

Governance and Institutional Development

Markus Jachtenfuchs and Beate Kohler-Koch

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1. Introduction*

In recent years, the term 'governance' has become very popular in research on European integration (Armstrong and Bulmer 1998; Bulmer 1994; Hooghe and Marks 2001; Kohler-Koch and Eising 1999; Marks et al. 1996; Scharpf 2002). Governance concepts are also increasingly used in domestic politics (Campbell, Hollingsworth and Lindberg 1993; Kooiman 1993; Rhodes 1997) and in international relations (Keohane 2001; Young 1999). Usually, a rapidly increasing usage of a concept goes hand in hand with a loss of precision of its meaning. The works quoted above are only the tips of an iceberg in an incredibly rich and varied field. In addition, even within the more narrow confines of European governance, there are distinct national academic traditions (Wallace 2003).

Given this complexity in a rapidly evolving field of research, this article does not attempt to explore the varieties of governance approaches (c.f. Jachtenfuchs 2001 for an overview) but makes an argument about the contribution that a governance perspective can make towards a more comprehensive understanding of the development of the Euro-polity as compared to other approaches such as classical integration theory, policy analysis or the constitutional debate. In our view, this contribution is threefold. First, a governance perspective is able to link policy-making and institution-building. Second, it re-introduces the competition for political power into the analysis. Third, it allows to discuss normative issues of a good political order for the EU without losing contact to empirical research on how political life in the EU actually functions.

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2. Approaches to European Integration

2.1. Three Separate Discussions

To understand how and why the Euro-polity emerged and evolved and how it functions is the broad concern of much of the literature on European integration. Several of these approaches are dealt with in other chapters of this book. However, three distinct academic discussions are particularly relevant for understanding the contribution of a governance perspective on European integration as they are closely related to one another but at the same time have specific and sometimes complementary blindspots.

Classical integration theory is an analytical approach for explaining why states chose to empower the EU to perform certain tasks in specific areas. Since the 1960s, a society-centred version (neofunctionalism; c.f. Haas 1964; Sandholtz and Stone Sweet 1998; Schmitter, in this volume) competed with a state-centred version (intergovernmentalism; c.f. Hoffmann 1966; Moravcsik, in this volume). Contrary to the neofunctionalism of the 1960s which had a strong normative orientation because it considered 'international organisation' to be a promising political strategy in a violent international environment and a means to overcome the self-fulfilling nature of realism as a theory of political action, recent scholarship writes from an almost exclusively analytical perspective. European integration seen as a subset of international relations theory asks about the conditions under which states create and reform international institutions.

Policy analysis has dealt with European integration from a totally different angle and developed in parallel with and independently from classical integration theory. The explanatory goal of policy analysis is to find out how public problems are solved in various institutional contexts and in different types of political processes. As a by-product, it has shown the enormous variety in institutional structures on the microlevel below the level of intergovernmental conferences. However, it proved difficult to generalise from these empirical findings because it is immensely difficult to control for the exploding complexity of context variables even among allegedly similar countries. Studies of EU policies suffer from the same problem. However, if the claim for universal theory is given up, partial theories offer a promising path (Scharpf 1997). Increasingly, studies of this type contribute to a better understanding of how the European multilevel system

works. The perspective is mainly analytical but normative issues loom strongly in the background as it is very difficult to analyse policy-processes without having an idea about good or appropriate solutions to policy problems.

The *constitutional debate* is a third perspective that many scholars would not even consider as theory. Many contributions to it are emerge from think tanks and constitute applied research that does not seek new knowledge but rather apply existing theories. However, there also exists an explicit and strong normative theory from early years (Friedrich 1969) to the present with a now intensive debate on how the Euro-polity should look like (Abromeit 1998; Schmalz-Bruns 1999; Schmitter 2000). The term 'constitutional debate' here refers to the body of literature dealing with the question of how a legitimate and effective polity for the particular social and political setting of the European Union should look like. It is not restricted to those writing about a possible EU constitution. This field of polity-making is not the exclusive domain of lawyers but a typical domain of political scientists. Constitution-making is the field where analytical and normative theories are most closely linked. Constitution-makers have to take into account driving social forces analysed by classical integration theory and the conditions for effective problem-solving identified by policy-analysis. On the other hand, the focus on constitutional policy sheds light on issues of legitimacy, democracy and community-building that are largely outside the explanatory scope of the first two approaches of integration theory. In sum, the constitutional debate far too often loses contact with empirical reality as it is analysed by classical integration theory and policy analysis. The latter on the other hand risk omitting key issues of social science and legal analysis.

2.2. Governance as an Integrated Approach

Each of the three approaches has distinct explanatory interests and blind spots. This holds not only true for the analysis of European integration alone. Policy analysis tends to take the polity as a stable background variable, theories of international institutions put issues of legitimacy at the margin, and normative theories of institutions would often profit from a better empirical grip on reality. We argue that a governance perspective is able to link these separate discussions and thus to improve our knowledge about the EU.

In academic as well as in public discourse the usage of the term 'governance' has seen a fast increase. As a result, it is sometimes difficult to find areas where governance does *not* take place. In our view, governance should be rather narrowly defined in a way that does not include all kinds of goal-oriented action irrespectively of its social context. This would exclude usages such as 'corporate governance' from our definition. Second, while openly admitting the unavoidable normative connotations of many key social science concepts, we do not think that the concept of governance should determine the substantive outcomes of governance. This would exclude overly prescriptive terms such as 'good governance' which are so prominent in the discussion of international organisations (e.g. OECD 2001; United Nations 2000). Finally, the concept should not be restricted to the acts and omissions of governments within territorial states. Thus, we define governance as the continuous political process of setting explicit goals for society and intervening into it in order to achieve these goals (c.f. Kohler-Koch 1993; 2002; March and Olsen 1995; Zürn 1998).

This definition should constitute a viable compromise between an all-encompassing but vague notion of governance and a too narrowly defined one which is already conceptually linked to the existence of the territorial state. The threshold should be sufficiently high in order not to equate each action with an act of governance. Governance thus involves setting goals and making decisions for an entire collectivity, including individuals or groups who have not explicitly agreed to them. It also involves a rather high level of intervention which may stabilise or alter a given status quo.

How does such a conceptual lens help to better understand the European Union and to integrate the three theoretical approaches outlined above? The answer lies in two propositions that are neglected by these approaches taken in isolation. First, we argue that the way policy is made changes the institutional framework in a broader sense. The institutional structure of the EU in this view does not only comprise the text of the basic treaties but also informal components of institutions that are often neglected in analysing the European Union.

Over the years, this is an incremental and cumulative process. Rules of behaviour are being defined and changed. Once agreed upon, these rules may acquire the same prescriptive force as formal rules. They emerge either in the normal policy process or as explicit 'inter-institutional agreements'. The prime example for the first type of rules is 'comitology'. Only after numerous

committees and practices and rules of behaviour within these committees had emerged in highly specific policy fields the Council adopted a formal regulation on comitology and later revised it (see Christiansen and Kirchner 2000; Joerges and Vos 1999 for overviews). Comitology touches the core of the EU law-making process and the relationship between the Commission and the member states. It is now clearly a part of the EU's constitution (Joerges and Neyer 1997). Examples for the second type are the budgetary agreements or those concerning the hearings of designated Commissioners before EP committees.

These rules change normative and cognitive expectations as well as the behaviour of actors in the EU system. They are part of the 'rules of the game' (North 1993: 12) comparable to the written Treaty rules. However, this constitutional dimension of policy-making is easily overlooked.

Second, changes in governance also change the course of integration. By integration, we understand not only the explicit constitutional decisions about the relationship between the EU and its member states but also incremental and informal changes in that relationship. Several factors work in this direction. The EU creates a 'communicative universe' (Bogdandy 2003): Regular reporting in the most diverse forms about actual member state behaviour with respect to the EU legislation or policies increases the level of information about other member states policies. Member states may always choose to ignore e.g. a recommendation but the information about this behaviour spreads through the EU system. This may turn out to be disadvantageous in cases where the same member state has a strong interest in the observation of a certain regulation by all others. It also increases the need for justification of non-conforming behaviour. This again is not a heavy sanction but adds to the constraints of policy making.

Governance approaches also build on regime theory and the compliance literature. The key difference is that international regimes are issue specific whereas the EU is almost universal in scope. The EU thus acts as a comprehensive institution in which the individual member state is embedded in a system of information and assessment in virtually every field of politics. As a result, member states mutually observe each other and constantly remind one another of their duties and obligations as members of a larger community. This does not mean that those duties and obligations are always perfectly observed. But there is a pressure towards mutual information and empathy in a multi-level system of governance. Similar forces may apply to the Open Method of Co-

ordination (Hodson and Maher 2000) and to integrating civil society into the EU policy process as this favours the emergence of a European political space.

These mechanisms and their effects have long been observed. We do not argue that they are new; they are not even restricted to the European Union although they find their most developed expression here. But we do argue that a governance perspective is best able to see their interrelationship.

3. The Shape of Governance in the EU

3.1. Characteristics of the Multi-Level System

The structure of the EU polity *ceteris paribus* is responsible for the way political processes take place and how policy outputs look like. Turning Lowi's argument (Lowi 1964) on its head, we argue that polity determines politics and policy. However, in order to establish precise cause-effect relationships, the particular characteristics of the EU polity which matter for political processes and political outcomes must be singled out. This endeavor has to proceed at a rather low level of abstraction if it is to yield specific results going beyond sweeping generalisations. As the independent variable of this type of inquiry is not the EU (which is unique) but more concrete parts of its institutional setup (which may exist in other states or international organizations as well), this approach does not suffer from the eternal $n=1$ problem of EU studies but allows for comparative inquiries. In this section we discuss some examples of this type of non-concrete elements of the Euro-Polity.

One such element is represented by the significant differences between policy areas in the EU, commonly referred to as pillars. Although comparative policy analysis usually reveals remarkable differences between policy fields even within one and the same territorial state, the differences in the EU are by far stronger. The Commission monopoly of initiative, the EP's increasingly asserting itself as a second law-making chamber, or judicial review by the ECJ may account for systematic characteristics of EU policy-making in that particular structure such as a possible asymmetry between 'negative' and 'positive' integration (Scharpf 1996). However, the very institutional structure that is responsible for this asymmetry is not present in the second or third pillar. Hence, there are large

differences in terms of political conflicts, policy outcomes and problem-solving capacity between the supranational and these 'transgovernmental' (Wallace 2002: 265) areas of the EU.

The governance approach argues that in the entire system, member states are still very important. An overall assessment of the distribution of policy-making powers between the European and the member state level suggests that the EU is stuck somewhere in the middle (Schmitter 1996), with large variations between policy fields. Over half a century, there is no uniform development towards ever increasing powers for supranational institutions. The emerging picture is more one of power-sharing between different levels with the member states retaining a very substantial role in decision-making including the exclusive power to extend or reduce EU policy-making competencies.

Even more important is that whereas supranational institutions have a substantial share in policy-making, the competition for political power takes place almost exclusively at member state level. Although the homogeneity of political groups within the European Parliament has steadily increased over the years (Hix 1999: ch. 6), there is no independent European arena for the competition for political power. The members of key European institutions are chosen by the member states, and changes in the party balance in the EP have at best a small impact on the outcomes of the EU policy-making process. As a result, European elections are still 'second-order national elections' (Reif and Schmitt 1980). Major political debates usually take place within neatly separated national political spaces. The European public space is fragmented and ephemeral (Eder 2003).

In short, political competition at the EU level is weak compared to federal states. EU-level institutions are strong in terms of their ability to shape policy outcomes and in terms of the resources at their disposal, compared to other international organisations and in some respect (e.g. in the case of the ECJ) parallel those of their national counterparts. But the sometimes striking similarities between the EU and territorial states – which are often overlooked by classical integration theory – should not obscure that the EU does not possess the two most important sources of power: the legitimate use of physical force and independent taxation (Genschel 2002; Weber 1978: 54).

A result of these characteristics and a further specific feature of the EU's institutional structure is the fact that EU politics is not characterised by hierarchical and majoritarian decision-making and implementation but by negotiations among

independent actors and institutions. These negotiations have to cope with two conflicting goals (Scharpf 1994). On the one hand, decisions have to respect member state autonomy. The EU institutions or other member states cannot strictly speaking enforce the implementation of a decision upon an unwilling member state as they lack the means of violence. Even if they were in possession of those means, the long shadow of future EU co-operation would suggest to use them with great reluctance because each member state might find itself in a similar position in the future.

A one-sided emphasis on autonomy preservation alone would prevent or at least hinder the resolution of collective action problems among EU member states. For this reason, member states have an interest in a general orientation of decision-making that is compatible with Union-wide goals. This is the second goal. Both are not merely general characteristics of decision-making but also normative principles. In the supranational structures, the special relationship between the Commission and the Council (Wallace 2000) is the institutionalisation of those two principles. In the transgovernmental structure, the institutionalisation of autonomy is much stronger.

The last example for elements of the Euro-polity that shape politics and policy is the fact that it is a multi-level system. The literature on 'multi-level governance' (e.g. Hooghe and Marks 2001) regards this as the single most important characteristic of the EU. However, it is important to avoid interpreting this notion in terms of neatly separated layers in analogy to the ideal-typical model of US-federalism. The European multi-level system is much more similar to the German system when decisions taken at the higher level are dependent upon the consent of the lower level (Scharpf 1988). As a result, institutional self-interests often prevail over substantive interests. Both systems are also heavily biased towards the preservation of autonomy.

However, one should not fall into the other extreme and overstate the similarities between European and German federalism. Thus, in Germany, the upper (federal) level and the lower (*Länder*) level are linked by the ubiquitous presence of integrated political parties across governmental levels. In this setting, a conflict between the levels of government is often transformed into a conflict between government parties and opposition parties at the federal level (Lehmbruch 2000). Due to the weakness of political parties and political competition at the EU level, this unifying factor across levels is absent in EU

politics. For this reason, negotiators at the EU level are less strongly bound to mandates and positions set at the lower level than is the case in German federalism. Because of the absence of this unifying factor, governments may even liberate themselves from the grip of their domestic constituencies by pointing to the necessities of compromising in a large negotiation system (Grande 1996). Actors in such a setting can resort to tactically motivated self-commitments (Schelling 1960: 22). On the whole, the relationship between the different levels in the EU is characterised by loose coupling. In Germany, levels are tightly coupled (Benz2003).

The absence of strong political parties at the European level, one of the structural sources of the EU's democratic deficit, presents a major factor for promoting agreement among governments. The different logic of party competition is not the only important factor that accounts for differences between European and German (and US) federalism. It has been used here merely as an illustration for the argument that referring to the EU as a multi-level system has no explanatory power unless research reveals the mechanisms by which the levels of such a system are linked.

3.2. Sharing authority in a multi-level system of governance

The intellectual challenge of the multi-level governance model is that it does not just describe the dispersion of authoritative competence across territorial levels but draws the attention to the interconnection of multiple political arenas in the process of governing (Hooghe and Marks 2001: 3-4).

The Treaties provide mechanisms to reconcile the strive for autonomy and member state control with the needs of efficient collective decision-making. But studying supranational procedures in the first pillar or transgovernmental ones in the second and third pillars just highlights to what extent both national governments and Community institutions, above all the Commission and the European Parliament, have become an integral part of joint decision making. It does not inform us about the management of political responsibility and political influence. National governments are accountable to national parliaments and the electorate. In federal systems, in addition, they have to consider the positions of sub-national units. Furthermore, state agents have to co-operate with private

interest groups in order to attune public policy making to societal demands. Managing the public-private interface is a challenge for national actors and Community institutions, whereas adjusting national systems of democratic accountability to a multi-level polity is the main task of governments.

Member state governments are faced with a 'negotiation-accountability dilemma' (Benz 2003: 8). Negotiations in the Council are mixed-motive games in which each participant aims at a collective decision that, nevertheless, should pay tribute to partial interests. Flexibility in negotiating positions that allow for a give and take across issue areas or rely on future trade-offs facilitate agreements. The price for avoiding deadlock in negotiations is the degrading of national accountability. Flexibility demands a high degree of autonomy which even the governing majority in parliament will be hesitant to accept. Member states have resorted to different formal and informal strategies in order to reconcile parliamentary accountability – and also regional participation – with the imperatives of efficient European negotiations. Irrespective of the diverse kinds of solutions, the main difference is between strategies of 'tight' or 'loose coupling'.

Although parliaments in only two member states have the formal right to issue binding propositions (Benz 2003), they can exert a *de facto veto* by threatening not to ratify treaty agreements or to oppose the transposition of directives. In daily practice, however, at least the majority faction in parliaments seeks to avoid putting a government under narrow constraints. For the sake of decision making efficiency some form of 'loose coupling' would be advisable, but most of the time actors resort to informal consultations. The 'critical dialogue between government and majority faction' (Benz 2003: 33) proved to be an efficient instrument of political concertation but it functions best when both sides avoid publicising conflicting positions and in this way it is adverse to transparency and public accountability. An indication that de-coupling may be on the rise is the establishment of national parliamentary offices in Brussels which furnish them to become a European actor in their own right.

The quest for influence in a system with dispersed allocation of governing authority has stimulated all kinds of actors to go transnational. National interest groups have adapted to the opportunities of multiple access and now pursue a dual strategy lobbying both at home and in Brussels. Likewise, EU associations and trans-national public interest groups now target both EU institutions and member state governments. Their incorporation into the European policy making

process at national and Community level is determined by the value they can add to efficient and appropriate problem-solving and the resources they command to raise a voice and get ear-time. The Commission, in particular, has been eager to prop up its role as political entrepreneur by inviting external expert advice. In recent years the argument that interest group and expert involvement are improving the quality of policy deliberations has been supplemented by reasons of upgrading legitimacy. In order to win public acceptance for the EU, the Commission seeks to involve public interest groups in particular (European Commission 2000: 5). It has also made a plea for 'better involvement and more openness' (European Commission 2001: 4), that is for opening-up the policy-process and for getting more individuals and organisations involved. Whether these pleas will achieve their stated goals remains to be seen (Scharpf 2002). It is, however, an indication of a strong perceived need on the part of the Commission to increase the legitimacy of the policy-process by involving more actors.

Networking is the most characteristic feature of EU governance (see Peterson in this volume) and a plethora of committees are nodal points of communication. A culture of consultation and dialogue is prevalent for two reasons. The first is that in contrast to a parliamentary democracy diverging interests cannot be framed in opposing ideological positions and decided by party competition. The Commission is supposed to be a non-political technocratic body, the Council is by nature an 'all-party government' and the European Parliament, because of the requirements of qualified majority vote, is most of the time forced to form a broad conservative-socialist coalition in order to gain influence. Hence, the logic of interest intermediation within each institution and to an even larger extent the logic of institutional interaction preclude the strong link between party politics and the substance of policy prevalent in the member states.

The second reason is that with new problems on the horizon and the complex context of fifteen national political systems policy-making entails above all defining the problem and analysing the given situation. Therefore, it is plausible to assume that gathering expertise and arguing will be the prevailing pattern of interaction. It is well accepted that the Commission takes the lead when negotiations concentrate on analysing the factual. Advisory committees assisting the Commission in drafting policy proposals and even comitology committees are geared to support the decision-making process by providing expert knowledge. The Commission has even a legal duty of '[...] taking account [...] of any new

development based on scientific facts' (EC Treaty, art. 95, 3) which is widely read as an obligation to consult scientific experts (Dehousse 2002: 14). As soon as negotiations turn to discuss what might be a fitting and appropriate solution scientific deliberations become deficient. The mode of communication changes from arguing to bargaining and government representatives go in front because they and not the Commission are considered to be in a better position to make judgements on questions of social and political compatibility. But even then the convincing argument in line with consensual knowledge is the common currency to trade negotiating positions.

4. Governance, Integration and System Transformation

After having discussed how the specific setup of the Euro-polity structures political processes and policy-making, we will now turn to the aspects of how the practice of governance shapes the EU's constitution and how these changes in governance lead to changes in the overall structure of the European multi-level system.

4.1. Patterns of Governance and Constitutional Reality

In the literature, there are two contrasting views about what the constitution of the EU actually is and what the major factors for change are. In the intergovernmentalist account, it consists of the basic Treaties and major agreements (such as the one on the European Monetary System in the late 1970s). It is changed through agreements among the member states at intergovernmental conferences or European Council meetings (c.f. Moravcsik 1998 and his contribution in this volume). The competing view argues that while this is true, it is not the entire picture. In this view the EU constitution has more fluid boundaries. Besides the Treaties and major agreements, it also consists of norms from other sources (Shaw 1999). These norms are easily overlooked because they do not result from highly publicised intergovernmental bargains but from small incremental steps that often have only a low visibility.

Incrementalism makes it easy to obscure a hidden agenda: '[...] integrationists promote their ambitions by stealth' (The Economist 2002, September 14: 33). It

may, indeed, be called a 'brilliant, but also slightly sinister strategy' (ibid.) that constitutional moves are drowned in a mass of technical detail, boring people into submission. In this section, we discuss a number of examples of how seemingly minor provisions acquire a constitutional dimension and contribute to a change in the overall system structure.

The first example is the 'notification obligation' (for more detail see Bogdandy 2000, 2003). There is no general act which regulates the Commission's right to ask member states for providing information. But individual directives, especially relating to legal harmonisation of the single market, include legal obligations to inform the Commission. In the field of technical standards and regulation the member states are required to notify already during the drafting stage any initiative concerning new technical regulations. They have to provide information at every step of their legislative process and they are prevented from adopting a new regulation before the Commission and other parties concerned had an opportunity to react. In case that the Commission regards an EU regulation as being more appropriate than a national one, the member government may not proceed with its own initiative. The interference with member state autonomy has expanded over the years by moving in three directions. The Commission gained a central position by defining the procedures to be applied, in particular by institutionalising a special standing committee and involving private economic interests. Furthermore, the scope of application has been enlarged and, above all, compliance has become compulsory because the European Court of Justice affirmed direct applicability.

Thus a minor change in reporting obligations over the years developed into changing the equilibrium between the national and the supra-national level. It did so in two ways, first, by strengthening the institutional position of the Commission in the European policy-making process and, second, by opening the national decision-making process to trans-border interference. For the sake of building up the single market, the notifying obligation has led to a change in legislative culture. The better informed national administrators are likely to take into consideration policy initiatives by other member states and appraise the relative benefit of a common EU regulation.

Another case illustrating how procedural provisions and institutional reforms interact is provided by the area of social policy. For example, social policy regulations at EU level were until recently underdeveloped for economic and political reasons. The Community's preoccupation with market building, the

uneven distribution of negotiating powers between the social partners, and the reluctance of member state governments to renounce social policy authority explain quite well the low standing. Institutional constraints made it easier to block social initiatives than to endorse them. After the introduction of majority voting in some areas of social policy not only governments but social partners, in particular the employer associations, changed their attitude. They agreed to a Commission initiative to launch a new and innovative corporatist procedure which was – with small corrections – inserted into the Treaty of Maastricht. Management and labour are now not only endowed with the powers to conclude voluntary agreements but, within the social dialogue, they can reach binding agreements that may subsequently be turned into Community law (art. 138, 139 EC Treaty; see Falkner 2000 for more detail). The Treaty provisions privilege the social partners in relation to both the Commission and the Council. It furnishes them with a right of initiative, otherwise the prerogative of the Commission, and with the right of policy formulation which under the Community method is the joint task of Commission, Council, and Parliament.

For our argument it does not matter that they succeeded only twice to reach an agreement (on parental leave and on atypical work) because this is owed mainly to economic and political context conditions. The more important point is that small changes in governance procedures at the European level had a considerable impact throughout the system. In the shadow of a Council vote the Commission found it easy to persuade management and labour to engage in Euro-corporatism and to form an advocacy coalition strong enough to push its point in the Treaty negotiations. A practice has now been established which opens new opportunity structures for social partners which now are core actors under this new ‘negotiated legislation’ procedure (Falkner 2000: 719). It tips not just the balance between actors in policy making at the European level but, quite obviously, has implications for the national policy process. The corporatist EU policy community has gained influence on national patterns of interest intermediation. Including social actors in the implementation of policies is supported by law¹, by a shared normative belief system endorsing ‘social

¹The Treaty of Amsterdam (art. 137,4 EC Treaty) stipulates that member states may entrust management and labour, at their joint request, with the implementation of directives adopted. In addition, several directives propagate explicitly social partner involvement in national implementation with the argument that they know best what is needed and an-

partnership' as an uncontested norm, and by institutionalised patterns of communication and interaction that reach across national borders (Falkner 2002).

In view of the persistent high level of unemployment, the European Council in 1994 took the first step by agreeing to an intergovernmental exchange of information. The approach has been further developed in terms of giving it a legal base by incorporating a new title into the Treaty of Amsterdam providing for a more elaborate procedure and an institutional infrastructure. The constitutionalisation did not confer any additional legislative or legal competence. It is an exercise in benchmarking introducing reporting obligations, procedures of target setting, monitoring and evaluation and assigning responsibilities (to the Commission and the Employment Committee) for managing the exchange of information, consultation and review.

The new provisions have been rated by some as 'largely symbolic actions' (Leibfried and Pierson 2000: 273) whereas others see the new approach in employment policy as the beginning of a re-structuring of the state (Deppe, Felder and Tidow 2003). In the perspective of normative democratic theory it is a concept that deviates from fundamental requirements of parliamentary democracy. The idea that only those who have to bear the cost of implementation have the right to participate in formulating and carrying out regulations runs counter to the fundamental right of equal democratic responsibility. An equally fundamental opposition has been voiced by proponents of European supranationality. A 'deliberative supranationalism' which leaves decisions on political targets and commitments to corresponding behaviour to voluntary agreements is accused to erode the basis of the Community system (Weiler 1999; for a critical evaluation see Joerges 2002: 28-31).

Such far-reaching conclusions seem, however, to be premature. Up to now the new modes of governance are of limited importance because they are applied only in a minority of cases and most of them are to be found in just two areas, environmental and social policy. Furthermore, when put under empirical scrutiny (Héritier 2002) it turns out that they do not live up to the high expectations in terms of improving policy making efficiency and implementation effectiveness. As a consequence any further expansion might be restricted and established procedures might be changed to fit the Community method. It is open to debate

appropriate.

whether the kind of co-operation now institutionalised in employment and other aspects of social policy is a 'starting-point' or a 'resting-point' (Wallace 2002: 32). In the past the Commission many times started to facilitate co-operation between the member states by making studies, delivering opinions and arranging consultations. Accordingly, some scholars see it in the perspective of an evolutionary pattern (Maurer, Mittag and Wessels 2003) which in a protracted trial and error process moves towards communitarisation. Others might argue that the Open Method of Co-ordination fits very well in the present functioning of EU institutions, which in daily practice have supplemented and partly substituted legal hierarchy by deliberation and negotiated compliance. The effectiveness of the comitology procedures rests as much on a communicative approach to problem-solving (Joerges and Neyer 1997) as the willingness of member states to respect Community law is advanced by 'horizontal enforcement' that is a network of discussions and negotiations which help to keep the constraints of implementation flexible (Snyder 1993; Neyer and Wolf 2003).

One outcome, though, is quite evident. The new modes of governance do not deprive the Commission of influence. It is the Commission that encourages the social partners to launch a policy initiative. The Commission provides the infrastructure for exchanging information and sharing knowledge, it builds and cultivates networks of experts, performs as process-manager and PR agent of shared conceptions. It looks as if the Commission has regained ground which it had lost to the European Parliament and the Council with the introduction of the co-decision procedure. The effect is twofold. First, it supports the trend towards informality and selective networking. Both decrease transparency and hence accountability of governance. Second, it pushes a trans-nationalisation of the European system. Member state governments lose their gate-keeping power especially in relation to resourceful actors. This has an impact not just on governing procedures but on substance. Interest intermediation at the European level is biased in favour of those who have the capacity to get organised and raise their voice and it is framed by the dominant logic of market formation. In this way the new modes of governance probably contribute to the process of uneven Europeanisation (Deppe, Felder and Tidow 2003), that is to say, the evolution of a system of deterritorialised regulation and territorially segmented accountability and mediation of public interests.

4.2. Europeanisation, the forgotten dimension of integration

For decades integration studies focused on the building of a supranational system of European co-operation and hardly ever asked how this might affect the domestic social and political systems. With the upraise of EU regulation in the mid 1980s and the ensuing interest in policy studies, research on the Europeanisation became a growth industry covering a broad research agenda. Because research interests extend to different dimensions and embrace divergent theoretical approaches it is not astonishing that Europeanisation is still a fuzzy concept (c.f. Eising 2003 and Radaelli 2000 for overviews).

The prevalent view defines Europeanisation 'as the process of influence deriving from European decisions and impacting member states' policies and political and administrative structures' (Héritier 2001: 3). It avoids any teleological connotations and leaves it open to empirical verification whether a conversion in outcome occurs or an internalisation of the organisational logic of the EU takes place. Supranational legislation is the starting point and research explores and explains in a comparative perspective the processing of EU input in individual political systems.

The bulk of literature is confined to impact studies of the EU on member states in terms of changing policies and, less so, on administrative structures and patterns of interest intermediation. But even in this relatively narrow field and in spite of a considerable number of empirical explorations, there is limited agreement of causes and effects. The reasons why it is so difficult to make compelling generalisations is not hard to understand in view of the complexities of subject matters giving rise to competing interest constellations and bearing in mind the long and varied institutional histories of European countries which national actors might defend fiercely or consider a 'burden of the past' (Olsen 2001). The attempt to design a parsimonious concept of 'fit or misfit' (Caporaso, Cowles and Risse 2001) is problematic because '[...] it tends to miss the complex dynamics of political processes induced by European policy inputs at the national level' (Héritier 2001: 9; see also Knill 2002: 201-204 and Goetz 2001: 220).

The main conclusion to be drawn from this debate is that policy regulation and administrative politics change though in particular 'national colours' (Kohler-Koch 2001: 88). Member states have responded quite differently to identical EU input even under similar external and internal context conditions (Héritier and Knill

2001: 257). The two most obvious reasons are that national and sub-national actors have a considerable latitude when implementing an EU policy and that costs of adaptation differ. It makes a difference whether alterations are restricted to modifications within a given pattern of sector regulation or whether they hit the core of national administrative traditions (Knill 2002: 41-45). In addition, the specific problem-solving approach of a particular country and its capacity for administrative reform are important.

Though the record of empirical investigation is mixed, the over-all picture is quite conclusive: decades of EU attempts of harmonisation and system competition have left a mark on national systems but they had no unifying effect. This first of all applies to policy regulation and administrative structures. It also holds true when looking at national governance beyond the narrow confines of administrative politics. Again, policy making at the European level has forced governments to adapt. Empirical studies document the intensity of participation of national institutions in the process of preparing, negotiating, implementing and controlling European level decisions (Wessels 2000). But the shift in attention and resources and the requirements of adaptation have not led to dramatic modifications in the overall system design of the member states. 'Traditional national patterns are resistant and apparently flexible enough to be sufficiently capable of coping with the challenges from the European level' (Maurer, Mittag and Wessels 2003).

These findings relate to the organisation within governments for managing European policy making and do not provide an over-all picture. In order to come to a general assessment of the Europeanisation of national governance, further dimensions need to be studied. An inclusive approach has to explore the shifting boundaries between the public and the private sphere, changes in public accountability and in the equilibrium between the legislative and the executive, and the organisation of interest mediation, in particular with respect to the role of political parties. This is difficult because the record is mixed and not all dimensions are equally well explored. What follows is a tentative move in this direction.

One could argue that the public-private balance has changed because the inbuilt preference for liberalisation and de-regulation in the single market programme has a tendency to set limits to public intervention. In addition, monetary union and above all the commitment to economic and financial stability has put national governments under strict and heavy constraints. However, these

two obvious trends have to be viewed in proper perspective: Efforts of re-regulation at the European level have been notable and, furthermore, social distributive and re-distributive policies have remained a national prerogative. The requirements of economic and financial stability set strict limits to public spending, but it is left to national governments to choose the appropriate measures of compliance. Furthermore, it can be argued that the provisions written into the Treaty just express in political terms the logic of sound economic policy which would otherwise be enforced by market forces in an internationalised economy.

Economic and Monetary Union has brought about the most spectacular change in national governance but it is a self-chosen external constraint that does not alter the functioning of the domestic governance system. It is rather the empowerment of economic actors by an integrated market and the lobby opportunities for trade associations in a multi-level system that distort the given equilibrium of social forces in the member states. Their gain in autonomy contributes to a transformation in the role of the state, from an integrative institution with superior power to a mediator between competing societal interests, and it favours the emergence of a system of network governance (Kohler-Koch and Eising 1999).

The process of integration also impinged on the balance between the executive and the legislative. The extraordinary high regulative output of the EU is a good indicator of the extent to which national parliaments have been deprived of their policy setting power. In addition, the internal dynamics of Council negotiations and committee work makes it easy for governments to escape their political accountability. National parliaments have made efforts to regain parliamentary scrutiny over governmental action but did not succeed. They did not find adequate procedures that would square the circle, namely exerting control without blocking the decision-making process and having influence which is compatible with public accountability (Benz 2003). This trend is not restricted to EU involvement but extends to many fields of international regulation. The highly technical mission of regulating complex subject matters like international financial markets favours the emergence of transnational expert groups. Though being still part of a national ministry, they control access to the international arena, share exclusive knowledge and contacts. They become socialised into an international club and gain autonomy from any kind of national control – be it by parliament or by their own ministry (Lütz 2002: 328-330).

The liberation of internationalised technocrats from public control may be the flip side of the coin of a still provincial world of political parties. Parties get organised where the power is and despite a deep entrenchment of national policy making in the supranational system of the EU, government power is still gained and lost in national elections. The national party system in many European countries is in flux but there are no indications that change relates in any way to the existence of a European Union (Mair 2000). Parties may have the EU on their agenda but an inward looking public audience makes it difficult to attract attention to political choices. To make matters worse, the public discourse does not reflect political responsibilities. When voting for the European Parliament the electorate takes into consideration the pro- or anti-European preference of a party though the EP has very little say in constitutional politics. In national elections parties are more often than not held accountable for the substantive policy outputs which were decided beyond their reach in Brussels. What is missing is an 'enlightened understanding' among citizens that is considered to be a prerequisite for a democratic process (Dahl 1989: 112).

4.3. A Governance Perspective on Eastern Enlargement

A governance perspective does not seek to explain the basic intergovernmental decisions on extent and timing of enlargement (Schimmelfennig 2001) but is interested in the consequences of enlargement for EU governance, EU institutional development and governance in applicant countries. The most important background condition for understanding the consequences of Eastern enlargement for European integration is that it considerably increases heterogeneity within the EU – heterogeneity in terms of the level of economic development, administrative structures and capacities, systems of political ideas, party systems, constitutionalism, to name but a few. Both policy-making and the constitutional structure of the EU have to cope with this heterogeneity. However, the easiest way for dealing with heterogeneity – independence of sub-units (e.g. states) which are comparatively homogeneous – is not available in the EU with its integrated market and its high degree of legalization (Wolf and Zürn 2000). Hence, the EU system will have to cope with this heterogeneity. Which consequences can be expected from a governance perspective?

With respect to the overall pattern of EU governance, one could expect a further increase in the importance of soft instruments. As decisions in the Council will be more difficult to reach after enlargement because of the increase in the diversity of member state preferences, strict and uniform rules become more difficult to adopt. More flexibility in terms of the substance of the decisions may therefore be expected in order to avoid deadlock. The EU has already a long-standing record of using suitable instruments. As the specific conditions for policy-making in the new member countries are far less known to the present EU members and the European Commission than it is the case among the present members, the need for information is going to increase.

This creates a demand for information obligations and related instruments as described in the previous section. The intensity of communication about member state policies in the EU is going to increase, and new member states will be intensely observed by both the old member states and by the Commission. This is not a one-sided process: The new member states are also likely to use information about policy-making in the EU and in other member states for increasing their policy-making options. On the whole, the EU may lean more towards the principle of autonomy than towards the principle of community. As a result, instead of more or less uniform policies agreed upon by common decisions, the role of regulatory competition among different systems of policy-making may increase.

There is, however, an alternative course of events: Applicant countries are required to make a rapid transition from pre-modern, undifferentiated forms of socialist governance to the post-modern EU form of governance. The capacity to make that transition depends largely on the policy infrastructure in place but could be eased by the lack of rigid, long-standing systems of governance in transition states.

Which of these two possibilities – increasing regulatory competition and informality or comparatively easy adaptation of Eastern European countries to West European models – prevails depends not least upon the perceived effects of Europeanisation among voters and political parties. The high fluidity of East European party systems as compared to their West European counterparts makes it very difficult to predict whether a durable pro-/anti-European cleavage is likely to emerge as a result of EU membership. But such a cleavage is more than a remote possibility, and even a reluctance towards supranational integration among

the parties from Eastern Europe that make their way into the European Parliament could endanger the present centrist and pro-European majority within the EP. A more Euro-sceptic EP would seriously affect the power relationships among Commission, Council and Parliament.

A further potential result of increased heterogeneity, as a result of enlargement and the ensuing emphasis on autonomy instead of community as a basic principle of European constitutionalism is the relative increase of transgovernmentalism as compared to supranationalism. This would not only amount to a change in the overall systems structure but has consequences for democracy and responsibility. From a governance perspective, it is more problematic because it leads to a further empowerment of the executive at the expense of parliaments because of the information advantages of executives which make *ex ante* parliamentary control very demanding and because parliaments are in a weak position when they demand *ex post* changes to policy packages agreed upon in difficult negotiations. On the whole, the positive side of enlargement – the creation of a larger security community, welfare gains from a larger market and a stabilization of new democracies – may be accompanied by a strengthening of the negative side of integration – an escape of political decisions from effective democratic control.

5. Conclusion

In the study of European integration, we have identified three distinct theoretical viewpoints, classical integration theory, policy analysis and the constitutional debate. We have also identified three issues which are important for understanding how the EU works and how it interferes with the political options of citizens, organised groups and member states but which are not adequately dealt with by the three approaches mentioned above. We argue that a governance perspective is able to put these issues in their appropriate place by drawing on insights from all three theoretical approaches.

The first issue is about democracy, legitimacy and the normative assessment of how an appropriate political order for the EU should look like. As they are both concerned with the problem of how peaceful international cooperation is possible, they remain largely indifferent to these issues. In their construction of social reality,

cooperation and peace are values in themselves which are difficult to put into existence. Hence, instruments for the normative assessment of different forms of cooperation are less developed than in other fields of political science where peaceful cooperation among actors is largely taken for granted, e.g. in the study of political systems of Western democracies. For classical integration theory, however, it is difficult to accept that it is precisely the extraordinarily high level of cooperation and institutionalization in the European Union which is problematic for democracy. Policy-analysis goes a step further than classical integration theory because it deals with the conditions for effective and efficient problem-solving, that is, with the output-side of democracy. In its construction of social reality, the question of responsible and responsive problem-solving (i.e. the input-side of democracy) is mostly missing whereas it is at the core of the constitutional debate. The latter, however, all too often excludes questions of power and of the social prerequisites of political institutions.

Second, a governance perspective is well equipped to treat the EU system as a whole instead of focussing on a single level of the European multi-level system or on a small number of policy areas. This allows to grasp changes in the overall system architecture caused by daily incrementalism. It also avoids treating EU politics as a zero-sum game between actors at different levels.

Third, it places the competition for political power at the core of integration research. In classical integration theory, this issue has often been reduced to a zero-sum conflict between member states on the one hand and supranational institutions on the other over control of the EU system. However, the competition for political power in the EU does not take place among states alone but also among political parties. The logic of party politics in the EU is not only an interesting subject in itself but has a major impact on substantive policies and on political responsibility.

Combining insights from these theories within a governance perspective does not create a comprehensive theory of European integration but a broader view on the integration process. This is a major advantage. As the object of study is not the EU as such but only parts of it such as 'networks' or 'loosely coupled systems', a transfer of concepts, hypotheses and results between research on European integration and research on other issues is easily possible. In such a governance perspective, the EU is not a single case but part of a larger research programme on the study of governance within and beyond the nation state which

invites comparisons across institutional boundaries.

In a broader perspective, such a view may help to remind us that the EU is not only an emerging institution for the reduction of transaction costs between states or for efficient problem solving and conflict management but a political order which massively influences the life of individuals. This political order does not only emerge on intergovernmental constitutional conventions with broad press coverage but also in small steps behind our backs. This is a silent revolution leading to the transformation of the core institution of modern political science – the state – in the region where it originally emerged. The study of governance in the European Union and beyond should not only lead to a better understanding of these broader processes but also remind us that what is at stake is not only technocratic optimization of policy processes but also an appropriate political order in Europe.

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