Robert Schuman Centre

Why Did They Sign? Explaining EC Environmental Policy Bargaining

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Abstract

This paper explores the extent to which political scientists and international relations scholars possess the empirical evidence required to determine the applicability of bargaining models to the development of EC environmental policy. Particular attention will be paid to Council bargaining which occurred under conditions of unanimity prior to the Single European Act (1972-1986).

The paper has two aims. First, to clarify the phenomenon which bargaining models need to explain--how integration has "ratcheted up" environmental standards instead of yielding a series of lowest common denominator outcomes which merely reflect pre-existing national environmental policies. The second objective is to determine which bargaining dynamics facilitated consensus on such stringent standards. In other words, the paper seeks to answer the question why, when it came to Council bargaining, did the respective national governments agree to sign these laws?

Empirical evidence suggests that dynamics varied across time and between states. In some cases bargaining outcomes reflected slack cutting, side-payments or issue linkage inherent to intergovernmentalism and two-level games. However, many of the paper's findings challenge the characterisation of EC environmental integration as a strict product of intergovernmental bargaining. National governments frequently agreed to EC Directives which later produced entirely unanticipated and undesired costs beyond the scope of the original bargain.

In addressing the question "why did they sign?", this paper explores the content and development of EC environmental policy. In so doing, it highlights the relative strengths and weaknesses of functionalism and liberal intergovernmental bargaining as competing theories of European integration. Analysis focuses on secondary community law, and on decisionmaking under conditions of unanimity 1972-86. This excludes consideration of international environmental agreements, although a more thorough analysis would undoubtedly need to consider the extent to which negotiations in international arenas, in addition to yielding effective environmental protection (Haas, Keohane and Levy 1993), shape the development of secondary EC law.

I. Ratcheting

The term "ratcheting" has been used to describe the adoption of EC environmental standards which are more stringent than pre-existing national laws in the member states. EC laws can ratchet up standards for one state, a few or the entire group. Although claims of ratcheting under conditions of unanimous voting prior to the adoption of the Single European Act (SEA) are widespread in the literature (Sbragia 1993, 1996, Vogel 1996, Haigh 1984, Rehbinder and Stewart 1985), tracing these to the source often gives a muddy picture of the integration process. Significant ratcheting depends on whether EC law was harmonised at a high or a low standard, and whether substantial costs were incurred at the national level. Unfortunately neither of these questions is addressed in any rigorous sense by available studies, although several dissertations have been devoted to establishing the relationship between national standards and EC laws (see Golub 1994, and the Phd research of Inger Weibust at MIT).

Much of the basis for claims of ratcheting is a single series of reports by EC lawyers, in which there is no consistent analysis of national conditions before harmonisation, no effort to distinguish cosmetic legal changes from substantive policy changes, and very little attempt made to assess the costs imposed on various national actors by EC directives (Haigh et al 1986). In terms of the central questions noted above, the case studies suffer from incongruities between the usually quoted series conclusion (vol. 1), the actual examples in the country reports (vols. 2-4), and the conclusions offered by the individual country reports. Thus EC law might not have changed anything, as

national law was already in the pipeline, and may not have imposed any additional costs on domestic polluters. The absence of these two conditions suggests the absence of significant ratcheting.

It should be pointed out that contributions to Pinter's *EC Membership Evaluated Series*, a second group of articles often cited to support ratcheting, suffer from the same, if not more severe, methodological limitations. Most of the articles are written from a purely legal perspective, thus ignoring both of the conditions needed for actual ratcheting, and for many states analysis is extremely limited, making no effort to determine pre-existing national conditions, bargaining dynamics or costs of adopted EC legislation.

Nevertheless, there can be little doubt that EC laws imposed an enormous ratcheting effect on Southern Europe: the entry of these states required wholesale adoption of EC directives against a sometimes tabula rasa background (Collier and Golub 1996, La Spina and Sciortino 1993), and while recent events took place under QMV, Greece participated in five years of EC environmental policymaking under conditions of unanimous voting, during which time many standards were adopted which far exceeded its pre-existing national measures. For the original member states, on the other hand, the picture is fuzzy, the example of nitrates in drinking water often being put forward as indicative of widespread ratcheting. This example, as well as other cases of ratcheting, are discussed below in the context of bargaining mechanisms.

II. Why did they sign?

Functionalism

One explanation which has been offered to explain why member states adopted EC environmental laws emphasises the role of functionalism. A number of authors have identified geographic spillover (international recognition of transboundary pollution) and economic spillover as reasons why the Community became involved in environmental policy, and why it produced its first Environmental Action Programme in 1973 (Pollack 1994, Hildebrand 1993, Haigh 1984, Brenton 1994). As important as these issues are in explaining EC task expansion, economic spillover and the rise of global environmental movements tell us nothing about what these coordinated actions look like, the actual content of EC laws. For example, completion of the market could have been accomplished equally well by either lowest or highest common denominator regulations (Golub 1996c). Functionalism by itself is incapable of

explaining the integration process because it ignores variation amongst countries for why they signed actual policies, as well as overlooking the distribution of gains and losses when dealing with coordinated action and negative externalities.

In addition to economic spillover, however, functionalist theory also contends that psychological spillover--aspects of which have been referred to as *engrenage*, or *copinage technocratique*--represents an important mechanism which explains unexpectedly high regulatory outcomes. At the core of the argument is the claim that national technical experts and national political representatives, particularly those meeting repeatedly in COREPER and a bewildering array of working groups, develop a level of collective identity which fosters cooperation and mutual concessions. Under this type of policymaking, often called "problem solving", national interests are redefined or no longer defended, and distributional questions vanish as rational calculations give way to common goals (Héritier et al 1996, Majone 1993, Peterson 1995, Haas 1958, Haas 1964, Hayes-Renshaw & Wallace 1996, de Zwaan 1995).

For its empirical support, much of this theoretical literature draws upon a single but substantial study of harmonisation in the field of health and safety at work (Eichener 1992). Eichener's study deals with a group of directives which were based on Article 100A and were thus subject to QMV. However, the functionalist dynamics described by Eichener could also apply under unanimous voting. The functionalist literature assumes this possibility--its frequent rehearsals of Eichener's findings as definitive evidence for functionalist logic are never accompanied by language limiting the claim to pre-1987 Community development. One of the central goals of the analysis set out below is therefore to determine whether the available evidence suggests that EU environmental policymaking prior to the SEA exhibits the functionalist dynamics identified by Eichener.

Liberal Intergovernmentalism?

Constituting an important advance over realism, liberal intergovernmentalism (LI) suggests a model whereby European integration proceeds by a sequential process of domestic preference formation followed by intergovernmental bargaining (Moravcsik 1993, 1994). Despite his admirable and painstaking attention to a vast array of empirical evidence, Moravcsik has consistently refused to extend this powerful theory to cover daily policymaking, focusing instead on a handful of "history making" bargains such as the signing

of the original treaty, the SEA, Maastricht, and the establishment of the ERM. While claiming to model "European integration," this dramatic restriction of the dependent variable excludes from analysis the hundreds of EC laws which in fact may constitute the bulk of European integration (Golub 1996a). As currently constructed, liberal intergovernmentalism offers few insights into the preferences and influence of actors involved in daily policymaking, and thus no predictions about the content of EC law.

Nevertheless, LI represents the most highly developed model of European integration to date, and there is no reason why it cannot be extended to "daily policymaking" in a way which Moravcsik resists. In the following pages I make a preliminary effort to do so, asking first, how much of the question "why did they sign?" can be answered by a bargaining model, and second, which factors beyond bargaining should we consider? The strengths and limitations of the bargaining explanation cast light on important aspects of the integration process, particularly the relative persuasiveness of LI and functionalism.

I should note at the outset that this paper will not address the issue of agenda-setting. While its failure to capture the complexities of agenda-setting may constitute a fatal flaw in LI, for the purposes of this paper the issue would only become decisive if one could show that member states effectively had no choice but to sign the specific proposals on the table. I have argued elsewhere that in most cases agenda-setting involves separate elements of influence and power, whereby the Commission acts as a reservoir of innovative ideas from which the Council selects at its leisure, thereby retaining individual power of the member states under unanimity or collective power under QMV (Golub 1996a). Furthermore, a powerful agenda-setting role for the Commission, Parliament, media, scientists or any other number of actors does not by itself deny the importance of the bargaining mechanisms outlined below. Policy entrepreneurs and agenda-setters must still convince all the states to sign.

To extend LI to daily policymaking, and to the production of environmental policy in particular, it is necessary to consider both the process of domestic preference formation and the potential bargaining dynamics.

Preference formation: For our purposes the key domestic players which influence national preference formation are industrial/producer groups, and green groups. Because of the distribution of costs and benefits from regulation, in general the former is concentrated, dominates control and provision of technical information, and traditionally enjoys insider status with government officials, while the latter is more dispersed and traditionally exerts weaker influence (Olson 1965, Moravcsik 1993, Mazey and Richardson 1993). In short,

we would expect that the interests of these groups would be first to gain competitive advantages against their European counterparts, and second to avoid adjustment costs and the resulting competitive disadvantages stemming from EC environmental regulation. Under an extended version of LI, these preferences would be taken on by national representatives and defended throughout the negotiating process in Brussels.

Bargaining dynamics: Although the dominant position of producer groups gives rise to the common national preference of avoiding economic disadvantages, traditions of environmental protection vary amongst EC states, generating different environmental "baselines" in each country. With varying baselines, we can make predictions about which countries might gain from EC harmonisation, and thus the incentives underpinning why these states might have signed EC environmental directives. While no state is an environmental leader in every sector, a crude ranking by national environmental concern might produce the following: Netherlands/Germany/Denmark manifest high levels of environmental protection, while France/UK/Belgium and Italy manifest lower levels. The hypothesis is that EC standards will not exceed the regulatory levels dictated by dominant domestic actors in laggard states at any given point in time unless specific bargaining mechanisms are employed.

Following the analysis of Rehbinder and Stewart (1985:9-13), environmental states understandably seek harmonisation at the highest possible levels, but could reasonably be expected to sign just about any EC environmental law, whether product standards or process standards, as each of these has the potential to raise costs in the more polluting states and prevent social dumping. Polluting states would certainly oppose process standards, and also harmonised product standards if foreign environmental trade barriers could be overcome by legal challenge under Article 30 (negative commerce clause). Alternatively, if legal recourse were precluded, polluter states would support product standards at the lowest possible level. Under conditions of unanimity, the resulting incentive structure would predict harmonised but lax product standards, and no harmonisation of process standards beyond the LCD (Rehbinder and Stewart 1985:11). Thus we expect many LCD outcomes from a tying-hands strategy (Putnam 1988), with national industry and producer groups constituting the essential domestic constituencies which constrain government bargaining. With its negotiating line dictated by these groups, no state government would willingly accept higher production costs or barred exports at the hands of its EC competitors.

III. EC Environmental Law: LCD Bargaining Outcomes

In fact, a wide range of evidence might lead one to characterise 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. First of all there are examples where a national veto precluded any bargaining outcome, as with the UK and paper pulp or sea dumping proposals (Golub 1994). Although the British government was responding to pressure from national industry, it also invoked the subsidiarity principle to ward off EC legislation, a practice which has continued in the post-Maastricht era when some of these same proposals resurfaced (Golub 1996c).

Besides proposals which languished in COREPER or were defeated in the Council, a vast literature (often the very sources cited to confirm ratcheting!) documents LCDs where no significant costs were imposed on national groups. This includes instances where in practice EC law doesnt apply to a state, such as Ireland, because it has no affected industry or no pollution problems in a given policy sector (O'Donnell 1991, Bennett 1991:28-9). More often, EC law imposed no real costs because sufficiently stringent standards were either already in place under national legislation or were already under consideration at the time of adoption. And in many cases national pollution levels were far below those mandated by EC law, despite an absence of national legislation.

Taking seven of the air pollution directives as examples illustrates the prevalence of these LCD effects, as well as highlighting the tiny number of ratcheting exceptions:

> SO2 Directive 80/779: standards already met by Belgium, Denmark, Germany, Netherlands (Bennett 1991:46-51, 76-7), France incurred no sweeping changes or costs, and retained its preferred UES approach (Bennett 1991:62-4), Italy's emissions were already falling (Bennett 1991:70), UK had no SO2 problem and had laws committed to smoke reduction (Bennett 1991:82-4).
>
> Large plant framework Directive 84/360: Standards and authorisation procedures already in place for Belgium, Denmark, Germany, France, Netherlands (Bennett 1991:180-3, 185-193). UK kept BPM (Bennett 1991:196). Toothless, as it replaced BAT with BATNEEC, exchanged QMV for unanimous voting on subsequent standards, incorporated language about environmental absorption

much favoured by the UK (Zito 1995, Golub 1994, Haigh 1989:225-6). Significant ratcheting in Italy (Bennett 1991:189). Possible effects in Ireland (Bennett 1991:187).

Lead Directive 82/884: Belgium, Denmark, Germany, France, Netherlands, Ireland already met standards (Bennett 1991:87-9, 93, 98-9). UK already moving towards the standard (Haigh 1989:200). Possible ratcheting in France.

Nitrogen Directive 85/203: standards already met in Belgium, Denmark, Germany, Netherlands, Ireland, UK (Bennett 1991:104-7, 119-121), France had few violations and stabilising emissions (Bennett 1991:111-2).

Sulphur in gas oil Directive 75/716: standards already met or laws already planned in Belgium, Denmark, France, Netherlands, UK (Bennett 1991:125-131, 134-7) (although possible ratcheting in Germany and Ireland).

Lead in petrol Directive 78/611: lead limits already met in Belgium, Denmark, Germany, Netherlands, UK (Bennett 1991:140-3, 151, 157). Move to unleaded ratcheted only Belgium, and market forces were already pushing for widespread availability of unleaded (Bennett 1991:140-141).

Industrial plant Directive 84/360: standards already met in Belgium, Denmark, Germany, France, Netherlands (Bennett 1991:179-83, 187, 192). UK keeps BPM (Bennett 1991:196, Golub 1994). Various ratcheting in Ireland and Italy: permitting makes big impact in Ireland but very few plants (Bennett 1991:187), Italy seriously hit with costs (Bennett 1991:189).

Besides these seven directives, EC air laws were filled with specific derogations and loopholes for individual plants, which also allowed states to retain their preferred pollution reduction methods and even expand production in areas of high environmental quality (Golub 1994, 1996b, Bennett 1991:44, Haigh 1989, Rehbinder and Stewart 1985).

A similar story can be told for EC water directives prior to the SEA. Besides opt-outs for specific industry or for geographic conditions, states often

introduced vague wording which allowed them to designate for themselves which waters needed improvement. This rendered EC directives on freshwater fish and shellfish almost totally harmless (Haigh et al 1986:26-34, Lavoux 1986:34, 41, Bennett 1986:32, 34). Also similar to the air directives, EC water laws frequently imposed weaker standards than already existed or had been planned in the member states, or provided a legal instrument for environmental standards that were already being met without specific regulation. For almost every state, EC laws on the biodegradability of detergents, surface water for drinking and chloro-alkali fall into this category (e.g--Kromarek 1986:93, Lavoux 1986:61, Bennett 1986:54, Haigh 1989:87-9). In signing many of the water directives, Britain was able to negotiate an important dual control system whereby through EQOs it could maintain its preferred dispersal and absorption approach while gaining the right to apply UES to particularly polluting plants in clean areas; Britain was also successful in negotiating emissions standards which took into account economic considerations (Golub 1994, 1996b).

For the group of EC directives devoted to problems of waste shipment and disposal, available evidence suggests that on the whole they imposed little, if any, significant costs on member states, derived almost entirely from pre-existing national rules, and entailed only marginal adjustments to national regulatory systems (Haigh et al 1986:100, Lavoux 1986:102, Kromarek 1986:109, 118, 124, 131, Bennett 1986:93). Even Directive 76/403 on PCBs, for example, which has been cited as an example of significant ratcheting similar to the ones found by Eichener (Rehbinder & Stewart 1985:214, Majone 1994:54), appears less remarkable when examined closely. While OECD warnings in 1973 and many international disasters shot PCB protection up the agenda, there is no evidence of resistance to the directive in any member state, no important amendments were made to the draft proposal, and national laws were already in place to deal with PCBs (Kromarek 1986:120-2, Lavoux 1986:91-2, Haigh 1989:152). Similarly, there is no indication in the literature that this directive involved heavy compliance costs.

On the whole, the *EC Environmental Law in Practice Reports*, along with other studies, give the impression that EC directives forced states to make many cosmetic changes, and sometimes hire a few additional staff. Much is made about having to introduce binding standards (Bennett 1991:199, Haigh et al 1986:98, 105), but the body of the reports indicate that in almost every case these alterations merely verified the fact that certain types of pollution were not occurring. The remainder of cases usually indicate minor extensions to pre-existing pollution control systems (e.g.--in the Netherlands, Bennett 1986:91).

This perspective undercuts the strength of ratcheting claims, including those made in a few of the *Membership Evaluated Series* books (e.g.--van Maasacker and Aarsten 1990). For both of these groups of studies, their purely juridical analysis exaggerates the ratcheting effect by overlooking the question of new regulatory costs and the possibility that states were already moving towards new policies. Certainly more thorough research is required before concluding that the bulk of EC environmental law pre-87 was the result of a LCD bargaining game, but the initial evidence points in this direction.

IV. Ratcheted Bargaining Outcomes

Even if LCDs predominated, the interesting question is to explain the residual cases of ratcheting under conditions of unanimity. Several mechanisms derived from LI/bargaining theory and integration literature might account for these policy outcomes (Vogel 1995, 1996, Putnam 1988, Moravcsik 1993, 1994, Rehbinder and Stewart 1985, Sbragia 1996, Haas 1980). They are portrayed here as analytically distinct, but in practice they are sometimes difficult to distinguish and can operate simultaneously:

1) California effect: In contrast to the feared "race to the bottom", regulatory competition creates a race to the top, with large green markets driving the integration process. Individual states, particularly Germany and California, threaten to impose higher standards unilaterally, thereby excluding "dirty" foreign goods from their domestic markets. In order to maintain market access, other member states are forced to either meet these environmental standards entirely, or agree to harmonised EC standards at a somewhat ratcheted level of environmental protection. Theoretically, product standards represent the least interesting cases because the widespread aversion to fragmented European markets generates consensus for action and states therefore have extremely high incentives to find collective solutions in the form of harmonised EC laws. Nevertheless, there remain important empirical questions of which factors are necessary for the California effect to operate, what type of bargaining takes place, and why states agree to the content of specific laws.

2) explicit issue linkage (horsetrading, package deals): ratcheting could result when negotiators make explicit trade-offs amongst policies, either within or between sectors. An example of inter-sectoral linkage might be a state accepting

tighter and thus costlier standards for sewage treatment in exchange for a lower contribution to the EC budget, higher agricultural prices, revised pharmaceutical standards or changes in the structure of the VAT. Intra-sectoral linkage, on the other hand, might involve accepting higher sewage standards in exchange for laxer air pollution standards or looser environmental impact assessment rules.

3) diffuse reciprocity: environmental ratcheting could also result from concessions on a specific policy in expectation of unspecified later gains. Perceived gains can take the form of specific envisaged policies or the expectation that the overall benefits of membership are greater than zero. Securing benefits from specific later outcomes possibly depends on intangible factors, such as accumulating goodwill by appearing a good European. Diffuse reciprocity also appears in another important form: with many issues on the table, no state has the political capital to resist them all, so inevitable concessions result. Nevertheless, policy outcomes are reached because there is an expected payoff from remaining a "member of the club", rather than because a reformulation of identity or interests transformed the process from one of bargaining into one of problem solving.

4) side payments: states might also offer concessions on a specific policy in exchange for a straightforward bribe, such as increased structural or cohesion funds.

5) slack cutting: precisely the opposite dynamic to the "tying hands" approach which results in LCD outcomes, slack cutting involves collusion amongst national representatives in order to escape constraints imposed by domestic actors. A variety of advantages are conferred on national officials who operate simultaneously in the domestic and EU arenas--the two levels of policymaking--allowing them to redefine their win-sets to include higher environmental standards. These advantages include, among other things, selective manipulation and dispersal of information during bargaining, institutional insulation, and control of initiatives, each of which places domestic opponents in substantially weakened positions.

6) expected non-compliance: ratcheting might reflect the willingness of certain states to sign directives which they have no serious intention of implementing.

The projected costs imposed by EC standards would be considered irrelevant by states with dismal domestic implementation and enforcement apparatus.

Turning to the empirical evidence, we can ask which of these mechanisms has been important for the adoption of stringent EC environmental standards, and which have been "disproved" as important causal mechanisms.

1) From the outset the California effect argument lacks a key analytical link: that unilateral green trade barriers were deemed legal under Article 30/36. In fact the ECJ doctrine in *Dassonville* and *Cassis* suggests otherwise (Cases 8/74 [1974] and 120/78 [1978], Rehbinder and Stewart 1985:10-11). The Court drew broad prohibitions against measures restricting intra-EC trade, and environmental aspects were not explicitly added to Article 36's exceptions until the French waste oil case (Case 240/83 [1983]) (subsequently extended by the Danish bottles case (Case 302/86 [1988])). Although potentially allowable even under *Cassis*, the ECJ never ruled on the legality of unilateral environmental action prior to 1983. Perhaps the most that can be made of this mechanism is that the hassle and uncertainty of legal action, thus the possibility of a California effect, forced compromises at levels higher than LCD.

Something like the California effect certainly played a role in the case of car emissions: some states signed because the directives would impose no costs, or because these costs were an inevitable product of market forces. For example, the size of their export markets meant that Belgium, Denmark, and the Netherlands already met vehicle standard directives 70/220-83/351 and thus faced no new costs (Bennett 1991:162-4).

But even here ratcheting should not be overstated, as optional harmonisation protected producers with huge domestic markets from suffering new production costs and intense intergovernmental bargaining still occurred. Britain, France and Italy all opposed catalytic converters, thereby blocking the 1985 Commission proposal.

Tighter car standards in the mid-1980s did result from a California effect, but not with the legal support of the ECJ. In 1983 Germany introduced unilateral restrictions on polluting (and thus predominantly foreign) cars, accompanied by preferential tax breaks for clean cars. France and the UK threatened to drag Germany before the ECJ for violating Article 92 on state aids, but no ruling was ever made on the legality of German emission standards or tax break measures (Arp 1995:229-31). With the ECJ as an ally, or at least a silent opponent, German policies successfully greened the huge German car

market, placing enormous pressure on other member states to meet higher standards and eventually tighten EC law dealing with vehicle emissions and catalytic converters.

Despite the example of car standards, even at its best the California effect only provides a partial explanation for the adoption of EC environmental laws. Viewed from a functionalist perspective (Pollack 1994) or a bargaining perspective (Moravcsik 1993:502), authors who invoke the California effect provide no reasons for the ratcheting of process standards, which bring no export benefits but only higher production costs. Green states would obviously push for uniformity at the highest possible level but laggard states would cling to competitive advantage (Rehbinder and Stewart 1985). Many examples of such laws exist in the history of EC environmental policy: paper pulp mills, drinking water and bathing standards, mercury discharges, titanium dioxide, all the waste disposal laws.

2) Widespread usage of inter-sectoral package deals is constantly claimed in literature on EC policymaking, invariably without any empirical support. Basically there is no credibility in cross-sectoral concessions. Far too many people are required to complete such linkage (not the same person making and receiving concessions), while serious timing problems preclude effective deals and encourage defection for 'new circumstances' (long-range policy such as the EC budget is only negotiated every three years). Domestic opposition also prevents linkage because someone always loses. As LI recognises, you only get inter-sectoral linkage when you can offload the costs onto some disorganised group (Moravcsik 1993:505). As producer/industrial groups are neither diffuse nor passive, government officials would have little room to accept expensive environmental ratcheting in order to gain in other policy areas.

Not a single example of inter-sectoral linkage has actually been identified in the literature on EC environmental policy. Besides theoretical objections, several studies confirm the absence of inter-sectoral linkage in practice, shifting the burden on to exponents of this mechanism (Golub 1996b, 1997, Arp 1995, Liefferink 1995).

But intra-sectoral linkage plays a significant role because credibility of concessions is higher: the same officials bargain repeatedly over time, reducing coordination problems, and multiple environmental issues often arise on the same agenda, reducing chances of defection. It should be noted that LI allows for this type of ratcheting (Moravcsik 1993:506). Lionel Barber, often cited for his provocative article in the Financial Times (March 11/12, 1995) suggesting

the power of COREPER and the role of intersectoral package deals (widgets for whiskey example) admits that such deals are extremely rare; inter-sectoral bargains are the exception to the rule of intense intra-sectoral bargaining--such as wine for whiskey (personal communication, 1 April 1995).

In the field of EC environmental policy, intra-sectoral linkage was crucial to the adoption of certain air pollution directives, with Germany making concessions on car standards in order to secure agreement for large industrial plants (Arp 1995:238). The Netherlands also employed this type of linkage frequently, sometimes in order to avoid costs of EC laws, other times to achieve as much ratcheting as possible in certain areas where it was a green leader (Liefferink 1995).

3) Diffuse reciprocity is hard to identify, but underpins LI's claim that bargaining doesnt necessarily yield LCDs--"since it is generally in [a state's] interest to compromise somewhat rather than veto an agreement" (Moravcsik 1993:501). Tangible or intangible, the expected future payoff from concessions is crucial, thus differentiating diffuse reciprocity from functionalist dynamics of problem solving and identity reformulation. Spain's wholesale acceptance of EC environmental obligations in order to demonstrate its position as a central player on the European stage provides a clear example of diffuse reciprocity in combination with side payments--Spain expected to gain more from full and equal membership than it would from environmental derogations (Pridham 1995, Pridham and Konstadakopulos 1994). But examples are also available from the original member states. The sampling of surface water directive was opposed by both the Lander and the German government on grounds of cost and work load, but eventually accepted "for reasons of Community integration" (Kromarek 1986:39). Germany was also willing to sign what it saw as a flawed freshwater fish proposal to "show its good European will" (Kromarek 1986:54), although such concessions are easy when no costs are involved.

More important than explicit expressions of diffuse reciprocity, this mechanism often takes the form of a state simply not being able to veto everything. British negotiators in the 1970s, for example, were opposed to both the bathing water and dangerous substances directives, but chose to focus their resistance on the latter, thereby securing the dual-measurement system of EQOs and UES at the expense of taking a risk on bathing water standards (Golub 1996b, 1997). The need to prioritise resistance to groups of directives allows considerable ratcheting under the expectation that no state will suffer consistent losses over time.

Diffuse reciprocity also plays an important role at the implementation stage. Although very difficult to distinguish from slack, the two mechanisms often working in unison, government officials can pressure domestic groups to enforce tight standards with the claim that such sacrifices are part of a European game that offers overall advantages. Thus Germany appealed to "loyalty towards the EC" and a "desire not to spoil European harmony" when imposing costly water laws on its industry, noting that other states were doing the same (Kromarek 1986:132).

4) side payments: although crucial for southern states during and after the SEA, the record reveals no examples pre-1987, and none for any of the northern states.

5) slack: Slack cutting in the southern member states has allowed a significant amount of environmental ratcheting (Collier and Golub 1996, Pridham 1995, Pridham and Konstadakopulos 1994, Lewanski 1993). This could explain the various examples presented above where Italy was the state primarily affected by EC standards. While most prevalent in the South, there is no theoretical reason why slack couldnt also account for the few cases of ratcheting in the north. It is noteworthy that in the case of Britain, somewhat of an environmental laggard where slack might be expected to play an important role, studies have found no instances where DOE members exploited the European arena to bring home tighter regulations which their domestic ministerial colleagues would otherwise have blocked (see Arp 1995 for cars, Zito 1995 for air, Golub 1996b, 1997 for an extensive review of British environmental bargaining).

Slack cutting remains difficult to identify at the adoption stage, but it certainly becomes an important mechanism at the implementation phase. In a number of cases German officials sought to secure compliance with ratcheted standards by scapegoating the EC (Kromarek 1986:130). French officials made similar efforts, invoking EC obligations when responding to industrial complaints of economic disadvantage from higher environmental costs (Lavoux 1986:101-2). Slack cutting also allows officials to reinterpret their previous bargains, as seen in Germany's portrayal of costs from the bathing water directive as "justified" and "in our own interest" after having resisted aspects of the original proposal (Kromarek 1986:62-71).

6) expected non-compliance: as with slack, this mechanism remains extremely difficult to identify in practice, as any state could sign a directive without

intentions to fulfil its obligations. Nevertheless, available information suggests that expected non-compliance plays a more substantial role for southern European states, where the Mediterranean syndrome and other systemic problems prevent effective enforcement (La Spina and Sciortino 1993, Lewanski 1993, Pridham 1995, Pridham and Konstadakopulos 1994, Collier and Golub 1996). These states top the list for Article 169 infringement proceedings, transposition problems and practical implementation failures. To cite just a few examples, lack of funding and enforcement, particularly at the regional level, resulted in Italian implementation failure for EC directives on SO2, lead, sulphur in gas, and lead in petrol (Bennett 1991:70, 97, 131, 148).

Each of the previous six mechanisms derives from a model of integration which focuses on the adoption stage of EC legislation and why each state signed particular proposals. The ability of these mechanisms to account for ratcheting could demonstrate the extent to which the member states foresee the consequences of their agreements and thus exercise tight control over the integration process. In short, these mechanisms illuminate some of the many reasons why states might allow EC laws to ratchet up national standards. However, a substantial amount of ratcheting might take place despite the expectations of member states, demonstrating the gap between why states sign a law and the eventual effect that law has on national practices. The prevalence of these unintended consequences determines whether integration consists of much more than bargains and depends on factors other than strict control by member states.

In fact the record reveals a variety of unintended consequences, casting doubt on some of the central claims of LI. Two separate but related facets of unintended consequences require consideration:

1) unintended consequences from inherent bargaining limits: the general phenomenon consists of negotiators not foreseeing the consequences of their bargains (Haigh 1986:105). Ratcheting could result from bounded rationality, or from a lack of basic information regarding the proposal at hand, or simply the weak negotiation skills of an inept national official.

Unintended consequences appear in many forms. First, highly technical and protracted negotiations over EC environmental proposals often result in last minute changes to annexes with no time for national officials to carry out a cost-benefit-analysis (CBA) on the final draft. This played a role in drinking water, where substantial watering down of the original proposal took place over

time but one important detail got through without sufficient consideration--the infamous nitrate standard which ratcheted up even German law (Interview with British negotiator/industry representative, 5 July 1995). Unintended consequences also account for acceptance of the nitrate standard by Germany and the Netherlands (Kromarek 1986:50-1, Bennett 1986:28-9).

The endemic bargaining failures of Italian officials help explain why Italy signed so many expensive EC environmental laws. Facing a cash shortage the Italians often chose not to send any officials to Brussels during the formulation of proposals, and could not afford to commission extensive CBA, leaving them in no position to understand or resist stringent EC directives (Collier and Golub 1996, Lewanski 1993). It is also interesting to note the conflicting views of whether unintended consequences resulted in substantial and costly emissions reductions by German industry in the context of the North Sea Conferences (compare Kromarek 1986:100 with Haas et al 1993).

In a number of other cases green states sought to ratchet up standards in other states, export their preferred approach to pollution control (such as BAT) and avoid competitive disadvantage, but ended up having to incur more domestic costs than anticipated. For Germany, EC laws on dangerous substances, groundwater, titanium dioxide, and chloro-alkali demonstrate this effect (Kromarek 1986:74-5, 81-5, 93, 99), as does the bathing water directive for France (Lavoux 1986:45-8). Further research is needed to determine whether these costs were truly unanticipated, or if France and Germany signed the bathing water directive as part of an intra-sectoral bargain.

An important reason why costs of these laws were unanticipated stems from the fact that some states simply did not take the process of European integration seriously, assuming that their domestic standards would conform with some interpretation of EC law. During the 1970s British negotiators were certainly labouring under this false belief (Golub 1994). A passive approach to policymaking was particularly attractive when costs fell far in the future, as illustrated by France's acceptance of air pollution standards and British acceptance of water laws (Bennett 1991:62-4, Golub 1994).

2) A second crucial aspect of unintended consequences in secondary EC law is that they depend on actors outside the scope of the original policy bargains. As mentioned above, focusing on the bargain alone explains initial outcomes but not the full effects of EC policy. While vague wording and expected derogations allow states to reach a consensus in the Council, this vagueness has a tendency to evaporate during subsequent implementation. The Commission

and the ECJ, neither of which were parties to any of the original bargains, define or redefine provisions of the directive in concrete terms through infringement proceedings and legal interpretation. States may then find themselves facing substantial costs from directives which they had viewed as LCD bargaining outcomes.

ECJ legal rulings and narrow Commission interpretations of derogations have transformed a number of what might have been vague and toothless environmental laws into expensive and legally binding instruments, particularly in the area of water protection. The UK has been forced to invest billions of pounds to improve its bathing and drinking water (Golub 1996b, 1997), as has Germany (Kromarek 1986:46), France (Lavoux 1986:46-7), and the Netherlands (Bennett 1986:40). Germany was also forced to make unanticipated investments in TiO2 reduction (Kromarek 1986:99).

Conclusions

While this paper provides no support for the functionalist model of integration, it equally reveals significant limitations in the LI model as currently constructed and highlights areas where additional research is badly needed.

Although the field is supposedly over researched, we know almost nothing about the period 1972-87, which not only makes it difficult to say anything meaningful about environmental integration, but also inhibits meaningful conclusions about the integration process and ongoing debate between LI and functionalism. It is also difficult to identify properly the decisive mechanisms of integration. Frequent ratcheting from intra-sectoral bargains and expected costs would suggest a form of LI as a model for integration, while widespread unintended consequences would point towards functionalism.

Bearing these methodological limitations firmly in mind, the available evidence seems to offer no support for the functionalist position. The enormous number of LCD outcomes disproves the central prediction of unexpectedly high regulations. It was certainly not the case during the 1970s and early 1980s that EC standards were set at the highest common denominator or even exceeded any pre-existing national legislation, as Eichener suggested in the case of workplace laws.

There is also no evidence that psychological spillover and technical experts created a problem-solving atmosphere where national interests were

displaced by collective identity and unexpectedly high standards. All the evidence indicates that powerful industry/producer groups defended national positions in working groups. Nothing suggests that these groups suddenly lost influence when a proposal went to COREPER. Rather, COREPER deliberations were negotiations involving bargains which reflected important national interests.

While this does not entirely disprove the role of functionalism in European integration, as this paper dealt only with environmental policymaking under conditions of unanimity during the period 1972-86, it does indicate how Eichener's conclusions should not be extrapolated indiscriminately to earlier years or other policy areas. As a next step, attempts should be made to identify functionalist dynamics in EC environmental policymaking after the SEA, a task which exceeded the bounds of the current analysis. One should not exclude the possibility that QMV transforms the atmosphere in which policymaking takes place.

In contrast to functionalism, bargaining explains a substantial amount about the development of this policy area during the period 1972-86. Functionalism tells us why there might be something to sign, perhaps even what might be signed, but bargaining tells us what interests were taken into negotiations and why states signed the specific environmental proposals. All the theses, legal reports and articles referred to above confirm the existence of strong preferences by industrial/producer groups, careful consideration of costs from EC regulation, and active insider involvement in the decisionmaking process at both the national and EC level.

Rather than significant ratcheting, negotiations produced a vast number of LCD outcomes in accordance with the interests of dominant national industry/producer groups. In addition to several vetoed proposals, a plethora of EC laws imposed no tighter standards or new regulatory costs on domestic groups. In most cases national legislation was already in place or under consideration, or EC regulatory standards were already met without explicit domestic legislation. The combination of vague provisions, derogations and loopholes makes it difficult to characterise EC environmental law as the source of a steady ratcheting effect in the member states.

It is worth repeating that much more evidence is required before we can claim with any certainty whether ratcheting was the exception or the rule. Either way, however, this does not preclude the steady upgrading of common interests, it clarifies its source: rather than upward ratcheting imposed from supranational actors in the EC, steady upward movement in environmental standards reflects a

gradual rise in what constitutes the lowest common denominator. As environmental awareness ascends domestic political agendas, due to publicised environmental disasters and scientific breakthroughs, dominant industrial groups accept, willingly or unwillingly, higher national environmental standards, and thus are in a position to agree on ever tighter EC standards as national preferences evolve towards greater environmental protection.

Rather than functionalism's claims of problem solving atmospheres or identity reformation amongst the actors, identifiable bargaining mechanisms account for several cases of ratcheting even under conditions of unanimity. In these cases, government officials attempted to gain competitive advantages for their domestic industry/producer groups and minimise the competitive disadvantages associated with ratcheting, but were also sometimes willing to incur the costs of specific proposals because of expected future gains from reciprocal concessions in the field of environment or from the general payoff of continued EC membership. The California effect produced by potential exclusion from export markets, intra-sectoral linkage, diffuse reciprocity, and slack all played a role in the cases where EC environmental standards imposed substantial adjustment costs on member states.

Despite the relative strength of the bargaining model, this study highlights several fundamental limitations of LI as it is currently constructed. Most importantly, the evidence suggests that integration does not strengthen "the state", regardless of whether bargaining outcomes are LCDs or ratcheted standards. While they may not impose new costs on industry, LCDs are binding legal instruments which states may not apply selectively, which limit the autonomy, manoeuvrability and sovereignty of national executives in a number of significant ways: LCDs stop states from backsliding and repealing environmental laws in times of economic recession or after a change of administration, force states to meet domestic deadlines, and introduce an element of supranational enforcement (Golub 1996a). Indeed there are many examples of EC law forcing states to follow through with heavy investments in environmental protection which might otherwise have remained nothing more than empty domestic promises.

A second fundamental shortcoming of LI is its conception of the state as a unitary actor, monopolising the interface between domestic politics and EC institutions, capable of wielding the full arsenal of bargaining tactics at any point in time. In the field of environment, not all of the possible bargaining mechanisms were utilised with the same frequency; their importance varied amongst member states, and some mechanisms were rarely if ever employed.

Identifying which officials are actually capable of employing these mechanisms, the conditions under which they are used, as well as the relative frequency of their application sheds light on whether daily policymaking, in contrast to high profile history making bargains, strengthens the state as currently conceptualised. In fact, daily policymaking can only be understood if we disaggregate the state, taking into consideration the variety of specialised COREPER working groups and Council meetings which create secondary community law. Disaggregation provides a different picture of bargaining, and thus of the integration process itself.

In order to apply LI to secondary legislation, it is essential to identify which officials are required to achieve issue linkage, and who is the beneficiary of slack when EC environmental policy is negotiated. Amongst unitary state actors issue linkage involves far fewer logistical obstacles than amongst actors in a disaggregated state. In order to have any credibility, inter-sectoral linkage requires tight coordination amongst officials in several national ministries and within COREPER, as well as the ability of these officials to deliver on commitments which might fall in the medium or distant future. Intra-sectoral linkage requires far less coordination and good will, as bargains are concentrated amongst a small group of officials, usually green ministers and technical experts, and multiple issues are covered over a shorter timespan.

LI's misrepresentation of the principle-agent relationship also has enormous implications for the role of slack in daily policymaking. For the big bargains between chief executives, it may be reasonable to conceptualise "the state" as "a single agent" (Moravcsik 1994:4). However, for secondary legislation negotiated by nine, twelve, or fifteen disaggregated states, any national official operating in Brussels enjoys the same advantages over information control, initiative, ideas and institutions that LI attributes to a unitary actor. The existence of highly fragmented states, the pieces of which negotiate in parallel without coordination, allows EC policy to develop without a single controlling national executive.

This creates two important types of intra-state slack which LI overlooks: environmental ministers enjoy inter-ministerial slack when cutting deals in Brussels which have been blocked domestically by traditionally powerful ministries such as Finance, Trade and Industry, or Agriculture; environmental ministers also gain intra-ministerial slack within their own departments, as green issues are often only a minor element within "superdepartments" dealing with housing, planning and local government. Each of these mechanisms clearly illustrates that integration does not strengthen "the state" but rather a wide range

of national officials operating in Brussels by increasing the manoeuvrability of lead departments. This line of argument represents an important departure from Moravcsik's position, using the same slack-cutting mechanisms he specifies but reaching a very different overall conclusion.

Future research might test a hypothesis which seems to emerge from the evidence considered above: that the prevalence of inter-sectoral linkage is inversely proportional to the prevalence of slack. To do this, inter-sectoral linkage and slack could be placed in the context of varying levels of coordination within governments (LI proponents recognise the importance of this but have not considered the full ramifications on their principal-agent model. See Moravcsik 1994:66, fn 6). We would expect that inter-sectoral linkage would occur most frequently in states with highly coordinated cabinet and civil service structures, for example Britain. Officials from states with highly fragmented bureaucracies on the other hand, particularly in Southern Europe, would have less capacity for issue linkage but maximum scope for cutting slack. If this is indeed the case, inter-sectoral slack may have particular force in Southern Europe (Golub 1996a, Collier and Golub 1996). Even so, the fact that substantial bureaucratic fragmentation and EC policy co-ordination problems are evident in most member states (Siedentopf and Ziller 1988, Pappas 1995) would suggest that cases of ratcheting from inter-sectoral slack would far outnumber those from inter-sectoral issue linkage.

Other factors might also be sought to explain the variation in types of bargaining mechanisms deployed by each state. Diffuse reciprocity, linkage and slack should all be related to the time horizons of negotiating parties. For many states and their domestic industries, the long-term costs of directives might appear acceptable because of short term advantages gained from bolstering their green image. Similarly, national representatives from states with highly unstable governments, or with a history of frequent government turnover, might be more willing to incur the regulatory costs associated with environmental improvement because the electoral punishment for such costs will fall on future administrations.

One important conclusion which may be drawn from the evidence is that bargaining allows a substantial amount of ratcheting not just when integration represents a positive sum game--when every state gains from the deal. While inter-sectoral linkage and side payments might fully compensate a state for signing a specific environmental proposal, these mechanisms played no role in daily policymaking process! Rather, because intra-sectoral bargaining predominated, states were often forced to accept undesirable legislation in order

to minimise their losses. Equally important, diffuse reciprocity also allows enormous scope for ratcheting even when states do not gain from expected future concessions. States might sign not because membership pays off, but because membership hurts less than exit!

This paper has also highlighted how the extreme complexity of directives and the power of the ECJ provide ample room, both in theory and practice, for significant unintended consequences throughout the production and application of EC secondary legislation in the area of environmental policy. To the extent that daily policymaking accounts for the bulk of integration, rather than LI's five big history making bargains, member states, let alone chief executives, are not fully in control of the integration process.

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