



## Book Review

### **Procedural Politics. Issues, Influence, and Institutional Choice in the European Union**

Joseph Jupille

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In this book, Joseph Jupille sets out a theory of procedural politics, defined as the ‘everyday conduct of politics not within, but with respect to, political institutions’ (p. 1). The theory is applied to explain the selection of treaty bases, where these treaty bases imply different procedures for legislation to be passed, in the European Union (EU).

In a review of institutional theorizing and research, Jupille finds that most existing research treats institutions as either fully exogenous or fully endogenous. It is also restricted exclusively to higher-order rules on the constitutional level or to lower-order rules on day-to-day decision-making. These shortcomings are the points of departure for Jupille’s theory, in which institutions figure as both independent and dependent variables in a multi-level system of rules. With respect to the EU, the ultimate goal is to paint ‘a more coherent and complete picture of the operation of EU institutions than is currently available’ (p. 7).

More precisely, the book aims at answering the questions of ‘why, when, how, and with what effects ... actors attempt to influence their institutional environment’ (p. 1). To that end, Jupille presents a theory of institutional selection. Selection refers to the choice of lower-order rules based on a range of alternatives defined by the higher-order rules. The theory claims to improve our understanding of institutional effects and, through explicating feedback effects from lower- to higher-order levels over time, also of institutional change. It sets out with three conceptual premises: First, ‘institutions matter’, because they condition the impact actors have on substantive outcomes. Second, because institutions matter, actors have ‘derived institutional preferences’, not because they value certain institutions as such, but because they reckon with the outcomes these institutions produce. Finally, actors engage in ‘strategic interaction’ within the existing institutional environment to realize these institutional preferences.

On the basis of these assumptions, the condition for procedural politics to take place is a simple function of opportunities and incentives. Opportunity presents itself through the availability of institutional alternatives. What makes



alternatives available is a high degree of jurisdictional ambiguity, defined as the '(lack of) correspondence between political issues and the rules used to process them' (p. 20). The relative desirability of these alternatives, that is, the incentive, is determined by the expected net benefit of playing procedural politics. The potential influence gained must outweigh its costs, mainly incurred through procedural political bargaining. With regard to behaviour and processes, actors will 'game' the external criteria governing rule choice (p. 28). In the case of the EU, where the European Court of Justice determines the 'correct' legal base by evaluating the 'proximity of a given issue to one or another jurisdiction' (p. 28), actors will engage in strategic issue definition in an attempt to move the issue towards a legal base that promises a more favourable legislative procedure to them. In addition, the composition of coalitions of actors will be a reflection of their procedural preferences. Regarding the effects of procedural politics, policy-making efficiency will decrease because of the time and resources spent on procedural political bargaining. Furthermore, consequences for higher-order institutional change can be predicted, because procedural politics points to gaps in the existing constitutional structure and gives incentives for change by raising opportunity costs of the current status quo.

Before Jupille turns to the empirical examination of these propositions, the three main premises for the EU context are 'operationalized'. First, that institutions matter is shown by using spatial modelling techniques to identify the differential effects of the nine most commonly used legislative procedures on the influence of the Commission, the Parliament, and the Council of Ministers, respectively. Second, these insights are used to construct institutional preference orderings for the three actors. When an actor is indifferent between procedures according to the spatial modelling results, three auxiliary assumptions are used that are invoked in sequence until a strict preference ordering is achieved: the first assumption holds that the European Parliament prefers more participation rather than less; the second that both the European Parliament and the Council of Ministers prefer procedures favouring the European Commission rather than each other; the third that all actors favour more economical to less economical procedures. Finally, in order to 'flesh out' the claim of strategic choice (p. 63), a formal model is developed; a non-cooperative game with incomplete information played by the European Commission, the Council of Ministers, and the non-strategic European Court of Justice. The model indicates that in only one out of the five possible perfect Bayesian equilibria will a case be brought before the Court, and this outcome is driven by divergent assessments of institutional alternatives among actors and, particularly, by different beliefs about the correspondence of policy issues to current legislative procedures.



In the remainder of the book, the hypotheses are tested on quantitative and qualitative data. The statistical analysis largely focuses on the period 1987–1997. In the descriptive statistical assessment, the variation over time, across issues, and actors broadly supports the arguments about the conditions for procedural political conflict to occur. These conditions are also confirmed by a multivariate relogit analysis. Further multivariate analyses support the propositions about the effects of procedural disputes: policymaking efficiency decreases and the likelihood of change of procedure in treaty reforms increases.

The subsequent qualitative inter- and intrasectoral comparison examines the remaining claims about the ways procedural politics is played as well as whether the observed statistical correlations can indeed be traced back to the causal mechanisms claimed by the theory. The processes of five procedural political disputes are traced, three in the environmental sector and two in agriculture. Theoretical expectations and variation across issue areas in jurisdictional ambiguity as described earlier in the book predict that environmental policy should most likely and agriculture least likely exhibit procedural disputes. The similarity of cases within sectors then allows controlling for many possibly confounding factors and rival explanations. Each sector is evaluated with respect to the conditions for procedural political fights to take place, the means actors employed in these disputes, and the effects these had on institutional change in subsequent treaties. With the exception of coalition behaviour in one of the agriculture cases, all of the claims of the theory are confirmed. Overall then, Jupille concludes that the procedural political perspective is broadly supported.

Jupille's book presents an explicit theoretical framework as well as empirically testable propositions. It brings to bear an enormous amount of quantitative and qualitative data, illuminating a largely neglected aspect of EU politics. In many respects, the empirical investigations reflect the state of the art in political methodology. To name just two examples, alternative explanations are continuously taken into account and the comparative case studies are based on a theoretically informed selection strategy. Thus, much of the evidence convincingly speaks in favour of the propositions. Nevertheless, there are some problems in both the empirical and the theoretical parts of the book.

Regarding the empirics, the multitude of evidence considered and the relatively large number of analyses performed seem to have come, at times, at the cost of transparency and reflexion, particularly with respect to the quantitative analyses. Thus, in the descriptive and explanatory large-*n* analyses, several data sets are employed, the sources of which are rather unclear. Moreover, issues of reliability and validity are hardly discussed. With regard to coding the main data on political disputes used in the multivariate regressions, for example, information is drawn from databases, archival



research, documentary and interview evidence from the EU institutions, as well as from records of 'selected' national parliaments and executives and other secondary and primary sources (p. 105). This is an impressive list of sources, but it does not help the reader in evaluating the quality of the data. At least a reference mentioning where the data sets and a documentation of them can be accessed for replication purposes would have been helpful.

Several open questions remain with regard to the statistical analyses performed. The inclusion of year or sector dummies accounting for dependencies among observations over time and/or policy areas are not considered in the analysis of either the conditions for procedural disputes or decision-making efficiency, leading potentially to biased estimates. With regard to the analysis of policy-making efficiency, Jupille claims that the regression based on a sample of legal acts adopted has 'obviated the "right-censoring" problem inherent in samples that include legislation proposed but not yet adopted' (p. 112). However, this procedure does not obviate but rather ignores the problem, leading possibly to biased causal inferences through the selection of cases on the dependent variable. Finally, the results of the analyses of institutional choice are puzzling in the light of the theory. Why should otherwise influence-maximizing Member States respond to increased procedural disputes initiated by the European Parliament with a change in procedures to increase the European Parliament's influence? This finding is explained by pointing to the costs imposed on Member States by procedural politics, which incites institutional change. However, it is not clear why actors are influence-maximizers in day-to-day politics but follow efficiency considerations when they bargain on constitutional rules in treaty negotiations.

Regarding the theoretical part of the book, the operationalization of the premises in the EU context and the connections between these operationalizations, the propositions and the basic assumptions are debatable. Turning first to the operationalization of 'derived institutional preferences', it is questionable whether the reliance on rational choice spatial models of legislative decision-making was necessary or even adequate to derive preferences over procedural rules for different actors. It is highly contested in the literature whether these models, with their reliance on purely formal institutional rules, can adequately account for legislative decision-making in the EU. Many empirical researchers stress that social norms and informal practices are at least as important for determining decision-making outcomes as the provisions made in the treaties. As these models often predict the same influence of an actor under different procedures, auxiliary assumptions to generate strict preference orderings had to be introduced anyway. It is doubtful that the preference orderings would have been very different with a reliance on these 'common sense' assumptions alone. Arguably, they might be more plausible than some of the assumptions on which the spatial models are based. In any



case, the surplus of applying these relatively sophisticated models for the operationalization of preferences is not obvious. A much simpler alternative would have been to measure the procedural preferences of different actors empirically, for example, through the interpretation of general statements on institutional choice as usually produced in advance of treaty reforms or other documents not related to specific procedural disputes. This would have avoided the introduction of rather restrictive and contested assumptions inhibited by the models without compromising the general theoretical argument.

The value added through the formalization of the premise of 'strategic choice' in a game theoretical model is also not apparent. It is not really surprising that a model that is built on the assumptions of actors as influence-maximizers who base their decisions to engage in political disputes on incentives and opportunities, finds that these incentives and opportunities indeed determine the occurrence of such a dispute. The benefit of this modelling exercise is unclear, especially since all the propositions tested in the empirical part of the book are not deduced from the formal model but introduced as part of the general theoretical framework in the previous chapter. In fact, the formal model clearly shows that at least the propositions referring to the means by which procedural politics is played and to its effects on policy-making efficiency and institutional choice are not logically deduced from the three basic premises. The three premises, together with the 'influence maximizing' and 'institutional ambiguity' hypothesis, offer an explanation for the occurrence of procedural disputes; however, they say nothing about the means by which this occurs (i.e. issue framing and coalition composition) or their effects. Hence, these hypotheses are not derived from the premises, but rather constitute independent basic assumptions themselves.

The points of criticism on the empirical part mainly point to *possible* problems of *some* of the analyses, to further sources of uncertainty, but they are not fundamentally challenging the overall conclusion of the book. It is important to stress this point, since most of the results not picked upon here in detail are based on a sound methodological base. In a similar vein, my discussion of the theoretical part does not question the argument of the book as such, but directs attention to further improvements of the structure of the theory. The book's claim that political actors are constantly engaged in strategic calculations on whether to challenge a certain institutional rule or not is bound to give further fuel to the ongoing debate between rational choice and sociological institutionalists. Overall, *Procedural Politics* is an interesting and sometimes innovative book that makes a very valuable contribution to research on EU politics and institutionalist theorizing in general.

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