influence are the level and type of costs and the group of actors upon which they are imposed.

[2] See for example, Tsebelis and Garrett (2001), Tsebelis et al (2001).

1.0 INTRODUCTION

One of the major pre-occupations in the burgeoning literature on the European Parliament (EP) concerns this institution's influence. When and how does it exercise influence? What affects its capacity to do so? This paper concentrates on the latter question. It examines the variables that affect the EP's ability to shape legislation, and engages primarily with the work of Shackleton (2000) who seeks to dispel the idea that the EP's influence is contingent and contextual Instead, Shackleton argues that the key variables shaping the EP's influence are the type of legislation under consideration, i.e. distributive (concerned with allocating resources to certain groups), or regulatory (seeking to promote or restrict certain activities) and a set of conditions specific to each type.

Surprisingly, Shackleton's arguments have not yet been subject to rigorous empirical or theoretical investigation. The EP "influence" literature, once largely composed of qualitative and practitioner-based work (e.g. see Corbett 1989; 1998; Earnshaw and Judge 1995; 1997; Garman and Hilditch 1998; Judge and Earnshaw 1994; Judge et al 1994; Shackleton 1998; 2000) has recently become dominated by two other approaches. First, a rational choice new institutionalist (RCNI) approach that has sought to analyse the ways in which decision-making rules affect the EP's legislative influence (Moser et al 2000; Tsebelis and Garrett 2000; 2001). Second, and related to the first, there has been a growth in statistical analyses of the EP's amendments, which seek to determine the conditions shaping the successful incorporation of EP amendments into legislation (Kreppel 1999; Tsebelis and Kalandrakis 1999; Tsebelis et al 2001). Both these areas of EP scholarship have uncovered interesting hypotheses, data and fruitful avenues of enquiry that can complement qualitative work. However, EP scholars' preoccupation with these more recent additions to the literature has led

to the more "traditional" branch being overlooked, consequently authors in this field have not been subject to the same kind of attention, testing and questioning as those located in the RCNI and statistical branches. This oversight is regrettable, for surely only through testing the claims made by scholars of all persuasions can our understanding of the EP's influence be advanced. Moreover, focussing on a handful of case studies facilitates detailed and nuanced analysis of institutional behaviour, highlighting aspects of decision-making that other approaches may miss.

This paper seeks to bridge the existing gap in the literature by using case studies to test and develop Shackleton's (2000) arguments concerning the relationship between the EP's influence and the type of legislation under consideration. Using the findings from the cases it is argued that Shackleton's arguments about distributive legislation have limited empirical applicability, and it is suggested that his discussion of the costs and benefits arising from regulatory legislation requires a greater level of analytical precision. In addition, it is suggested that analysis of the pattern of costs and benefits arising from legislation should also take into account the types of actors who are affected by legislative amendments. The paper finds some evidence of a relationship between costs and benefits and EP influence, and concludes by positing two hypotheses for future research. In the following section Shackleton's position is outlined and two research questions are identified, in section three the case studies are presented and analysed, and in section four some conclusions and the hypotheses for future research are offered.

2.0 DETERMINING INFLUENCE

Inevitably, a range of factors may affect a legislature's policy influence, not least the rules of

decision-making, the choice of policy instrument, the timing of the legislation and the types of actors involved (Judge et al 1994). Nevertheless the nature and content of the legislation under consideration is always a key variable and is often closely connected to the other factors that shape a legislature's influence, particularly in the EU system. For example, within the EU the choice of policy instrument is often linked to the type of policy being deliberated: decisions are used to implement programmes; directives are frequently employed for setting environmental standards; and regulations are normally used to set minimum standards, for example in food safety or veterinary hygiene. Procedures of decision-making and voting rules are also linked to the type of policy. For example, single market policies are now normally adopted under the co-decision procedure by qualified majority voting. Moreover, the type and content of policy determines which actors become involved in the passage of legislation. Environmental directives are be dealt with by DG Environment, the European Parliament's Environment Committee and the Council's Environment ministers, and attract attention from environmental pressure groups and affected industries. Consequently, it is relatively uncontroversial to argue that the type of policy can be a critical variable in determining legislative influence.

Michael Shackleton (2000), taking the lead from Judge et al (1994), has sought to determine how policy-type affects the European Parliament's influence and to identify the conditions that shape the EP's exercise of influence when dealing with either distributive or regulatory legislation. Shackleton's aim is to dispel the view that the EP's influence is contingent and dependent on circumstance, instead, he argues "there is a structure in any area of policy and that structure has a strong effect on what the Parliament can achieve" (Shackleton 2000, p.339). Shackleton concentrates on legislation adopted under the co-decision procedure, under

which the European Parliament acts as a co-legislator with the Council. Co-decision gives the EP three readings of legislation, the right to conciliation with the Council if the two institutions cannot agree, and the right to reject the proposed legislation if a satisfactory compromise cannot be found. Co-decision is one of the main procedures for the adoption of EC legislation[3] and as Shackleton notes, legislation adopted under this procedure is well suited to analysis of the impact of the type of policy upon the EP's influence. Co-decision legislation falls into two key categories, distributive and regulatory (Shackleton 2000, p.337), and the debates surrounding the adoption of legislation are rehearsed more publicly than is usual under other procedures of decision-making. Under co-decision the European Parliament as co-legislator with the Council, has been able to press the Council to give explicit justifications for the adoption of policy positions and Council members are now routinely engaged in contacts with EP officials and parliamentarians. Moreover, in conciliation meetings (taken here to refer to the formal and informal meetings held between the Council and Parliament to negotiate a compromise text), both sides have to air their positions, so it becomes possible to "identify conditions specific to distributive and regulatory polices which are important in determining whether the Parliament can have an impact" (Shackleton 2000, p.338).

Shackleton (2000, p.337) defines distributive legislation as that which allocates "public resources for the achievement of specified objectives by private individuals or groups"; and regulatory legislation as that which establishes "rules which seek to act against activities that are seen as harmful (for example, the consumption of tobacco) or to promote activities that are seen as beneficial (such as the provision of guarantees for consumers when they purchase

[3] The two other key procedures for adopting legislation are the consultation and co-operation procedures.

goods)". He further argues that for each type of policy it is possible to identify specific conditions that are important in determining the level of EP influence. He argues that for distributive policies the "variable to consider is the *level of legitimacy accorded to EU action* by the Council members: the lower that level, the less chance the EP has of having an impact", and for regulatory policies "the variable is *the degree of concentration of the costs* arising from the position of the Parliament: the less concentrated they are the more likely it is that the Parliament can affect the outcome" (ibid p.338).

He then goes on to illustrate the way in which the conditions he has identified shape EP influence, by referring to three cases. First, to illustrate his argument about distributive legislation Shackleton discusses the programme for a European Voluntary Service, which in 1998 became the subject of a budgetary dispute between the Council and EP in conciliation. Shackleton argues that the struggle over funding masked a wider dispute concerning the programme's scope and the fact that a number of states were opposed to a European level voluntary service. Specifically, some states opposed the EU having competency to determine arrangements for military service and its civilian equivalents when there were pre-existing national schemes that might come to conflict with the European Programme (ibid p.338). The case therefore provides an ideal illustration of Shackleton's posited condition for determining the EP's influence over distributive legislation. In this case some members of the Council were opposed to the EU taking action in this area and the EP was therefore unable to secure the increase in budget that it requested.

Second, Shackleton cites the case of the 1999 directive on the protection of personal data to support his argument that the level and distribution of costs determine the EP's influence over

gulatory legislation. He argues that in this instance an amendment suggested by the rliament would have imposed severe costs upon the French government and consequently e EP's amendment, which imposed concentrated costs upon one country failed. Finally, he tes the example of the auto-oil programme, which was adopted in 1998 and which sought to nit emissions from cars and light commercial vehicles. The costs of implementing the ·ogramme were be spread over time, would affect all EU states (although the costs of gislation were not equally distributed between all the states, derogations were included) and ·ere shared between the petroleum and car industries. Shackleton argues that the relatively iffuse nature of the costs in this instance gave the EP scope to negotiate a compromise with ıe Council. However, he also acknowledges that the energy and commitment of the Council 'residency were key variables in determining the directive's successful adoption (ibid p. 339).

'hus the core of Shackleton's argument is that the pattern of costs and benefits arising from he EP's proposed amendments may affect the Parliament's influence. In the cases he cites ·here there were concentrated costs and diffuse benefits arising from the EP's amendments, he Parliament's influence was likely to be low, but where the EP amendments led to diffuse osts and diffuse benefits the Parliament's influence was likely to be high. However, ;hackleton does not explicitly consider whether there is a relationship between the actors who vill benefit from, or pay costs of legislation, and the EP's influence. Yet such a relationship eems likely. For example, if an EP amendment imposed concentrated costs on one person ınd offered diffuse benefits to most EU citizens, it would be more likely to be adopted than if t imposed concentrated costs on an important industry, or, as in the case cited by Shackleton, ıpon a key state. Widening the discussion of costs and benefits to encompass the actors who gain or lose from the adoption of certain amendments may, ironically, offer greater analytical

:cision. For example, if such an analysis were extended to Shackleton's examples, then as ble 1 shows, it could be concluded that when EP amendments result in costs being inflicted one state and offer diffuse benefits to consumers, the EP will be less successful; but when ıendments result in diffuse costs and also offer diffuse benefits to states, industry and the der community, the EP will have greater success.

ABLE ONE: EP INFLUENCE AND THE PATTERN OF COSTS AND BENEFITS

	COSTS	BENEFITS	EP INFLUENCE
ıta protection	Concentrated Costs One state	Diffuse Benefits For consumers	Low
ıto-Oil	Diffuse Costs Over time All states (some derogations) Two industries	Diffuse Benefits Over time National Health National Environment Meeting International Commitments Competitive Edge	High

he question that remains to be answered is whether this analysis can be applied to a wider ımber of cases. In the following section, three cases are analysed in order to determine: -

1. If Shackleton's argument concerning the relationship between the legitimacy accorded to EU action and EP influence over distributive legislation applies to other cases.
2. Whether there is a link between EP influence and the distribution of costs and benefits and whether there is relationship between the EP's success and the actors who gain or lose from the Parliament's proposed amendments.

'he analysis also seeks to uncover any other relevant variables or conditions that shape the :P's influence within the context of this specific discussion about the costs and benefits rising from legislation. The discussion is based on a narrow definition of influence covering

he European Parliament's success in seeing its amendments successfully incorporated into egislation. However, although this definition is relatively limited, it is not without omplexity; some amendments may be trivial and their adoption may indicate little more than iat the institutions agree. Alternatively important amendments may only be partially icorporated into legislation. In order to take into account these factors this paper employs ie typologies devised by Tsebelis and Kalandrakis (1999) to classify amendments in order to flect their importance, and the extent to which they are incorporated into legislation (see so Kreppel 1999; Tsebelis et al 2001).

ie classification of the importance of amendments ranges from *insignificant* through to *ghly important.* Amendments with no substantive legal implications, which clarify the text liting amendments or language amendments), or introduce provisions already covered in : original text, are classified as *insignificant* (Tsebelis and Kalandrakis, p.131). iendments that introduce substantive changes, but which do not significantly alter the pe of the legislative initiative are classified as *significant* or *highly significant* (ibid p.131). iendments involving a clear case of substantive changes, e.g. time limits with may have t implications for industry fall into the latter category. However, when such effects are icult to assess the amendment is classified as *significant* (ibid p.131). Finally, amendments introduce changes that significantly alter the scope of the legislation or imply serious sequences relative to the overall legislative initiative are classified as *important* or *highly ortant,* with the latter category reserved for cases where the scope of legislation is altered iderably (ibid p.131). The typology is summarised in Table 2. The classification for the tion of amendments is based on a five-fold typology ranging from *fully adopted* through *t adopted* and is summarised in Table 3.

TABLE TWO: CLASSIFYING THE IMPORTANCE OF EP AMENDMENTS

CLASSIFICATION	CRITERIA
Insignificant	Clarification; no substantive legal implications; no new provisions.
Significant	Substantive change but little alteration to scope of proposal.
Highly Significant	Substantive change, whilst little alteration to scope of proposal, may involve change with cost implications.
Important	Alteration of scope of the legislation or changes with serious consequences relative to the overall legislative initiative.
Highly Important	Considerable alteration of scope of legislation.

Based on Tsebelis and Kalandrakis (1999 pp.130-132)

TABLE THREE: CLASSIFYING THE ADOPTION OF EP AMENDMENTS

CLASSIFICATION	MEANING
Adopted	Amendment is adopted word for word
Largely Adopted	Amendment is adopted with minor modifications
Partially Adopted	Less than 50% of the amendment is adopted
Text Modified	Legislative text is modified but not as EP wanted
Not Adopted	Amendment is rejected

Based on Tsebelis and Kalandrakis (1999, p.128).

3.0 THE CASE STUDIES

The discussion below is based on data collected between 1999-2000 from two key sources: semi-structured research interviews with institutional officials, MEPs and interest group representatives; and EU legislative documents (for more detail see Burns 2002). The analysis concentrates primarily on three cases: the first concerns a piece of distributive legislation, a decision adopted in 1999 implementing the second phase of the Socrates programme; the next two involve regulatory legislation, the 1997 novel foods regulation and 1998 directive on the legal protection of biotechnological inventions. The cases were all adopted under the co-

decision procedure[4] and all three went to conciliation. Inevitably, analysing just three cases limits the scope for empirical generalisation. However, determining the costs and benefits delivered by legislation and identifying which actors gain or lose from EP amendments requires a relatively detailed level of analysis, based on qualitative rather than quantitative methods, which inevitably limits the researcher to a small number of cases. Nevertheless, although the study is limited to a small *n*, its findings can still allow the development of analytical precision in determining when and how the EP exercises influence.

3.1 SOCRATES

Socrates is the EU's flagship education programme and its overall aim is to develop a European dimension in education by encouraging co-operation and contact between institutions in different states, mobility amongst students and professionals, and greater language-learning. The programme funds activities to meet its overall aims and therefore fits with Shackleton's definition of distributive legislation. The first phase of the programme which ran from 1994-1999 was a great success and was very popular with all the participants (European Commission 1998) and the institutions are all in favour of the programme and wish to be associated with its success (Official from Finnish Permanent Representation, interview 20/03/00). The second phase of the programme was brought forward in 1998 and as with the European Voluntary Service (EVS) programme there was a dispute in the conciliation negotiations over funding for the 2000-2006 programme.

However, in this instance the disagreement did not mask a broader conflict about whether

[4] The co-decision procedure was reformed in 1997 by the Amsterdam Treaty, and the Socrates programme was adopted under the new procedure. Although the new version of the procedure increased the EP's power (see Hix 1999; Tsebelis and Garrett 2001) those changes do not affect the analysis employed here.

there should be an education programme. Rather the budget dispute was about the fact that the Council felt that there were not enough funds available to meet the EP's demands (Official from the Council Secretariat General, interview 19/11/99; MEP, interview 07/03/00). According to Shackleton (2000), when the Council favours EU action one would expect the EP to be successful in conciliation, but the EP managed to secure only a 19% increase in the programme's budget in this case[5], compared to a 36% increase the EVS budget[6]. Thus, it appears that the EP was more successful in the case of the EVS than Socrates, despite the fact that Socrates is an accepted and popular programme. In the case of Socrates a key factor prompting the Council's intransigence was that the ceiling for expenditure in the category of the budget covering Socrates had almost been reached, and the Council position was supported by the EP's own budget committee, which recommended a lower figure for running the programme than that endorsed by the Conciliation Committee (MEP, interview 07/03/00). In addition, the sums requested in the case of Socrates were much greater than those requested in the case of the EVS programme.

There are other examples that seem to offer more concrete support to Shackleton's hypothesis. For example, the health programmes covering the prevention of cancer, AIDs and promoting health education were also regarded as legitimate and desirable by the Council, which acceded to all the EP's budgetary demands in conciliation (European Parliament 1999c, p.26). However, when these programmes were debated the Parliament was united on the issue, and there was active co-operation between the budget and conciliation committees (ibid p.26), and there were enough funds available within the relevant budgetary category to meet

[5] The EP wanted to increase the budget from €1,550 million to € 2,550 million and the final budget was €1,850 million (European Parliament 1999a; 1999b)
[6] The EP increased the budget for the European Voluntary Service Programme from ECU 35 million to ECU 47.5 million (European Parliament 1999c, p.140)

the EP's demands. On the basis of this admittedly limited data it seems not unreasonable to suggest that the legitimacy of the programme is a *necessary* but not sufficient condition determining the EP's success on distributive legislation, for even when the Council regards a programme such as Socrates as being legitimate it may block what it views as unreasonable budgetary requests from the Parliament. Consequently, it seems that there are other important variables that affect the EP's influence over distributive legislation, such as the position of the EP budgets committee, the extent to which the Council regards the EP's budgetary amendments as being reasonable and the degree of flexibility for increases within the relevant budgetary category. In short, in the arena of distributive legislation the EP's success will always be, to some degree, contingent and contextual.

.2 NOVEL FOODS

The aim of the proposal for the regulation on novel foods and food ingredients was to introduce Community-wide safety-assessment and notification procedures for the marketing of new food products, i.e. foods with no established history of use, genetically-modified (GM) foods, or foods that had been produced by processes that had changed their composition or nutritional value (European Commission 1992). Although the aim of the regulation was to provide assessment procedures for all new food products, because many of them would be based on biotechnology the policy debate surrounding the proposal concentrated on the issue of labelling GM foods and became the focus of a conflict between the Parliament, Commission and Council in conciliation (see Burns 2002 for detail). The key point of dispute concerned which foods should to be labelled as being genetically modified. The Parliament adopted amendments under which foods with an altered genetic structure which remained indistinguishable from conventional foodstuffs would have to be labelled, as would foods

with genetically- modified agricultural characteristics (i.e. had been made resistant to certain pests) (European Parliament 1996).

According to Shackleton, if the costs imposed by the EP amendments were concentrated then the EP was likely to be less successful and if they were diffuse it was likely to be more successful. However, the distribution of costs and benefits in this case varied according to actor perception. The Commission and a majority in the Council were concerned about the costs that would be imposed upon farmers, producers, food manufacturers and US exporters if stringent labelling rules were adopted (Burns 2002). Thus, although the regulation would not impose concentrated costs upon one state, it would impose concentrated costs upon particular industries. However, perhaps the most compelling argument concerned trade. The Commission in particular was concerned that the adoption of strict labelling rules would prompt a trade dispute with the US, which would be potentially very costly for the EU as a whole (European Commission 1996). Thus the EP's amendments would have imposed concentrated costs upon a certain set of industrial actors, and threatened the prospect of diffuse and potentially high costs on all states and industries through a trade dispute. For its part the EP wanted stricter labelling rules in order to provide information for consumers (Roth-Behrendt, PE Debates 13/09/93 No. 3-434, p.5), therefore its amendments offered diffuse benefits, and on the other side of the coin, the EP felt that the failure to adopt its amendments would impose diffuse costs. The EP's position was supported by some states[7] in the Council, who were aware that growing public awareness and disquiet about the use of genetically-modified organisms in food meant that their position on the legislation might be closely scrutinised at home. Consequently, these governments regarded the adoption of the

[7] Austria, Denmark, Germany, the Netherlands and Sweden.

EP's amendments as beneficial and saw the rejection of the amendments as potentially costly. Thus, the pattern of costs and benefits arising from the EP's proposed amendments affected the actors in different ways (see Table 4).

The conciliation negotiations concentrated on six amendments, which as Table 5 shows were all relatively important. Four of the amendments were fully adopted. However the amendments with potential trade implications (55 and 51) classified here as highly important, were only partially adopted. These findings suggest that another variable - the level of the costs - should be considered. This observation may seem banal but it is nevertheless important. The case implies that when the EP suggests amendments that impose potentially *high* and diffuse costs that will be levied within a short time frame on all the Member States (i.e. trade conflict), the Parliament's influence will be limited. But when the EP's amendments levy costs on industries (e.g. the labelling amendments, 52 and 54) but offer diffuse benefits for consumers and concentrated benefits for a number of governments, it is more likely to be successful.

TABLE FOUR: PATTERN OF COSTS AND BENEFITS IN THE NOVEL FOODS CASE

	COSTS	BENEFITS
Adoption of EP amendments	Concentrated on specific industries. But also potentially high diffuse costs through trade conflict	Diffuse benefits - more information for consumers. Concentrated benefits for states in favour of EP amendments
Rejection of EP amendments	Diffuse costs - less information for consumers But also potential costs for states in favour of EP amendments	Concentrated benefits for industry and potentially diffuse benefits (no trade conflict)

TABLE FIVE: TREATMENT OF EP AMENDMENTS TO THE NOVEL FOODS REGULATION

EP Amendments	Subject	Classification	Commission Position	Joint Text
53	Scope/safety	Important	Not Adopted	Fully Adopted
54	Labelling	Important	Not Adopted	Fully Adopted
55	Significant difference	Highly Important	Not Adopted	Partially Adopted
51	Definition of GMO	Highly Important	Not Adopted	Partially Adopted
52	Labelling	Highly Important	Not Adopted	Fully Adopted
48	Date	Highly Significant	Fully Adopted	Fully Adopted

3.3 THE PROTECTION OF BIOTECHNOLOGICAL INVENTIONS

The final case concentrates on the directive on the legal protection of biotechnological inventions; initially the proposal for the directive was rejected but a second proposal was accepted in 1998 (for detail see Burns 2002; Earnshaw and Wood 1999). The aim of the legislation was to put in place a harmonised system for granting patents to biotechnological inventions. The proposal attracted criticism from the Parliament because it failed to include any reference to the ethical issues raised by biotechnological inventions. Throughout the passage of the first directive, and particularly during and immediately after conciliation some MEPs raised concerns about the fact that the human germ-gene line might remain patentable and that the proposal failed to specify clearly enough the difference between a discovery and an invention, which might in turn lead to parts of the human body being patented (PE Debates 01/03/95 No. 4-458, pp.35-46). Members of the Parliament and those opposed to the directive were consequently concerned that the directive's passage would impose diffuse costs upon human-kind via the sale of human life, and exploitation of genetic heritage. On the other side of the debate were the pharmaceutical and biotechnology companies that stood to gain from the directive by using the patent system to protect their investment in the development of new products such as medicines and plants.

Hence the debate surrounding the first proposal was cast in the following terms: the proposal's acceptance would impose diffuse ethical costs affecting humankind whilst delivering concentrated benefits to pharmaceutical and biotechnology companies (see Table 6). Although the EP and Council reached a compromise in conciliation, the EP could not persuade the Council to adopt fully a crucial amendment relating to germ-gene line therapy[8]. The EP's position was weakened by the fact that it had a limited mandate in conciliation because it had failed to adopt key amendments at its second-reading. Indeed the conciliation meetings consisted of a frustrated EP delegation trying to persuade the Council to extend the discussion beyond those amendments that the EP had adopted at second reading (Council Secretariat General Official, interview 16/02/00; European Commission Official, interview 15/02/00; MEP, interview 09/02/00). Several member states and a majority of MEPs felt that the key ethical issues were insufficiently addressed in the compromise text. Luxembourg and Spain both stated that they would abstain and it was reported that the Austrian and Danish Parliaments had instructed their governments to vote against the joint text (*Financial Times* 01/03/95). The Parliament rejected the proposed directive by 240 votes to 188 during its third reading (PE Minutes of Sitting 11/05/98-15/05/98, OJC 167 01/06/98).

[8] The EP secured the full adoption of two significant amendments and the Council agreed to largely adopt the important amendment.

TABLE SIX: THE PATTERN OF COSTS AND BENEFITS IN THE CASE OF THE LEGAL PROTECTION OF BIOTECHNOLOGICAL INVENTIONS

	FIRST PROPOSAL	FIRST PROPOSAL	SECOND PROPOSAL	SECOND PROPOSAL
	COSTS	BENEFITS	COSTS	BENEFITS
REJECTION	Concentrated Costs for Industry	Diffuse benefits - no patenting of human germ-gene line	Diffuse costs via loss of new pharmaceuticals and medical advances. Concentrated Costs for industry and MEPs	Diffuse Benefits Protecting research culture, generic drugs and protecting humankind from commodification
ADOPTION	Diffuse Ethical Costs for humankind	Concentrated Benefits for Industry	Diffuse Costs Loss of research independence, expensive drugs commodification of humankind.	Diffuse Benefits Development of new pharmaceuticals and medical advances. Concentrated benefits for industry

In this case the EP was initially unsuccessful in amending the legislation to take into account the diffuse ethical costs that the directive might impose. The failure to secure the inclusion of the amendments in the joint text led MEPS to use the most powerful weapon available to them - their veto - in order to prevent the legislation being adopted. Nevertheless the Commission argued that there was still a need for the legislation and brought forward a new draft six months after the first proposal was rejected. The new draft addressed some of the key ethical issues relating to the patenting of the human germ-gene line (European Commission 1995), thereby removing the key issue of concern relating to the diffuse costs that the directive might have imposed. In addition, the debate surrounding the second proposal was conducted in a very different way. The industrial lobby realised that it had lost the public relations battle during the negotiation of the first proposal by allowing those opposed to the directive to argue that the benefits accruing from the legislation would be concentrated in the

lands of industrial interests. During the passage of the second proposal, the pharmaceuticals sector took the lead in representing the industry position and sought to emphasise both the specific and diffuse benefits that the legislation would deliver if adopted (see Earnshaw and Wood 1999).

The industrial lobby went on the offensive by recruiting patient groups representing sufferers of genetic and other diseases to its cause. The pro-lobby now argued that without legal protection for their inventions the pharmaceutical industry would be unable to afford to invest in research and development that could deliver advances in the fields of cancer, heart disease and HIV. Thus, the debate about costs and benefits shifted the emphasis away from the concentrated benefits that would accrue to industrial interests onto the diffuse benefits that new pharmaceuticals could deliver. This argument was also backed by the patient groups staging appearances at key votes. Furthermore, the industrial lobby backed their PR campaign with a direct appeal to the survival instinct of MEPs by claiming that jobs in their domestic constituencies (whether national or regional) might be lost if the directive were not adopted (see Burns 2002). On the other side of the debate, those who were opposed to the directive were weakened because the new proposal addressed the issue of patenting the human germ-gene line, which had caused most concern during the passage of the first proposal.

After unprecedented lobbying the directive was adopted without conciliation in 1998. The Parliament's first-reading amendments were mostly largely adopted but many were insignificant (See Table 7). No amendments were adopted at second reading. The case suggests that where legislation may impose diffuse ethical costs with only concentrated benefits for industrial interests, the EP is likely to insist upon its rights and exercise influence.

Indeed, in this instance the Parliament's rejection not only led to the key ethical concerns being directly addressed in the second proposal, it also led to the debate being recast by the industrial lobby in order to emphasise the diffuse benefits that the legislation could deliver. This move by the industrial lobby suggests its awareness that the EP was more likely to favour legislation that offered diffuse benefits, and conversely, to seek to amend legislation that failed to offer such benefits. Again the case shows that the costs and benefits of legislation are viewed in different ways by the various actors, and also that the perception of those costs and benefits can change.

TABLE SEVEN: TREATMENT OF THE EP'S AMENDMENTS TO THE SECOND PROPOSAL ON THE LEGAL PROTECTION OF BIOTECHNOLOGICAL INVENTIONS

CLASSIFICATION	FULLY ADOPTED	LARGELY ADOPTED	PARTIALLY ADOPTED	TEXT MODIFIED	NOT ADOPTED	TOTAL
HIGHLY IMPORTANT	0	0	1	1	0	2
IMPORTANT	1 (1)	8 (5)	0	1	1	11 (6)
HIGHLY SIGNIFICANT	1 (1)	1 (1)	1	0	1	4 (2)
SIGNIFICANT	5 (3)	4 (3)	0	2 (2)	0	11 (8)
INSIGNIFICANT	19 (11)*	11 (9)	7 (7)	0	2 (2)	39 (29)
TOTAL	26 (16)	24 (18)	9 (7)	4 (2)	4 (2)	67 (45)

* numbers in brackets are amendments to recitals

4.0 CONCLUSION

This paper sought to address two key issues. First, it sought to determine if Shackleton's argument concerning the relationship between the legitimacy accorded to EU action and EP influence over distributive legislation stands up to wider empirical testing. Second, it has investigated whether there is a link between EP influence and the distribution of costs and benefits and tested whether there is relationship between the EP's success and the actors who gain or lose from the Parliament's proposed amendments. In addressing these two questions

the paper also engages with the broader question of whether the EP's influence is contingent and contextual or if it is, as Shackleton (2000, p.339) suggests, structured by certain conditions.

On the first question the discussion of Socrates indicated that the legitimacy of EU action is a sufficient, but not necessary condition for structuring the EP's influence when dealing with distributive legislation. The case suggests that the Parliament's influence will always be contingent on a range of other variables such as the amounts requested, the position of the EP's budgets committee and the status of expenditure in the relevant category of the budget. Hence, the findings suggests that when the Council regards EU action as legitimate, *and* the EP budgets committee supports the conciliation committee, *and* there is room for manoeuvre in the budget, the EP is more likely to be influential. Although this formula lacks the simplicity and parsimony of Shackleton's original argument, it nevertheless offers greater empirical accuracy.

Investigation of the second issue resulted in three key findings. First, the cases suggest that greater analytical precision is required when discussing costs and benefits. Specifically three key issues need to be taken into account:-

1. The distribution of the costs and benefits over time; will their effect be felt immediately or in the future?

2. The level of the costs and benefits; will they be high or low?

3. The nature of the costs and benefits; are they financial, political, or related to welfare?

Broadly speaking the cases indicate that industrial interests are concerned with financial costs and benefits (e.g. the costs of implementing labelling rules, or protecting their investments),

governments are concerned about political costs and benefits (securing legislation that suits the national framework and does not threaten the governments electoral fortunes); and the EP is most concerned about welfare and ethics (providing information for consumers and safeguarding ethical principles). Inevitably, there is overlap between the categories. For example the EP may be concerned about welfare because it is politically expedient for the Parliament to take a stand on those issues. Or, as the novel foods case indicated, governments may also take financial costs into account, for example trade conflicts. Moreover, it is conceivable that EU legislation imposing financial costs upon a "national" industry may have political ramifications for the relevant government.

Second, in both the novel food and biotechnology patenting cases the EP sought to, and was successful in exercising influence when its amendments offered diffuse, welfare benefits, and the un-amended legislation offered only concentrated, financial benefits to industrial concerns. However, the novel foods case suggests that when the EP amendments threaten diffuse (as in levied on all states and several industries), and potentially immediate and high, financial and political costs, it is less likely to be successful.

Third, the cases suggest that the EP is also more likely to be successful if a handful of states gain political benefit from its amendments, or less positively, if the states face political costs if the legislation goes un-amended.

On the basis of the findings it is possible to posit two hypotheses for future research:

1. When EP amendments offer diffuse, high, welfare benefits and the un-amended legislation offers concentrated, financial benefits, then the EP is more likely to be successful.

2. When EP amendments offer diffuse, high, welfare benefits but impose diffuse, high, political and financial costs the EP is less likely to be successful.

On the overall question, concerning the extent to which the EP's influence is contingent and contextual, or subject to structuring conditions, is its difficult to offer any concrete conclusions- not least because only a few cases have been analysed. However, on the basis of this limited data it seems reasonable to concur with Shackleton's view that any policy is subject to certain structuring conditions that may affect the EP's influence. However, the structuring conditions will be subject not only to the type of policy but also to its content and the way in which it offers costs and benefits to the relevant actors. As regulatory legislation affects actors in different ways the pattern of costs and benefits will vary from case to case, consequently the EP's influence may be similarly subject to change. Nevertheless on the basis of the evidence presented in this paper it has been possible to posit two hypotheses (see above) for future research, which can investigate if the relationships identified here apply in other cases, and seek to determine if there are any other identifiable links between patterns of costs and benefits and the EP's influence.

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