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Does consultation count for corruption? The causal relations in the EU-28

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ABSTRACT
Consultation is a policy instrument geared toward stakeholder engagement in the formulation of primary and secondary legislation. It ensures certain categories of actors can access draft proposals, examine the evidence produced by government or regulators, provide comments and receive feedback. Using an original dataset of consultation design across the EU-28, we examine how variations in combinations of consultation design matter for perceptions of corruption. Using Ostrom's Institutional Grammar Tool (IGT), we develop expectations about the causal effects of combinations of formal consultation rules together with the condition of social capital, which captures important attributes of the context in which consultation operates. We test our expectations using set-theoretic techniques. Our findings indicate: formal consultation rules are rarely sufficient for mitigating perceptions of corruption, legally prescribed procedures are often replaced by informal rules, and the limited effect of formal consultation rules on perceptions of corruption is due to an incomplete design of the procedures.

KEYWORDS Configurational analysis; corruption; consultation; rule-making; institutional grammar tool (IGT); social capital

Introduction: Varieties of consultation

Consultation is a policy instrument geared towards stakeholder engagement in the formulation of primary and secondary legislation. As a procedure, it ensures certain categories of actors can access draft proposals, examine the evidence produced by government or regulators and provide comments.

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Stakeholder engagement is a key component of the regulatory reform agenda (often dubbed 'better regulation') championed by international organizations (IO), such as Organization for Economic Cooperation and Development (OECD), World Bank, International Monetary Fund (IMF), United Nations and European Union (EU) (IMF, 2008; Johns & Saltane, 2016; OECD, 2009, 2011; Smismans, 2016; UN, 2004). These organizations have produced consultation templates to facilitate the engagement of stakeholders – together with other instruments of participation, access and information. But what is consultation, conceptually?

Consultation belongs to those modes of governance aimed at 'regulating rule-making' (Radaelli, 2010), i.e., meta-regulation. In other words, consultation procedures contain rules about making rules, or, better, they prescribe how legislation (primary and secondary) should be developed. They do so, for example, by obliging governments and regulators to carry out certain actions and by giving citizens and companies rights to be notified, to comment on proposals, to know how comments are handled, to receive feedback, etc. By doing that, consultation should improve on the accountability of public administration through procedural steps that increase transparency and public participation. In turn, transparency and the level playing field should reduce pathologies of policy formulation, including corrupt practices to exercise influence in rule-making.

In this article, we examine the causal relation between consultation and corruption. We use data from the ERC project Protego (Procedural Tools for Effective Govenance) on the population of EU-28 countries to test the claim that different configurations of consultation's design features impact on corruption (or more precisely, on levels of *perceived* corruption). To achieve this aim, we need to be coherent in the overall research design, including concepts, theory, causality and the evidence we need to test the claim.

At the outset, we observe that consultation procedures vary markedly across the EU-28 member states. If consultation is our cause, we need an analytical device to measure and explain the effects of different configurations of consultation procedures. In fact, in countries like Denmark and Sweden consultation is grounded in the administrative and constitutional tradition of hearings and, in Sweden, on committees of inquiry for the preparation of new legislation (Herlitz, 1953; OECD, 2010; Radaelli, 2009). Countries with a strong corporatist tradition like Austria and Luxembourg rely on co-determination and bargaining among the government and the most representative associations of employers and unions (EUPACK, 2018, p. 31). In yet another group of countries, such as France, Italy and Central and Eastern European states, consultation appeared in the wake of the adoption of better regulation policies and tools, frequently following the input of OECD and EU commitments (De Francesco, 2013). Consultation procedures, while seemingly 'doing the same thing' across the EU 28, do it in fundamentally different ways.

Turning to the possible effects of our cause, how can different consultation designs affect public perceptions of corruption? The argument is as follows: by

designing consultation procedures, governments take (or escape) specific commitments about transparency and signal (or fail to do so) that there will be a level-playing field for those who provide input to the preparation of laws and regulations, or, for corporatist countries, particular attention to key-decision makers. These commitments and signals – substantiated in the different rules and steps governing consultation procedures – should affect perceptions. In particular, we are interested in perceptions of corruption.

Given this focus, how can one capture the various combinations of consultation rules and their effects in a theoretically robust fashion? We examine varieties of consultation procedures as action situations. Following Elinor Ostrom's institutional grammar tool (IGT) (Crawford & Ostrom, 1995; Ostrom, 2005), we theorize that each existing design of consultation procedures instantiates a set of rules about positions, boundaries, choices, information, aggregation, payoffs, and scope. By theorizing consultation procedures in this way, we gain a solid and broadly applicable approach to measurement that moves us beyond the idiosyncratic measures used by international organizations that are often reproduced in social scientific analysis.

Our causal claim is not one along the lines of 'more consultation reduces corruption' but rather 'different combinations of consultation features affect perceptions of corruption'. Our central research question is: what combinations of rules of the consultation game (position, boundary, choice, information, aggregation, payoff and scope) are sufficient for a case to belong to the set of countries where citizens hold beliefs that corruption is high (or low)? The key here is the signalling power of a meta-regulatory instrument like consultation. Consider a consultation procedure whereby, for instance, all citizens are granted access, regulators must motivate their rejection of citizens' inputs and are under strict obligations to share the knowledge base of policy proposals. These procedural design features will signal a commitment to transparency which will in turn affect public perceptions of corruption.

It is useful to be explicit on what we do not claim. We *do not* argue that governments introduce consultation because they want to combat corruption – there may be many other motives, such as modernizing the public sector, emulation and the prospect of EU membership (De Francesco, 2013; Radaelli & Meuwese, 2009). Neither do we advance the argument that consultation has direct mitigating effects on the overall numbers of corrupted exchanges. Since we consider only the design of consultation procedures, objective measures may still point to the existence of corruption even when consultation procedures are well-designed – yet we expect subjective measures of corruption to point towards the belief that bureaucracy is more transparent, accessible and less corrupt in general. Design is not trivial. It signals and may confer enforceable rights that can be protected in court or by the Ombudsman. Obviously, design does not automatically translate into behaviour, and can trigger perverse effects. But it can nevertheless alter perceptions.

The question about the causal relationship between consultation and corruption is topical since the literature and international organizations have argued that consultation can reduce the likelihood of corrupt exchanges between private interests and public administration by increasing transparency and participation (Bauhr & Grimes, 2017; Cucciniello *et al*., 2016; UNODC, 2004). (Meta)-Regulatory procedural instruments, however, work in social, political and institutional contexts, and this too varies across the EU (Radaelli, 2005). They are not plug-and-play devices. Hence, our second research question addresses how the causal relationships between varieties of consultation and corruption are mediated by the context. To capture the breadth of context, we deploy an indicator of the environment in which consultation rules operate – as we will explain, one effective way to do that is to include a measure of social capital.

The article proceeds with the following steps. First, we introduce the literature with the aim of building expectations. Following that, we discuss our strategy based on Ostrom's rule typology within the institutional grammar tool (IGT) (Crawford & Ostrom, 1995; Ostrom, 2005). With our framework outlined, we turn to the operationalization of our concepts, the type of data we gathered, and our motivation for configurational analysis (specifically fuzzy set Qualitative Comparative Analysis [fsQCA]). Empirically, we identify a number of cross-country configurations that are sufficient for absence or presence of perceived corruption in conjunction with the mediating system-level condition of social capital. The main findings are about the interplay between formal consultation procedures and informal social capital rules. We also examine the implications of the absence of payoff and aggregation rules in our population and the utility of these results for policymakers.

Literature: Regulation and corruption

A study carried out at the World Bank shows confidence in how consultation hinders corruption:

> [W]here citizens know the rules that govern their society and have a role in shaping them, they are more likely to comply with those rules. Corruption is lower, and the quality of regulation higher (Johns & Saltane, 2016, p. 2).

But, where can we find the conceptual apparatus to support this confidence? The specialized literature provides few insights on this specific causal relationship [1] – hence we have to build expectations drawing on more general literature on rule-making. US studies are often dedicated to pressure groups' influence on rule-making (Yackee, 2019; Yackee & Yackee, 2006) and, more recently, to the limits of consultation in reaching out to relevant stakeholders (Farina & Newhart, 2013). Costa *et al*. (2019) approach the problem of stakeholder engagement in rule-making from a different perspective and look

into the relationship between public comments and the use of science in regulatory impact assessment. In Europe too we find literature informed by pressure group politics, the study of policy networks, and the nature and reach of stakeholders' influence (Ackland & Halpin, 2018; Baldwin, 2018; Kaya, 2019), with empirical works mainly focussing on whether consultation provides a level-playing field. Bartle (2006) provides one of the early, sceptical studies on the question of fair access. A major theme is inclusiveness or whether EU-level consultation alleviates the bias between policy insiders and outsiders (Bozzini & Smismans, 2016; Bunea, 2017; Marxsen, 2015). Bunea and Ibenskas (2017) discuss the balance between technocratic and participatory modes of consultation.

A prominent theme in the literature is influence and capture. But these concepts do not allow us to theorize about corruption. Capture does not necessarily lead to corruption because the perpetrators already obtain the outcome they prefer.[2] Besides, the literature on the EU is not comparative: it deals with the EU as single case study. Thus, although we know about the involvement of affected interests and whether procedures are skewed, the literature has not yet elaborated and tested expectations on the causal relationship with corruption in rule-making.

While there is no global consensus, we accept a minimum and broad definition of corruption as 'the use of public office for private gains where an official […] entrusted with carrying out a task by the public […] engages in some sort of malfeasance for private enrichment' (Bardhan, 1997, p. 1321).

A bribe can be paid to avoid an inefficient, burdensome rule or to get rid of ill-conceived price restrictions that hinder free economic exchanges (Ogus, 2004, p. 333). But a briber can also pay a public official to obtain discretionary benefits or to avoid a sanction or court action. Corruption can tilt the policy formulation process distributing undue rents to certain industries or firms, or may protect incumbent firms from new entrants (Murphy *et al*., 1993). At the macro-level corruption is not efficient for economic growth, investment, trade, innovation (Kurtzman *et al*., 2004; for a review see Dunlop & Radaelli, 2019, pp. 97–99). More importantly for scholars of governance, processes of policy formulation that are not designed to be open and transparent signal to stakeholders and the public the likely presence of political bias. Since this erodes trust, opaque, skewed and insulated consultation procedures may have an effect on perceptions of corruption (beyond economic effects such as inefficient policy choices). Conversely, when consultation includes rules that by design should empower diffuse interests and increase regulatory accountability (Rose-Ackerman, 1999), we would expect low perceived corruption.

Ogus (2004:, pp. 341–342) bring us a bit closer to the core of our puzzle. He starts from the simple observation that consultation increases information flows and direct access to decision-makers. He then adds the equally uncontroversial observation that the effects of access and

information on private manipulation and corruption will differ by jurisdiction. Some political systems may struggle more than others (culturally, politically, administratively) to guarantee the requirement to keep transparent and official records of the interactions between private interests and regulators. Other countries can purposefully decide to disregard binding procedures and rely instead on informal practices. As mentioned, Denmark and Sweden's informal practices are sufficiently robust to stabilize expectations about the behaviour of stakeholders and decision-makers in policy formulation processes (Radaelli, 2009). In consequence, some types of informality have effects on perceptions of corruption, but the direction of the effect depends on the context (Radaelli, 2005).

In sum, the literature provides empirical findings on how consultation works and on the theorization of regulatory procedures. But it is not clear on the causal effects on corruption. We nevertheless draw three key lessons from the literature. First, we should break down the concept of consultation into flows of actions that identify empirically a given consultation procedure. With this granular approach, we should be better equipped to build expectations about corruption. Second, and following Ogus, we must attend to the broad socio-political context in which these rules are situated. Finally, to empirically trace the effects of consultation, we need a research design that accounts for informality as mediating condition of formal procedures.

Theory: Consultation as action situation

In this section, we argue that the nationwide, whole-of-government consultation procedures in the EU-28 can be approached as an empirical instance of rule types that constitute an action situation, following Ostrom and her institutional grammar tool (IGT) (Crawford & Ostrom, 1995; Ostrom, 2005). To be clear, we are not adopting the whole of Ostrom's institutional analysis and development (IAD) framework. Nor do we use the ADICO – Attribute (A), Deontic (D), aIm (I), Condition (C), and the Or else (O) (Crawford & Ostrom, 1995) – syntax tool to code our legal texts. Rather, we adopt the rule categorization aspect of IGT specifically (see Dunlop *et al*., 2019). According to Ostrom, rule types are a classification instrument, 'a useful system for those interested in linking rules and the action situations (games) created by rules, the biophysical world, and communities' (Ostrom, 2005, p. 187). We postulate that the legal design of a procedure such as consultation represents the sufficient set of rules-in-form that constitute the 'consultation action situation'. In short, the IGT provides a powerful and theoretically robust lens to observe the fine-grained (i.e., at the individual rule type level) variability of procedures across the EU-28.

Following the IGT, in political 'action situations' like consultation institutions and individuals occupy roles and take decisions drawing on

information available to them. These situations are made empirically substantive and tractable by focussing on the ways in which rules (*in-form* or *in-use*) shape the alignment of collective and individual interests. Ostrom lays out seven rules types covering positions, boundaries, choice, information, pay-off, aggregation and scope (see Box 1 and, for a recent review, Dunlop et al., 2019). Thus, according to the rule type classification, we have to find out empirically what (type of) rules are included in the 28 consultation action situations. Critically, this means that we shall organize our data points (i.e., rules, institutional statements) on the consultation procedures in different countries according to Ostrom's types and their properties (see next Section).

Box 1. Seven Rules Types of IGT.

Rule type	Definition
Position	Identify positions/roles to be filled by actors (individuals or collective)
Boundary	Regulate eligibility of actors to occupy positions
Choice	Specify actions that actors must, must not, or may undertake
Aggregation	Discipline actions or decisions that require the aggregation of two or more actors (e.g., rules about independent oversight)
Information	Identify channels and modes of communication/exchange of information between actors
Payoff	Assign benefits and costs – for example rewards and sanctions – to specific actors relative to following distinct courses of action
Scope	Identify required, desired, or prohibited outcomes of the action situation

Sources: Carter, Weible, Siddiki, & Basurto, 2015, p. 163; Ostrom, 2005, p. 190.

Rules, however, operate alongside exogenous realities, notably the biophysical world and / or the attributes of the community. In the real world, combination of rules types are deployed in given contexts. Operationally, we do this by examining how the different rule types work in combination with each other and are mediated by a salient contextual condition subsuming the wider socio-political environment.

We argue that one fundamental characteristic of this environment, most of all in terms of interactive attributes of the community, is social capital. Social capital underpins communities' capacity to participate and mediates how formal rules will be used, or distorted, or not used at all (Putnam, 1993).

Informal rules, institutions and networks are powerful forces creating incentives and constraints (North, 1990, chapter 5) and interact in different ways with formal rules (Helmke & Levitsky, 2004). Interactions taking place in the public sphere produce what has been called a 'bridging' form of social capital (Adler & Kwon, 2002) – where the information and efficacy people experience through volunteering, voting, helping neighbours, etc. stimulates capacity for wider collective action. Under this lens, the nexus between social capital and consultation – intended as an instrument geared toward increased participation and transparency – is evident. The correlation between high social capital and low corruption is also conceptually consistent, as well as documented in the literature (see for example La Porta *et al*., 1997).

Hence, we expect the causal relationship between consultation and corruption to be incomplete unless we take into account the role of social capital.

Expectations

Drawing on the previous arguments, we build expectations about the balance of rule types within action situations. From a theoretical standpoint, boundary and choice are those rule types we expect to be more salient for consultation. In fact, openness to diffuse interest implies rules that guarantee equal and fair access to a plurality of actors including those affected systematically by power and resource asymmetries – 'all citizens' *vis-à-vis* 'stakeholders'. These rules should empirically appear combined with choice rules (actions, including the procedure's outcomes) that make the exchanges between policy-makers and consultees more deliberative and guided by a logic of 'motivating first' and giving reasons. This is what we expect from *strong consultation designs*. The opposite applies to *weak designs* characterized by limited or privileged access conditions and choice rules that do not put regulators under public scrutiny obligations. Other rule typologies that may be salient, most of all when lacking, are aggregation and payoff rules. Since Ostrom's action situation is contingent on a coherent and complete set of rules, the absence of key rule types, like rules that affect incentives (such as payoff rules and aggregation rules), damages the overall effects of consultation. Empirically, this should appear as incomplete design.

When we combine design features with social capital, we are able to generate more precise expectations. We do not expect the mere presence of formal consultation rules (albeit *strong*) to be sufficient for an outcome of low perceived corruption when social capital is poor. If this does happen however, the expectation we call *formal design vindicated* will be met, that is, consultation procedures are designed in such a way that makes up for low levels of social capital. There is more conceptual leverage to expect high levels of social capital combined with the presence of consultation to be sufficient for achieving (perceived) low corruption. We call this expectation *informal and formal rules as complementary effects* (Helmke & Levitsky, 2004; Lauth, 2000). An alternative pathway to perceptions of low corruption could see strong social capital acting to fill and make up for the deficits left by missing or *weak* consultation rules. We call this expectation *informal rules as substitutes* (Helmke & Levitsky, 2004). Finally, while it is conceptually possible, we consider implausible a situation where low corruption is the outcome of low social capital and weak consultation (*doomsday for formal and informal rules*).

Data

Working with a team of 40 administrative lawyers, for each country of the EU 28 we identified the legal base of consultation procedures in force as of 2018

(grounded in hard law and/or on guidance documents) and retrieved text in original language and in English translation. Relevant portions of these legal texts were gathered using a protocol based on Ostrom's rule categories.[3] Thus, when considering the guidance and/or law on consultation for country X we retrieved the exact text (articles, clauses, or entire sections) where positions are defined, boundaries set, information flows described, choice prescribed, and so on. As a result, our data points are sentences extracted from consultation legal bases.

Once we gathered this considerable amount of rules organized around Ostrom's typologies, we reduced complexity by developing four consultation conditions fit for an empirical treatment:

_thickness;
_access;
_action;
_information.

See Table 1 for a summary and Appendix 1 for full details on the calibration of these conditions. These conditions represent salient procedural components/types of rules-obligations structuring consultation action situation.

The access condition is designed to condense both position and boundary rules that taken together do indeed regulate actors' access to consultation. It also includes an item covering the overarching goals underpinned by consultation (a proxy of Ostrom's scope rules). Choice and information follow Ostrom's typologies. The thickness condition does not belong to Ostrom's rule types, but it serves the purpose of capturing both the legal stringency of the procedure and its complexity in terms of total number of rules. Finally, two Ostromian rule types are not present in any consultation design across the EU-28: aggregation and pay-off rules. Preliminarily, this absence may be telling. In fact, the absence of rules that regulate control of the consultation action situation, and the associated costs and benefits, is expected to affect the overall strength of consultation designs (as per the flawed or incomplete design expectations). As IGT has a configurational logic where each rule has a bearing on the operation of the others, the same will be true of the absence of rules – which leave the action situation if not incomplete then certainly skewed.

Our fifth condition in Table 1 is about the most salient attribute of the environment: social capital. We use the social capital data compiled by Prosperity Index (Legatum Institute, 2018) which uses nine questions from Gallup World Polls and one indicator of voter turnout from International Institute for Democracy and Electoral Assistance (IDEA) to create a composite indicator.[4] This measure is suitable for our purposes because it operationalizes social capital as interactions and civic behaviour.

Table 1. Summary of conditions.

Condition	Dimensions covered	Components	Rule Types	Sources
Thickness	Legal standing and legislative reach of consultation	1. Presence of a legal base for consultation, Y/N 2. Is the legal base grounded in hard or soft law, H-Y/S-L 3. Presence of legal base(s) for sectors, Y/N; 4. Presence of general rights of notification, Y/N; 5. Presence of rights to participate, Y/N; 6. Consultation applies to primary law, Y/N 7. Consultation applies to secondary law, Y/N and; 8. Total number of rules/Above average-Y/Below average – N (Max. value 36; mean value 14.64)	Legal Basis	Legal base(s) for consultation, general administrative law
Access	Positions, roles and eligibility/boundaries assigned to participants in the procedure	1. Reference to 'citizens' are consulted entities, Y/N 2. Reference to unions / professional associations as consulted entities, Y/N 3. Participation to consultation requires a personal interest, Y/N 4. Consultation is mandatory or discretionary, M-Y/D-N 5. The aim of consultation is explicit in legal base, Y/N	Position, Boundary, Scope	Legal base(s) for consultation (law and/or guidelines)
Choice	Actions/choices participants may/must undertake in the procedure	1. Presence of different types of consultation, Y/N 2. Presence of timetable for carrying out the procedure, Y/N 3. Publication of draft regulation, Y/N 4. Publication of additional material, Y/N 5. Provision for public feedback if comments are not accepted, Y/N	Choice	Legal base(s) for consultation (law and/or guidelines)
Information	Rules related to information exchanges participant may/must undertake in the procedure	1. Publication of comments, Y/N 2. Publication of consultation report, Y/N 3. Presence of consultation portal, Y/N 4. Provision for red tape reduction, Y/N	Information	Legal base(s) for consultation (law and/or guidelines)

(*Continued*)

Table 1. Continued.

Condition	Dimensions covered	Components	Rule Types	Sources
Polity	Social capital levels	1. Making donations; 2. Having relatives to rely on; 3. Assisting a stranger; 4. Offering financial assistance to another household; 5. Feeling satisfied with socialising opportunities; 6. Being treated with respect; 7. Having confidence in the local police; 8. Voicing opinion to a public official; 9. Having recently volunteered; 10. Voter turnout and vote in most recent national election. All Y/N	Rule Environment	Legatum Prosperity Index™ 2018 (based on Gallup World Poll core questions)

We turn now to our outcome measure for corruption. Measuring corruption is fraught with difficulty. Most widespread are perception-based indicators (e.g., based on the opinions experts, firms and citizens); experience-based indicators (e.g., frequency of being offered a bribe (Seligson 2002); objective indicators (Fazekas & Kocksis, 2017; Golden & Picci, 2005)); and proxy or aggregate indicators. This final type marks a 'second generation' (Johnston, 2001) of measures which, since they go beyond using individual indictors in isolation, offer the most complete cross-national comparison of corruption. Among these are Transparency International's Corruption Perception Index (CPI) (Lambsdorff, 2008), and the World Bank's World Governance Indicators (WGI) Control of Corruption (Kaufmann *et al*., 1999). Clearly, there are fundamental tradeoffs to be made when we use composite measures. Rather than fueling a never-ending debate, we simply share our reasoning behind our choice of the World Bank's WGI.

Control of Corruption is one of six components of the WGI. It offers the most extensive range of sources of any index – in 2018 it refers to 43 surveys from 32 source organizations.[5] Our reasons for selecting WGI over CPI are four-fold. First, and most saliently, WGI aligns well with our consultation conditions and social capital measure in key ways. Specifically, it includes citizen survey data (unlike CPI which is limited to experts and business) and perceptions of state capture by elites and private interests.[6] Second, the WGI not only includes more indicators than CPI, but it also reflects the precision of each individual data source by weighting the averages.[7] Third, unlike the CPI, WGI reports margins of error (Kaufmann *et al*., 2009, 2011). Fourth, as we are not analysing the whole population but a sample of high performers in the control of corruption (EU-28) we relied on WGI as it shows a higher coefficient of variation with respect to the CPI measures.[8] A final remark: for the EU-28 countries, CPI and WGI scores correlate almost perfectly.[9]

To proceed, we enter our analytical strategy based on the fuzzy variant of Qualitative Comparative Analysis (QCA) (Ragin, 2008; Schneider & Wagemann, 2012). QCA is an established and systematic type of traditional case comparison and shows its advantages above all with mid-sized case numbers, such as ours of 28. Its set-theoretic nature allows for what has been called causal complexity (Schneider & Wagemann, 2012, p. 76ff.). The feature of conjunctural causation is most important for our purpose here, since the configurational logic of QCA foresees that conditions are not analysed separately from one another, but rather in their interplay. This aligns to Ostrom's different rule types that have a configurational nature and, in combination with each other, constitute an action situation (Ostrom, 2005, p. 191). In consequence, the QCA analysis of sufficiency is based on different configurations ('paths' or 'recipes') which imply the outcome. Accordingly, there can be more than one solution path (equifinality) – this is important for our analysis since we do not expect causal patterns to be equal in all countries. More often than

not, explanations overlap. Finally, asymmetry means that the explanation of the negative outcome is not automatically the negation of the result for the positive outcome. We have documented the analysis in Appendix 2; all steps have been performed with the software R (Duşa, 2019).

Analysis and findings

Following Schneider and Wagemann (2012:, p. 278), we start with the analysis of necessity. Examining the outcome of low perceived corruption first, there are no necessary conditions (see Appendix 2). Social capital has, not very surprisingly, the highest consistency value (0.814) and, thus, comes closest to being a necessary condition without however being truly necessary for which a rule of thumb would foresee consistency values (called 'inclusion' in the software R) of approximately 0.9 or higher.

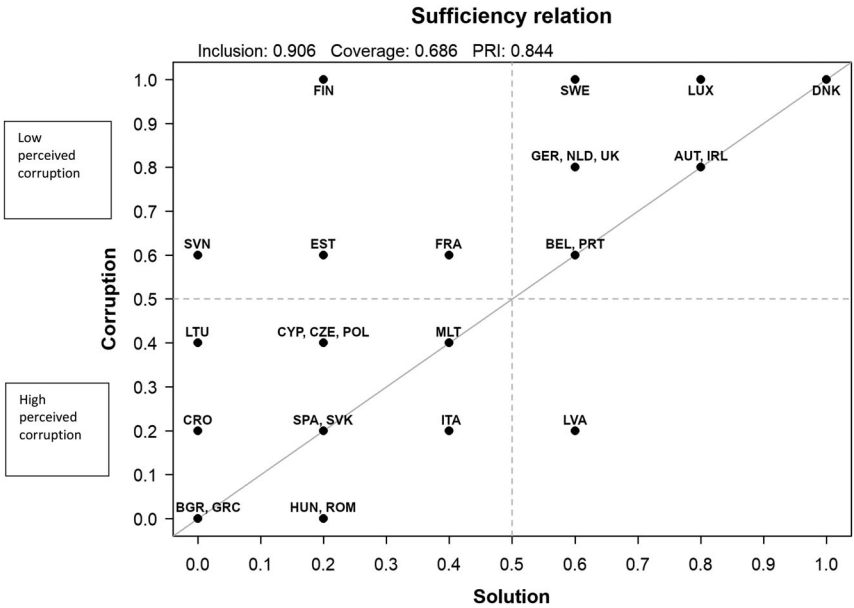
Absent any single necessary condition, disjunctions of conditions can be examined. They assess statements following which (at least) one out of two (or more) conditions has to be necessarily present, if the outcome appears. To avoid trivial necessary conditions, we only consider those disjunctions for which Ragin's coverage measure and Schneider and Wagemann's relevance measure are high enough, and whose components are functionally equivalent to one another (Schneider & Wagemann, 2012, p. 278). There are three necessary disjunctions. For public perception of corruption to be low,[10] it is necessary to have high social capital or weak/absent access rules; high social capital or weak/absent choice rules; high social capital or weak/absent information rules (see Appendix 2). These insights will be used in the following analysis of sufficiency when no logical remainders are allowed into minimization which would contradict these three necessary disjunctions.

In terms of what is sufficient for perceptions of low corruption we find the following paths (Table 2; see also Graph 1):

Although parameters of fit can only be indicative, the consistency value is quite high (0.906), with coverage being lower, but within acceptable ranges (0.686), above all, since no complete explanation of the phenomenon of low perceived corruption is aimed at, considering that only social capital and consultation modes are chosen as explanatory factors. But only with them, already nearly 70 per cent of the outcome set can be covered.

Table 2. Sufficient paths for perceptions of low corruption.

		inclS	PRI	covS	covU
1	~ACCESS*~CHOICE*SOCCAP	0.976	0.957	0.571	0.129
2	~THICKNESS*~CHOICE*~INFORMATION*SOCCAP	0.966	0.938	0.400	0.014
3	~THICKNESS*ACCESS*CHOICE*INFORMATION*SOCCAP	0.867	0.600	0.186	0.057
4	THICKNESS*ACCESS*~CHOICE*~INFORMATION*~SOCCAP	0.867	0.714	0.186	0.029
		0.906	0.844	0.686	



Graph 1. Sufficiency relation for low perceived corruption.

The first sufficient path combines social capital with the simultaneous absence/weakness of access and choice rules. This solution refers to the situation in Austria, Belgium, Denmark, Germany, Ireland, Luxembourg, and the Netherlands. All these countries can be described by this combination of explanatory factors and show low corruption.

The second sufficient path combines social capital with light proceduralization. This can be observed in some – but not all – of the countries which are already described by the first path (Austria, Belgium, Denmark, and the Netherlands) plus in Sweden.[11]

Both these paths, which cover thirteen EU member states, suggest informal norms of social capital substituting formal consultation rules, in line with our expectations of informal rules as substitute. In particular, where the actions available to participants are limited (~choice), social capital makes it possible to achieve the transparency consultation aims for. The findings on choice rules are essentially telling, given the importance of giving feedback in guidance documents (OECD, 2006) and our expectation about the salience of this type of rules.

The other two paths are a bit more particular: the third describes a situation in which strong access, choice and information rules are combined with social capital. The only country for which this applies is the UK. Here, we have formal and informal rules working to reinforce one another – in line with our complementary effect expectation. What remains invisible is the extent to which it is the formal consultation rules in the UK that boost

social capital, or the strong civic-ness that ensures effective consultation rules and strengthens incentives to make them work. The UK finding is also interesting given that the part of the system usually singled out as powerful are the ad hoc contacts that take place between organized interests and agencies before the formal system of procedures kicks in (Hogwood, 1987; OECD, 2006).

The fourth path, instead, is interesting since it illustrates the only situation in which the condition measuring social capital is not sufficient in the presence of procedural thickness and strong access rules. Such a situation is observable in Portugal and Latvia. However, these countries differ in that only Portugal is consistent with the sufficiency claim. Latvia is hence a 'true logically contradictory case', since, if we consider this combination to be sufficient, it should show the outcome (low corruption), but it does not. A contributing factor in Portugal may be the historical commitment to consultation and in particular US-style notice and comment of pre-publication which started in 1991 (OECD, 2006) and makes for a more inclusive and accessible rule-making system. This path shows that empirically there can also be a sufficient configuration for perceptions of low corruption which does not include high levels of social capital.[12] This is the configuration which vindicates formal design.

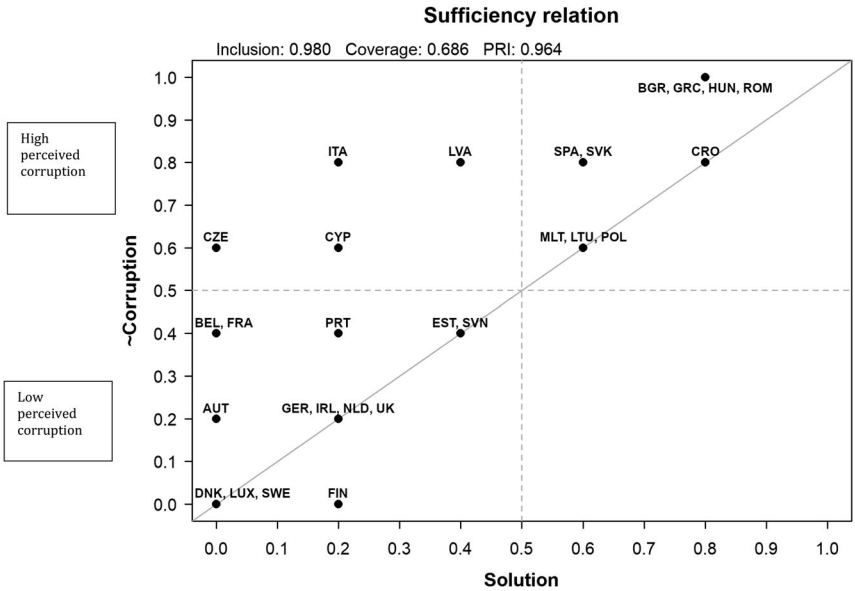
We now reverse the picture and concentrate on the analysis of the negative outcome (i.e., perceptions of high corruption). Here the findings expand our discussion to other important cases and thus contribute to our knowledge about the interplay between consultation modes, social capital, and corruption. They also generate insights on what design features specifically imply perceptions of high corruption.

Again, we start from necessary conditions. The condition 'absence of social capital' has a high consistency score for necessity (0.814), but also thickness (0.829). However, both are far away from the recommended value of 0.9 so no further investigations are made into this. When it comes to disjunctions, two can count as necessary conditions: although the low social capital is a good indicator for high corruption, it is not necessary, but can be substituted in one variant by access rules, and, in the other variant, of choice rules.

Turning to sufficiency analysis, these are the paths found (Table 3; see also Graph 2).

Table 3. Sufficient paths for perceptions of high corruption.

		inclS	PRI	covS	covU
1	ACCESS*~CHOICE*INFORMATION*SOCCAP	0.933	0.750	0.200	0.100
2	~THICKNESS*~ACCESS*CHOICE*INFORMATION*~SOCCAP	1.000	1.000	0.157	0.029
3	THICKNESS*ACCESS*CHOICE*INFORMATION*~SOCCAP	0.975	0.960	0.557	0.400
		0.980	0.964	0.686	



Graph 2. Sufficiency relation for high perceived corruption.

The consistency value is extraordinarily high (0.980), with an acceptable coverage (0.686). Again, the sense of the analysis is not to explain high perceived corruption exclusively with consultation modes and social capital, but it is rather about the sufficiency of combinations of rule types and social capital for a country to fall in a set of high corruption.

Let us first focus on the third path. This combination is sufficient for perceptions of high corruption. Countries which can be described in this way are Bulgaria, Croatia, Greece, Hungary, Lithuania, Romania, and Slovakia. This is an important pathway since it provides a stark indication of the limits of formal rules. Despite good coverage of consultation rules, wide access conditions, and stringency of the prescribed actions and information to be released, in the context of low social capital rules on the books have no bite.

The second path differs from this third path (which alone covers no less than 0.557 of the negative outcome) by the fact that we do not find the conditions 'thickness' and 'access'. Only high perceived corruption in Poland is characterized by this combination (see the low unique coverage of 0.029).

Finally, the first path shows that there might also be a situation in which high perceived corruption occurs despite high social capital and a relatively strong consultation design. Such combination exists in Malta and Spain, both countries with high corruption values in our dataset. Malta exemplifies the pervasive impact (beyond party politics) of clientelism which remains a ubiquitous feature of that system (Mitchell, 2002; Veenendaal, 2019). Spain similarly has

an embedded and multi-faceted corruption challenge which renders social capital far less potent than in northern European countries (Villoria *et al*., 2013).

We acknowledge the limitations of our analysis. In the solutions for perceptions of low corruption, once we accept the contradiction for Latvia, the final XY plot shows that Finland is problematic (Graph 1).[13] Arguably, to understand Finland we need to cast the net much wider than consultation to include for example, civil service integrity codes; anti-corruption legislation, and the ombudsman (Salminen, 2013, p. 67). That being said, the Finnish configuration fully belongs (though not in terms of QCA sufficiency conditions) to the expectation we raised about the positive combined effect of high social capital and complete, formalized consultation procedures – a sort of saturation effect.

In Graph 2, the main limitation concerns Italy and Latvia. It has been said that Latvia had the largest Russian minority among any CEE country and as result experienced higher levels of economic and administrative instability as the political roles of Latvians and Russians reversed (Pridham, 2009). As a result, its democratic consolidation has taken a slower pace than its neighbours. Regarding Italy, the contradictory result may be due to the historically controversial relationship existing between intermediate public bodies and corporatist interest organizations (Salvati, 2006).

Discussion and conclusions

Over the years, the World Bank, the OECD and the European Commission have promoted the better regulation agenda warning their member states and recipients of aid that its policy tools (consultation, impact assessment, public access to information, etc.) should be adopted and implemented with careful attention to the context (e.g., 'OECD countries have gone a long way reflecting on institutional and contextual components of regulatory decision-making' OECD, 2008, p. 29). Indeed, academic research has often made the point that regulatory reform is not a plug-and-play device (Kamkhaji *et al*., 2019; Radaelli, 2005). Our findings contribute to the evolution of this line of thinking by adding conceptual and empirical precision that is absent in the literature. They also contribute to the literature on measuring policy instruments/administrative procedures by bringing in Ostrom's rule configuration toolbox (IGT) and showing how to deploy it in a comparative study with 28 cases. By doing that, we have innovated in the domain of regulatory indicators. Contrary to the IO indicators on consultation that are often reproduced in academic research, our indicators are not idiosyncratic. They are grounded in theoretical categories.

The results corroborate the *incomplete design* expectation. We did not find payoff rules that introduce rewards and sanctions. Aggregation rules are also absent. Consultation procedures that ignore payoffs and aggregation do not

signal a strong commitment towards robust input from a vast array of interests. This happens also in the presence of strong access and choice conditions, meaning that openness and procedural stringency are not enough to improve perceptions of a clean, non-corrupted decision-making environment. In the EU, the quality of consultation is monitored only in rare cases and often in the context of the review of the impact assessment (see OECD, 2019) – which means that 'when things go wrong' there are no checks or sanctions. This finding is also strengthened by the observation that all consultation rules are part of broader ecologies of regulatory reform tools including impact assessment, giving-reasons requirements, and freedom of information (Damonte *et al*., 2014). Design can also be incomplete, in a broader perspective, because consultation interacts with other procedural regulatory requirements (freedom of information and impact assessment, in particular) that may be absent or poorly designed. Future research should explore this ecological angle by examining how consultation interacts with other regulatory reform tools.

Always in the recipes associated with (perceived) corruption, in particular the one featuring the largest coverage, we find that all the countries but Greece are former planned economies which established formal consultation procedures at a relatively recent stage and mainly following the push and template provided by the EU and the OECD. These countries have plenty of formal requirements about what should be published, how stakeholders should access the consultation process, and the information to be circulated. These access, information and choice rules may work in some established pluralistic systems. But, they may be rigid in accommodating the sociopolitical realities of recently-established democracies. Or, arguably, the transfer of access, choice and information rules from EU-OECD templates to new democracies may take time to become embedded in the policy formulation process.

Turning to our expectations for a 'clean' rule-making environment, *formal design vindicated* is exceptional. Only in Portugal do we observe the corruption mitigating potential of design at work – in the absence of high social capital. And yet, not of the design we expected, but rather of a combination of thick proceduralization and open access conditions only. Elsewhere, context counts. Social capital acts both as substitute for strong formal consultation rules and as system-level environmental condition that reinforces them. In terms of our expectations, *informal rules as substitutes* means that social capital fuels patterns of interaction between government/regulators and interests that do not require codification, rigid procedures and formal consultation steps. This explains why previous research (Radaelli, 2009) found that countries like Denmark did not pin down rigid steps by writing detailed consultation procedures – yet consultation still takes place on the basis of stable expectations about the level and quality of participation of stakeholders. Ironically, if the designers had done that (interviewees reported) 'the system would have come to a grinding halt in two weeks' (Radaelli, 2009, p. 40).

We also found how *informal and formal rules have complementary effects*. Our analysis shows how exactly some consultation rules (but not others) have these effects and where.

Turning to the high perceived corruption solutions, the most important path involves low social capital and strong proceduralization. This path points to the limits of formal design and/or implementation deficits. But here again, we can make the case for *incomplete design*: the action situation is incomplete without payoff and aggregation rules. Access, information and choice should be complemented by rules sanctioning non-compliance (pay-off rules) or independent oversight/accountability bodies and rules (aggregation rules). Countries with high social capital also lack formal pay-off rules, but rely on strong informal norms of social reciprocity. In countries with low social capital, on the other hand, the absence of such reputational mechanism coupled with the lack of codified sanctions for non-compliance to procedural rules and oversight functions mutes the potential transparency effects of consultation.

For policy-makers, the implication is not about the futility of consultation. Rather, we have three implications. First, design has limited effects on the perceptions of corruption when it lacks certain categories of rules, which should then be included in future reforms of consultation processes. Second, consultation procedures should be aligned with the administrative and socio-political contexts, to avoid introducing rigidity via formal procedures into contexts that work by dint of informality. Finally, design shows commitment and sends signals to citizens and stakeholders, but choices about policy instruments like consultation should also be informed by objective measures on the dynamics of corruption in the preparation of laws and regulation.

Notes

1. Indeed, a Web of Science topic search of consultation AND corruption yielded just 37 results, only one of which pertained to rule-making and corruption (OECD, 2003a, 2003b) (search conducted 29 June 2019, all years, all subjects).
2. We are grateful to a reviewer for suggesting this wording.
3. See Appendix 1 for more details on the data collection methodology.
4. https://www.prosperity.com/rankings (accessed 2 July 2019). The Legatum Institute Prosperity Index™ is an annual ranking based on 104 variables grouped in nine indexes of which social capital is one. See Appendix 1 and Table 1 above for more details.
5. https://info.worldbank.org/governance/wgi/#doc
6. https://datacatalog.worldbank.org/control-corruption-estimate-0
7. The 2018 edition of the CPI draws on 13 surveys (https://www.transparency.org/cpi2018) as compared with the WGI's 43 (https://info.worldbank.org/governance/wgi/#doc).
8. 147 as opposed to .04. The rescaling procedure for WGI corruption data of the EU-28 is outlined in Appendix I.

9. Pearson correlation .989, $p<.01$.
10. Countries are distributed across a continuum when it comes to their control of corruption and social capital scores, making it meaningful to talk about high and low perceived corruption and social capital. Yet, the fuzzy transformation of these scores divided the countries according to their membership or non-membership in sets whereby corruption and social capital are present or absent. The same rationale applies to the four Ostrom conditions. See Appendix 1.
11. Note the low 'unique coverage' for this path (0.014) which says that only 1.4 per cent of the outcome which are covered by this path (referring to Sweden) has not already been covered by other paths.
12. If we do not deem this fourth part a sufficient condition (and Latvia's deviance gives us good reasons to be skeptical), all other paths and their parameters of fit remain the same (despite the unique coverage of the first path which increases to 0.171), and the overall consistency value even increases (0.939), while the overall coverage decreases a bit (0.657). See Appendix 2.
13. The deviant cases for coverage in an analysis of sufficiency can be found in the upper left angle of an XY plot. These are those cases which show high values of the outcome, but only low values in any of the explanatory paths and therefore also a low value in the term which describes the final solution.

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