Introduction

Sixty-Five Years of European Governance

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Abstract

The key achievement of European integration in the realm of policymaking is a radical transformation in governance which transcends simple notions of hierarchy and may take the form of direct intervention or the establishment of guidelines or norms, in which governance is shared by multiple institutional actors across multiple levels. The articles in this special issue demonstrate the creative and often fragile solutions found to address the challenges facing Europe by analysing changes in governance over time, at various points since the origins of the European integration project, in a range of institutions and policy areas. European governance has evolved from a simple state interventionist model to a complex system of 'governance of governance', employing both hierarchical and non-hierarchical governance modes combined in innovative ways.

Keywords

European integration faces strong headwinds sixty-five years after the Treaty of Paris establishing the European Coal and Steel Community was signed. Awarded the Nobel Peace Prize for helping 'transform most of Europe from a continent of war to a continent of peace' (Nobelprize.org 2012), the European Union today faces persistent unemployment, the challenges of a common currency without a common fiscal policy, illiberal governments in Hungary and Poland, even the possibility of a British exit. Refugees desperately seeking safe haven encounter discrimination and antipathy, and anti-immigrant sentiment – promoted by the National Front in France, Pegida in Germany, Geert Wilders in the Netherlands, and similar groups elsewhere – appears to be growing across Europe, placing stress on the Schengen system of no internal border controls and the promise of a common EU citizenship. All these developments are undergirded by growing euroscepticism that sees the nation-state, rather than European cooperation and common institutions, as the proper locus of loyalty and best placed to solve problems. Yet even in times of crisis such as these, the EU continues to be admired for its powerful impact on governance process and outcomes. Since the EU's post-war origins, governance in Europe has been fundamentally transformed; European integration has not resulted in the kind of federal union that some envisioned, but the EU affects virtually all political decisions in Europe today. What makes the EU truly unique and relevant are its groundbreaking institutional framework and its innovative governance arrangements.

Shared governance and policymaking have long played central roles in European integration. Some policy areas have demonstrated a strong European component since the 1950s, but the importance of European coordination and responsibility increased substantially in the 1980s and 1990s with the single market project. Today it is difficult to find a policy sector in which EU institutions do not share competence with member states or at least help coordinate decisions. Many concepts and approaches have been advanced to describe and explain this growth in European governance. As the role of the state generally has become more multifaceted, the governance and policymaking landscape in Europe has become ever more complex. EU institutions often have policy formulation or coordination roles but generally lack all but the most basic resources to ensure implementation. European publics, often ignorant or sceptical of EU governance, generally continue to hold national governments accountable, not least as these governments often find it convenient to blame 'Brussels' for unpopular policies. The risk of such responsibility without accountability is that it might

lead to a democratic deficit or to a compromise of national approaches without a European solution. The articles in this special issue clarify where responsibility and accountability lie and explain the evolution of policymaking competences that are increasingly shared in Europe's multilevel governance system.

GOVERNANCE

European integration has fascinated scholars since its origins, with particular attention paid to the new institutions and coordinated policymaking that have resulted. The EU is seen as 'the most successful example of institutionalized political cooperation in history' (Meunier and McNamara 2007) in which a 'major thrust of European integration has been to lower barriers, to break down impediments to movement, to make borders disappear or at least lose the significance they once had' (Maas 2007: 120), resulting in an 'unparalleled experiment, lacking obvious historical or territorial precedents, and with each reform fraught with contestation, risk, and uncertainty' (Dawson, Enderlein and Joerges 2015: 2-3). The evolution of European governance can be summarised as an 'unstable and contested reallocation of authority to the European level' (Schakel, Hooghe and Marks 2015: 169) and, despite contestation and instability, EU institutions work to 'extend the Union's internal rules, norms, standards, and governance processes beyond its borders', thereby enhancing both European and global governance (Zeitlin 2015: 8). The degree to which European governance can actually be 'democratic' remains an open question (Dahl 1999), yet recent research on politicisation demonstrates the continuing difficulty of importing concepts such as 'democracy' into the sphere of European governance because different kinds of European governance are demanded by different people, in different settings and countries, and even by the same people at different times (Wilde, Leupold and Schmidtke 2016). The 'crisis' context post-2008 has arguably led to a 'hardening' and (re-)hierarchisation of EU regulation in key policy areas, while central institutions such as the Commission adroitly use their 'soft powers' in ways that buttress their influence (Dehousse 2016). Perhaps the wisest approach is for those who value multi-tiered governance with overlapping memberships – as seems best suited for the European Union, which cannot easily (nor probably should aspire to) become a traditional state with hierarchical governance – to 'accept that this means valuing 'semi-sovereign' governments and 'moderate' senses of membership' (Smith 2013: 69). Viewed through a broad lens, despite the considerable changes that have taken place in the EU's membership, policy scope and institutional structure, the result indeed appears to be semi-sovereign governments with moderate (rather than unitary and exclusive) senses of membership. The articles in this special issue provide a theoretically informed analysis of European governance, analysed over time across key institutional and policy settings.

Since this special issue focuses on the 'governance' of the European Union, it is important to define the concept, a task that is particularly necessary since the term is often contested and ambiguous. The *Oxford Handbook of Governance* begins by stating that 'governance is not a unified, homogeneous, and hierarchical approach to the study of politics, economics, and society' (Levi-Faur 2012: 9). In speaking of governance, particularly in the European Union, Bartolini reiterates this sentiment: 'various conceptions of governance do not share a set of constitutive features, a defining conceptual core to which additional features can be cumulatively added to identify its specific manifestations' (Bartolini 2009: 2). Nevertheless, there is some agreement that the expression is meant to delineate a focus that is broader than simply government and its institutions. While structure remains an important consideration, describing and explaining the process aspect of governing also matters (Bartolini 2009: 14; Levi-Faur 2012: 8). The study of governance suggests a heightened emphasis on the actors involved, because it often seeks to highlight that governance might be shared between different levels of government (the national, supranational, and sub-national), between government and non-governmental entities, or that governance may be shifting between public and private market forces. Thus, the special issue treats governance as being not

only direct intervention into national policy, but also the establishment of guidelines and frameworks, which are sometimes more normative than positive.

Indeed, concentrating on governance has also been instrumental in delineating how the very act of governing may be transformed from the standard conception of following the command of a hierarchically, centrally situated government to newer modes of governance in which compliance is not entirely mandatory, in the interest of furthering parallel goals such as learning, increased participation, and democratic legitimacy. In line with this latter concern, the concept of 'good governance' has emerged, which identifies government practices such as transparency, merit-based advancement, and the inclusion of various stakeholders in policymaking and uses these as the basis for setting standards (Weiss 2000). Thus, governance approaches share a common interest in policymaking and implementation, and the ways in which the competences for these are distributed across a variety of actors. With a common focus not merely on the location of policymaking authority but also on the type of authority that is exercised either directly or indirectly through the setting of guidelines, the contributions in this special issue examine governance through a more nuanced analysis that identifies three separate orders of governance.

Governance of the European Union

The study of governance has assumed particular relevance within studies of the European Union, which have spawned such concepts as neofunctionalism, multilevel governance, and new governance, to name a few. As Börzel (2012) argues, traditional international relations theories that are heavily state-centric, as well as comparative politics approaches that do not adequately appreciate the transnational or supranational nature of the EU, often fail to factor in all the dynamics of the EU as well as governance approaches that more ably capture inter- or trans-governmental negotiations consisting of public actors from different policy sectors and/or levels of government. The pre-eminent theories concerning the EU's initial creation and development, neofunctionalism and intergovernmentalism, focused on whether European integration follows a path prescribed primarily by the member states or by the supranational institutions that they empowered. Indeed, the standard mode for examining European governance – as exemplified by the approach in Marks, Scharpf, Schmitter and Streeck's *Governance in the European Union* (1996) – is to determine the level at which authority for decision-making resides.

However, this is far from the only conception of governance commonly applied to study the EU. In recognition of the degree to which the term 'governance' has co-evolved with European integration, the *Handbook of Governance*, which is otherwise organised by broader concepts such as democratic, economic or global governance, devotes an entire section with four chapters to the EU alone, though no other particular polity, national or international, is addressed in such a manner. Initially, supranational and intergovernmental theorising viewed the contestation over policymaking competence as involving the member states and the supranational level. This simple dichotomy has been modelled as a relationship between the principals, the states, which delegate their authority to an agent, the supranational institutions, which act rather independently, subject to a few controls in the form of shared decision-making and periodic monitoring (Pollack 1997). This parsimonious model and the general focus on the national versus the supranational are challenged by the reality that some competences for decision-making, and particularly implementation, reside at the sub-national level where regions and municipalities also share in governing.

In response, the idea of multilevel governance was coined in reference to the fashion in which the EU has established special fora and procedures that also draw in subnational polities (Marks, Hooghe, and Blank 1996). Beyond looking further downward to identify additional stakeholders involved in the governance of the EU, scholarship has also expanded outward, granting greater

attention to non-governmental actors and their ability to impact governance and become empowered in the implementation of EU policy. Here, one often speaks of self-governance or self-regulation, which entails the degree to which producer groups have been entrusted with the task of legal harmonisation with the ability to set enforceable European standards largely beyond the control of either the member states or the EU level.

The emergence of such a variety of governance configurations challenges standard conceptions of politics that highlight government's tendency to centralise and monopolise authority within itself, and instead testifies to the pragmatic nature of European integration in which goals may be accorded primacy, over the question of who will carry out these tasks. This agnosticism as to the level at which policymaking should occur and which political actors should be involved, together with the novel challenge of negotiating the transference of partial or even complete competences, is reflected in the variety of governance processes that have blossomed. New, or experimental governance, refers to new patterns of governance that have taken their place alongside the traditional Community Method through which the Commission was largely tasked with drafting policy which was then debated between the Council of Ministers and the European Parliament before finally resulting in concrete EU legislation.

Thus, new governance is characterised by less hierarchical decision-making by a variety of actors, including non-government entities, while its primary *telos* is not to create uniform binding laws, but rather to create a network for discussing policy innovation and learning from the successes and best practices from a variety of polities and polity levels. Projects such as NEWGOV, which studies new governance and the dynamics surrounding its emergence, re-emphasise the synergy between the EU and the concept of governance, but their temporal focus falls short of capturing the entire span of European integration since such practices are indeed newer, and have emerged largely only since the 1990s, or at the earliest the late 1980s (Héritier and Rhodes 2011). They sketch an important aspect of EU governance and the path it may follow in the future, reminding us what makes the EU unique and pertinent; but explaining the development of governance in the EU involves a different focus and set of questions.

This cursory review illustrates that there is no single European governance mode, and, indeed, that is precisely why this special issue seeks to explore the variety of different governance styles that are in place across various policy domains and to explain how this came to be so. Articles in the special issue cover the entire experience of European integration since its inception. This allows us to chart broad trends more clearly and identify significant degrees of change over time.

SIXTY-FIVE YEARS OF EUROPEAN GOVERNANCE

This special issue's virtue lies in its temporal breadth and its concentration upon a single aspect of the EU. Sixty-five years is a suitable juncture to reflect upon changes in the EU, particularly since an examination over time renders transformations that may otherwise be obscured by their incremental nature more vivid and offers the opportunity to compare the starting point to the current situation. Conversely, by focusing on a single key aspect such as governance, it is possible to apply greater nuance to the analysis, especially when it is investigated across different institutions and policy areas.

A common concern of the analyses contained within this issue is whether changes have been transformative or not, and whether such change transpired incrementally or through key institutional reforms. Of the diverse approaches to governance, there are a few conceptions of the term that have proved to be the most common guides for analysis in this volume. The majority of the contributors analyse governance through the standard notion of a division of policymaking

authority between member states and the supranational agents they initially empowered. Most follow Tömmel's (this issue) gloss on Kooiman's (2003) conception of three orders of governance, ranging from direct intervention to setting guidelines to creating a normative framework. Some articles also bring out the multiple levels across which governance competences are distributed, and whether private actors are also involved. While some pieces discuss the degree to which non-hierarchical means of governance have also been introduced, this plays a far lesser role than in the new governance literature generally. Finally, there is also consideration of how the idea of 'good governance' has been adopted and adapted by the Commission. Thus, while several aspects of governance are addressed, the conceptions under consideration demonstrate sufficient commonalities to yield comparable findings.

Summarising across the examinations of both institutions and policy areas, a few important points emerge that may not surprise, yet which can now be asserted with greater confidence, not just when speaking of European integration overall, but also across multiple EU domains. First, changes in governance have often been transformative, but they most commonly display an incremental path of change in which the process often assumes an independent dynamic through which the growing independence of the supranational actors appears to be tolerated largely for the sake of pragmatism. Second, in many areas the crucial changes, or indeed the initial changes, in governance nature or practices have intensified in the last 25 years. Certainly the creation of the European Union in 1992 plays a role here, but as the issue's contributions concerning various different areas of governance confirm, it has often taken the EU quite a long time actually to 'grow into' the new governance patterns contemplated by Maastricht. Third, though new governance approaches highlight the multiple levels and actors increasingly implicated in EU governance, it is national governments and EU institutions that remain central. Further, government institutions generally, rather than non-governmental actors, still wield the overwhelming degree of authority in decision-making processes that remain largely hierarchical.

The Governance of Institutions and Policies

The special issue's articles examine the development and evolution of governance in individual aspects of the European Union, some more focused on institutions and others on policies. First, Ingeborg Tömmel's contribution casts a broader gaze upon EU governance generally, arguing that it has evolved from a simple state interventionist model, based on hierarchical means of political steering, to a complex system of governance, using both hierarchical and non-hierarchical governance modes and combining them in innovative ways. This process constitutes an evolution from a simple concept of governance aimed at directly steering developments in the member states to a complex system of governance of governance, that is, a system aimed at directing or shaping the governance of the member states. The article explains both incremental changes and more fundamental transformations in EU governance as responses of the EU, in particular the Commission, to policymaking deadlocks. This analysis highlights what becomes evident throughout the other articles: the variations among policy areas in the distribution of powers across government levels, and in the use and ever more complex combinations of governance modes from both the hierarchical and non-hierarchical spectrum. Tömmel's article provides a framework for conceptualising European governance as a system of governance that shapes the governance of the member states, and then distinguishes between four phases, elaborating the major turning points in the evolution of European governance, which serve as analytical tools that other special issue contributions follow for ordering the highly complex empirical material on EU governance across the various institutions and policy areas.

The institutional focus begins with Neill Nugent's examination of the overall decision-making structure of the EU and the extent to which progressive enlargements have challenged the ability of

the EU to continue to govern effectively and efficiently. Governance in this case refers to the ability of the Commission and Council to draft and implement solutions to the problems that come before them effectively, in other words it refers to the EU's decision-making capacity. Enlargement has been an issue for the EU since 1961, and is thus an ongoing process, which has been matched in an incremental and reactive fashion by institutional adjustments. Nugent concludes that these formal changes to decision-making processes have been facilitated by attitudinal changes among national governments that have recognised that with so many diverse member states and areas of policy involvement, decision-making flexibility must be accorded paramount importance.

Michelle Cini examines the concept of 'good governance' as it relates to public ethics through the establishment of structures and policies to govern the conduct of public servants. Her article considers the development of the discourses and practices around public ethics that have emerged since the 1990s in the European Commission. The article charts how good governance issues appeared on the Commission's agenda, in part as a consequence of growing concerns about the legitimacy of the European integration process, but only transformed into an actual agenda as a consequence of the scandal surrounding the Commission's resignation in March 1999. Nevertheless, despite this event, Cini argues that this new discourse did not mark a further transformation in the governance of public ethics in the Commission, as public ethics from 2005 was marked in practice more by continuity and incrementalism than by dramatic change. The article draws attention to the importance of the governance of governance (meta-governance) within the EU institutions, while emphasising the important distinction that exists between discourses and practices of governance in that context. It argues that while governance discourses are often characterised by a language of transformation, institutionally, the practices of governance may continue to evolve incrementally.

A further institution under examination is the Court of Justice of the European Union. Jessica Guth's article begins with an assessment of the early case law that transformed the treaties from simple international law obligations between member states into an integrated legal order directly applicable in member states. She argues that without these decisions European integration would have been far slower, if not impossible. Although the legal order itself has remained fairly static, the Court retains an activist stance, continuing to make decisions that transform certain policy areas, thereby assuming a position of authority and power in the institutional framework which could not have been foreseen and which is not welcomed by all. The article concludes with an analysis of how and why the member states have tended to accept the court's activism or, at least, have been unsuccessful in curbing the Court's power to expand the scope of EU law. By analysing the development of the Court from an interdisciplinary perspective that brings together law and politics, the article encourages a more critical debate on the role of the Court as both a legal and a political institution.

A final institutional article is Paul Stephenson's analysis of the little-studied institution of the Court of Auditors, highlighting how it has evolved from simply auditing expenditure to actually questioning the policies of other EU institutions. Examining the beginnings of European administrative governance in the area of financial control, Stephenson reveals how initial attempts to scrutinise Community expenditure gradually led to more assertive demands from the Commission, Council, and Parliament to justify institutional and policy expenditures. Through a historical institutionalist analysis, it traces the defining moments that have shaped audit governance, and how the nature of the audit function has itself changed since Maastricht, and has coped with fraud, euroscepticism and the financial crisis. The analysis demonstrates how the European Court of Auditors has achieved greater independence, and precisely how this has also generated greater contestation over what its mandate should actually be.

The articles dealing with policy areas begin with Michele Chang's analysis of a policy area currently undergoing dramatic transformation: Economic and Monetary Union (EMU). Chang uncovers the

normative aspects of governance that have been enhanced through the economic crisis that began in 2008. Since that time, third order governance in the form of greater acceptance for EU-level intervention has also enhanced opportunities for first and second order governance. The former is in evidence through the expansion of the ability of the European Central Bank to determine binding policies, as well as the establishment of new bodies such as the European Stability Mechanism or the Single Supervisory Mechanism. Chang argues that second order governance remains the standard mode in those areas where the normative framework has not shifted, permitting only incremental advancement in such areas. Unless there were normative changes concerning the acceptability of intervention on a certain issue or support from hegemonic powers such as Germany, the sovereignty of the member states has remained largely as protected as it was during the formation of the EMU.

Sandra Eckert's article on regulatory governance in energy policy examines decentralisation tendencies in the multilevel system as well as the degree of delegation of regulatory competencies towards private actors in an effort to test the supranational centralisation hypothesis. Despite having initially been an area where the European level assumed direct policymaking authority, this tendency has receded over time, as governance capacity in this area has centred on setting institutional and procedural rules. Eckert argues that this has been accomplished through a combination of governance networks in the area of competition policy and agency governance, self-regulation in areas with incomplete governance capacity on cross-border issues, and soft governance mechanisms that bridge policy areas and governance levels. This can be successful where framework provision combines with hierarchy, but contradictory policy goals and resistance from lower levels remain considerable obstacles. Concretely, this has meant that EU energy policy has undergone incremental change with the development of an *acquis* in related areas (internal market, environment, security of supply) and the establishment of an Agency for the Cooperation of European Energy Regulators (ACER).

Roberto Dominguez takes on the daunting task of uniting the three separate facets of EU external relations in a single article. Here, trade has been the most orthodox with the Commission wielding substantial leverage since the early 1960s. The political-diplomatic sector, on the other hand, has witnessed the steady development of permanent communication practices and formal and informal institutions. Finally, in the military-security sector, governance is limited to cooperation, which has remained cautious and practically underdeveloped in terms of integration processes, in spite of several attempts in the early days of the European integration project. Dominguez pays particular attention to the degree that institutions – either existing ones such as the Commission or European Parliament, or newly created positions such as the High Representative – are empowered by the member states to participate in the formulation of policies, as well as actual decisions on implementation. Here he demonstrates how the differing pace and degree of transference of governance competences clearly reflects the varied salience of these three different domains of external relations.

Willem Maas considers the development over six decades of the concept of European citizenship, from the initial introduction of free movement rights for certain workers in the European Coal and Steel Community to current debates about making EU citizenship an autonomous status no longer dependent on member state nationality, or at least encouraging coordination of rules on citizenship acquisition and loss. In his comparative analysis of the development of citizenship in nation-states, Maas demonstrates that the introduction of central rights that took primacy over local ones empowered individuals and redrew the relationship between the governments of the centre and those of the units. Similarly, Union citizenship limits the power of member states to treat their own nationals worse than nationals of other member states. Many cases decided at the Court of Justice of the European Communities, particularly since the entry into force of the Maastricht Treaty, can be seen as attempts to grapple with the new constitutional status of Union citizenship. Whichever future direction these debates take, it is clear that the introduction and growth of a common legal

status for EU citizens has profoundly altered the nature of Europe and the meaning of European integration for its citizens, which forces even notionally sovereign EU member states to coordinate their citizenship and nationality policies.

In his article, Alexander Caviedes focuses on the development of governance in immigration and asylum. Freedom of movement for EU workers has always been part of the Communities and has expanded incrementally, both in terms of who benefits from this right and the degree to which member states retain control over such movement. Immigration policy was not initially within the ambit of the European Community, and only become an area of EU competence through the Maastricht Treaty. Since then, governance has developed over three distinct periods that saw expanding authority for the Commission, together with increased involvement from the Court of Justice and the European Parliament and greater relevance of EU agencies such as Frontex. Within the individual migration policy domains, member states retain the greatest sovereignty in labour migration and family reunion. Caviedes concludes that there has been relatively greater supranational involvement in the areas of irregular migration and specifically asylum, whether through the involvement of EU agencies, or through legislation and court rulings setting concrete obligations that impact actual behaviour.

The issue concludes with Maurits van der Veen's study on public opinion concerning the EU, and whether this is impacted by the nature of EU governance in discrete policy areas. Survey data suggests that public support for the Europeanisation of particular policy areas has changed over time, dependent on changes in the level of integration in those areas. Further, issue-specific support for (or opposition to) Europeanisation appears to have a measurable effect on support for the overall European integration project, specifically when Europeanisation has in fact taken place. This is an important matter and the proper tone on which to conclude the issue, since it probes the question of efficacy, not simply in definitional terms, but in practice, because it seeks to determine whether public perceptions of having relinquished authority to the EU are accompanied by greater support for such policies, or whether this triggers some form of backlash.

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To conclude, this issue pursues three principal objectives. First, to conduct a comprehensive evaluation of 65 years of European governance in a targeted manner that considers a variety of both institutions and policy areas. Second, to analyse 'second order' governance that focuses on the balance of competences between the central supranational actors and the member states that have empowered these institutions. Third, to analyse developments in the various areas to determine the extent to which changes in institutions and policy have been transformative, and demonstrate whether this has proceeded in an incremental fashion or through moments of major institutional reform that were intended to produce the desired consequences. This approach to analysing governance issues and how these have evolved throughout Europe's integration experiment is at the cusp of current EU studies. We hope it will contribute to the continuing debates over what type of polity the EU is, where it is heading, and how it can best achieve the many expectations of and responsibilities placed on shared governance in Europe.

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