



HAL
open science

Principles and compromise in reform-related negotiation processes

Emmanuel Bernard Picavet, Caroline Guibet Lafaye

► **To cite this version:**

Emmanuel Bernard Picavet, Caroline Guibet Lafaye. Principles and compromise in reform-related negotiation processes. Euro Working Group ETHICS on Decision making, Jun 2008, Delft, Netherlands. hal-00384827

HAL Id: hal-00384827

<https://hal.science/hal-00384827>

Submitted on 15 May 2009

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Emmanuel Picavet and Caroline Guibet Lafaye¹

Principles and compromise in reform-related negotiation processes²

Abstract

Workshop on Ethics in Decision Making, TU-Delft (Human-Centered Processes), June 9th 2008. Delft, The Netherlands.

Acceptance or rejection of reforms in political or administrative contexts can be viewed as the result of a negotiation process, which is either explicit or tacit. Here we focus on a dimension of such processes which has hitherto been neglected to some extent: the role and perception of guiding principles. Such principles raise issues concerning the nature of rule-following, when the rules are fairly general and call for interpretation (and this is generally the case when the rules have ethical significance). This is not alien to some currents of research about bargaining and computer support for bargaining. The specificities of rule-following in such contexts can help explain some features of reform-related negotiation or compromise-building processes. This is illustrated by the insights from two case studies: (1) reform of the hospital system in France in the 1970s and (2) present-day innovation policy in Norway.

1. Introduction

Principles play a role in negotiation. At the very least, they help structure the issues around which the threat of continuing conflict and the prospects for cooperation revolve. In political or administrative settings, agents are especially interested in the application and interpretation of underlying principles, which are

¹ Respectively : Université Paris-1 Panthéon-Sorbonne (France) and Centre Maurice Halbwachs (France). Both authors : DELICOM project (research team « Philosophies contemporaines », NoSoPhi group), C19-06, Université Paris-1 Panthéon-Sorbonne, 90 rue de Tolbiac F-75013 Paris.

² Support from *Agence Nationale de la Recherche* (DELICOM project, ANR JC-JC 05, <http://epi.univ-paris1.fr/delicom>) and the Åsgard Foundation (from which E. Picavet received a fellowship in 2007) is gratefully acknowledged. E. Picavet thanks the *Centre culturel français* in Oslo – in particular, Xavier Morise and Delphine Vallon – who have allowed him to make the most of his stay in Norway under the auspices of the Åsgard Foundation. E. Picavet also wishes to thank Raimo Malnes, Olav Gjelsvik and Nils Roll-Hansen, Hilde Nafstad and Christel Fricke (University of Oslo), J. Peter Burgess, Gregory Reichberg, Sonja Kittelsen, Naima Mouhleb (International Peace Research Institute, Oslo), Pål Gretland, Knut Vrålstad et Eivind Lorentzen (Ministry of Industry and Trade), Else Boon, Tor-Jørgen Thoresen et Eirik Normann (Norges Forsningsråd) for interesting exchanges during two visits to Norway. E. Picavet also thanks Jacob Elster and Jean Gayon for their help in the preparation of the visits. The authors also wish to thank Claude Gamel, Alain Leroux, Pierre Livet, Jean Magnan de Bornier for useful exchanges on the occasion of E. Picavet's presentation at CEPERC (Université de Provence, Aix-en-Provence), April 2d, 2008.

often associated with important ethical, professional or political values (Backhaus 2001, Moor 2005).

This results in challenges for the proper understanding of negotiation processes and for proper counselling to agents who take part in such processes. In particular, the scheduling and the very conception of reforms should reflect the foreseeable difficulties in the implementation of reform, and the insights from theory and experience about the negotiation mechanisms which result in better prospects for all agents. This seems to be recommended, at least, if political and administrative decision-making is to bring about changes in the predicted directions.

Our intention is to pave the way for a better understanding of such processes, understood as institutional bargaining processes. Our conclusions partially rely on two case studies (about (a) reform of the hospital system in France in the 1970s and (b) innovation policy in Norway nowadays) which will be summed up; they also stem from an attempt at a better integration of principles into the framework of institutional analysis.

2. Taking principles to the forefront of negotiation analysis

In a world of institutions and institutional actors, dialogue is essential to the negotiation processes which bring about changes in rules, policies and public values. Usually, dialogue doesn't start off from scratches. It moves ahead under the shadow of principles - most conspicuously, those principles which delineate the respective areas of competence for the institutional actors, and those principles which express institutional functions, goals or basic deontological benchmarks.

Hence there is a good case for devoting some effort to elucidate the functionings of principles (and their institutional implementation) in reform-related negotiation processes. Ultimately, the modelling and computer simulation of dialogue-cum-

negotiation processes could help avoid scenarios which lead to unsatisfactory endpoints, widely resented by participants as conundrum situations. In those scenarios, agents might well be aware of conceivable situations in which everybody would be better-off. Moreover, the level of mutual distrust sometimes raises up to politically dangerous levels.

There is no denying that cultural factors may have a role in the explanation of successful or unsuccessful dialogue, negotiation and reform. But recent research results about political negotiation processes suggest that there exist structural features of the implication of principles or semi-interpreted rules and goals (which call for further interpretation in implementation phases – see Jones and Clark 2001, Matland 1995, Reynaud 2003). The very presence of dialogue testifies to the fact that the negotiation problem, and perhaps the rules of negotiation itself, are partly indeterminate. But this does not amount to identifying a mere defect of the process; more plausibly, this is a feature that opens some avenues for compromise-building, even though it might complicate the viability of some other avenues. Thus, taking principles seriously is a necessary step for the benchmarking of reform-related negotiation processes³.

By “*reform-related negotiation processes*” we refer to processes which are initiated by political or administrative authorities with a view to bringing about, in a voluntarist manner, definite changes in rules or institutional structure in a given sector⁴. Although their practical importance cannot be denied, such processes are ill-understood. They include a negotiation component, because they exhibit the

³ Insofar as the external or interactive role of institutional agents appears to be an integral component of their functionings, such betterment may be considered part of the broadly conceived tasks of institutional design.

⁴ Roughly speaking, this falls within the ambit of policy implementation, but our own ongoing research project strongly suggests that the analysis should have much in common with the analysis of interactive episodes in which the distribution of power is of a less hierarchical nature.

following features to varying degrees: (1) they might fail and this poses a threat to the agents, (2) the goals of the institutional actors are not necessarily convergent, and (3) the parties to the negotiation have a capacity to strike compromise. In the cases at hand, compromises usually assume the form of a set of (modified) rules or institutional characteristics.

A second analytic starting point is the working definition of an “*institution*”. It will be defined as a social equilibrium among agents, which consists of a typical pattern of simultaneous actions (or a set of such patterns), and beliefs which allow individual actions to fit to one another (this includes, in particular, the beliefs or expectations of agents about the attitudes or conduct of other agents).

The realised association and mutual interdependence of such actions and beliefs makes for an effective or “enforcing” equilibrium, which is sometimes amenable to being described with the tools of game theory⁵. For explanatory, descriptive or analytic purposes, a relevant enforcing equilibrium of this sort should be described in such a manner that it can be identified with the typical functionings of existing, concrete “institutions”, and every such institution comprises at least a certain distribution of roles or action domains⁶, and norms which summarize the goals or functions of institutional action, as well as the side constraints it shouldn’t violate⁷.

⁵ The association and mutual interdependence does not amount to a perfect fit between action and beliefs on the part of every actor. Indeed, it has been conjectured with some credibility that institutional forms owe their distinctness and resilience to the (sometimes rational) ability of agents not to adapt in a perfectly reactive way to just every new piece of information (Heiner 1983).

⁶ In real-world institutions, this distribution is usually quite formal and it might gradually move apart from shifted positions of real power, in the sense of the ability to achieve one’s preferred results in the world. On this differentiation, see Aghion and Tirole 1997, Picavet and Razafimahatolotra 2008.

⁷ The norms are often formulated through general and imprecise principles (“public transportation should be committed to the continuity of the service to the public”, “universities should promote equal access to learning and professional education”, and the like).

A third analytic starting point is the choice of an approach to compromise in which the latter does not reduce to an endpoint. When rules (or the interpretations of principles, or institutional patterns) are at stake, compromise does not assume the form of an endpoint, because the social use of rules (or principles, or institutional patterns) is flexible in nature, and keeps adapting to new situations in complex, partly unpredictable ways⁸. For this reason it is more appropriate to think of compromises as temporary institutional patterns which occur in a particular slice of time along the path of institutional evolution. The relevant slice of time is the “reform” episode, which harbours successive moves by institutional actors.

Then the ability to enforce a compromise in a smooth way can be dealt with, analytically, in terms of the viability of a certain institutional arrangement, of which the projected reform consists. Political or administrative reforms are not just endpoints which can be contrasted with the status quo situation. In broad terms, they usually consist of a certain institutional setting which should harbour successive social situations, which are taken from a certain predicted spectrum (or subset of conceivable situations)⁹.

Sometimes, things happen to be as they were predicted, in the rough, and sometimes not. In the latter case, we might describe the situation as an example of how the reformed institutional framework turns out to be unstable. Given our working definition of institutions, the path-setting reformed scheme is an institution, but its functionings might turn down the whole scheme none the less.

⁸ For background discussions, see Bailyn 2002 and Reynaud 2003. Another illustration is to be found in Picavet 2006a, 2006b.

⁹ Such situations are identified with the “normal” or predicted functionings of the reformed institutional setting (or “reform”), and this usually implies a series of continuing moves and concessions on the part of institutional actors. When the goals of the different actors are not fully congruent, the viability of reform can only involve concessions.

Given these analytic choices, of particular interest is the study of how institutional arrangements may have a capacity to reinforce themselves through time, by which we mean (after current practice in institutionalist social science) a capacity to sustain the processes (dialogue, compromise and action) which yield the “normal” or “predicted” institutional functionings.

3. Key insights from case studies

The case studies we jointly realised (Picavet and Guibet Lafaye 2007, 2008) focus on the relationships between the political actors’s strategies and the interpretative tasks with respect to underlying principles which are jointly referred to by all agents in argumentative exchanges.

The first example is the reception of the 1970 hospital law in France. The interpretation of general principles was at stake and the parallel argument in both camps (right-wing officials and communist or other left-wing protesters) demonstrates agreement on the value of such principles as efficiency, technical progress and equal access to health care facilities. The struggle against inefficiencies should have been an object of agreement. But there was no agreement on the operational significance to be given to such principles. An additional problem was that the endorsement of possible compromise positions was widely perceived as dangerous. The general terms used in the formulation of policies and compromises were perceived as dangerous for future deliberation process because they gave rise to fears about the possible use of general words and principles.

The ambiguity of principles, as well as the expected reallocations of power principles could harbour, appeared to have an important role in the failure of agents to strike an evolving compromise. Some deadlocks of the social discussion

were due to fears with respect to the foreseeable allocation of powers (given the use of new management methods), and this was rooted in the ambiguities of reform and its principles.

When interpretation has its strategic side, agreement on common and essential principles doesn't suffice to warrant an agreement on collective purposes. General principles both offer resources for political agreement and harbour future reallocations of competences and power positions which might weaken the negotiation position of some actors (such as trade-union leaders and local authorities) in a way that is perceived *ex ante*, with the result that concessions are blocked¹⁰.

In our second example, present-day innovation policy in Norway, a very general principle – the principle of sustainability – is used as a benchmark for public policies and other principles such as equity and equality are paid due tribute¹¹. The principles explicitly followed by political powers provide institutional actors (such as universities, firms, research institutes...) with reasons to trust the Norwegian government because the very process of implementation gives room to changes in the future interpretation of principles and to concomitant changes in the allocation of competences¹². In this example, the implementation of sustainability-oriented reform provides institutional actors with an active role in bringing about or preventing qualitative changes.

From the start, principles are used in a way which involves commitments (to action) and adaptation (to circumstances) so that collective action in reform

¹⁰ A basic mechanism is that agents perceive that their future ability to influence the selected interpretation of principles or the way to articulate principles might be hurt.

¹¹ See esp. *Commitment to Research*. Report No.20 (2004-05) to Storting, Norwegian Ministry of Education and Research.

¹² This recognized interpretative flexibility is further supported by procedural rules for implementation which give much weight to continuing exchanges of views, bottom-up decision-making and the backing of local or partial experiments. Thus all key institutional agents can expect to exert some influence on the way innovation policy is carried through.

implementation is possible and goes beyond verbal agreement. In such a case, the ambiguity of general principles gives resources for learning and for flexible adaptation to the shifting modalities of international cooperation and to the trends of scientific (or technical) progress¹³. These positive effects counterbalance the possible distrust associated to fears with respect to the evolving interpretation of general principles and such distrust is attenuated, or disappears, through procedural reassurances given to institutional actors to the effect that their preferences, initiatives and interpretations are seriously taken into account in the reform process.

The acceptability of evolutions and reforms, here, is also due to the mutual reinforcement of past and new axiological references – for example, a new public-sector ethic on the one hand and the values of equality and sustainable progress on the other hand. This gives an additional to believe that something is to be gained from the reliance on general principles when it comes to adapting to circumstances. Generally speaking, fears and distrust are likely to recede when explicit reasons that can be widely understood and supported by institutional agents are put forward in reform policy.

It is a natural step to hypothesize that the factors at work undergo changes in the endogenous process through which institutions head either for adaptation or misfit with respect to external, exogenous conditions. This motivates the integrative steps we next describe.

4. Theoretical integrative steps

¹³ This is evidenced in Norway's *New White Paper on Research*.

Recent explanations of institutional stability through time have drawn attention to the relevance of endogenous processes if we are to account for key features of known processes. More particularly, we shall use the theory in Greif and Laitin 2004 as a benchmark model.

This theory stresses the role played, in institutional evolution, by the “reinforcing” properties of institutional arrangements, that is, their capacity to promote the conditions which while enable them to offer more resistance to changing circumstances (exogenous, shifting parameters). Technically, this is captured through “quasi-parameters” which are affected by the social functionings of institutions in an endogenous manner and which, in turn, impact the ability of institutions not to be destabilized by changing circumstances (so that, for example, they will be enforceable for a larger set of possible parameter values).

Taking an approach of this sort as a benchmark, we contend that the following factors should gain some importance in the explanation of institutional stability or instability: the shifts in shared or prevailing interpretations of the underlying principles; each agent’s capacity to rely on principles in order to have some success in the interactive process; and each agent’s margin for action in interpretation-setting tasks.

Given our initial analytic choices, these factors should identically gain some importance in the understanding of how compromise-building is made sustainable or not in reform-based negotiation processes. In the terms of the Greif-Laitin benchmark model, such factors play the role of quasi-parameters. They are impacted by institutional functionings, and they impact the latter in turn in a way that conditions institutional reinforcing or self-undermining.

Analytically, this motivates an enlargement of the initial description of the main components of a concrete institution. In order to take into account the enumerated factors, it seems appropriate to let institutions comprise:

- I-1** A certain distribution of roles or action domains, which covers:
 - **I-1-a** an allocation of real decision capacities among institutional agents;
 - **I-1-b** the arrangements for the explanation or justification of actions with a view to the underlying, structuring principles;
 - **I-1-c** procedural features, to do with (1) the way institutional agents can let some interpretations of principles prevail over other possible ones, and (2) the way they can implement these chosen interpretations. Such procedural features encapsulate the way in which different viewpoints are taken into account and weighed against one another in the typical institutional functionings.
- I-2** Norms (or principles) which summarize the goals or functions of institutional action, as well as the side constraints it should not infringe upon, and which allow for alternative credible interpretations.

With this conceptual apparatus in mind, let us turn again to our examples. In the hospital example, the social equilibrium which tends to prevail is based on limited cooperation (around professional, general-interest tasks) with a substantial amount of conflict, such that the implementation of reform cannot be said to be smooth or satisfactory. In this example, compromise-building has very limited effectiveness and this seems to be related (or aggravated) by factors such as:

- (1) fears among the workers (or workers's unions, or the Communist party) that some *a priori* consensual principles (such as modernisation, efficiency and the like) undergo adverse interpretative shifts; these expected shifts, especially in association with the following factor, favour distrust;
- (2) the fact that the "reformed" institution harbours shifted power positions, in the sense of an alteration of decision capacities; in the expectations of the workers's unions, this makes room for a reinforcement of adverse interpretations;
- (3) the fact that the "reformed" institution, through shifted influence positions and new procedural rules, gives less weight to some viewpoint; this affects the way in

which differing viewpoints are taken into account in the decision-making processes, including the interpretation-setting and rule-following tasks.

These factors engender the continuing compromise-building processes which would be necessary for the reformed institutions to keep afloat. In this analysis, our attention is drawn to interpretations, expected positions of influence and the respective abilities to rely on the consensual principles in order to gain something (or avoid certain concessions) in the reform-based negotiation process. These factors can be viewed as quasi-parameters which, in this precise example, have an undermining (rather than reinforcing) effect on the reformed institutional framework. In theoretical terms, these factors are the result of the initial steps in the process (so that they can be viewed as the consequence of social equilibrium along the path of reform) but they have a capacity to undermine the predicted path of reform. The undermining assumes the form of a heightened sensitivity of the hospital system to exogenous shocks concerning the needs in the population and shifting costs for treatments. Changes in such external circumstances might result in crises, as they give advantages to one of the actors in conflict-ridden interaction.

In the Norwegian example, on the contrary, the equilibrium path of reform seems to be associated with quasi-parameters which have a reinforcing role. In particular, the selection of socially prevailing interpretations of principles, as well as the inclusive mechanisms through which the differing viewpoints are taken into account, provide institutional actors with important guarantees¹⁴. Moreover, the path of reform gives a central role to flexibility and the negotiated adjustment to shifting circumstances. Thus compromise-building procedures can be integrated

¹⁴ These guarantees extend to their role in interpretation-setting tasks (due to widespread consultation and participation) and to their ability to refer to principles in an effective way to avoid some concessions.

into the agents's strategies in a significant way. These mechanisms are well suited for continuing compromise-building, and the stability of reformed institutional arrangements, in the face of exogenous (and largely unpredictable) scientific and technological innovation, and exogenous changes in the modalities of international cooperation.

5. Conclusion

The observations from the case studies suggest that interpretative evolutions are very important indeed for a proper understanding of the reinforcement or the undermining of given institutional arrangements (with emphasis on their key features such as, for example, the allocation of institutional competences)¹⁵. Moreover, the growth and corruption of reform schemes appears to have deep connections with the ability of agents to rely on the principles in order to justify their initiatives, or in order to have some success about a disputed issue. Their capacity to put forward desired interpretative shifts, with some chance of being successful therein in some cases at least, also turns out to be a decisive feature of the position of actors.

References

- Aghion (Philippe) and Tirole (Jean) 1997 "Real and Formal Authority in Organisations". *Journal of Political Economy*, 105, p. 1-29.
- Backhaus (Jürgen) 2001 "Economic Principles of Constitutions. An Economic Analysis of Constitutional Law". *The Independent Institute* (USA). Working paper Series, No. 40.
- Bailyn (Sarah J.) 2002 "Who Makes the Rules? Using Wittgenstein in Social Theory". *Journal for the Theory of Social Behaviour*, 32 (3), p. 311-329.
- Calvert (Randall) and Johnson (James) 1999 "Interpretation and Coordination in Constitutional Politics", in Hauser, E. and J. Wasilewski, eds., *Lessons in Democracy. Jagiellonian*. University Press and University of Rochester Press.
- Greif (Avner) and Laitin (David D.) 2004 "A Theory of Endogenous Institutional Change". *American Political Science Review*, 98 (4), p. 633-652.

¹⁵ In our identification of key factors, interpretation-related processes are thus central. This may account for part of the path-dependence properties of institutional processes (for example, reform-related negotiation processes). This is because the endogenous evolution of meanings is not random; it usually capitalizes on previous coordination episodes which associate diverging goals, independent actions and the shared reference to underlying principles (which corroborates the main argument in Calvert and Johnson 1999).

- Heiner (Ronald A.) 1983 “The Origin of Predictable Behavior”, *American Economic Review*, 73 [4], p. 560-595.
- Jones (Alun) et Clark (Julian) 2001 *The Modalities of European Union Governance. New Institutional Explanations of Agri-Environmental Policy*. Oxford, Oxford University Press.
- Matland (Robert E.) 1995 “Synthesizing the Implementation Literature : The Ambiguity-Conflict Model of Policy Implementation”. *Journal of Public Administration Research and Theory*, 5/2, p.145-175.
- Moor (Pierre) 2005 *Pour une théorie micropolitique du droit*. Paris, Presses Universitaires de France.
- Picavet (Emmanuel) 2006a “Neoliberal governance norms and authority relationships between institutions”. Presented at Workshop: ‘Good Governance’ and Democracy: Competing or Complementary Models of Global Political Legitimacy? (Merton College, Oxford, March 2006). DELICOM working paper series (available on request).
- Picavet (E.) 2006b “L’institutionnalisation de l’attribution des pouvoirs politico-économiques: normalité et exception”. *Canadian Journal of Law and Society / Revue Canadienne Droit et Société*, 21(1), p. 39-62.
- Picavet (E.) and Guibet Lafaye (Caroline) 2007 “Confiance et adaptation de principes généraux. Le cas de l’équité dans l’accès aux soins”. In : Th. Martin et P.-Y. Quiviger, ed., *Médecine et confiance*, Besançon, Presses Universitaires Franc-Comtoises.
- Picavet (E.) and Guibet Lafaye (C.) 2008 “Confiance, innovation et adaptation des principes. L’exemple des politiques de l’innovation norvégiennes”. DELICOM research paper, available on request. Submitted to: in *Lettres d’Ivoire* (Ivory Coast), for No. 4, 2008: “Confiance et conflits”.
- Picavet (E.) and Razafimahatolotra (Dawidson) 2008 “Sur la formalisation de la pluralité des interprétations en matière normative”. DELICOM working paper. Available on the website of the *Société de philosophie des sciences* (proceedings of the Geneva congress, march 2007).
- Reynaud (Bénédicte) 2003 *Operating Rules in Organizations*. London, Palgrave.