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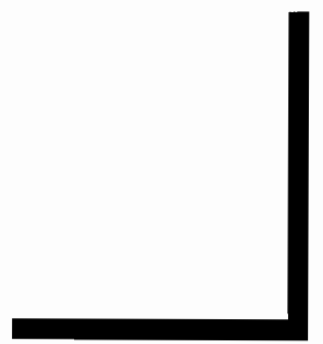


Theoretical Perspectives on
European Governance

Markus Jachtenfuchs
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Abstract

The paper reviews some social scientific theories which could contribute to the development of a concept of European governance beyond traditional notions of federal state or international organisation. The theoretical argument is based on the culturalist version of neo-institutionalism which stresses the role of ideas in the functioning and transformation of a political order. It is claimed that both globalisation and functional differentiation transform existing nation-states and shape the emerging European polity. European governance is characterised as poly-centric and non-hierarchical. Finally, different approaches to the legitimation of such a polity are discussed. The paper comes to the result that the emergence of a European political order is part of a process which could necessitate a rethinking of basic social scientific concepts.

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Theoretical Perspectives on European Governance

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This paper¹ attempts to discuss the nature and structure of the emerging European polity from a theoretical point of view². It claims that during the process of European integration, a new practice of governance beyond the state has emerged. For its analysis it proposes a theoretical approach rooted in the culturalist branch of neoinstitutionalism. This approach regards the state and its legitimacy as historically and socially contingent.

The paper does not claim to propose a comprehensive theory but only to shed some light on the central problems of the emerging European polity. It is divided into three parts. The first part sets out the theoretical approach of the paper. Based on neoinstitutionalism, it introduces the notion of 'world views' as a concept for the analysis of the interaction between institutions and ideas. The second part discusses the desirability and the possibility of governance beyond the state. Drawing upon theories of international relations, neofunctionalist integration theory and theories of the state, it deals with the possibility of a system of polycentric governance different from the hierarchically organised state. The third part addresses the question of legitimacy. In reviewing some concepts of legitimacy which might be fruitful for governance beyond the state, it comes to the result that the conflict between efficiency and democracy claimed by some writers is not inevitable but results from their theoretical framework.

1. Abbreviations: APSR = American Political Science Review; EuR = Europarecht; IO = International Organization; ISQ = International Studies Quarterly; JoCMS = Journal of Common Market Studies.
2. The paper briefly sketches the theoretical background for an empirical research project on the legitimacy of supranational governance the author is currently carrying out. I am grateful to Beate Kohler-Koch, Francis Snyder and Michael Zürn for critical comments, as well as to the participants in the session on integration theory of the second ECSA world conference in Brussels and the workshop on European multilateralism in Florence in Summer 1994 where earlier versions of the paper have been presented.

I A Neoinstitutionalist Approach to Governance

In recent years, neoinstitutionalism has gained widespread attention in the social sciences. It can broadly be divided into a rationalist³ and a culturalist stream⁴. In this paper, neoinstitutionalism always refers to the culturalist tradition, fragmented and heterogeneous in itself as it is. Contrary to the rationalist tradition, the culturalist approach claims that institutions do not only have governance functions for society but that they also define a style of living. Compared to the rationalist tradition, the culturalist approach to institutions assigns a more prominent and autonomous role to ideas, norms, symbols, values etc. which are usually subsumed under the heading of 'culture'. In this perspective, institutions have a dual character. They are not only neutral devices for the accommodation of different interests in the the pursuance of common policies but also provide symbolic guidance for society. The political institutions of Western democracies, for example, are not only arenas for conflict mediation between different groups in a pluralistic society or mechanisms for delivering public policies but stand for specific values about how political and social life *should* be organised.

This symbolic representation can be analysed in terms of its fundamental idea which motivates actors in a specific way and creates links and obligations with regard to the specific order it incorporates. Examples for this kind of ideas include 'democracy', 'market economy', 'multi-cultural society', 'federalism', etc. Further qualifications could be added in order to distinguish between different versions of one and the same normative model, e.g. 'liberal' vs. 'social' market economy. As this example indicates, those fundamental ideas can even compete with each other. The culturalist stream of neoinstitutionalism is thus on a very general level concerned with the relationship between institutions and ideas.

3. See e.g. Hechter, Opp and Wippler, Social Institutions. Their Emergence, Maintenance and Effects (Berlin/New York: de Gruyter, 1990).
4. See e.g. Powell and DiMaggio (eds.), The New Institutionalism in Organizational Analysis (Chicago/London: Chicago University Press, 1991) and id., 'Introduction', in ibid., 1-38. The work of James March and Johan Olsen has also considerably shaped this line of thinking; see March and Olsen, 'The New Institutionalism: Organizational Factors in Political Life', (1984) APSR 78, 734-749; id., Rediscovering Institutions. The Organizational Basis of Politics (London/New York: The Free Press/Macmillain, 1989); id., 'Institutional Perspectives on Governance', in Derlien, Gerhardt and Scharpf (eds.), Systemrationalität und Partialinteresse. Festschrift für Renate Mayntz (Baden-Baden: Nomos, 1994), 249-270.

In this view institutions create theories about themselves which have in turn consequences for the interaction of actors. The role of ideas with regard to political institutions can be conceptualised in different ways. A prominent role is assigned to them by systems theory⁵ and by discourse theory. Systems theory regards them as theories *in* (and not *about*) the political system, in other words as a political semantics in which the political system describes itself⁶. Discourse theory, for its part, conceives of them as a discourse universe⁷, and is less inclined than systems theory to treat them simply as a covariant of political change⁸ but attributes to them a logic of their own which is different from the logic of political institutions⁹. In this paper, I will assign the term 'world views' to the type of ideas which exist in the political system and which contain a description of this very system. 'Description' is used here in the sense of a complex cognition reconstruction and interpretation, not in the sense of 'descriptive' as opposed to 'analytical'.

World views are not only a product of social interaction but also influence it¹⁰. Actors construct their identity and their reality with reference to world views. As reality, for instance the development of institutions, is accessible for actors only via cognition, the cognitive prestructuring of the interpretation of reality gains a decisive importance. In this view, world views are a social phenomenon which individuals

5. 'Systems theory' here does not refer to the Eastonian theory of the political system but to the universal theory of social systems, developed largely by the German sociologist Niklas Luhmann, in particular in Luhmann, Soziale Systeme. Grundriß einer allgemeinen Theorie (Frankfurt a.M.: Suhrkamp, 1984); transl. Social Systems (Stanford: Stanford University Press, 1995). Systems theoretical approaches to the law are contained in *id.*, Das Recht der Gesellschaft, (Frankfurt a.M.: Suhrkamp, 1993) and Teubner, Recht als autopoietisches System (Frankfurt a.M.: Suhrkamp, 1989); transl. Law as an Autopoietic System (Oxford: Basil Blackwell, 1993).
6. Cf. Luhmann, Gesellschaftsstruktur und Semantik. Studien zur Wissenssoziologie der modernen Gesellschaft (Frankfurt a.M.: Suhrkamp, 1980, 1981 and 1989, 3 Vols.)
7. Habermas, Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft (Darmstadt/Neuwied: Luchterhand, 1962); *id.*, Theorie des kommunikativen Handelns; (Frankfurt a.M.: Suhrkamp, 1981, 2 Vols.), transl: The Theory of Communicative Action (Boston: Beacon Press, 1984 and 1987); Eder, Geschichte als Lernprozeß? Zur Pathagonese politischer Modernität in Deutschland (Frankfurt a.M.: Suhrkamp, 1991).
8. Eder, 'Prozedurale Rationalität. Moderne Rechtsentwicklung jenseits formaler Rationalisierung', in (1986) Zeitschrift für Rechtssoziologie 7, 1-30.
9. Habermas, Legitimationsprobleme im Spätkapitalismus (Frankfurt a.M.: Suhrkamp, 1973); transl.: Legitimation Crisis (Cambridge: Polity Press, 1976).
10. A famous example for this kind of thinking and still worth reading is Berger and Luckmann, The Social Construction of Reality. A Treatise in the Sociology of Knowledge (Garden City, NY: Doubleday, 1966).

might share. They are carried by social collectivities which cannot be determined in advance. This usage is not to be confused with the older tradition of political culture studies which is concerned with the practices of political action (in the sense of Almond and Verba's 'Civic Culture'). In other words, I am not concerned here with 'culture of action' but with 'culture in action'¹¹. The older tradition studying culture of action uses the notion of culture only to designate specific patterns of political action, e.g. to distinguish a 'participatory' political culture (where citizens go to elections, join political parties, keep themselves informed about political events, etc.) from other forms of political culture (e.g. an authoritarian one). It is not concerned, to remain in the example, with the effects the very concept (or the idea) of 'participation' might have on political action. From a perspective of culture in action, one would look at the degree to which 'participation' as an idea in the political system shapes the behaviour of actors (e.g. citizens' movements) and possibly conflicts with other concepts (e.g. 'stability of government') which might entail different behaviour.

In recent years, the analysis of the logic of ideas has aroused increasing attention. A common line in these very heterogeneous works is the treatment of ideas in their own right neither in the sense of a classic history of ideas nor in the sense of mere secondary phenomena, e.g. as rationalisations of underlying power or production structures common to international relations theory and to Marxism respectively. In policy analysis, which under the influence of the discussions on the possibilities and deficiencies of governance has had to give up its initial hopes for an ever more perfect planning and steering of society, the analysis of the role of ideas even appears to lay the foundations for a new, more modest, research programme¹². International

11. The distinction is taken from Eisenstadt, 'Culture and Social Structure in Recent Sociological Analysis', in Haferkamp (ed.), Social Structure and Culture (Berlin/New York: de Gruyter, 1989), 5-11.
12. See the contributions in Héritier, Policy-Analyse. Kritik und Neuorientierung (PVS, special issue no. 24) (Opladen: Westdeutscher Verlag, 1993). Despite considerable theoretical differences, other authors have also tried to conceptualise the role of ideas in a way which insists on a more or less strong degree of independence ideas conceived of in a broad sense have with regard to interests and power which are more common explanatory factors for political scientists. In policy analysis, for instance, Sabatier, 'Knowledge, Policy-Oriented Learning and Policy Change. An Advocacy Coalition Framework', in (1987) Knowledge. Creation, Diffusion, Utilization 8, 649-692, speaks of 'belief systems', Rein and Schon, 'Frame-reflective Policy Discourse', in Wagner, Wittrock and Wollmann (eds.), Social Science and Modern States. National Experiences and Theoretical Crossroads (Cambridge, 1991), 262-289, use the label 'frames' and Majone, 'Policies as Theories', (1980) Omega 8, 151-162, simply talks about 'theories'. In organisation research, Argyris and Schön, Organizational Learning. A Theory of Action Perspective (Reading etc: Addison-Wesley, 1978), refer to 'theories of action' whereas Hedberg, 'How Organizations Learn and Unlearn', in Nystrom and Starbuck (eds.), Handbook

relations theory has for a long time confined the analysis of the role of ideas to foreign policy doctrines and the 'cognitive maps' of actors¹³. The more recent discussion has for some time focused almost exclusively on the role of natural scientific knowledge or, sometimes, economic knowledge for technical policy fields¹⁴. Only very recently, a renewed and broadened interest in the role of ideas for the shaping and structuring of international politics can be observed¹⁵. One theme of this type of literature is to study to which degree the impact of 'Western' ideas such as (political and economic) liberalism or human rights might have led to the demise of the Soviet empire and as a consequence to a fundamental change of the international system. Finally, (American) 'cultural theory' tries to identify basic structures of viewing the world as a function of the structure of society¹⁶. It operates usually on a very high level of abstraction, claiming that only four or five basic world views (such as 'egalitarian', 'hierarchical', etc.) exist which can, however, be combined and modified in a multitude of ways.

This short review of recent literature demonstrates that the analysis of ideas has gained renewed attention in recent years and seems to be a promising new field of

of Organizational Design. Vol. 1. Adapting Organizations to their Environments (Oxford: Oxford University Press, 1981), 3-27, speaks about 'myths'.

13. See e.g. Bonham and Shapiro, Thought and Action in Foreign Policies. Proceedings of the London Conference on Cognitive Process Models of Foreign Policy, March 1973 (Basel/Stuttgart: Birkhäuser, 1977); Jervis, Perception and Misperception in International Relations (Princeton: Princeton University Press, 1976); Hurwitz, Peffley and Seligson, 'Foreign Policy Belief Systems in Comparative Perspective: The United States and Costa Rica', in (1993) ISQ 37, 245-270.
14. This is the debate on 'epistemic communities', networks of experts which, due to their monopoly of technical knowledge, can set at least frameworks for state action; see P. Haas, Saving the Mediterranean. The Politics of International Environmental Cooperation (New York: Columbia University Press, 1990); id., 'Epistemic Communities and the Dynamics of International Environmental Cooperation', in Rittberger (ed.), Regime Theory and International Relations (Oxford: Oxford University Press, 1993), 168-201; Adler and P. Haas, 'Conclusion. Epistemic Communities, World Order and the Creation of a Reflective Research Programm', in (1992) IO 46, 367-390.
15. See Risse-Kappen, 'Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War', in (1994) IO 38, 185-214; Keohane and Goldstein (eds.), Ideas and Foreign Policy (Ithaca: Cornell University Press, 1993); Katzenstein and Okawara, 'Japan's National Security. Structures, Norms, and Policies', in (1994) International Security 17, 84-118.
16. Examples are Schwarz and Thompson, Divided We Stand. Redefining Politics, Technology and Social Choice (New York etc: Harvester Wheatsheaf, 1990); Thompson, Ellis and Wildavsky, Cultural Theory (Boulder, CO etc.: Westview Press, 1990); Wildavsky, 'Choosing Preferences by Constructing Institutions: A Cultural Theory of Preference Formation', in (1987) APSR 81, 3-21; Douglas and Wildavsky, Risk and Culture. An Essay on the Selection of Technological and Environmental Dangers (Berkeley etc: University of California Press, 1983); Douglas, How Institutions Think (Syracuse: Syracuse University Press, 1986).

research. In neoinstitutionalism, ideas are produced by institutions and interact with them. Empirically, these guiding ideas which incorporate the symbolic orientation function of institutions can be analysed as world views. World views are stable patterns of perceiving and interpreting the world or 'a way of selecting, organizing, interpreting and making sense of a complex reality so as to provide guideposts for knowing, analyzing, persuading and acting.' A world view 'is a perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted upon.'¹⁷ World views give meaning to social situations. Although they exist in society they serve as the cognitive instruments of actors in order to select and to interpret events, facts, symbols, etc. Formulated in the language of systems theory, world views constitute the cognitive filter by which systems reduce environmental complexity. Empirical studies show how different world views lead to different problem definitions and to different interests of actors. These redefinitions of seemingly one and the same reality can have dramatic consequences¹⁸.

World views as conceptualised here are no institutional blueprints like 'federal state', 'bicameral system', etc., an abundant quantity of which has been produced in the history of European Integration¹⁹. Instead, they are real myths produced by institutions and used by actors. The basic theoretical claim behind this concept is that cultural systems of meaning and symbolic structures are the key to the understanding of the institutionalisation of the modern political order²⁰. This applies in particular to a new and emerging type of political order such as the European Union which is probably not exclusively based on the model of a territorial organisation of politics.

World views on European governance in the sense introduced above can be found in the media discourse, in party programmes and parliamentary debates, in publications of politicians or intellectuals, in government documents and in judgements e.g. by the Court of Justice or by constitutional courts of the Member States. A systematic

17. Quotations from Rein and Schon, *op. cit.*, fn. 12, p 263.

18. See in particular Gusfield, The Culture of Public Problems. Drinking-Driving and the Symbolic Order (Chicago/London: Chicago University Press, 1981).

19. An analysis of these blueprints in the history of European integration is given by Schneider, Rückblick für die Zukunft. Konzeptionelle Weichenstellungen für die Europäische Einigung (Bonn: Europa Union Verlag, 1986) and *id.*, 'Europäische Integration. Die Leitbilder und die Politik', in Kreile (ed.), Die Integration Europas (PVS, special issue no. 23) (Opladen: Westdeutscher Verlag), S. 3-35.

20. See Beck, Die Erfindung des Politischen. Zu einer Theorie reflexiver Modernisierung (Frankfurt a.M.: Suhrkamp, 1993).

analysis of world views on European governance shared by these actor groups must be confined to a larger research project. In this article, I have to confine myself to scientific theories about the possibility and nature of governance beyond the state. Besides restrictions of time and space, an additional justification for such an approach lies in the assumption that scientific theories more or less reflect what is going on in their field of study. What follows is thus not only a review of scholarly literature but should at least give some hints about cultural conflicts over European governance, in other words about ideas existing *in* the political system (and not only theories *of* the political system) and having political consequences.

II Governance Beyond the State

Thinking about European governance it is impossible to ignore the extraordinary role the state occupies in concepts of international, European and domestic governance. Obviously, the state is an important actor. But more profoundly, the very notion of the state is at the heart of the distinction between international relations and domestic politics as well as between international and domestic law. Blueprints for European institutions are often inspired (voluntarily or not) by an idealised model of the state. The major controversies of integrations theories in political science have taken place between those who held that the European community was nothing more than an institution for the coordination of state interests (although highly sophisticated) and those who thought that it had acquired a quality of its own, somewhere beyond the nation-state. The same controversy can be found in the legal literature with respect to the assessment of the nature of the European legal order. The following overview will therefore focus on the specific role of the state in different theoretical frameworks.

Neorealism as an important branch of international relations theory and the neorealist tradition of regime theory do not have a notion of governance in the international system beyond the co-ordination of different state interests. This does not imply a mere adaptation of state behaviour to the needs of the international system but designates the fact that governance is only possible either through common accord of all participants or through hegemonic domination. Existing institutions such as international regimes in this view are based on the rational decision of sovereign states to co-operate. This decision can be revised at any time should the state in question calculate its interests differently. The rationality of this form of co-operation is based on the fact that institutions facilitate the pursuance of individual interests by states as

compared to autonomous action. Institutions reduce transaction costs. This explains the 'demand for international regimes'²¹. Although the term is not used in the discussion on neorealism, 'governance' means the voluntary co-operation of states. In this conceptual universe, states do not co-operate in order to pursue jointly defined goals which might even change domestic definitions of state interests. Instead, states co-operate in order to pursue their own interests. These interests exist before co-operation and independent of it.

The idea behind this is a conceptualisation of the international system as consisting of functionally like units, the states. In this theoretical framework, the erosion or even the disappearance of the so-defined state would amount to a revolutionary structural change in this system and its end as an *international* system²². Neorealist theory allows only for a quasi digital concept of the state: it either exists, and be it only as an essential core²³, or it does not exist at all. The construction of the theory itself excludes intermediary forms as they would put into question constitutive hypotheses of this very theory. In this perspective, the European Union appears as a system of 'state bargains'²⁴. This system may be very complex and at the same time very stable but it can only be a system of states. Even a transformation towards a fully-fledged state²⁵ is not excluded in this theoretical framework but remains very unlikely because such a change would amount to a fundamental transformation of the international system at least in a regional context.

21. Keohane, 'The Demand for International Regimes', in Krasner (ed.), International Regimes (Ithaca/London: Cornell University Press, 1983), 141-171. A more elaborate version of the argument is contained in id., After Hegemony. Cooperation and Discord in World Politics (Princeton: Princeton University Press, 1984).
22. See Waltz, Theory of International Politics (New York etc: McGraw-Hill, 1979).
23. See e.g. Hoffmann, 'Obstinate or Obsolete? The Fate of the Nation State in the Case of Western Europe', in (1966) Daedalus 95, 862-915 and id., 'Reflections on the Nation-State in Western Europe Today', in (1982) JoCMS 20, 21-37.
24. See Keohane and Hoffmann, 'Institutional Change in Europe in the 1980s', in id. (eds.), The New European Community. Decisionmaking and Institutional Change (Boulder etc.: Westview, 1991), 1-39; Moravcsik, 'Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community', in (1991) IO 45, 19-56; id., 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', in (1993) JoCMS 31, 473-524.
25. See Wildenmann, Staatswerdung Europas? Optionen für eine Europäische Union (Baden-Baden: Nomos, 1991).

A more recent body of literature in international relations theory is explicitly interested in problems and prospects of 'Governance without Government'²⁶. However, the basic concept of an international system constituted in fact (if not theoretically) by states is not given up as those writers aim at a regulation and civilisation of this very system. The international system is increasingly marked by 'turbulence'²⁷ and societal actors occupy an increasingly important place beside the states. Thus, governance understood as common action by state actors becomes increasingly complex and difficult. Still, the state as the fundamental unit of the international system is not put into question.

This theoretical construction has been attacked by the criticism of 'reflective'²⁸ approaches to international relations. Although this label is attached to a wide variety of theoretical streams, several of them are based on Anthony Giddens' theory of structuration²⁹. The term 'reflective' points to a similarity of these approaches with the theoretical position defended here. Reflective approaches stress the role of ideas that shape the identity of actors and their options for action. According to these critics, the structure of the international system is not simply given but itself a product of a specific historical development³⁰. The international system is not a given entity with fixed rules that are to be discovered by scientists but engaged in a constant process of reproduction which changes the structure, the actors and the rules of the system. In this view, states reproduce the international system by their actions and are reproduced themselves as states by this very system³¹. Hence, instead of obtaining

26. Rosenau and Czempiel (eds.), Governance without Government. Order and Change in World Politics (Cambridge: Cambridge University Press, 1992). See also Czempiel and Rosenau (eds.), Global Changes and Theoretical Challenges. Approaches to World Politics for the 1990s (Lexington, MA/Toronto: Lexington Books, 1989) and Czempiel, Weltpolitik im Umbruch. Das internationale System nach dem Ende des Ost-West-Konflikts (München: Beck, 2nd. ed. 1993).
27. Rosenau, Turbulence in World Politics. A Theory of Change and Continuity (New York etc: Harvester Wheatsheaf, 1990).
28. The label is taken from Keohane, 'International Institutions: Two Approaches', in (1988) ISQ 33, 379-396.
29. See in particular Giddens, The Constitution of Society. Outline of the Theory of Structuration (Cambridge: Polity Press, 1984). An application of the theory to international politics is id., The Nation-State and Violence (Berkeley/Los Angeles: University of California Press, 1985).
30. The lack of historicity in the way international relations theory deals with the state has been fervently criticised by Michael Mann, States, War, and Capitalism (Oxford: Basil Blackwell, 1988) and id., The Sources of Social Power, Vol. 2: The Rise of Classes and Nation-States 1760-1914 (Cambridge: Cambridge University Press, 1993).
31. See in particular Wendt, 'Anarchy is what States Make of it. The Social Construction of Power Politics', in (1992) IO 46, 391-425 but also Wendt and Duvall, 'Institutions and International Order', in Czempiel and Rosenau (eds.), op. cit., fn. 26, 51-73; Wendt, 'The Agent-Structure

ontological status by the construction of (neorealist) theory, the state itself is at stake, at least in principle.

For the present purpose, this debate is important in so far as it treats the great structuring principles of the international system, such as 'anarchy', 'diplomacy' or 'reciprocity'³² as social constructions compatible with the theoretical orientation defended in this article. This branch of literature has contributed important insights about the limitations of the theoretical mainstream in international relations theory. It has only to a much lesser degree been able to go beyond this criticism and propose conceptualisations of the international system which lead to new empirical insights. It is striking to see that the European Union which might appear as a test case par excellence for standard assumptions and concepts of international relations theory has never seriously been taken as an object of inquiry by recent 'reflective' theorists. Most of their writings remain on a very high level of abstraction³³.

Neofunctionalism as a variant of international relations theory initially developed for explaining European integration has tried to explore the possibilities of governance 'Beyond the Nation-State'³⁴ at a much earlier date. Starting from a concept of politics as incremental problem-solving, neofunctionalism predicted the increasing transfer of decision-making competencies from the nation-state towards the emerging supranational institutions of the European Community. According to the theory, this development, caused by the superior problem-solving capacities of the latter, was accompanied by a reorientation of actors' interests and loyalties³⁵. In contrast to the 'classic' theory of international relations, neofunctionalism thus explicitly allowed for the gradual erosion of statehood. Considerable effort was devoted to measure and explain this process³⁶. As analytical efforts were to a large degree targeted at this

- Problem in International Relations Theory', in (1987) IO 41, 335-370 and Dessler, 'What's at Stake in the Agent-Structure Debate?', in (1989) IO 43, 441-473.
32. Wendt, 'Anarchy is what States Make of it', op. cit., fn. 31; Der Derian, On Diplomacy. A Genealogy of Western Estrangement (Oxford: Basil Blackwell, 1987); Keohane, 'Reciprocity in International Relations', in (1986) IO 40, 1-27.
 33. This is particularly true for the post-modernists; see e.g. Ashley and Walker, 'Reading Dissidence/Writing the Discipline: Crisis and the Question of Sovereignty in International Studies', in (1987) ISQ 34, 367-416.
 34. E. Haas, Beyond the Nation-State. Functionalism and International Organization (Stanford: Stanford University Press, 1964).
 35. See E. Haas, The Uniting of Europe. Political, Economic and Social Forces 1950-1957 (Stanford: Stanford University Press, 1958).
 36. See Lindberg and Scheingold (eds.), Regional Integration. Theory and Research (Cambridge, MA: Harvard University Press, 1971) and in particular Lindberg, 'Political Integration as a

process dimension, theorising about the concrete shape of the newly emerging political authority was somewhat neglected³⁷. 'Integration' was always seen as process and thus a transitory phenomenon; explicit reflections about the end product of this transition and about stable institutional solutions for this end-state were lacking. As an intermediary result it appears that the theory of international relations, on the whole, kept the notion of the state as a fundamental category. Only recently, some writers have put the state as an unchangeable entity into question.

Systems theory, on the other hand, has even been ready to give up the notion of the state altogether and replace it with the category of the political system. This approach is based on the thesis of the increasing functional differentiation of society, formulated independently of systems theory³⁸. In this literature, the state is not merely put into question *externally* by the general process of globalisation³⁹ but even more so *internally* by the differentiation of functional systems. According to systems theory, the political system is only one among several differentiated functional sub-systems of society, and does not occupy any particular place in society. Thus, the state is no more the central institution of societal self-organisation.

In systems theory, functional sub-systems of society develop their own internal logic to a degree that they become immune to direct outside influence. In the language of the theory, they develop into 'self-referential' systems. This does not mean that politics, for instance, cannot influence the economy anymore. Empirical evidence would contradict such a statement immediately. It only means that political decisions, to remain in the example, are processed by the economic system according to its own logic and with incalculable side-effects. A direct governance of the economy, and indeed a direct domination of one system over another, is thus impossible. As a result, hierarchy as the organising principle of the state increasingly loses its value

Multidimensional Phenomenon Requiring Multivariate Measurement', in *ibid.*, 45-127. See also Lindberg and Scheingold, Europe's Would-Be Polity. Patterns of Change in the European Community (Englewood Cliffs/NJ: Prentice Hall, 1970).

37. See the self-criticism of Schmitter, 'Representation and the Future Euro-Polity', in (1992) Staatswissenschaften und Staatspraxis 3, 379-405.
38. See Mayntz, 'Funktionelle Teilsysteme in der Theorie sozialer Beziehungen', in Mayntz et al., Differenzierung und Verselbständigung. Zur Entwicklung gesellschaftlicher Teilsysteme (Frankfurt a.M./New York: Campus, 1988), 11-44.
39. See e.g. Zürn, 'Jenseits der Staatlichkeit. Über die Folgen der ungleichzeitigen Denationalisierung', in (1992) Leviathan 20, 490-513.

with regard to other functional sub-systems. In parallel, power and money, the classic means of governance, become less efficient.

In the systems theoretical model of society, governance is decreasingly possible as 'classic' governance by which one system (usually the political system) controls the others but must increasingly rely on 'reflexive governance' or 'self-governance'⁴⁰. If the state (or the political system) is not the centre of society anymore, hierarchy as a principle of governance becomes increasingly dysfunctional and leads to inefficiency. In this evolution, reflection becomes a new medium of governance. It is the form of self-governance by which systems address their own identity and their relations to other systems⁴¹. Instead of a short-termist adaptation to external constraints, systems can in this way deal with a long development path. By putting such an emphasis on reflection and discussion, systems theory comes to similar results as discourse theory.

Systems theory has explicitly declared its intention to tear away all mystifications other theories have put around the notion of the state⁴² and put it back on its right place among other functional sub-systems in an increasingly differentiated society. This theory radically breaks with the ideal-type of the state as an internally and externally sovereign political unit. As a result, the state (i.e. the political system) cannot fulfil anymore most of the demands addressed to it from society, in particular with regard to the development of the welfare state.

It is therefore a challenging task to ask whether there is a new form of governance reflecting the double demystification of the state (internally and externally) which is either emerging or which might at least appear possible. When addressing this question, one is immediately faced with the lack of appropriate concepts for the understanding of such a new phenomenon. Almost any thinking about governance and societal organisation is deeply influenced by concepts developed with reference to the historically successful model of the state. When talking about society, systems theorists like many sociologists usually mean societies organised in nation-states. In political science, governance is almost exclusively linked to policies, politics and

40. Teubner and Willke, 'Kontext und Autonomie. Gesellschaftliche Selbststeuerung durch reflexives Recht', in (1984) Zeitschrift für Rechtssoziologie 5, 4-35 and Willke, Ironie des Staates. Grundlinien einer Staatstheorie polyzentrischer Gesellschaft (Frankfurt a.M.: Suhrkamp, 1992).

41. See Willke, Ironie des Staates, *op. cit.*, fn. 40, p 73.

42. See Willke, Entzauberung des Staates. Überlegungen zu einer sozietaalen Steuerungstheorie (Königstein, Taunus: Athenäum, 1983).

polity of political systems organised as states. This is particularly - but by far not exclusively - true with regard to the French and the German tradition. Here, it even applies to works which explicitly put governance in an international context⁴³.

More at ease with governance beyond the state is the Anglo-Saxon tradition. Indeed, the distinction between 'governance' and 'government' does not exist in German. In a very broad sense, governance implies that political goals are set intentionally and that sustained efforts are made in order to assure that the behaviour of domestic or international actors is guided by these goals⁴⁴. This general definition does not say anything about the concrete *form* of governance beyond the state. It is only clear that contrary to the long tradition of utopian plans for a world federation or at least a European federation, the idea of governance *beyond* the state does not necessarily mean governance *above* the state, thus reconstituting the state with all its constituent elements simply on a higher institutional level. On the contrary, the idea of governance beyond the state has to stop relying on the state as the institutional form and the hierarchical centre of an integrated society. At present, the outline of such a new form are completely unclear and are mostly referred to under the metaphor of the 'new middle-ages' of a polycentric society. At the present stage, however, it is not clear whether this line of thinking is probably too much influenced by historical analogies which might be much less unequivocal than expected⁴⁵. Only a few authors have started thinking systematically about the possibility and the implication of types of international governance which are not based on the territorially defined nation-state⁴⁶. Such a new form of political organisation must be located somewhere in the middle of an imagined continuum between horizontal (market, international system) and vertical (hierarchical state) organisation.

One opportunity to think about such a new form of political organisation without immediately getting involved in concepts shaped by theorising about the state could

43. See Hartwich (ed.), Regieren zwischen nationaler Souveränität, europäischer Integration und weltweiten Verflechtungen. Regieren in der Bundesrepublik, Vol. 5 (Opladen: Leske + Budrich, 1993).

44. See Kohler-Koch, 'Die Welt regieren ohne Weltregierung', in Böhrer and Wewer (eds.), Regieren im 21. Jahrhundert - zwischen Globalisierung und Regionalisierung. Festgabe für Hans-Hermann Hartwich zum 65. Geburtstag (Opladen: Leske + Budrich, 1993), p 116.

45. For an overview of the emergence and change of forms of governance in the last millennium in Europe, see Schulze, Staat und Nation in der europäischen Geschichte (München: Beck, 1994).

46. In particular is Ruggie, 'Territoriality and Beyond. Problematizing Modernity in International Relations', in (1993) IO 47, 139-174.

possibly be found in the notion of 'network' or of 'negotiation systems'. Already conceptually, both resist an easy association with one of the extreme ideal types of the market or the state. However, the network concepts itself is still a very fuzzy one⁴⁷. Whether networks are indeed a new type of social order or even a new paradigm for the architecture of complexity⁴⁸ shall not be discussed here. In any case, however, networks or negotiation systems constitute a conceptual tool helpful for thinking beyond the dichotomy of market versus state.

What is interesting in these theories despite their conceptual differences, is the assessment of the future of the state. Theories from very different angles come to the result that hierarchy as a fundamental principle of governance is being replaced or should be replaced by decentral co-ordination. Decentral co-ordination seems to be a principle which allows to link the seemingly contradictory poles of the international and the domestic system under a common conceptual umbrella. International relations theory largely conceives of governance as of self-coordination and the fulfilment of self-imposed obligations. Domestically, for instance in neo-corporatist arrangements, or internationally in the case of international regimes, governance takes place in negotiation systems. This does not imply that the state now approaches the alleged inefficiency of the international system or the presumed low authority of international law. On the contrary, theorists have claimed that the growing differentiation of society even allows for an *increase* in society's capacity for problem-solving and co-ordination. The fact that large parts of the discussion on the future of domestic as well as international governance are based on a 19th century notion of the state characterised by hierarchy in domestic politics and sovereignty in foreign policy rather prevents than furthers the understanding of this development⁴⁹.

As a result, governance is not dependent on hierarchy but can as well proceed through negotiation among actors. If governance by negotiation is possible, the notion of

47. See van Waarden, 'Dimensions and Types of Policy-Networks', in (1992) European Journal of Political Research 21, 29-52.
48. Kenis and Schneider, 'Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox', in Marin and Mayntz (eds.), Policy Networks: Empirical Evidence and Theoretical Considerations (Frankfurt a.M./Boulder, CO: Campus/Westview, 1991), p 25. The literature on networks is huge and heterogeneous. For a recent contribution in a governance perspective see Scharpf, 'Politiknetzwerke als Steuerungssubjekte', in Gerhardt, Derlien and Scharpf (eds.), op. cit., fn. 3, 381-408 and Mayntz, 'Policy-Netzwerke und die Logik von Verhandlungssystemen', in Héritier, op. cit., fn. 12, 39-56.
49. Scharpf, 'Die Handlungsfähigkeit des Staates am Ende des zwanzigsten Jahrhunderts', in (1991) PVS 32, p 623.

governance is not linked anymore exclusively to the state. This opens up the possibility for a poly-centric system of non-territorially based governance.

III The Legitimacy of Supranational Governance

I have argued earlier that a political order, such as the one of the European Union, was represented in a symbolic structure which can be analysed empirically. This symbolic structure is not an exact image of the institutional structure but follows a logic of its own. Ideas about institutions, for instance about how efficient they are, how democratic or how legitimate, are part of the symbolic structure and can be analysed as such. Their analysis might give indications for the stability of the existing order or indications of change and of future development. This does not mean any deterministic relationship between institutions and ideas. Changes in one of the two are not immediately reflected in the other. The analysis of world views as parts of the symbolic structure of a political order might, however, lead to insights which go beyond what is possible either by public opinion research or by normative academic reflection. This is in particular true with regard to a key element of any form of governance, namely its legitimacy.

The problem of the legitimacy of governance is a fundamental question of political science. Unfortunately, the debate on the 'legitimation crisis' of the capitalist welfare state in the seventies⁵⁰ has on the one hand led to a broad international discussion about the issue but on the other hand contributed to a certain dilution of the notion of legitimacy, to a degree that it has almost become a 'floating signifier'⁵¹ which allows no more for a differentiation between the use of the term in common or in scientific language. In this context, I can only make a few remarks on basic concepts of legitimacy. For this purpose, I will distinguish between three broad notions of legitimacy.

The first relates legitimacy to a core of fundamental rights. It assumes that modern society and its political order are still based on a solid consensus of generally shared

50. See Habermas, *op. cit.*, fn. 9, Luhmann, Legitimation durch Verfahren (Frankfurt a.M.: Suhrkamp, 1989), Graf Kielmansegg, Volkssouveränität. Eine Untersuchung der Bedingungen demokratischer Legitimität (Stuttgart: Klett, 1977).

51. Heins, Strategien der Legitimation. Das Legitimationsparadigma in der politischen Theorie (Münster: Verlag Westfälisches Dampfboot, 1990), p 8.

values. Such a consensus, according to this view, is reflected in the catalogues of fundamental rights and values contained in many Western constitutions. It is often but by no means exclusively held by lawyers⁵². This view assumes an essential core of legitimacy of the state which has to be defended against challenges coming, for instance, from European institutions or even from the state's own citizens⁵³. It assesses the legitimacy of a political order from a point of view outside of this very order. For the present discussion, it is relevant in so far as several drafts for a constitution of the European Union contain such a catalogue of fundamental rights⁵⁴, partly with the explicit aim to create a solid legitimation basis for the EU. Others stress the importance of a consensus of basic values among the member states of the Union⁵⁵.

This view is challenged by the second, the functional position. According to this theory, the unity of society is inevitably lost as a result of its advanced functional differentiation. Therefore, legitimacy cannot refer anymore to a common set of values but can only be produced by procedures such as democratic elections. Contrary to the first view, which defends the possibility of a correct legitimacy of a political order, the second view is relativistic. Legitimacy only means loyalty of the citizens with respect to decisions of the political system and legitimation the procedures to obtain this loyalty. Legitimacy in this second meaning can be measured in public opinion surveys⁵⁶. In the functional view, democracy is only *one* possible mechanism of legitimation with a number of functional equivalents. Democracy is by no means distinguished by its normative quality but at best by its efficiency in assuring legitimacy. As a consequence, non-democratic systems may also enjoy legitimacy.

52. E.g. Hättich and Benda, 'Demokratie'; in Görres-Gesellschaft (ed.), Staatslexikon. Recht – Wirtschaft – Gesellschaft (Freiburg etc: Herder, 7th ed. 1985), 1182-1202; Hesse, Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland (Heidelberg: C.F. Müller, 18th ed. 1991) or for a political scientist Hennis, 'Legitimität - Zu einer Kategorie der bürgerlichen Gesellschaft', in Graf Kielmansegg (ed.), Legitimationsprobleme politischer Systeme (PVS, special issue no. 7) (Opladen: Westdeutscher Verlag, 1976), 9-38.
53. See Heins, *op. cit.*, fn. 51, p. 111.
54. Weidenfeld (ed.), Wie Europa verfaßt sein soll. Materialien zur Politischen Union (Gütersloh: Verlag Bertelsmann Stiftung, 1991).
55. See von der Groeben, Legitimationsprobleme der Europäischen Gemeinschaft (Baden-Baden: Nomos, 1987), pp. 45 seq.
56. See e.g. the large-scale inquiry of Weil, 'The Sources and Structure of Legitimation in Western Democracies. A Consolidated Model Tested with Time-Series Data in Six Countries since World War II', in (1989) American Sociological Review 54, 682-706.

A third contribution is Habermas' reconstructive notion of legitimacy. Habermas considers legitimacy as the precarious result of a specific process of arguing which cannot be substituted by other mechanisms⁵⁷. This notion of legitimacy is based on the hypothesis that citizens increasingly accept the force of arguments. Legitimation thus becomes an exclusively discursive process, and legitimation problems are not identical with the lack of 'diffuse political support' (Easton) but consist of communication problems between government and citizens. Hence, legitimation problems cannot be identified by looking at opinion polls. Therefore, in this perspective the famous 'permissive consensus' about European integration presented by numerous EUROBAROMETER reports is no indicator for the legitimacy of European institutions.

Luhmann's functionalist view of legitimacy directs the attention of the analyst towards alternatives to the principle of democracy which in Europe today is institutionalised in the form of parliamentary democracy. As a consequence, it follows that the European Union (or any other type of international governance) does not necessarily have to be legitimated by strong parliamentary bodies, although this is precisely the position which is put forward by political theorists concerned with the problem of democracy in the age of international interdependence or with the democratisation of international regimes⁵⁸. Legitimation by parliamentarisation is also the thesis which characterises virtually the entire debate on the so-called 'democratic deficit' of the European Union. Even authors holding that the EU cannot become a legitimate form of supranational governance independent of the complete control of member states refer to the structural deficiencies of the European Parliament in order to support their view⁵⁹.

In recent years, authors critical of the seemingly ever-increasing powers of the European Union have stressed that principles of legitimation have to be firmly fixed in the community of those who are subject to governance. Some authors equate this community with the (ethnically defined) people and declare this congruence of governance with a so-defined people to a natural as well as optimal form of state organisation⁶⁰. In this view, the highest form of governance is the state, and the state

57. See Habermas, *op. cit.*, fn. 9, pp. 131 seq.

58. See Held, 'Democracy, the Nation-State and the Global System'; in (1991) *Economy and Society* 20, 138-172 and Zürn, *op. cit.*, fn. 39.

59. For instance Klein, 'Entwicklungsperspektiven für das Europäische Parlament', in (1987) *EuR* 22, 97-112.

60. E.g. di Fabio, 'Der neue Art. 23 des Grundgesetzes. Positivierung vollzogenen Verfassungswandels oder Verfassungsneuschöpfung?', in (1993) *Der Staat* 32, 191-217 and the

has to rely on the nation, defined as a prepolitical community of destiny. As the European Union does not rely on a nation defined in this particular way, there is no possibility for the EU to be or to become a legitimate form of governance. Legitimacy in the European Union must in this view always be based on the member states.

The opposing view regards the nation as a free association of citizens⁶¹. In this case, the community or the nation which is at the basis of the legitimacy of a political order is the product of a specific historical development instead of being an unchangeable and quasi-natural entity. Nations, in this view, are political communities and thus at the disposition of their members. This concept of a nation of citizens as opposed to an ethnically, linguistically, or culturally defined nation at least in principle allows for the possibility that legitimacy is not linked exclusively to the state. This conceptualisation does not from the outset exclude that the European Union is a new type of governance which can neither be understood nor legitimated by categories drawn from the nation-state⁶².

Even the proponents of the latter view are sceptical about the possibility or desirability of the constitution of a European nation in the latter sense which might legitimate the European Union. Referenda on a European constitution, as proposed by European federalists, might enhance the legitimacy of the EU. However, this view neglects the long tradition of European nation-states. A referendum which is just one single constitutional act cannot ignore the diversity of political structures in the member states and the diversity of their assessment by the citizens. All attempts to find or even to promote a common European political identity have been rather unsuccessful up till now. This process, if it is ever to come to a result at all, is likely to take very long time and does not seem apt for manipulation. As a consequence, the European Union will at least partly be dependent on the legitimacy of the member states in the

even stronger formulations in Isensee, Mikat, Honecker and Suttner, 'Staat', in Görres-Gesellschaft (ed.), Staatslexikon (Freiburg etc: Herder, 1985), p 138.

61. See Lepsius, "'Ethnos" oder "Demos". Zur Anwendung zweier Kategorien von Emerich Francis auf das nationale Selbstverständnis der Bundesrepublik und auf die Europäische Einigung', in id., Interessen, Ideen und Institutionen (Opladen: Westdeutscher Verlag, 1990), 247-255 and id. 'Der Europäische Nationalstaat: Erbe und Zukunft', in ibid., 256-269.
62. See von Bogdandy, 'Supranationale Union als neuer Herrschaftstypus. Entstaatlichung und Vergemeinschaftung in staatsrechtlicher Perspektive', in (1993) Integration 16, 210-224.

foreseeable future⁶³. This leads to the possibility of a joint legitimacy referring to the Union (and the European Parliament) *and* to its member states⁶⁴.

Even if the notion of an ethnically defined nation as the only source of legitimacy is given up and is replaced by a culturally and politically defined community, the European Union in the view of several authors cannot achieve exclusive legitimacy. A precondition for this would be the emergence of a common language, common culture, common political tradition, etc. Even Jürgen Habermas who has strongly criticised the definition of nations on ethnic criteria and defended the notion of a nation as a political community remains sceptical about the possibility for a European nationality as a source of legitimacy of the European Union. Habermasian discourse theory is less demanding with regard to common traditions of political culture as a precondition of the emergence of a politically defined nation or its supranational equivalent but insists on the need for a common language which is indispensable for the existence of a public political discourse, the essential source of political legitimacy in this view. Despite the major importance of English, there is no common European language and political discourses remain mostly confined to national boundaries⁶⁵.

On the other hand, it has become conventional wisdom in recent years that the state has lost a great part of its autonomous powers due to the internationalisation of different functional systems, in particular the economy, and the resulting interdependence. It has become a commonplace to say that many problems cannot be solved on the level of a single state anymore and that hence, governance beyond the state was necessary. If this argument is used together with the preceding one, saying that the EU can at best be partly legitimate, it leads to a dilemma. The more autonomous powers the EU has and the more efficient it is in terms of problem-solving and decision-making, the less legitimate it is. The more it respects the specific political processes of its member states which are – in this view – the by far most important source of legitimacy, the less efficient it is⁶⁶. This situation is not changed

63. See Scharpf, 'Europäisches Demokratiedefizit und deutscher Föderalismus', in (1992) Staatwissenschaften und Staatspraxis 3, 293-306 and Schmitter, op. cit., fn. 37.

64. This is the position of von Simson, 'Was heißt in einer europäischen Verfassung "Das Volk"?', in (1991) EuR 26, 1-18.

65. Habermas, 'Staatsbürgerschaft und nationale Identität', in id., Faktizität und Geltung. Beiträge zur Diskussionstheorie des Rechts und des demokratischen Rechtsstaats (Frankfurt a.M.: Suhrkamp, 1992), 632-659.

66. This requires a balancing act between efficiency (which often requires more competencies for the EU) and legitimacy (which asks for the strict respect of Member State autonomy). This is a central theme of the work of Fritz Scharpf; see e.g. Scharpf, 'Versuch über Demokratie im

by the existence of a strong democratic European Parliament. The dilemma cannot be overcome but only be moderated by the consequent application of the subsidiarity principle which helps to respect the cultural and political autonomy of the member states. In this view, governance in the EU is a balancing act between the needs of efficient problem-solving on a high institutional level and the necessity of assuring the legitimacy of these decisions by taking them on a lower institutional level.

This may be a good pragmatic advice in order to calm the fears of over-regulation and bureaucratic domination expressed in several member states. The question is, however, whether external demands as well as the spill-over dynamics of the integration process itself, analysed with ingenuity by neo-functionalists, do not severely limit the possibilities of a radical application of the subsidiarity principle. Whether this is the case, is an empirical question. What I wish to point out here, however, is that the dilemma between efficiency and legitimacy stems from the choice and the definition of the basic categories. Only if legitimacy is linked to a community which in fact is identical with the nation-state, independently of whether it is defined culturally, linguistically or ethnically, the efficiency-legitimacy dilemma arises. If legitimacy is defined as support of the political system, this support is independent of the territorial scope of this very system and can only be determined empirically. If legitimacy is considered to be a world view which develops in parallel but independent of institutions, it is again not from the outset linked to the state. In both cases, there is no dilemma between efficiency and legitimacy but European institutions can in principle be *regarded* as efficient and as legitimate. Efficiency may even substitute democracy as a source of legitimation or as a legitimating argument.

IV Conclusion

In the context of the theories briefly reviewed above, the European Union appears as a unique attempt to regain the action potential of the state which the latter has lost in the course of the internationalisation of functional systems. However, the path to a simple reconstitution of the state on a higher institutional level, i.e. on the European

verhandelnden Staat', in Czada and Schmitt (eds.), Verhandlungsdemokratie. Interessenvermittlung, Regierbarkeit. Festschrift für Gerhard Lehbruch (Opladen: Westdeutscher Verlag, 1993), 25-50 and id., 'Politische Optionen im vollendeten Binnenmarkt', in Jachtenfuchs and Kohler-Koch (eds.), Europäische Integration (Opladen: Leske + Budrich, 1995).

instead of the Member States level, is prevented by the second aspect of the transformation of the state, namely the differentiation and autonomous development of functional systems within the state. In other words, the 'United States of Europe', would they ever come into being, would probably be able to cope with the problem of internationalisation but unable to deal with functional differentiation and its consequences.

This result also applies for theories about European governance. Theorising about the European polity should take serious the claims made by several independent lines of thinking in the social sciences about the role and nature of the state. The question is not whether European integration overcomes the nation-state. Instead, attention should be directed towards the effects of globalisation and functional differentiation on existing nation-states. In this broader context, it would be interesting to deal with the specific achievements and problems the emerging Euro-polity presents for the Member States. The emerging political order of the European Union is a much deeper process than merely the development of a particular form of international organisation. As it is part of a process which leads to the transformation of European states, it also puts into question theoretical constructions drawn from the ideal-typical model of the state. The institutionalisation of a European political order can only be understood if the analyst leaves room for changes even in the fundamental principles and concepts of political organisation we are familiar with. The present paper has only tried to give a very preliminary overview of concepts which seem to be theoretically open and capable to deal with this development.

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