Agenda setting, vetoes and the European Union’s co-decision procedure

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This paper is a rejoinder to Roger Scully’s article criticising our recent work on legislative dynamics in the contemporary European Union. Scully’s critique concerns the co-decision procedure (Article 189b of the Treaty on European Union – TEU) that was added to the EU’s legislative arsenal at Maastricht, and more specifically the impact of co-decision on the decision-making power of the European Parliament. Contra the conventional wisdom, we have argued that under most reasonable scenarios, the ability of the Parliament to influence policy is likely to be greater under co-operation than co-decision. Scully claims, however, that there are serious flaws in our modelling of the co-decision procedure – in which the European Parliament (EP) was given an unconditional veto over EU legislation (in important areas, notably the internal market) of which it disapproves. Moreover, he asserts that the empirical evidence refutes our arguments, claiming it is clear that the Parliament’s legislative power has increased since the introduction of co-decision.

We approve of Scully’s general approach to studying the EU. He has not relied on power index calculations that generate misguided predictions about legislative dynamics that we have criticised elsewhere; nor is Scully content to reiterate facile claims common in the more descriptive literature. Rather, he highlights what he considers to be mistakes in our model and provides alternative expectations of his own, which he then tries to support with empirical evidence. Thus, Scully has attempted to bring theory to support the conventional wisdom about the co-decision procedure. We
disagree with his arguments and his evidence. Nonetheless, we wholeheartedly endorse his fundamental presumption that an accurate understanding of the day-to-day operation of the EU can come only from the interplay between deductive theorising and empirical testing.

We make two fundamental points. First, Scully’s theoretical criticisms are based on an erroneous understanding of strategic reasoning and indicate confusion and misunderstanding about the legislative role of parliaments in general, and the EP in particular. Second, what Scully calls ‘strong evidence’ against our analysis amounts to nothing more than a compilation of irrelevant points. We present an empirical analysis of all the available data pertaining to the impact of the European Parliament on legislation under the EU’s co-operation and co-decision procedures. These data are consistent with our arguments, and falsify Scully’s hypotheses.

Our article is organised in three sections. The first presents some simple modelling of agenda setting in the European Union that will help the reader understand the contending arguments. The second focuses on the co-decision procedure and explains why Scully’s claims are based on misunderstanding of its strategic properties (backwards induction, incomplete information, and the indeterminacy of multi-actor bargaining). The third section then analyses all the existing empirical evidence that bears on the effects of co-decision. The analysis does not corroborate Scully’s claims; rather it is wholly consistent with our arguments.

AGENDA SETTING AND THE CO-OPERATION PROCEDURE

Let us begin with a simple representation of the structure underpinning the legislative game in the contemporary EU. Figure 1 is drawn directly from Scully’s article (it is his Figure 1). The figure depicts a one-dimensional policy space (in this case, from less to more European integration) in which the integers represent the ideal points of a seven-member Council of Ministers, with 5/7 votes constituting a qualified majority. The preferences of the (median member of the) EP and the (median member of the) Commission are more integrationist than those of any Council member. In addition, all actors prefer more integration than exists under the status quo.

FIGURE 1
A SIMPLIFIED MODEL OF THE CO-OPERATION PROCEDURE

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<td>SQ'</td>
<td>C</td>
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Scully claims that our modelling of the EU's co-operation procedure (that, among other things, governed the implementation of the '1992' internal market agenda until Maastricht) would predict a legislative outcome just to the left of point 6 in Figure 1. In fact, in a configuration of ideal points of the actors such as the one Scully presents, our model would predict a point SQ' to the left of 4 as the outcome of the co-operation procedure – exactly as reported in Figure 3 of Garrett. This is also one of the main points made by Tsebelis.

In order to see why Scully has misinterpreted our argument about the dynamics of the co-operation procedure (now Article 189c, TEU), it is first necessary to review the procedure's salient features. As in all EU legislation, proposals can only be made by the Commission (but the Commission must make proposals if requested by the Council and, since Maastricht, the Parliament). The Council may approve Commission proposals under QMV, but only a unanimous Council can amend proposals (either outcome is deemed the Council's 'common position'). The common position then goes to the European Parliament which – by an absolute majority of its members – can either accept, amend or reject. If the EP accepts, the proposal becomes law. If the Parliament rejects, this can only be overridden by a majority in the Commission and a unanimous Council. If the EP chooses to amend the common position, its amendments are reconsidered by the Commission. If the Commission accepts the EP's amendments, the new proposal returns to the Council where it can be accepted under QMV or amended unanimously.

Now let us analyse the likely outcome of decision making under the co-operation procedure in the context of Figure 1. In the co-operation endgame, the Parliament and the Commission know that the only way to be sure that their proposal will be accepted by the Council is if it makes a qualified majority in the Council (members 3–7 in Figure 1) better off than anything the Council could agree to unanimously. Since the Council could decide unanimously to replace the status quo with point SQu (just to the left of point 2) in the Figure, the proposal has to make the pivotal member of the Council (member 3) better off than SQu. Therefore, the best thing for the Parliament and the Commission to offer is point SQ' (just to the left of 4).

Why does Scully believe our model would predict an outcome just to the left of government 6? The reason is that he does not understand that the pivotal member in the Council will only accept a Commission/EP proposal if it makes her better off than what she could achieve in a unanimous Council (in this case, SQu). The relevant winset is thus not defined by the distance between the status quo and the pivotal government in the Council – because of the fundamental fact of EU legislation that the Council can always act unanimously to change the status quo. This is why Tsebelis introduced the
concept of 'conditional agenda setting' and why Garrett contrasted it with unconditional agenda setting (in which the Council could not amend proposals before it at all). This reasoning is explained in our articles; in addition, it is the major point of disagreement between Tsebelis (who reiterates and expands the argument) and Moser (who disputes it). While these articles are cited by Scully, he does not seem to have grasped the argument.

Moreover, Scully is not even a reliable guide for the points in our argument that he has understood. He claims that 'the implications of alternative distributions of preferences will be considered later on'. When the time comes, Scully says that the positioning of actors and the status quo in our model 'seems almost designed to play down the fact that the absolute veto power given to the EP under co-decision ensures that it can never be made worse off'. As an alternative, he presents his Figure 2 which implies 'very different things about the relative worth of co-operation and co-decision to the EP'. Buried in his note 41 is the statement that this point is 'indeed acknowledged' by us. The interested reader can verify that two figures as well as a substantial discussion in Garrett and Tsebelis are dedicated to precisely this point.

In fact, Scully's Figure 2 replicates our Figure 7. It should now be clear why we have been forced to reiterate our argument about the co-operation procedure. But there is a second reason for this section. It allows us to make some broader points about the effects of agenda setting and veto power in legislative environments that seem to escape not only Scully, but many other scholars as well.

FIGURE 2
SIGNIFICANCE OF AGENDA SETTING

Location of winning proposal when the agenda is controlled by Parliament (Pp) or by the Council (Po)
Figure 2 gives a graphical representation of the essence of our argument. The status quo could represent existing legislation at the European level or, in the absence of it, a set of national laws. In order to simplify the argument we only include the ideal points of the European Parliament (P) and the Council (C), and we ignore the fact that these actors are actually composed of many individuals with different preferences. These simplifications, however, do not materially affect the argument.

Any new legislation must be supported by both the Council (QMV or unanimity) and the Parliament (or more precisely, it must not be opposed by an absolute majority of its members). If we assume that both (the pivotal actors in) C and P prefer points that are closer to their own ideal points over the status quo, then feasible outcomes are inside the shaded area of the figure. Out of all these possible compromises, the effective agenda setter (that is, the actor making the final proposal) will clearly select the one she most prefers, presenting the other actor with a 'take it or leave it' proposition. This proposal would be $P_p$ if the Parliament controlled the agenda, and $P_c$ if the agenda were controlled by the Council.

The effects of agenda setting will thus be substantial except when the status quo lies between C and P. In this case, there is no agenda setting power because no Pareto improving proposal exists. If one considers a more complicated situation with multiple members of the Council and Parliament located in a multidimensional space instead of the simplified two-dimensional space version presented here, the powers of the agenda setter generally increase. Indeed, it is possible under certain conditions for the agenda setter to select not only the outcome but also one particular coalition that will support the most advantageous outcome.

Let us now think of the EU with reference to the two basic forms of democratic political systems – presidential and parliamentary. The fundamental legislative characteristic of presidential systems is that the legislature (Parliament) makes proposals to the executive (President) that can accept or veto them. In parliamentary systems the roles are reversed; the executive (government) makes proposals to the legislature. It should thus not be surprising that presidents frequently request line item vetoes while legislators complain about their impotence in parliamentary systems. Both sides understand the importance of controlling the legislative agenda.

It should thus be clear that European parliamentary systems – and particularly unicameral ones – are not the appropriate benchmark against which to analyse the EU’s legislative processes. Analysts would do well to think about the EU (at least the co-operation procedure) in more ‘presidential’ terms, where the Council’s role is typically akin to that of presidents and the EP (and the Commission) perform the role of parliament with respect to legislation. This distinction is not often made in the EU
literature because the conventional wisdom is that the Commission is Europe’s executive branch. While this is more or less true with respect to the implementation of policy, it is very misleading with respect to the passage of legislation.

Scully’s discussion of ‘viscosity’ in the conclusions of his article and the comparison of the EP with national parliaments of EU countries indicates this fundamental misunderstanding of the role of agenda setter. The legislative roles of the executive and legislative branches in the EU’s co-operation procedure and national parliaments in Europe are diametrically opposed. In all fairness, however, we should point out that Scully is far from the only person to make such mistaken comparisons. This particular distinction between presidential and parliamentary systems is recent in the literature.16

It is the misunderstanding of agenda-setting power and veto power that leads directly to the flaws in Scully’s analysis of the EU’s co-operation and co-decision procedures. In the last stages of the co-operation procedure, the Parliament makes a proposal to the Council. If this proposal is accepted by the Commission, it requires a qualified majority to be accepted in the Council or unanimity to be modified. Conversely, in the last stages of the co-decision procedure, the Council makes a proposal to the Parliament that can only be overturned by an absolute majority in the Parliament.

This change in the location of agenda-setting power is the basis of our argument about the likely legislative consequences of moving from co-operation to co-decision. Scully does not dispute our analysis of co-operation (notwithstanding the fact that he does not understand why agenda-setting power is ‘conditional’ and the policy consequences of this adjective). Nor does Scully disagree with us that in the last stage of co-decision it is the Council that makes a proposal to the EP. What he does claim is that our analysis of the co-decision endgame conceals what he considers to be of far greater importance – the systematic upgrading of the European Parliament’s powers throughout the procedure. Let us now turn to this issue.

VETOES AND THE CO-DECISION PROCEDURE

With the ratification of the Maastricht treaty, the co-decision procedure (among other things) replaced co-operation for internal market legislation in the EU. The first steps in co-decision are the same as under co-operation. Co-decision is distinctive, however, in cases where the EP decides to amend or reject the Council’s common position. If the EP amends the common position, the amended proposal is returned immediately to the Council (rather than being considered first by the Commission, as is the case under
co-operation). The Council may then accept these amendments under QMV. If a unanimous Council chooses to amend the EP's amendments, however, a conciliation committee is convened containing equal representation from the Council and Parliament. If the EP rejects the common position, a conciliation committee is convened directly.

The conciliation committee is charged with writing a 'joint text'. The representatives of both the Council and the EP can make proposals and amendments unless or until a qualified majority of the Council and a simple majority of the Parliament agree to a joint text. If no joint text is approved, the Council then decides by QMV whether to approve its earlier common position, possibly including any of the EP's amendments that it likes. The text the Council approves becomes law unless the EP rejects it by absolute majority.

There is no doubt that the co-decision procedure is very complicated. Our analysis of its central dynamics, however, is quite straightforward. We argue that co-decision gives the Council the agenda-setting power it lacks under co-operation. The Commission loses some control over the legislative agenda. So does the Parliament, but this loss is accompanied by its new unconditional veto power. We argue, however, that this veto power is worth little so long as the Council is located between the Parliament and the status quo. As a result, winning Council proposals under co-decision are likely frequently to be less integrationist than winning Commission/EP proposals under co-operation.

Scully disagrees with our logic. He argues that analysing the co-decision endgame is not enough because under the previous stages of co-decision the Parliament will already have made the same proposals (amendments) that it would have made under co-operation, and these proposals would have been adopted by qualified majority. The essence of Scully's argument is thus that there is no change in the location of agenda-setting power from co-operation to co-decision. The only substantive effect of co-decision is to give the EP a veto over proposals that it does not like. The obvious conclusion, or so Scully believes, is that co-decision represents a significant increase in the EP's powers.

We wish to highlight three critical errors built into Scully's account. They concern, respectively, the concepts of 'backwards induction', 'incomplete information' and 'indeterminacy of multiperson bargaining games'. These misunderstandings lead to his erroneous conclusions.

**Backwards Induction**

Rational actors make decisions on the basis of their expected consequences. Therefore, they strategise 'backwards' from the end of a game-tree to the beginning. For example, if the Council knows that at the end of the game it
THE EUROPEAN UNION’S CO-DECISION PROCEDURE

will select from the set of all feasible outcomes the one it most prefers to the status quo (or to what it could obtain on its own, acting unanimously), it will not accept anything less in earlier rounds. Scully seems to argue against backwards induction. He claims that ‘(i)t must be reiterated 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, Council supporting the common position as amended by the EP’, and on and on back through all previous stages of the co-decision game.

Scully even uses the fact that most of the time the final stage of the co-decision procedures is not reached as ‘evidence’ in favour of his argument. Of course, this is absurd from the standpoint of game theory: whether the final round of the game is reached is irrelevant to its outcome. What is sufficient for rational players is to know the outcome of such a final round. So long as the possibility is there for the final stage of a take-it-or-leave-it Council offer to the EP to be reached, the Council will not accept any solution that is not as good as it could win in this endgame.

Incomplete Information

In a world of complete information (in which all actors know the full structure of the game and each others’ preferences), the sequence of moves permitted by co-operation and co-decision would never occur. In particular, rational actors in the Commission, Council and EP would know which amendments would be acceptable to the other, and would not make unacceptable ones. Moreover, earlier proposals would already have incorporated possible successful amendments. To take the most extreme example, under complete information there would only be one stage in the co-decision game – the initial Commission proposal would be accepted QMV by the Council and by an absolute majority of the Parliament.

The EU’s legislative environment, however, is manifestly not a world of complete information. The very fact that we see amendments proposed and accepted or partially accepted (see the next section) indicates the existence of incomplete information. The greater the ‘uncertainty’ (in Scully’s terms) surrounding the process, the more lengthy the legislative process itself. Scully, however, makes a bizarre argument on this point, claiming that the legislative process may be shortened by incomplete information:

Council members should realise, 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.20

This argument is bizarre because if the last stages of the co-decision procedure are reached this necessarily implies incomplete information. Consider the basic structure of preferences in Figure 2 and assume that actors in the Council and Parliament do not know each other’s ideal points. As a result, they try to infer them from all the proposals they have made but were rejected by the other side (N.B. rejections represent costly – and therefore credible – signals of preferences). In the last stage, the Council will have a better idea of where the Parliament is located, and it will make a proposal that is most advantageous to itself and that will be acceptable by the EP (on the basis of all available information). We now consider which proposal the Council will make to the Parliament in the co-decision endgame.

Indeterminacy of Multi-Actor Bargaining Outcomes

It is well known that an infinite set of utility partitions can be supported as perfect equilibria in pure bargaining games with three or more players.21 In the case of co-decision, our focus must be on the choices available to the actors who effectively decide what Council proposal to make to the EP in the last stage of the game. In the context of Figure 1, the relevant players in the Council are governments 3–7. These five governments have to make a proposal that will not be rejected by the EP.

In order to understand legislative outcomes under co-decision, therefore, attention must be focused on bargaining in the Council, and in particular among the most pro-integration QMV coalition (governments 3–7). The set of feasible outcomes is the area between points 3 and 4. Government 3 is the pivotal actor; if it does not support the Council proposal, there is nothing that governments 4–7 can do to improve circumstances for themselves. In turn, government 3 knows that a unanimous Council could generate a proposal between points 1 and 2. Government 3 would thus be better off under any QMV proposal between 2 and 4, but it also knows that governments 4–7 prefer outcomes at 3 than at 2. The effective range of possible bargaining outcomes in the Council is therefore between 3 and 4.

But we are getting ahead of ourselves, because Scully never makes it to this point in the analysis. Since he does not understand backwards induction, he assumes that the EP will previously have made a proposal outside the Council’s effective bargaining partition. He argues that the Parliament will make a proposal to the Council before the conciliation committee is convened just to the left of the ideal point of government 6. Scully understands that government 3 is pivotal in the Council, but he thinks that the EP makes proposals to it. Hence, the ‘winning’ EP proposal would
be just to the left of government 6. It should now be clear that this is wrong not only because of the logic of backwards induction but also because Scully does not understand the implications of the fact that the EP’s agenda-setting power is always conditional on what a unanimous Council could do.

Nonetheless, we will persevere with Scully’s analysis (that is, based on the notion that the EP’s agenda-setting power is unconditional and that it retains this power under co-decision) because it still allows us to make our basic point about multi-player bargaining games. If Parliament’s proposal were to the left of 6, the set of feasible outcomes would be the area between 3 and 6 (the pivotal government 3 would reject anything else). Scully, however, knows little about bargaining games over which there is no institutional discipline — that is games in which there is an effective unanimity rule, where anyone can make unlimited proposals and amendments, and where the process continues until a unanimous decision is reached. Indeed, Scully is bewildered by them: ‘Using this model [that is, that which he attributes to us] ... it is virtually impossible for any [emphasis in the original] legislation to ever pass under co-decision. The Council members will almost always split three ways between the status quo, the common position and the EP.’ 22

Had Scully paid attention to our argument, however, he would not have been so perplexed. We stated:

The final solution [to the co-decision endgame] will thus be the one accepted by 34567 and the Parliament. With respect to the internal bargaining of coalition 34567, we know that any solution acceptable to government 3 (that is any position it prefers to the status quo) is a fortiori acceptable to the other four members of the coalition, and to the Parliament as well. This reduces the expected outcomes to the segment 35 in Figure 4. It is conceivable that government 4 will make a statement that it cannot accept any other outcome but its own ideal point. If this statement is considered credible by the other governments, 4 will be the outcome of the codecision procedure. A more reasonable assumption, however, is that government 3 has the effective bargaining power, and it will be able to impose its will on the Council. It will propose a policy at its ideal point. This will be accepted by the four governments to its right. In turn, the Council’s proposal will also be accepted by the Parliament, and legislation will be passed implementing the ideal point of government 3. 23

If one were to overlook the myriad inaccuracies and confusion in Scully’s article, the disagreement between us can be boiled down to a single issue. It concerns the interaction between the Council and the Parliament in the final stage of the co-decision procedure: the proposal the Council makes
to the Parliament (and therefore, unless the EP rejects by absolute majority, the outcome of this procedure). We claim that the outcome of co-decision will be within the segment 3–6 (again, using Scully’s description of the feasible set of outcomes), and add that 3 is the ‘more reasonable’. In contrast, Scully claims that the proposal will necessarily be just to the left of government 6, exactly the same as the result of co-operation under his assumptions. As a result, Scully concludes ‘that the common position (under co-decision) will be agreed at a similar point to that in the co-operation procedure, but that the EP has the additional security of a veto to prevent the passage of any legislation it is unhappy with’. Therefore, the Parliament is a more influential legislator under co-operation than under co-decision.

Scully’s conclusion is incorrect so long as the outcome is anywhere significantly to the left of point 6, including point 3, which we claim to be ‘more reasonable’. Why did we select this specific outcome from the whole 3–6 interval? The reason is that the empirical literature on the EU persistently and strongly claims that unconstrained bargaining among governments in the EU is subject to powerful ‘lowest common denominator’ pressures. Robert Keohane and Stanley Hoffmann highlight the extent of otherwise recalcitrant Margaret Thatcher’s willingness to ‘pool sovereignty’ through QMV on internal market issues as effectively determining the limits of the Single European Act: ‘The British government was very clear that it was entering into a bargain and not acting on the basis of an ideology of unity or solidarity with Europe.’

Similarly, Jonathan Golub claims that ‘a wide range of evidence might lead one to characterize EC environmental policy prior to the SEA as a series of LCD bargaining outcomes based on domestic industrial preferences, with ratcheting constituting the rare exception to the rule.’ One could easily multiply these citations and quotations. Our simple point is that the consensus on unconstrained unanimity bargaining among member governments – in the Council or in intergovernmental conferences – is that outcomes will be subject to heavy lowest common denominator pressures. The empirical literature thus narrows down game theoretic predictions. But Scully ignores both the theoretical predictions and the empirical literature: he argues that the highest common denominator will obtain in the Council.

The reason that we have closely dissected Scully’s argument is that it formalises the conventional wisdom about the empowering of the EP at Maastricht. In so doing, we have been able to highlight why we consider the conventional wisdom to be fundamentally misguided about co-decision. For Scully, extending the policy areas subject to co-decision is a clear way to reduce the democratic deficit in Europe. In contrast, we believe that this
objective would be furthered much more effectively by eliminating the stages of the co-decision procedure after the conciliation committee. Indeed in almost all countries with bicameral legislatures where a conference committee is used (with the exception of France), legislation is aborted if this committee does not reach a compromise, or if the compromise fails to get approved by both chambers. In addition, the reduction of qualified majority threshold in the Council would also result in an increase of the EP’s influence. If these practices were followed in the EU, this would place the Council and the Parliament on a much more equal footing.

Before concluding our theoretical discussion, we would like to present some more analysis of co-decision based on Tsebelis (an article that Scully does not discuss because he had not seen it). This article makes the distinction between two kinds of disagreements that might arise between the Parliament and Council under the co-operation and co-decision procedures. The members of the Council are likely to have different positions on policy matters. When this is the case, it will be possible for the EP to use its agenda-setting role under co-operation to make proposals that will make a qualified majority better off.

On institutional questions (like comitology, or issues of enforcement of legislation, or under what procedure will future decisions be made), in contrast, the members of the Council are likely to have identical positions – because they all want to increase the power of the Council over other institutions. Where this is the case, the conditional agenda-setting power of the Parliament under co-operation would be eliminated because its amendments could be overruled by the unanimous Council. Put differently, when institutional questions are at stake, the only power that the Parliament has is its veto under co-decision (assuming it can persuade the Council that it will veto the bill unless a certain number of its amendments are included in the legislation). With this distinction between institutional issues and policy issues in place, it is now time to turn to the empirical evidence.

THE EMPIRICAL RECORD OF CO-OPERATION AND CO-DECISION

Most of the ‘strong evidence’ Scully presents against our co-decision thesis is in fact irrelevant because no real information (except that there is incomplete information!) is contained in data showing how frequently the last stage of the co-decision procedure is reached. If the procedure ends sooner, one cannot infer that the Parliament got a better deal. Reaching the endgame only means that there was more uncertainty. Similarly, higher participation is irrelevant. What remains of Scully’s evidence? First, there is the quotation from Corbett Jacobs and Shackleton that ‘early indications are that the rate of adoption of [Parliament’s] amendments is considerably
higher under codecision’ than under co-operation. The second piece of evidence is Scully’s observation notes that the EP has called for extension of the co-decision procedure to more policy areas.

Corbett and his colleagues did not have the latest data in their hands when they were writing the most recent edition of their authoritative book on the European Parliament. The standard piece of evidence that is considered an indicator of parliamentary influence in the EU is a table published by DG II (suivi des actes parlementaires). It presents the total number of parliamentary amendments, as well as the number of these that were subsequently accepted by the Commission and by the Council, respectively. These data are significantly less revealing than generally believed in the empirical literature, for the following reason: strictly speaking, the number of amendments is an indicator of incomplete information (otherwise either the amendments would have been anticipated and incorporated, or their failure would have been anticipated and the amendments not proposed). So, the way to interpret the evidence is the following: out of the times that the actors failed to anticipate each other’s proposals how many times did the EP prevail? Still, these data have demonstrated that half of the amendments are incorporated in legislation under co-operation. For our task at hand (a comparison of parliamentary influence under co-operation and co-decision) they are quite crude indicators: all amendments are added without any attempt to evaluate their significance. Moreover, the numbers do not differentiate between partially accepted or modified amendments, on the one hand, and those that were accepted by the Council exactly as the Parliament drafted them.

The latter accounting rule creates a serious bias against our thesis. We argue that the Council’s final proposal will be at a position close to the ideal point of its pivotal member, not much closer to the EP’s ideal point. One consequence of our argument is that some parliamentary amendments may well be partially accepted by the Council. Here is a possible sequence based on Figure 1. The EP, following Scully’s suggestions (or, more likely, because of incomplete information), offers 6 in the first round. The most likely response by the Council is a unanimous rejection with a new proposal at point 1 or point 2. Irrespective of whether the EP reintroduces point 6 or becomes wiser and offers point 4 (as we suggest for the co-operation procedure), a QMV in the Council can still select 3 instead. In such a sequence of events, the official statistics will count this partially accepted amendment as if it were completely accepted, biasing the results against our argument.

Data published by DG II on 23 July 1996 compile all amendments proposed by the Parliament and accepted by the Commission and the Council in the 48 pieces of legislation completed under the co-decision procedure up to June 1996. DG II reports 1,057 Parliamentary amendments.
in the first round and 228 in the second round. Of these, the Commission accepted 584 in the first round and 171 in the second, while the Council accepted 505 in the first round and 'at least' 59 in the second.34

Let us now compare these recently generated numbers with the co-operation procedure statistics (see Table 1). In order to make these numbers comparable to previous data, it should be remembered that the EP does not introduce new amendments in the second reading of a bill (unless the Council or the Commission introduced new parts in the text of the bill). This means that, in general, second reading amendments indicate that the EP has insisted on its previous position. The numbers presented here are based on this assumption.35

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<td>1,057 (1.0)</td>
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<td>Commission (%)</td>
<td>1,992 (.73)</td>
<td>982 (.53)</td>
<td>755 (.71)</td>
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<tr>
<td>Council (%)</td>
<td>1,410 (.52)</td>
<td>809 (.44)</td>
<td>&gt;564 (&gt; .53)</td>
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The columns of Table 1 present the number of amendments introduced by the EP (in the first reading of the bill, since second-round amendments are assumed to be reintroductions), and those that are accepted by the Commission and the Council (in either reading of the bill). The rows correspond to the amendments introduced in the first period of the co-operation procedure (until 1991),36 the second period (1992–93), the total existing numbers for co-operation,37 and the data for the first period of co-decision. Percentages of acceptance are below the raw numbers.

There has been a clear drop in the portion of accepted EP amendments during the lifetime of the co-operation procedure. In the first period, from 1987 to 1991, the Commission accepted 73 per cent of Parliament's amendments while the Council accepted 52 per cent. These percentages then fell to 53 per cent and 44 per cent respectively in the following two-year period. As far as we know, this difference has never previously been identified and reported, let alone explained. On the basis of these statistics
there has been a decline over time in the rate of acceptance of parliamentary amendments. We do not know whether this decline reflects changes in the issue areas subject to legislation, a change in the Council’s strategy (see below), or the updating of strategies by all actors based on learning. Until we ascertain the reasons for the secular decline in the rate of acceptance of EP amendments, the appropriate comparator for the first two years of co-decision is the first period of co-operation. This is the simplest way to counteract any bias inherent in the changes over time in the co-operation procedure statistics.

There is no substantive difference in the fate of EP amendments under co-operation and co-decision in these comparable periods. Is this finding more supportive of our argument (that policy influence of the EP is likely to decline under co-decision) or Scully’s (that the Parliament is more powerful under co-decision)? Let us analyse this question as follows. Let \( x \) be the rate of acceptance of ‘policy amendments’, and \( y \) the rate of acceptance of ‘institutional amendments’ (see end of section 2); \( x \) can thus be considered as a measure of the agenda-setting power of the EP, while \( y \) is more indicative of its veto power. Using the subscripts \( _{\text{cod}} \) and \( _{\text{coop}} \) for co-decision and co-operation respectively, there are actually three different theses in debate: our own, the conventional wisdom and Scully’s (which is a variant of the conventional wisdom).

We claim that the EP has agenda-setting power under co-operation, and therefore more policy amendments will be accepted under co-operation than co-decision (\( x_{\text{coop}} > x_{\text{cod}} \)). In addition, the EP cannot overcome a unanimous Council decision under co-operation (\( y_{\text{coop}} = 0 \)), but it can under co-decision (\( y_{\text{cod}} > 0 \)) if it makes the credible threat that it will abort the whole bill. In summary, our position is:

\[
x_{\text{coop}} > x_{\text{cod}}, \quad y_{\text{coop}} = 0, \quad y_{\text{cod}} > 0
\]

(1)

Scully claims that there is no difference in policy outcomes between co-operation and co-decision (\( x_{\text{coop}} = x_{\text{cod}} \)), but the Parliament gains veto power under co-decision which would be translated as in our thesis to \( y_{\text{coop}} = 0 \), and \( y_{\text{cod}} > 0 \). Scully’s argument can thus be represented as:

\[
x_{\text{coop}} = x_{\text{cod}}, \quad y_{\text{coop}} = 0, \quad y_{\text{cod}} > 0
\]

(2)

Finally, the conventional wisdom does not differentiate between different kinds of amendments, and expects that parliamentary influence (expressed as the sum of the two different kinds of amendments) increases under co-decision:

\[
x_{\text{coop}} + y_{\text{coop}} < x_{\text{cod}} + y_{\text{cod}}
\]

(3)

Note that our thesis and the conventional wisdom are not mutually exclusive: if \( y_{\text{cod}} > x_{\text{coop}} - x_{\text{cod}} \), both our argument and the conventional
wisdom are correct. Furthermore, Scully’s contribution to the general
debate is to provide a particular interpretation of the conventional wisdom
in which the only difference between co-operation and co-decision is the
EP’s new veto power.

Now reconsider the data in Table 1 in algebraic terms. The data suggest:

\[ x_{\text{coop}} + y_{\text{coop}} = x_{\text{cod}} + y_{\text{cod}} \]  

(4)

This empirical relationship is consistent with our theory. Since we argue that
\( y_{\text{coop}} = 0 \), this implies that \( x_{\text{coop}} = x_{\text{cod}} + y_{\text{cod}} \). Furthermore, since it is
uncontroversial that \( y_{\text{cod}} > 0 \), \( x_{\text{coop}} > x_{\text{cod}} \) as we predict. The data are not very
supportive of the conventional wisdom because they show an equality of
acceptance rates between the two procedures rather than an increase under
co-decision. Finally, the data are wholly inconsistent with Scully’s, unless
veto power counts for absolutely nothing under co-decision. But this is
certainly not Scully’s argument.

The data also address Scully’s rhetorical question: if the Parliament’s
power is no greater under co-decision than under co-operation, why do
members of the EP ask for extensions of co-decision? As Tsebelis argues,
‘institutional conflicts are likely to be the land of high profile cases on the
basis of which commentators make their judgments about how the EU
works’. The same is probable for members of the EP in a period when the
Parliament wants to increase its powers. Because co-decision gives the
Parliament veto power and this allows the EP to extract institutional
concessions from the Council, MEPs are right to ask for more co-decision.
In a period of ‘rodage’ of European institutions, such questions will
certainly be more frequent than when or if these debates are settled. When
this period is over, we would expect the institutional actors once again to
focus on agenda setting.

To summarise this section, we have shown that Scully’s ‘empirical
evidence’ is irrelevant to the dispute between us and that the best available
data are consistent with our analysis and refute his. This is not to suggest that
the available data on the fate of EP amendments are perfect. They necessarily
exclude any and all EP amendments that were anticipated by the Council and
Commission, and therefore not made. Based on the history of the co-
operation procedure, there must be a good chance that the co-decision
statistics will change over time. Moreover, the data are very crude, and biased
against our argument. As a result, we find the results quite convincing given
the circumstances.

CONCLUSION

Scully’s *modus operandi* is commendable: he subjects deductive arguments
to empirical scrutiny. Furthermore, his hypotheses are more precise than is
the conventional wisdom; sufficiently precise to be empirically testable. We have shown, however, that Scully’s theoretical account of legislative processes in the EU is fatally flawed, and that the best available data indicate that his empirical expectations are incorrect. Scully has thus been too hasty to answer in the affirmative Tsebelis’ question: ‘will Maastricht reduce the democratic deficit?’ It will take time and better data before we can draw robust conclusions about this subject with respect to the EU’s legislative process. Nonetheless, we agree with Scully that the only way forward for EU scholarship is to confront theoretical arguments with empirical evidence. The either/or approach that bifurcates most existing research must give way to a more integrated social scientific approach.

NOTES


3. The figure also replicates perfectly the setup used in Garrett, ‘From the Luxembourg Compromise to Codecision. It differs from Figure 4 in Garrett and Tsebelis, ‘An Institutional Critique of Intergovernmentalism’, where we assumed that the status quo was at the ideal point of government 1 in order to simplify calculations.

4. This is the simplest way to analyse the different QMV rules that have obtained in the Council of Ministers. In doing so, we assume that all governments in the Council have equal voting weights. While factually incorrect, this assumption has no impact on any of the issues in debate between Scully and ourselves.

5. Garrett, ‘From the Luxembourg Compromise to Codecision’.

6. George Tsebelis, ‘The Power of the European Parliament as a Conditional Agenda-Setter’, American Political Science Review, 88 (1994), pp.128–42. In fact he makes a more general claim in two respects (p.135). First, the prediction is the same irrespective of the number of dimensions in the policy space. Second, Tsebelis argues that if the EP can narrow down the range of what the Council can do by unanimity, it can use this to its own advantage. For example, if the EP knows that the only unanimous outcome in the Council is the position of state 1 (the lowest common denominator), then it can propose and have point 5 accepted. We discuss the lowest common denominator argument at length in the third section.

7. For a more detailed description and analysis of all the EU’s legislative procedures, see Tsebelis and Garrett, ‘An Institutional Critique of Intergovernmentalism’, p.354.


13. The following discussion is based on Tsebelis, ‘Will Maastricht Reduce the “Democratic Deficit”?’ and Tsebelis, ‘Maastricht and the “Democratic Deficit”’, Aussenwirtschaft (forthcoming).


15. See Tsebelis, ‘Maastricht and the “Democratic Deficit”’, for a series of significantly more complicated voting models that demonstrate this claim.


17. It is not clear whether the Council can modify the amendments it chooses to include in its final proposal. If the Council cannot modify the parliamentary amendments, its choices are more restricted. For an extended discussion of this uncertainty over the ambit of the Council’s power in the penultimate stage of co-decision and its consequences, see Tsebelis, ‘Maastricht and the “Democratic Deficit”’.


19. This discussion, as well as Scully’s rejoinder to our original models, ignores the impact of Rubinstein’s ‘impatience’ of the two players on the final outcome. See Ariel Rubinstein, ‘Perfect Equilibrium in a Bargaining Game’, Econometrica, 50, pp.97–109. For policy bargaining models between impatient players see George Tsebelis and Jeannette Money, Bicameralism (New York: Cambridge University Press, 1997).


28. Tsebelis and Money, Bicameralism.

29. Tsebelis, ‘Maastricht and the “Democratic Deficit”’.

30. In a private communication with us, Heiner Schulz argued that members of the Council can disagree on institutional issues and agree on policy ones (for example, if the status quo is between the positions of the Council and the EP the members of the Council are unanimous against any EP amendment). His point is well taken. In what follows we will use the term ‘policy’ in order to indicate all the cases where the EP can find an allied qualified majority within the Council (and therefore has agenda-setting powers), and ‘institutional’ for all the cases it can not. We remind the reader that amendments (whether successful or failed) are indications of incomplete information, and consequently failed amendments under co-operation are not necessarily institutional.
33. The details of the argument are presented in Tsebelis' response to Moser, who uses the empirical literature to explain that if the EP makes a proposal that does not make all the members of a QMV better off than anything the Council can decide unanimously the Council is likely to decide by unanimity in favour of a position that this member prefers over the EP proposal (in our case member 3 prefers point 1 or 2 over point 6).
34. The document explains that these 59 amendments correspond to 12 bills where the position of the EP was adopted. There were another 19 bills where the position of the conciliation committee was adopted (which includes Parliamentary amendments), and 17 cases where the Parliament made no second-round amendments.
35. This is not a perfect measure, but is how the Commission calculates that 'over 50 per cent of Parliament's amendments have been accepted by the Commission and carried by the Council', see David Earnshaw and David Judge, 'From Co-operation to Co-decision: The European Parliament's Path to Legislative Power', in J.J. Richardson (ed.), *European Union: Power and Policy-Making* (London: Routledge, 1996), p.96. However, our conclusions hold also if one assumes that one out of two second-round amendments are new amendments (which is a more realistic assumption).
38. Actually, the data show $x_{coop} + y_{coop} > x_{cod} + y_{cod}$ with respect to the Commission, and the opposite with respect to the Council. Since these differences are small and the first is in our favour while the second is against us, we will ignore them.
39. Tsebelis, 'Maastricht and the "Democratic Deficit"'.
40. Tsebelis, 'Will Maastricht Reduce the "Democratic Deficit"?'