

Democracy and Governance in the European Union

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Abstract

It is generally believed that internationalization undermines governance and democracy. This phenomenon has two dimensions. On the one hand, it is a real process which has to be understood. On the other hand, it constitutes a challenge for a number of concepts and theories in the social sciences as well as in law. These concepts and theories are often implicitly based on the idea of a sovereign nation-state. In consequence, it is difficult to conceptualize even the possibility of the transformation of the state as a result of internationalization.

This general *problematique* is most strongly visible in the European Union which over time has developed into a political system of a new type. This system has enormous consequences on democracy and governance in its member states. The first part of the paper presents a view on the EU's political system which does not preclude the possibility of a fundamental transformation of governance and democracy in the EU by the choice of its basic concepts. The second part presents those features of the EU's political system which are most important for the future of democracy and governance. They are uneven Europeanization, permanent institutional change and new patterns of legitimation. The third part discusses two models of the European Union which might be the result of these processes. They represent two different mixtures of the institutionalization of governance and democracy. Both seem to be at least potentially stable forms of political organization but none of them can be reduced to the traditional forms of 'state' and 'international organization'. The final part contains an assessment of the prospective development of the EU in the light of the central features of the EU and the system models discussed in the two previous section.

Kurzfassung

Allgemein wird davon ausgegangen, daß Internationalisierung sowohl politische Steuerungsfähigkeit als auch Demokratie untergräbt. Dabei handelt es sich einerseits um einen realen Prozeß, den es zu verstehen gilt, andererseits aber um eine Herausforderung für eine Reihe von sozial- und rechtswissenschaftlichen Konzepten und Theorien. Da sich diese häufig implizit auf die Vorstellung des souveränen Nationalstaates beziehen, fällt es schwer, die Möglichkeit einer Veränderung dieses Konzeptes als Folge von Internationalisierung auch nur zu denken. Diese allgemeine Problematik zeigt sich am deutlichsten anhand der Europäischen Union. Diese hat sich im Laufe der Zeit zu einem politischen System neuen Typs entwickelt, das enorme Konsequenzen für Demokratie und Steuerungsfähigkeit in den Mitgliedstaaten hat. Im folgenden soll zunächst eine Zugangsweise auf den Integrationsprozeß diskutiert werden, die den Blick auf die Besonderheiten des EU-Systems nicht schon durch die Wahl der Grundbegriffe und der theoretischen Werkzeuge verstellt. Im nächsten Abschnitt werden unter Steuerungs- und Demokratieaspekten zentrale Aspekte des politischen Systems der EU vorgestellt, nämlich ungleichmäßige Europäisierung, stetiger institutioneller Wandel und neue Legitimationsmuster. Im dritten Teil werden zwei stark stilisierte Modelle des politischen Systems der Europäischen Union und ihre politischen Implikationen als mögliche Entwicklungsszenarien vorgestellt. In beiden Fällen handelt es sich zumindest potentiell um stabile Formen politischer Organisation, die sich nicht auf die traditionelle Dichotomie von "Staatenbund" und "Bundesstaat" zurückführen lassen.

Den Schluß bildet eine zusammenfassende Einschätzung der Entwicklungsdynamik der EU im Lichte der vorher diskutierten Triebkräfte und Systemmodelle.

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I. Introduction

The link between internationalization, governance and democracy is a central problem for politics as well as for political science. Even if clear empirical evidence on the nature of this link is not yet available, the literature seems to support the view that internationalization both undermines the capacity for governance and puts into question traditional forms of democracy. This phenomenon has two dimensions. On the one hand, it is a process taking place in political reality which can be studied scientifically. On the other hand, it constitutes a challenge for a number of concepts and theories in the social sciences as well as in law. In their reasoning, these disciplines often assume the existence of the externally and internally sovereign, democratic nation-state. It is therefore difficult to even consider the possibility of the erosion of this very model.

Because of this deep-rooted difficulty to think about a model of democratic governance different from the democratic nation-state, it seems reasonable to discuss this problematique not by abstract reasoning but by focusing on a concrete case. The best case available is the European Union which in recent decades has developed into a new type of political system with enormous consequences on democracy and governance in its member states. Despite repeated attempts for major institutional reforms, this system is arguably likely to persist in its basic structures for a foreseeable future and is unlikely to develop into a federal state or to disintegrate into a classic international organization. The present state of democracy and governance in the EU is therefore worth to be analyzed as it is not a mere transitory phenomenon.

In the following, I will first present an analytical perspective on this political system which by its

choice of concepts and theoretical tools allows for an open view on possible tendencies and problems with respect to democracy and governance in the EU. In the third part, I discuss those features of the EU's political system which are most important for an understanding of its present state and its prospective development. The fourth part presents two highly stylized, ideal-typical system models, each of which embodies different mixtures and forms of democracy and governance. Both could be permanently stable but none of them can be reduced to the traditional forms of either 'state' or 'international organization'. The final part consists of an overall assessment of the EU's possible development.

II. The EU as a Dynamic Multi-level System

The frequent qualification of the European Union as an institution 'sui generis' reflects the difficulties in science as well as in the political debate to find an appropriate analytical or normative approach to the European Union. The reason for this is that scientific as well as political thought is deeply marked by the idea that modern societies organize themselves in the form of nation-states.

Not only in political science but also in legal science, sociology and economics basic concepts and theories rely on a traditional concept of the state. In this view, the state is organized internally as a hierarchy and externally in an anarchical system. In this reasoning, there are national political systems which take the form of a universally competent state as a powerful central organ on the one hand and international relations taking place in the absence of central authority on the other hand; there is public law on the one hand and public international law or private international law governing the collisions of domestic legal systems on the other hand; there is national society as the level of social integration and world society as the level of system integration; there are national economies which allow for an intentionally created order on the one hand and the world market which is governed at best by 'spontaneous order' (Hayek) on the other hand (Kohler-Koch/Jachtenfuchs 1996: 540).

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This dichotomic characterization of social and political order runs through the entire social sciences. It is increasingly inappropriate for the analysis of present politics and society. This is particularly true for the analytical as well as for the normative assessment of the European Union. If already by the choice of fundamental theoretical notions the member states on the one hand and the European Union on the other hand are considered as two separate political systems which are only linked in the Council of Ministers, changes in this dichotomy easily disappear from the analyst's view and even from the scientific agenda. As a consequence, analytical models of the integration process consider the question of whether it overcomes (Haas 1964) or strengthens the nation-states (Hoffmann 1966; Moravcsik 1994) as the most important issue of integration research. The same applies for normative models which on this conceptual basis can only consist of variations of the ideal-types of 'federal state' or 'international organization'. From this perspective, political discourse and actual European policy-making are usually perceived as a dramatic fight between these two poles in which the respective players more or less succeed to push the reality of European integration in one of these two directions. This does not only apply to the numerous 'plans for Europe' but also to theories *in* the political system (Luhmann 1981, 1991), i.e. theories which guide and justify political action. The 1993 judgment of the German constitutional court on the Maastricht Treaty is a striking example of the political importance of the analytic and normative separation of member states and European Union.

This zero-sum logic misses the essence of the integration process as well as the true challenge for science and politics. Almost fifty years after the creation of the first European institution it makes

less and less sense to understand and judge the European Union by reference to one of these two ideal-typical models. One possibility to deal with the present state of the EU without losing its particular features out of sight is to regard it as a 'dynamic multi-level system' (Jachtenfuchs/Kohler-Koch 1996). 'Dynamic' refers to the permanent process of institutional change, 'multi-level system' indicates that the EU includes its member states in an encompassing system while at the same time, national political, economic or legal systems continue to exist. The concept itself already precludes the notion of two distinct levels and the resulting normative as well as analytical implications. Such a concept takes account of the wide-spread feeling of unease with the application of state-bound concepts to the analysis of the European Union (Schuppert 1994: 53). It also directs the analytic attention to the dynamic character, i.e. to the constantly changing division of competencies and the permanent state of institutional change within the system which result in numerous tensions, cleavages and pathologies.

Obviously, a concept is not yet a theory. However, other attempts to grasp the 'sui generis' character of the European Union (Schmitter 1992; Ruggie 1993; Bogdandy 1993) show to what considerable extent the choice of appropriate terms and concepts can open up analytical possibilities which remain constrained by the terminological orthodoxy of integration research and policy-making. Speaking of the EU as a dynamic multi-level system is still more a conceptual approach, a particular way of looking at reality rather than a developed analytical model. It is useful, however, to overcome the intellectual ties with the idealized model of the modern state which increasingly appears as an analytical hindrance not only in integration research (Ellwein 1992).

Instead of regarding the EU as being in a permanent state of transition, it is analytically, normatively and practically more fruitful to look at the present state of the EU not in terms of its organizational structure but in terms of a general *problematique* which is not confined to the EU. One such possibility is to ask about actors, processes, means and results of governance in the European Union. In other words, it seems less fruitful to analyze and assess the organizational structure of the EU and the relationships of different actors within this structure but more promising to ask in which particular way and with what consequences the EU solves the problem of governance. By 'governance' I understand the adoption of generally binding decisions.

Unfortunately, the term 'governance' in political science as well as in law is often without further qualification reserved for the activities of a state government. This is less so in the Anglo-Saxon as compared for instance to the German tradition because in the former it is at least semantically possible to distinguish between 'governance' and 'government' whereas this is not the case in German. But even in English-speaking social science, the conceptual link between 'governance' and 'state' is very strong. In recent years, this link has come under empirical as well as theoretical criticism from very different angles. On a very general level, it may be said that both internationalization (Zürn 1995) and functional differentiation (Mayntz et al. 1988) make it increasingly difficult to associate governance unequivocally with the state.

In the European Union, there is a strong degree of both internationalization and functional differentiation. It is thus a particularly well-suited object for asking for the conditions and possibilities of responsive and responsible governance under modern conditions. This question by far transcends integration theory in the narrow sense but makes it possible for integration research to contribute to a more general issue of major importance. Analyzing the European Union from a governance perspective denies that it is a 'sui generis' institution which by its very nature precludes to arrive at general conclusions. On the contrary, such a perspective also allows for comparisons of the EU with the most diverse kind of governance systems in the sense of a 'most different systems

design' (Przeworski/Teune 1970), thus opening up a whole range of possibilities for comparative research which remains as yet largely unexplored. The position held by parts of integration research that the EU was unsuitable for comparative research because there was nothing to compare it with is thus untenable. Politically, however, this thesis is important because it has the function to prevent from the outset comparisons with 'mere' international organizations on the one hand and with the democratic structures of modern states on the other hand.

If the European Union is regarded as a dynamic multi-level system from a governance perspective, it is possible to study central problems of the integration process from a more general point of view and at the same time acknowledge the possibility that the EU has developed into a unique and new type of political system. In this sense, the EU is a political system 'sui generis' but could well be compared with other political systems and their solutions to the problem of responsible and responsive governance from an analytic as well as from a normative standpoint.

III. Central Features

In the following, I will discuss those features of the EU's political system which seem to be most important for its possible development as well as for the possibilities of responsible and responsive governance. These features are not meant to be a comprehensive list. I merely wish to highlight those properties indicating that the EU is neither a state nor an international organization and will not develop in either direction. The discussion is not concerned with details but focuses on persistent lines of conflicts and problems which have existed for decades and will most likely remain important in the years to come. The background of the discussion is the general question to which extent political institutions are dependent on particular features of society and to which extent they can create these preconditions by themselves.

1. Uneven Europeanization

By this term I understand the fact that functional subsystems of society are europeanized to largely different degrees and that the action capacity of politically relevant actors on the European level and with regard to European affairs differs widely. This is not a new insight but it seems to me that the consequences of this trend for political responsibility and governance both within the member states and of the EU are not yet sufficiently discussed.

The Europeanization of functional systems does not proceed in parallel to the Europeanization of the actors in these systems. Despite remaining deficits in the implementation of the 'four freedoms' of the internal market, the Europeanization of the economy is the most advanced. As a result, economic transactions can take place in the entire EU without any significant difference to the domestic context. It does not mean that a homogeneous economic area with an even distribution of economic activity had emerged, that borders do not create additional transaction costs or that economic agents can act on the European scale independently of their size. It means, however, that the possibility of capital owners to move freely in the entire EU constrains national governments in their economic policy.

The Europeanization of the economy is made and institutionalized by a rapidly developing European economic law. Even if again there is no homogenous European legal space and probably there will never be one, the importance of the dynamics of European economic law for the restructuring of political relationships can hardly be underestimated. European law does not only consist of

constitutional provisions in the classical sense, and the agenda of European law-making is not only concerned with the elaboration of a constitution for the European Union and the issue of whether and to which degree the national democratic legal order is compatible with the European legal system, as stated vigorously by the Maastricht-decision of the German constitutional court (Bundesverfassungsgericht 1994). Whereas the emergence of a European constitution mainly by the jurisprudence of the European Court of Justice and its impact are increasingly discussed in the literature (Weiler 1981, 1982, 1991; Burley/Mattli 1993; Garrett/Weingast 1993), this is much less the case for the Europeanization of economic law and its impacts. However, economic law is not a technical subject and of interest only for specialized lawyers but is of utmost political importance even if (or better: precisely because) it is not on the agenda of intergovernmental reform conferences (Joerges 1993, 1994, 1996). The analysis of European economic law is a striking illustration of the degree to which the Europeanization of the economy is not a 'natural' process but created and sustained by political actors and even more by allegedly unpolitical experts. One major issue in this respect are the social consequences of economic integration caused and institutionalized by economic law. A second, and probably even more important issue is whether the institutionalization of a particular 'criterion of rationality' (Lepsius 1995), namely that collective welfare was increased by market enlargement and market liberalization can also legitimate the disintegrative effects of economic integration.

Contrary to the far-reaching Europeanization of the economy and the legal system, politics and society largely remain organized within nation-states. This is even more the case for society than for politics. Despite a general and long-term trend towards conversion in the Western world, ambiguous as it may be (Kaelble 1987; Therborn 1995), social cleavages, political culture, social structures and political identities are to a large extent national ones. European societies have many similar but few common problems (Flora 1993: 756). A large number of institutions understood in a larger sense emerged as the result of long and fierce fights over conflicting values that took place within nation states. Among these are party systems, democracy and the welfare state in their respective national versions.

These institutions cannot be easily Europeanized because of this path-dependent development and the necessity to link them to a societal base. Political parties are the most well-known example. High expectations of the emergence of a European party system on the occasion of the first direct elections of the European Parliament were largely disappointed. Even parties of the same ideological orientation but from different member states had great difficulties to agree even on minimal common programmatic guidelines. As their organizational and electoral basis remains within the member states, they follow the imperatives of the national political game instead of showing solidarity, and be it only programmatic solidarity, with a party in a different country.

Similar limits to Europeanization apply to social movements which usually are even deeper rooted in small-scale social relationships. Contrary to popular criticism of an overwhelming influence of interest groups on European policy-making, this also applies to interest groups. Already in the national context, interest groups have to balance the 'logic of membership' and the 'logic of influence' (Schmitter/Streeck 1981). On the European level, heterogeneity is much stronger and decision-making much more complicated. For this reason, European umbrella associations have a very limited capacity for action. Only representations of single multinational enterprises are capable of effective targeted action. As a result, Commission and European Parliament are not faced with a few homogeneous actors representing economic interests as expected in the early years of the integration process but with a multitude of European peak associations, national associations and representatives of single enterprises. On the whole, the limits to the Europeanization of interest groups strengthen rather than weaken the executive, although this very general statement should not lead one to overlook the existing asymmetries, for instance between trade unions and industrial associations (Grande 1996; Kohler-Koch 1994, 1996).

Thus, on a very general level the economy and economic law are largely europeanized in the European Union whereas politics and society but also constitutional law largely remain national. In particular large enterprises and parts of the political executive are able to act effectively on the European level whereas this is only to a much lesser degree the case for political parties, social movements, trade unions and to some degree interest groups. Because of the structural nature of this asymmetry, the EU will have to live with it for a considerable time to come.

2. Permanent Institutional Change

In western societies, governance usually takes place in a rather stable institutional context. Both formal and informal institutions such as government, parliament, intermediary institutions, democracy, rule of law, the welfare state, as well as the relationship between rulers and ruled are more or less stable. This situation changes only in cases of intentional reform (e.g. federalization in Belgium) or in cases of severe system crises (e.g. Italy). The European Union on the other hand is characterized by a decade-long process of institutional change which is both incremental and deep. This process of change does not only concern the institutions of the EU but also those of the member states. The latter process is being perceived only slowly (Héritier/Knill/Mingers 1996).

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This type of institutional change has never been on the agenda of intergovernmental reform conferences. On the contrary, it is a phenomenon which is only to a small degree the result of intentional political engineering. Instead, it is the result of non-intended but politically important consequences of numerous single decisions which seem unimportant if taken alone but the cumulative effects of which are substantial. Institutional change within the member states is not restricted to spectacular and highly politicized measures to make these states 'fit' for the European Union, such as new constitutional articles or the creation of specialized parliamentary and governmental bodies dealing with European politics. More importantly, a general process of disintegration and change of political structures is taking place at member state level. Interest groups and political parties are most concerned by this process. Both do not only have to mediate between the interests of their members or their electorate on the one hand and the political system on the other. In addition, their margin for action is often severely constrained or transformed by European law or by the pressure of competition in an open European market. Because of their embeddedness in national traditions very different national from each other, Europeanization is only possible to a limited extent. In the case of political parties, what is at issue is the capacity to mobilize political support, in other words, a decisive element of the stability of national political systems.

This transformation also concerns institutions in a broader sense, e.g. the particular national versions of the welfare state, democracy, rule of law and labor relations. Examples include the competencies of the German constitutional court, the central role of the British parliament and the financing of the Danish welfare state. The problem is not that these institutions are being abolished by the EU. At stake is the intended or unintended pressure exerted by the integration process which might lead to modifications in these institutions changing their core. This breaking up of institutionalized solutions to past and present conflicts does not have to be bad as such. It may also help to overcome long-established impasses and blockades of reform (e.g. Eichener 1993). It also does not necessarily need to lead to manifest conflicts. The politically decisive point is, however, that changes induced by Europeanization have to be dealt with in *national* political systems.

The transfer of authority to private or semi-public institutions on the European level is another element in this general process of institutional change. Depending on the political preferences of the respective government or on national traditions, governance by private or semi-public institutions can

also be found in member-states. This tendency is, however, systematically favored by the structure of the EU because it takes issues defined as technical ones out of the difficult process of consensus formation in the Council of Ministers. One result of this process is 'comitology', a unique but relatively unexplored phenomenon both empirically and normatively (Winter 1994; Joerges/Neyer 1996). The creations of 'regulatory agencies' is another. Although the emergence of regulatory agencies is still in an embryonic stage compared to the United States, it is a clear example of how political decision-making bodies are relieved of complicated issues by expert bodies.

The processes of institutional change discussed above take place in a political system with clear outlines. Practically unknown in nation-states and hardly understood in its consequences for efficient and responsible governance is a phenomenon which figures under various headings and which shall be referred to here as 'variable geometry' (for an overview c.f. Stubb 1996). In such a system, participants and possibilities for participation as well as decision-making rules change depending on the issue at stake. Variable geometry is not a minor issue of institutional design for the EU but has to do with basic questions of large-scale polities which emerge due to a large variation in territorial and functional units and a strong coupling of these units. On an even more abstract level, it has to do with the relationship between unity and diversity.

With some exceptions (e.g. Schmitter 1992), variable geometry in political science as well as in the political debate is considered to be a pragmatic and temporary derivation from the ideal of uniformity (e.g. Grabitz 1984). However, such a view downplays the quasi permanent character of the 'exception' by pointing to the unattainable ideal. The other alternative, namely to consider variable geometry (e.g. in the form of 'functional federalism', c.f. Straubhaar 1993) as an adequate solution to a large number of highly different problems of regulation may convince from an efficiency point of view but leaves out the issue of the political responsibility of such a number of overlapping and variable regimes with considerable impact on their members.

Already the 'Single' European Act consisted of three separate and distinct parts. The Maastricht Treaty officially partitioned the EU into three pillars, without counting the other sub-systems of the EU (Schengen, the European Monetary System, the Western European Union) and the differentiation contained in the Maastricht Treaty itself (social protocol). Faced with further enlargements and hence larger heterogeneity, variable geometry is likely to increase. At present, it is doubtful whether conventional constitutions for a polity, even federal ones, are able to deal with such a degree of interdependent heterogeneity. Thinking about this problem should not be made even more difficult by looking for non-existing ways of overcoming heterogeneity.

3. Democracy and Legitimacy

Democracy is understood here as the institutionalization of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions. Legitimacy means a generalized degree of trust of the addressees of these decisions towards the political system. From this definition, it follows that democracy does not necessarily and exclusively have to be synonymous with parliamentary government. It also follows that the legitimacy of a political system is not exclusively linked to democracy and certainly not to parliamentary democracy. Such a statement does not imply an agreement with old and new technocratic visions of the EU (Ipsen 1972; Majone 1994a, 1994b; Andersen/Burns 1996). It does imply, however, that models of democracy developed in the national context cannot be easily transferred to the European Union and that a political strategy based on such a transfer would not necessarily lead to a more democratic EU and to an increase in its legitimacy.

The necessity of democracy in the EU can be justified on normative grounds. Each system of governance takes collectively binding decisions and thus at least potentially intervenes massively into the lives of people. For this reason, the latter have to have voice in the system and a realistic chance to change the course of events. A more pragmatic reason is also possible: Even in hierarchically structured systems it is impossible to govern against a substantial resistance of citizens or organized groups. This is even more true for the highly decentralized system of the EU where decisions are frequently taken by unanimous decision and where capacities for implementation and sanctions are weak. In such a situation, democracy increases system stability and problem-solving efficiency.

Rejecting claims for a democratization of the EU is therefore questionable both for normative and for practical reasons. At the same time, asking for a full parliamentarization of the EU is equally unrealistic. Whereas the public debate in most member states turns around the *desirability* of a European Union organized as a (strongly decentralized) federal state with a two-chamber system representing the 'European people' and the member states, the scientific debate in recent years has gradually become more critical against the *possibility* of democracy in the EU. The reasons given are structural ones. It is argued that democracy cannot simply be installed by a constitutional act (Kohler 1978) but that it is linked to particular social preconditions which are only partially existent in the EU and which cannot be created by political intervention (Habermas 1992; Lepsius 1991; Scharpf 1993; Kielmansegg 1996). Democracy requires the existence of a collective identity which does not exist on the European level.

In particular, democracy requires a functioning political infrastructure which mediates between decision-makers and citizens. In the member states, this function is performed by political parties and by media-based public discourse. The function of these institutions is to transform even complicated issues into distinguishable alternatives for decision along clearly defined conflict lines. However, parties and the media belong to those institutions which are most strongly linked to the historical development of the respective states. The limits to a Europeanization of political parties have been discussed above; with regard to the media, it is clear that linguistic barriers prevent the emergence of a European public discourse. As a result, it is difficult if not impossible to achieve an EU-wide politicization of issues, in other words to bring issues on the European political agenda and discuss them along ideological instead of national cleavages. Thus, politicization usually takes place in a national context. What is politically important and discussed controversially in one member state does not have to be so in any of the other. As a result, even a political debate in Germany as the biggest member state would not have much impact on the European scale. Influence could only be exerted by the intergovernmental channel which follows, however, a completely different logic than public discourse. For this reason, the problem cannot be solved by a reform of decision-making procedures.

The problems of how to organize political responsibility in a system of variable geometry are even more severe. In the present Union, only the Community pillar is subject to some parliamentary responsibility whereas the two other pillars as well as the subsystems existing outside the Maastricht Treaty are not controlled by a parliament at all. A substantial increase in overlapping functional areas would lead to a multiplication of specialized parliaments and thus even further decrease the possibility of politicization of particular issues.

Does this mean that those are right who make a plea for a renationalization of the European Union in the name of democracy? Even if one does not reject renationalization on the grounds of the general benefits of European integration, this seemingly easy solution is at best a partial one. Despite all justified criticism of the immense hunger for competencies of the Brussels institutions, one has to admit that some decisions have to be taken on the EU-level if the common market is to be preserved or if gains from economic policy coordination are to be realized. Renationalization is not an answer to the question of how these decisions shall be made accountable.

In sum, the EU is faced with a dilemma between efficiency and democracy. The political decision to create a European market requires at least some political decision-making competencies at the European level. Their democratic control, however, is hampered by structural problems of the Europeanization of democracy and its social preconditions. Insisting on the virtues of national democracy in turn risks to defend an increasingly empty set of formal participation rules while the impact of the European market dictates political choices.

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IV. Which Type of Polity?

How is it possible to grasp the present state of the European Union and which future developments are conceivable on the basis of this conceptualization? Whereas the political debate focuses on whether the EU should or is likely to become either a federal state or an association of states, it seems to me that this conception of the EU's prospective development in terms of opposing alternatives misses essential features of the present state of the EU or downplays them to transitory phenomena. The normative debate in particular should not restrict itself to comparing the sad reality of European democracy to the bright ideals of the democratic nation-state. At the same time, the argument that there was no real problem of democracy because democratic nation-states kept firm control over the integration process is not very convincing either.

For this reason, it is necessary to develop models of political organization which are not conceptually based on the image of the state in order to provide a guidepost for the analytical as well as for the normative discussion of governance in the European Union. Two such models will be briefly presented here. They are based on theoretical reasonings and empirical investigations within the framework of a research project on the legitimation of the European Union (Jachtenfuchs/Diez/Jung 1996). In the first place, these models are provisional attempts to grasp the rapidly changing and confusing reality of governance in the EU. In addition, however, they are more than abstract scientific models because they can also be found in the conceptions of political parties in some member states about a legitimate political order for the EU. Thus, they are not only theories *about* but also theories *in* the political system of the EU. They symbolically express desired political orders and thus have a legitimizing or delegitimizing function.

The distinction of theories about and theories in the political system also applies to the concept of the democratic nation-state. This concept is not only an analytical one but also a normative theory about the appropriate organization of the state which serves as a reference point for political actors in their assessment of political reality. As the model of the democratic nation-state has been the only successful one historically, it is the most influential normative theory in the political system. As a consequence, the EU is being compared to this very normative model, irrespectively of whether it is a state or not. The model of the democratic state structures the debate about the future of the European Union and has an influence on the proposals made in order to diminish the 'democratic deficit' or create a 'Europe of the citizens'. If the ideal of a European state is unattainable, as has been argued previously, this becomes problematic. If the entire endeavor of European integration is not put into question, the only remaining alternative is either to accept the discrepancy between democratic ideal and European reality (and possibly try to legitimize it) or to look for different models of political organization. These models must at the same time match reality more adequately than the model of the state and meet the requirements of political efficiency and responsibility.

1. Economic Community

This model is closely linked to the German theory of a neoliberal 'economic constitution' for the EU (Mestmäcker 1994a; Petersmann 1993; Scherer 1970; Streit/Mussler 1995). Although it is strongly influenced by particular German ways of thinking about the relationship between politics, law and the economy and is most influential politically only in Germany, its more abstract features can be combined to a model of the EU which is not linked to particular national traditions of thinking about institutions and society. In fact, empirical analysis shows that it is a prescriptive model how a legitimate political order for the EU could look like which is shared by several political parties in Britain, France, and Germany throughout the history of the EU (Jachtenfuchs/Diez/Jung 1996).

The most important feature of the model is the separation of the market and the state, in other words the co-existence of a single European market together with a number of distinct states on the same territory without a degree of political control equivalent to the degree of economic integration. In the framework of this model, economic integration is not only a necessary reaction to the requirements of a natural process of economic globalization but also an explicit normative goal. The underlying argument refers to the existence of a number of possible economic orders which have different consequences on economic efficiency and individual liberty. Both economic efficiency and individual liberty are best served by the institutionalization of a market economy which among other factors assures free competition, a strong respect of private property and a strict anti-cartel legislation. This type of market economy represents an optimum type of order for society both for efficiency and for normative reasons (respect of individual liberty). On the other hand, it is constantly threatened by organized rent-seekers trying to gain extra benefits at the expense of the well-being of society. Because of its superiority as a societal order and the risk of erosion by rent-seekers it must and can legitimately be sheltered from political influence. One means for achieving this is to codify the basic principles of the economic community into a constitution which has high majority requirements for change.

The model of the economic community should not be confused with the one of a free and self-regulating market. It is a normative order which is constituted by a number of legal rights and which must be protected against the egoistic interests of market participants. Because only a particular type of market economy best balances economic efficiency and individual liberty, the number of allowed interventions into the market is limited. For individuals and corporate actors (i.e. for enterprises), rights and obligations on the European level exist only within a relatively restricted economic domain. Individual social rights should not exist on the European level but remain restricted to the domain of the nation state, together with political rights.

As the citizen has only economic rights and obligation on the EU level, and these are conferred upon him by a constitution embodying principles of an optimal economic organization, there is no need for democracy at the EU level. Legitimation of the economic community is achieved by efficiency and liberty (Mestmäcker 1978, 1994b). It does not require democratic legitimation because the latter is only relevant for the political realm but not for the economic one. There is thus a sharp division between politics which has to be subject to democratic control but remains the exclusive domain of the member states and economics which is unpolitical and thus beyond the need for democracy and has to be organized on the European level (and possibly on an even larger geographical scale) due to the internationalization of economic activity. This division is seen as a natural one based on the properties of the respective functional systems.

Democracy and pluralism are a threat to this type of order because both favor particular individual interests which in the long run would undermine the efficiency of such a liberal economic order. The

competition of different interests in the framework of democratic rules, mediated by political parties and interest groups in this view does not increase collective welfare, at least not if the latter is defined in purely economic terms. In this perspective, parliamentarians are considered as actors which are easily at the service of interest groups and other particularistic interests. Thus, a constitution must contain mechanisms which protect it even from the elected representatives of the people.

For this reason, the economic community should be institutionalized in a constitution as a constitution offers the best protection against opportunistic interests. This is particularly true for the European constitution (i.e. the EC Treaty) which can only be changed by unanimity and is thus even more immune to changes than a national constitution which can usually be changed by a two-thirds majority or something alike. The implementation of the constitutional provisions of the EU (or, more precisely, in its EC part) is controlled by the politically independent European Court of Justice. Thus, in the ideal case, a societal order which is considered optimal by scientific experts is institutionalized in a form which is difficult to change and its implementation conferred to an organ which is not subject to political control. At the same time, decisions are often made in the form of directly applicable and binding European law.

Because of the separation of the economy from politics, internal and external security are tasks of the state and thus irrelevant for the EU. The decisive domain for the latter is welfare understood in the sense embodied in the constitution. As the economic community is not a political one, it does not require whatever kind of collective identity and no symbolic integration.

This model of an economic community exists in various types also in the scientific literature. One example is Hans-Peter Ipsen's characterization of the EU as a 'Zweckverband funktioneller Integration' (Ipsen 1972, 1985, 1987a, 1987b, 1993). Although Ipsen also distinguishes between the national state and the European market, he does not base this distinction upon quasi-objective necessities of an efficient and liberal economic order but on the need to cope with the consequences of economic liberalization. For this purpose, Ipsen argues, the member states had created the EU. This purpose legitimates the activity of the EU in a number of functional areas and at the same time limits the extension of EU competencies to what is necessary for coping with economic interdependence. According to Ipsen, the resulting activities are of a technical and organizational nature and can for this reason be carried out by experts without democratic legitimation. Only within these narrow margins, the legitimacy of the EU is guaranteed by the legitimacy of its member states. Broadening the scope of EU competencies would require democratic control which the European Parliament cannot provide because it is a representation of different national peoples rather than of one European people. In other words, the EU cannot become democratic, and an increase of the competencies of the European Parliament thus undermines rather than increases democracy (Ipsen 1985).

Another variant of the economic community model is Giandomenico Majone's 'regulatory state' (Majone 1994a, 1994b, 1994c, 1996). Again, the economy and politics are organized on different geographical scales. However, the reasons given for this separation and the instruments used are different compared to the ones discussed above. Majone stipulates the existence of market failures and the need to correct them. This is best done by efficiency-oriented and independent regulatory agencies which are dominated by sectoral technical experts. The model of the regulatory state is politically more neutral than the model of the economic community because it explicitly allows the correction of market failures in areas of social regulation (e.g. environmental policy, health and safety at work) which are regarded critically or even rejected by the proponents of the economic

community in the narrower sense. Correcting transnational market failures requires strong supranational powers but in limited sectors. For their democratic legitimation, the European Parliament is sufficient despite its deficiencies. Regulatory authorities draw their legitimation from the distinction between efficiency-oriented and redistributive policy. The former has to be based on expertise as long as society is willing or forced to avoid paying the price of inefficient policy resulting in times of internationalized markets. Only redistributive policies need democratic legitimation.

In sum, the separation of politics and the economy yields a number of criteria for assessing the legitimacy and efficiency of the EU and for constructing prescriptive models. Although the models discussed above differ in their institutional setup and in their political implications, they all allow at least in principle the co-existence of a European market together with national states and weak European governance. Whether such institutional models would be sustainable in practice depends, however, not only on the parsimony of the theoretical construction but also on the empirical question of whether it is possible to legitimate the division between state and market and the ensuing consequences.

2. Network

Whereas the model of the (federal) state (which will not be discussed here) is characterized by territorial congruence of those who govern with those who are governed, the model of the economic community is characterized by the separation of a European market and the national states. Both models thus have a clear structure with regard to the territorial scope of their different components. This does not apply to the network model which is characterized by a multitude of institutions, participation channels and actors. The social scientific literature has used the term 'network' for capturing a particular type of social order. In contrast to the type of a 'state' with the structuring principle of hierarchy and of a 'market' with the structuring principle of anarchy, the particular feature of networks is the loose coupling of its components (Mayntz 1993). To some writers, they appear as the organizational form which fits best to the division of society into increasingly autonomous functional subsystems (Willke 1995). They neither have a fixed organizational structure nor a constant number or type of participants.

In the political debate, the network as a model of political organization has mainly been put forward by green parties. This usage of the network model insists on the necessity to increase citizen participation in decision-making which is of relevance to them and on the preservation of small-scale identities. The result is a bundle of different functional and territorial constituencies with overlapping and variable membership and without a clearly distinguishable center or geographical scope. Such a model is based on a particular concept of politics which reaches back to the ideas of 'integral federalists' (Marc 1979; Roemheld 1978) and ideas of Jean-Pierre Proudhon about radical democracy to the 'societal federalism' of Johannes Althusius (c.f. Hüglin 1991). It is based on the idea that the power of a unitary and hierarchical state with a center which is usually far away from the concrete live-world of the citizens prevents rather than furthers the development of individuals and groups. As this problem cannot be dealt with by means of majoritarian democracy in large and heterogeneous societies, this line of thinking stresses the need to grant far-reaching rights to people on the local and the regional level and with regard to those areas which are of direct relevance to them.

In the political debate, this concept is often referred to under the label of a 'Europe of the regions' (Diez 1996). The main political unit would thus be a region, however it may be defined. Different regions would cooperate to different degrees and in varying ways in order to solve problems perceived to be common. By its proponents, the network concept is meant to be a possibility to separate participation from its link to the territorial organization of politics (Brock/Albert 1995; Ruggie 1993) which always implies practices of inclusion and exclusion (Connolly 1995). In this view, political organization does not necessarily require a strong and powerful center but can as well

work in such an open and fluid structure, given in particular the opportunities provided by modern communication technology.

In the political science literature, networks are mainly discussed with regard to their ability for governance (Scharpf 1994) whereas the problems of democracy and legitimacy of and in networks are largely unexplored. The open structure of networks suggests, however, that legitimation cannot be achieved by classical means of democratic control because the institutional preconditions of democracy are lacking if the territorial congruence of rulers and ruled are not given. In the literature, it has been proposed to cope with this problem by creating a number of quasi-parliamentary bodies for particular problem fields. Their composition does not have to be determined by general elections but can follow other criteria, e.g. statistical representation or the representation of particular groups (Held 1991, 1995). The political proponents of the network model suggest that legitimation is mainly achieved by broad participation. Networks can become legitimate because they offer opportunities for participation which non-participants do not have. Whether this is sufficient to assure the legitimacy of a European Union constructed as a network or whether such an EU would in fact exclude large and distinguishable groups from the political process, is not yet clear. However, legitimation by participation bears the possibility that non-participants might become politically active as adversaries of the integration process instead of fighting for participation.

In sum, pluralism – understood in a comprehensive way as a mode of governance and participation – is a distinctive feature of the network model. State and societal actors of the most diverse kind participate in varying combinations in the decision-making process. Another particular feature is the preservation of small-scale identities. As a consequence, the network model is not only not very demanding with respect to a common European identity for the Euro-polity but on the contrary insists that a 'substantial' identity of the EU would run counter to the very idea of organizing the EU as a network. At best, 'procedural' identities (e.g. openness for varying forms of participation, mutual respect, respect of diversity) might be necessary.

As the notion of the network has developed at the margins of the political discourse and in a rather fragmented way, and also because it is a most innovative form of political design with hardly any historical precedent, its contours are not very clear. However, ignoring the network type means ignoring a number of models for the EU which exist in the political discourse and which cannot be captured by other models.

V. Perspectives for Polity Development

I have tried to characterize the EU by three trends: uneven Europeanization, permanent institutional change and structural problems of democracy. The overall image gained by such a view is a political system in which the principle of territorially organized and responsible politics is at stake. The decisive difference of this system with regard to the problems of internationalization and interdependence which touch most Western states consists in the fact the system is formally and factually highly immune to change. Should it turn out that some types of political decisions taken by the EU cannot be controlled democratically *as a matter of principle*, the EU would be a manifestation of a transformation of a fundamental principle of statehood.

From the two models discussed above, the economic community seems to reflect the present state of the integration process and its development options in the near future. This type also highlights the political problems caused by the integration process. The state as a normative or analytical model can only by considerably conceptual stretching be applied to a polity characterized by a variable

geographical scope and structural problems of democracy. The network model takes these features into account and tries to build a normatively acceptable political order on this basis but overlooks the fundamental asymmetry between the European market and the national state.

The economic community as a normative and an analytical model of the EU is not politically neutral. Whereas the idea of a federal state is politically indifferent and the network is inspired by 'green' thinking, the economic community is a conservative project. It precludes the developments of strong policies to cope with market failures and merely allows the EU to turn in to a 'regulatory state'. This does not necessarily imply a dismantling of national welfare states but also allows for a positively joint sovereignty (Leibfried 1994). However, state intervention into the economy has to rely exclusively on market-correcting policies because it lacks the legal authority as well as the financial means to do anything different. An analysis of party programs in Britain, France and Germany shows, however, that the asymmetry between market-creating and market-correcting policies is widely accepted by political parties, and even by some parties on the left (Jachtenfuchs/Diez/Jung 1996). Does this imply that the EU is the institutionalization of the end of social-democratic visions for the change of society and the victory of neoliberalism?

The European internal market is widely accepted in most political camps. In addition, it is not only institutionalized in a kind of economic constitution (Joerges 1996) but also stabilized by a particular constellation of interests in the EU which favors 'negative integration', i.e. the abolishment of barriers to economic transactions and hence 'market making' at the expense of policies of 'positive integration', i.e. market correction (Scharpf 1996). Democratic policy-making mainly takes place within the nation-state. Whether such an asymmetrical political order can become permanently legitimate in the eyes of citizens depends in particular on how disintegrative effects of the integration process and relative deprivations are perceived and attributed. A stable system in which the distributive consequences of market processes are regarded as unpolitical and not as the result of conscious and revisable political decisions is perfectly conceivable. Despite the turbulence created by the Maastricht debate, this seems to be by and large the case at present. The introduction of a common currency and the actions of a democratically uncontrolled European Central Bank could be the decisive test for showing whether an effective restructuring of normative expectations of citizens and thus a factual acceptance of binding European decision including their possible negative effects on individuals as legitimate and appropriate has taken place.

The true problem of the integration process does not reside in cumbersome decision-making processes. On the contrary: insisting exclusively on an even further increase of political and economic efficiency and the exclusive institutionalization of this idea of rationality could turn out to be a threat to the integration process. The neglect of other criteria of rationality such as 'autonomy' or 'democracy' could lead to the formation of political movements against integration which are stronger and more persistent than the ones that appeared during the referenda on the Maastricht Treaty. The perception of negative consequences of integration and the possible formation of political movements responding to this perception is, however, not directly linked to the 'real' strength of such negative consequences but strongly shaped in the political discourse by political parties and the media.

Institutional reforms and increasing possibilities for citizen participation in EU decision-making are necessary but certainly not sufficient for permanently legitimating the EU in the eyes of the citizens. What is lacking are political programs containing normative criteria as well as concrete action proposals for the present state of integration. The increasingly widespread criticism of the EU is not a result of political manipulation which can be corrected by neutral information but stems mainly from

the discrepancy between the prevailing normative model of political organization (i.e. the democratic state) and perceived deficits of the EU with reference to this model. If it is true that the EU is for structural reasons unlikely to develop into a state thus meeting the requirements of the prevailing normative model and if at the same time a renationalization of the EU is also unlikely, the public political debate is in desperate need for models of the European polity which give a realistic analytical image of the EU and at the same time serve as normative guideposts for feasible reforms balancing democracy and governance.

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