

2 Theoretical framework

2.1 Studying WCIs: A policy analysis perspective

In this chapter, the analysis is first placed within the realm of policy analysis. Then historical institutionalism and its expansion with constructivist elements are introduced as the theoretical foundation. Core elements transferred from these approaches to new institutionalism are (a) the role of strategic action and the linkage of strategic action to policy goals, (b) the significance of creating a policy image beyond agenda-setting, (c) the role of experts as policy entrepreneurs, and finally (d) the probability of unintended outcomes as a consequence of strategic action being socially constructed.

The third section is particularly dedicated to policy instruments. A distinct body of literature about policy instrument choice is introduced. To provide a better theoretical anchorage of the research, the section elaborates on the link between historical/constructivist institutionalism and the literature on policy instrument choice. Fourth, different ways of understanding market-based policy instruments are introduced, since WCIs are in practice often labelled as market-based instruments. The final fifth section sets out the complexity challenge of energy efficiency policy, introducing the main discourses of energy efficiency.

Instruments have (...) always been used in governing; what has changed is that we now understand that instruments can, and should, be considered independently of other aspects of the design of policies (see Linders and Peters 1984). Rather than being inherently intertwined in the policies that they deliver, instruments do have some autonomous effects of their own and can independently impact the policies for which they are chosen. These effects can determine the success or failure of a program in reaching its policy goals as well as the political success or failure of a program. Understanding the independent influence of instrument choice is important because policies that appear to be failures because they have chose goals that are not achievable through collective action may, in fact, be quite feasible and even popular if they were attempted utilizing different instruments. (Peters 2005: 353)

This quotation points to the perspective of this analysis: the focus is on the policy instrument since it is believed that it may exert an influence on policy change which is worthy of special attention. The link between policy instrument choice

and policy change is addressed further below. By understanding policy instrument choice and design as a result of socially constructed strategic action, another perspective of the dissertation is added, linking elements of policy analysis²⁷ to constructivist institutionalism. As a consequence, the way the policy instrument is understood is assumed to have an influence on the policy instrument's effectiveness.

A number of middle-range theoretical approaches seek to explain general policy change²⁸. Most of them are situated within the realm of new institutionalism; some are more attached to the rational choice variant, others put more weight on ideas and path dependencies and thus count as historical or sociological institutional approaches. Among the most received are the 'garbage can' model by Cohen, March and Olsen (1972), John Kingdon's 'multiple streams model' (1984), and Baumgartner and Jones's (1993) 'punctuated equilibria' explaining agenda-setting and change in policy process and outcome. Some authors emphasize the importance of policy learning as an intervening variable. They typically draw in some way upon the works of Hugh Heclo (1974), Peter Hall (1993), or Richard Rose (1991). Among the most influential concepts in explaining policy change is the advocacy coalition framework (Sabatier 1988; Sabatier & Jenkins-Smith 1990). Moreover, policy transfer (Dolowitz & Marsh 1996, 2000; Evans & Davies 1999), policy diffusion (Tews 2005) or policy convergence (Holzinger & Knill 2005; Holzinger, Jörgens & Knill 2008; Bennett 1991) have become popular concepts for analysing aspects of change in the policy-making process. Applying these concepts, researchers seek drivers and routes that certain policies take towards implementation in a certain country or range of countries (e.g. be-

²⁷ Note that the underlying policy analysis examines policy content, including policy output and policy outcome as well as the process leading to both content and outcome.

²⁸ Two very influential analytical frameworks on a more aggregate level serve as a source of inspiration for many other middle-range theories and provide starting points for comparative policy analysis. They take into account both the role of actors and the institutional context in which they act. With their institutional analysis and development framework Kiser and Ostrom (Kiser & Ostrom 1982; Ostrom 2007) created a well-known and frequently applied framework of analysis providing a range of explanatory factors and leaving room for a range of theories to fit this framework. The second framework is the actor-centered institutionalism developed by Fritz Scharpf and Renate Mayntz (Mayntz & Scharpf 1995), which similarly combines a number of variables in order to explain policy change. One of their suggestions is to take into account all these factors and then model game theoretically the behaviour of decision-makers, which then usually serves as the main research hypothesis. Many of the scholars who refer to Scharpf (2000), however, find it useful to use just the collection of factors and the way they are interrelated by Scharpf and Mayntz for structuring their own, often comparative, empirical analysis. Although very influential, these approaches are not directly referred to here since other theoretical accounts (expanding explanations beyond the rationality or 'bounded rationality' of actors and interests as the main variables) seem to be more fruitful for the analysis.

ing consciously transferred or adopted rather randomly under pressure from generally changing economic conditions or as a result of the presence of key actors or institutions) and explain their relative similarities or differences. None of these concepts is, however, especially designed to explain policy instrument choice with the policy instrument as a starting point. Even if many insights from these approaches are also applicable to explaining instrument choice, they focus on specific aspects and processes but do not offer a general framework for explaining policy instrument choice or policy instrument change. Therefore, explanations of policy change are taken from historical as well as constructivist institutionalism and applied to the body of literature on policy instrument choice to fill this gap.

What most of the middle-range theories for analysing policy change have in common is the strong link between change and agenda-setting. Hence, a considerable literature exists on changing the political agenda. With their concept of punctuated equilibrium, Baumgartner and Jones (1993) acknowledge the consequences of agenda-setting for the subsequent political process. Still, their analysis puts agenda-setting in focus.

The underlying piece of work, however, aims at analysing the influence that policy instrument choice and the way a policy is brought on to the political agenda (i.e. to which intentions, goals and images it is linked) have on the policy implementation²⁹. Since policy instruments unfold steering capacity in order to attain specific policy goals, the quest for effectiveness arises automatically³⁰. Effectiveness is dependent on detailed design choices. The analysis thus focuses on how agenda-setting affects the design of the policy instrument on the micro-level.

Besides the middle-range theories, there exists a body of literature on policy instrument choice that has advanced over time and developed into more concrete ideas of the process that determines instrument choice, instrument change, and instrument design. This literature often does not place great importance on the theoretical anchoring of policy instrument choice. Political anchoring would, however, allow for a more distinct identification of variables and their analysis. Further, only a few distinct models aim at explaining the paradoxical results of instrument choice that are so often found in political reality, thus going beyond a

²⁹ Policy analysis is typically structured around different stages of the policy cycle (Hill 2005: 19ff). While the policy cycle is a heuristic tool that does not mirror complex reality, it is still worth distinguishing different stages such as agenda-setting and implementation in order to render the analysis more structured and clear as well as to separate explanatory variables from the scope of their influence. Thus, this analysis also makes use of the different stages the policy cycle model provides.

³⁰ Thus, the analysis is not about explaining change or stability *per se*. Rather, it is of interest to what extent the effectiveness, that is, goal attainment, can politically be influenced by instrument choice and change.

purely ‘technical’ and solely rational approach to instrument choice. Recently, more research has been dedicated to putting instrument choice in the context of governance (see e.g. Voß 2007; Eliadis, Hill & Howlett 2005; Lascombes & Le Galès 2007). In anchoring policy instrument choice and change in the context of new institutionalism, it becomes possible to follow these governance approaches to research on policy instruments and even to go further in stretching the concepts by introducing a constructivist perspective, as is further explained below.

In a sense, the theoretical approach adopted in this analysis is an experiment as it takes theoretical levels from macro-theoretical concepts and incorporates middle-range theoretical approaches for analysing political processes on a micro-level³¹. The linking element is the influence of ideas on policy instrument and design choice via the policy image. Ideas are understood in the realm of historical institutionalism and its expansion to what some experts call ‘constructivist institutionalism’, as presented in the following section.

2.2 Ideas in context – expanding Historical Institutionalism to Constructivist Institutionalism

In order to offer new insights for research on policy instruments, the analysis presents a constructivist account of new institutionalism in order to apply its core elements (socially constructed strategic action, creating a policy image, and the conditions for unintended policy outcomes) to the research design of WCIs.

Different branches of new institutionalism make different assumptions about preferences (endogenously given versus exogenously formed), behaviour (is rational behaviour possible?), and the interaction between structure and agency (see e.g. van Waarden 2009: 290f.). Scholars usually distinguish three approaches: rational choice institutionalism, sociological institutionalism, and historical institutionalism³². More recently, some authors have identified the emergence of a fourth variant of new institutionalism, which is referred to as

³¹ Carefully weighing strengths and weaknesses, Sil and Katzenstein (2010: 426) provide convincing arguments for what they call ‘analytic eclecticism’: ‘First, analytic eclecticism alone aims to problematize complex phenomena encountered by practitioners and ordinary actors, phenomena that are typically sliced into more narrowly circumscribed puzzles by adherents of research traditions. Second, analytic eclecticism alone is designed to simultaneously traffic in theories from multiple traditions in search of linkages between different types of mechanisms that are normally treated in isolation in separate traditions. In so doing, analytic eclecticism increases the chance that scholars and other actors will hit upon hidden connections and new insights that elude us when we simplify the world for the sole purpose of analyzing it through a single theoretical lens.’

³² Some authors draw other distinctions. For example, Peters (2000) refers to the normative rather than the sociological approach of institutionalism. He adds ‘empirical institutionalism’. Immergut (1997) refers to organization theory rather than to sociological institutionalism.

‘constructivist’ or ‘discursive institutionalism’. The discursive institutionalist perspective, as Vivian Schmidt understands it, differs from the constructivist institutionalist perspective that Hay (2006) offers. Both authors differentiate their new notion of institutionalism in some way from the rational choice variant. But whereas Hay sees much fruitful common ground with historical institutionalists, Schmidt stresses the relation of discursive institutionalism with sociological institutionalism, arguing that the latter is all about ideas and discourse (Schmidt 2008: 320)³³. Another piece of work has been very influential for the analysis: Jabko (2006: 26) has framed the term ‘strategic constructivism’³⁴ from the constructivist perspective rather than the institutionalist,³⁵ emphasizing the influence of strategic action. Since there exists an extensive literature about different accounts of New Institutionalism (see e.g. van Waarden 2009; Thelen 1999; Immergut 1997; Peters 2000; Schmidt 2008; Hay 2006), the differences between the individual understandings are not fully displayed here. As the focus of the analysis here is on assumptions of historical institutionalism and of what recently emerged out of historical institutionalism³⁶, namely, constructivist institutionalism, the following paragraph deals with these accounts in greater detail. Those aspects are highlighted that supposedly will matter throughout the analysis

The charm of historical institutionalism (HI) consists in the combination of the two central elements: path dependency and ideas³⁷. The existing literature

³³ Since I understand this new approach as a theoretical expansion of historical institutionalism, I follow Hay’s suggestion and refer to ‘constructivist institutionalism’.

³⁴ Jabko’s work is dealt with in more detail below. Even though his work has much in common with other approaches, including the approach adopted here, his work does not stem from the logic of new institutionalism. Therefore, I do not refer to the term ‘strategic constructivism’ but adhere to Hay’s constructivist institutionalism.

³⁵ Similarly, Hajer (1995) showed that institutional analysis and discourse analysis go together. Exemplifying a discourse analysis, his work is interesting from a methodological viewpoint. However, he showed the institutional dimension of discourse (1995: 263) rather than the significance of constructivism for institutional analysis. While influential on this subject in general terms, Hajer’s work is of limited usefulness for the concrete development of the analysis here since this dissertation proceeds from the institutional perspective and subsequently integrates constructivist insights. In addition, it does not carry out a discourse analysis even though the term ‘discourse’ appears and plays a role, as is shown further below.

³⁶ Constructivist institutionalism as understood by Hay (2006) has been most influential on the analysis here. Hay distinguishes his institutionalism from historical institutionalism as a combination of explanations of behaviour driven by calculus (as in rational choice institutionalism) and cultural logic (as in sociological institutionalism) (Hall & Taylor 1998). However, he acknowledges that other accounts of historical institutionalism are closer to his constructivist institutionalism. He mainly refers to Thelen and Steinmo (1992) in this respect. Therefore, the dissertation bases its theoretical assumptions largely on the work of Thelen and Steinmo.

³⁷ Peter Hall and Rosemary Taylor distinguish two other characteristics of historical institutionalism, namely, the relatively broad conceptualization of the relationship between institutions and individual behaviour and the asymmetries of power associated with the operation and development of institu-

clearly treats those decisions taken before the decision to be examined as the main explanatory factor for the persistence of policies. This includes the continued existence of the policy instruments in use and other institutions that were created to support policy goals: Path dependency takes into account the fact that the policy and structural choices made at the inception of the institution will have a persistent influence on its behaviour for the remainder of its existence (Peters, 2000: 3). In a nutshell, the history of the political process matters and has explanatory power.³⁸

Among the most influential work on HI is that by Peter Hall³⁹ (Peters, 1999: 64). In a publication with Rosemary Taylor on the three New Institutionalisms, he further elaborates the importance of the concept of ideas and the role that ideas play in explaining policy design. Historical institutionalists draw special attention to the relationship between institutions and ideas or beliefs (Hall & Taylor 1996: 942). It is not so much the claim that ideas have influence, but rather the urge to understand how ideas interact with institutions to cause change and why it is that certain ideas seem to have more influence than others (see Thelen & Steinmo 1992: 23). In Peter Hall's well-known analysis, it is the structure of political institutions that help put certain ideas on to the political agenda and finally lead to a paradigm shift (Hall 1993). This causal relationship of institutions favouring the transmission of certain ideas by offering particular channels is also underlined in King's analysis (King 1992) and as a constraining factor within the concept of 'bounded innovation' by Weir (1992) as well. However, this analysis does not restrict ideas to the function of cognitive filters but rather follows Thelen and Steinmo (1992) and Hay (2006). In their view, ideas are also drivers of institutional change. Hay and Wincott (1998) refer to Thelen and

tions (i.e. political decision-making is characterized by power imbalances and so policy outcomes generate losers) (Hall & Taylor 1996: 938ff).

³⁸ It is, however, less clear why traditions and not purposes (rational institutionalism) or norms (sociological institutionalism) are followed. As van Waarden (2009: 288) puts it, the drivers for following traditions might indeed be either 'rational', as a policy change would involve excessive costs, or 'norm-driven', since the social environment would not support breaking with established institutions that reflect norms. Seen this way, a historical institutionalist perspective allows for the integration of other theoretical assumptions and thus serves as a theoretical frame. Like van Waarden, Hall and Taylor (1996: 938f., 950) highlight an important virtue of the historical institutionalism which embraces both a calculus and a cultural explanation of the individuals' behaviour and choices. Thus, the individual is both a utility maximizer and a satisficer. Colin Hay and Daniel Wincott radically criticize Halls and Taylor's position. They argue that putting both options – the individual as both maximizer and satisficer – at the heart of HI is nothing more than highlighting the main difference between the two (incompatible) approaches of new institutionalism: rational choice institutionalism and sociological institutionalism (Hay & Wincott 1998: 953).

³⁹ Certainly among Hall's most important publications is the journal article from 1993 on policy paradigms, social learning and the state.

Steinmo in order to capture the distinct relationship between institutions and behaviour in HI:

Institutional analysis...allows us to examine the relationship between political actors as objects and as agents of history. The institutions that are at the centre of historical institutionalist analysis...can shape and constrain political strategies in important ways, but they are themselves also the outcome (conscious or unintended) of deliberate political strategies of political conflict and choice. (Thelen and Steinmo 1992: 10 in Hay and Wincott 1998: 955)

Hay and Wincott attempts to argue that historical institutionalism offers the basis for a theory that explains change by the interaction of actors within their institutional environment. This interaction can be understood as the mutual constitutive formation of institutions as well as actors' preferences and behaviour. In this way it can be seen as a bridge with the new variant of new institutionalism that has recently been put forward by a growing number of researchers⁴⁰ (e.g. Hay 2006; Schmidt 2008; Blyth 2003),⁴¹ Hay later formulates a distinct definition of institutional change from constructivist institutionalism:

(...) institutional change is understood in terms of the interaction between strategic conduct and the strategic context within which it is conceived, and in the *later* unfolding of its consequences, both intended and unintended. As in historical institutionalism, such a formulation is path dependent. (Hay 2006: 64; emphasis in original)

Hall and Taylor (1998: 361) argue that historical institutionalists capture a view of actors as able to alter both basic and strategic preferences according to the manifold ideas that they are exposed to. Hay (2006) places an emphasis, from the constructivist institutionalism viewpoint, on the impossibility of deriving interests and preferences from the context, since interests are social constructions.

⁴⁰ In his paper on constructivist institutionalism, Hay refers to the book by Campbell and Pedersen (2001) as the first publication clearly identifying a new 'new institutionalism'.

⁴¹ Vivian Schmidt (2008: 314–15) argues that it is due to the 'logic of communication' that discursive institutionalism (DI) is better able to explain institutional change than the other three new institutionalisms. According to Schmidt, it is the (foreground) 'discursive abilities' (through which agents may change institutions and which exists parallel to the 'background ideational abilities') that represents this logic of communication. It 'enables agents to think, speak, and act outside their institutions even as they are inside them, to deliberate about institutional rules even as they use them, and to persuade one another to change those institutions or to maintain them'. She argues further that the older approaches can be used as 'background information' in order to identify what one would expect to happen, whereas DI may better explain the unexpected.

The understanding of ideas in this analysis follows Hall and Taylor (1998: 961). To them, ideas exist at all possible levels, such as overall ideas about what governs the world, ideas about what drives the behaviour of individuals, or ideas that entail a moral dimension. In historical institutionalism actors are not assigned single preferences but a multitude of preferences, all of which might have an effect on the relevant issue. ‘This renders issue-definition a particularly consequential dimension of the political problematic’ (Hall & Taylor 1998: 961). As a consequence, there are many ways for ideas to be embodied in institutions and to affect individual action. On the one hand ideas act as cognitive filters, and on the other hand they can be considered as main components of action. In order to understand their functionality, certain institutional structures have to be opened up by tracing institutions empirically and historically. Like Thelen and Steinmo (1992), Hay emphasizes that both institutional and the ideational path dependence (Hay 2006: 65) matter in the course of historical analysis: ‘Institutions are built on ideational foundations which exert an independent path dependent effect on their subsequent development.’ This is a core assumption also of the analysis at hand.

While this section mainly sets out the basic ideas of HI enriched by elements of constructivist institutionalism, the following subsections are more strongly focused on the constructivist perspective on institutionalism. They are structured around the core elements of the theoretical assumptions underpinning the research taken from both historical and constructivist institutionalism, namely, strategic action and goals, creation of a policy image, the role of policy entrepreneurs, unintended outcomes and prevailing tensions.

2.2.1 Strategic action and goals

A building block of the underlying theoretical framework is strategic action. Nicolas Jabko's research fits very well in this section since he merges different institutionalist accounts with a constructivist perspective, putting political strategies at the heart of his research. He comprehends political strategy as a social construct (Jabko 2006: 28–9). Further, he finds that issue definition is an inherent part of strategic action⁴². And finally, the empirical example that he investigates is the use of the term 'market' and different kinds of ideas that are connected with this term. Since 'market' is also a central term/concept used in association with tradable white certificates, his findings are especially interesting for this analysis (see section 2.4).

Strategic action on the part of actors such as policymakers or policy entrepreneurs is usually an assumption in rational choice institutionalism. In this analysis, too, actors are assumed to act strategically in order to 'realize complex, contingent and often changing goals' (Hay & Wincott 1998: 954). But the definition of strategic action goes beyond rational choice institutionalism. This analysis follows the constructivist-institutionalist understanding of strategic action. Here, strategic action is affected by a whole range of sometimes diverging subjective preferences going beyond what is often referred to as 'bounded rationality' (e.g. Schmidt 2008: 318; Hay 2006: 63–4). Strategic action is always happening in a context about which actors have limited information; and thus the perception of the context can be neither predicted nor a complete mirror of the situation. '[The actors'] desires, preferences, and motivations are not a contextually given fact (...) but irredeemably ideational, reflecting a normative (indeed moral, ethical, and political) orientation towards the context in which they will have to be realized' (Hay 2006: 63–4). Here a constructivist perspective comes into play: it is acknowledged that interest-based behaviour, which drives strategic action, exists. However, the relevant question is not about the material reality but about the reality that exerts an influence – and this is always socially constructed. This means that even interests are social constructs. Nicolas Jabko bases his investigation on similar assumption. In this context, he introduces the term 'strategic constructivism' (Jabko 2006: 26) to label the theoretical approach to explaining what – as he argues – has driven European integration. Like historical institutionalism, his approach goes beyond what he calls the utilitarian behaviour of influential political actors, beyond institutional explanations mainly of incremental change, and finally also beyond a purely constructivist perspec-

⁴² He puts goal complexity as a core element of political strategy and find that it is the actors' ability to pursue a common political strategy that led to various integrationist reforms in Europe despite disagreeing over their long-term purposes (Jabko 2006: 29ff).

tive, in that he refuses to explain the development of the common European market purely by the power of (neoliberal) ideas. He uses the term 'utilitarian' rather than 'rationalist' because he finds 'utilitarian' more specific and distinct than the broadly and oft-cited terms 'rationalist' and 'rational choice' (Jabko 2006: 12 n). To Jabko, a political strategy, or what he calls 'the politics of market ideas', caused institutional change⁴³.

Constructivist institutionalism further acknowledges that strategic resources are unevenly distributed, including knowledge of the institutional environment. 'This in turn affects the ability of actors to transform the contexts (institutional and otherwise) in which they find themselves' (Hay 2006: 65).

Guided by their preferences, actors will act strategically, adapting to the institutional context at a certain time in history. At a certain moment, new ideas may have the potential to cause groups to rethink their preferences and interests, which will then lead to a new packaging of policies or to the formation of certain coalitions (Weir 1992: 9). This 'packaging' or 'coalition formation' is often described as strategic action. Given that this action is caused by a range of historically determining factors such as the occurrence of a certain idea at a point in time when, for example, the prevailing institutions prescribe a reallocation of resources, strategic action cannot necessarily be bound to cognition or utility-maximizing behaviour, but is to a certain degree context-driven.

Hay and Wincott's definition of change captures these implications well and therefore supplies the understanding of institutional change in this analysis:

Change is seen as the consequence (whether intended or unintended) of strategic action (whether intuitive or instrumental), filtered through perceptions (however informed or misinformed) of an institutional context that favours certain strategies, actors and perceptions over others. (Hay & Wincott 1998: 955)

Strategies are adjusted in the light of preferences. Whereas rational institutionalists see preferences as given exogenously, necessarily deduced from the situational context and serving maximizing actors' self-interest, historical institutionalists⁴⁴ assume that preferences are not given but shaped by and within the social and political institutional context. They 'argue that not just the *strategies* but also the *goals* actors pursue are shaped by the institutional context' (Thelen & Steinmo 1992: 8).

⁴³ As a result of his investigations, Jabko found that there is no single market ideology, and explored different ideas associated with the term 'market'. This made it possible for actors to justify different and sometimes conflicting steps of integration.

⁴⁴ This assumption can also be found in constructivist institutionalism, but it is not shared by all accounts of historical institutionalism.

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