

BOOK PROPOSAL

DESIGNING GOVERNANCE: HOW REGULATORY POLICY INSTRUMENTS MATTER FOR INTEGRITY, DOING BUSINESS AND SUSTAINABILITY

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The Book's Background

This proposal has a bit of history behind it. It is part of an intellectual endeavour stretching back over a decade. Three of the authors of this proposal (Dunlop, Kamkhaji and Radaelli) were involved in the European Research Council (ERC) advanced research grant on Analysis of Learning in Regulatory Governance (ALREG, 2009-2013). In ALREG, Radaelli and Dunlop explained the causal mechanisms and conditions through which regulatory policy instruments trigger learning processes. Among other things, ALREG produced a *Research Handbook on Regulatory Impact Assessment* (Dunlop and Radaelli 2016). Once we explained how policy-makers and institutions learn how to use regulatory policy tools like consultation and impact assessment, we addressed the question of the effects of learning (about tools) on the quality of governance. However, when we investigated these broader effects on governance outcomes, we found the explanatory power of individual regulatory policy instruments is limited.

The design of regulatory policy instruments may well affect governance, but this effect or contribution is achieved via a combination of instruments, the social mechanisms they trigger and the characteristics of the context in which they operate. These findings motivated the second ERC advanced project – PROTEGO (Procedural Tools for Effective Governance <http://protego-erc.eu/project/> led by Radaelli, Dunlop Co-PI). PROTEGO's central focus is to show how different combinations of rule-making procedures and instruments manifest themselves in a population of countries and, crucially, to explain how the design of these

combinations affect governance. In PROTEGO, the population is made up of the European Union (EU) 27 cases and the UK.

The project has reached its final year. Empirically, we studied stakeholder consultation in the preparation of primary and secondary legislation, freedom of information, impact assessment, Ombudsman procedures and general principles of transparency and administrative judicial review in the EU 28 (i.e. the EU member states and the UK). The rationale for the choice of these procedural policy instrumentation is the following: we consider the most important processes through which interests affected by regulation are granted access, must be consulted, can see the evidence-based supporting new proposals, and can activate the review of legislation or address maladministration. Each of the instruments we consider has a procedural quality – in Elinor Ostrom’s vocabulary, they are action situations (Ostrom 2005). Taken together, they constitute nested action situation that define the making of primary and secondary legislation.

During the last four years, we have generated a vast body of original evidence on the design of policy instruments in the population of interest and we are now in the position to document the implications and effects of the different combinations and pathways we have observed on a relevant set of governance outputs. We are keen to disseminate the findings to a large and qualified audience that includes (but is not limited to) scholars of regulation, public policy and administrative law and policy practitioners.

Rather than the classic large-size research monograph, we propose a book rich in original findings that offers ‘to the point’ insights informed by robust and original scientific analysis. Accordingly, we plan an interdisciplinary book of 55,000-60,000 words. To be clear, this is not a serialisation of journal articles. None of the findings in the book have been published previously and are not consideration for review at academic journals. The added value of condensing a set of original findings on different instruments and outcomes in a single research product draws on the very thrust of the PROTEGO project, that is, the notion that it is the combination of instruments that matter for governance. An ecological account of multiple instruments and outcomes naturally lends itself for a book length treatment.

The Team

For this book project, we assembled (and tested in recent publications) a team of authors for this monograph, including, beyond Dunlop and Radaelli, Claudius Wagemann, a leader in the field of set-theoretic methods, Jonathan Kamkhaji, who has looked after the construction of our data as well as being intimately familiar with the datasets of international organizations having worked for the World Bank, and Gaia Taffoni, who connected the strands of administrative law and regulatory analysis during the last two years.

The Original Data

For this volume we will draw on the PROTEGO dataset. Within the overall project, the dataset covers four policy instruments - consultation, freedom of information acts, the Ombudsman and (regulatory) impact assessment - that make the government and regulators accountable

by imposing different types of obligations while parallelly enfranchising citizens with specific actionable rights. Decades of policy research tell us that their design matters for governance, but exactly how? This cannot be established without robust original dataset and appropriate understandings of mechanisms of causation.

Our data collection is the first of its kind in scale and coverage (four instruments across a population of the 27 Member States of the EU and the UK). It crucially departs from similar datasets as it relies on textual data points extracted from in-force legal bases rather than on expert surveys. A policy approach based on discrete instruments rather than on administrative functions has allowed us to carry out a systematic data collection exercise that was never conceived in the field administrative law. While we are fully aware of the limitations, from a legal perspective, of focusing on instruments rather than on the overall administrative functions that are typically exerted by sets of instruments/procedures, we are also proud of the *chutzpah* that led us to collect a coherent database of comparative administrative procedures in 28 cases. The main efforts at comparing administrative systems and procedures by legal scholars are typically qualitative and limited to small sets of countries or instruments.

Data collection was carried out through an original architecture designed by the project team. We hired an interdisciplinary network of 40 (mostly) lawyers and (a few) social scientists supported by two senior lawyers who served on the project's International Advisory Team. The network of country experts worked on original national legislation and guidance material in force in the 28 countries. Beyond the dataset properly defined, we also assembled qualitative information on the broader context of administrative law with special protocols on administrative judicial review and general rights of participation contained in administrative procedure acts. The core team validated the data in 2019.

After data validation, we operationalized raw textual data collected for each of the instruments into the seven rule typology developed by Elinor Ostrom and Sue Crawford (1995). These rule types, taken together, define an action situation. In this way, by equating the four procedural instruments to distinct action situations, we measure the design features of the different instruments with the same theory-guided yardstick, avoiding the idiosyncrasies of existing regulatory indicators. Our choice of policy instruments is also wider and different from 'better regulation' as defined by the World Bank, the OECD and the EU – which does not include freedom of information and the Ombudsman.

The Central Scientific Aims

The proposed volume presents a number of causal claims of how regulatory design affects three crucial governance outcomes: corruption, ease of doing business and sustainable development. It also introduces the reader to the causal claim that regulation has an effect of trust in government and confidence in legislation – in doing that, we explain how this claim differs from the previous ones.

With the help of Qualitative Comparative Analysis (QCA) (Ragin 1987) which follows a set-theoretic and conjunctural understanding of causation, we show that there are different causal pathways for different countries and groups of countries. This allows us to challenge the received wisdom captured in simple notions such as ‘too much regulation causes corruption’ or ‘policy instruments plug and play in every context’ (Radaelli 2005).

We argue that different combinations of instruments’ designs (pathways) contribute either to positive or negative governance outcomes (e.g., corruption/integrity) and both types of contributions are relevant and instructive for policy design. As a technique, QCA allows to expose both the light and dark sides of instruments designed to enhance public scrutiny of rule-making. This is significant because by adopting these tools, certain countries may actually introduce rigidity in rule-making that clashes with informal approaches to policy designs. In these cases, the contribution of highly formalized procedures to good governance can be negative. This is then the first research to document both positive and negative solutions for a coherent population of countries.

As a result, this will not be just another study of rulemaking and its procedures: our research pushes beyond the domain of regulatory studies to connect with the fields of governance, integrity, and sustainable development and competitiveness. We will engage the reader in this conversation from a distinctive policy design angle by showing when, how and under which conditions regulatory procedures impact on perceptions of corruption, sustainability, and the quality of the business environment.

We piloted and demonstrated the robustness of our approach in an article on a single policy instrument and a single outcome (integrity) published in *Journal of European Public Policy* (Dunlop et al 2020) The empirical chapters of the book scale up the level of ambition by refining the causal claim and looking for the causal relationships between combinations of instruments designs and multiple governance outcomes. Instead of measuring the quality of the business environment, by investigating the combined effect of different policy designs we seek to measure the quality of the rulemaking environment. The latter is then linked, as a causal factor, not only to perceptions but also to more tangible outcomes such as the business environment and measures of sustainability. Yet again, our claim is not along the lines of ‘the more formalized the rulemaking environment, the better for governance’ but rather ‘case-specific combinations of policy designs contribute to good governance’.

Ecologies

The book will first explain the claims and arguments about possible hypothesized effects of regulatory procedures’ design with easy and accessible narratives, and then present the most important and as yet unpublished findings.

- Empirically, we will dissect four important rulemaking instruments: consultation, freedom of information, impact assessment and the Ombudsman – each has its own ground-breaking original cross-national dataset (hosted and available on our project

website). The book will be the first presentation of the full data-set and major research resource.

- Conceptually, our approach to the regulatory instruments is informed by the institutional grammar tool (IGT) created by Nobel-prize winner Elinor Ostrom and Sue Crawford. Our approach is at the cutting-edge of policy theorisation – currently the development and application of the IGT is the focus of a concerted international research effort led by colleagues in North America ([Institutional Grammar Research Initiative](#) based at Syracuse University). We are plugged into that network and our research offers the first IGT-inspired contribution on procedural instruments.
- Methodologically, we will draw on Qualitative Comparative Analysis (QCA), guided by one of the technique's foremost international scholars Claudius Wagemann. The choice of a set-theoretic approach enables us to show the various configurational pathways which in turn respond to the different regulatory cultures and institutions we find across Europe. In doing this, our analysis provides a step change in the discussion of governance design. Understanding that the technique is sophisticated, we ensure to communicate our methods with the general reader in mind.

The Competition

There are no direct or indirect competitors to this interdisciplinary monograph – based on political science but grounded in an intimate knowledge of comparative administrative law. As the product of an ERC advanced grant this makes sense – this scheme funds research which is highly innovative, involves a high level of risk and reward and likely to produce research which is a primary reference point in its area. Indeed, this book will be the first comprehensive treatment of a range of outcomes, i.e.: perceptions of corruption, ease of doing business, and sustainable development goals. We will finally answer the question whether good regulation provides trust and confidence in regulation, showing why a single answer cannot be given and therefore we have to re-present the question in different conceptual format.

Thus, rather than speak the language of competitors, for this monograph it makes more sense to think about the company this text will keep. What is sitting next to it on the bookshelf? There are various individual articles and books on regulatory instruments (on consultation Bunea 2017; on freedom of information Dragos, Kovač and Marseille 2019; on impact assessment Dunlop and Radaelli 2016 and on the Ombudsman Buck et al 2010; Erkkilä 2020) and regulatory indicators (Anheier, Haber and Kayser 2018). Then there are books on individual mechanisms of causation and individual, topical research questions, such as does regulation stifles the business environment (Djankov 2009), the effects of de-regulation (Radaelli and Schrefler 2015), does regulation kill jobs (Coglianese, Finkel and Carrigan 2015), and how can governments control corruption (Mungiu-Pippidi 2015; Rothstein and Varraich 2017; Rothstein 2021)?

The book is part of the burgeoning literature on policy theories and institutional design – most recently, Barzelay (2019), Peters et al (2018) and Siddiki (2020).

Finally, there are several handbooks covering regulation and governance outcomes and administrative law that link to our study: *Handbook on the Politics of Regulation* (Levi-Faur

2013), *The Oxford Handbooks of The Quality of Government* (Bågenholm, Bauhr, Grimes and Rothstein 2021), *Regulation* (Baldwin, Cave and Lodge 2010) *Administrative Law* (Endicott 2021; Rose-Ackerman, Lindseth and Emerson 2019)

The Readership

The research will attract readers from two disciplines primarily: political science and law. Political sciences are our core audience and the research will be of importance in several sub-fields: regulation and governance; comparative public policy and administration; international political economy; institutional analysis, and EU studies. Legal scholars specialising in administrative and/or constitutional law will also read the book. While the empirical material is drawn from Europe, the importance and innovation in our conceptual and methodological approaches have a significance beyond that context.

The book will also draw the interest of a non-academic audience in government bureaucracies, international organizations and think tanks. Policy practitioners involved in the design of better regulation measures and good governance measures in the European Commission, World Bank and OECD have been engaged on our analytical approach and early findings throughout the project.

In terms of the profile of our readership, as a research monograph the volume will engage advanced undergraduates, postgraduate students – both those taking traditional programmes and practitioner students on Masters in Public Administration (MPA) programmes – PhD students, academics and policy practitioners and consultants.

Synopsis

Chapter 1 Where are we with the Regulatory Reform Agenda?

The chapter presents the motivation of the book, its essential concepts, main claims and arguments made in the book and briefly direct the readers towards the most important conclusions. At the outset, we introduce the reader to the so-called better regulation agenda, what it has achieved and its limitations. We explain why we distinguish our understanding of regulatory policy instruments from the language of ‘better regulation’ adopted by international organizations, explain the choice of instruments, how they basically work, and why they should be considered together, as an ecology of ‘rules about rulemaking’ or ‘meta-regulation’. The introduction also justifies our choice of a coherent population of cases for our analysis and clarifies that we are interested in the design of nation-wide procedures, not in implementation and customization of the instruments considered.

An important motivation of the volume is to go beyond the description and measurement of one or more rule-making instrument or procedure, and instead establish their overall contribution to governance. In particular, we are interested in perceptions of corruption/integrity, the quality of the business environment, and how the contribution to sustainability (as identified in the sustainable development goals). We also introduce the causal link between regulation and confidence in legislation and trust in government.

Chapter 2 Regulatory Reform for What?

The EU Member States and the UK have invested in creating special procedures and instruments to enfranchise specific interests during the rule-making process. In some countries, the new instrumentation has been layered on previous administrative procedures, raising the question of the overall synergy between regulatory innovations like consultation and impact assessment and traditions like hearings and the Parliamentary Ombudsman. Freedom of information acts have proliferated in the last two decades or so – opening-up the process of making rules in terms of access, but not unconditionally. To make things even more complicated, some instruments like impact assessment have been adopted under the better regulation agenda championed by the OECD and the EU (De Francesco 2012). But others have followed their own waves of diffusion, independently for the ambition and aims of the better regulation strategies. This is the case of Freedom of Information and Ombudsman.

Given this state of play, the question about coherence in the policy instrumentation arises. Is the overall ecology coherent? Does it contribute to governance? This chapter contains all the theoretical baggage the reader needs to address the questions.

Specifically, we review the main causal theories and claims about the effects of regulation on corruption, ease of doing business, sustainability and trust. We clarify how academic and policy debates on causation are often obfuscated by lack of clarity – for example, does ‘regulation cause corruption’ or ‘too much regulation causes corruption’ or ‘bad regulation

causes corruption’? We highlight how we will proceed in clarifying and testing precise research questions about corruption, the quality of the business environment, sustainability, and trust.

We explain how the following chapters will provide explicitly theorised causal mechanisms and data to test the contribution of regulatory design on the first three outcomes. We leave the discussion of trust to the last chapter, given its macro-scale and the difficulty of providing a single template for empirical analysis of this causal relationship.

Chapter 3 Measuring Regulation: A Theory-Informed Approach

Measuring and comparing the design features of regulatory procedures across different countries/jurisdictions is a complex endeavour. We depart from existing approaches championed by international organizations which draw on expert input to designate the presence/absence of specific micro-procedural features. Instead, by drawing on the diverse legal and linguistic expertise of a network of lawyers (see above), we leverage a data architecture based on Ostrom’s rule typology. This architecture informs both raw data-gathering and data generation, thus providing coherence to the whole process that led to the creation of the PROTEGO dataset. This dataset contains hundreds of data points in the format of institutional statements. The data are deployed to model the action situations of the four regulatory procedural instruments in our population.

We then operationalize these statements into variables and carry out Principal Component Analysis (PCA) for each procedure to grasp instrument-specific dimensions of variations suitable for cross country comparison. Principal Components and Principal Component Scores transform numerical data in set membership scores suitable for QCA.

In the final section we explain how the analysis provides the work-horse for identifying the essential elements of design of the four policy instruments. Its synthetic quality is leveraged to create QCA conditions that will appear in the next chapters. Each instrument is described by dozens of rules in the PROTEGO dataset – in total the four instruments contain almost 200 rules that conceptually define four actions situations in each of the 28 cases. This rich information is captured synthetically in the Principal Component Analysis. We make this point in plain English and guide the reader through an interpretation of the conditions that does not require advanced quantitative skills.

Chapter 4 More Rules, More Corruption?

Regulation and corruption are often connected in causal terms in general discourse and in the prescription of international organizations. In this chapter we test the effects of combinations of consultation, freedom of information, impact assessment, and the Ombudsman on perceptions of corruption. We start by reasoning on how the conditions representing the four instruments can contribute to perceptions of corruption (or, at the opposite, integrity). Importantly, we argue that we are not outlining an explanation of corruption. Corruption has

many causes – regulation is at best only one of them. Our research design does not try to establish the causes of corruption – neither do we want to show rank regulatory tools in the long list of causes. Instead, we set out to establish the contribution of regulatory instruments to perceptions of corruption. The point is the following: for policy-makers, it is more useful to know that certain combinations of regulatory instruments are sufficient conditions for integrity than to know that corruption depends on many causes, most of which (such as culture and social capital) cannot be modified in the short or medium term.

By leveraging the conceptual and methodological potential of QCA, we use the instruments as sufficient conditions for different degrees of perceptions of corruption. Low levels of corruption are explained by two explanatory paths which are mainly composed of the absences of instruments. We also find that the instruments can account well for low levels of corruption, but not in all countries under research.

In the conclusions we go back to the importance of these findings for policy-makers and regulatory reform under discussion across the world, and argue that ours is an original way to think about the pathways to integrity and corruption.

Chapter 5 How Regulation Shapes the Business Environment

One of the most important arguments for the reform of permits and licencing regimes, simplification, de-regulation and regulatory guillotines is that bad regulatory processes and ‘too many rules’ stifle innovation and growth by restricting the many activities that make up doing business. The four regulatory policy instruments that populate our dataset operate at a meta-level in this causal thinking. By changing the processes in which rules are made, stakeholders are consulted, access is provided, and maladministration surveyed by special institutions, the rulemaking process should stop the flow of regulations that damage the business environment and provide remedies to bureaucratic interference with legitimate and economically profitable business activities.

This argument is heavily loaded from the normative perspective. Nevertheless, it has generated a whole literature around the doing business indicators. We do not take any normative position. Instead, we test how the action situations created by the four regulatory procedures create holistically the conditions for either high quality business environment or low quality business environment. For the outcome variable we do not depart from the well-established doing business indicators, but discuss their limitations and how they are used in our project and for what purposes.

Again, the four instruments are defined as conditions. This time, three explanatory paths result from the QCA which also arrive at a higher coverage than in the analysis on corruption. This means that the perspective on instruments contributes more to the analysis of the business environment than for low corruption.

In the conclusion we relate these results to the international discourse on leveraging regulation to improve on foreign direct investment and growth in general, pointing to the

limitation of messages such as ‘regulatory culls’ and regulatory targets. Instead, we guide the readers towards a qualitative understanding of our nuanced results.

Chapter 6 Regulating for the Sustainable Development Goals

Can regulatory procedural instruments have effects beyond single outcomes like corruption or the quality of the business environment? In this chapter, we raise the bar for the PROTEGO policy instruments. We first reconnect and expand the causal claims introduced in chapter 2, and find reasons to both support and be sceptical of the notion that there should be an effect on sustainability.

We then test empirically our population of cases, yet again conceptualized as four actions situations per each country – with the synthetic approach to the characteristics of each action situation granted by Principal Component Analysis. We examine different indicators of sustainability and decide for a general measure of the sustainable development goals. Since the claim aired in the theory is broad, the measures should be aligned with the ambition of the claim and capture the essence of the sustainable development goals with a composite indicator. The QCA results again in different combinations of conditions so that all three outcomes are explained in different ways. In case of sustainable development goals, again three explanatory paths result which show considerably good parameters of fit. There are some deviant cases (Portugal, Greece, and Slovenia) which, if they were in line with our model, should show high(er) levels of sustainability than they actually do.

The final section of the chapter relates our results to the concept of sustainable competitiveness endorsed by the [European Commission](#) and the [UN-DESA](#) guidance on adopting regulatory policy instruments to achieve the sustainable development goals. By doing that, we connect our results to important policy debates and suggest implications for regulatory policy reforms.

Chapter 7 Rules and Good Governance

Since the [1990s](#), international organizations have drawn attention to the quality of regulation as determinant of good governance, alongside other key dimensions such as voice and accountability, rule of law, instability and violence, public sector effectiveness, and integrity (see the [Worldwide Governance Indicators](#)). In this final chapter we wrap up the previous discussion and findings to address this question. We present a causal claim that connects regulation with the concept of good governance via trustworthiness. As shown by a recent book by De Benedetto, Lupo and Rangone (2020) regulatory procedural instruments affect diffuse perceptions that regulators and the government are trustworthy when they generate, produce, and manage regulations. Investment in high quality regulatory policy instruments – they argue – may be a valid response to the crisis of confidence in legislation.

One more time we draw on the PROTEGO dataset to find evidence of a direct causal relationship between policy instruments and trust in government. Our findings suggest that

the causal relationship is weak and does not cover a sufficiently large portion of our population.

We then try a modified version of the causal claim, whereby regulatory instruments affect trust in government via the contribution of integrity, quality of the business environment and sustainability. Yet again we do not find sufficient evidence to corroborate the claim.

Overall, our findings show what can be achieved by regulation and the limits of regulatory reform. The policy implications are that there are good reasons to invest in regulatory reform but with three important caveats. First, the presence of highly formalized procedures for consultation, impact assessment, and access to regulation and (mal)administration does not work well in countries that rely in informality and pre-existing stock of trust in government – as evidenced by high social capital for example. In these cases, trust is at the origin of the regulatory causal relationship rather than being an outcome. Second, PROTEGO's regulatory policy instruments are not plug-and-play devices. Whilst previous literature (see Radaelli 2005) has already articulated this argument, with our project we are able to show exactly why and where this happens. Third, regulatory reform has holistic effects – meaning that the design of the single instrument is less important than the design of the overall regulatory reform ecology.

We finally reflect on our contribution to the literature on policy design and policy instruments, as well as on the implications for the next stage of regulatory reform in Europe.

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