Informal Governance in the European Union

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Informality might be the rule rather than the exception in politics. Behind the scenes and alongside official procedures seems to be where many important decisions are being made. This has become evident not least during the crisis of the Eurozone. For example, since the EU treaty (Treaty of Lisbon, Article 125) prohibits member states from bailing out countries with excessive debt, the member states agreed first to emergency bailout measures outside the EU’s official procedures. Some argue that the European Central Bank transgressed its mandate by announcing its commitment to purchase sovereign debt from troubled Eurozone members in the secondary market. In fact, the list of examples where important decision makers eschewed or bent the formal rules during the current crisis is endless.

But informality is not just a phenomenon of the Eurozone crisis. When I embarked on my doctoral studies in Berlin—the EU was still in good order—I was bothered by the incongruence between theory and reality in the analysis of decision making in the European Union (EU). Those in the policy world who made a living detailing how the EU worked in practice rarely offered an explanation of why this was the case. Yet those in the academic world who offered explanations of the EU’s official rules and procedures often seemed to miss how decision making in the EU worked in reality. Indeed, then as now, many scholars ignore actual decision-making practices, even or especially if these do not quite conform to the formal rules, or consider them as negligible or as statistical noise that defies any systematic description and explanation. As a result, we know little about why decision makers sometimes stick to formal rules and at other times seek a way around them. Where and why do these practices of informal governance exist? Why are they more prevalent in some institutional settings and issue areas than in others? Is informal governance a good or a bad thing?

To me, the mystified doctoral student, this discrepancy between formal rules and informal practices was most consequential in the case of the EU’s Council presidency, a position held consecutively by each member government for six months. Barely mentioned in the treaties, the Council presidency was an institution that many agreed informally enjoyed substantial authority in the legislative process. Yet most models of legislative bargaining in the EU neglected this institution.
Puzzled and confused, I arrived at Princeton. I thought I was on to something really interesting. I just couldn’t explain why. Hoping for an epiphany, I took a couple of classes in different subfields and disciplines. I got even more confused. Hoping for confirmation that I had indeed discovered an important puzzle, I talked to my advisers. “You doctoral students today,” Andy Moravcsik exclaimed, “studying these boring tiny instances while there is a whole world of informal practices out there.” I was overwhelmed. Wouldn’t studying more informal practices only compound my confusion?

I never had an epiphany. I did follow Andy’s advice, however, and went to Brussels and searched numerous archives to discover more instances where the EU’s formal procedures said one thing and governments did something else. To get a better picture of what was going on, I constructed a stylized model of the EU’s legislative process and defined the behavior one would expect from governments and supranational actors if decision making were governed solely by formal rules. I then compared this behavior to the practices on the ground and called the discrepancy “informal governance.” The result of this exercise was remarkable. I found a whole web of informal governance around the EU’s legislative process. More important, these practices, although stable over time, appeared to vary systematically across issue areas. The Council presidency, which prompted this project, turned out to be just the tip of a massive iceberg of informal governance. As I got a better picture of the patterns of formal and informal governance, the many things I had learned in class and what I knew about the EU slowly fell into place.

The central argument of this book is that informal governance provides added flexibility—a flexibility that states use to resolve potentially disruptive conflicts that their cooperation at the interstate level suddenly stirs up at the domestic level.

The logic is the following. Although it is clear, for example, that an EU-wide regulation of lightbulbs creates not only winners but also losers that have to bear the burden of adjusting to the new law, who benefits and who loses, the extent of these adjustment costs as well as when these costs accrue, is not always entirely predictable. Suddenly confronted with unexpected costs, a domestic group mobilizes against this regulation to an extent that its government is pressured into delaying, obstructing, or even openly defying it. I call this problem political uncertainty.

Political uncertainty is a problem for everyone, because when states defy the law then the very basis of cooperation, namely stable expectations about one another’s commitment, seems potentially brittle. To keep this basis for the EU’s smooth operation intact, states collectively depart from the rules that allow for imposing costs on one another in order to accommodate governments under exceedingly strong domestic pressure: they concede just enough to restore such
governments’ incentive to cooperate. Because it allows for changing the timing, extent, and distribution of adjustment costs, informal governance permits states to manipulate one another’s domestic politics of collective action in a way that keeps domestic interests aligned in favor of cooperation. It makes cooperation work.

Although confined to economic integration within the EU, the theory developed in this book sheds important light on current events and other international organizations as well. Consider again the Eurozone crisis. The book is about how frequent disruptions to the domestic politics of collective action lead to the routine use of informal governance through which governments sustain a very high level of cooperation. In the current crisis the Eurozone members are dealing with unprecedented shocks on a massive scale to their highly interdependent economies. However, the challenge that policymakers face in both situations is similar: the defection of one of them, be it in the form of obstruction, delay, outright noncompliance, or exit from the Eurozone, hurts everyone because it undermines the credibility of the institution itself. Accordingly, the Eurozone members are not only concerned about the direct economic consequences of the crisis. They are also concerned that, for example, a Greek exit from the Eurozone or the reintroduction of national currencies in another country will cast doubt on the Eurozone’s very stability, damage the euro’s credibility, and thus harm all of them (Financial Times 2012b). The EU member governments consequently resort to informal governance practices when sticking to formal procedures would not prevent such scenarios from becoming reality.

Thus, just as the governments in this book depart from formal rules in day-to-day EU politics in order to avert excessive domestic mobilization against EU laws, so leaders in the current crisis use informal governance to prevent crisis-ridden governments from caving in to oppositional domestic forces. The result is a nerve-racking balancing act in which, for example, creditors and EU institutions vociferously insist that debtors follow the rules and duly implement the conditions tied to bailouts; yet there is often no alternative for creditors but to create just enough informal wiggle room regarding the timing and amount of debt payments to prevent the debtor governments from losing important votes and caving in to domestic pressure for exit (Financial Times 2012a).

In light of the scarcity of information, ambiguous statements, and ongoing nature of events, it is too early to make strong claims about the member states’ strategies, or to speculate about how and whether the crisis will end. What can be said with some confidence, however, is that in a few years’ time, when the dust has settled and documents are released, the EU’s monetary union and its crisis will be a fruitful area for research on informal governance.
This book sheds light on other international organizations as well. Especially in the inherently dynamic realm of international trade, any organization with the authority to impose a decision on a member state may generate unexpected costs for, say, American shrimp fishers or German toy companies that suddenly prompt these groups to mobilize against it. As I discuss in the conclusion, this theory might well account for certain informal practices in other international organizations. Furthermore, by arguing that informal governance helps sustain cooperation by making institutions more responsive to those whom they affect most, this theory has some interesting and perhaps counterintuitive implications for normative debates on the democratic deficit in European and global governance.

Therefore, this book speaks not only to students of the EU but also to those interested in international organizations and law, the intersection of domestic and international politics, and normative aspects of European and global governance. I hope to bridge two gaps in current scholarship.

A first gap exists between students of international relations and students of comparative politics. In a world of complex interdependence, in which state borders become more and more porous, the distinction between both subfields has become increasingly anachronistic, especially in Europe, the world’s most interdependent region. Paradoxically, the divide seems to be particularly pronounced in EU studies, where a division of labor has evolved between international relations scholars explaining the EU’s treaty revisions and comparativists studying the EU’s day-to-day politics (Hix and Hoyland 2011, 2; see also Polsack 2005). Thus, the first group is concerned with the endogenous aspect of EU institutions and asks why these institutions exist and take the form they do. The second group then takes EU institutions as exogenous and studies how they constrain individual choices and interaction among the legislative actors. I employ aspects of both approaches to show when, how, and why the member states collectively seize informal control of the EU institutions in order to mitigate their effect on the domestic distribution of the costs and benefits of economic integration. As a result, I hope to demonstrate how theories from both subfields can be usefully combined to shed more light on the complex ways in which domestic and international politics interact.

A second gap exists between scholars who study practices in their institution of choice in minute detail, and those who seek to theorize about the bigger picture. The first group often neglects to justify the significance of their work for broader debates in political science and other fields, while the second group tends to ignore the fact that there are real limits to the applicability of general theories to a specific institution. Regarding the EU, one example mentioned in this book is the effort to identify stable patterns in preferences and coalitions in the few data that
exist on voting in the Council of Ministers, just as scholars try to identify such patterns in other international organizations or national parliaments. Instead, I argue in chapter 4, it is more interesting to ask why there is so little data and why exactly it is so difficult to find any such patterns in the EU context. One should not be afraid that questions like this about the EU’s idiosyncrasies separate EU studies from broader debates in political science. In fact, this is how broader debates evolve and general theories are developed. After all, science progresses through the discovery and study of anomalies (Lakatos 1970), not through the replication of existing studies. It requires a back and forth between “soaking and poking” (observing actual practices) and the interpretation of actual practices in light of general theories (Greif 2006, chapter 11). I am sure there will be EU experts who think that this book’s bird’s-eye view on more than fifty years of EU politics misses important details, while others will be left wondering how the theory might be applied beyond the case of the EU. I hope that, at the very least, this book stimulates further debate about these questions. More than that, I hope that it inspires scholars outside just as much as inside Europe to engage with what is beyond doubt one of the world’s most fascinating institutions.