



Tanja Börzel. 2021. *Why Noncompliance: The Politics of Law in the European Union* (Ithaca and London: Cornell University Press)

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After years of opt-outs and struggle, the United Kingdom has left the European Union (EU). It no longer wishes to comply with the stream of regulations coming from Brussels. Contrary to what one may expect, during its membership the UK was actually one of the top compliers in the EU. Tanja Börzel's latest book, which has been many years in the making, develops a comprehensive and compelling theory of noncompliance in the EU that is able to account for this and other puzzles. It builds on a literature to which she has been a seminal and prodigious contributor over many years.

The book seeks to explain noncompliance based on a parsimonious theory centered on three concepts: Power, Capacity, and Politicization (PCP). As chapter 2 explains, these concepts come into play at two stages: the shaping and the taking of policy. At the shaping stage, powerful states with high bureaucratic capacity and Eurosceptic citizens (high politicization) are better able to shape policy. This should improve compliance. At the taking stage, weak states with high bureaucratic capacity and Europhile citizens are more likely to comply. Theoretically, the role of capacity is clear: higher capacity leads to more shaping and better taking, and hence more compliance. The expected effects of Power and Politicization are ambiguous. Powerful states may be better able to shape EU policy before it is adopted, but also to resist compliance at the taking stage. In a two-level game model of the shaping stage, states facing high politicization of EU policy can tie their hands to domestic Eurosceptic audiences and obtain opt-outs or policy closer to their preferences. Yet at the taking stage, if no opt-outs or amendments have been obtained, they are more likely not to comply.

In chapters 3–5 the PCP model is put to work to explain variation in noncompliance across three dimensions: states, time, and policy sectors. The data are discussed

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in chapter 1 and cover about 14 thousand infringement cases started by the European Commission over the period 1978–2017. This chapter also defines different forms of noncompliance in the EU context. A key distinction is between not transposing EU directives that need to be translated into national law, or not respecting EU regulations that have direct effect in the member states. The EU has five “compliance laggards”: Italy, Greece, Portugal, Belgium, and France. Surprisingly, noncompliance has gone down over time in spite of widening and deepening of the EU. In terms of sectors, noncompliance is concentrated in Justice and Home Affairs, the Environment, and policy domains related to making the internal market function. As an anecdote in the preface explains, the data were painstakingly collected over many years. All the nicer that the author has made not only the book but also the dataset open access in the form of the Berlin Infringement Database (BID).

Chapter 3 convincingly shows that powerful states with low bureaucratic capacity and low EU politicization are more likely to comply with EU policies. While this is presented as a straightforward prediction of the PCP model, in fact it requires assuming or concluding that Power mostly plays at the taking stage and Politicization mostly at the shaping stage. This could have been theorized more, for instance pointing to the consensus culture in the Council to explain why power does not play strongly at the shaping stage.

Consider noncompliance champion Italy. It cannot tie its hands to a Eurosceptic public at the shaping stage, lacks the bureaucratic capacity or efficiency to shape or quickly translate EU directives into domestic law, and has the power to resist compliance at the taking stage. From a more constructivist angle, one also wonders whether top noncompliers and EU founding members like Italy, Belgium, and France get away with noncompliance because no one questions their fundamental commitment. Conversely, Eurosceptic countries like Denmark and the UK may be top compliers not only because they are (were) able to shape policies by tying their hands to Eurosceptic audiences, but also because they realize transgressions will be taken as yet another proof of their recalcitrance, and punished as such.

Chapter 4 shows that noncompliance has not gone up over time, in spite of EU enlargement and the reduction of policy areas where member states have a veto. For the Eastern expansion, this puzzle is explained by capacity-building efforts of the EU, and a strong depoliticization and one-off willingness to transpose into national law the stock of EU law known as the *acquis communautaire*. In general, while member states have lost power to block unwanted policies, a lot of the more difficult policy related to the internal market has been set and transposed in the past.

Chapter 5 builds on the familiar argument of Majone (1994) of the EU as a regulatory state. Facing difficulties in adopting explicitly (re)distributive policies, the EU has focused on regulating the internal market. However, as Börzel shows, such regulation often has hidden domestic costs and winners and losers who oppose compliance after the seemingly neutral policies have been adopted. This insight is then further refined and shown to apply even more to market-correcting re-regulation versus market-making deregulation.

In the conclusion, Börzel moves beyond the EU and the mostly rationalist theory and empirics that form the core of the book. First, she argues for the usefulness of her PCP framework for studying noncompliance also outside of the EU context.

Second, she takes a more normative turn: both within and outside of the EU there is a risk of seeking to depoliticize policies through delegation. When citizens and politicians wake up to the depoliticization of individual policies, their opposition turns to the EU and other forms of international organization as a whole. Brexit is a powerful warning sign that “[r]ather than masking redistribution as a regulatory problem to be best delegated to independent agencies, such as investor state dispute settlement bodies or international courts, national policy makers may have to engage in public debates about who should get what within and beyond the nation state” (192).

The book deserves praise for its clear theorizing, structure, and comprehensive theoretical and empirical approach. Headings summarize findings rather than being dry and descriptive. One gets a wide overview of relevant literature in EU studies, law, public policy and administration, as well as policy-specific sources. The book skillfully weaves together theory, descriptive data, regressions and anecdotes. Non-EU scholars will learn not only about noncompliance, but also about EU institutional reforms such as the expansion of qualified majority voting and the empowerment of the European Parliament.

The book’s parsimonious theory and empirical tests without econometric bells and whistles should make it useful also in teaching. One can imagine for instance an EU course being taught with this book as starting point, seeing how it bridges to hot topics such as EU enlargement, Brexit, democratic backsliding, the refugee crisis, Economic and Monetary Union, and the Stability and Growth Pact.

The choice for a parsimonious theory and the realities of writing and finishing a book inevitably put limitations on what can be included both in terms of scope and recent literature. Two examples come to mind. First, the literature on responsiveness. Like Börzel, this literature has found that Eurosceptic member states are able to shape policies. However, it offers more nuanced theoretical predictions, such as that they are better able to do so when faced with domestic elections that are temporally and electorally close (Schneider, 2018). Second, the literature on national parliaments in the EU. Given the emphasis placed by Börzel on their potential role in re-democratizing the EU, little attention is paid to literature showing how national parliaments are already using government oversight, the Political Dialogue, and the Early Warning System to shape EU policy (Cooper, 2019; Rasmussen & Dionigi, 2018; van Gruisen & Huysmans, 2020; Winzen, 2012).

As said, the statistical analyses are relatively no-nonsense. While this makes the book accessible, it does imply some limitations. First, each of the three empirical chapters focuses on variation on a different level: over countries, time, and policy areas. The pedagogical logic is clear, but one does wonder which factors would matter most in a model including all sources of variation simultaneously. Econometrically, some specification choices limit the strength of the findings: while chapter 3 focuses on country-level variables, standard errors were not clustered at the country level. Chapters 3 and 6 use negative binomial regressions on yearly counts of non-compliance. This unfortunately requires throwing away information as policy-level data need to be averaged to the yearly level. A probit model at the (country-)policy level would have allowed for more fine-grained controls.

Overall, *Why noncompliance* is both an accessible summary as well as a novel contribution in its own right to the literature on noncompliance both within and

beyond the EU. It builds a parsimonious theory that solves interesting empirical puzzles, and deserves a wide readership of scholars and students of the EU and international organization more broadly.

References

- Cooper, I. (2019). National parliaments in the democratic politics of the EU: The subsidiarity early warning mechanism, 2009–2017. *Comparative European Politics*, 17(6), 919–939. <https://doi.org/10.1057/s41295-018-0137-y>.
- Majone, G. (1994). The rise of the regulatory state in Europe. *West European Politics*, 17(3), 77–101. <https://doi.org/10.1080/01402389408425031>.
- Rasmussen, M. B., & Dionigi, M. K. (2018). National parliaments' use of the political dialogue: Institutional lobbyists, traditionalists or communicators? *Journal of Common Market Studies*, 56(5), 1108–1126. <https://doi.org/10.1111/jcms.12711>.
- Schneider, C. J. (2018). *The responsive union: National elections and European governance*. Cambridge University Press.
- van Gruisen, P., & Huysmans, M. (2020). The early warning system and policymaking in the European Union. *European Union Politics*, 21(3), 451–473. <https://doi.org/10.1177/1465116520923752>.
- Winzen, T. (2012). European integration and national parliamentary oversight institutions. *European Union Politics*, 14(2), 297–323.

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