More on the European Parliament as a Conditional Agenda Setter: Response to Moser

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Moser analyzes the cooperation procedure using a model that assumes (1) one dimension and (2) complete information. I show that because of these two restrictive assumptions and his misunderstanding of the strategic implications of Article 189a(1) of the Maastricht Treaty (an article also present in the Single European Act and the Treaty of Rome), Moser's conclusions are mistaken. In particular, his predicted outcomes are incorrect, and his major institutional prediction (that the European Parliament plays no role in decision making except in the second round of the cooperation procedure) is contradicted by thousands of parliamentary amendments, the major part of which are accepted in the first round.

The article that Peter Moser criticizes (Tsebelis 1994) uses a multidimensional Euclidean model to investigate interactions among the Council of Ministers, the Commission of the European Union, and the European Parliament (EP) in the second round of the cooperation procedure. On the basis of the model, I drew several conclusions concerning this interaction and, more generally, decision making in Europe. Such conclusions concerned what I called (1) the curvilinear property, that in one or two dimensions when the status quo is far away from the Council or in the middle of the ideal points of the Council members, neither the Commission nor the EP has agenda setting power; (2) the "informational property," that the more secretive the deliberations of the Council, the less influence the agenda setter has; and (3) the "dimensionality of space property," according to which higher dimensionality confers more powers on the agenda setter. In addition, I concluded that the EP has conditional agenda-setting powers, and I speculated about the rate of integration when such powers are offered to prointegration actors like the EP and the Commission.

Moser presents a one-dimensional complete information model of European decision making and comes to three main results, two of which contradict my analysis. In this rejoinder I will show that his model is based on an incomplete understanding of the treaties and of my own article as well as a serious neglect of the facts surrounding the application of the cooperation procedure. Despite this, Moser makes some valid points, and I will try to sort them out from the rest of his argument. I start with a discussion of the three results of Moser's model and then argue that the reason his conclusions are incorrect is his limiting assumptions (complete information and one dimension). I then conclude.

MOSES'S RESULTS

My presentation follows the sequence in which Moser presents his results. I will demonstrate that our first and most important dispute (his Result 1) is based on his inaccurate understanding of the strategic implications of the treaties; the second (Result 2) is based on neglect of the facts; and the third (Result 3) is not a disagreement, since his point is one made throughout my article, including the summary. For reasons of economy of space I will refer to his results by number, and I will use his Figure 1 to detail our differences.

Result 1, or, What Happened to the Treaties?

I have claimed that in one- or two-dimensional policy space there is a curvilinear property to the EP's power. That is, if the status quo is very far from the ideal points of the members of the Council, or in the middle of them, the EP cannot make a winning proposal, whereas if the status quo is in intermediate position with respect to the Council, such a proposal may exist. Moser disputes this result and claims that the farther the status quo from the Council, the more power the agenda setter has. Let me add here what is implicit but not highlighted in my original article: If the policy space has more than two dimensions, then the farther away the status quo is from the members of the Council, the less power the agenda setter has. This statement will make my disagreement with Moser even more pronounced.

According to Moser, "Tsebelis' model implies that the Council unanimously chooses a proposal on its own in the first stage." He also claims that (in the configuration of forces depicted in his Figure 1) the Commission will exercise its agenda-setting power in the first round and make a proposal which is more prointegrationist than in my model, and that this proposal will be voted in the first round and cannot be upset in the second. Both claims are mistaken: I have never made the argument he attributes to me; moreover, an understanding of the strategic implications of the treaties shows that the agenda setter (whether the EP or the Commission in this case is irrelevant) is very unlikely to make Moser's proposal (although, as I will explain, under certain extreme conditions such a proposal may be possible).

My difference with Moser is located in Article 189a(1) of the Maastricht Treaty. It specifies in part: "Where in pursuance of the Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an

1 Tsebelis and Kreppel (1995) trace the history of this article to the Treaty of Rome. In fact, it is repeated in all the treaties since then.
act constituting an amendment to that proposal." Moser recognizes this article in his presentation of the cooperation procedure but does not draw any strategic implications from it. Let us follow his Figure 1 (the case of similar preferences of the EP and the Commission) to see what he missed by ignoring this article.

The Council can always (both in the first and second reading) modify a Commission proposal by unanimity. Consequently, when the Commission introduces proposal $v$, while it is true that members $3-7$ prefer $v$ to the status quo, member $3$ always (by construction) prefers point $z$ in Moser's Figure 1 to both $v$ and the status quo. Consequently, the coalition of members $3-7$ is not a stable coalition. At least one of its members (and possibly more) prefer to enter in coalition with members $1$ and $2$ and try to have $z$ voted instead.

Consequently, if the Commission proposes $v$, the members of the Council are faced with a coordination game. They propose $v$ over the status quo by qualified majority, but they also unanimously prefer $z$ over the status quo; moreover, there is no clear ordering of the alternatives $v$ and $z$. Both are equilibria in this game, which means that if all other necessary members have decided to vote for $v$, then the missing fifth member will vote for it, and if all other necessary members are determined to vote for $z$, then the last member will vote for it. Therefore, on the one hand, if member $3$ makes a credible commitment that $s/he$ will only vote for $z$, then $z$ will be the outcome. If, on the other hand, member $7$ makes a credible commitment that $s/he$ will only support $v$, then $v$ will be the outcome. Moser assumes (mistakenly) that if $v$ is proposed, it will be the outcome. What happens, instead, is that when the agenda setter makes a proposal of $v$, in fact $s/he$ selects a lottery between $v$ and $z$ (and possibly, if there is no coordination, the status quo).

Is there a way of guessing which one of these two or three outcomes is more likely to occur? A game-theoretic analysis would eliminate the status quo, since it is not an equilibrium, and would predict either $z$ or $v$. Furthermore, such an analysis would introduce some additional criterion for equilibrium selection (refinement). The standard refinements do not provide an answer in this case, but an understanding of focal points and practices established in the Council is likely to be illuminating. Readers familiar with game theory will notice that the argument that follows is equivalent with the claim that of the two sequential equilibria (that Moser and I propose), mine is supported by the off-equilibrium beliefs generated by the relevant literature (that the Council produces a unanimous decision whenever it can), while his collapses under the same set of beliefs.

Of the three possible outcomes—the status quo (if there is no agreement), $v$ (preferred to the status quo by a qualified majority), and $z$ (preferred to the status quo by unanimity)—$z$ has a focal point quality because it is always located in the middle between $v$ and the status quo. In addition, there are frequent arguments in the literature about the preference for unanimous decision making in the Council (outcome $z$ in our case). For example, it is well established that few formal votes are taken in the Council. Here is how a document by the European People's Party (EPP) Group (Christian Democrats) describes the situation:

Informal votes are often held which reveal whether a qualified majority exists. If it does, the Council Presidency may simply say that a decision will be deemed to be taken unless anyone objects. Equally, within the Council, significant efforts are often made to secure the widest measure of agreement, to accommodate states which may not be able to stop a proposal being adopted but have strong concerns about particular points. Everyone has a vested interest in a divisive vote being avoided. As a result, few formal votes occur. However, without the certainty that a vote can be taken at the end of the day, there would be little impulsion towards agreement (Infodoc, December 1995; emphasis added).

What this passage and other similar accounts indicate is that if there is a point with unanimous support (such as $z$) it will be selected over nonunanimous points (like $v$). In its absence, an informal vote will be taken, and the prevailing option will be reported as the outcome unless some state wants to report its objection. So, if the agenda setter proposes $v$, the most likely outcome will be a unanimous decision by the Council to select $z$.

Here is the logic of my article in this simplified one-dimensional setting. If the agenda setter makes the proposal $x$, which the pivotal member $3$ prefers over $z$ (anything that the Council can decide by unanimity), then there is nothing that can lead $3$ to defect from the coalition $3-7$. Member $3$ will not try to enter into coalition with $1$ and $2$ and upset the Commission's proposal. In other words, no alternative to $x$ can emerge from within the Council. Consequently, when the agenda setter makes a proposal of $x$, in fact $s/he$ selects the outcome $x$.

Now let us follow the agenda setter's decision making. $S/he$ has to select between a lottery of $v$ and $z$, where $z$ (the outcome least preferred by the agenda setter) is more likely, or a sure event $x$. What is $s/he$ going to do? The odds are overwhelming in terms of policy preferences that the agenda setter will go for $x$ (the outcome predicted in Tsebelis 1994) instead of the lottery (the outcome predicted by Moser in his comment). If one adds to the equation institutional rivalries, according to which each institution prefers to see its own proposals accepted rather than disputed and amended, the odds become even more favorable for my analysis.

The reader has undoubtedly noticed that I am speaking in terms of probabilities and have established that Moser's argument is highly unlikely. Can I establish that it is impossible? The answer is no. If the agenda setter knows that unanimity is impossible (for example, if countries 1 and 2 have different ideal points and have made clear that they will not support anything other than their own ideal points), the agenda setter can propose $v$.

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2 For a word of caution against selection of equilibria on the basis of some formal criterion, see Kreps (1990).

3 The refinements are perfect (Selten 1975), sequential (Kreps and Wilson 1982), or stationary (Baron and Ferejohn 1989).

4 Similar arguments can be found in Peters (1992, 84–5), Dinan (1994, 254), and Miller (1995).
and have it accepted by the qualified majority of the Council.\footnote{I made a similar argument when I was trying to explain why European workplace health and safety regulation went outside the Pareto set of the Council (Tsebelis 1995). Under the prevailing rules, the Council would have been able to select unanimously an outcome located in its Pareto set. Yet, if one of the countries (say, the United Kingdom) refuses for its own domestic reasons to endorse any regulation on the matter, then the Council will adopt, by qualified majority, outcomes outside its Pareto set.} But such cases will be rare, indeed. In conclusion, the agenda setter will make the proposal $x$ in the second round, not because there was a unanimous vote by the Council in the first round (as Moser has me claiming), but for strategic reasons, in order to prevent a unanimous decision of $z$ in the second round.

Since the logic of my argument prevails in the second round, let us see whether the Commission can do something about that in the first round, as Moser suggests. As I have said, there is no difference in the applicability of Article 189a(1) in the first or the second round, so in the first round the outcome would have been the same. But let as assume that the Council cannot modify unanimously in the first round, in order to follow Moser's logic closely. He claims my analysis "is based on an asymmetric assumption: While the EP acts strategically in the second reading, the Commission does not use its agenda setting rights effectively in the first stage." His argument, developed in the explanation of Result 1, is that even if the outcome would have been $z$ in the second round, the Commission will prevent it by proposing $v$ in the first round, with the result that then $v$ cannot be upset in the second round (members 6 and 7 would vote against such a change).

At this point Moser has the strategic analysis backwards. Even under the (counterfactual) assumptions that we have made to favor his model, the outcome still would have been $x$ not $v$. The reason is that $v$ will be voted down by member 3 in the first round, so that $x$ will be offered in the second round and accepted by a qualified majority. The reason for that outcome is the standard backwards induction reasoning of game theory: Strategic actors can look at the end of the game and will not accept anything less in order to terminate the game earlier.\footnote{I remind the readers with game-theoretic background that there are no time discount factors here.}

This point is important in order to examine Moser's claim that my analysis is either incorrect or incomplete. I have shown that Moser arrives at his results because he did not pay attention to Article 189a(1). The consequence is that his analysis is incorrect, not mine. The claims of incompleteness are also mistaken, because one has to analyze games backwards, and any (subgame perfect) equilibrium strategies in the game have to include equilibrium behavior in the last stage of the game. In other words, in order to draw conclusions about the cooperation procedure, one has to start from the second round, exactly as I did.

Moser's Result 1 is the most important theoretical disagreement between us. If correct, it would dispute not only the curvilinear property but also my whole line of argument and the concept of a conditional agenda setter.

Indeed, the basic difference between Moser's unconditional agenda setting and my concept of conditional agenda setting is that in the first case the Council will revert to the status quo if it rejects the EP's proposal, whereas in the second case the Council has the option of reverting to a unanimously acceptable solution. This possibility significantly limits the powers of the agenda setter, whose proposal must make a qualified majority better off than any (unanimous) decision, otherwise s/he loses the agenda-setting power, which reverts to the unanimous Council. That is why I developed the concept of conditional agenda setting. Understanding the strategic implications of Article 189a(1) confirms my analysis of the second round of the cooperation procedure, and backwards induction confirms the same result for the first round.

\section{Result 2, or, the Rule with Thousands of Exceptions}

Moser predicts that in equilibrium the EP will have no influence on legislation. If the EP anticipates that some proposal will not pass, it will not make it; and if the EP's proposal would have passed, it will be offered by the Commission. So, in equilibrium there should be no amendments and certainly no EP influence. It is surprising that Moser brings this point up for debate, because the facts do not support his case. As he says, I have reported that for every four EP amendments, three are accepted by the Commission, and two of these are incorporated into law. What Moser does not present is the sheer numbers: Corbett et al. (1995, 199) report that from 1987 to 1993 the EP made 4,572 amendments, the Commission accepted 2,974, and the Council 2,219.\footnote{For the calculation of these numbers I assumed that there are no new EP amendments in the second round, which although mandated by the EP rules is not always followed in practice.} Depending on what one considers the major point of Moser's argument (no EP amendments, or amendments that will all be rejected by the Commission or will be rejected by the Council), there are 4,572, 2,974, or 2,219 exceptions to it. I do not understand why Moser insists on providing a model with so many exceptions as a benchmark.

Moser deserves credit, however, because he is the only person to confront the inadequacy of complete information models in providing an explanation for the facts. He at least tries to provide an ad hoc explanation,\footnote{Examples that do not discuss the empirical side are Steunenberg (1994) and Crombez (1996).} specifically, that something changes between the first and the second round of the cooperation procedure. The change can occur in the position of the pivotal member of the Council, or in the position of the Commission, or in the position of the status quo. In any of these cases, the Commission can no longer amend the bill, so the only feasible amendments are introduced by the EP, and the Commission accepts them. Moser's ad hoc explanation reduces the number of exceptions between his theory and the facts, but not by very much. In the first round, the Commission accepted 2,499 of the EP's amendments and the Council 1,966.
Of course, further analysis of these statistics is required. In my own research, analyzing the legislative history of about 90 directives and roughly 1,400 EP amendments, I found that 12% were accepted by the Council in their entirety, 11% largely (more than half the text), 10% partially (less than half the text), and 20% with modifications. In total, 53% of EP amendments were accepted and the overwhelming majority in the first round. Although we lack systematic information concerning the significance of these amendments, we do know that some were important and that some were accepted in the first round of the cooperation procedure. For example, in another article (Tsebelis 1995, 73) I enumerate EP amendments that introduced significant changes in work place health and safety; I also show that some of these were accepted in the first round. Similarly, in examining environmental legislation, Kalandrakis (1996) divided EP amendments into significant and nonsignificant and found that of the 154 amendments examined, 82 were significant; that the acceptance rates were almost identical between amendments generally and those that were significant (0.54 in the first case, and 0.50 in the second); and that the major share of acceptance occurred in the first round (0.89 for all accepted amendments, 0.91 for significant accepted amendments).

What is interesting about these numbers is that, whether drawn from statistical studies or case analyses, they all tell the same story, one that is very different from Moser's model even after the addition of his verbal corrections. Moser's model expects no amendments to be accepted (indeed, he expects that amendments will not even be made), and his verbal modifications expect that no amendments will be accepted in the first round. In reality, thousands of EP amendments are accepted, and the major part of them in the first round.

Result 3, or, How to Force Open Doors

Moser's third result is constantly reported in my 1994 article, including the summary: "[The EP] can make a proposal that, if accepted by the Commission ..." (p. 128). In fact, the three conditions for a successful EP proposal are (1) an absolute majority in the EP, by no means a trivial matter with existing attendance rates, (2) acceptance by the Commission, which happens three-quarters of the time, and (3) a status quo not far removed so that there is an area preferred by a qualified majority in the Council over any unanimous solution (Tsebelis 1994, 138). The reader can refer to my article to verify that acceptance by the Commission is always stated as a condition, so I will not pursue this point; instead, I will offer my explanation as to why Moser's results are so far off the mark.

Moser's Assumptions

The two basic assumptions driving Moser's results are a single dimension of policy space and complete information. I will discuss the limitations imposed by each of these assumptions, but let me start with questioning their realism by discussing some little-known features of the famous catalytic converters case (SYN 115). I use it not because I believe it is typical but because it is instructive for our purposes.

In the directive concerning small cars, the difference between the EP, on the one hand, and the other two institutions (the Commission and the Council), on the other, was that the former wanted strict emission standards which could have been met only by the introduction of catalytic converters (20 grams/test for carbon monoxide and 5 grams/test for hydrocarbons and oxides of nitrogen), while the latter wanted more relaxed standards (30 grams/test and 8 grams/test, respectively). In the first reading, the Commission and the Council rejected the EP's amendments in favor of their version, but in the second reading, the Commission and the Council decided to accept the amendments.

What I have not seen reported in the literature is that the Commission then proposed a compromise. It introduced its own (and the Council's) initial standards for a period of transition and accepted the EP's amendment thereafter (in fact, it even improved upon those standards by reducing the level of carbon monoxide emissions from 20 to 19 grams/test). The Council did not accept the two-period adjustment and voted to adopt the EP's standards in one step.

Some inferences to be drawn from this story are as follows. First, the story cannot be told in one dimension. Even if one wanted to do so, the introduction of the two-step process by the Commission introduced a second dimension (time) into the debate. The Council was obviously closer to the EP in this second dimension (time) into the debate. The Council was obviously closer to the EP in this second dimension and did not see why a two-step process would be better than straightforward adoption. This story thus directly discredits Moser's single-dimension assumption. But there is more: Under complete information, the Commission never would have made an amendment which would not be adopted and which would lead the Council to line up with the EP. Consequently, one single directive shows that both of Moser's fundamental assumptions are unrealistic (i.e., false). Now, I know that for some people having false assumptions is not considered a problem (Friedman 1953). I happen to believe that it is a major problem for a model, because when the fundamental assumptions are false, it does not matter what the conclusions are. Indeed, once one ignores the facts and ventures to make Moser's counterfactual assumptions, there is no possible

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9 I am currently undertaking such an investigation under the auspices of the NSF (grant #SBR 9511485).

10 See EP amendment #3. For the original proposal, see OJC 262 10/10/88/89; for Commission revisions, see OJC 321 14/12/1988/7; for EP second reading, OJC 120 16/5/89; for Commission second revisions, OJC 134 31/5/89/8; for Council decision, OJL 226 3/8/89/1.

11 Arguably, since it involves different technologies, it is already multidimensional.

12 Cases in which the Council sides with the EP against the Commission are important for our discussion. In my study I found that it happens around 1% of the time.

13 See Tsebelis 1990 (chapter 2) for extensive development of this point and the surrounding dispute over the question of "realism of assumptions."
influence of the EP except in very limited ways, one of which Moser presents verbally, as well as some others I will present below. But there are many more reasons that such influence can occur; here are some examples.

In the first round of the cooperation procedure the EP makes amendments in new dimensions (different than the axis defined by the Commission and the Council). Some of these amendments may make the Commission better off, and it accepts them immediately (possibly with modifications), which may lead (because of conditional agenda setting) to the adoption by the Council. The Commission and/or the Council may reject EP amendments in the first round and wait until the second round to accept them. Why? Because the Commission and/or the Council may expect the EP to moderate its position in the second round and make a better (for them) offer. Since a small majority is required for an amendment to pass on the floor in the first round but an absolute majority is required in the second round, the EP may, indeed, modify its position or fail to adopt the initial amendment in the second round; then again, it may simply reintroduce its first-round amendment. Again, this amendment may be accepted (conditional agenda setting) or not because there is no winning proposal (the Commission rejects it, or the Council modifies it unanimously). This story involves multiple dimensions and incomplete information, and it is (with all its variations) the modal history of the EP’s amendments (at least in the roughly 90 SYNs I have seen). And this story with all its variations is consistent with my model (Tsebelis 1994) and inconsistent with Moser’s.

But the EP also can make amendments along the dimension of disagreements of the Council and the Commission and have its proposals accepted for reasons different from the ones proposed by Moser. It is possible that the EP blackmails the Commission by threatening to delay or veto legislation (which it can do effectively with the support of a single government). In fact, “in 1981 the Parliament amended its procedures to enable its committees to postpone a vote on a Commission proposal until the Commission had taken a position on Parliament’s amendments” (Judge 1992, 194). It is also possible that the Commission goes along with an EP amendment because it wants to maintain good relations with the EP, or because it wants to act as an honest broker (a point frequently raised in the literature) and is concerned about generating as little friction as possible within European institutions. Finally, it is possible for the Commission as a whole or for some actor within it to plant amendments through the EP. Here is how Judge (1992, 199) reports an interview with an official of DG XI (the Commission’s directorate general in charge of the environment): “We will ask Parliament to do things, to look at things. If we need things to be changed in the Council then we might ask the EP to take an amendment on board. We then go back to Council and say ‘Look this is what parliament is pressing for,’ . . . This is a legitimate tactic on our part.”

In short, EP amendments are not impossible, contrary to Moser’s model. They do not occur only in the second round, as his verbal account expects. They happen frequently, and they are accepted by the thousands in both the first and the second round. They are the rule. Here is how the Commission characterizes the situation: “Since the Single European Act came into force on July 1, 1987, over 50 per cent of Parliament’s amendments have been accepted by the Commission and carried by the Council. No national parliament has a comparable success rate in bending the executive to its will” [Commission Press release 15 December 1994; quoted in Earnshaw and Judge (1996, 96)]. The reason Moser arrives at mistaken conclusions is the two restrictive assumptions of his model, single dimension and complete information.

CONCLUSIONS

Moser’s argument is inconsistent with both the Rome and Maastricht treaties and with the facts. Yet, his contribution deserves credit for two reasons. First, unlike other authors, Moser tries to bring his model to grips with the facts. To that effect, he identifies a mechanism that does occur in European legislation: the change of positions of some actors or the status quo. Change of preferences is a mechanism that is frequently neglected in the rational choice literature because the phenomena explained take place in a short period and because its intellectual quality is trivial (it is always possible to claim that actors changed behavior because they changed their mind). In the European context, however, when legislation may take years to be completed, and the composition of different deliberative bodies may alter from the first stage to the last, change of preferences or of the status quo is a plausible explanation. Moser brings this point out very forcefully.

Moser also deserves credit because he reinstates the fact that the Commission writes the first draft of legislation and, consequently, is also a conditional agenda setter in the cooperation procedure. While it does not have de facto exclusive jurisdiction as to the subject matters to be discussed,14 it is the exclusive author of the initial proposal. In my original article I analyzed the second round and therefore did not underline this point. What I did underscore (and what I still consider the most important contribution of that article) are the powers of the conditional agenda setter. Unlike Moser’s unconditional agenda setters, whose powers increase with the distance of the status quo from the positions of the Council, conditional agenda setters see their powers either change in a curvilinear fashion (in one or two dimensions) or decrease with the distance of the status quo from the Council. These properties have significant implications for the speed of European integration, implications described in the article and developed in more detail in subsequent publications (Garrett and Tsebelis 1996, Tsebelis 1995, Tsebelis and Kreppel 1995). I thank Moser for giving me the opportunity to revisit my article along with some of the literature written since.

Moser and I share the belief that the EU institutions

are to a great extent responsible for the observed outcomes, such as the speed and directions of integration. Our institutionalist approach is based on deductive reasoning for the modeling part (as opposed to simple institution) and on systematic evaluation of the facts for the empirical part (as opposed to historical accounts of single events). Space constraints prevented me from pointing out these similarities and led me to focus on the differences. Because our models come to sharper predictions (like points $x$ and $v$ in Figure 1) and are relevant to a set of facts (thousands of EP amendments), we are able to test our arguments better and present our evidence in more distinct contrast to each other than otherwise would have been the case. The extensive presentation of our disagreements, however, should not mislead the reader into the belief that they outweigh the points we have in common.

For a lengthier criticism of other approaches, see Garrett and Tsebelis (1996) and Tsebelis and Kreppel (1995).

REFERENCES


