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The Transformation of Governance in
the European Union

Markus Jachtenfuchs and Beate Kohler-Koch
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Dr. Markus Jachtenfuchs ist Mitarbeiter des DFG-geförderten Projektes „Regieren in der EU“, das im Arbeitsbereich III des Mannheimer Zentrums für Europäische Sozialforschung angesiedelt ist. Prof. Dr. Beate Kohler-Koch, Lehrstuhl für Politische Wissenschaft II der Universität Mannheim, ist Leiterin des Arbeitsbereiches III des MZES. Ihre gegenwärtigen Schwerpunkte liegen im Bereich der Interessengruppenforschung und der Rolle von Regionen in der EU. Weiterhin arbeitet sie zur Theorie und Empirie im Bereich der Internationalen Politik.

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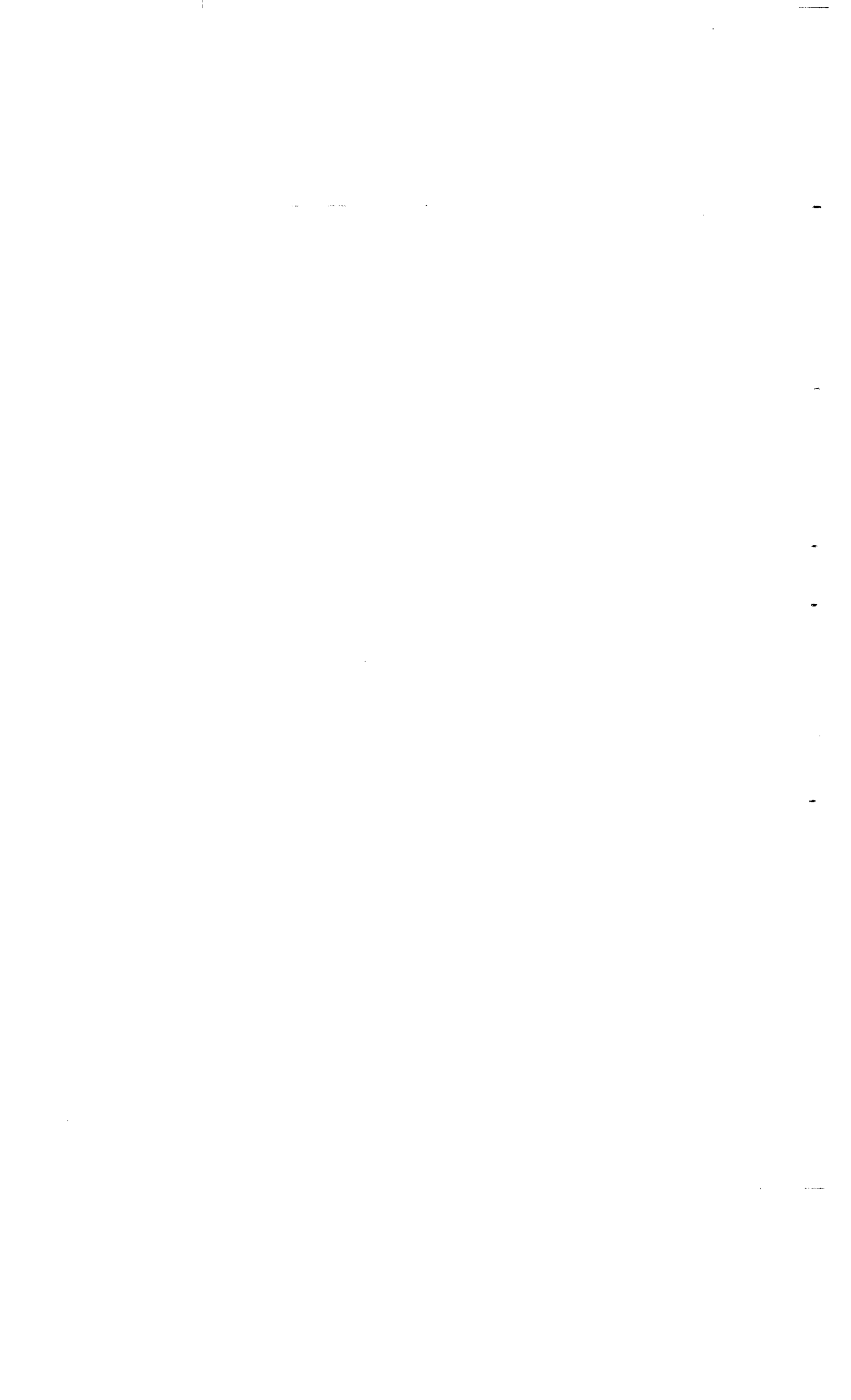
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Dr. Markus Jachtenfuchs is researcher on the project „Governance in the EU“ financed by the German Science Foundation which is part of the Research Department III of the Mannheim Centre for European Social Research. Beate Kohler-Koch, Professor for Political Science at the University of Mannheim, is Head of the Research Department III at the Mannheimer Centre for European Social Research.

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EUROBAROMETER surveys regularly confirm that in a number of policy fields, citizens consider the European Union to be the appropriate level for political action. Even a brief look into the Maastricht Treaty shows that the European Union has very broad political competencies. In the EU, collectively perceived problems are dealt with by means of targeted public policy with the aim of collectively binding decisions. This corresponds to a general notion of governance (Kohler-Koch 1993). However, the notion of governance is commonly used with reference to the state and cannot be easily applied to the institutional system of the European Union. On the other hand, the political integration of Western Europe has led to a qualitative change both in the conditions under which governments act and in their ability to govern in the interests of their citizens. At the same time, the European Union – and more precisely its supranational community component – has been transformed into a political order with an action capacity of its own. The transfer of political competencies to the European level proceeds in small steps in the daily practice of governance and of adjudication. In large intervals, the results of these processes are codified in treaty form by intergovernmental conferences. In the light of these briefly sketched features and developments, it seems fruitful to have a closer look at “governance in a dynamic multi-level system”.

The first part of this paper recalls the political and legal controversy about the nature of the political order of the Union with the aim of justifying the use of the term “governance” with reference to the EU. More or less isolated from the discussion on the nature of the EU and its possible or desirable future development, scholars increasingly deal with the effects of the integration process on responsible and effective governance within the member states. This debate is linked to a broader concern about the problems and prospects of governance under the conditions of increasing internationalization which finds its expression in the transnational expansion of functional subsystems of society, increasing interdependence and the globalization of problems. Policy analysis has started to deal with the changes in institutional structures and political processes caused by the Europeanization of policies. These questions are discussed in the second part which draws on the contributions to a forthcoming book edited by the authors (Jachtenfuchs/Kohler-Koch 1995). The third part focuses the meaning and the possibility of legitimate and efficient governance beyond the state framework. The fourth part discusses different institutional models for dealing with the problems of governance in a dynamic multi-level system resulting from the integration process. In the light of the perspective developed in this paper, the final part puts forward some general empirical, theoretical and normative questions for further research.

1. Political Order and Governance

Changes in the integration process have led to changes of the guiding questions of integration theory. In the 1960s, neofunctionalists analyzed European integration in the perspective of a possible transformation of the international system. A main concern of early integration theory was whether the institutionalization of cooperation in Europe could lead to a permanent disappearance of the security dilemma and a persistent change of the logic of international politics towards peaceful and effective problem-solving. This concern has never been purely analytical but has always included normative concerns. This is particularly true for the period when "regional integration" (Nye 1971; Lindberg/Scheingold 1971) was explicitly promoted not only as a political theory but as a political vision for the stabilization of the international system sharply opposed to realist theories and political designs of balance-of-power politics.

These diverging normative goals and research interests were in the last resort based on different conceptions of politics and led to sharply diverging assessments of the nature of the emerging European institutions. Neofunctionalists considered them as a nucleus of a new political authority above the nation-state. The superior problem-solving capacities of these institutions were expected to result in a slow reorientation of the expectations of societal actors (in particular elites and interest groups) towards the new center which was expected to satisfy their interests better than national governments. This would create the preconditions for an incremental transfer of formal competencies to the new institutions. The positive performance of European institutions would give legitimacy to their actions, create broad diffuse support (in the Eastonian sense) of this "would-be polity" (Lindberg/Scheingold 1970) and thus lead to a transformation of the European Community into a political system "sui generis". The fact that the European Commission in particular has used neofunctionalist integration theory as its integration ideology makes it somewhat difficult to assess whether neofunctionalism has indeed constructed a kind of automatism toward a European federal state in the way critics often objected. Apart from this issue, neofunctionalism has probably concentrated too much on the process dimension and thereby neglected the thinking about possible stable institutional outcomes of the integration process (cf. the self-criticism of Schmitter 1992). Still, there were scenarios for future persistent patterns of integration which included the "asymmetrical overlap" of Community and national competencies besides the possibility of a "regional state" and a "regional commune" (Haas 1971: 4). Even the modest scenario of an "asymmetrical overlap" designates a type of supranational institutionalization which cannot be reduced to a limited, specific and reversible transfer

of competencies to a regional organization leaving intact the sovereignty and autonomy of its member states.

Seen from the opposite point of view, this was precisely the case. Realist and intergovernmentalist writers criticized the teleological elements of neofunctionalism which was accused to take his desire for an overcoming of the nation-state as a reality. In the realist view, the European Community of the 1960s and 1970s still was an organization for the coordination of state interests in which sovereignty was not overcome but exercised jointly. Member states remain the decisive actors in the integration process and fully control its institutional development (Hoffmann 1966, 1982). For this reason, there can be no question of a political order superseding or even replacing the nation-state.

This controversy in political science found its equivalent in legal science where the debate was about the conceptual analysis and the normative assessment of the emerging system of European law. During the first phases of integration, the characterization of the European Community as an association for limited purposes ("Zweckverband funktioneller Integration"; Ipsen 1972) expressed a broad consensus. In recent years, an increasing number of scholars have claimed that European law constitutes a supranational legal order with a quality of its own and is in fact a constitution for the member states themselves as well as for groups and citizens within the member states (Mancini 1991). Like neofunctionalists in political science, legal scholars claiming that the integration process has led to a new form of political and legal order had to struggle in order to find a proper designation for this new order. The term "sui generis" is merely a label which stresses that the new polity has features distinct from both international organizations and states. It does not identify the distinctive features of the new phenomenon itself (Joerges 1995).

The controversy on the nature of the EC/EU and on the driving forces and actors of the integration process continues both in law and in political science. In political science, there are still approaches inspired by neofunctionalism (Burley/Mattli 1993; Busch 1995; Sandholtz/Zysman 1989; Sandholtz 1993) trying to explain integration dynamics at least partly by resorting to preference changes of societal actors as a result of the integration process. At the same time, the competing position is also put forward, namely that the integration process develops on the basis of interstate agreements and that the European Union was an institution for the coordination of state interests (Keohane/Hoffmann 1991; Moravcsik 1991, 1993). In legal science, the judgment of the German constitutional court on the Maastricht treaty has reanimated the debate between those

who claim that European law is derived from decisions of sovereign member states and the European Union thus an association of states ("Staatenverbund") and those who hold that it represents a new type of legal order irreducible to domestic or international law (von Bogdandy 1993)¹. Stressing the opposition between these two streams of thought and attempting to associate them with the two theoretical schools of either "neofunctionalism" or "intergouvernementalism" hides the similarities which emerged in the ongoing debate. The new approaches both recognize the central role of state negotiations for the integration process and resist teleological temptations. Although with different accents, they stress the importance of societal actors and changing actor constellations and acknowledge the particularly important role of institutions for interstate politics. In any case, a perspective stressing the distinctive importance of interstate bargains does not necessarily preclude that member state preferences are shaped directly or indirectly (via societal actors) by the integration process and by European institutions (Gehring 1994; Olsen 1995).

Research on European integration has in the last years continued to focus on the dynamics of the EU's institutional development. The continuing actuality of the link between deepening and widening of the Union is increasingly attracting attention in this line of research and has gained new relevance after the end of the cold war because of possible membership applications by Eastern European states and the 1996 revision conference of the Maastricht treaty. A second perspective has, however, gained importance which had been largely neglected during the first phase of integration research. The comparative analysis of political systems as well as policy analysis become increasingly aware of the changes in state action as a consequence of the integration process. It is increasingly perceived that the particular features of political institutions, political processes and policies can neither be understood within member states taken alone nor in a comparative perspective without taking into account the EU dimension. This second line of research is not only concerned with the multiple and far-reaching effects of the EU on polity, politics and policy in the member states but more fundamentally with the changes in responsible and efficient governance.

Research of this kind develops more or less independently from the controversies on the nature and the perspectives of the integration process but starts from the empirical analysis of the EU-system. This focus on the present reality of the EU may be regrettable

1. For the various positions taken in the debate, see the overview in von Bogdandy/Nettesheim (1995) and Joerges (1995).

as it seems to prevent the results from being generalized. Comparisons in time are, however, not excluded in principle but only neglected as a matter of fact and may follow later. In any case, this perspective objects to the commonly held view that the EU is facing decisive choices for its development. Competing scenarios in this respect foresee either a rapid eastern enlargement coupled with forms of variable geometry within the Union or the consolidation and further deepening of the present EU coupled with special-type associations of third states below the membership threshold. There are numerous possible combinations of those two alternatives in a process of muddling through and they will certainly trigger important changes. The recent northern enlargement is also likely to lead to adaptations of the acquis communautaire. In addition, the entering into force of the third stage of economic and monetary union will be most certainly be followed by major changes within the EU.

Still, all this does not preclude that analyses of the present reality of the EU can be generalized. As in the case of previous treaty changes and enlargements, the upcoming changes of the next few years are not likely to lead to a fundamental change in the nature of the political order of the European Union. Apart from obvious differences in (sometimes major) details, member state governments have already established their positions to a degree that makes the "saut qualitatif" of normative EU literature at least for the 1996 revision conference very unlikely. It is therefore useful to start from a scenario which could be called "persistence of Maastricht". This label does not preclude even major changes in the institutional order of the EU but excludes a fundamental transformation of the EU towards a federal state.

Dealing with this kind of multilevel system seems even more promising as the ensuing change of governance is only one aspect of the organization of politics under the conditions of increasing internationalization (Voruba 1993; Zürn 1995), although a particularly important one. Internationalization and the related phenomena require that successful political problem-solving be organized transnationally if it is not to lead to a withdrawal of political responsibility and the increasing reliance on alternative mechanisms such as the market or private self-regulation. How optimal collective decisions can be achieved under the conditions of increasing internationalization and interdependence has been extensively discussed in regime theory (Kohler-Koch 1989; Rittberger 1993) and in the debate on "governance without government" (Rosenau/Czempiel 1992; Kohler-Koch 1993; Gehring 1995). A common concern in this debate is with the conditions and possibilities of governance independent of the existence of a central authority and beyond the territorial congruence of those who govern with those who are subject to governance. In this context, governance takes place by several

formally autonomous but factually interdependent actors. The internationalization of politics thus pushed forward the emergence of new, non-territorial forms of governance (Ruggie 1993).

The transformation of governance in the European Union refers to three aspects, namely action capacity and responsibility of politics, changes in political structures and processes, and the transformation of statehood. Internationalization leads to a decrease in political action capacity because state action is largely confined to territorial boundaries whereas actors which are targets of state policies can move transnationally or are even totally free from territorial links. The joint exercise of sovereignty in the EU enlarges the territorial scope for political action but on the other hand incorporates its member states into a complex decision-making system thus confronting them with the problems of horizontal coordination of political action in negotiation systems. Even if theoretical considerations show that at least in principle, horizontal coordination is equivalent to hierarchical governance in terms of efficiency (Scharpf 1991), horizontal coordination faces serious problems of implementation and control (Majone 1995) and is vulnerable to the pathologies of joint-decision making in interlocked systems (Scharpf 1988). In addition, horizontal coordination is problematic in terms of democratic accountability (Scharpf 1993; Graf Kielmansegg 1995). For these reasons, there is wide agreement that the European Union has a lower action capacity than its member states and that the action capacity of the latter is reduced by the constraints of negotiation processes within the European institutions. A critical discussion of this assessment follows in the next section of this paper.

At the same time, politics in the European Union transforms institutional structures and political processes in the member states. When national policies are partly supplemented and partly replaced by European policies, the latter are necessarily unable to respect the particular material conditions, actor constellations and historical developments in the member states, thus destroying or transforming old structures or creating new ones. This development sometimes leads to sudden changes in power relationships between actors and actor groups within the member states which may have evolved in long historical struggles. It creates new points of access to the political process for actors formerly excluded or left at the margins. Further dimensions of these kinds of changes concern the centralization or decentralization of political and administrative competencies and institutions, preferred instruments of governance, dominant problem-solving philosophies and the relationship between state and interest groups or political parties (Héritier et al. 1994: 20).

The third dimension of the transformation of governance in the European Union is the transformation of statehood understood as a general organizing principle. This is to be distinguished from the second point mentioned above, the changes in the dimensions of polity, politics and policy. We refer to transformation of statehood only if and insofar the principle of territorially organized and responsible politics itself is at stake. A second condition must also be met: these changes have to follow necessarily from processes of internationalization instead of being the result of explicit political decisions. In the latter case, the transfer of political decision-making competencies and allocative functions from the democratic state to the market is merely a change in the dominant problem-solving philosophy which may lead to a change of the form of the state from an interventionist welfare state to a minimalist neoliberal² state. In our usage, this development only qualifies as “transformation of statehood” if it follows necessarily from the internationalization of functional subsystems of society because it is impossible to create the necessary institutions for responsible and efficient governance.

2. The New Shape of Politics

In this part, we will confront the general assumption about the state losing sovereignty and autonomy in the course of the integration process with empirical evidence and plausible arguments telling a different story³. We argue that in order to gain a better understanding of the changes taking place in the European polity as a whole (i.e. in the European Union and in its member states) it is necessary to look at the transformations in the nature and conceptions of governance. These changes certainly cannot be attributed exclusively to the dynamics of the integration process and to the properties of the EU system alone. Both, however, contribute to a large extent to the transformation of governance and in this respect to the role of the state in Europe.

The still prominent discussion about the supranational “rescue” or “decline” of the nation state (Wildenmann 1991; Milward 1992; Moravcsik 1994) certainly no longer starts from the assumption that the state can be modeled as a “unitary actor”, as the “one and indivisible” body of unitary policy-making based on parliamentary majorities and the undisputed right and capability of the executive to implement whatever decision is taken thanks to the “monopoly of the legitimate use of physical force” (Max Weber).

2. “Neoliberal” is used here in the European meaning.

3. The argument is only briefly sketched here. For a detailed elaboration, see Kohler-Koch (1995a).

This concept of the modern state has always been an ideal type with limited descriptive accuracy even in the second half of the last century when it was developed (Ellwein 1992). But dividing political actors into national and European executives on the one hand and societal groups on the other, attributing to them "distinct and independent sets of preferences" and modeling their relationship as an "ongoing set of bargains between principals and agents" (Moravcsik 1994: 4) means to uphold a concept of governing which is synonymous with political control and in this way still is very much in line with the traditional model of the state: governing is what governments do, and the effectiveness of their activities derives from the resources they command because those will define their relative bargaining power in relation to societal actors.

This concept, prominent in the Steuerungsdebatte of the 1960s and 1970s, changed when research began to focus on implementation problems. As a result, a different analytical perspective slowly emerged. The problems of "governability" were no longer perceived in terms of insufficient intelligence of bureaucracy, in the lack of governments' ability to take decisions or in a choice of the wrong instruments but in the particular character of the objects or targets of governance (Mayntz 1987, 1993a). These "objects of governing" were now conceived of as complex "sub-systems of society" with their own internal dynamics making them "impenetrable for outsiders in a double sense, both cognitively as well as in terms of the possibility to be purposefully influenced" (Mayntz 1993a: 14). Therefore, consecutive research centered on the question of how to conceptualize the problematique of governance as it became obvious that political guidance through command and control over "target-group behavior" cannot be achieved.

Policy-analysis (Héritier 1993; Scharpf 1993a), economics (Williamson 1975) and international relations theory (Rosenau/Czempiel 1992; Kohler-Koch 1993) have slowly come to a common understanding that governance is about coordinating multiple players in a complex setting of mutual dependence. Governing then is not synonymous with what governments do by themselves but includes "... all those activities of social, political and administrative actors that can be seen as purposeful efforts to guide, steer, control or manage (sectors or facets of) societies ... Social-political forms of governing are forms in which public or private actors do not act separately but in conjunction, together, in combination, that is to say in 'co'arrangements ... 'governance' [means] the patterns that emerge from governing activities ..." (Kooiman 1993: 2).

The proliferation of networks is a condition as well as a consequence of the growing differentiation of functional subsystems, the political emancipation of large corporate

actors able to take strategic actions by themselves, and the increasing complexity of interdependence (Mayntz 1993b: 43). At the same time, it is an expression of the progressing recognition on the part of social and political actors that a new mode of governance has to develop which rests on the continuous process of interaction. Governing, in this view, has to be organized in a way "to enhance the independent adaptive, reactive, and problem-solving capacities of societal actors, which means to motivate and to enable them to react purposefully at any moment of changing conditions" (Mayntz 1993a: 15). In other words, "governance becomes less a matter of engineering than of gardening" (March/Olsen 1983: 292).

The integration process brings together actors which have a special interest in collective decision-making in networks instead of unilateral state regulation. This cannot be reduced to the desire of egoist actors to have access to financial resources. The literature on European R & D policy and on European structural policy shows that European networks not only provide financial resources for the actors involved but also supply common problem-solving philosophies and give legitimacy to their actions. Instead of being objects of governance, actors in European networks, be they interest groups, enterprises, regions or research institutes, become partners of joint problem-solving. European structural policy, for instance, does not only consist in an increase in the role of regions at the expense of member states due to subsidies from the structural funds. Instead, structural policy offers the opportunity for regions to use the resources offered (financial support, strategic concepts and legitimacy) for achieving new action capacities and a new identity (Marks 1995).

The same applies for R & D policy. In this case, public-private partnerships have already been advocated at national level. They were justified by the assumption that the nature of the problem at stake was characterized by high uncertainty about cause-effect relationships. Policy success requires considerable financial means but takes a long time to materialize. On the basis of this common problem-definition, the "European Roundtable" of leading enterprises in information technology was created and became influential in policy-formulation. It was neither a coalition of industry to get access to new European subsidies nor an association created by the Commission in order to support its policy plans in the Council. Instead, as in other policy fields (Jachtenfuchs 1995), these kinds of coalitions are only made possible on the basis of a common problem definition.

The increasing importance of policy networks should not be interpreted in the sense that the state was just losing more and more power to a large number of other actors.

Networks are always embedded into an institutional context determining the role of individual actors but are much less institutionalized themselves. In addition, European networks are characterized by a higher fluctuation of membership than national ones (Héritier et al. 1994: 9). The existence of complex negotiation systems in European policy-making may even paradoxically increase the autonomy of state administrations and governments vis-à-vis societal actors (Grande 1995).

The complexity of this negotiation process stems less from the material content of the problems to be dealt with but from the fact that these problems are at the same time also political, legal, and/or economic problems in which different sets of actors in usually largely differing national contexts have to be taken into account. This is already true for policy-making within the member states but even more in a Union of fifteen members and a corresponding plurality of political conflicts, legal systems and economic situations. As a consequence, the Commission has to rely on outside expertise and support in order to assess the internal consistency and the acceptability of its proposals.

In this situation of strong dependence from outside information and the necessity to take decisions together with other actors and with the member states, one could assume that the Commission could become dependent from private actors to a degree which makes it almost unable to pursue the "Community interest" or a policy oriented at general as opposed to private welfare. The same applies to the member states with the only difference that contrary to the Commission they do not have to take into account the political, legal and economic situation in the other member states in the process of policy-making. The very fact that in the European Union decisions are taken in a multi-level system helps the European as well as the national administrations to gain a certain degree of autonomy from outside influence. It is remarkable, however, to note the degree of cooperation of Commission and member state administrators during the preparatory phase of a proposal as well as in the decision-making phase (Wessels 1995).

Private actors, on the other hand, find their possibilities of access to the decision-making process limited by the multiplication of institutions and committees involved in the process because there is no central point of access anymore. Instead, interest groups have to pursue time-intensive and costly lobbying in multiple fora at the European as well as at the national level. For European interest associations which are organized as "associations of associations" the additional problem emerges that due to their internal heterogeneity and distance from member enterprises they have major difficulties in forming a common position and can hardly act as corporate actors. In recent years, considerable efforts have been made to strengthen the action capacity and the political

power of interest associations in particular in the economic field. There is now a stronger differentiation of sector-specific associations with a larger internal homogeneity and also an increased direct concertation of large European enterprises, partly through internal reforms of European-level associations, partly through informal alliances (Kohler-Koch 1995b). These reforms were intended to increase the position of interest groups with regard to the Commission which in the last decades has acquired a strong identity and a considerable action capacity as a corporate actor. In addition, the Commission has the privilege of being the "process-manager" (Eichener 1992, 1995). Even national administrations can use the inbuilt necessity of compromising and the temporal closure of the interstate decision-making process for all but state actors in order to gain autonomy with regard to interest groups (Grande 1995).

The distinctive role of regulatory policy-making is another characteristic feature of the EU. A main reason for its importance lies in the fact that despite considerable increases in the last years the budget of the EU remains relatively small and is still to a large extent allocated to agricultural spending. In addition, the major part of the budget consists in contributions from the member states – despite the label "own resources" attached to these funds. Distributive policies such as spending by the structural funds are, however, usually accompanied by massive conflicts among the member states desiring to get "their" share from the available funds (Marks 1995). Regulatory policy-making, on the contrary, shifts direct or indirect costs of a policy to those who are regulated. These costs can easily reach several billion ECU (e.g. in the case of clean air policy) whereas the immediate costs for political decision-makers are usually trivial. Thus, regulatory policy is not only cheap for the Union but avoids conflicts among the member states about the distribution of costs and benefits. Still, conflicts of the latter kind may emerge if a policy severely affects the competitiveness of economic sectors in some member states but not in others.

Distributive or redistributive policies are easily politicized because it is usually easy to establish cost-benefit analyses for the issue at stake. In contrast, the costs and benefits of regulatory policies are usually difficult to establish and depend on complicated and controversial assessments which do not lend themselves to clear dichotomies between winners and losers furthering politicization. Regulatory policy easily becomes the domain of experts and corresponds to the Commission's view of its own role as an unpolitical institution with the task of putting forward conceptually solid and scientifically proven proposals for the solution of practical problems (Wallace 1995). As the amount of technical and scientific information often exceeds expertise and knowledge available to the Commission, it has to rely on a complicated and wide-ranging network of

consultative committees and other bodies. In some areas (e.g. environmental policy and medical drugs), the technical character of the policy is so strong that the establishment of specialized regulatory agencies following the US-example is decided or planned. This development is likely to define the respective policies as technical and non-distributive, thus leaving them out of the political debate. It is also likely to further the emergence of transnational communities of technical and scientific expertise (Haas 1992). At the same time, there are strong arguments in favor of the thesis that regulatory policy-making and the related proliferation of "non-majoritarian institutions" (Majone 1993) have an inbuilt tendency to reduce the influence of parliaments on the policy-process. Normative judgments about this development depend on the possible role of the European Parliament for the legitimation of the European political order.

It has been argued that in the European Union redistributive policies (which can easily be politicized) are possible only to a limited degree as a matter of principle and at the same time are not even desirable from a normative point of view (Majone 1995). If this argument is true and it is also true that in the EU there is a structural bias towards regulatory policy-making by non-majoritarian institutions, we are indeed faced with a transformation of statehood by European integration. The transfer of large areas of policy-making to independent regulatory bodies is only acceptable from a normative point of view if these authorities can be held responsible before parliament in one way or another. If at the same time a full parliamentary accountability of EU institutions faces structural problems (Graf Kielmansegg 1995; Scharpf 1993b), the integration process systematically undermines the possibility of democratic policy-making, democracy understood as parliamentary responsibility.

A review of studies of singular policy fields in the first place leads to a contradictory image of the transformation of politics in the integration process. It seems worth mentioning that the hypothesis according to which the unanimity rule in the Council would result in low standards, a harmonization at the lowest common denominator or even in non-decisions in some cases, is at least not simply confirmed. On the contrary, case studies show that despite unfavorable structural factors, policy-making in the EU has resulted in efficient problem-solving and a regulation at a high level (Eichener 1995). It has to be noted, however, that systematic and methodologically sound comparative research in this area is still lacking. Further research has to be done in order to avoid far-reaching generalizations on the basis of individual and narrowly confined case studies. Empirical studies also show that the notion of "high standards" which is particularly important in the scientific as well as in the political discussion is at least problematic given the enormous complexity of many policy measures and the complicated overlap of

European regulations with pre-existing national ones. In practice, European regulation sometimes replace, sometimes supplement and sometimes transform pre-existing and often complicated national regulations. Combinations of all these patterns are possible as well as the creation of completely new measures in areas which were not previously covered with national legislation. In this situation, it is a quite dubious enterprise to compare European and national standards with reference to their "level".

Another effect of the integration process is the transformation of established national political structures, political processes and policies. Changes occur because of the impact of European policy-making and because of attempts to influence European policy-making. These changes, however, take place along national paths. The respective structures, processes and policies are not simply replaced or harmonized by European policies because institutions and policy-specific patterns in the member states have historically developed a certain persistence against external influence which cannot easily be overcome by European policies. For this reason, there is no increasing uniformity of national systems as a result of the Europeanization of politics. Politics on the national as well as on the European level is and remains distinct and fragmented. On the whole, it seems that European integration makes the political landscape in the individual member states more diverse and leads to an increased complexity in particular in those member states with an already well-established regulatory tradition. One should, however, not easily dismiss the possibility that this apparent increase in complexity in reality hides trends pointing to a simultaneous uniformization of political developments within the EU. One example for such a trend could be the increasing replacement of public intervention by regulation through markets or by autonomous self-coordination of actors as a result of the integration process, in other words the withdrawal of the state in favor of the market or private actors (Streeck 1994; Scharpf 1995).

European policy-making is a reaction to the decreasing link between problems and specific territories and at the same time leads to the emergence of non-territorially bound politics. The European Union looks like an attempt to compensate the uneven expansion of functional sub-systems by supranational politics and thus to reestablish the control and action capacities of the political system on a higher level. This expansion of functional sub-systems is not an autonomous process but to a large extent caused by the European Union. Stimulated by the existence of a institutional framework and a European market, political regulation and economic processes extend over the territorial borders of individual member states into the entire territory of the EU and partly into even larger spaces created by special agreements (European Economic Area, association agreements). The politics of the European Union stimulates this process of

internationalization even beyond the European space. Whereas the Union is a reaction to internationalization and interdependence, it is also a major cause of both and thus in some way creates the conditions of its own existence. In any case, European policy-making cannot be reduced to an attempt of member states to control the consequences of (mostly economic) interdependence by the joint exercise of sovereignty and to save the autonomy of the nation-state through institutionalized cooperation.

This attempt of states to create political action potentials by international cooperation has a price in the form of multiple consensus requirements which in turn reduce the autonomy and the action capacity of the state. Even in its relation to societal actors the state increasingly occupies the role of a partner instead of an institution which unilaterally sets the rules of the game and determines policy outputs. This development is not identical with a decrease of state dominance because it is precisely the proliferation of transnational networks furthered by the integration process which allows the state an even deeper penetration of society. In addition, the structure of the political process of the Union gives the state further autonomy in relation to societal actors (Kohler-Koch 1995a).

Politics in the European Union does therefore not automatically lead to sub-optimal outcomes but to changes of national political structures, processes and policies. There are no solid empirical studies available yet but it seems at least plausible that in the political system of the European Union the loosening territorial links of politics and the division of regulatory competencies on different institutional levels even changes the fundamental principles of territorially based governance. This refers to the apparent systematic transfer of allocative competencies from the state to the market and the seeming impossibility to develop a new political architecture which allows a democratic political control and participation. Even if governmental action is strengthened and weakened at the same time, this development leads to fundamental questions regarding the possible legitimacy of this kind of political order.

3. Governance Beyond the State

The real deficit of integration theory consists in its inability to conceptualize political order in different terms than in the common types of "state" and "state system". Patterns of thinking in the social sciences as well as in legal science are marked by these ordering principles of modernity and these disciplines therefore do not possess even the necessary notions to conceptualize governance beyond the state.

Thinking in terms of state and state system has repeatedly been criticized by reflective and postmodern approaches in international relations theory⁴. These critics insist that the state system and its constituent units, the states, are no unchangeable units but represent the present state of a historical development which has not necessarily reached its final stage in the form of a system of sovereign states. Postmodernists in particular add to this the diagnosis that this development originating in the creation of nation states in Western Europe has led to the emergence of a dominant intellectual discourse which makes political authority over territorially defined units seem justified and natural.

The emergence of modern West European nation-states has been studied in large-scale efforts of historical sociology (Tilly 1975; Rokkan 1975). The conceptual understanding of the erosion of this model has to rely on metaphors such as the "new middle ages" (Bull 1977) which rest on analogies to historical appearances of a polycentric and overlapping organization of political order. We do not want to dismiss the possibility that a comparative study of forms of governance in different historical periods and in different cultures may yield substantial insights into the functional requirements of political order because it is able to shed light on the seemingly unproblematic and self-evident preconditions of the emergence and stability of the Western European model. Nevertheless, the specific conditions of political order in past times are too different from those of the present leading to the erosion and transformation of statehood. In any case, the old middle ages are of little help for the understanding of the new middle ages because the crucial role of religion and its institutions for the integration of society and state system in the middle ages (Schulze 1994) do not find any present-day equivalent.

For these reasons, the metaphor of the new middle ages merely expresses the feeling of an unclear and indeterminate situation without being able to point to concrete elements of a desirable or possible model of non-territorially based governance. In addition, the reference to old or new middle ages is also unable to serve as an institutional blueprint because in the course of enlightenment, the people has occupied the place of the sovereign. Its right of sovereign self-determination can only be restricted in pre-established limits and procedures, installing a government for collective action which is controlled politically and serves only for a limited period of time. This implies that governance is only legitimate if those who are subject to it are identical with those who are responsible for the establishment of the rules determining how political power is

4. See Schaber/Ulbert (1994) for an overview of reflective and Albert (1994) for a discussion of postmodern approaches in international relations theory.

acquired, exercised, limited and lost. Legitimate governance is only possible with reference to a nation united in a territory and in the last resort governing itself via representative and responsible institutions (Graf Kielmansegg 1977).

In this view, responsible government is only possible in the territorially confined nation-state. In this model, borders have an important function because they create the distinction between "inside" and "outside", thus making possible the resistance to external interventions into the territorially organized political community. However, borders do not only have pragmatic functions but also normative ones. The function of borders for the internal relations of political communities consists in their contribution to social integration. They define spaces for communication and fix the limits of the solidarity required from each citizen as encompassing only those citizens living within the same borders. Although social integration is mainly a social process which is largely driven by relations of production and the development of productive forces, the state also contributes to normative integration. It does so as a constitutional state by guaranteeing fundamental rights and as a law-making state by codifying and directing social change. On the one hand, the state is norm-conserving because each change in social norms has to conform to legal norms and to be inserted into a system of positive law. On the other hand, law-making by the state also includes a dynamic element because social change is expressed in the political process of legislation. Thus, the politicization of social situations and demands can become a motor of change.

This model of legitimate governance is logically bound to the state. It only works to the degree that the problems which are brought up and identified as collective tasks by society can at least in principle be solved by the representatives of this very society. It comes under pressure if in the process of internationalization economic interdependence, transnational communication, and the reach of modern weapons increase to an extent that the claim of territorially bound politics to solve problems within its own territory effectively and efficiently cannot be upheld anymore.

The pragmatic solution to this problem consists in the organization of different forms of interstate cooperation. Only in the exceptional case of the European Union, this "management of interdependence" is organized supranationally. Usually, there are softer forms of institutionalized cooperation between states such as international organizations or international regimes. This kind of collective problem-solving is not considered problematic as long as it touches only the margins of the life-world of citizens, or is accepted as "high politics" which can only be solved by cooperation between states or is considered as a successful increase of state autonomy. The fact that a major part of this

kind of international cooperation takes place unobserved by citizens hides international politics behind a legitimating veil. Even in domestic politics it is not possible to discuss every political matter in public discourse. The normative criterion of democratic and therefore controlled governance requires, however, that each political issue can at least in principle be politicized and thus become a subject of public debates over controversial options for assessment and action. In this discourse, responsibility for political action is made transparent and can therefore be subject to sanctions. If, however, the politicization of an issue is neither able to bring the discussion back into the domestic arena nor to guarantee that decisions are taken by actors which can be held responsible politically for these very decisions in elections, the legitimating veil of international politics is torn away. Its results may be considered useful and effective but for the citizen it is clearly and obviously not a case of responsible politics anymore (Graf Kielmansegg 1995).

International cooperation for collective problem-solving – be it in the form of international regimes or of international or supranational organizations – also has consequences for the ability of the state to contribute to the normative integration of society. This is particularly true if this cooperation has achieved a level and quality of institutionalization as in the case of the EU because it undermines the monopoly of the state to pursue integration through law. These observations which are also important for political science have been mainly made by lawyers (Weiler 1981, 1982; Joerges 1995). The core of the European integration project, the market without internal borders, has been created mainly by the case law of the European Court of Justice and by highly technical legal measures of “negative integration” (Scharpf 1995). The fact that political scientists and constitutional lawyers have often regarded the European Union as a “mere” economic community and have considered the rapidly growing body of European economic law as a matter for specialized lawyers (Joerges 1993) may together with the seemingly technical nature of very specialized problems explain the systematic neglect of these issues by political scientists and constitutional lawyers.

In the last years, there have been increasing efforts to loosen the functional link between European law and the creation of the common market by transforming the system of community law into a legitimate fundamental legal order similar to the constitutions of the member states (Mancini 1991). The reference to common constitutional traditions, the adherence to the European convention on human rights or the adoption of a catalogue of fundamental rights as proposed by the European Parliament are certainly necessary for the emergence of a legitimating constitution but probably not sufficient. These elements had to be supplemented by the existence of a European society with the ability to politically articulate itself (Habermas 1992; Lepsius 1991).

Whether this possibility exists is debated at present. In its judgment on the Maastricht treaty, the German constitutional court has argued that democratic processes can only take place in a society in which controversial political positions are debated in public discourse mainly by political parties and in the media. Neither political parties nor mass media exist on a European level. The judgment shows in an exemplary way the difficulty to think about a legitimate political order in categories different from those drawn from the example of the highly integrated nation-state. The resulting dilemma is obvious: a European state is impossible but a retreat to the nation-state is also infeasible because the internationalization of decision-making and law-making competencies makes it less and less possible to solve problems according to the ideal of the democratic territorial state. After the completion of the internal market of the European Union there is a real danger of "democracy illusions" (Streeck 1994) if politics is still judged with reference to the sovereign state which is able to solve the problems on its territory and with the means available there. In this case, the state and political parties will be confronted with demands they are unable to solve whereas at the same time, European institutions do not meet the legitimacy criteria of democratic governance.

4. Legitimate Governance in Europe

It is relatively easy to come to the diagnosis that the model of territorially based governance in Europe is changing: The unique historical coincidence between political authority, economic processes and societal self-definition which makes up the model of the nation-state is slowly falling apart. This statement does, however, not provide an answer to the question how the normative model of legitimate democratic governance can survive under these circumstances. The inability to understand the present state and nature of the European Union and to make empirical forecasts or normative teleological statements about its future development corresponds to the inability to conceptualize democracy and authority beyond the state.

It is not by accident that the discussion on the future development of the EU frequently returns to the question whether the European Union should or could develop into a federal state (Wildenmann 1991). In other words, the debate on the future of the EU does not put into question the model of "state" but merely asks whether this model can be extended to a polity such as the EU with fifteen or more members. Even if it can hardly be denied that such a Union has to be built on strong federal elements as argued by Sbragia (1992) or Scharpf (1994), even this discussion does not put into question the

basic model of territorially based governance but locates the EU merely on a continuum between an association of states and a federal state. Thinking about a possible legitimation of the EU as an independent form of the organization of politics distinct from the former two models has just begun (von Bogdandy 1993; Schmitter 1992).

Political authority needs legitimacy. In the case of the state, this legitimacy is created by the fact that state action is always bound to a set of fundamental rights which is usually contained in the constitution and by democratic procedures of control which assure that authority is exercised only for limited periods of time. Neither the link to fundamental rights nor the existence of democratic procedures are, however, eternally valid elements of legitimate governance but idealized justifications of real relationships. They are theories which the political system has created during its development. As theories *in* (and not *about*) the political system they guarantee the self-legitimation of the political system (Luhmann 1981, 1987). Expressed in functionalist language, they are possible and stable solutions to the problem of legitimation of authority.

One possibility to react to the political, economic, legal and social pressures created by the integration process is to regard the democratic constitutional state as the only possible form of legitimate governance and to defend it against all changes – even with the risk of creating “democracy illusions” (Isensee et al. 1985; Kirchhoff 1992; BVerfGE 1994). A functional approach on the other hand at least in principle allows thinking about functional equivalents to present mechanisms of legitimation. At first sight, such an approach looks technocratic and incompatible with the requirement of democracy if it defines legitimacy as the generalized preparedness to follow the decisions of the political system, denies the possibility of assessing legitimacy by normative criteria and as a consequence considers legitimation merely as a neutral device allowing the efficient use of authority (Luhmann 1969).

However, it is indispensable for the empirical analysis of the present shape of the political system of the EU to look for existing mechanisms of legitimation independently of their normative quality. This approach can be justified even more because even national political systems have institutions which are not democratically legitimated in a narrower sense despite their importance for the allocation of resources or of life chances. Constitutional courts and independent central banks in several countries are examples of this kind. In addition, in several EU member states a considerable amount of law-making is done directly by government or by the administration. These forms of administrative

law-making hardly conform to the ideal-type of parliamentary control of legislative activity⁵. These examples illustrate that even democratic political systems create mechanisms of governance which do not correspond to the ideal of democratic control of government. By saying this we do not suggest that the European Union should easily give up any attempt of democratic legitimation but only that the theory of democracy as well as constitutional law doctrine should take into account the consequences of internationalization and social complexity for the constitution and exercise of political authority (Held 1991).

The analysis of mechanisms of legitimation is also a tool for the better understanding of the nature of the political system in question. The key to this are the expectations of persons or groups subject to governance. Historically, Western European states have developed a specific national structure of cognitive and normative expectations of individuals, groups and organizations with regard to legitimate governance. In the process of European integration, expectations of these actors in the member states are effectively transformed and as a result, the model of legitimate governance (in the sense of a theory in the political system) also changes (Jachtenfuchs 1995). On the other hand, the European political system itself creates new or different theories of legitimation which do not necessarily find an equivalent in the nation-state but which may lead to the acceptance of decisions of the European political system⁶.

In this perspective, a stable and legitimate European political order does not appear impossible from the outset. Three possible types of legitimation for European governance will be briefly discussed here. The first is a neoconservative "economic constitution" (Behrens 1994; Petersmann 1994; Streit/Mussler 1995). In this model, the task of the state is only to guarantee civic liberties and the role of European institutions is to guarantee a functioning market. Demands for the correction of market failures, social welfare systems and the creation of a more just society are rejected. If these elements can be combined in the expectations of citizens, groups or organizations, a stable coexistence of a European and a national political order seems possible. From its very logic, such an economic constitution should be sheltered from parliamentary influence, be it national or European. It offers a realistic possibility to combine a minimalist conception of political authority in the nation-state with the guarantee of a

5. This argument relies on a yet unpublished comparative study by Armin von Bogdandy.

6. A systematic comparative analysis of theories of the legitimation of supranational governance in the above sense is presently carried out by Markus Jachtenfuchs in a research project funded by the German Science Foundation.

European free market without fundamental legitimation problems. Politically, it is an attempt for the definite abolishment of national welfare states via the European way. Critics from the left have always claimed that this was precisely the aim or at least the effect of the integration process (Bieling/Deppe 1995).

The second model of European legitimation comes to similar results from a less conservative political standpoint and regards the EU as a "regulatory regime". Starting from theoretical considerations suggesting that the EU cannot develop into a fully-fledged state, the Union is legitimated mainly by its superior problem-solving capacity in specific sectors. This technocratic legitimation of the EU (Majone 1993, 1995) rests on the distinction between efficiency-oriented regulatory policy and redistributive policy. Whereas the latter follows the classic democratic majority principle, the former has to be conferred to specialized regulatory agencies. The theory of the regulatory state argues that the EU is less dependent on its problematic parliamentary legitimacy if it concentrates on efficiency-oriented policies. The authoritarian dangers of legitimation by expertise are considered to be rather small because the parliamentary legitimacy of the EU is sufficient to control regulatory agencies either by debating their broad political orientations (e.g. in the form of yearly reports or work programs) or by taking back specific issues into the political arena. Independently of their political desirability, both "economic constitution" and "regulatory regime" are at least plausible models of European institutions. They require only a modest parliamentary legitimation and are not logically linked to the model of the nation-state.

A third possibility is the broad notion of the "negotiating state" (Scharpf 1991) which is able to grasp both the transformation of national governance and the emergence of an overarching political system. Like the model of the economic constitution, it is in accordance with the theory of the increasing resistance of functional sub-systems of society to external interference. Whereas the neoconservative idea of a market without a state⁷ elevates the safeguarding of the independence of the economic system to a normative postulate, the more social-democratically minded theory of the negotiating state merely takes the loose coupling of functional sub-systems as an empirical reality (Willke 1992). Governance of the sub-systems of society is considered neither impossible nor undesirable. In this perspective, governance seems possible if political theory abandons the image of the hierarchical state and the idea of the subordination of other functional sub-systems to the political system. Empirical studies show that functional

7. The term is taken from Joerges (1991).

theoretical effort on a broad basis. After the self-declared "obsolescence" of neofunctionalism twenty years ago, integration research has lost its strong interdisciplinary character and has focused on questions within the confines of isolated disciplines or sub-disciplines. Many writings have completely lost theoretical questions out of sight. For this reason, scholars interested in theoretical approaches to European integration again and again referred to real or constructed neofunctionalist postulates. The only serious competition seems to come from international relations theory in the form of "neoliberal institutionalism". However, contrasting neofunctionalism with neoliberal institutionalism only reproduces a debate of the 1960s on the subject of the nature of the European polity, i.e. whether the latter was a new authority above the nation-state or merely a vehicle of dominant nation-states to stabilize their domestic authority under the conditions of international interdependence.

In terms of research strategy, a direct continuation of the highly instructive and valuable theoretical discussion of the sixties and early seventies carries more disadvantages than advantages. It may indeed be useful to take the differentiated typologies of neofunctionalism (Lindberg 1971) as a starting point for the qualitative and quantitative assessment of the nature of the European polity by taking into account critical voices about the fields neglected by neofunctionalism, in particular the role of law. Still, discussing European integration in terms of neofunctionalist theory can hardly escape a certain technocratic bias and the idea of "overcoming" the nation-state. The possibility that the present stage of integration may be stable for the period in which scientific predictions do not yet lose any empirical grounding risks to be systematically neglected in this case. With the fiftieth birthday of the first EU-institution approaching, scientific attention should be directed toward the problems and chances of responsible and responsive politics in the present stage of integration. In addition, controversies about the fate of the nation-state easily acquire the character of religious fights rather than scientific discussions. Finally, questions of democracy occupy a minor role in both neofunctionalist and neoliberalist thinking.

The development of the European integration process has added a second major questions to integration research which was largely absent from the debate in the sixties and early seventies. The increasing action capacity of the EU leads to a transformation of existing political institutions, processes and policies in the member states. This process has major impacts on the action capacity of the state as well as on the possibility of democratic politics. Whether this process leads to the transformation of the principle of territorially organized politics, i.e. to the transformation of statehood, is a major question both for politics and for political science. Research on European integration which is

theoretically interested and open for interdisciplinary questions should therefore take the likely stability of the present state of integration in the foreseeable future as a starting point for analytical as well as for normative work. In addition, it should regard the transformation of governance by integration in a dynamic multi-level system as its second pillar.

Yet, the analysis of European integration offers more possibilities than the empirical investigation of a certainly important field in addition to theoretical and normative reflections about possible developments. European integration is a unique field for the inquiry into the developmental dynamics of modern societies under the conditions of internationalization and functional differentiation. For political science, this means posing the question of the organization of politics. Whereas international relations theory has taken up the consequences of the internationalization of problems and of international interdependence for state politics, research in the domestic field has been largely interested in the consequences of functional differentiation for societal governance. Both perspectives can be combined in integration research. This allows in an almost ideal manner an empirical approach to the discussion on the future of the state and on the validity of the idealized model of the externally and internally sovereign state. Still, a concern with the organization of politics at the end of the twentieth century should not remain restricted to an empirical inventory of the existing forms of modern governance.

The concept of the state as the form of the political organization of society is deeply embedded not only in political science but also in a number of adjacent disciplines. In political science, it is constitutive for the distinction between the international and the domestic system and the respective sub-disciplines. Comparative research not only in political science often implicitly or explicitly compares societies or parts of societies organized as states. Central categories of political theory such as authority, legitimacy and democracy are implicitly linked to the model of the state. Integration research as part of the scientific analysis of politics offers the opportunity to problematize the implicit or explicit reference to the state in central scientific concepts and ask to which degree theories of politics implicitly rely on a concept of the state as the political organization of society.

European integration is not only an empirical process with possible theoretical consequences for a number of social scientific disciplines and sub-disciplines but could also have an impact on the normative discussion. Some years ago, it has been deplored that an adequate normative theory of democratic participation and political responsibility which takes into account the reality of governance today and which could serve as a

guidepost for public debates does not exist (Scharpf 1991: 630). This statement is still true. This lack of an adequate normative theory of modern governance stems from the lack of theoretical and analytical concepts enabling us to grasp the essence of modern governance which in turn can be explained by the fact that thinking about politics and the organization of society is deeply marked by notions derived from the historically successful model of the nineteenth-century nation-state. This is also the deeper reason why the major part of institutional blueprints for the European Union can be classified under the rubric of "federal state" or "union of states". Both consider the state as the only possible organizational form of politics.

The completion of the internal market probably marks the threshold beyond which the autonomy of the state is reduced by internationalization and functional differentiation to a degree which may lead to legitimation problems. Even if premature generalizations should be avoided it seems at least plausible that both tendencies have achieved a strength which makes the model of the sovereign state, developed from the Western European reality and spread throughout the world, an increasingly inadequate description of reality at least in its region of origin. A third tendency besides internationalization and functional differentiation which was largely neglected in this paper probably consists in the increasing fluidity of normative and social structures. The increase of societal contingency in the "risk society" (Beck 1986) might undermine the model of Western modernity with its specific mixture of capitalism, democracy, legality and sovereignty from below (Beck 1993: 17).

Integration research has the rare opportunity to deal with a unique empirical phenomenon which is particularly appropriate to integrate these three tendencies into a realistic model of modern political organization. This would require a departure from a state-centric perspective which is becoming increasingly inadequate in the nation-state itself. It would offer the chance for the elaboration and further development of concepts and tools which could be of some use for political practice and social scientific theorizing alike.

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