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**Recalcitrance, Inefficiency, and
Support for European Integration:
Why Member States Do (Not)
Comply with European Law**

by

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Abstract

This paper seeks to explain inter-state variation in non-compliance with European law. While non-compliance has not significantly increased over time, some member states violate European law more frequently than others. In order to account for the variance observed, we draw on three prominent approaches in the compliance literature – enforcement, management, and legitimacy. In the first place, we develop a set of hypotheses for each of the three theories. We then discuss how they can be combined in theoretically consistent ways and develop three integrated models. Finally, we empirically test these models drawing on a unique and comprehensive dataset, which comprises more than 6,300 instances of member-state non-compliance with European law between 1978 and 1999. The empirical findings show that the combined model of the enforcement and the management approach turns out to have the highest explanatory power. Politically powerful member states are most likely to violate European law while the best compliers are small countries with highly efficient bureaucracies. Yet, administrative capacity also matters for powerful member states. The UK and Germany are much more compliant than France and Italy, which command similar political power but whose administrations are ridden by bureaucratic inefficiency and corruption.

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1. Introduction¹

One of the major questions in the research on international institutions has been “why governments, seeking to promote their own interests, ever comply with the rules of international regimes when they view these rules as in conflict with [...] their myopic self-interest.”² While realists argue that states simply do not comply if the costs of a rule are too high, rational institutionalists point to the role of international regimes and organizations, which entail monitoring, sanctioning, and adjudication mechanisms increasing the costs of non-compliance. Management theories, by contrast, focus on capacity building and rule specification. Social constructivists, finally, stress legitimacy, socialization, and norm internalization through processes of social learning and persuasion. Thus, different International Relations approaches provide different explanations for why states comply. They have paid less attention to the question of why some states comply better than others.

This paper seeks to find out why some states are more inclined to comply with international norms and rules than others. The European Union (EU) is an ideal case to explore this question. As “masters of the treaties,” the member states still have a significant say on the norms and rules they have to comply with. At the same time, EU institutions entail highly legalized monitoring, adjudication, and sanctioning mechanisms. They do not only aim at changing the instrumental calculations of states by increasing the costs of non-compliance, but also allow for rule specification and capacity building, and promote processes of social learning and persuasion. Thus, all approaches should expect a rather high level of compliance. Many students of European Politics would agree that the EU, compared to many international regimes, does not suffer from serious compliance problems.³ Yet, the member states vary significantly in their compliance with European law. Why is it, for example, that EU-skeptic Great Britain, Sweden and Denmark belong to the compliance leaders while more EU-friendly Italy, France, or Portugal join the group of the laggards? Or, why do centralized countries like France and Greece have equally as bad compliance records as federal Belgium and regionalized Italy?

In order to explain the varying degree of state compliance with European law, this paper draws on a unique and comprehensive data set. For the very first time, researchers have been granted direct access to the infringement data base of the European Commission, which is in charge of monitoring compliance with European law. The Commission provided us with a complete set of all the cases it opened against the member states for violating European law between 1978 and 1999. Unlike the data published in the Commission’s Official Reports, our data base contains information regarding the nature of non-compliance, the type of law infringed on, the policy sector to which the law pertains, the violating member state, and the measures taken by EU institutions in response to non-compliance for each of the more than 6,300 infringement

¹We thank Andrea Liese, Katarina Linos, Thomas Risse, Beth Simmons, Paul Schure, Cornelia Ulbert, Karen Alter, Robert Falkner, the participants of the Harvard Weatherhead Center for International Affairs seminar on International Law and International Relations, and the participants of the Princeton Center for Globalization and Governance work shop for detailed comments. Needless to say, we are solely responsible for any conceptual, methodological, or empirical errors that may remain.

²Keohane 1984: 99.

³Zürn and Joerges 2005.

cases.⁴ The data confirm that there is significant variance in the level of compliance among the member states that backs explanation.

In a nutshell, we argue that member-state compliance is a function of both power and capacity. Politically powerful member states are most likely to violate European law while the best compliers are small countries with highly efficient bureaucracies. Yet, administrative capacity also matters for powerful member states. The UK and Germany are much more compliant than France and Italy, which wield similar political power but whose administrations are ridden with bureaucratic inefficiency and corruption. In fact, we find an interaction between capacity and power, where capacity conditions the relation between power and compliance. With increasing bureaucratic efficiency, the non-compliance promoting effects of power are gradually reduced.

The paper proceeds as follows. After outlining our empirical puzzle, we review three prominent compliance approaches in the International Relations literature. Enforcement approaches assume that states violate international norms and rules voluntarily because they are not willing to bear the costs of compliance. International institutions increasing external constraints can alter strategic cost-benefit calculations of states and lead to a change of their preferences over strategies eventually resulting in compliance. By contrast, management approaches argue that non-compliance is involuntary, i.e., is not the result of strategic choices. States are willing to comply but lack the necessary resources. The third approach – legitimacy – argues similarly to enforcement theories that non-compliance is strategic. But, unlike management and enforcement approaches, legitimacy draws on socialization, persuasion, and learning mechanisms. Compliance is not a matter of sufficient material resources or a question of costs and benefits of rule confirming behavior, but depends on whether a rule is internalized and accepted as a standard for appropriate behavior.

For each of the three approaches, we develop a set of hypotheses. While the literature often treats them as competing or at least alternative explanations, there are good reasons, both theoretical and empirical, to combine them.⁵ We discuss three options for integrating the power, capacity and legitimacy in a theoretically consistent and meaningful way and derive an additional set of hypotheses for our integrated models.

Next, we test our different models using quantitative methods. The empirical findings show that the combined model of the enforcement and the management approach has the highest explanatory power. The best compliers are member states that have ample administrative capacity and lack the power to resist compliance. Conversely, the countries with the worst compliance records are those with limited capacity but enough power to resist the Commission's enforcement efforts. Member states with weak capacity and limited power are not very good compliers either but they still fare better than their powerful counterparts. Finally, powerful member states with strong capacity comply better than powerful member states with weak capacity. In short, while power has a negative impact on compliance it is reduced by the interaction with capacity.

In the concluding section, we place the EU in a comparative perspective and discuss the extent to which our findings can be applied to international regimes and organization, which

⁴The data are available by the authors upon request. Once the article is published, the database will be made publicly accessible at <http://www.fu-berlin.de/europa>.

⁵Checkel 2001; Tallberg 2002.

possess a lower degree of institutionalization and legalization. Our research shows that even highly legalized international institutions do not completely mitigate power differences between states. Moreover, while capacity-building by international institutions is an effective way to improve compliance, it should combine resource transfer with measures for fostering bureaucratic efficiency.

2. Non-Compliance in the European Union

2.1. Infringement Proceedings as a Measure of Non-compliance

Studies on compliance with international norms and rules face a serious methodological challenge of measuring their dependent variable.⁶ Many have developed their own assessment criteria and collected the empirical information in laborious case studies.⁷ Others have drawn on statistical data provided by the monitoring bodies of international regimes and organizations, like the European Commission has done for the EU since 1984.⁸ Its Annual Reports on Monitoring the Application of Community Law⁹ contain information on the legal action the Commission brought against the member states since 1978. Article 226 ECT (ex-Article 169) entitles the Commission to open infringement proceedings against member states suspected in violation of European law. These infringement proceedings consists of several stages. The first two suspected infringements (complaints, petitions, etc.) and Formal Letters, are considered informal and treated largely as confidential. The official infringement procedure (Article 226 ECT) starts when the European Commission issues a Reasoned Opinion and ends with a ruling of the European Court of Justice. If the member states still refuse to comply, the Commission can open new proceedings (Article 228 ECT, ex-Article 171), which may result in financial penalties. Article 228 ECT proceedings consist of the same stages as Article 226 ECT proceedings but the ECJ has the possibility to impose a financial penalty.¹⁰

The dependent variable of our study uses the Reasoned Opinions as a measurement for non-compliance for two reasons. First, for the previous two stages, the Commission only provides aggregate data on the total number of cases brought against individual member states – information on individual cases is considered confidential. Second, Reasoned Opinions concern the more serious cases of non-compliance since they refer to issues that could not be solved through informal negotiations at the previous, unofficial stages. Note that two-thirds of all the cases in which the Commission had issued a Formal Letter between 1978 and 1999 got settled before a Reasoned Opinion had to be sent.

In order to control for the growing number of legal acts that can be potentially infringed on, we use the relative number of Reasoned Opinions sent per legal act rather than the absolute number per member state in a given year. Between 1978 and 1999, the Commission opened almost 17,000 infringement proceedings (Formal Letters). Over the same time, the number of legal acts in force has more than doubled from less than 5,000 to almost 10,000. By taking the number of Reasoned Opinions sent to a member states in a given year as percentage of the legal act in

⁶Simmons 1998; Raustiala and Slaughter 2002.

⁷Duina 1997; Mitchell 2003; Finnemore and Sikkink 1998.

⁸For instance Reinhardt 2001, Steinberg 2002.

⁹Source: http://ec.europa.eu/community_law/eulaw/index_en.htm, last accessed on February 15, 2007.

¹⁰Snyder 1993; Tallberg 2002.

force at the time of violation in addition to using time dummies in our analyses, we avoid problems of time trends (ever-growing number of legal acts) and structural breaks caused by political events, such as the completion of the Internal Market, which frequently haunt panel and time series analyzes.¹¹

The database, on which this paper draws, is based on a unique and comprehensive dataset including all the infringement proceedings in which the European Commission sent a Reasoned Opinion to the member states between 1978 and 1999.¹² It contains more than 6,300 individual infringement cases, which are classified by infringement number, member state, policy sector, legal basis (CELEX number), legal act, type of infringement, and stage reached in the proceedings. The Commission gave us access to its own data base. We were allowed to download all the data available for the years 1978 till 1999 (excluding the Formal Letters). This is the very first time that researchers have received such data.

Using infringements as a measurement for non-compliance with European law is not without problems. There are good reasons to question whether infringement proceedings qualify as valid and reliable indicators of compliance failure, that is, whether they constitute a random sample of all the non-compliance cases that occur. First, for reasons of limited resources, the Commission is not capable of detecting and legally pursuing all instances of non-compliance with European law. Infringement proceedings present only a fraction of all instances of non-compliance, and we have no means of estimating their real number. Moreover, the infringement sample could be seriously biased since the Commission depends heavily on member-states' reporting back on their implementation activities, on costly and time-consuming consultancy reports, and on information from citizens, interest groups and companies. But whereas the monitoring capacity of member states and their domestic actors varies, there is no indication that the limited detection of non-compliance systematically biases infringement data towards certain member states. We have been conducting an expert survey, which asks 189 policymakers, civil servants, companies, interest groups and scientific experts in the EU member states which form part of our study, to assess the level of non-compliance in their country in general and with respect to core norms and rules in different policy areas. The response rate was more than 60 percent and the results correspond with the relative distribution of infringement proceedings, which strengthens our confidence that the data do not contain a systematic bias.

2.2 Mapping Member-state Non-compliance with European Law

Our data on non-compliance with European law show significant variation among the member states (Graph 1).¹³ Member states can be divided into three groups: leaders, laggards and the middle-field. The three Scandinavian member states, the United Kingdom, and the Netherlands are good compliers and rarely violate European law. By contrast, the Southern European countries (including France) – with the exception of Spain – and Belgium seriously lag behind. The rest of the member states range in between, forming the middle-field. Analyzing

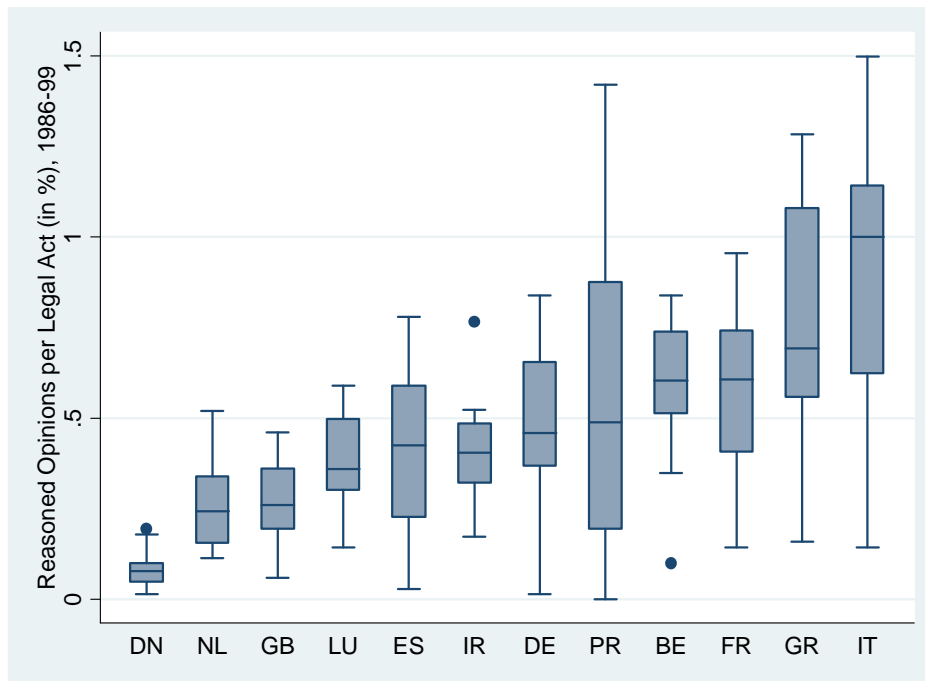
¹¹Cf. Banerjee et al. 1993; Enders 2004.

¹²1978 is the first year, for which the Commission comprehensively published infringement data. 1999 is the last year, for which the Commission was willing to give us access to its data base.

¹³Our analysis only covers the EU 12, since our dataset ends in 1999. Including the three member states that joined the EU in 1995 might have introduced a bias in our data, since the average number of infringements tends to increase in the years after accession.

this pattern more closely, we also find that it is virtually constant over time. Leaders stay leaders, while Italy, France and Greece always belong to the group of member states with the worst compliance record. Graph 1 does not only present the ranking of the member states from exemplary Denmark on the left to notorious Italy on the right by their average non-compliance records. The box plots also show, for example, that Italy receives a median of one Reasoned Opinion from the Commission per 100 legal acts in force each year, whereas Denmark, as well as the other Scandinavian countries not depicted in the graph, infringe on only one out of 1,000 legal acts on the median.

Graph 1: Annual Reasoned Opinions per Legal Act (in %) by EU 12 Member States, 1986-99



The distribution of non-compliance among member states is puzzling because, at first sight, none of the prominent compliance approaches seems to provide an explanation that systematically accounts for the variance observed. Realists should ask themselves why France and Italy wield similar economic and political power in the EU as Germany and the UK do, but are much less compliant. This becomes even more puzzling for management theories since France and Italy comply as badly as or even worse than Greece and Portugal, which are the two poorest countries in the EU 15. Constructivists should have a hard time in understanding why EU skeptical countries like the UK, Denmark, Sweden or Finland comply much better with European law than states that are highly supportive of European integration, such as France, Italy or Belgium. Institutionalists have in general difficulties in accounting for country variation since the level of legalization is the same for states within an international institution. Likewise, monitoring and sanctioning mechanisms should affect the cost-benefit calculations of states in an equal way. Variance is much more expected between international institutions, if they differ in their degree of obligation, delegation and precision.¹⁴ Of course, the costs of (non-)compliance may

¹⁴Abbott et al. 2000; Keohane, Moravcsik, and Slaughter 2000.

vary across countries. But then we need an explanation for why some states face higher costs than others, something which institutionalist theories usually do not provide. As we will see below, combining institutionalist reasoning with a power-based enforcement approach is one way to solve this problem.

3. Three Compliance Approaches

To explain why there is significant variation between member states with regard to their level of (non-)compliance with European law, we have to find country-based explanations. International Relations theories, such as the enforcement, management and legitimacy approaches, primarily focus on institutional design (monitoring and sanctioning, capacity-building and adjudication and socialization). Consequently, they have largely been used to account for variation in compliance across international institutions. However, all three approaches can be easily reformulated to account for country-specific explanatory factors, such as the power (enforcement), the capacity (management) of states and the acceptance of international rules and institutions (legitimacy) by states.

3.1. Enforcement

Enforcement approaches assume that states choose to violate international norms and rules because they are not willing to bear the costs of compliance. Incentives for defection are particularly strong if international norms and rules are not compatible with national arrangements, as a result of which compliance requires substantial changes at the domestic level.¹⁵ From this rationalist perspective, non-compliance can only be prevented by increasing the costs of non-compliance.¹⁶ Increasing external constraints by establishing institutionalized monitoring and sanctioning mechanisms can alter strategic cost-benefit calculations of states. The likelihood of being detected and punished increases the anticipated costs of non-compliance, be they material (economic sanctions or financial penalties)¹⁷ or immaterial (loss of reputation and credibility).¹⁸ Such costs may finally lead to a change of strategic preferences towards compliance. However, states do not necessarily face the same compliance costs nor are they equally sensitive to sanctions.¹⁹ Drawing on power-based theories of International Relations, we can distinguish three strands of the enforcement approach.

The Power of Recalcitrance: Power Matters at the Stage of Enforcement

Following the argument of Keohane and Nye on power and interdependence,²⁰ states can be regarded as being more sensitive to the costs imposed by sanctions if they have less political or economic power than other states, the latter being more resistant to external pressures. With regard to our dependent variable, we would then expect that the less powerful EU member states are, the more sensitive they are to external enforcement constraints and the less likely they are to infringe EU legal acts, hence, the smaller their number of infringements compared to

¹⁵Cf. Cortell and Davis 1996; Checkel 2001; Risse and Ropp 1999; Underdal 1998.

¹⁶Martin 1992; Downs, Rocke, and Barsoom 1996; Downs 1998; Dorn and Fulton 1997.

¹⁷Martin 1992; Fearon 1998.

¹⁸Checkel calls this "social sanctioning" (Checkel 2001: 558; cf. Klotz 1995; Keck and Sikkink 1998; Gurowitz 1999; Satori 2002; Schoppa 1999).

¹⁹Abbott et al. 2000; Garrett, Kelemen, and Schulz 1998; Horne and Cutlip 2002.

²⁰Keohane 1988.

less cost-sensitive, i.e., more powerful, member states. Hence, the political and economic weight of a state allows it to be *recalcitrant* with respect to the effective implementation of European law. This variant of the enforcement approach emphasizes the extent to which power translates into indifference or resistance vis-à-vis external constraints imposed on states.²¹ The mechanism of *recalcitrance* thereby predicts a positive relationship between the power of a state and its non-compliance record. The first enforcement hypothesis (H1a) expects that *more powerful states infringe on international and European laws more often than weaker states*.

The Power of Assertiveness: Power Matters at the Stage of Decision Making

Another variant of the enforcement approach focuses on states, but attributes more weight to the decision-making process. According to this line of argumentation, the power of a member state does not only deploy an impact in the implementation stage (resulting in *recalcitrance*), but also in the stage of decision making. Moreover, high power results in a *better* record of compliance. The political and economic weight of a member state is closely related to its *assertiveness*, i.e., its ability to shape legal acts according to its preferences.²² The extent to which a state has managed to impose its preferences during negotiating procedures determines the costs of compliance and thereby the state's willingness to comply with the decision *ex post*. Hence, if power is defined as *assertiveness* in the decision-making process, a second enforcement hypothesis (H1b) expects that *more powerful states infringe on international and European laws less often than weaker states*.

The Power of Deterrence: Power Matters for the Enforcement Authority

The assumption of a *positive* impact of state power on compliance has been taken up by other strands of the enforcement literature which emphasize, however, another causal mechanism. According to this line of argumentation, the political and economic weight of a state can translate into a *deterrence of the enforcement authority*, i.e., the institution which monitors compliance and imposes sanctions against free-riders and norm-violators.²³ Like the hypothesis about the *recalcitrance* of powerful states, the *deterrence* hypothesis stresses the relationship between the non-compliant state and the enforcement authority. But rather than conceptualizing the power of the non-compliant state as determining its reaction to actions of the enforcement authority, it explains the behavior of the enforcement authority in the first place. It assumes a principal-agent relation between the states (principals) and the enforcement authority (agent), in which the latter ultimately depends on the former since the states can always renounce the power of the enforcement authority.²⁴ This asymmetrical relationship may induce the enforcement authority to act strategically and be reluctant to impose sanctions on powerful states. This asymmetry is stronger for powerful member states since they have more political weight in international institutions, which they could use to punish the enforcement authority. Regarding the case of the European Union, the European Commission or the European Court of Justice (ECJ) might therefore be less willing either to open infringement proceedings or to issue rulings against powerful member states, since they finally depend on the extent to which member states are willing to delegate this authority to them. Thus, similarly to the assertiveness hypothesis, the deterrence hypothesis predicts a lower record of non-compliance cases for powerful states. In contrast to the assertive-

²¹Martin 1992.

²²Giuliani 2003; Moravcsik 1997; Fearon 1998; Keohane and Nye 1977.

²³Abbott et al. 2000; Garrett, Kelemen, and Schulz 1998; Horne and Cutlip 2002.

²⁴Horne and Cutlip 2002: 301; cf. Garrett, 1998 #4238; Tallberg 2000.

ness hypothesis, however, powerful member states might actually violate a rule, but are simply not being sanctioned for it. In this perspective, the deterrence hypothesis only allows for making predictions about the *probability with which violations are prosecuted and sanctioned*, not about the actual occurrence and prevalence of non-compliance.²⁵ The third enforcement hypothesis (H1c) expects that *the more powerful a state is, the less probably it will face infringement proceedings* since enforcement authorities are deterred.

Table 1: Overview of the Enforcement Hypotheses

Power of recalcitrance (H1a)	Power of assertiveness (H1b)	Power of deterrence (H1c)
Powerful states infringe on European law more often than weak states (since they are less sensitive to the costs imposed by sanctions).	Powerful states infringe on European law less often than weak states (since they have been able to decrease the costs of compliance by shaping European law according to their preferences).	Powerful states are less likely to be prosecuted and sanctioned for infringements against European law (since enforcement authorities are deterred by them).

Operationalization of the Independent Variables

In order to test for the influence of the power of recalcitrance on non-compliance, we incorporate two power indicators into our analyses. These indicators are widely used in the literature and account for different aspects of power – economic size and EU-specific political power. Gross domestic product (“GDP”) is a proxy for economic power.²⁶ It influences the sensitivity towards material costs of financial penalties or the withholding of EU subsidies. The data come from the World Development Indicators.²⁷ Direct EU-specific political power is more relevant for reputational costs. Member states such as Germany and France, which have significant voting power, cannot be ignored by others in EU decision making, even if they may have lost credibility by not abiding with previously agreed-upon rules. Thus, we use the proportion of times when a member state is pivotal (and can, thus, turn a losing into a winning coalition) under QMV (qualified majority voting) in the Council of Ministers (“SSI”) as an indicator of EU-specific political power.²⁸ This indicator also serves for the operationalization of the assertiveness and deterrence hypotheses. The power to shape EU rules and to deter the Commission, respectively, is strongly mitigated by the highly institutionalized context of EU decision making and the need for coalition building, as a result of which power resources, such as military capabilities, do not carry much weight. Population is relevant but captured by “SSI” since the number of votes a member state has is based on the size of its population.

²⁵Cf. Reiss 1984. A proper test of the deterrence hypotheses would require an approach which looks at the later stages of the infringement proceedings when the material costs of imposed sanctions become more imminent. We have done this in a separate study, which confirms our findings for the Reasoned Opinion stage (Authors).

²⁶Keohane 1989; Martin 1992; Moravcsik 1998; Steinberg 2002.

²⁷World Bank 2005.

²⁸Shapley and Shubik 1954; Rodden 2002.

3.2. Management

The management school assumes that non-compliance is involuntary. Even if states would like to comply with a European rule, they are prevented from doing so if the very preconditions that enable state compliance are absent. There are three sources of involuntary non-compliance: lacking or insufficient state capacities, ambiguous definitions of norms and inadequate timetables up to which compliance has to be achieved.²⁹ While management approaches attribute equal influence to capacities, precision of norms and transposition timetables, the latter two factors relate to the character of individual rules and, hence, cannot account for inter-state variation. Therefore, we focus on state capacity within this paper.

The concept of state capacity is not used uniformly in the literature and its operationalization differs significantly. Resource-centered approaches define capacity as a state's ability to act, i.e., the sum of its legal authority and financial, military and human resources.³⁰ Neo-institutionalist approaches, by contrast, argue that the domestic institutional structure influences the degree of a state's capacity to act and its autonomy to make decisions.³¹ Thereby, domestic veto players come to the fore, which block the implementation of international rules because of the costs they have to (co-)bear.³² A high number of veto players reduces the capacity of a state to make the necessary changes to the status quo for the implementation of costly rules.³³ In order to do justice to both lines of argumentation, we differentiate between the *government autonomy* and the *government capacity* of states. While government autonomy refers to institutional and partisan veto players (and is higher, the lower the number of veto players is), government capacity is geared to the financial endowment of states and their human resources. Yet, even if a state has sufficient resources, its administration may still have difficulties in pooling and coordinating, particularly if the required resources are dispersed among various public agencies (e.g. ministries) and levels of government.³⁴ We therefore distinguish between resource endowment and the efficiency of a state bureaucracy to mobilize and channel resources into the compliance process. Italy and France are two prominent examples of how the two types of government capacity may diverge. Both countries command more resources than most of the other member states. Yet, their bureaucracies are comparably inefficient and face serious problems of corruption.

In the implementation of European norms, both government autonomy and government capacity are necessary for the production as well as adaptation of preexisting national legal acts and their correct application. Based on these considerations we derive the following hypothesis from the managerial approach: *The lower government autonomy and the lower government capacity, the more difficult it becomes for a member state to comply with European legal norms.* Hence, higher rates of infringements can be expected for states with low government autonomy and capacity.

²⁹Chayes and Chayes 1993, 1995; Chayes, Chayes, and Mitchell 1998; Young 1992; Haas, Keohane, and Levy 1993; Jacobsen and Weiss Brown 1995; Haas 1998.

³⁰Przeworski 1990; Haas 1998; Simmons 1998.

³¹Katzenstein 1978; Evans 1995; Evans, Rueschemeyer, and Skocpol 1985.

³²Putnam 1988; Duina 1997; Haverland 2000.

³³Alesina and Rosenthal 1995; Tsebelis 2002.

³⁴Mbaye 2001; Larrue and Chabason 1998; Egeberg 1999.

Table 2: Overview of the Management Hypotheses

Government autonomy (H2a)	Government capacity (H2b)
States with a low level of government autonomy infringe on European law more often than more autonomous states (since veto players might block or delay decisions).	States with a low level of government capacity infringe on European law more often than states with a high level of capacity (since they do not have the material resources and/or efficient bureaucracies to comply).

Operationalization of the Independent Variables

To test for the influence of government capacity on the distribution of non-compliance, we include two indicators that are prominent in the literature. First of all, we incorporate the GDP per capita (“GDPpc”).³⁵ It is a general measure for the resources on which a state can draw to insure compliance. The data come from the World Development Indicators.³⁶ Whether a state has the capacity to mobilize these resources will be captured by the second variable, bureaucratic efficiency (“efficiency”). In the operationalization, we use an index of bureaucratic efficiency professionalism of the public service created by Auer and her colleagues.³⁷ The index consists of three components of bureaucratic efficiency: performance-related pay for civil servants, lack of permanent tenure and public advertising of open positions. Bureaucratic efficiency highly correlates with measures of corruption, e.g. the Corruption Perception Index of Transparency International.³⁸ For issues with multicollinearity, we include only bureaucratic efficiency in our analyses. Other potential indicators of government capacity – such as the World Bank governance indicators by Kaufmann et al. (2002) – are not used either due to the fact that they cover only part of the time period analyzed in this paper or lack sufficient variance for comparative studies of OECD countries.

Government autonomy is a function of the number of veto players in the political system of a member state.³⁹ However, even if the number of the institutional and partisan veto players remains constant over time, the interests of these actors – for example regarding (non-)compliance – may change. Therefore, we use an alternative veto player index (“polcon”), which allows for the interests of veto players in such a way that interdependences between veto players and the respective political system are taken into consideration.⁴⁰ It is based on a simple spatial model of political interaction among government branches, measuring the number of independent branches with veto power and the distribution of political preferences across these branches. They can be interpreted as a measure of institutional constraints that either preclude arbitrary changes of existing policies or produce gridlock and so undermine the ability of the government to change policies when such change is needed. Two alternative indicators of government autonomy are discussed in the literature: the executive control of the parliamentary agenda measured by the extent to which the government can successfully initiate drafts and rely on stable majorities for in the legislative branch,⁴¹ and the parliamentary oversight of govern-

³⁵Cf. Brautigam 1996.

³⁶World Bank 2005.

³⁷Mbaye 2001; Auer, Demmke, and Polet 1996.

³⁸Herzfeld and Weiss 2003.

³⁹Tsebelis 2002; Immergut 1998.

⁴⁰Henisz 2002. Beck et al. 2001 have developed a similar index.

⁴¹Döring 1995; Tsebelis 2002.

ment measured by the material (e.g., number of Committees) and ideational resources (e.g., information-processing capacity) relevant for the oversight of the legislative on the government.⁴²We had initially included both these variables but dropped them because of multicollinearity concerns, their lack of significant (executive control) and robustness (parliamentary oversight).

3.3. Legitimacy

Constructivists draw on the social logic of appropriateness to explain compliance. States are socialized into the norms and rules of international institutions through processes of social learning and persuasion. They comply out of a normative belief that a rule or institution ought to be obeyed rather than because it suits their instrumental self-interests. This sense of moral obligation is a function of the legitimacy of the rules themselves or their sources.⁴³ There are several ways by which legitimacy can be generated. First, the rule is embedded in an underlying institution or a legal system, which is generally characterized by a high level of legitimacy (acceptance of the rule-setting institution).⁴⁴ Second, a critical number of states already complies with an international rule. As a result, other states are “pulled” into compliance because they want to demonstrate that they conform to the group of states, to which they want to belong and whose esteem they care about (peer pressure).⁴⁵ Third, legitimacy can also result from certain procedures that include those actors in the rule-making that are potentially affected and who engage in processes of persuasion and mutual learning (procedural legitimacy).⁴⁶ Both procedural legitimacy and peer pressure focus more on compliance with individual rules (exactly those which result from “fair” decision-making processes or those with which other states already comply). The acceptance of the rule-setting institution hypothesis emphasizes that voluntary compliance is generated by diffuse support for and general acceptance of the rule-setting institutions and the constitutive principles of the law-making and standing. Since our unit of analysis are country years and we study infringements rather than individually violated legal acts, we focus in this paper on the acceptance of and support for the rule-setting institution.

The institutional legitimacy hypothesis can itself be disentangled into two different variants which stress different institutional aspects: the rule of law and the rule-setting institution.

Domestic Culture of Law-Abidingness and Support for the Rule of Law

Legal sociological studies refer to the relation between national legal cultures and their inclinations for compliance with national norms.⁴⁷ Legal cultures comprise three elements: (1) the characteristics of legal awareness, (2) general attitudes towards the supremacy of law and (3) general attitudes towards the judicial system and its values.⁴⁸ In this perspective, the degree of compliance correlates with the extent to which rule addressees accept the legitimacy of the rule of law and consider compliance with legal norms as demanded by a domestic logic of appropriateness. The acceptance of a rule and the subsequent inclination to comply with it result from

⁴²Harfst and Schnapp 2003.

⁴³Hurd 1999; Franck 1990; Finnemore and Toope 2001; Checkel 2001.

⁴⁴Hurd 1999; Kohler-Koch 2000.

⁴⁵Franck 1990; Finnemore and Sikkink 1998.

⁴⁶Dworkin 1986; Hurrell 1995; Franck 1995.

⁴⁷Gibson and Caldeira 1996; Jacob et al. 1996.

⁴⁸Gibson and Caldeira 1996.

the diffuse support for law-making as a legitimate means to ensuring political order in a community.⁴⁹ Consequently, even costly rules will principally be complied with. While this argument was developed for compliance with domestic laws, it should also apply to international and European rules since they also constitute law. This is all the more true for the EU, where European law is the law of the land because of its supremacy and direct effect. The corresponding hypothesis (H3a) states that *the lower the public support for the principle of the rule of law in a member state, the more often European law is infringed on.*

Support for the EU as the Rule-setting Institution

The explanation of rule-consistent behavior due to diffuse support can not only refer to the acceptance of the law as a means to the insurance of political order in a community. It can also refer to the institution responsible for rule-setting. Rules are not only complied with because laws ought to be obeyed, but because the rules are set by institutions, which enjoy a high degree of support.⁵⁰ Therefore, the second legitimacy hypothesis (H3b) states that *member states with a high public supports for the EU as a rule-setting institution infringe European Law less often than member states with a EU-skeptic population.*

Table 3: Overview of the Legitimacy Hypotheses

Rule of law (H3a)	Support (H3b)
States with lower levels of support for the principle of the rule of law infringe on European law more often than states with higher levels (since they feel a lower sense of obligation to comply with law in general).	States with lower public support for the EU as a rule-setting institution infringe on European law more often than states with higher public support (since they feel a lower sense of obligation to comply with European law).

Operationalization of the Independent Variables

In principle, the operationalization of the rule of law hypothesis is unproblematic. The extent of the support for the rule of law can be quantified on the basis of opinion poll data (“rule of law”). Yet, good data are rare. Alternatively, the rule of law or “law and order tradition,” as it is better known from the International Country Risk Guide, data provided by the World Bank do not cover the full time period of our analysis.⁵¹ Therefore, we use James L. Gibson and Gregory A. Caldeira’s opinion poll survey data, even though they only provide data for EU 12 member states.⁵² The data measure the extent of support for the rule of law on the basis of agreement with the following statements: “it is not necessary to obey a law which I consider unfair,” “sometimes it is better to ignore a law and to directly solve problems instead of awaiting legal solution,” as well as “if I do not agree with a rule, it is okay to violate it as long as I pay attention to not being discovered.”

Data on public support for the EU are available from Eurobarometer surveys. The acceptance of European institutions can be quantified by the question which refers to the support of the membership of one’s own country in the European Union (“support”).

⁴⁹Easton 1965; Habermas 1992.

⁵⁰Dworkin 1986; Hurrell 1995; Gibson and Caldeira 1995.

⁵¹Kaufmann, Kraay, and Mastruzzi 2003.

⁵²Gibson and Caldeira 1996.

So far, we have treated the three compliance approaches as competing or at least alternative explanations for member-state compliance. The next section will discuss to what extent the three approaches can be combined. Why should power, capacity and legitimacy not have joint and conditionals effects on state compliance, i.e., reinforcing or undermining their individual influence?

3.4. Towards an Integrated Approach

The compliance literature has been rather skeptical about combining different approaches because of their diverging assumptions regarding “how the international system works, the possibilities for governance with international law, and the policy tools that are available and should be used to handle implementation problems.”⁵³ Yet empirical studies support explanations based on power and capacity, as well as legitimacy.⁵⁴ Likewise, the European Union and many international organizations use a combination of management, enforcement and legitimacy mechanisms to induce member-state compliance.⁵⁵ Combining explanatory factors of the different approaches makes not only empirical sense; their theoretical assumptions are not always that incompatible either.

Power and Capacity

Enforcement theories conceptualize compliance as a strategic choice by actors who weigh the costs of compliance against the benefits. The management school, by contrast, emphasizes the importance of capacity to make and act upon (rational) choices in the first place. If actors lack the necessary resources, they have no other choice but to defect. This offers a fruitful opportunity to combine management and enforcement approaches: the effect of power on compliance is conditional on capacity. In binary terms, power only matters if states have the general capacity to comply. While countries with no capacity would be bad compliers irrespective of their power, high-capacity member states could still choose whether to comply *if* they had the power to resist or deter enforcement pressures by the Commission. H1a and H1c would then become conditional on sufficient capacity. Statistically, such a relation would suggest a significant interaction effect between power and capacity.

The effects of power and capacity could interact, reinforcing or undermining each other. Member states with both the capacity to comply and the power to shape EU rules according to their preferences should be better compliers than countries that lack both or have only high capacities to cope with the costs of compliance or the power of assertiveness. Conversely, member states with the power to deter or resist the enforcement pressures (i.e., power of deterrence and recalcitrance) might be less inclined to do so if they have the capacity to comply. Likewise, countries which have neither capacity nor power might have to make greater efforts to mobilize additional resources than their powerful counterparts, which can defy compliance pressures.

⁵³Raustiala and Victor 1998: 681; cf. Raustiala and Slaughter 2002: 543.

⁵⁴Tallberg 2002; Mbaye 2001; Haas 1998; Mendrinou 1996; Steunenberg 2006; Mastenbroek 2003, 2005; Reinhardt 2001; Steinberg 2002; see also Zürn and Joerges 2005.

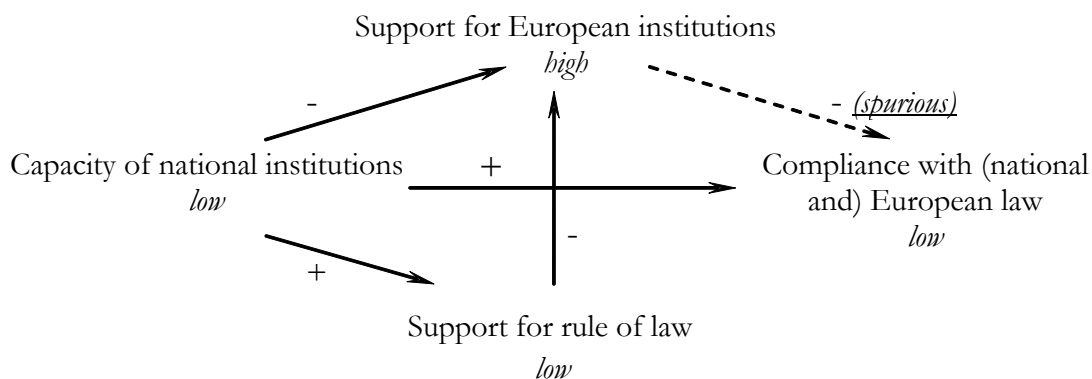
⁵⁵Tallberg 2002; Risse, Ropp, and Sikkink 1999; Keohane, Haas, and Levy 1993; Mitchell 1996; Zürn and Joerges 2005.

Capacity and Legitimacy

The conditioning effect of capacity can also apply to its relation with legitimacy and (non-)compliance. The difference between legitimacy and enforcement approaches is that state choices are less guided by an instrumental logic of cost-benefit calculations but by a normative logic of appropriateness. Actors who seek to do what is socially accepted need as much capacity as actors who are driven by the strategic maximization of their self-interests. As in the case of power, capacity would be a scope condition for H3a and H3b.

Member states that have strong capacities and value the law and/or the EU as a law-making institution should be better compliers than countries with similar capacities but less support for the rule of law and/or the EU. Likewise, countries with lower capacities and higher support should make a greater effort to comply than their counterparts with equally weak capacities but citizens who are less law-abiding and supportive of the EU. Beside this positive interaction effect of capacity and legitimacy with respect to compliance, we can also conceive of a direct and negative relation between the independent variables capacity and legitimacy themselves, which might bring about a negative, albeit spurious, effect of EU support on compliance. The literature has found that support for the EU and the rule of law, respectively, is directly linked to a lack of state capacity. Citizens of states with weak capacities have low support for the rule of law since domestic legislation is only weakly enforced.⁵⁶ Consequently, they turn to the EU as an institution that may be more effective in providing public goods.⁵⁷ As a result, those member states most supportive of the EU might be among the worst compliers since the EU may produce rules for the provision of public goods but the member state still lacks the capacity to effectively implement them on the grounds (cf. Graph 2). This somehow counterintuitive finding is corroborated by IR scholars, who argue that states have an incentive to delegate authority to international institutions to achieve policy outcomes that cannot be realized at the domestic level due to powerful veto players or lacking resources.⁵⁸

Graph 2: Capacity, Legitimacy, and Compliance



⁵⁶Putnam 1993; Levi 1998; Tyler 1998.

⁵⁷Sánchez-Cuenca 2000.

⁵⁸Simmons 2002; Simmons and Martin 1998: 747-748; Keohane 1984; Putnam 1988; Keohane and Nye 1977; Ruggie 1983.

The combination of the enforcement and legitimacy approaches is more problematic since they are based on different theories of social action. Despite attempts to integrate rationalist and constructivist reasoning, synthetic explanations of (non-)compliance are still rare.⁵⁹ They tend to focus on the scope conditions for the two different logics of social action. In a similar vein, we would argue that states that have power can do as they please (conditional on capacity), but what pleases them may well be defined by a normative logic that makes compliance the socially expected and accepted behavior – if their population is supportive of the rule of law and the EU, respectively. Moreover, powerful states whose citizens strongly support the rule of law and show little support for the EU, respectively, may be more inclined to use their power of assertiveness to shape EU rules according to the preferences of their constituencies.

Table 4: Overview of the Integrated Hypotheses

Power and Capacity	Capacity and Legitimacy	Power and Legitimacy
<p>H4a: With increasing capacity, the positive effect of the power of recalcitrance (H1a) and the negative effect of the power of deterrence (H1c) on the propensity of member states to infringe on European law are reduced.</p> <p>H4b: With increasing capacity, the negative effect of the power of assertiveness (H1b) on the propensity of member states to infringe on European law is reinforced.</p>	<p>H4c: With increasing capacity, the negative effects of the support for the rule of law (H3a) and the EU (H3b), respectively, on the propensity of member states to infringe on European law is reinforced.</p> <p>H4d: Capacity affects both legitimacy and compliance – lower capacity of a member state leads to higher public support for the EU, but still results in a high frequency of infringements.</p>	<p>H4e: With increasing support for the rule of law and the EU, respectively, the positive effect of the power of recalcitrance and the negative effect of the power of deterrence on the propensity of member states to infringe on European law are reduced.</p> <p>H4f: With increasing support for the rule of law and decreasing support for the EU, respectively, the negative effect of the power of assertiveness (H1b) on the propensity of member states to infringe on European law is reinforced.</p>

4. Empirical Results

In this section we report the results of our quantitative tests of the effects of power, capacity, and legitimacy on non-compliance.⁶⁰ We discuss the findings in turn, referring to the models 1-5 of Table 5, which estimate the influence of each of the three theoretical approaches si-

⁵⁹But see Checkel 2001; Risse, Ropp, and Sikink 1999.

⁶⁰The regression results were generated using the statistics software package Intercooled Stata 9.2. We tested for first- and higher order autocorrelation. None was found. Problems of heteroscedasticity were counteracted by the use robust standard errors with clustering on member states. As to unobserved heterogeneity, we decided against the use of fixed effects (cf. Plümper, Manow, and Tröger 2005).

multaneously controlling for the influences of at least one other approach at a time. The models comprise the most promising variables of each theoretical account, which were discussed in the respective sections on the operationalization of the independent variables. While model one consists of the basic model without interactions, models 2 to 4 respectively test the three different groups of integrated hypotheses (H4s) – power and capacity, capacity and legitimacy, and power and legitimacy. Model 5 brings these separate models together in one single integrated model, adding a three-way interaction term for power, capacity, and legitimacy. In all models, we add time dummies to control for period effects that go beyond growing number of legal acts, discussed in section 2.1 above.

Table 5: Capacity, Power, Legitimacy, and Infringements

	(1)	(2)	(3)	(4)	(5)
<i>Power:</i>					
GDP	-0.0000 (0.0001)	-0.0000 (0.0001)		-0.0002** (0.0001)	0.0001 (0.0001)
Shapley Shubik Index	0.0336** (0.0122)	0.0264** (0.0090)		0.0577*** (0.0138)	0.0059 (0.0167)
<i>Capacity:</i>					
GDPpc	0.0000 (0.0000)	0.0000 (0.0000)	0.0000 (0.0000)		-0.0000** (0.0000)
Efficiency	-0.2227** (0.0869)	-0.2469*** (0.0235)	-0.3260** (0.1194)		-0.1886* (0.0957)
Polcon	0.0176 (0.2788)	-0.1187 (0.3248)	-0.4109 (0.3482)		0.1633 (0.3867)
<i>Legitimacy:</i>					
Rule of law	-0.0020 (0.0089)		0.0104 (0.0109)	-0.0196*** (0.0042)	-0.0030 (0.0091)
Support	0.0011 (0.0023)		-0.0016 (0.0031)	0.0046 (0.0036)	0.0022 (0.0018)
<i>Interaction Effects:</i>					
SSI * Efficiency		-0.0107** (0.0043)			-0.0330** (0.0123)
Rule of law * Efficiency			-0.0043 (0.0062)		0.0056 (0.0092)
SSI * Rule of law				-0.0008 (0.0006)	0.0022* (0.0012)
SSI * Efficiency * Rule of law					0.0001 (0.0011)
Constant	0.1091 (0.0961)	0.1167 (0.0908)	0.1543 (0.1024)	0.1891* (0.0959)	0.0988 (0.1071)
Year dummies	yes	yes	yes	yes	yes
Observations	233	233	233	233	233
Adjusted R-squared	0.48	0.50	0.39	0.43	0.52

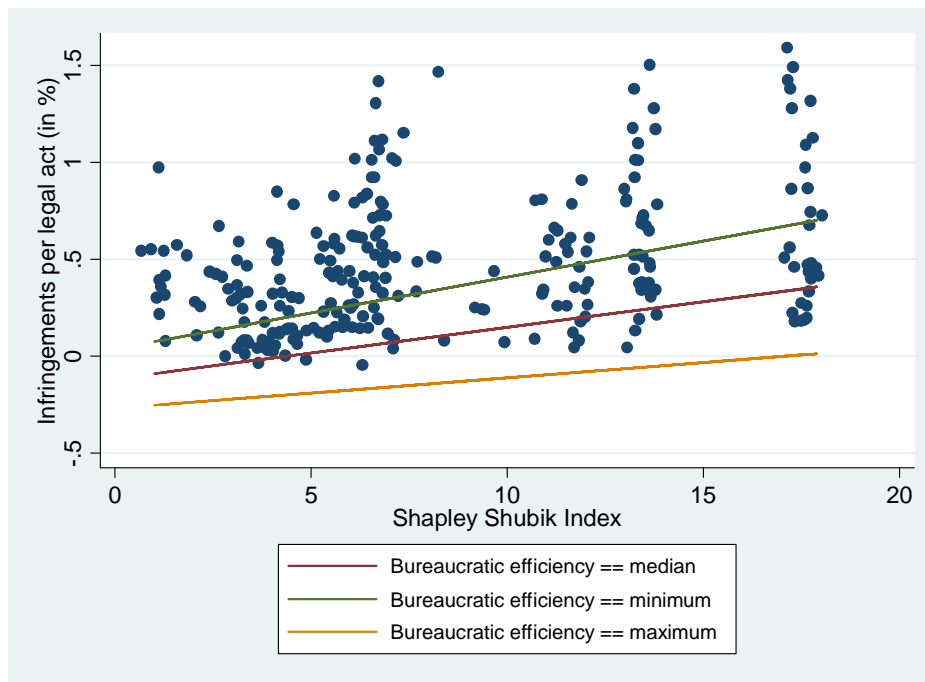
Dependent variable is reasoned opinions per legal act. OLS regressions with two-tailed t-tests. Robust (Hubert/White) standard errors (with clustering on member states) in parentheses. *** = $p < 0.01$, ** = $p < 0.05$, * = $p < 0.1$.

4.1. Enforcement

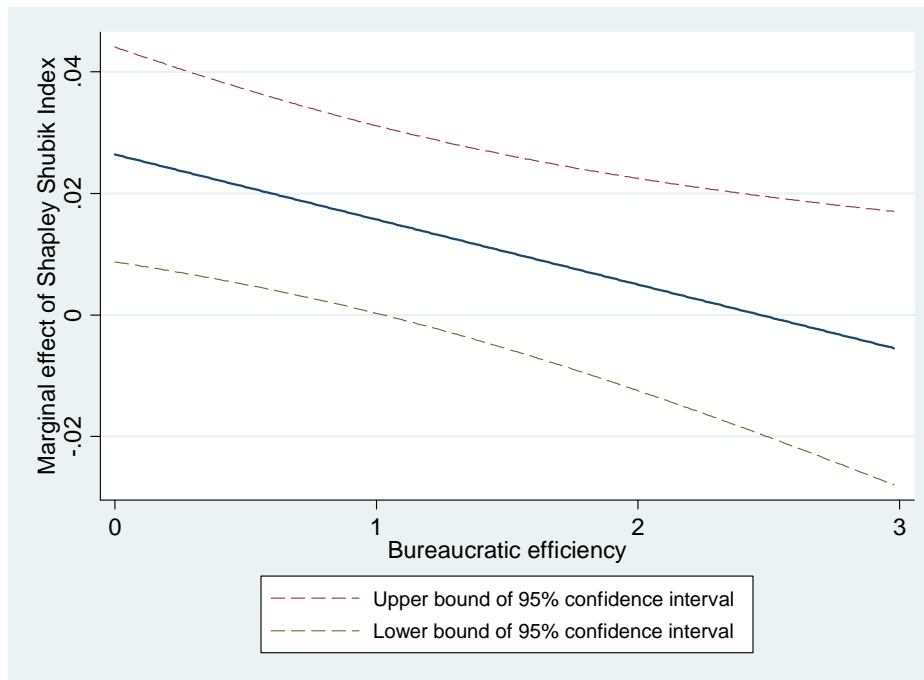
The results give support to the recalcitrance hypothesis (H1a). The political weight in the Council of Ministers (“SSI”) has a significant effect on infringements per legal act. Member states like France, Italy or Germany have more Council votes and violate European law more frequently than member states with low voting power, such as Denmark, Finland, Sweden or the Netherlands (cf. Table 5, models 1, 2, and 4). Greater economic power, by contrast, does not substantially affect a country’s compliance record. The size of the economy does not matter when it comes to infringements on European law. Note, however, that the recalcitrance hypothesis has difficulties in accounting for the compliance performance of the United Kingdom, on the one hand, and Greece, Belgium and Portugal, on the other. While the former complies much better compared with other ‘big countries’, such as France and Italy, the latter three have considerably less voting power and still belong to the worst compliers.

One starting point for the explanation of these “outliers” is a closer inspection of model 2. The negative and significant interaction effect of voting power and bureaucratic efficiency indicates what can also be read of graphs 3 and 4. With increases in capacity, the non-compliance promoting effects of power become less pronounced. This finding strongly supports the integrated hypothesis H4a.

Graph 3: Power and Capacity



Graph 4: Power and Capacity



The assertiveness hypothesis (H1b) states that more powerful states infringe European law less often than weaker states, since they have been able to decrease the costs of compliance by shaping the law according to their preferences. It is tested in exactly the same way as the recalcitrance hypothesis (H1a) above using the same indicators. The only difference is our expectation with respect to the signs of our independent power variables. As the results have already give support to the recalcitrance hypothesis, the assertiveness hypothesis has to be rejected.

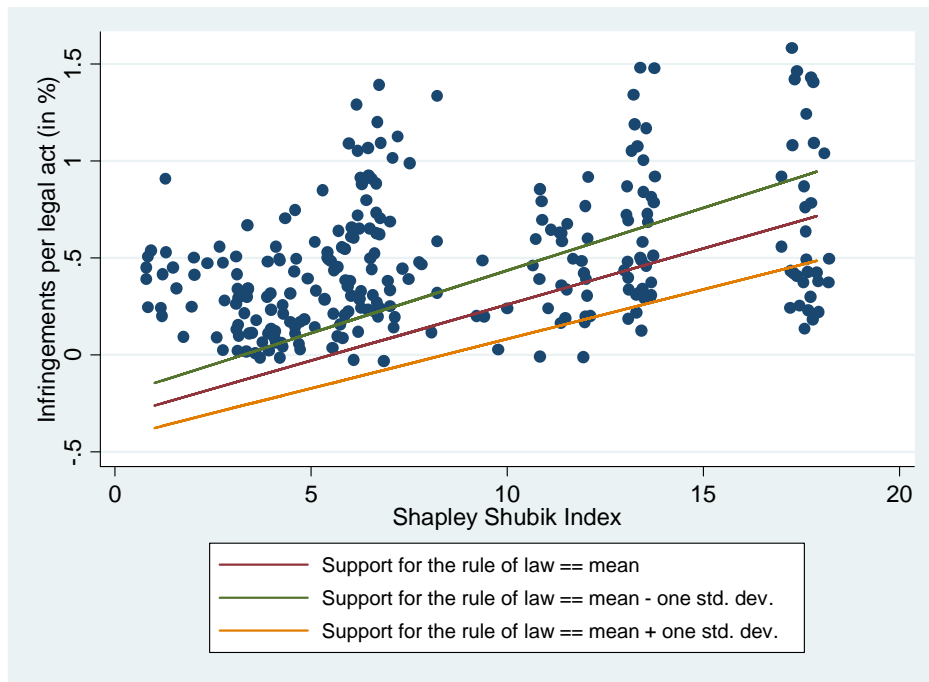
The deterrence hypothesis (H1c) predicts the same outcome as the assertiveness hypothesis (H1b), but draws on another causal mechanism, namely the likelihood that enforcement authorities shy away from enforcing compliance. Accordingly, the deterrence hypothesis would expect that powerful member states have fewer infringements than weaker ones since the European Commission and the ECJ are deterred to a greater extent. We operationalize the deterrence hypothesis in the same way as the recalcitrance hypothesis and use the same indicators. As the results have already given support to the recalcitrance hypothesis, the deterrence hypothesis has to be rejected, just as the assertiveness hypothesis above. This is not to suggest that the Commission might not act strategically. However, our expert survey clearly indicates that if the Commission strategically enforced European Law, such behavior would not systematically disadvantage particular member states (see section 2.1).⁶¹

Comparatively, the integrated hypothesis of power and legitimacy (H4e) scores just as bad as the assertiveness and the deterrence hypotheses. The interaction effect between the Shap-

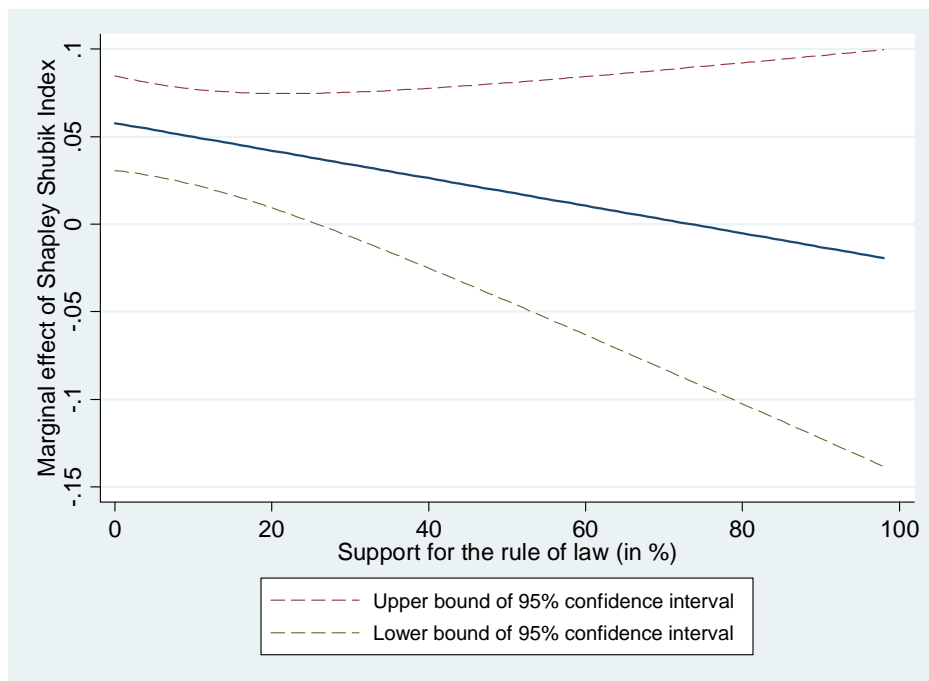
⁶¹To properly test the deterrence hypothesis, we would need the population of infringement cases and compare it to those infringements denounced by the Commission. However, we only have Commission data. Therefore, we cannot statistically test whether the Commission is systematically biased towards particular member states.

ley Shubik Index and support for the rule of law is negative as hypothesized, but not significantly different from zero. In other words, the effect of power on non-compliance is not conditional on the presence or absence of legitimacy (cf. also Graphs 5 and 6).

Graph 5: Power and Legitimacy



Graph 6: Power and Legitimacy



4.2. Management

Testing the effect of government autonomy and government capacity on non-compliance, we find a strong relation between the government capacity of a member state and its number of infringements (cf. Table 5, models 1-3 and 5). While general capacity measured by GDP per capita has no significant effect on compliance, we can see that larger bureaucratic efficiency brings about fewer violations of European law. The coefficient for the efficiency of civil servants is negative and significantly different from zero. This is in line with other studies, which also find that the command of resources appear to be less an issue in the EU.⁶² Compliance appears to depend much more on the capacity of mobilizing existing resources. This explains why France and Italy, which belong among the wealthiest member states of the EU, are as bad compliers as poor countries like Greece and Portugal.

Government autonomy, by contrast, seems to have no effect on the number of infringements. The “polcon” coefficients are not significant in any model. In fact, they even change their algebraic sign depending on the model specification. If anything, our previous studies have revealed that countries with several veto players commit fewer violations of European law than countries with a small number of veto players. The literature on consensual democracies could offer an explanation for this counterintuitive finding. As Arendt Lijphart has argued, high horizontal and vertical dispersion of policy competencies fosters the inclusion of diverse societal interests into political processes and outcomes.⁶³ It forces political actors to construct broad compromises and comply with them, even in cases in which their own interests are not fully included. In order to avoid deadlocks, consensual democracies develop political cultures with inclinations towards diffuse reciprocity. Yet, the group of compliance laggards, which includes unitary member states, such as Greece and France, as well as regionalized Italy and federal Belgium, indicates that government autonomy is a poor predictor for compliance.

In a nutshell, the government autonomy hypothesis (H2a) has to be rejected, while government capacity defined as bureaucratic efficiency (H2b) has a strong positive effect on the number of infringements of European law.

4.3. Legitimacy

The statistical analysis finds hardly any significant correlation between the support for the rule of law and the frequency of violations of European law (H3a). Only model 4 indicates that infringements of EU law are rarer in countries in which the principle of the rule of law is supported. This is not enough evidence to state that the rule of law hypothesis is confirmed. However, we need to keep in mind the data issues discussed above. We would need much better data for a more reliable statement about the influence of legal culture on the degree of compliance.

As to the question of the support for the EU, we find mixed and contra-intuitive results, which are in line with the statistical difficulties that follow from the integrated hypothesis H4d. Due to the close relationship between the right-hand side capacity and legitimacy variables, our models suffer from multicollinearity, thereby increasing standard errors and negating any significant and meaningful findings with respect to EU support and non-compliance. If anything,

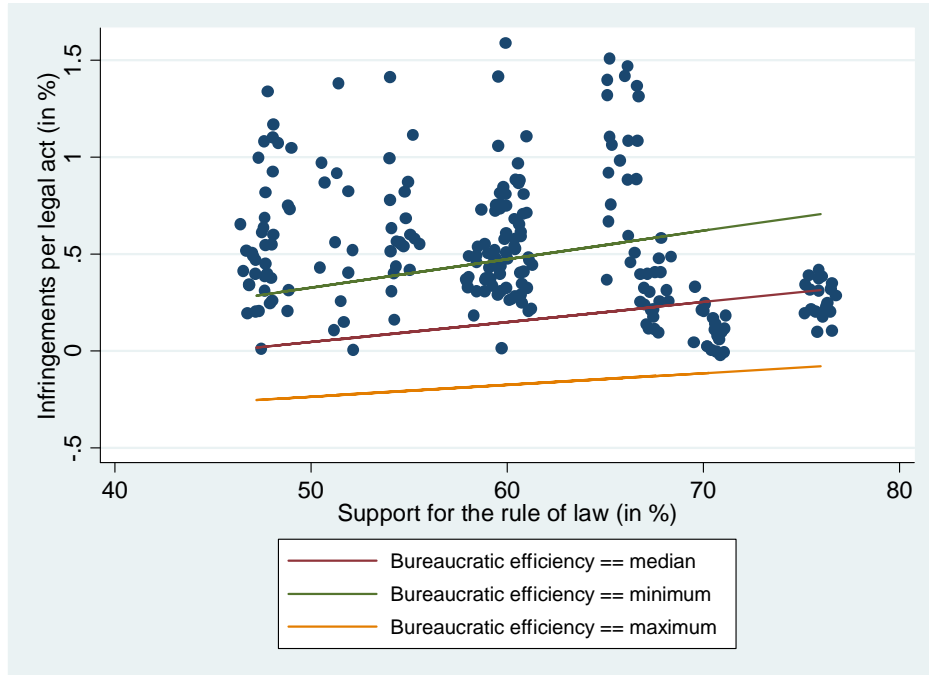
⁶²Mbaye 2001; Hille and Knill 2006; Steunenberg 2006.

⁶³Lijphart 1999.

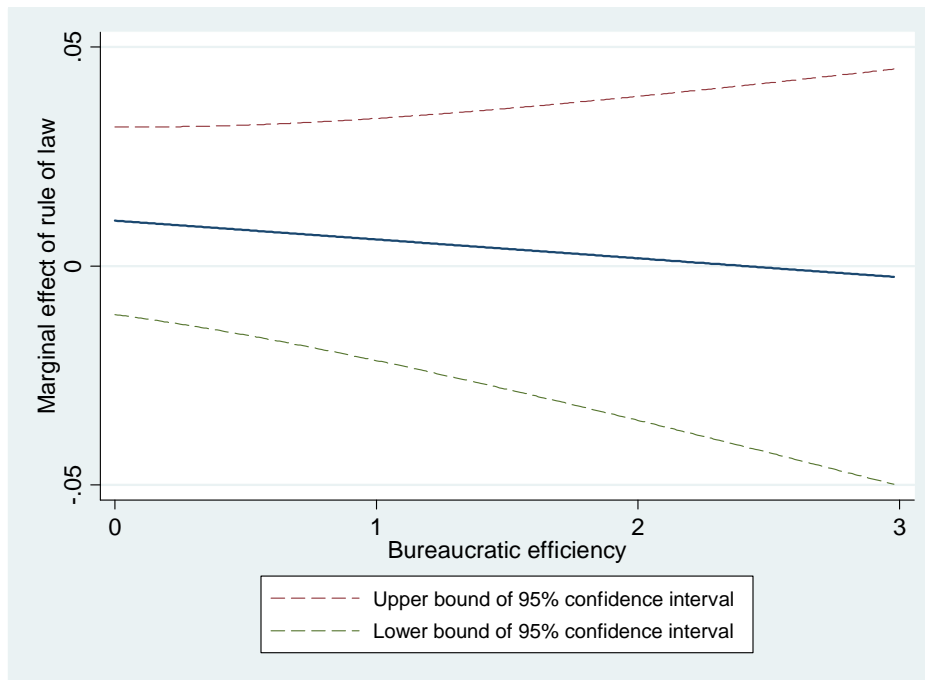
we would rather find a positive correlation between public support for the EU and infringements of European law than the negative effect we would anticipate in line with hypothesis 3b. Those countries, in which the population is particularly supportive of European integration, rather infringe more frequently on legal acts than EU-skeptic countries like Denmark, Sweden, and the United Kingdom, which comply particularly well with European law.

In sum, the rule of law hypothesis (H3a) could probably be confirmed with better data. The support hypothesis (H3b), on the contrary, has to be rejected, since the results do not support the expected negative effect of EU support on non-compliance. However, these findings are less surprising if we evaluate them in light of our integrated capacity and legitimacy hypothesis (H4d), which may also explain why our data do not support the first model combining capacity and legitimacy (H4c). Neither do we find a negative effect of the support for the rule of law on the propensity of member states to infringe on European law in model 3, nor is it reinforced (cf. Graphs 6 and 7).

Graph 7: Legitimacy and Capacity



Graph 8: Legitimacy and Capacity



5. Conclusion

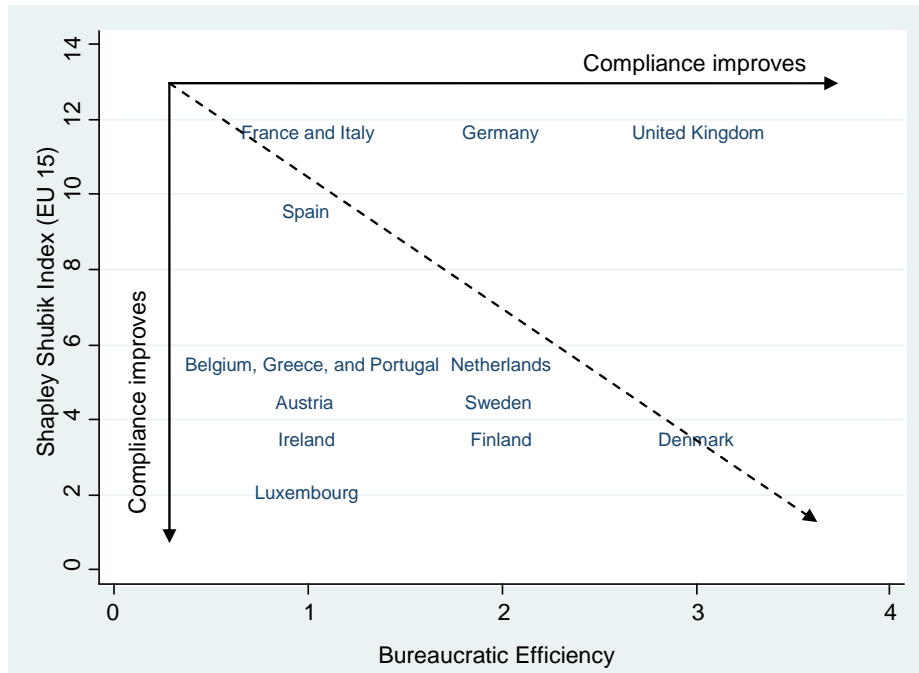
In this paper, we analyzed why some member states violate European legal acts more frequently than others. In a *first* step, we developed hypotheses based on three prominent theoretical approaches. The management school of thought argues that non-compliance is not a strategic choice but occurs when states lack the necessary government capacity and government autonomy to implement international rules properly and in a timely manner. The enforcement approach provides three hypotheses on the importance of power for the distribution of non-compliance (recalcitrance, assertiveness and deterrence). Researchers devoted to the study of legitimacy and non-compliance argue that neither power nor lack of capacity determines non-compliance, but that acceptance of rules as standards for appropriate behavior is the relevant independent variable. While there are many ways in which legitimacy might affect (non-) compliance with rules, we focused in this paper on testing the extent to which the support for the principle of the rule of law as well as the acceptance of the rule-setting institution explain the level of (non-) compliance in the member states. Instead of merely treating the three approaches as alternative or even competing explanations, we discussed different possibilities in which their explanatory factors could be combined in a theoretically consistent and meaningful way.

In a *second* step, we extensively tested the empirical implications of all hypotheses, derived from these three theoretical approaches and their combinations, with panel-econometrical methods. Our regression results show that capacity-centered, power-centered and legitimacy-based models explain some of the variance of annual infringements per European legal act in force (cf. Table 5). Combining the variables from all three approaches we explain more than 50 percent of the observed variance on the dependent variable. Even though one should not over-

state the informative value of the adjusted R-squared statistic, it still highlights the substantial explanatory power of our model.

Especially the combination of the power of recalcitrance (H1a) and bureaucratic efficiency (H2b), as depicted in Graph 9, yields promising results (cf. H4a). Our quantitative analyses reveal that powerful states, like France and Italy, which have a great share of votes in the Council, are less sensitive to enforcement costs and, therefore, have a higher share of infringements than weaker member states. Countries with high capacities, such as Denmark, Finland or the United Kingdom, have a better compliance record than states with lower capacities, such as Greece, Portugal or Belgium. Yet, important outliers remain. Great Britain is as powerful as France and Italy, but complies much better. Conversely, Greece is one of the least powerful countries in the EU, but is almost as bad a complier as powerful France and Italy. This can be explained by combining and interacting the managerial variable government capacity and the power of recalcitrance variable (“SSI”). States with high capacities and low political power infringe on European law less frequently than other member states. In other words, the combination of low government capacity and great political power brings together inability to comply and the necessary political weight to be recalcitrant in the face of looming sanctions. Hence, we expect and find states such as Italy or France, which have a great share of votes in the Council, but are characterized by low government capacity, to have a comparatively high number of infringement proceedings opened.

Graph 9: Power, Capacity, and Compliance



These findings indicate some pathways for future research. *First* of all, our findings point to the importance of disentangling specific variants of each approach. Within the enforcement approach, both the assertiveness and the deterrence variant had to be rejected, while the recalcitrance approach turned out to have explanatory power for the occurrence of non-compliance. The same holds true for the management approach, in which only the capacity of a government

seems to be causally related to the number of infringements between member states. With regard to the legitimacy approach, only the support for the rule of law variant has potential to explain member-states' non-compliance with European law. However, all variants are also closely related to each other and not necessarily mutually exclusive. This is particularly the case for the power-centered approaches, in which both the recalcitrance and the deterrence hypotheses refer to the relationship between the deviant and the enforcement authority. Thus, we could argue that the confirmation of the recalcitrance hypothesis does not only reveal insights about why member states do not comply, but that it could also be interpreted as the inclination of the enforcement authority to open infringement proceedings against powerful member states. However, this argument only holds true if we use infringement proceedings as a proxy for non-compliance. Further research has to focus on testing this argument by using different proxies.

Second, our findings suggest going a step further and combine specific parts of different theoretical approaches to explaining non-compliance with law beyond the nation-state. While a combination of variables from the enforcement and the management approach turned out to have the greatest explanatory power, we still have to find alternative ways for explaining the (non-)effect of legitimacy. Are there other ways of theorizing and testing the relationship between support for EU institutions and compliance performance than by linking it to government capacity? In other words, does the legitimacy approach have explanatory power in its own right? This is particularly relevant question because we have tested only two variants of the legitimacy argument neglecting factors, such as procedural fairness or peer pressure.

Finally, while the overall fit of our integrated model is quite good, a significant amount of variation still remains to be explained. Moreover, our integrated model has two "outlying" member states whose compliance records cannot be adequately accounted for by the combination of power- and capacity-centered models: Germany and Spain. While the latter performs better than predicted by the integrated model and has an overall medium level of infringements, the former has a worse compliance record than expected given its capacity. Part of the reason why a considerable share of non-compliance remains unexplained may be that the compliance literature in International Relations has largely neglected policy-related explanations as developed in the early implementation literature.⁶⁴ "Bringing policy back in" could also be a fruitful way to account for variations within individual states and between policy fields or specific norms.

So, what does the European Union teach us about non-compliance in international politics? The EU is often regarded as a system *sui generis* whose unique supranational properties (e.g., supremacy and direct effect of European law)⁶⁵ preclude generalizations to other international institutions. However, if we adopt a fine-grained perspective, ultimately, any political institution is one of a kind. To make fruitful comparisons, we need to climb up the ladder of abstraction.⁶⁶ Hence, the potential for generalizations depends on the properties that are looked at. While the EU is the most legalized system in the world,⁶⁷ its institutionalized compliance mechanisms can also be found elsewhere.⁶⁸ Our study has two important implications for compliance

⁶⁴Pressmann and Wildawsky 1973; Mazmanian and Sabatier 1981.

⁶⁵Alter 2001.

⁶⁶Sartori 1991.

⁶⁷Alter 2000: 490.

⁶⁸Mitchell 1996: 17-20; Smith 2000: 139-140; Peters 2003.

with law beyond the nation state. *First*, states with both low capacities and high shares of power are compliance laggards and delimit the power of law beyond the nation state. They lack the capacity to easily comply with international law and, at the same time, are not willing to introduce major resource-redistributions and investments, but rather rely on their ability to resist enforcement pressure.

Second, the twinning of management and enforcement instruments is, indeed, an effective way to restore compliance.⁶⁹ The combination of managerial dialogue, capacity building, and penalties addresses the two major sources of non-compliance identified by our study. However, two caveats are in order:

(i) The managerial instrument of capacity-building is not sufficient in restoring compliance, if it merely entails the transfer of resources to non-compliant states. Rather, it is essential to foster bureaucratic efficiency, e.g. by promoting anti-corruption measures as part of “good governance.”

(ii) Even highly legalized institutions, such as the EU, the World Trade Organization, and the Andean Community, where monitoring and sanctioning powers are delegated to third parties,⁷⁰ do not completely mitigate power differences between states.

⁶⁹Tallberg 2002: 632.

⁷⁰Smith 2000.

References

- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne Marie Slaughter, and Duncan Snidal. 2000. The Concept of Legalization. *International Organization* 54,3: 401-419.
- Alesina, Alberto, and Howard Rosenthal. 1995. *Partisan Politics. Divided Government, and the Economy*. Cambridge: Cambridge University Press.
- Alter, Karen J. 2000. The European Union's Legal System and Domestic Policy: Spillover or Backlash? *International Organization* 54 ,3: 489-517.
- _____. 2001. *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. Oxford: Oxford University Press.
- Auer, Astrid, Christoph Demmke, and Robert Polet. 1996. *Civil Services in the Europe of the Fifteen: Current Situation and Prospects*. Maastricht: European Institute of Public Administration.
- Banerjee, Anindya, Juan Dolado, John W. Galbraith, and David F. Hendry. 1993. *Cointegration, Error Correction and the Econometric Analysis of Non-Stationary Data*. Oxford: Oxford University Press.
- Beck, Thorsten, George Clarke, Alberto Groff, Philip Keefer, and Patrick Walsh. 2001. New Tools in Comparative Political Economy: The Database of Political Institutions. *World Bank Economic Review* 15,1: 165-176.
- Brautigam, Deborah. 1996. *State capacity and Effective Governance*. Edited by Benno Ndulu and Nicolas van de Walle, *Agenda for Africa's Economic Renewal*. Washington DC: Transaction Publishers.
- Chayes, Abram, and Antonia Handler Chayes. 1993. On Compliance. *International Organization* 47,2: 175-205.
- _____. 1995. *The New Sovereignty. Compliance with International Regulatory Agreements*. Cambridge MA: Harvard University Press.
- Chayes, Abram, Antonia Handler Chayes, and Ronald B. Mitchell. 1998. Managing Compliance: A Comparative Perspective. In *Engaging Countries: Strengthening Compliance with International Environmental Accords*, edited by Edith Brown Weiss and Harold K. Jacobsen. Cambridge MA: MIT Press, 39-62.
- Checkel, Jeffery T. 2001. Why Comply? Social Learning and European Identity Change. *International Organization* 55,3: 553-588.
- Cortell, Andrew P., and James W. Jr. Davis. 1996. How do International Institutions Matter? The Domestic Impact of International Rules and Norms. *International Studies Quarterly* 40,XX: 451-478.
- Döring, Herbert. 1995. *Parliaments and Majority Rule in Western Europe*. New York: St. Martin's Press.
- Dorn, A. Walter, and Andrew Fulton. 1997. Securing Compliance with Disarmament Treaties: Carrots, Sticks, and the Case of North Korea. *Global Governance* 3,1: 17-40.

- Downs, George W. 1998. Enforcement and the Evolution of Cooperation. *Michigan Journal of International Law* 19,2: 319-344.
- Downs, George W., David M. Rocke, and Peter N. Barsoom. 1996. Is the Good News About Compliance Good News About Cooperation? *International Organization* 50,3: 379-406.
- Duina, Francesco G. 1997. Explaining Legal Implementation in the European Union. *International Journal of the Sociology of Law* 25,2: 155-179.
- Dworkin, Ronald. 1986. *Law's Empire*. Cambridge MA: MIT Press.
- Easton, David. 1965. *A Systems Analysis of Political Life*. New York: Wiley & Sons.
- Egeberg, Morten. 1999. The Impact of Bureaucratic Structure on Policy Making. *Public Administration* 77,1: 155-170.
- Enders, Walter. 2004. *Applied Econometric Time Series*. New York: Wiley.
- Evans, Peter B. 1995. *Embedded Autonomy: States and Industrial Transformation*. Princeton: Princeton University Press.
- Evans, Peter, Dietrich Rueschemeyer, and Theda Skocpol, eds. 1985. *Bringing the State Back In*. Cambridge: Cambridge University Press.
- Fearon, James. 1998. Bargaining, Enforcement, and International Cooperation. *International Organization* 52,2: 269-305.
- Finnemore, Martha, and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change. *International Organization* 52,4: 887-917.
- Finnemore, Martha, and Stephen J. Toope. 2001. Alternatives to "Legalization": Richer Views of Law and Politics. *International Organization* 55,3: 743-758.
- Franck, Thomas M. 1990. *The Power of Legitimacy Among Nations*. Oxford: Oxford University Press.
- _____. 1995. *Fairness in International Law and Institutions*. Oxford: Clarendon Press.
- Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schulz. 1998. The European Court of Justice, National Governments, and Legal Integration in the European Union. *International Organization* 52,1: 149-176.
- Gibson, James L., and Gregory A. Caldeira. 1995. The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice. *American Journal of Political Science* 39,2: 459-489.
- _____. 1996. The Legal Cultures of Europe. *Law & Society Review* 30,1: 55-85.
- Giuliani, Marco. 2003. Europeanization in Comparative Perspective: Institutional Fit and National Adaptation. In *The Politics of Europeanisation*, edited by Keith Featherstone and Claudio Radaelli. Oxford: Oxford University Press, pp. 134-155.

- Gurowitz, Amy. 1999. Mobilizing International Norms: Domestic Actors, Immigrants and the Japanese State. *World Politics* 51,3: 413-445.
- Haas, Peter M. 1998. Compliance with EU Directives: Insights from International Relations and Comparative Politics. *Journal of European Public Policy* 5,1: 17-37.
- Haas, Peter M., Robert O. Keohane, and Marc A. Levy, eds. 1993. *Institutions for the Earth. Sources of Effective International Environmental Protection*. Cambridge MA: MIT Press.
- Habermas, Jürgen. 1992. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge MA: MIT Press.
- Harfst, Philipp, and Kai-Uwe Schnapp. 2003. Instrumente parlamentarischer Kontrolle der Exekutive in westlichen Demokratien. *WZB Discussion Paper* FS IV (03-201).
- Haverland, Markus. 2000. National Adaptation to European Integration: The Importance of Institutional Veto Points. *Journal of Public Policy* 20,1: 83-103.
- Henisz, Witold J. 2002. The Institutional Environment for Infrastructure Investment. *Industrial and Corporate Change* 11,2: 355-389.
- Herzfeld, Thomas, and Christoph Weiss. 2003. Corruption and Legal (In)effectiveness: An Empirical Investigation. *Political Economy* 19: 621-632.
- Hille, Peter, and Christoph Knill. 2006. 'It's the Bureaucracy, Stupid'. The Implementation of the Acquis Communautaire in EU Candidate Countries, 1999-2003 *European Union Politics* 7,4: 531-552.
- Horne, Christine, and Anna Cutlip. 2002. Sanctioning Costs and Norm Enforcement. *Rationality and Society* 14,3: 285-307.
- Hurd, Ian. 1999. Legitimacy and Authority in International Politics. *International Organization* 53,2: 379-408.
- Hurrell, Andrew. 1995. International Society and the Study of Regimes. A Reflective Approach. In *Regime Theory and International Relations*, edited by Volker Rittberger. Oxford: Clarendon Press, pp. 49-72.
- Immergut, Ellen M. 1998. The Theoretical Core of the New Institutionalism. *Politics and Society* 26,1: 5-34.
- Jacob, Herbert, Erhard Blankenburg, Herbert Kritzer, Doris Marie Provine, and Joseph Sanders. 1996. *Courts, Law, and Politics in Comparative Perspective*. New Haven: Yale University Press.
- Jacobsen, Harold K., and Edith Weiss Brown. 1995. Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project. *Global Governance* 1,2: 119-148.
- Katzenstein, Peter J., ed. 1978. *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States*. Madison: Wisconsin University Press.

- Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi. 2003. Governance Matters III: Governance Indicators for 1996-2002. www.worldbank.org/wbi/governance/govdata2002.
- Keck, Margaret, and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press.
- Keohane, Robert O. 1984. *After Hegemony. Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press.
- _____. 1988. International Organizations: Two Approaches. *International Studies Quarterly* 32,3: 379-396.
- _____. 1989. *International Institutions and State Power*. Boulder: Westview.
- Keohane, Robert O., Peter M. Haas, and Marc A. Levy. 1993. The Effectiveness of International Environmental Institutions. In *Institutions for the Earth. Sources of Effective International Environmental Protection*, edited by Peter M. Haas, Robert O. Keohane and Marc A. Levy. Cambridge, MA: MIT Press, pp. 3-26.
- Keohane, Robert O., Andrew Moravcsik, and Anne Marie Slaughter. 2000. Legalized Dispute Resolution: Interstate and Transnational. *International Organization* 54,3: 457-488.
- Keohane, Robert O., and Joseph S. Jr. Nye. 1977. *Power and Interdependence*. Boston: Little, Brown.
- Klotz, Audie. 1995. *Norms in International Relations. The Struggle against Apartheid*. Ithaca: Cornell University Press.
- Kohler-Koch, Beate. 2000. Framing the Bottleneck of Constructing Legitimate Institutions. *Journal of European Public Policy* 7,4: 513-531.
- Larrue, Corinne, and Lucien Chabason. 1998. France: Fragmented Policy and Consensual Implementation. In *Governance and Environment in Western Europe. Politics, Policy and Administration*, edited by Kenneth Hanf and Alf-Inge Jansen. Essex: Longman, pp. 60-81.
- Levi, Margaret. 1998. A State of Trust. In *Trust and Governance*, edited by John Braithwaite and Margaret Levi. New York: Russell Sage Foundation, pp. 77-101.
- Lijphart, Arend. 1999. *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. New Haven and London: Yale University Press.
- Martin, Lisa L. 1992. *Coercive Cooperation: Explaining Multilateral Economic Sanctions*. Princeton: Princeton University Press.
- Mastenbroek, Ellen. 2003. Surviving the Deadline: The Transposition of EU Directives in the Netherlands. *European Union Politics* 4,4: 371-396.
- _____. 2005. EU Compliance: Still a 'Black Hole'? *Journal of European Public Policy* 12,6: 1103-1120.
- Mazmanian, Daniel A., and Paul A. Sabatier, eds. 1981. *Effective Policy Implementation*. Lexington, MA: Lexington Books.

Mbaye, Heather A. D. 2001. Why National States Comply with Supranational Law. Explaining Implementation Infringements in the European Union 1972-1993. *European Union Politics* 2,3: 259-281.

Mendrinou, Maria. 1996. Non-Compliance and the European Commission's Role in Integration. *Journal of European Public Policy* 3,1: 1-22.

Mitchell, Ronald B. 1996. Compliance Theory: An Overview. In *Improving Compliance with International Environmental Law*, edited by James Cameron, Jacob Werksman and Peter Roderick. London: Earthscan, pp. 3-28.

_____. 2003. Regime Design Matters: Intentional Oil Pollution and Treaty Compliance. *International Organization* 48,3: 425-458.

Moravcsik, Andrew. 1997. Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization* 51,4: 513-553.

_____. 1998. *The Choice for Europe: Social Purpose and State Power From Rome to Maastricht*. Ithaca: Cornell University Press.

Peters, Anne. 2003. International Dispute Settlement: A Network of Cooperational Duties. *European Journal of International Law* 14,1: 1-34.

Plümper, Thomas, Philip Manow, and Vera Tröger. 2005. Panel Data Analysis in the Comparative Political Economy of the Welfare State: A Note on Methodology and Theory. *European Journal of Political Research* 44: 327-354.

Pressmann, Jeffrey L., and Aaron B. Wildawsky. 1973. *Implementation. How Great Expectations in Washington are Dashed in Oakland*. Berkeley: University of California Press.

Przeworski, Adam. 1990. *East-South System Transformation*. Chicago: Chicago University Press.

Putnam, Robert D. 1988. Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization* 42,3: 427-460.

_____. 1993. *Making Democracy Work. Civic Traditions in Modern Italy*. Princeton: Princeton University Press.

Raustiala, Kal, and Anne Marie Slaughter. 2002. International Law, International Relations and Compliance. In *Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse and Beth A. Simmons. London: Sage Publications, pp. 538-558.

Raustiala, Kal, and David G. Victor. 1998. Conclusions. In *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice*, edited by David G. Victor, Kal Raustiala and Eugene B. Skolnikoff. Cambridge MA: MIT Press, pp. 659-707.

Reinhardt, Eric. 2001. Adjudication without Enforcement in GATT Disputes. *Journal of Conflict Resolution* 45,2: 174-195.

Reiss, Albert J. Jr. 1984. Consequences of Compliance and Deterrence Models of Law Enforcement for the Exercise of Police Discretion. *Law and Contemporary Problems* 47: 83-122.

Risse, Thomas, and Stephen C. Ropp. 1999. Conclusions. In *The Power of Human Rights. International Norms and Domestic Change*, edited by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink. Cambridge: Cambridge University Press, pp. 234-278.

Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, eds. 1999. *The Power of Human Rights. International Norms and Domestic Change*. Cambridge: Cambridge University Press.

Rodden, Jonathan. 2002. Strength in Numbers? Representation and Redistribution in the European Union. *European Union Politics* 3,XX: 151-175.

Ruggie, John G. 1983. International Regimes, Transactions, and Change: Embedded Liberalism in the Post-war Economic Order. In *International Regimes*, edited by Stephen D. Krasner. Ithaca: Cornell University Press, pp. 195-232.

Sánchez-Cuenca, Ignacio. 2000. The Political Basis of Support for European Integration. *European Union Politics* 1,2: 147-171.

Sartori, Giovanni. 1991. Comparing and Miscomparing. *Journal of Theoretical Politics*: 243-257.

Satori, Anne E. 2002. The Might of the Pen: A Reputational Theory of Communication in International Disputes. *International Organization* 56,1: 121-149.

Schoppa, Leonard J. 1999. The Social Context in Coercive International Bargaining. *International Organization* 53,2: 307-342.

Shapley, Lloyd S., and Martin Shubik. 1954. A Method for Evaluating the Distribution of Power in a Committee System. *American Political Science Review* 48: 787-792.

Simmons, Beth A. 1998. Compliance with International Agreements. *The Annual Review of Political Science* 1: 75-93.

_____. 2002. Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes. *The Journal of Conflict Resolution* 46,6: 829-856.

Simmons, Beth, and Lisa L. Martin. 1998. Theories and Empirical Studies of International Institutions. *International Organization* 52 (4): 729-757.

Smith, James McCall. 2000. The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts. *International Organization* 54,1: 137-180.

Snyder, Francis. 1993. The Effectiveness of European Community Law. Institutions, Processes, Tools and Techniques. *Modern Law Review* XXX,56: 19-54.

Steinberg, Richard H. 2002. In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO. *International Organization* 56,2: 339-374.

Steunenberg, Bernard. 2006. Turning Swift Policy-making into Deadlock and Delay. National Policy Coordination and the Transposition of EU Directives *European Union Politics* 7,3: 293-319.

Tallberg, Jonas. 2000. Supranational Influence in EU Enforcement: The ECJ and the Principle of State Liability. *Journal of European Public Policy* 7,1: 104-121.

_____. 2002. Paths to Compliance. Enforcement, Management, and the European Union. *International Organization* 56,3: 609-643.

Tsebelis, George. 2002. *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press.

Tyler, Tom R. 1998. Public Mistrust of the Law: A Political Perspective. *University of Cincinnati Law Review* 66: 847-876.

Underdal, Arild. 1998. Explaining Compliance and Defection: Three Models. *European Journal of International Relations* 4,1: 5-30.

World Bank. 2005. *World Development Indicators on CD-Rom*. Washington DC: World Bank.

Young, Oran R. 1992. The Effectiveness of International Institutions: Hard Cases and Critical Variables. In *Governance without Government: Order and Change in World Politics*, edited by James N. Rosenau and Ernst-Otto Czempiel. Cambridge: Cambridge University Press, pp. 160-194.

Zürn, Michael, and Christian Joerges, eds. 2005. *Law and Governance in Postnational Europe. Compliance Beyond the Nation-State*. Cambridge: Cambridge University Press.