

recasting institutionalism: institutional analysis and public policy

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Abstract

In its rational, organisational, historical and discursive varieties, the new institutionalism research agenda is arguably the most successful paradigm in comparative politics and public policy analysis. However, neo-institutional practice applied to comparative policy analysis reveals four pitfalls, that is, 'institutional determinism', 'drop in the box', 'second best residual explanations' and 'theoretical conjectures without foundational mechanisms'. We illustrate and examine the pitfalls and consider the conceptual and methodological implications for the comparative analysis of policies. In the conclusion, we present options for rescuing institutional analysis from bad practice.

Keywords new institutionalism; comparative public policy; research methods; pitfalls

In its rational, organisational, historical and discursive varieties, the new institutionalism research agenda is arguably the most successful paradigm in comparative politics and public policy analysis (Di Maggio and Powell, 1991; March and Olsen, 1984, 1989; Schmidt, 2008; Shepsle, 2006; Steinmo *et al*, 1992). The theoretical and substantive achievements of new institutionalist research are not disputed here. Rather,

we are concerned with specific negative implications of new institutionalist thinking in a specific field of research, that is, the comparative analysis of public policy. Obviously, there are several angles that can be used to appraise what new institutionalism has delivered – comparative public policy being only one of these, although not a trivial one.

We argue that there are four pitfalls of new institutionalist research in comparative

public policy analysis that show up frequently in articles published in major journals. These pitfalls do not derive from wrong assumptions or problems internal to neo-institutionalism (NI). Instead, they are the consequence of NI usages. The problem – we reason – is that we use NI in comparative public policy to justify a number of practices that, upon scrutiny, are not justified – neither by social scientific standards nor by the NI's own theoretical and methodological premises. We therefore conclude that we have to go back to the research problems that originally inspired the new institutionalist paradigm and suggest a way forward.

It is useful to clarify the arguments we do NOT make. We are not concerned with the study of institutions, governments, elections, regional integration and many other topics that are prominent on the agenda of political scientists and international relations scholars. We do not deny the importance of neo-institutional frameworks that have demonstrated the importance of institutional design for public policy outcomes – there is plenty of evidence showing a robust causal link between design elements such as veto-players and policy outcomes (Tsebelis, 2002). We realise that social scientists often have to make the choice between radically simplifying assumptions in large-N studies and resource-intensive case studies – conceptual frameworks play a fundamental role in easing this trade off. Neither do we take issue with the notion that the institutional context builds up a large causal effect over time, and therefore, it is indispensable for comparative statics. Finally, we are agnostic as to whether the problems we discuss here are general political science problems or are typical of institutional analysis – to answer this question, one would need a major survey of the whole discipline of political science. Even within NI, we simply want to prove

'... there are four pitfalls of new institutionalist research in comparative public policy analysis ...'

that the pitfalls simply exist, but since this article does not contain a survey of a representative sample of NI articles we cannot say how diffuse the malaise is. We do hope that what we say resonates as common practice to the readers, but only future work will be able to establish the diffusion (within NI) of the pitfalls we describe.

Let us also clarify the meaning of pitfall. Following Majone's *Anatomy of Pitfalls*, a pitfall, differently from fallacies and simple errors, can be understood as 'a conceptual error into which, because of its specious plausibility, people frequently and easily fall'. It is 'the taking of a false logical path' that may lead the unwary to absurd conclusions, a hidden mistake capable of destroying the validity of an entire argument' (Majone, 1980: 7). There are different types of pitfalls. Some are conceptual: Majone has repeatedly argued that a unit made up of a number of entities does not necessarily have the properties of these constitutive entities. So, if we approach the European Union by assuming that this 'unit' has the same structural features of its member states, we produce a conceptual pitfall. Pitfalls may also affect formulation, modelling, data analysis and methods. In short, a pitfall is not a fallacy like a numerical error or a factual mistake (Majone, 1980). It is an error that 'vitiates the basic structure of the underlying argument' (Majone, 1980: 7).

We proceed as follows. In the second section, we review the main original aims of NI and situate our critique within the other critical remarks made on NI in the past. We then move to the illustration of the pitfalls with examples from the NI

literature, and elaborate on them. Finally, we discuss the implications of the pitfalls and turn to categories that, we believe, may rescue NI from its indiscriminate adoption and usage.

THE PROMISE OF NI AND THE FOUR PITFALLS

As mentioned, there are different new institutionalist approaches – *sociological/organisational, rational-choice, historical* – that can be distinguished on the basis of the specific role attributed to institutions and to their relations with other components of political life. Recently, Vivien Schmidt has made the point that a fourth, discursive, institutionalism provides theoretical leverage and can usefully accompany the three other strands (Schmidt, 2008, 2010). We do not need to rehearse one more time why and how the different fields of NI differ, since this has been done very well by Hall and Taylor (1996) and Schmidt (2010).

Fundamentally, NI scholars of all camps have reopened the way for a theory-grounded consideration of institutions in structuring political life and influencing human agency within organisational configurations. Over the last three decades, the NI Schools have collectively established a grip on the key issues of comparative analysis – no matter how bitter the internal disagreement among schools may be.

NI theorists have provided explanations that account for both variations in policy outcomes in several countries (Hall, 1986; Immergut, 1998; Levi, 1988; North, 1990; Shepsle, 1986; Steinmo *et al*, 1992; Tsebelis, 1990) and policy continuity and change within countries (Skowronek, 1982; Weaver and Rockman, 1993; Weir, 1993). No matter what type of institutionalism one sticks to, there is nothing in the core research agenda we have presented above that justifies the

type of pitfalls we are about to encounter. Ironically, these practices are indeed closer to the 'old' institutionalist agenda than to the 'new'.

Criticisms of NI have already appeared, especially concerning the logic of NI explanation in the different strands (Green and Shapiro, 1994; Gorges, 2001; see a range of criticisms in Schmidt, 2010). However, these critiques have less to say about NI than about the specific limitations of the variants that inform it. They are first and foremost critiques of rational choice, historical analysis and sociological thinking – the concern with institutional features is secondary. The NI variants or strands have become a veritable methodological battleground (Schmidt, 2010). Despite sharing the idea that institutional variables are central in the explanation of political action, new institutionalisms substantially differ in their object of explanation and in the logic they assume for explaining political phenomena.

The criticisms that have appeared in the literature, however, do not affect the problems we are concerned with – problems that affect the approach to the comparative analysis of public policy – and therefore have less to do with grand debates about the logic of explanation and modes of analysis. Essentially, we identify the following pitfalls:

INSTITUTIONAL DETERMINISM

The formal characters of the government, associated with fixed institutional characteristics, are considered the determinants of policy outcomes. This is arguably the only pitfall that we can strictly associate with NI practice. The following pitfalls appear in NI scholarly work, but they may also feature in general political science – as we said in the introduction, we cannot establish this without a comprehensive survey of the literature.

DROP IN THE BOX

Some important strands of NI operate via typologies and classifications. These typologies often arise out of heuristics. For us, the problem does not lie in using classification, but in the assumptions made about institutional variables and public policies. To put it bluntly, but we shall elaborate below, the pitfall has two dimensions. First, since the chosen approach has N boxes, each case must fall in one of the pre-assigned boxes. Second, the classificatory exercise is given an explanatory power that it does not have – certainly not in terms of explaining any policy outcome.

SECOND BEST-RESIDUAL EXPLANATION

This pitfall is about acknowledging the role of policy-level variables in the conceptual section of an article, but then using institutional variables instead. This is because structural/institutional variables, basically, seem to fill the gap between the total variation of the selected cases and the amount of variation explained by the policy-level variables. As we shall see, there are also practical problems concerning the generation of policy-level data. Since producing the data that the conceptual foundations would require is extremely time consuming, the authors prefer to condense several features of a given policy system into what is already known in terms of institutional variables.

THEORETICAL CONJECTURES WITHOUT FOUNDATIONAL MECHANISMS

Again, we put it bluntly to explain our label (but we shall return to this category in detail): since we have a neo-institutional approach, we have to shoehorn any policy outcome into the approach. But the

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approach does not provide any argument in terms of mechanisms leading to the observed policy outcomes.

To repeat, these problems originate in the practice of NI rather than in the founding texts of this approach. Indeed, our argument is that the practice that informs the pitfalls of analysis is connected to old institutionalist thinking and it is not justified by the NI own standards and theoretical premises.

HOW THE PITFALLS OCCUR IN NI PRACTICE

Our first pitfall is *institutional determinism*. Here, the formal characteristics of the government, associated with fixed institutional characteristics, become the determinants of policy outcomes. Usually, these studies are backed by the use of extended databases and state-of-the-art statistical analysis.

These articles often build on a tradition in political economy that investigates the determinants of budget deficit and fiscal outcomes (Alesina *et al*, 1999; De Haan and Sturm, 1997; Edin and Ohlsson, 1991; Grilli *et al*, 1991; Roubini and Sachs, 1989; Stein *et al*, 1998; von Hagen and Harden, 1995), inflation rates (Crouch, 1985; Bruno and Sachs, 1985) or the level of taxation and economic performance (Alvarez *et al*, 1991; Lehner, 1988; Lange and Garrett, 1985).

Thus, Cheibub (2006) maintains that the budget deficit, on balance, is smaller in presidential than in parliamentary democracies. This, his argument goes on, is the resultant of the high degree of

the institutionally guaranteed electoral identifiability that keeps the president accountable for performance. Therefore, what actually matters is the relationship between voters and the government and the positioning of policy responsibility, not the party structure, the minority or majority nature of governments or the electoral system in force.

Other authors have claimed that changes in a specific policy sector are explained by the institutional 'context' – variously modelled. Hence, differences in the way the US and Canada dealt with children environmental health are functions of the different structure of the Congress, past policy legacies and the influence of institutions on non-governmental actors (Boothe and Harrison, 2009). Others have produced evidence linking deficits and fragmentation (partisan and procedural) (Wehner, 2010) or between the total tax revenue and the character of governments, which are classified in terms of majoritarian, shifting coalition and dominant coalition (Steinmo and Tolbert, 1998).

This practice links the starting point of the causal chain and the policy outcomes with a plausible conjecture, ignoring that the chain is very long, with several intervening variables that can interrupt it or alter its outcomes. The unit-of-analysis problem is recurrent in this pitfall: institutional features determine policies, so a Presidential system will produce more or less the same outcomes across policies – ignoring the cross-policy variability that certainly exists.

Our second pitfall is *drop in the box*. In this case, the approach foresees a certain number of boxes – usually via typological exercises originally built in heuristic manner – corresponding to as many institutional compounds. We can see immediately the problem that, when we move to the initial heuristic exercise that originated the 'boxes', every new case has to be shoehorned into the existing

N types. But there is another problem related to the explanation of public policy. In fact, at the root of this pitfall is the habit of turning a Weberian ideal type into a causal explanation of public policy. Ideal types are useful for classification, but do not provide causal explanations of policy outcomes.¹ An example is the *Varieties of Capitalism* approach (VoC) (Hall, 2007; Hall and Gingerich, 2009; Hall and Thelen, 2006; Hall and Soskice, 2001; Thelen, 2004). The problem is not VoC *per se*, but how it is used to explain policy outcomes.²

Suppose one is explaining privatisation, vocational training and corporate governance in a comparative project. Or that one is looking at the responses (in different policy sectors) of Member States to European Union initiatives – or to global pressures on domestic policy regimes. Since the chosen approach (in our example VoC) has N boxes, each case, as coupled with a specific set of policy outcomes, must fall in one of the pre-assigned boxes (Thelen and van Wijnbergen, 2003). Therefore, individual countries are identified with the theoretical features of 'coordinated market economies' or instead 'liberal market economies' (Soskice, 1999), and in turn thought to be leading to specific sets of policy outcomes. Thus, for instance, a coordinated market economy would be less likely to privatise its industries than Great Britain, which instead is matched with the character of a Liberal market model. Hopner and Shafer (2007) argue that the proposal of the European Commission for a directive on the liberalisation of services across the European Union created a clash of capitalisms between coordinated market economies and liberal market economies – the two classic VoC boxes. Hence, we can explain different responses by the member States of the European Union by putting individual countries into the pre-fabricated types.

In other cases, the type of political regime (liberal or non-liberal democracies) is considered as the independent variable to explain cross-national difference in the scope, character, development and impact of interest groups regulation at the national level (Yshai, 1998). Here, the analysis lacks micro-foundations. The inference made is rather approximate. Policy sector-level variables are left aside. But let us go straight to the specific problem we have with dropping cases into boxes.

First, when we move from the well-known countries like the UK and Germany and consider new ones, we are forced to drop the new units into one of the boxes – this applies to VoC as well as other classifications, like Presidential-Parliamentary democracies. Yet, the fit between the chosen box and the country may be very low. The result is a kind of ugly duckling phenomenon: the country is somewhat associated with one of the boxes where it shows up as a poor performer in relation to the institutional properties of the box. Yet it could provide an example of creative combination of institutional features that do not add up to any known box – it can be a beautiful swan in a box we still have to find and describe. Indeed, this is what happened with the evolution of VoC from two original types to richer varieties to cover countries like France, Spain and Italy, calling them mixed market economies (MMEs); MMEs do not help much conceptually, although they have a heuristic value (Hanckè *et al*, 2007: chapter 1).

Second, but most importantly for our argument, there is no theoretical justification that links the box to the phenomenon. There is no VoC theory connecting institutional features to privatisation or other policy outcomes. Obviously, VoC is not a theory of privatisation or liberalisation and does not provide any theorised mechanism about privatisation choices. Consequently, the pitfall does

not lie in the use of categories and types, but in assuming that the categories contain underlying arguments about policy-level explanations.

Third, the variables used to create the boxes are often continuous. Countries do not have either centralised or decentralised wage bargaining, they have a more or less (de)centralised wage bargaining system. Think of the difficulties we encounter when it comes to Switzerland within the VoC approach, or Japan. We also encounter conceptual difficulties when variables are continuous over time in the single country. What happens when Britain moves closer to a multiparty parliament and coalition governments? In sum, the practice of dropping countries into the box(es) has no theoretical leverage and leads to wrong prediction because of the uncontrolled classification bias and measurement problems.³

Yet another pitfall looms large when scholars resort to institutional factors to explain policy results without explicitly stating the relevance of institutional variables at the outset of their analyses. In these cases, neo-institutionalism serves as a sort of *second best approach* to explanation, where institutional variables are initially listed together with policy-level variables (i.e., constellation of actors, policy coalitions, etc. ...), but eventually used as major explanatory variables due to lack of information on policy-level variables.

Let us look at work produced by one of the authors of this article – to show how easy it is to fall into a pitfall. Radaelli's article on regulatory reform (Radaelli, 2010) is a case in point. He first puts forward the likelihood that cross-country variance is explained by factors such as knowledge utilisation, diffusion of public management reforms and rational decision making, but eventually he falls back on classic categories of comparative politics, like coordination within central government, the nature of executive

government, ministerial relations and administrative models. A more coherent explanation could have instead considered the structures of problems and the nature of the interaction networks within the various sectors of policy to which economic appraisals of legislation are utilised. Situations like this due to the lack of extended information about the policy variables initially mentioned by the researcher, who finds it more convenient to make use of well-known categories to reach plausible – but not necessarily correct – inference.

This is indeed nowadays very *classic* in comparative research, even almost typical in large N research, where the data available on public policy as dependent variable are limited (typically an outcome variable, such as levels of compliance with legislation or levels of pollution or expenditure in the sector). There is little comparative knowledge on the features of the sector, including capacity, the structure of conflict, the degree of enforcement and implementation. By contrast, we have plenty of measures at the level of institutions, for instance, on the executive structure, on the relationship between the government and the Parliament, on the electoral laws, on veto players and so on.

Thus, comparative researchers tend to use these to identify and measure the independent variables, plus control variables. But if we look closely at these independent variables, we are left with very classic old institutional features. These variables are then used in two ways: in positive analysis, comparative policy researchers use them to predict the policy outcomes. In normative analysis, the argument becomes that to achieve policy change we have to operate on the institutional levers, such as strengthening the power of the executive. Note that these variables do not change in the short term, especially in periods of relative macro-economic and political stability.

Thus, not only are we dealing with an explanation that is excessively structural and determinist but we also run the risk of a static explanation: transport policy in Spain – for example – will never change unless we change the electoral rules or reduce veto players via institutional reform.

Theoretical conjectures without foundational mechanisms concerns causality and explanation. In a continuum from the particular to the general, this is the more general pitfall we describe in this article. What is the pitfall about? To explain policy variation, we consider a simple model of institutional causation and associate institutional variation (the independent variable) with policy variation. Now, this would be legitimate (but still questionable, as we shall see in a moment) if the authors added to the simple model of institutional causation, the complexity of the policy domain in a stepwise process. The problem is that they do the former (i.e., the simple model of institutional causation) but not the latter. In the end, we find powerful explanatory institutional variables because this is what we are looking for.

Now, there is no theoretical justification of this practice of truncating the stepwise process at the first step of simple institutional causation. The mantra that ‘institutions matter’ does not qualify as theory if all we get is institutional variation associated with policy variation. And thinking of the whole direction of the stepwise process, we would argue that there is more theoretical leverage in starting from actors’ constellations in a given policy domain first, and then add institutional complexity to account for the variation that policy-level variables do not explain.

Where does this pitfall come from? It probably originates from the NI argument that the structure of a nation’s political institutions shape or frame the decision-making context faced by policymakers. Others move from path dependency to

explain both stability and change; in this vein, it is claimed that 'institutions define *policy making* in such a way that *public policy* over time becomes "path dependent"' (Kuipers, 2009: 165 *emphasis added*). More often than not, these studies lack the mechanisms through which the institutional setting explains policy outcomes – or they provide simplistic mechanistic explanations based on incentives. It does not seem necessary to many authors to explain how and why the institutional setting – in Scharpf's (1997) terms 'a shorthand term to describe [...] influences' (1997: 39) – actually determines the outcome or at least the behaviour of the relevant actors. To identify such mechanisms is hard, and we acknowledge that mechanisms are not a necessary condition for explanation (Gerring, 2010), but without at least some conjectures about why the institutional rules influence actors behaviour in a specific way, for instance, by providing selective incentives to operate in a specific way, the argument becomes circular.

Of course, institutional settings are different and policy outcomes are diverse, but the mere juxtaposition of these two differences does not provide a hypothesis, *let alone* an explanation. For instance, in a recent article about the different levels of compliance with European directives in the field of the electricity market in Italy and France, Prontera (2010) suggested that the technocratic and highly institutionalised electric energy policy in France explains the fact that *Electricité de France* resistance against the liberalisation of the field was strong and successful. By contrast, in Italy the 'central role of political parties in policy making and in the formulation of Enel's business strategies' explains why electricity policy was much less institutionalised, with the consequence of a more rapid demise of the previous monopolistic setting. *Prima facie*, the explanation seems convincing, but if one thinks about

it the mechanism is absent: why should one expect that in a period of deep crisis of the party system (Italy after 1993) the role of the powerful electricity monopolist should be low, with the effect of not being able to resist liberalisation? Moreover, in another field within energy policy, oil and gas, the picture is totally different: the former Italian monopolist, ENI, has so far been very successful in maintaining the vertical integration that includes exploration, extraction, transportation and distribution. The explanation of the policy outcomes has much more to do with policy-level variables than with any institutional variable.

Similarly, Mendez (2005) considers variability in policy outcomes in the area of cyber crime. His cases are Switzerland, the European Union and the United States, three federal systems. In order to account for the variation in policy outcomes, he draws on comparative federalism. He comes to the conclusion that the institutional characteristics of the three different political systems explain this new, emerging policy concerned with computer viruses, virtual infrastructures and crime on the internet. Here we see why we insist on the public policy dimension of the pitfall. We are not questioning the leverage of comparative federalism in terms of explanation of the three different federal institutions of the EU, Switzerland and the USA. There is no problem here. The problem arises when variation of federal institutions is used as explanation of the variation of policies concerning cyber crime.

The examples also alert us on the choice of the *unit of analysis*. The NI theoretical arguments about institutions are used in studies of public policy to situate this unit at the level of the country. Thus, the unit of analysis is not, say, *transport* policy, but *Spanish* transport policy. In consequence, attention is drawn to the institutional features of the Spanish political system, not the policy-level

variables (which may better explain public policy). Within NI practice, it becomes almost obvious to look for the characteristics of the Spanish institutional system, such as the cohesion of government, the capacity of the executive to manage social conflict, the type of political system and the role of Courts in setting policy agendas. It also follows that the expectation is one of limited variability between one policy sector and another in Spain, and high variability between Spanish policies (e.g., transport, as well as housing and environment, to carry on with our example) and the policies of other countries. This variability is explained by 'institutions'. The circle is closed, but it is the same circle of the old institutionalism. Yet one could reason that the diffusion of policy models have made transport policy in Spain and Portugal more similar than transport policy and housing policy in Spain.

Again, the way out of these traps is to specify carefully – as NI approaches should do – the causal chain linking the institutional-level variables and the policy outcomes, necessarily passing through the behaviour of policy actors. Otherwise the correspondence between given institutional setting and a given policy outcome – does not matter how frequent it is – does not provide a true explanation, but is indeed a *theoretical conjecture without theoretical foundations*.

DISCUSSION

This state of play leads to two undesirable outcomes, already identified by Fritz Scharpf in his 1986 article on *Policy Failure and Institutional Reform: Why Should Form Follow Function?* The first problem spotted by Scharpf (1986) is that we do not have a theory that leads us from an understanding of the institutional variables characterising a political system to the prediction of policy outcomes.

'Institutionalist analysis leads us to track down the wrong independent variables'.

How does one link, conceptually, the vote of confidence to the policy performance in the energy sector?

This mode of analysis represents a hindrance to the understanding of variability among policy sectors. Indeed, there is plenty of evidence of this type of variability. It is not true that all policies do not perform well in, say, Italy because there is poor administrative capacity. Research has documented considerable variability, even within regions and the same sectors. Even within public administration, capacity varies (not to mention policy performance) – an Italian study found that two Chambers of Commerce that operate in the same region at fifty miles of distance exhibit different capacity (SPA Ricerche, 1993). Yet one cannot say that the civil society or the organisation of the regional government differs since the two chambers are in the same region.

Consequently, there is a model specification problem in designing the relation between institutions and policies. Put differently, the policy-level variables that could explain variability are omitted from the model. Institutionalist pitfalls lead us to track down the wrong independent variables. They also force the (wrong) institutionalist measures to perform Procrustean explanatory efforts in econometric models, as well as in small-N institutionalist explanations – as shown above.

The second problem is less important for our argument – since we are only tangentially interested in design sciences and normative analysis. But it shows how it can direct the minds of political scientists towards the wrong remedies

for policy failure. As Scharpf argued, a consequence of this type of institutionalist analysis is that if a policy does not work, the solution is to *manipulate the institutional variables*. Scharpf rightly saw this as a limitation. He observed that 'similar outcomes may be obtained by different policies, similar policies may be produced by different institutional structures, and a given institutional structure is capable of producing different policy responses' (Scharpf, 1986: 183–185). Things may indeed improve, or they may worsen. We do not know: yet we keep faith in the manipulation of institutional variables. This obviously sounds very 'institutionalist', but it is not warranted by our theoretical knowledge of institutions and their impact on policy.

Having said that, one could respond by observing that policies may seem to differ sector by sector. Yet they are formulated within the same regional or national executive, they are all implemented by the same class of civil servants, they are all discussed by the same parliament and so on. We also know how to handle federalism and the variability of civil society within regions of a country. Yet this argument seems to conflate the law-making process with the policy process. The government and the executive are primary actors in the discussion of a bill, but the law that comes out of parliament is simply a resource for the networks or implementation structures (including courts, competition authorities, street level public managers, pressure groups, experts, etc.) that will then produce policy outcomes.

Yet law and public policy are not the same thing. For a policy analyst, the former is a resource used in the formulation and implementation of the latter. We have to establish empirically whether the policy-level actors have the ability and motivation to use this resource. In essence, legal resources are not different

from other resources used in the policy process, but they do not define policy.

We stress this point because of the NI tendency to consider the law as at least partly outside the reach of the actors.⁴ NI scholars look at the law as something that is beyond or before policy – a component of the institutional advantage given to some of the participants, but that is not really 'acted upon' by concrete actors. Even the authors that share a 'contractualist' NI – think of Elinor Ostrom – downplay the role of the actors in the use of the law (rules in use), and of the institutional setting: may be at the beginning, the legal rules were established in order to secure the cooperation, but in any given moment they are outside the possibility of the actors to use them in a differentiated way. What should be done then to model correctly the role of institutions in public policy? Perhaps, surprisingly, we do believe that institutional variation (both over time and across different policies) is an important explanatory variable of differential policy outcomes. For instance, the creation in the last third of the last century of National Departments for the Environment in Western Europe has been a significant step in increasing the effectiveness of the policy. This is partly because, in this specific case, a new actor was created, able to operate as the advocate of environmental protection in the government, mobilising political, legal and financial resources. A comparative analysis of environmental policy capacity shows that this is a necessary – although not sufficient – step for policy development (Weidner and Jänicke, 2002).

In other cases, the creation of new institutional arrangements is the way in which an arena is established, a forum in which different policy actors can discuss and negotiate policy issues, thus lowering transaction costs and creating the conditions for long-term adjustments (Bressers and Kuks, 2004). Or, again,

the institutional transformation can be simply symbolical, but not without consequences as far as policy outcomes are concerned. This is the case in which a mere change of label (the old wine in new bottles' phenomenon) has the effect of better focusing a specific policy problem, thus modifying the behaviour of the existing actors and, as a consequence, the results. The variation can affect the procedure and the organisations. For instance, Knoepfel has shown how the possibility of using direct democracy (referendums and initiatives) has altered the way in which the policy game is played in Switzerland (Knoepfel, 2009).

All these examples have something in common: namely, the fact that the effect of institutional change is mediated by the existing actors often modifying their resources and their mutual interaction. In other and simpler words, *institutions do play a role within the policy process not outside it*, and it is the task of the existing actors to understand how the existing institutional framework affects their field of intervention, readjusting their strategies and their tactics accordingly. Institutional change is not the effect of exogenous shocks, but brought about by the same actors that play the substantive game. This does not mean that 'institutional policies' do not exist and that they do not have their own specificities (Knoepfel, 2009), but it is not always so and in any case even institutional policies have their actors, their problems, and are played under the same veil of ignorance about their consequences, that characterises most contemporary policies.

CONCLUSIONS

In this article, we have exposed some pitfalls that dominate NI analysis of comparative public policy. We have found that the NI understanding of public policy is hindered by pitfalls concerning a lack of

'Institutional change is not the effect of exogenous shocks, but brought about by the same actors that play the substantive game'.

theoretical arguments, the tendency to drop countries in pre-defined boxes, institutional determinism and wrong second-best measurement strategies. These are not deadly sins of the original NI paradigm, but rather pitfalls that originated in NI practice. For this reason, there is no need to throw away the baby (of the rich NI theoretical framework) with the bathwater.

But our findings also suggest a way forward in understanding the relationship between institutions, law and public policy. Here, perhaps it is NI theory that needs to slightly modify its theoretical core propositions about the institutional effects on public policy. It is indeed classic of NI to postulate that there is an institutional domain separated from substantive public policy, and because of this institutions have policy effects.

We suggested a redirection of this way of thinking. To recap, we argued that the law is one of the resources in the policy process, and it can be used, not used and manipulated in the same way other resources such as knowledge and money are. We also argued that institutional change has policy effects, such as the creation of new actors, the generation of new arenas and fora, and the redefinition of policy problems. The same can be said of procedural rules such as electoral laws and referenda. Yet institutional policies are public policies like the others (at least at a fundamental level of how to conceptualise them). They do not have an instrumental position in relation to substantive policy areas. By bringing

together institutional and policy analysis, we can make the most of the truly 'new' institutionalism and shed light on the rules of the games, the roles of different actors, the logic of appropriateness of the regulators and how actors get, or do not get, locked in mechanisms of path dependence. Exactly because these are the effects that matter, we have to redirect theory and rescue the new institutionalism from the pitfalls of its enthusiastic supporters.

'... we have to redirect theory and rescue the new institutionalism from the pitfalls of its enthusiastic supporters.'

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Notes

- 1 It is however possible to draw on classificatory types and elaborate causal explanations, but only when one follows the specific rules of explanatory typologies (Elman, 2005).
- 2 For other, different critiques of the VOC framework, see the references cited in the comprehensive overview by Hancké *et al* (2007: 3–38).
- 3 We are grateful to Thomas Plümpner for having suggested this third point in his correspondence with Radaelli.
- 4 Possibly, one of the sources of this misunderstanding is the ambiguity of the concept of legal rule that encompasses both the *lex* (the normative proposition binding public or private behaviours issued through the legislative process) and the *jus* (the set of principles according to which the *lex* has to be interpreted and acted upon). For a discussion of this distinction, see Dente (2009).

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