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The Evolution and Transformation of European Governance

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Abstract

Kernthese des Beitrags ist, dass sich in der EU ein spezifischer Typ des Regierens entwickelt, der sich – wenn auch in politikfeldspezifischen Variationen – deutlich von der Art des Regierens in den Nationalstaaten unterscheidet. In Weiterführung von Lijphart und Lehbruch wird eine Typologie entworfen, die aus der Verknüpfung kontextspezifischer Leitideen über angemessene Verfahren der Entscheidungsfindung (Mehrheitsregime bzw. “consociatio”) und politischer Sinnhorizonte (Identität bzw. Interesse) gewonnen wird.

Die Besonderheit des europäischen “Regierens in Netzwerken” liegt in ihren dynamischen Effekten, nämlich zum einen in ihrer Verbreitung in die nationalen Systeme hinein und zum anderen in der Beschleunigung der Vergemeinschaftung im Sinne der Expansion eines genuin europäischen politischen Raumes, der den EU-Staatenverbund zunehmend überlagert.

Notes

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Beate Kohler-Koch was a visiting professor at the Department of Political Science of the Institute for Advanced Studies in October 1998.

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1. Why Talk about European Governance?

European integration is about more than just building a common market; it is about political regulation as well. This lesson has been learned in the last decade. Since Maastricht, Community competences have been enlarged, covering many aspects of daily life. It is evident that European policy-making has an impact on substantive policies. Whether or not it has an impact on the ways and means of governing, is entirely another question. In the long run, the most important question is: Will European integration bring about a change in governance? The term ‘governance’ refers to patterns of governing which, as we know, vary from country to country.¹ In essence, ‘governance’ is about the ways and means in which the divergent preferences of citizens are translated into effective policy choices, about how the plurality of societal interests are transformed into unitary action and the compliance of social actors is achieved.

The essence of governance just like that of government is to reach binding decisions. The difference between government and governance is that government is the organisation in charge of making binding decisions, resting on a constitutionally defined authority. A government is – in principle – a unitary actor furnished with explicit rights and subject to control according to established procedures. In a democracy, it comes to power and will be substituted in a legally prescribed and publicly controlled process. Compliance to government decisions will be assured by the legitimacy of institutions channeling in an efficient and normatively accepted way the input process and assuring output performance. Governance is the process of bringing about binding agreements. Any kind of governance is embedded in institutions, enframed in norms and is dependent on authority to assure compliance. Institutions, normative orientations and the source of authority will, however, vary and be different when governance takes place without government. The interrelationship between institutional settings, norms, and sources of authority and modes of governance is a central focus of this contribution. It starts from the assumption that the European Union (EU), more precisely the European Community (EC),² is governed in a particular way, and that the predominant mode of European governance disseminates into member states. Two hypotheses will be tested:

Europe’s supranational Community functions according to a logic different from that of the representative democracies of its member states. Its purpose and institutional architecture are

¹ In this contribution, the term ‘governance’ is not synonymous with a new process of governing, as suggested by Rhodes (1997: 15), but embraces all different modes of governing patterns.

² The focus of this analysis is limited because it originated from an ECPR workshop gathering policy researchers who took an interest in the transformation of policy specific modes of governance in the process of Europeanization. Therefore, this contribution is first of all only dealing with the supranational pillar of the EU, i.e. the EC, based on the European Community Treaty. I did not test whether it applies to the Common Foreign and Security Policy or to EU Cooperation in Justice and Home Affairs. Secondly, it does not take account of the effects the changing international environment has on the EU. It is plausible to assume that the restructuring of the international system and the new security issues put on the international agenda have a strong catalytic effect, but I would hesitate to assess its strength without further research.

distinctive, promoting a particular mode of governance. The process of 'Europeanisation', i. e. extending the boundaries of the relevant political space beyond the member states, will contribute to a change of governance at national and sub-national levels. Being a member of the EU is concomitant with the interpenetration of systems of governance; any polity which is part of such a 'penetrated system'³ is bound to change in terms of established patterns of governing.

2. The European Community: a Very Particular System of Governance

It is part of the conventional wisdom that the European Community is a 'sui generis' polity, a political system which is far more than an international organisation and yet does not fit the notion of a federal state (Sbragia 1992a: 2). European integration has, indeed, taken us 'Beyond the Nation State' (Haas 1964) in two different ways:

1. by extending the realm of the political beyond the borders of the once sovereign nation states;
2. by building up a political system which is not and, in the foreseeable future, will not become a state.

One of the most characteristic features of this 'sui generis system' is that it is governed without government. The 'sovereign people' are sovereign only within the boundaries of their individual states. Representative democracy stops at state borders. There is no delegation of political power to a directly responsible top decision-making authority at the European level. Nevertheless, policies are decided at the European level and decisions have binding force on citizens within each member state. Although there is no government, citizens are governed. To put it in more general terms: Governance is not just limited to actions taken by a government and although it is embedded in a context of representative democracy, European Governance does not conform to the norms of democratic rule. This much is obvious; what follows is the less obvious but plausible assumption that when there is no government and no democratic representation, the ways and means of governing will be different.

These two aspects must be seen in conjunction, in order to understand how the European Community is governed. Up to now, both aspects have been treated separately. Research has either looked at the institutional structure and administrative organisation of the Community, or it has focused on the 'democratic deficit' of the EC. In the latter case, the debate has centred mainly on the constitutional design of the Community, on the evolution of public support and on

³ This refers to an understanding of 'penetration' as developed by Rosenau (1969), i. e. the right of external powers to legitimately take part in authoritative decisions.

the so-called 'structural prerequisites' of a working democracy in terms of political identity, a political infrastructure of intermediary institutions, and a European-wide public debate. Little attention has been paid to the ensuing patterns of European policy-making.

Policy analysis, on the other hand, has provided us with innumerable case studies which link the institutional set-up and the legal framing of EC decision-making to the processes and outcomes of Community governance. In comparing policy studies, a deep insight is gained into the particular features of EC agenda-setting and the formulation and implementation of European policies. Despite some variations across policy areas, the findings coincide with the picture drawn by those who are interested in assessing the politics of EC governance. There is a broad consensus about the 'logic of common decision-making' (Kerremans 1996). The lesson to be learned is that the very properties of the EC system result in particular patterns of actor relations and decision-making routines and that this in turn feeds back on the characteristic features of the Community system (Eising and Kohler-Koch 1994).

This type of research is chiefly interested in the 'performance' of the European system. Empirical research as well as theoretical reasoning⁴ are employed to investigate those institutional mechanisms of the European multi-level negotiating system which might promote or endanger its capacity for efficient decision-making and effective problem-solving. It is a functional rather than a normative debate. Normative deliberations arise when research touches upon the question of whose interests prevail in European politics and whether the system has a structural bias to privilege some group of actors over others. Even then the focus is not on the legitimacy of the Community system as such.⁵

Only recently has the discussion on the democratic fallacies of the 'negotiating state' reached EC policy research.⁶ Up to now, those who have written about the democratic deficit of the European Community have hardly ever bothered to take a close look at how the system is administered, and those who know all the details of how policies are developed have not

⁴ See in particular Fritz Scharpf's work; for the general argument, see Scharpf (1997).

⁵ In the interests of brevity, I do not differentiate here between two distinct lines of debate which hardly ever meet in actual research: First is the discussion about the relative importance of member states versus Community agents, and thus the normative question about preserving member state autonomy versus the pursuit of common European interests. The notion of 'two-level games' has introduced some new arguments into the intergovernmental debate, whereas the neo-institutionalist approach has highlighted conditions for 'Community friendly' negotiating strategies and the empowerment of Community agents. The second line of debate concerns research which looks into the shift between private and public actors and the inbuilt bias in favour of particular groups of organised interests. The institutional properties of the EC system are conceptualised as constituting a particular 'logic of influence' which invites private actors to enter the game and privileges some actors over others.

⁶ This topic has been highlighted as one of the central research questions to be dealt with in the research programme which is sponsored by the German Science Foundation (see Kohler-Koch and Jachtenfuchs 1996). It is the central focus in several projects for six years (1997–2002).

reflected generally on the legitimacy of being subject to European rule. Two camps of scholarly debate co-exist, and the participants live happily in a state of peaceful non-communication.⁷

However, in order to discover whether a particular system of European governance is likely to evolve, it is necessary to adopt both approaches. The policy-making process gains direction from the allocation of competences, formal and informal rules of decision-making, administrative routines and the working of 'comitology'. Nevertheless, this is only part of the picture. Governing is also directed by shared beliefs about what constitutes the legitimacy of a political system and what supports the claim to make binding decisions.⁸ No balanced assessment about the likely emergence of a particular mode of European governance can be drawn up without considering the constitutional framework which supports or does not support expectations of legitimate governance. The system, after all, is operated by actors who are all too aware of the fragile legitimacy of their joint enterprise. Therefore, the first hypothesis is that European governance is not just determined by the structural properties of the EC system but also influenced by actor's perceptions of legitimate organising principles.

The second hypothesis is that supranational integration and efforts to satisfy demands concerning efficiency and accountability will produce a very particular type of polity. The constitutional logic of the EC has never been clear. It may be seen as an intergovernmental enterprise, a supranational technocracy or a political community in its own right. Depending on which view is held, its legitimacy rests on the democratic quality of member state governments, on output performance or on the consent of the governed. The general assessment – although one may take issue with it – is that in the early years of the European Economic Community⁹ the policy programme laid down in the Treaty, in combination with the Commission's right of initiative and the unanimity rule in the Council reconciled the first two competing paradigms of political legitimacy. The EEC Treaty provided for an action programme which would be implemented best by an independent body of European experts. Political regulation extending beyond 'negative integration'¹⁰ was under member state control because any member state could use its power of veto.

With the deepening of the European Community and a changed international context, the conditions for ensuring the legitimacy of the system changed. A series of institutional reforms aimed to take account of the transformation of the basic conditions without upsetting this delicate mix of legitimacy. Reforms are supposed to improve the EU's capacity to act, to

⁷ This is a deplorable state of the art because evaluating the democratic deficit should take into account both the input and the output side of a political system.

⁸ This argument refers to the neo-institutionalist approach as put forward by James March and Johan P. Olsen; see in particular March and Olsen (1994). For a more elaborate account of the argument presented here see Kohler-Koch (1996).

⁹ That is, up to the completion of the customs union and the free market.

¹⁰ That is, the removal of trade barriers to allow market forces to penetrate markets as compared to 'positive integration', i. e. regulatory intervention to enforce a particular kind of integration (Tinbergen 1965).

ensure public consensus and to avoid both hegemonic suppression and unilateral opt out. The introduction of majority voting was a response to demands to unblock the decision-making process. The capacity to act became both more difficult and more important in a larger and perhaps less balanced¹¹ Community, which now embraces a wider range of responsibilities. Majority voting, however, infringes upon the sovereign right of the partners to ultimately decide what is and what is not acceptable to their home constituency. Introducing elements of democratic accountability through the European Parliament in compensation for the loss of intergovernmental and technocratic legitimacy will not help, because of the inferior representative quality of that parliament.¹² In addition, there is a fundamental incompatibility between the democratic norm of giving equal rights to citizens to state their views and the federal principle of giving equal representation to the collective members of the union.

The architects of the Union are stuck in the democratic dilemma of supranational integration with no blueprint available to get out of it. The more salient the issues to be decided, the greater the need to keep them under member state control, and the more emphatic the demands for democratic accountability. The domestic constituencies have made it clear that they are not content with a purely elitist system. The message to member governments and Community bodies alike from the referenda on the Treaty of Maastricht was that they had to bring the European Union 'closer to its citizens'.¹³

Any move towards a more democratic system has strengthened the unitary character of the system. Different strategies have been designed to increase the responsiveness of Community policy-making. The principle of 'partnership' has been introduced into various programmes to give the people affected a say in the framing and programming of Community policies. In particular the Commission has established routines to draw upon the expertise of public as well as private actors in order to ensure that its proposals are approved of by the governed. For years it has supported transnational interest formation and played an active role in 'networking', i. e. building up transnational policy communities around those policy issues which the Commission has an interest in promoting. The Commission has often been characterised as a 'political entrepreneur' which manages to give policy issues a European dimension and brings subnational actors into the game, whether for the sake of promoting European integration or for the sake of its own political standing vis à vis the member states. These strategies would not have been successful without a widespread acceptance that European policy-making is not just an intergovernmental affair. The permissive attitude of governments and the responsiveness

¹¹ According to conventional wisdom the European Communities have been well balanced thanks to the German-French partnership which – due to its internal difficulties – did not dominate the smaller countries. It is not that easy to assess the present regional balance within the EU because this is not just a matter of calculating resources. Immaterial assets are important too and, above all, power is a matter of perception.

¹² There is a broad consensus in the scientific community that a parliamentarisation of the EC system will not improve the democratic quality of the system. For a good summing up of the argument see Kielmansegg (1996) and Grimm (1995).

¹³ This is a quote from the Turin (1996) declaration of the European Council meeting.

of societal actors rests on a shared, if diffuse, understanding that a mix of functional representation, technocratic regulation, and institutionalised deliberation will increase the legitimacy of European governance. Each of these elements has been part of EC governance from the very beginning. Functional representation is institutionalised in the Economic and Social Committee (ECOSOC) and other advisory bodies with socio-economic representation.¹⁴ Their actual importance, however, and above all the general view that functional representation is a means of compensating for the democratic deficit, is on the increase.¹⁵ The same holds true for 'non-majoritarian institutions'¹⁶ and for elements of 'deliberate democracy' which scholars have spotted within EC comitology (Joerges and Neyer 1997).¹⁷ Supported by legal provisions for 'openness' and 'transparency' the mix of these elements is intended to serve two aims: First, to make up for the weakness of parliamentary legitimacy and second, to prove the appropriateness of a different type of governance. The message is that the EC is, by nature, a non-majoritarian system. It is a negotiating system which embraces Community institutions as well as economic and social actors and defines the role of the 'state', i. e. member state governments and the Commission, not as the apex of a decision-making hierarchy, but as a mediator in the common endeavour to come to terms with competing interests in designing common policies.

The foregoing account can be read in two different ways, the first of which sounds quite familiar. It concerns the Commission forging alliances with non-state actors to push reluctant governments towards an 'ever closer Union'.¹⁸ The second reading is less common. It is about delineating systems and reveals that, above all, the Commission takes an active part in redefining the boundaries of the European polity. What is at stake is the definition of the Community system as a polity, both in and for itself, and not just as a composition of member state polities.

The Commission is an active, although not the only actor interested in redefining the boundaries of the European political space. Its interests coincide with those of two different kinds of actors. First, there are the territorially based, i. e. sub-national actors who hope to improve their own autonomy, or at least to gain the right to be represented and to gain political influence in European affairs. In recent years, a redefinition of boundary rules has been

¹⁴ For example, the Standing Committee on Employment; in these committees both sides of industry are represented, whereas in other committees – whether Commission or Council committees – functional interests are only invited at the discretion of the Community body in charge.

¹⁵ A more detailed account would relate how the ECOSOC and with it the idea of institutionalised functional representation nearly disappeared and has been mainly substituted by interest group lobbying. In recent years, however, the idea has gained new ground in politics (most obviously in the EC-sponsored 'social dialogue'), and in political science, with the debate about 'post-parliamentarian democracy' (Andersen and Burns 1996).

¹⁶ Their political importance has increased in the wake of the creation of the single market, one telling example being the committees on standardisation; the scholarly debate has been illuminated in particular by the contributions of Majone; see among others Majone (1996).

¹⁷ For a comparative evaluation of how these different elements are supposed to improve the EC's democratic quality, see Kohler-Koch (1998a), for a thorough-going critique, see Greven 1997.

¹⁸ Preamble of the Treaty on European Union .

apparent. Regions (and later also municipalities) have been accepted as relevant units of political action. At first their political recognition was limited to a particular policy field, namely that of EC structural policies. Today, the representation of territorial collective identities within the individual member states has been accepted as a general principle, and is institutionalised in the 'Committee of the Regions'.

Established boundary rules are also contested by functional collectivities. Just as transnational mergers of companies gave rise to an increased number of truly European corporate actors, so interest associations have been created which are not just federations of national associations, but are genuinely transnational in terms of organising interests irrespective of territorial provenance and taking the EC as the relevant playing field.

But corporate and resourceful actors are not alone in challenging traditional boundaries. Community law empowers each individual citizen to cross national borders. This is not just a matter of mobility and the right of establishment. It extends to challenging the supreme power of national sovereignty. Member state citizens have the right to take legal action against their governments. In this way, the European Community has been institutionalised as the 'référentiel collectif' (Jobert and Muller 1987) for individual citizens. Community decisions open windows of opportunity, and citizens may reach out to take advantage of them irrespective of the rulings of their national governments.

Together, the Single Market and Community law have transformed the 'compound' into a 'political unit' on a sectoral basis. A compound system is governed through inter-system negotiations, while a political unit develops different modes of intra-unit governance (Scharpf 1991: 58). To the extent that the member states no longer define the range of political options, alternative ways of interest representation gain legitimacy. The member state governments can no longer claim a monopoly on representing the interests of their citizens. Other avenues are open to them, and other non-national actors are competing for the position of legitimate interest representative.

To sum up: The European Community system is both a compound and a unit at the same time. Agents of the state together with Community bodies are engaged in inter-unit negotiations. Notwithstanding this, individual, corporate and collective actors are also legitimate participants in the political process and take the EC as one single playing ground. Will this support the emergence of a particular mode of governance?

3. A Typology of Modes of Governance

What we need is a heuristic instrument to identify different modes of governance. A typology will help to characterise the most prominent features of the EU system. Precisely because such a classification system has to cover diverging types of governance, the categories on which it is based must encapsulate the essence of governing: The transformation of the plurality of individual preferences into collectively binding decisions.

The typology I would like to propose draws on elements of Lijphart's well-known typology of democratic regimes (1977), although in defining the criteria I am closer to Lehbruch (1967; 1991) than to Lijphart.¹⁹ Lijphart based his typology on two criteria: The structure of society and elite behaviour (Lijphart 1977: 106). In my reading of the working of institutions structural settings do not translate directly into modes of governance and elite behaviour is more of a dependent variable which may oscillate across diverging types of governance. Cross-national and cross-sectoral variations of governance types cannot be explained by looking at the properties of the constituent elements of a system. Attention should rather be paid to patterns of relationships and regularities in the interactions between these constituent elements (Lehbruch 1991: 124).²⁰ Structural contingencies as well as 'task contingencies' have a constraining effect.²¹ Nonetheless, '... collective actors involved have some latitude for *strategic choice*, in the design of inter-organizational relations' (ibid.: 132). This choice depends on the strategic orientations of actors who are guided by collective interpretations of social reality. Understanding a particular governance system requires 'the reconstruction of meanings and interpretations that support their institutionalization'; they '... have to be understood as products of collective historical experience' (ibid.: 148).

In this Weberian tradition, I take 'constitutional conceptions', ('*Ordnungsideen*') as the basic criterion by which to differentiate distinct types of governance. They embrace 'belief systems' about 'pertinent' (based on causal beliefs), 'appropriate' and 'exemplary' (based on normative beliefs) ways of governing.

¹⁹ Lijphart wrote on comparative government, not on international relations. Nonetheless, he borrowed the term from Althusius and when Althusius wrote about 'consociatio' he applied the concept to a federation of states. Lijphart himself wrote that the consociational model '... stands between the unitary British model and the model of international diplomacy...' (Lijphart 1977: 43).

²⁰ Lehbruch only referred to interactions of organisations and public bureaucracies as he was interested in interest intermediation.

²¹ In the EC, with its segmented system of policy-making, the notion of 'task contingency' which has been elaborated in research on industrial organisations is particularly relevant.

Table 1: Criteria for Classifying Modes of Governance

organising principle of political relations		constitutive logic of the polity	
majority rule	consociation	common purpose	parallel interest

The typology is based on two categories: One refers to *the organising principle of political relations*, the other to the *constitutive logic of a polity*.

There are two opposing *principles of organising political relations*: Majority rule and consociation. They have been linked to distinct structural settings. Majority rule is supposed to be based on a homogeneous political culture and a pragmatic orientation of political elites (Almond 1958: 398–399) which makes it compatible with an adversarial style of political discourse. Consociation is located in a pluralist society marked by deep cleavages which can only be bridged by a coalescent policy style and all-embracing grand coalitions. By their sheer existence, however, structural settings do not produce particular patterns of actor relations. They rather give way to a particular understanding of a given situation and the choice of matching strategies. Concepts of ‘good governing’ are developed in historic situations, interpreting contextual conditions in view of how best to deal with the problems and challenges which arise.

Interpretations are hardly ever unequivocal, however, and in the European context it would be misleading to expect a direct translation from structure to governing concept. There are two good reasons for this. First, European history is rich in political thinking and institutional experiments and thus will nourish competing world-views on constitutional politics. Furthermore, there is a variety of national traditions accounting for quite divergent practical experience. Second, the EU as a ‘polity’ is still in its formative phase, and its very ‘nature’ – not to mention its ‘finalité politique’ – is still contested. Concepts will differ, depending on the interpretation chosen as to what sort of political animal the EU is or ought to become.²² Therefore, it is difficult to predict which will become the dominant interpretation. Research is challenging because the concepts which emerge in today’s politics tend, over time, ‘... to petrify into ideological sediments that guide much of the interpretation of later crisis and structural adaptations’ (Lehmbruch 1991: 148). This ‘emerging concept’ will, however, not

²² It is somewhat surprising that five decades of discourse on governing the European Community has hardly changed the views of national elites on the nature and the most appropriate way of governing the emerging European polity. National differences are even more pronounced than partisan ideological inclinations. This evidence has been produced by a comparative research project just concluded at Mannheim (Jachtenfuchs/Diez/Jung 1998).

merely aggregate the divergent national and partisan beliefs about legitimate types of governance. It will be 'path-dependent' in terms of taking up what was written into the founding treaties and subsequent institutional reforms. Intergovernmental high-level agreements and daily practice, too, have established an institutional system and numerous policy regimes which constrain choices in interpretations and strategy. In addition, apart from sharing divergent belief systems, actors have competing interests and a different perception of their own mission. Member state representatives by definition are guardians of the constituent elements of the EU system whereas the Community institutions (the European Court of Justice, the European Parliament and the Commission) are agents of the 'European interest' and an emerging European polity. Last not least, the EU system is segmented in three pillars of quite different constitutional quality and embraces quite divergent functional constituencies.

To put it in a nutshell: Consociation and majority rule are not organising principles born out of a given structural situation, but the result of strategic choices taken over time and driven by some fundamental beliefs about the legitimacy of specific patterns of governing. Consociation is a conscious concept to bridge the heterogeneity which is supposedly incompatible with (even temporary) subordination of a minority to the wishes of a majority. Majority rule, on the other hand, expresses the belief that forming the 'minimum winning coalition'²³ (Riker 1962: 32–33) is the best way of securing efficient government. Subordination is accepted because it is in the logic of political competition that government is a temporal affair. Compliance rests on the assumption that, in the event of poor government performance, the minority will attain the majority position.

The second dividing line between types of governance is that which marks different conceptions of the *constitutive logic of a polity*. This 'constitutive logic' is a boundary rule of a particular kind. It defines the grounds and reasons on which a legitimate political unit of action will be formed. The answer may be given in two alternative ways. Collective political action may be considered to be legitimate because it is based on uniting those who are 'bound together'.²⁴ Politics is an investment in a common identity which is expressed and will be reproduced in the political process. According to this line of thinking, the pertinent concept of governing is the pursuit of a collective purpose, acting on behalf of a community of citizens. The contrasting concept builds on 'premises of individualism and self-interest' (March and Olsen 1995: 5). Governing has to reconcile the competing preferences of self-interested individuals in an institutionalised system of peaceful conflict resolution. The legitimate right to have "voice"²⁵ is not defined by membership in a territorial constituency but is extended to all who are 'affected'

²³ 'Minimum winning coalitions' are based on the assumption that any party which wants to govern will only take as many coalition partners on board as are absolutely necessary to assure the majority because, with each new partner, new demands have to be taken into consideration.

²⁴ By this concept, I am not referring to any concept of 'primordial' communities ('Volksgemeinschaft'), which rests on inalienable properties, which in turn cannot be acquired. I refer rather to concepts of 'communities of will'.

²⁵ 'Voice' and 'exit', when put into quotation marks, refer to the concept of Hirschman (Hirschman 1970).

by a policy. Anybody with a 'true interest' and anybody who has the capacity to improve the quality of a decision to be taken, is a legitimate partner in politics. Heterogeneity is the hallmark of the system, and parallel interests will be organised along functional rather than territorial lines.

When these two categories are combined, four modes of governance can be distinguished:

1. 'Statism' based on majority rule and supported by a dedication to a 'common purpose',
2. 'corporatism', which includes competing social interests in consensus formation in order to achieve the common good,
3. 'pluralism', which combines majority rule and the particularistic pursuit of interests,
4. 'network governance', which also builds on self-interested actors and aims at upgrading common interests by negotiations.²⁶

Table 2: A Typology of Modes of Governance

constitutive logic of the polity	organising principle of socio-political relations	
	majority rule	consociation
common purpose	statism	corporatism
parallel interest	pluralism	network governance

When looking for empirical cases²⁷ which fit into a typology of governance, the most common approach is to look merely at the *organising principles* of political relations.²⁸ In this perspective

²⁶ 'Upgrading of common interest', a central topic in neo-functionalist writings, is not meant to aim at a preconceived 'common good' but to avoid sub-optimal solutions that would result from unilateral action and to achieve by cooperation 'positive-sum' solutions.

²⁷ When referring to empirical cases, it should be remembered that first, reference is made to political systems as they developed in a specific period of time and that second, the description aims to highlight the characteristic features distinguishing one system from the others.

²⁸ Although I only cover political relations in the empirical illustration, I claim that they are general principles which apply to social relations as well.

the 'British model' matches the 'majority rule' type and the 'Swiss Model' corresponds to the consociation type.²⁹

The characteristic features of these two models are well known: In the 'British model'³⁰ the composition of government is 'unitary' by nature, i. e. a majority is in power and the minority in opposition. Politics is ruled by competition and political discourse is adversarial. Precisely because competition is the rule of the game, majority governments are based on 'minimum winning coalitions'. The system thrives on a pragmatic approach to conflict resolution which is most likely to exist in a culturally and politically homogeneous environment.

The 'Swiss model' is less well known, but easy to remember, because it is the expression of a well-known cultural and social plurality.³¹ The most characteristic feature of such a system is a coalescent style of politics aimed at consensus formation. Grand coalitions and a right of veto for minorities are the rule and not (as in the British model) the exception. It is in the logic of the system that all significant segments of society cooperate in governing the polity. This holds true for political systems segmented by deep cultural or social cleavages as well as for federal systems in which – independent of the nature of societal cleavages – the political body is segmented along territorial lines. The German case nicely illustrates the fact that, in federal systems, territorial segmentation does not necessarily coincide with a cultural or social segmentation of society. Nonetheless, the particular political organisation of parts of a largely homogeneous society gives rise to political segmentation. Again, it is not structure which determines governing patterns. The Federal Republic of Germany is considered to be a typical example of a consociational democracy, whereas the United States, despite having a federal construction, belong to the majoritarian camp.

The second divide, i. e. differentiation according to the criteria laid down for what constitutes the *logic of the polity* – a drive for a common purpose or for individual interest materialisation – is most pronounced in state-society relations. France is viewed as the most typical example of the 'étatist' philosophy. Based on the notion of 'état-nation', the 'state' is responsible for preserving the identity of the nation and for giving expression to the 'national interest'. Politics according to this logic is by nature "expressive", it is the perpetual reproduction of the core 'referentiel', i. e. the national will, 'la nation'. Private interest groups lobbying the government to push partial interests are a reality of life but not appreciated, because lobbying is considered to be incompatible with the system. The authority to govern does not rest on successful interest

²⁹ Both models have already been dealt with in depth by Lehbruch (1967) and Lijphart (1977).

³⁰ Many would argue that the 'British' or 'Westminster' model bears little resemblance to today's reality. Rhodes (1997) argues that there has been 'a shift from the Westminster model to the differentiated polity' (24), i. e. '(i)t replaces strong cabinet government, parliamentary sovereignty, HM's loyal opposition and ministerial responsibility with interdependence, a segmented executive, policy networks, governance and hollowing out' (ibid.: 7). According to him: 'the unitary state is a multiform maze of interdependencies' (ibid.: 16), best characterised as 'the differentiated polity' (ibid.: 7).

³¹ Most obviously expressed in its four linguistic communities.

intermediation but on electoral voting and a strong state bureaucracy. Those who are in power are not in an exchange relationship with segments of society, they are in command. Government has the legitimacy to demand subordination. The United States are in the opposite camp. Politics is not about creating and giving expression to the 'national will'. It is an interest-driven game about who decides what. Anybody who is in command of resources and skills has the right to exert influence on the 'authoritative allocation' of material and immaterial goods.

Consociational systems differ along the same line. The belief that politics must pursue a collective purpose is the guiding concept of (neo-)corporatist systems. It governs inter-group relations and is also embodied in intra-group relations. The essence of (societal) corporatism is that a strong state is bargaining with a limited number of encompassing associations that enjoy representational monopoly and control membership behaviour (Schmitter 1979: 13, 21). Their coherence and their capacity to secure compliance will not come about just by the simple aggregation of interests. Cohesiveness is supported by common aspirations; an aim is at stake, not just parallel interests. Partisan allegiance, which provides the cement, has a strong ideological component. Interest groups are institutions which shape the identity of members. Membership has connotations of belonging and 'exit' is not just a matter of individual cost-benefit calculation. Cohesiveness is the necessary condition for a collective group to turn into a 'corporate' actor. Compliance is a powerful resource in exchange relations. When associations lose their 'weltanschauliche' attraction, the corporatist system starts to crumble.

When compared to other systems, the most obvious feature of a 'network' system is that public-private exchanges are not bargaining processes between government and a 'cartel' of organised groups (Lehmbruch 1979: 54) but include multiple and competitive actors. The rationale of the system is managing differentiations. This is most pronounced in the case of the EU. It lacks a unifying ideology which would give collective action binding force. The 'European' in the construction of a Community in Western Europe has never been anything more than a vague allusion to a common, though very divisive history and an overarching cultural tradition of Christianity, Roman law and enlightenment. Its reason for being is purely functional. It is based on the assumption that institutionalised cooperation, when properly handled, may turn into the mutual benefit of its members, be it for peace, security or welfare. Common institutions have been designed to give the system durability and to support the 'up-grading of the common interest' in inter-group negotiations.³² Governing involves reaching agreements in a highly interwoven negotiating system with two main actors, the Council and the Commission, who are not politically accountable in any direct way. Putting aside the democratic implications for the moment, the result is policy-making without politics. There is no voting mechanism which could mobilise a sense of political dedication to the European enterprise or give partisan support to a majority position on vital issues. 'Political primacy', therefore, is alien to the EU

³² EC institutions were deliberately designed to strengthen the 'common interest', not just to reduce 'transaction costs'; see the Jean Monnet method of partnership (Wallace 1996: 43).

system. Its legitimacy is confined to a rational calculation of costs and benefits.³³ It is a system based on the recognition of a plurality of legitimate preferences which have to be reconciled by consent. And because it rests on the assumption that politics is interest-driven, the main concern is with optimising output. The basic rationale is to improve performance because this is considered to be the only way to secure legitimacy.

Since *consociation* is the widely accepted governing principle and *interest* is both the rationale for exchange relations and the genuine reason for lasting agreements, the EC is well equipped as a network type of governance.³⁴

What is special about 'network governance'? First of all, it is not just an academic concept, used as an analytical tool in academic research; it is a political concept as well. The core idea is that politics is about problem-solving and that the setting of policy-making is defined by the existence of highly organised social sub-systems. It is evident that, in such a setting, efficient and effective governing has to recognise the specific rationalities of these sub-systems. Governing is about fitting new regulatory mechanisms into an environment which is functioning according to its own regulatory logic and has so far been unwilling or unable to change. European integration is a project of transformation in a highly complex constellation. Introducing new and sometimes quite deviant regulatory principles cannot be done by unilateral steering. Neither the institutions of the EC nor the predominant philosophy allow for a hierarchical system of governance. Optimising performance calls for a sympathetic treatment of target groups. This is not meant to imply that their partial interests should prevail but rather that it is reasonable to proceed in a way which makes them adapt in a productive fashion to the new situation. The Community tends to be a negotiating system, specifically a negotiating system with a variable geometry because, depending on the issue at stake, different actors have to be considered. It is not only member governments who negotiate; various public and private actors are also part of the game.

Second, 'network governance' may be constructed as an ideal type useful for heuristic purposes. In drawing up a general picture of 'network governance', four characteristic features stand out: The role of the state, rules of behaviour, patterns of interaction and the level of political action. The 'state', in terms of the most relevant public actor within a political system is no longer an actor in its own right. The *role of the state* has changed from authoritative allocation and regulation 'from above' to the role of mediator.³⁵ Governing involves bringing

³³ It is by necessity a reductionist concept of legitimacy. The legitimacy of 'representative government' rests on institutionalised procedures of democratic participation and control (input legitimacy), the performance of a system in the interest of the citizens (output legitimacy) and on identity in terms of the identification with a political community that extends equal rights and obligation to all of its members.

³⁴ The ideas which follow have already been developed in Kohler-Koch 1996: 369–372.

³⁵ This does not imply that government is just another group among the multitude of pressure groups nor that, from a methodological point of view, the concept of 'group actor' has not been applied to government before; see Richardson and Jordan (1979: 17).

together the relevant actors of society. Networking is a principal task and it is best accomplished when offering institutional frameworks which reduce transaction costs and give stability to self-regulatory agreements. The public administration is an actor which mainly organises the arena for political exchange and agreement.

Distinct *patterns of interaction* evolve, too. Hierarchy and subordination give way to an interchange on a more equal footing. The once clear-cut borderlines between the private and the public spheres become blurred. Multiple overlapping negotiating arenas emerge. The 'state' is not a unitary actor but is divided into functionally differentiated sub-structures which are part of sectoral 'policy communities' and drawn into various 'issue networks'.³⁶

Rules of behaviour and the prevailing decision-making styles within a negotiating state will differ from those prevalent in a hierarchical state. Without suspending the assumption that actors are self-interested and rational, it is plausible to assume that the structure of their situation will have an effect. Actors are tied up in a stable negotiating system which puts a high premium on 'Community friendly' behaviour. Nevertheless, it is best compared to a 'mixed motive' constellation 'in which the parties have common as well as competitive interests' (Scharpf 1991: 63).³⁷ Joint problem-solving is usually linked to the distribution of benefits. The commitment to a collective good, therefore, is as much part of the game as is the pursuit of partial interests.

The *level of political action* is brought down to those affected by the policy and whose active support is needed for implementation. 'Joint problem-solving' will by necessity be functionally more specific. Any policy that is geared to the 'mobilisation of indigenous resources' and 'joint learning' has to be decentralised and carried out in smaller units at lower levels. 'Subsidiarity' is a core principle in network governance. The controversial discussion that followed its introduction into Community law highlights the ensuing difficulties. Conceding more autonomy to the 'local' level gives rise to provincialism and the exploitation of the general interest.

4. When Types of Governance Meet

Let us assume that within the Community system a network type of governance is likely to emerge. What is the impact of EC governance on the established governance systems within the member states?

At first sight, it is obvious that governance patterns across EU member states vary considerably.³⁸ A first simple, but plausible hypothesis is that the readiness with which national

³⁶ The terminology follows Marsh and Rhodes 1992.

³⁷ For a thorough treatment of the general argument, see Scharpf (1997).

³⁸ See Vivian Schmidt's (1999) analysis of the match of EU and national systems of governance.

systems of governance might adapt will depend on the 'match' of systems and on parallel developments, whether in response to domestic or to international forces. Furthermore, in view of the well-known inertia of long-established and complex organisations it is more likely that innovations will succeed as 'extensions' to rather than a replacement of traditional patterns (Héritier et al. 1996). Last but not least, there is a good deal of evidence that '... Europeanisation of national governance is compatible with the maintainance of very distinct national institutional arrangements' (Goetz 1995: 93). Is path dependency telling the whole story then?

Matters are not that easy. There is first the question of the scope and range of the possible impact of European governance. The EC has by no means universal competence. Does it make sense to assume that governing patterns prevailing in only a few, but central economic policy areas will spill-over into the system as a whole? Or is it more likely that changes will be contained within specific policy sectors? Keeping in mind the fact that EC policies are highly sector specific, a 'meso-level' approach might be most promising. Looking at individual sectors would also take into account the fact that EC policies are at different stages of development, i. e. that their maturity differs from one issue area to another.

By examining the various policy areas, we will certainly get a more detailed picture. But knowing more about the variations in governance practices still does not tell us anything about what makes a system change. In order to follow in a systematic way how a particular mode of governance is transmitted from the European to the national level, three distinct avenues may be considered: (1) imposition, (2) involvement, and (3) supply.³⁹ Imposition is the one-way flow from the European to the national level, whereas involvement and supply see the recipient playing a more active role. Being *involved* means being confronted with the European type of governance in practice. Experience may or may not change the appreciation of particular modes of governance and the readiness to adapt. *Supply* will only produce results when it meets demand and finds ways of becoming incorporated into the actors' strategies. Because the EC is a political space open to all,⁴⁰ it provides opportunities for various actors who may have outside support and encouragement to pursue their preferences. To merely talk about 'impact' would obscure the active and interactive dimension that supports the diffusion of modes of governance.

It is worth differentiating between three different ways of transmittance for yet another reason. Governance has an ideational dimension as well as an organisational one. And the impetus to change either one of them is passed on in a different way. The ideational dimension relates to shared concepts of what legitimate governance is about. It relates to belief systems about what is appropriate and exemplary in the ways problems are solved, how conflicts are mediated and

³⁹ For a more detailed account, see Kohler-Koch (1998b: 21–23).

⁴⁰ The metaphor of the 'multi-level system of government' tends to obscure this fact. Consequently, I prefer to talk about a 'penetrated system of governance' (see Kohler-Koch 1998b: 15).

how public-private relations are organised. Belief systems can hardly ever be 'imposed'. They may change because learning takes place or because the discourse organised around a new policy contributes to produce a new 'guiding concept'.⁴¹ On the other hand, belief systems are certainly not immune to power politics. A different concept may become dominant due to a shift in the balance of power between competing advocacy coalitions. Imposition is more likely to occur when it comes to the more tangible parts of governance, i. e. the organisation of the political process. This relates to the admission of actors, the allocation of competences, the fixing of formal rules and procedures and the definition of the boundaries of a policy.

Imposition is closely related to EC policies. It takes place whenever a European policy regime is established which links the objectives that have been agreed upon to a particular set of regulatory procedures and a distinct group of actors to be included in that policy domain. The provisions for implementing the EC's regional policies are a good example of how a programme has been linked to a procedural logic. 'Partnership' is the formula which stipulates taking sub-national as well as social actors on board in the framing and implementing of structural fund projects. Programmes, however, are not the most convincing case for imposition. They are of limited scope and apply only to those who are eligible and willing to participate and accept the strings attached. Regulatory policies leave no room for escape. They have binding force although they leave some latitude for national variations when formulated as directives. But even regulatory policies are not a clear-cut case for imposition. By following the history of a directive, it becomes quite obvious that changes in governance are hardly ever imposed. Adaptation is a process which develops along with the protracted negotiations of a policy. Pre-emptive moves are more likely to occur than subordination. Adaptive moves occur before and not after a directive has been issued.⁴² Subordination to legal enforcement once a policy has been established tends to be the exception, and indicates opposition locked into a particular (national) context.⁴³

Negotiation entails the exchange of information, defending preferred policy options on grounds of optimising regulatory problems, etc. This is an ideal situation in which to initiate learning processes or to ease adaptive behaviour. In the EC context, *involvement* may be considered to be the most effective way of bringing about change in governance. 'Involvement' in the EC context is not a private affair in terms of inviting individuals with particular properties to become members of a network.⁴⁴ Networks embrace organisations, and operating a network means

⁴¹ That this is not the same as 'learning' is convincingly argued by Gottweis (1999).

⁴² Comparative case studies like those by Aspinwall, Eising and Lovecy in Kohler-Koch/Eising (1999) give convincing evidence.

⁴³ For a long time, German vine-growers could be taken as a typical example: Locked in a position of structural minority, they had no chance of pushing their interest at the European level whereas at the national and, in particular, the local level they could expect indulgence through exemptions. This is why for a long time they never engaged in pro-active strategies.

⁴⁴ Even when a particular kind of expert knowledge is needed, the expert invited to a committee is the one who is supposed to represent a scientific community.

managing interorganisational coordination. Due to the complexities of interorganisational systems, particular strategies have been developed. Although no 'unequivocal design norms' (Alexander 1995: 325) may exist, management strategies may be transferred into a different context. With the multiplication of autonomous actors at the national level, structural similarities spread and invite transfer behaviour. Changes of whatever sort come about in an incremental and mainly bottom-up process of adaptation. They involve a multitude of actors seeking direction under the pressure of rapidly changing conditions brought about by Europeanisation and globalisation simultaneously. Being involved in the formulation and implementation of European policies and in the concertation of transnational interests, they become socialised to new practices. Being involved implies being part of an institutionalised learning process. Experience will teach the deficiencies and/or the attractiveness of a particular mode of governance.

Supply sounds like the least active strategy: The Community sets an example in best practices of governing and elaborates more or less convincing governing concepts. It would be overselling the case to expect this kind of supply to trigger change. A constructivist approach helps to conceptualise how ideas and political practice spread and give policies binding force.⁴⁵ 'Positive'⁴⁶ European integration enmeshes national and Community actors in a complex discursive process. It incorporates a shared understanding of the basic rationale of the aims and purpose of building a 'European Union'. This has a structural dimension. EC policies are usually developed by extending existing Community competences. In this way, new policies are functionally closely related to established ones, which explains why they are so much in line with established philosophies. What looks like a well-designed strategy and proof of the dedication and entrepreneurial capabilities of the Commission is, in fact, built into the system. Extending the scope of competence from one field to another meets less opposition when it is done according to the logic of supplementing rather than inventing a new policy, and when it is in line with tried and tested principles and regulatory patterns.

The drafting of a new Community directive is bound to stimulate discussions which, on the one hand, are nested in the national context and, on the other hand, relate to a transnational discourse. The Community institutions allow the Commission to take the lead and endow it with the capacity to organise the discourse in a way that will highlight differences, create links between different discourses and produce 'bridging concepts' that may spur consensus.

Negotiations about Community policies are always competitions about in Gramsci's terms 'hegemonic concepts', in terms of defining substantial objectives and appropriate modes of sectoral governance. The 'supplying' of a persuasive concept is one side of the picture. The other is the gate-keeping powers of those who want to control the supply and demand of

⁴⁵ Such an approach has been applied to European policies in the field of research and technology (Kohler-Koch/Edler 1998) and in biotechnology (Gottweis 1999).

⁴⁶ That is, developing the integration process by political intervention.

concepts. In an open society, it is difficult to control public discourse. The best way to do so is to limit the scope of the policy under discussion. Control is exerted by manipulating the arena in which concepts will be taken up for discussion. By defining the policy issue in a particular way and by keeping policy agendas separate,⁴⁷ the policy arena will be open or closed to particular kinds of actors. It is the ‘core executives’⁴⁸ which police the boundaries of an issue area. In so doing, they determine which actors may legitimately claim to be affected and take part in the discussion. It is this kind of ‘border politics’ which opens or closes the gates to the spread of conceptual ideas.

5. Establishing the Framework for Empirical Research

In order to provide an answer to the question of whether the European Community is bound to develop a network type of governance and transpose it into the governing systems of its member states an analytical framework is needed that will grasp the complexity of an ongoing process of change. For this very reason, I have introduced a typology of systems of governance which allows us to differentiate between modes of governing and provides us with a basic understanding of the underlying logic of the diverging types of governance. It has sketched out the most characteristic features of governing in networks because it has been argued that it is plausible to assume that the purpose and institutional architecture of the European Community may be best suited to a network type of governance. In addition, I proposed a model in order to give a systematic account of different ways of transposing governing systems from the European to member state level. There are good reasons for assuming that such a transfer will occur under the pressure of shifting perceptions of legitimacy both at European and member state level. The deficiencies of parliamentary democracy raise the value of functional representation and expert participation in politics.

The emergence of a particular type of governance will certainly be shaped by the constitutional framework of the EU and its members. Limits are imposed by nested contexts. Changes in sectoral governance must take account of governing patterns in adjacent sectors. Contingencies may spur on or retard the dissemination of new types of governance. Nevertheless, it is not simply a case of ‘historic institutionalism at work’. Adaptation occurs in the shadow of the market. Both the single European market and globalisation are reshaping the context in which actors formulate their preferences and strike bargains. Shifts in power and preferences may make different modes of governance more attractive. Governance change, after all, involves actor strategies taking into account the operational costs of change and the

⁴⁷ The recent Intergovernmental Conference gives a good example of agenda management in order to keep arenas separate. Monetary issues were deliberately kept off the agenda to avoid any attempts of mingling issues.

⁴⁸ Dyson and Featherstone (1999) highlight in their study on the negotiation of the Economic and Monetary Union how a policy issue has been kept under the control of core executives. For the concept of ‘core executives’, see Dunleavy and Rhodes (1990).

legitimacy of a regulatory logic as compared to established rules and procedures. The shadow of the market can be felt in another way. Faced with the inherent complexity of a network system of governance, conceding even more allocative powers to the governing mechanism of the market may become attractive.

When considering actor strategies, power in terms of a policy-specific capacity to act should not be under-rated. The construction of the European Community may not change patterns of traditional interest mediation, simply because actors at national level lack the capacity for transnational interest representation. Weak actors may be condemned to provinciality because they do not command the necessary resources to become a European player in the EC polity. Enlarging the policy space discriminates against actors who are affected but incapable of becoming a partner in the new game. Intergovernmentalism, i. e. strengthening the components of the system, may be a very attractive alternative for them. The Commission, on the other hand, has a vested interest in upgrading the unitary character of the system and drawing in many different types of actors. Defining the realm of the Community is shaping the architecture of the polity and will consolidate particular patterns of governing. Though institution building touches on the prerogatives of member state governments many other actors take part in it. However, whenever actors disagree, it becomes quite obvious who the 'core executives' are. The national governments are the final arbiters. 'Border politics' delineates the policy field and, in so doing, opens or closes the arena to economic, social or other forces. As a result, decision-making may remain a strictly inter-governmental affair, controlled by top executives. Monetary affairs, foreign and security policy and cooperation in criminal law are not examples of network governance. Public and private actors cannot move easily between levels of decision-making and become engaged in transnational coalition-building. Here again it must be remembered that 'European governance' is not an all-embracing stable pattern, but varies over time and across policy areas.

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