Status Report for the Evaluation Committee

February 2002

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Founded in 1996, the Max Planck Project Group "Common Goods: Law, Politics and Economics" took up its activities in Bonn on 1 October 1997, when Professor Christoph Engel and his team of then six lawyers and an economist commenced their research. Eight political scientists later joined the Group, led by Professor Adrienne Héritier, who took up her full-time duties in the Project Group in February 1999. Hence, some members of the Project Group have been working up to four years, while the Group as a whole, however, has only been engaged in its activities (as of 2001) for two and a half years. For this reason, the report includes information about the full span of activity from 1 October 1997 to 2001.

The Group has been initially established for five years. Its research goals are tackled on an interdisciplinary basis: the Group's primary analytical concern is the integration of law, political science and economics. The Project Group is still being set up.

As of 1 August 2001 (in addition to the two heads of the Group) there were a total of 23 academic positions and additional positions of two visiting researchers, three researchers on fellowships, five researchers completing doctorate and seven undergraduate assistants. The Max Planck Society will decide whether the Project Group will be transformed into a permanent "Max Planck Institute" in Bonn after the evaluation of the Group's work in 2001/2002.

The Project Group examines the various institutional forms that are used to overcome social dilemma situations in the provision of common goods. It studies the preconditions, modes and consequences of these different forms of providing common goods in various policy areas, ranging from environmental policy, public utilities, and the regulation of financial markets, to communication based on information technology and trade disputes.

When the Max Planck Society originally decided to establish the Project Group it was envisaged that there would be a third discipline, economics, headed by an economist.

B The Concept of Common Goods: Working Definition

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We work with a definition at two levels:

a) the good as such and

b) the institutional and political aspects of definition and provision of the good.

The classic economic definition of public goods is based on two conditions: accessibility and (non)-rival consumption. Whereas access can be denied and consumption is rival in the case of private goods, common goods lack at least one of the two characteristics. Accessibility means that individuals who have not contributed to the production of the good cannot be prevented from consuming it. Non-rivalry means that if one individual consumes the good, this does not reduce the utility other individuals can derive from it. Common pool resources are defined by accessibility and rival consumption. If one individual consumes the good, others have less. Toll or club goods are defined by limited access and are (at least up to a certain number of consumers) non-rival. The combination of these two properties, accessibility and non-rival consumption, creates an incentive problem for the production and provision of the good. In terms of production and institutional provision, the classic economic argument claims that – given the properties of accessibility and non-rival consumption – there are not sufficient incentives for the market to produce the good. Hence, a central political or legal decision to safeguard its production and provision has to be made.

However, a closer glance reveals that it is questionable whether, indeed, the properties of accessibility and (non)-rival consumption are properties inherent to the good as such (ontological definition of goods). Rather, it may be argued that the property of accessibility/excludability derives from the factual or potential definition of property rights. A definition of property rights may not occur because of one of three reasons: a technology for excluding access does not exist (clean air); the transaction costs for establishing property rights are, for the time being, larger than the utility derived from (better) property rights (use of public roads); normative political and/or legal decisions are made in favour of general accessibility and its institutional guarantee (access to free health services).

Similarly, (non)-rival consumption need not be considered as a feature of the good as such. For individuals do not seek the possession of, or the access to, physical goods as such, but as carriers of some utility. Even if the good is not used up, this will, however, unavoidably be the case with the individual utility derived from it. Non-rivalry as a property disappears once the property right is no longer a right in the good, but a right in the individual utility derived from it. Car-sharing is a well-known example. Instead of owning a given car, the client has a conditional right to the temporal use of a car from a pool. But defining the narrower property right may fail for the same reasons that have been outlined in the previous paragraph.

The foregoing is based on the classical economic notion of utility-maximizing behaviour. A more realistic notion of human behaviour is more complex. It adds cognition, learning, the incomplete translation of attitudes into behaviour, the limited ability to process information, and biased decisions to the analysis of the willingness to contribute to the provision of common goods. The modes of the institutional provision of common goods have to take this more complex model of behaviour into account. This renders design more demanding, but it may also allow more favourable predictions, due to the role for instance that fairly strong reciprocity attitudes play in shaping behaviour.

These considerations open up a wide array for interesting theoretical, analytical, empirical and normative research. Why are individuals willing to contribute to the provision of a common good? Why does it come to be considered as such in the first place? Which role does societal influence, that is ideas, social norms, group pressure and existing institutions play in this context? Why and how is the institutional provision of a common good secured in a specific way? Which are the underlying political processes? What are the distributional impacts of particular institutional arrangements? Which normative precepts are to be derived from these insights? In their research the members of the project group seek to offer systematic answers to these questions.

C Living Interdisciplinarity

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Interdisciplinarity is central to the work of the Max Planck Project Group and not just a word occasionally added on to its work. However, we no longer live in the era of Leibniz. Not even the brightest and hardest working individual could simply amass the abilities and knowledge from all fields that might be relevant for the issues at hand. Rather, living interdisciplinarity calls for careful strategic decisions under conditions of considerable uncertainty. If it is to bear fruit, it must be embedded in appropriate procedures, an organizational framework and a culture of interdisciplinarity. Throughout the course of its existence, the project group has sought to offer such a fertile soil for interdisciplinary work, combining law, political science, and to some extent also economics and psychology.

We have done this from a variety of angles:

a) we have defined precisely delimited substantive areas for interdisciplinary research;

b) in a second line of research we have started from a central analytical focus of political science – namely governance across multiple arenas – and have added a legal dimension to it;

c) at a methodological level we have reflected on the conditions for fruitfully combining both disciplines;

d) finally, we have taken complementary perspectives in examining phenomena in both disciplines in terms of the level of analysis (i.e. the micro, meso and macro level) and nature of analysis (empirical-analytical and normative).

a) Joint substantive topics

One obvious condition for interdisciplinarity is a joint topic. The project group has combined efforts on two levels of specificity. On the more general level, all work is tied to the concept of common goods, as defined in the previous section of this report. All individual research focuses on legal, political and economic aspects of institutions aimed at providing common goods.

On the more specific level, cross-disciplinary topics centre around three substantive areas: the environment, communications and network industries. Héritier and collaborators have a long-standing record for their work on environmental issues (Héritier et al 1996). The habilitation projects and other works of Holzinger (1, 2, 3, 4, 5, 6) and Börzel (7, 8, 9, 10) make contributions to this field, as does Verweij (11, 12) with his work on the clean-up of the Rhine and on global warming. Knill has done research on European environmental policy (Knill 13, 14, 15, 16, 17) and Suck (18) investigates the policies of renewable energy in an Anglo-German comparison. Moral Soriano (19) analyses the legal reasoning of English judges in environmental cases under the aspect of the justification of a decision and the generation of coherence in the legal system. Engel and collaborators (see D I) have put most of their efforts into waste management.

The second intersecting research area is communications, with a focus on Internet governance. Engel and collaborators (20) have conducted a German-American study on global networks and local values, the U.S. co-chairman being a political scientist. Farrell (21) is working on a book project on the emerging transnational regime for data protection in electronic commerce. Knill (22) and Lehmkuhl (23) are analysing changing forms of governance in the regulation of information technologies, with a particular emphasis on private actors. In the third area, i.e. network industries, Héritier and collaborators, jointly with the London Business School, are conducting a project on the deregulation and reregulation of these industries: Böllhoff (24, 25), Héritier (26, 27, 28), Moral Soriano (29, 30, 31), Suck (32). Geiger (33) and Engel (34) have joined in with legal monographs on telecommunications. Again, smaller contributions add to this. Becker and Okruch (35) investigate the legal dimension of auctioning the UMTS-licences.

b) Governance across multiple arenas

The project group is increasingly exploring a second approach for organizing interdisciplinary work. This approach does not start by jointly looking at an issue area; instead, it starts out from a core analytical question of one of the two disciplines. All the political scientists involved in research here look in one way or other at governance across multiple arenas. Their basic observation is straightforward: governments no longer have a governance monopoly. Public authorities stretch from the local up to the global level. Public bodies at all levels compete with each other for regulatory authority. Some governance activities have been taken over by purely private actors. Hybrid forms, blurring each of these dividing lines, abound. Héritier (36) studies new modes of governance in European policy making. Lehmkuhl's habilitation project (37) investigates in various sectors whether the private resolution of commercial disputes can be read as a privatization of the judiciary. Lehmkuhl and Becker (38) pursue a project examining the interaction between two functionally specialized private associations on different planes in the areas of the international sports community. They extend this project to the question of whether the existence of private international regimes erodes domestic legal systems by establishing a legal order beyond the dualism of domestic and international public law. Knill/Lehmkuhl (39, 40) theorize the role of private actors in governance across multiple arenas. Farrell's project (41) studies self-regulation under public oversight in the area of data protection. Kerwer's habilitation (42) analyses the role of rating agencies in regulating financial markets. An international interdisciplinary conference on the topic organized at the project group in July 2000 (Héritier 43 – conference) grouped these various political science questions together.

A legal dimension has been added to the political science perspective on governance across multiple arenas in the vertical and horizontal dimension. Tjiong (44) is writing a Ph.D. thesis on regulatory competition. Becker's habilitation project (45) develops constitutional standards for addressing the increasingly blurred line between the public and private input into regulation. Hybrid regulation is the centrepiece of the final report in the project on Global Networks and Local Values by Engel and collaborators (46). Engel (47, 48) has contributed pieces addressing the constitutional challenges of pure private and of hybrid governance; he has also written pieces investigating institutions on the border between the state and the market (49), other pieces on regulated self-regulation in both the field of waste management and in the labour markets (50, 51). In yet another paper he tries to explain how a litigable European Charter on Fundamental Rights would change the political opportunity structure of the Union (52).

Finally, Börzel, Risse and Engel (53) convoked a workshop on global governance at the European University Institute, bringing political scientists and lawyers together. Additionally, in 2000, the Ad-hoc group "Governance in Transition" of the German Association of Political Science (DVPW), was established by three members of the Project Group, Holzinger, Knill and Lehmkuhl (Holzinger 54). An additional workshop "Law Beyond the Nation State" (October 2001) was organized in collaboration with the Institute for World Society, Bielefeld, and the Centre for Transnational Law (CENTRAL), Münster University. The overall objective of the workshop was to analyse the characteristics, possibilities and limits of a law beyond the nation state in a setting involving political scientists, lawyers, economists as well as legal and political philosophers from various universities and Max Planck institutes (Lehmkuhl 55).

c) Reflecting the conditions for interdisciplinarity between law and political science

The practical interdisciplinary work at the law/political science divide has made the project group aware of a deficit: In the days of descriptive political science, there was a tradition of combining public law and political science. But for modern, theoretically guided empirical political science, there are no trodden paths across the disciplinary frontier to law. The deficit has two related dimensions. Both can be demonstrated by comparing studies in 'law and political science' to the well-established field of 'law and economics'. Mainstream economics defines itself by methodological individualism. Accordingly, the field of 'law and economics' essentially applies this method to legal issues. Economists must learn how to select issues so that their method captures the essence of legal problems. Lawyers must learn how to integrate economic models into their richer agenda. Similarly, rational choice theory in political science

applies methodological individualism to political phenomena. However, there are other conceptual and theoretical approaches in political science that are just as widely applied. A variety of different concepts, theories and methods are available. Hence, it would not make sense to strive for a unified theory or for a single blueprint for designing successful interdisciplinary research among political scientists and lawyers.

The project group convoked a conference (56) to address the challenge. It selected topics of pronounced interest in both fields and asked participants to explore paths for combining insights from both fields. A follow-up conference is scheduled for May 2002. It shall result in a book publication.

Lehmkuhl (57) in a piece co-authored with a lawyer argues that any attempt to achieve the cross-fertilization of law and political science requires the mutual awareness of other (sub)disciplines' ontologies, epistemological assumptions and methodologies and the awareness of concepts and methods as indispensable preconditions for reaping the benefits of cooperation across disciplinary boundaries. Although not every problem of a lawyer may be translated into a problem of a political scientists (and vice versa), such an awareness facilitates not only the communication between lawyers and political scientists, but also allows for cooperative work, for instance, by providing complementary insights on a specific topic.

d) Complementarity of perspectives in law and political science

The conceptual and methodological orientations of both disciplines, which start from an interest in the goal-oriented behaviour of actors within institutional frameworks, are complementary: the political scientists are interested in generalizations and the empirical validation of these claims. The lawyers, by contrast, have a pronounced normative interest. They define themselves as counsellors, be that for rule design or for rule application. This implies that they weigh parsimony and fit differently. Political scientists seek to achieve theoretical consistency, methodological and empirical rigour. Lawyers must assume responsibility for their recommendations. This makes it important not to overlook any of the important dimensions of the issue at hand, even if they are not scientifically original, even if there are not yet rigorous scientific tools for analysing them, or even if they are too complex for the scientific methods that are meant to deal with them. All these traditions are characteristic of the two disciplines as such.

A second dimension of complementarity originates from the individual research orientations of the two heads of the project group. Héritier is more interested in the structural macro, meso and process perspectives. This is played out in the design of the programme on governance across multiple arenas (See D II 1 and D IV 2). Engel is more interested in microperspectives on the provision of common goods. This is played out in the new programme on the limits of rationality (See D V).

Collaborative work between the researchers at the project group over a number of years has changed the orientations of their work. Many political scientists are opening up to the normative implications of their work. Some, like Verweij (58, 59, 60), even predominantly argue normatively. His paper on global warming is one example. Conversely many lawyers (and economists) have supplemented their individualistic perspective with other conceptual or normative starting points offered by political scientists. Among the characteristic pieces along these lines are Spiecker's work aimed at understanding regulation under conditions of uncertainty (61, 62), Okruch's attempt to write an evolutionary theory of economic policy (63, 64, 65, 66) and Engel's application of a plurality of approaches to command and control regulation (67), where he attacks the widespread prejudice against this tool, based in an overly narrow perspective of governance by incentives.

When they apply the law in force to a case, lawyers have a distinct, hermeneutical method. The methodology is less settled when lawyers engage in legal policy. Simply adopting the standards of political scientists (or economists) cannot suffice. The lawyers cannot simply copy research designs from the social sciences. This would turn lawyers into narrowly trained members of these fields. In close exchange with political scientists, many legal papers from the project group struggle with defining independent, appropriate methodological standards. The easiest way out profits from the layered structure of the legal order. Constitutional and European Community law turn questions of legal policy at the lower level

into questions of dogmatics at the higher levels. Lüdemann's dissertation (68) is one work following this approach. He examines governmental attempts to shape environmental morale from an angle of constitutional law. A second strategy looks for impediments faced when transposing normative results from one of the social sciences to law. Bitter's dissertation (69) is one example of this. She tests whether the precepts of economic mechanism design could be used for drafting laws. A third strategy picks an existing legal tool, and uses social science to clarify how it actually affects the behaviour of its addressees. This is what Baehr (70) does in his dissertation, using psychological concepts for understanding how command and control regulation works. In the final report on the waste management programme, Engel (71) doesn't resort to such safety nets and tries to find a methodology that is directly appropriate for the practical tasks of institutional design.

Last but not least, the daily contact between the two disciplines is a cultural opportunity. Lawyers are relatively close to real life conflicts. They are trained to regard judgement as their highest value, not objectivity or originality. They are aware that, in the not so distant future, decisions must be taken, and the law must take on responsibility for the outcomes. In all these respects, political scientists learn from their legal colleagues. The other way round, learning is equally profound. Political scientists are trained to handle a rich set of rigorous theoretical concepts from the social sciences. It is taken for granted by the political scientists at the project group that their audience is international. In order to reach that audience, papers are usually written in English. All papers are routinely reviewed by anonymous referees. Journals have a quality ranking. None of this is yet common in German legal academia.

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(See D II 1, 1)

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(See D II 1, 2)

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Katharina Holzinger

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(See D II 1, 23)

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Henry Farrell

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Dieter Kerwer

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43. Conference

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Henri Tjiong

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(See D II 2, 14)

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(See D II 2, 35)

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55. Law Beyond the Nation-State

[Recht jenseits des Nationalstaats] Joint Workshop in Bielefeld, 8–10 October 2001
MPP "Common Goods: Law, Politics and Economics", Bonn
World Society, University of Bielefeld and the Center For Transnational Law (CENTRAL), University of Münster

The workshop 'Law Beyond the Nation-State' in October 2001 has been organized by the Max Planck Project Group: Law, Politics and Economics in collaboration with the Institute for World Society, Bielefeld, and the Center For Transnational Law (CENTRAL), Münster University. The overall objective of the workshop is to analyse the characteristics, possibilities and limits of law beyond the nation-state. Issues such as the emergence of new forms of law, the globalisation and harmonisation of law, the legalization of international relations and the normative and philosophical dimensions of law beyond the nation-state are discussed in a setting involving political scientists, lawyers, economists as well as legal and political philosophers from various universities and Max Planck Institutes.

Participants:

Andreas Fischer-Lescano
Institute for Civil Law
Johann Wolfgang Goethe University
Frankfurt am Main

Stefan Okruch
Max Planck Project Group
Common Goods: Law, Politics and Economics
Bonn

Markus Roth
Department of Law
University of Bremen

Peer Zumbansen
Jean Monnet Fellow
European University Institute
Badia Fiesolana
San Domenico di Fiesole (FI)

Gralf-Peter Calliess
Institute for Labour Law, Business Law and Civil Law
Department of Business Law
Johann Wolfgang Goethe University
Frankfurt am Main

Ralf Michaels
Max Planck Institute for Foreign and International Private Law
Hamburg

Henning Sieber
Berlin

Jan von Hein
Max Planck Institute for Foreign and International Private Law
Hamburg

Tobias Stoll
Max Planck-Institute for Foreign Public Law and International Law
Heidelberg

Dieter Wolf
Technical University, Munich
Chair for Political Science
Munich

Bernhard Zangl
University of Bremen

Christian Brütsch
Institute of Political Science
Department of International Relations
University of Zurich

Julia Eckert
Max Planck Institute for Social Anthropology
Project Group: Legal Pluralism
Halle/Saale

Tanja Hitzel-Casagnes
Institute for Political Science
University of Darmstadt

Discussants:

Mathias Albert
Faculty for Sociology
University of Bielefeld

Klaus Peter Berger
Institute for International Business Law
Centre for Transnational Law (CENTRAL)
Westfalian Wilhelms University, Münster

Günther Frankenberg
Faculty of Civil Law
Philosophy of Law and Comparative Law
Johann Wolfgang Goethe University
Frankfurt am Main

Dirk Lehmkuhl
Max Planck Project Group
Common Goods: Law, Politics and Economics
Bonn

Klaus Dieter Wolf
Institute for Political Science
TU Darmstadt

56. Linking Political Science and the Law

Conference Project. Outline

Historically, the link between academic law and political science would not have appeared to be a matter of concern. For first generation political scientists, understanding the polity would first and foremost have been an exercise in understanding the written constitution. In the German tradition, *Allgemeine Staatslehre* blended constitutional philosophy and constitutional history. It almost depended on coincidence whether a writer in this field held a chair in constitutional law or in political science. These days, however, many political scientists define themselves differently. They see their field as a social science, combining rigorous theoretical models with no less rigorous empirical testing. This disciplinary shift makes interdisciplinary work between political scientists and lawyers a much more demanding exercise. Defining and exploring the possibility conditions for such work must itself become a theoretically guided endeavour.

Each of the two sides must define these conditions independently. For a lawyer, relying on methods or insights from political science is easiest, if he steps back and looks to law as an outside observer. Much like legal sociology teaches him how his own field works, political science can allow him to gain an understanding about the political role of the law, or of legally organised political institutions.

But most legal work is not strictly positive. Typically, academic lawyers at least formulate normative precepts. Political scientists rightly stress that their tools are not made for that. Lawyers must learn not to abuse sharp intellectual concepts as mere rhetorical devices. And they must learn how to integrate models into normative reasoning.

If academic lawyers do not only want to formulate normative principles, but counsel regulators, the conditions for relying on concepts from political science become even more demanding. Academic lawyers do not themselves take the decision, for sure. But if they want to be heard, they must suggest solutions for which those in power could take responsibility. This can make it necessary to go beyond theoretically elaborate arguments. Trivial arguments can have greater weight. It can even be necessary to use ideas that nobody is able to formulate clearly for the time being. And the openness to historical context must be considerably greater than modelling would be willing to tolerate.

Many academic lawyers go even one step further. They want to say how the law in force ought to be interpreted. Insights from normative political science can be of help for that task. For legal rules

serve a purpose. Political science can help understand and evolve this purpose. Moreover, many legal orders have more than one layer. Constitutional law controls the interpretation of ordinary law; European Community law ranks above national law, and so forth. The law of the lower level must therefore be justified against the rules of the higher level. Political science can help understand what really happens at the lower level. But once they engage in interpretation, academic lawyers have to respect two additional limitations. The legislator can explicitly have constrained the field of analysis. And they have to respect the inherent features of hermeneutical work.

All these are considerations that in principle hold with respect to any social science. It therefore makes sense to link the discussion between political scientists and lawyers to the parallel discussions with economists or sociologists. What makes political science specific, apart from the different substantive area of interest, is a much richer plurality of concepts within the field. Many political scientists would themselves not define as partisans of one single concept, like rational choice. They would decide upon the choice of concept according to its expected fit with the subject matter at hand. This attitude is in principle attractive for lawyers. But it also entails the additional challenge of how to handle such a controlled plurality in interdisciplinary exchange.

While there is already quite some experience in how to integrate models into law (albeit less so with respect to models from political science), attempts to integrate rigorous empirical research into law are only just starting, criminology notwithstanding. In principle, parallel questions should come up. But answers and, more importantly, academic practice might differ.

Political scientists have an equally obvious starting point for interdisciplinarity. They can start cooperation with lawyers since they want to use law as fact. This approach generates a hypothesis on different grounds, say with a rational choice model. To test the hypothesis empirically, the political scientist looks at legal action, be that rule generation or rule application. This is not only a rich source, but also a conspicuously reliable one. For legislative or judicative outcomes do change reality. All involved in their generation are therefore likely to reveal their true attitudes, directly, or indirectly via strategic action. But one needs the professional expertise of lawyers to properly read these texts.

A second step is more demanding. Political scientists look to law for the generation of new theoretical hypotheses. There is a number of perspectives for which, at least historically, lawyers seem to have shown more interest than the social sciences: normativity, legitimacy, conflict resolution, transitory issues, the handling of outlier cases, to name some of the most appealing.

A third step will only be of interest to some political scientists. They might want to add a normative dimension to their positive work. Some might even want to counsel rule makers. In both cases, the larger professional experience of lawyers in this type of work might help them avoid pitfalls.

Against this backdrop, the conference serves two related purposes. A first section elaborates on the conditions for making interdisciplinary work combining concepts, insights or methods from the two fields a fruitful exercise. A second section takes a core concept of political sciences, the policy cycle, as a test case for crossing the boundary between the two disciplines.

This project has evolved out of a first workshop, held at Bonn in February 2001. A follow-up workshop is scheduled for May 24-25, 2002, at Bonn. The second workshop further streamlines the program, calls on participants of the earlier workshop to rework their papers to the extent appropriate, and supplements the program by some new papers. It is meant to result in a book publication later in 2002.

The following program for the second workshop, and for the book, is envisaged:

I. How to Bridge Methodological Differences between Political Sciences and the Law ?

Thomas Heller (Stanford Law School)
Lawyers and Political Scientists: How Much Common Ground ?

Thomas Risse (Berlin)
The Viewpoint of Political Sciences)

II. The Concept of the Policy Cycle, Visited from Within and from Outside

Adrienne Héritier/Leonor Moral Soriano (Max Planck Project Group)
Problem Selection and Definition, Conflict Solution and Legitimation in Energy Policy: The Intersection of Politics and Adjudication

Jens-Peter Schneider (University of Osnabrück, Fachbereich Rechtswissenschaften)
Solving Conflicts and Securing Democratic Legitimation in the Energy Sector: A Legal Perspective on Associations' Agreements as a Conflict Solving Mechanism

Matthew Adler (University of Pennsylvania Law School)
Agenda Setting and Problem Definition: Can they be Constitutionalised ?

Henri Tjiong (Max Planck Project Group)
Policy Formulation in a Corporatist Setting: The Case of the Dutch Covenant on Waste Management

Christoph Engel/Henry Farrell (Max Planck Project Group)
Policy Formulation Under Conditions of Globalisation: The Case of Internet Policy

Tanja Börzel (Max Planck Project Group)
Implementation, Tested with Legal Evidence: The Case of European Environmental Policy

Christoph Engel (Max Planck Project Group)
The Constitutional Court – Applying the Proportionality Principle – as a Subsidiary Authority for the Assessment of Political Outcomes

57. Law and Politics and Migration Research

In *Reflections on Migration Research: Constructions, Omissions, and Promises of Interdisciplinarity*, eds. M. Bommes and E. Moravska. California University Press (with Roland Bank, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg)

Dirk Lehmkuhl

The article sets out to assess the potential as well as possible shortcomings of interdisciplinary studies involving lawyers and political scientists. Using the field of migration as an example, the article argues that an attempt to achieve the cross-fertilization of law and politics in general – and in the field of migration research in particular – does not require a mutual convergence of scholars from these different disciplines, i.e. that a scholar of one of these discipline becomes a scholar of the other counter discipline. Rather – and already demanding enough – disciplined interdisciplinarity is based on the mutual awareness of other (sub)disciplines' ontologies, epistemological assumptions and methodologies as indispensable preconditions for reaping the benefits of cooperation across disciplinary boundaries. Although not every problem of a lawyer may be translated into a problem of a political scientist (and vice versa), such an awareness facilitates not only the communication between lawyers and political scientists, but also allows for cooperative work , for instance, by providing complementary insights on a specific topic.

58. A Snowball against Global Warming: An Alternative to the Kyoto Protocol

Preprint 2001/11

Marco Verweij

(See D V, 19)

59. A Watershed on the Rhine: Changing Approaches to International Environmental Cooperation

1999. *GeoJournal: An International Journal on Human Geography and Environmental Sciences* 47 (3): 453-461.

Marco Verweij

(See D V, 20)

60. Why Is the River Rhine Cleaner than the Great Lakes (Despite Looser Regulation)?

2000. *Law & Society Review* 34 (4): 1007-1054.

Marco Verweij

(See D V, 21)

61. State Action in the Face of Uncertainty

Habilitation Project

Indra Spiecker, gen. Döhmann

(See D I, 7)

62. State Decisions in the Face of Uncertainty

[Staatliche Entscheidungen unter Unsicherheit – juristische und ökonomische Vorgaben]. 2001. In *Genetic engineering in the non-human realm: What can and should law regulate?* ed. J. Lege, 51-86. Berlin: Spitz.

Indra Spiecker gen. Döhmann

(See D I, 8)

63. Network Economics and Economic Policy: Assessment and Development

Habilitation Project

Stefan Okruch

(See D II 2, 37)

64. The Misery of Theoretical Economic Policy: Is there an Evolutionary Exit?

[Das Elend der theoretischen Wirtschaftspolitik: Gibt es einen „evolutorischen" Ausweg?] 2001. In *Ökonomie ist Sozialwissenschaft,* eds. S. Panther and W. Ötsch. Marburg: Metropolis.

Stefan Okruch

(See D II 2, 38)

65. Evolutionary Analysis of Economic Policy: Towards a Normative Theory

[Evolutorische Wirtschaftspolitik: Von der positiven zur normativen Theorie]. 2001. In *Handbuch zur Evolutorischen Ökonomik*, eds. C. Hermann-Pillath and M. Lehmann-Waffenschmidt. Heidelberg: Springer. In print.

Stefan Okruch

(See D II 2, 39)

66. Puzzles in Eucken's and Hayek's Theory of Cultural Evolution

[„Hindrängen" zur Ordnung und „Entdeckung" des Rechts: Fragen zur kulturellen Evolution]. Preprint 1998/4.

Stefan Okruch

(See D II 2, 40)

67. Grammar of Law

[Die Grammatik des Rechts]. 2001. In *Instrumente des Umweltschutzes im Wirkungsverbund*, ed. H.-W. Rengeling and H. Hof, 17-19. Baden-Baden: Nomos.

Christoph Engel

(See D V, 25)

68. Waste Disposal Morality as an Instrument of Social Control: Factual and Legal Boundaries of State-Initiated Education of the Citizenry

Dissertation Project

Jörn Lüdemann

(See D I, 22)

69. Gathering Private Information from the Citizenry: Are German Public Agencies Free to Follow the Recommendations of Game Theory?

Dissertation Project

Melanie Bitter

(See D V, 24)

70. Behavioural Modification through Command and Control Regulation

Dissertation Project

Thomas Baehr

(See D V, 4)

71. Waste Management Law and Policy

2002. Baden-Baden: Nomos. Forthcoming.

Christoph Engel

(See D I, 1)

D The Institutional Provision of Common Goods: Research Programmes

D I Waste Management: de lege lata and de lege ferenda

I. General Outline

1. Waste management is not a virgin topic. Lawyers discuss the many dogmatic watersheds (Giesberts and Posser 2001) and develop general principles (Gebers, Führ et al. 1993; Rehbinder 1995; Frenz and Unnerstall 1999; Brandt and Röckeisen 2000). Economists apply the general theories of externalities (Cornes and Sandler 1996) and of resource economics (Ströbele 1987; Endres and Querner 2000) to the issue (Michaelis 1993; Holm-Müller 1997; Rutkowsky 1998; Hecht 1999). Political scientists do comparative research (Buclet and Godard 2000). Sociologists point to the constructed nature of waste (Thompson 1981).

   But waste management is also a fruitful field for interdisciplinary research that combines law with other social sciences (for other work pointing in that direction see in particular Reese 2000; Fischer 2001). The interdisciplinary approach is important for law, since environmental science, industry, society and, above all, regulators are very active. Hence the law hardly ever has a chance to profit from its greatest disciplinary advantage: the accumulation of experience via case law, and its gradual integration into a coherent body of general rules. Moreover, the legislator of the pertinent German statute, the German Cyclical Economy and Waste Management Act of 1996 (Kreislaufwirtschafts- und Abfallgesetz), does not leave much leeway for command and control regulation. This decision makes case law less likely, and less important. The legislator has obviously adopted a governance perspective. He strives for a rich, flexible and effective setting of institutions, be they legal in character or not. How all these explicitly employed or implicitly acknowledged tools work cannot be read in the text of the statute, nor can it be determined by the use of the classical methods of interpretation. The lawyer accordingly needs insights from the social sciences in order to do his own work properly.

   But the German, foreign, and international practice of managing solid waste is also a fruitful field for social scientists. Since this practice is partly simply the application of law, and certainly thoroughly influenced by legal institutions, the interdisciplinary exchange with lawyers is no less interesting for social scientists than vice versa. For them, legal practice serves as a field experiment that is both free of charge and reasonably reliable. Admittedly, people cheat in court, and courts do not necessarily behave like benevolent dictators. The same qualifications apply to administrative practice. But judicial and administrative authorities decide on real life conflicts. Social scientists can therefore legitimately start from the assumption that people's behaviour is induced by their actual wishes and desires. However, in order to use the specific kind of data generated by the legal process, social scientists must have a relatively good knowledge of who participates in this process and how it works. This knowledge can best be transmitted in interdisciplinary co-operation that makes no single discipline the servant of the other.

2. For a research institution interested in common goods, waste management is a good subject, precisely because it is not easy to show why the market fails. Before a good becomes waste, it has been moveable property. Exceptions like paint or medicine notwithstanding, the legal order normally does not regulate the possession or use of moveable property. Once the former owner abandons the good, however, it becomes heavily regulated waste. An incentive argument helps us to understand the difference. From the moment of its production on, the good has the potential to harm third parties and the environment. But as long as the owner cares for the use derived from the good, it is unlikely that the potential harm will materialise. The situation changes when the good for its owner is nothing more than an empty carrier of previous utility.

   Once a good becomes waste, it has to be treated in a manner that is not detrimental to the environment. Collecting and hauling household waste at the curb-side is often said to be a natural monopoly (Kleineidam 2). If the waste is incinerated, this is basically a question of preventing the air from being polluted. But the question is intertwined with the conceptually much more intricate question of siting the incinerator (Schubert 3, 4, 5, 6). If the waste is disposed of, the first concern

obviously is ground water deterioration. But uncontrolled mixtures of substances also pose a difficult problem of technical uncertainty. Both problems are compounded by the long period before (non incinerated) waste becomes inert, adding to the amount of uncertainty (Spiecker 7, 8).

German law is even more ambitious. As the name of the statute indicates, it strives for a "cyclical economy" (Kreislaufwirtschaft). The legislative drafting materials leave no doubt that the statute regards this not only as a means to reduce waste quantities, but as a regulatory end of its own. The conceptual basis for this end is not yet settled. A good option is to extend the time horizon. Where necessary, society is induced to economize resources for future generations (Gawel 9, Fiebig-Bauer 10).

The normative goals of the statute need not only be explained and reflected, but also tested against theoretical normative frameworks. An evolutionary, rather than a neoclassical economic approach, stresses the welfare enhancing function of innovation. Does the statute, if only implicitly, set the proper incentives for inducing, selecting and adapting to innovation (Bleischwitz 11)?

3. Statutes are not normally self-enforcing. In order to become effective, the regulatory ends must be made operational. Legal provisions doing the job are not regulatory instruments, but serve as sort of a link between the general end and the applicable tool. Such operationalisation is particularly important for waste management. The most prominent example is the so-called producers' responsibility. Several general ends are invoked to support the idea that producers should bear in mind the problem of resources when they shape their product and the production process. This affects the materials employed, and results in a product design that makes recycling easy (Gawel 12). But producers are not the only actors whose behaviour is responsible for the kind and degree of externalities originating from the good, once it becomes waste. "Product responsibility" should therefore also encompass "consumers' responsibility" (Gawel 13, 14, 15).

   The goal of product responsibility itself needs further operationalisation. The German regulatory practice usually obliges the producer (or a collective scheme jointly managed by all producers) to physically take the used products back. An alternative solution is a mere obligation to pay the cost of waste management for their former products (Lehmann 16). In Sweden, producers can replace individual obligations by buying recycling insurance (Hansel 17).

4. Waste management regulation is very rich in terms of tools. Some are quite innovative. The UK has introduced packaging recovery notes, creating a market for recycling services, despite high transaction costs (Bastians 18). In Germany, the aforementioned producers' liability is implemented by voluntary industry restraint agreements, to which government is a hidden partner (Engel 19, Tjiong 20, Lehmann 21). In order to make consumers separate their waste, the German government relies on a state-induced morality, rather than on command and control or on incentives (Lüdemann 22, Gawel 23, 24, 25). The principles of proximity and autarky severely limit trade in waste, for a bundle of more or less understandable motives (te Heesen 26, Kleineidam 2).

5. Some of the most intricate regulatory problems are the result of regulation itself. A well-studied example is the German "green dot" system. It results from a number of previous regulatory decisions. Unlike the UK, Germany has separate quota for packaging waste from industry and from households. These quota distinguish between fractions. In particular, they include a fraction for plastics. These quota cannot be met without collecting package waste from the households. Arguably, these features of the German system lead to a (regulation driven) "natural" monopoly for the Duales System Deutschland DSD. Is the vertical integration of DSD with the opposite market side, the recycling industry, under these conditions a viable second best solution (Lehmann 27)?

   Waste management has been the first field to alert regulators to the transitory dimension of their activities. Germany and the US have used very different institutional settings for organising and financing the clean-up of old disposal sites (Kleineidam 2). But before they can be cleaned, they must be detected. The more costly cleaning is, the stronger the incentives to conceal abandoned sites. A principle witness rule can help overcome this problem (Kleineidam/Lehmann 28).

6. National regulators are not always free to choose ends and tools. Legal restrictions stem from antitrust law (Lehmann 29), from the Constitution (Lüdemann 22) and from European Community Law (te Hessen 26, Tjiong 20). To the extent that waste may be traded across constituency borders, an often even more powerful check is exercised by regulatory competition (Tjiong 30).

7. All studies summarized above combine insights from law and economics. Where appropriate, political sciences and social psychology are added. Studies on waste management law and policy in the UK (Bastians 18), the US (Kleineidam 2), the Netherlands (Tjiong 20) and Sweden (Hansel 17) contrast German and European concepts with foreign experiences.

8. The individual contributions are synthesized, and missing links are added, in the final report of the research programme (Engel 1).

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1. Waste Management Law and Policy

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Christoph Engel

A. Introduction

B. Waste Law as Harmful Substances Law

4. Re-processing
5. Re-cycling
6. Waste Trade

X. Developing Efficient Operationalization Opportunities
1. Separating Waste in the Household
2. Developing Secondary Markets

XI. The Transitory Dimension
1. Protecting the Faith
2. Regulatory Problems of the Past and the Future
   a) Superfund Problem
   b) Hidden Needs
3. Extending the Timeframe of the Regulatory Problem
   a) Ecological Peek Loads
   b) The Future Effects of Today's Regulation

XII. Other Normative Currencies
1. Distribution
2. Disposal Guarantee
3. Inalienability
4. Fairness
5. Waste as a Constructed Good

XIII. External Trade Dimensions
1. Introduction
2. Importing Substance-related Dangers
3. Exporting Substance-related Dangers

XIV. Developing Rules in Federal Law
1. Comparing External Institutions
2. Agenda Setting
3. Problem Definition
4. Developing Rules
5. Applying Rules
6. Checking and Changing Rules

XV. Developing Rules in Alternative Institutional Arrangements
1. Introduction
2. Negotiated Rules for Product Responsibility
2. The Dual System as an Instance of Private Governance

XVI. Co-evolution of Goals, Instruments and Political Institutions

C. Waste Law as Raw Materials Law

I. Introduction

II. Normative Measures
1. Inter-temporal Allocation
   a) Efficient Construction
   b) Incentives and Behavioural Expectations on the Demand Side
   c) Incentives and Behavioural Expectations on the Supply Side
2. Inter-temporal Distribution
3. Inter-temporal Merit Goods

III. Addressees and Instruments
1. The Artificial Rights of Future Generations
2. Regulating Raw Materials Companies
3. Regulating Users of Substances

II. Abstracts

2. Waste Management Policy in Germany and the USA: A Law-and-Economics Analysis of Selected Problems

[Abfallwirtschaft in Deutschland und den USA. Ein ökonomisch informierter Rechtsvergleich ausgewählter Themen: Abfallverbringung, Entsorgungsgebühren und Altlastensanierung]. 2001. Baden-Baden: Nomos.

Roswitha A. Kleineidam

This book addresses and compares selected aspects of German and European as well as US-American waste law. In contrast to the German tradition of comparative legal analyses, this work adopts a law and economics perspective. Hence, besides presenting substantive results, the book's methodological message is that comparative legal analyses gain from applying analytical instruments of the economic toolkit.

After giving a short introduction to the US-American system of administrative and waste law, the different sections of the book address the discussion on transfrontier waste transports, the use of quantity-based user fees and the problem of clearing up contaminated sites.

In Germany, Europe and the United States, federal states or member states often press for a restriction of transfrontier waste movements, for reasons spelled out and explained in the corresponding section of the book. In the US, however, the Supreme Court regularly fends off such demands by referring to the so-called constitutional commerce clause, which contrasts with the more restrictive policy in Germany and on the European level. By using insights from economic theories of foreign trade, the section shows that the Supreme Court's position can be justified on economic grounds, and therefore concludes by recommending the liberalization of European and German waste law with respect to waste transports.

The book proceeds by changing the perspective to a more micro-oriented topic and addressing quantity-based user fees. Such so-called pay-as-you-throw systems are quite prominent in the United States, but much less so in Germany. The first sections explore the economic advantages of such systems as well as possible drawbacks. While pay-as-you-throw systems are widely reported to have positive net effects for the US-American communities using them, it is argued that their high degree of effectiveness is mainly explained by the different framework for national waste policy, namely, the absence of a nation-wide system of waste recovery and recycling. As such, a system is implemented in Germany, the section concludes by expressing skepticism about the wider application of quantity-based user fees in Germany.

The last section compares German and US-American cleanup regulation. Crucial differences in the regulatory approaches are highlighted; however, it is also shown that thanks to the recent regulatory reform in Germany, the different approaches have moved closer together. The section provides an economic analysis of the parties' bargaining incentives under the so-called carrot-and-stick elements of the US-American regulation, and explores the transferability of these elements to the German regulation. The section also argues that neither the German nor the US-American regulations create adequate incentives to reveal private information on contaminated sites, and that the introduction of a rule for turning state evidence may be helpful in this respect.

Beyond the aforementioned methodological message, the analytical sections yield distinct results. Clear normative conclusions and subsequent recommendations are at the end of the first and the last substantive section. In contrast, by stressing the importance of the specificities of the national regulatory and institutional framework, the middle section underlines the limits of conceptional transfers based on comparative analysis.

3. Urban Change and the Law

Dissertation Project

Christian Schubert

Socio-economic activities tend to cluster in geographical space. Until recently, economic theory has largely neglected this phenomenon, for lack of appropriate modeling techniques. For economic behavior in space can only be meaningfully analysed by assuming increasing returns, the implications of which are still hard to incorporate into textbook economics. The sources of these increasing returns, however, remain controversial. From an *evolutionary economics* viewpoint, agents cluster in order to exploit specific knowledge spillovers. Hence, urban agglomerations are highly complex generators of productive economic knowledge; cities facilitate the cross-fertilization of ideas, thereby stimulating innovations.

What is often ignored, however, are the undesirable *side-effects* of this process. When heterogeneous socio-economic activities cluster in space, a multitude of negative externalities are produced as well. Thus a governance problem arises. In policy debates it turns up under different headings: local neighbors oppose unwanted land uses ("Not-in-my-backyard syndrome"); trust in the administrative procedures governing contentious land uses erodes; urban land use patterns change in dramatic, yet often unwanted ways (e.g., "urban sprawl").

This project tries to shed light on the nature of these problems in order to infer normative conclusions regarding the institutional arrangements that try to solve it. In most developed countries, the evolution of urban land use patterns is governed by a complex interplay between market forces, political decisions and private and public law mechanisms, in particular nuisance and zoning law. In this regard, two questions are essential:

- How should economic behavior in space (i.e., the location choices of households and firms) be coordinated or channelled, given the "evolutionary" character of the ongoing urban morphogenesis?
- What is the economic rationale of the legal mechanisms – in particular the public planning law devices – that constrain and define private real property rights (i.e. rights concerning urban land use)?

From the viewpoint of mainstream Law & Economics, the law should maintain the institutional conditions under which agents can realise the land use pattern which maximizes aggregate land rents. Generally, conflicting land uses should be coped with by Coasean bargaining; if high transaction costs prevent this mechanism working courts and administrative agencies, guided by a cost-benefit calculus, ought to step in and channel land use choices in an "efficient" manner.

An evolutionary conception of economic behavior in (urban) space, though, proves incompatible with such a welfarist approach. Within urban space, the value of real property rights depends almost completely on the way neighboring land is used; hence, individual land use decisions are highly interdependent. They can thus (i) generate positive feedback loops and (ii) affect a diffuse set of third parties in a way that is not wholly visible instantaneously. Moreover, due to their multi-dimensional nature and complex time profile, the scale and scope of urban externalities is genuinely uncertain. In order to cope with them, agents have to develop subjective beliefs ("theories") concerning the evolution of their spatial environment.

Moreover, since it is driven by the agents´ ongoing attempts to exploit knowledge spillovers, urban evolution is never "finished"—new positive and negative externalities are constantly created. Their nature and (negative) implications, however, are not "given", but have to be assessed and agreed upon in a process of social communication.

It can be shown that (i) it is only this process that creates the institutional underpinnings for a *market for real property rights* in a complex urban setting; that (ii), given an evolutionary conception of the city as a knowledge generator, a welfarist efficiency yardstick should be replaced by a "consentable urban change" goal, which can only be realised by means of a constitutionally agreed upon market order; and that (iii) public planning law contains some mechanisms that may in prin-

ciple allow this communication process to work. It does so by processing decentralized knowledge on spatial externalities in order to constantly adapt the set of real property rights that can then be subject to bilateral trade in the post-constitutional stage. This interpretation relies heavily on the autonomous evolutionary logic and the knowledge-storing quality of legal institutions (e.g. legal doctrines and precedents), which appear to be essential for maintaining a stable market order under conditions as turbulent as those of a modern urban environment.

Finally, policy implications are derived concerning the reform of the legal mechanisms – in particular planning law – that govern urban land use in Germany.

4. Law and Creativity in Space. A Note on the Legal Governance of Spatial Self-Organization

Paper presented at the 17th EALE Annual Conference at Ghent/Belgium, September 14, 2000.

Christian Schubert

Real property rights (i.e. decision rights concerning land use) are among the most intensely regulated economic assets in all highly developed societies. Their allocation is shaped by complex legal arrangements, whose economic rationale the present paper tries to explore. The first part of this paper focuses on prevailing neoclassical approaches that posit strong normative statements about the appropriate governance of land use decisions. They rely, however, on rather problematic positive foundations. The second part of this paper consequently tries to assess the potential of an evolutionary approach to form and develop spatial structures, thereby deriving the need for (i) a concept of space that stresses its role in stimulating innovations, (ii) alternative efficiency criteria and (iii) a fresh look at the capacity of specific legal instruments to adequately cope with the complexity of space, in particular the positive feedbacks inherent in spatial self-organization. Seen from this angle, law can be understood as providing the institutional foundations for a broad class of variety-generating processes.

5. The Legal Governance of Urban Change

[Räumlicher Wandel und Rechtliche Steuerung]. Paper presented at the Workshop on Evolutionary Economics "Buchenbach 2001", Buchenbach/Germany, 24 May 2001.

Christian Schubert

Economic theory still offers no clear answer to the question which institutional framework is needed to for complex social systems to evolve along a "desired" trajectory. Taking urban structural change as a case in point, it is argued that the proper study of *public law* promises important insights to this puzzle. Following Hayek, however, economists have largely eschewed public law institutions, regarding them as perfectly malleable instruments in the hands of rent-seeking political actors. It can be shown, though, that public law contains devices which enable agents to rely on decentralized coordination tools even under adverse conditions of complex system dynamics. More specifically, legal

procedures can ensure the normative output of local legislation to approximately reflect the constitutional preferences of the citizens under conditions of scarce governance resources (including imperfect and biased knowledge). In the case of real property within urban areas displaying complex externalities, the legal framework of the market cannot be designed ex ante, but has to be refashioned within the ongoing process of structural change. This constitutional task cannot be left to the market forces, since the market does not generate the incentives necessary to provide the relevant knowledge. Hence, from the viewpoint of Evolutionary Economics, public law has a very different role to play than in the traditional Law & Economics story.

6. Urban Agglomerations and Barriers to their Innovative Potential

[Agglomerazioni urbane e blocchi al potenziale innovativo]. Forthcoming in a conference volume edited by Margherita Turvani (University of Venice/Italy) (with Paolo Seri)

Christian Schubert

It is only recently that economists have (re-)discovered the spatial dimension of economic behaviour, i.e. to analyse the causes and consequences of the uneven distribution of economic activity in space. More specifically, the literature on "Industrial Districts" has begun to analyse the conditions under which urban areas stimulate innovation-driven growth, by facilitating the transfer of uncodified knowledge and providing a forum for the recombination of heterogeneous knowledge elements. In particular, informal institutions are needed that support a local network regime of autonomous firms, whose long-term adaptability is secured by sufficiently "weak ties". This paper tries to explore (i) the conditions under which conventions emerge that foster the open exchange of productive knowledge and (ii) the various pathologies that might hinder the process of knowledge creation within urban areas. It applies Paul Davids (1998) model of scientific "openness conventions" to the spatial setting.

7. State Action in the Face of Uncertainty

Habilitation Project

Indra Spiecker, gen. Döhmann

Uncertainty and insecurity scare the legal analyst. His tools have been developed to solve clearly stated problems deriving from the application of similarly clearly stated legal rules. This has always been an illusion. The law never knows all the relevant facts. It understands even less fully how a problem at hand is nested in a problem area, and it cannot precisely predict the effect of legal intervention into social relations. But these deficiencies were less significant as long as the law was not predominantly conceived of as a governance tool. However, the social reality that is addressed by law today has become less stable and less coherent. Both factors make the development of a proper legal theory of uncertainty paramount.

Other disciplines are ahead of the law in their perceptions. Economics, sociology and political sci-

ence have long investigated the individual and social perception of and reaction to uncertainty. An interdisciplinary approach therefore seems more promising than a purely disciplinary one. The analysis shall be in three steps: defining uncertainty, understanding its origin, and designing appropriate legal reactions.

In a first part, an attempt at defining the term "uncertainty" for the purposes of the law shall be undertaken. This is best done by contrasting it with views in neighbouring disciplines, such as the distinction between "risk" and "uncertainty" familiar in economics. A useful legal concept would presumably have to focus on the situation before a legal decision is taken. Uncertainty would be framed as an environment where the decision-maker is not perfectly informed.

As a second step, a taxonomy of uncertainty shall be developed. It will – at least – need to apply two parameters: what type of information is unknown, and why is that so? Information can consist in either facts or knowledge about how facts are connected to each other. The law can use the latter for two basic purposes: predicting a development in natural or social reality, and predicting the impact of a legal intervention thereon.

Sometimes, no one possesses a given piece of information. It can be physically impossible to trace it, the cost of generating the information can be prohibitive, or the law itself might forbid searching for it. Often, however, only the legal officer is uninformed, as opposed to the parties before him or third persons. In such an instance of the asymmetric distribution of information, an important follow-up question looks at whether the information is verifiable, observable, or whether it has none of these properties.

These two steps prepare us for the final one: guidelines for state action in the face of uncertainty. Basically, the law has two options: diminishing the amount of uncertainty, or coming to a decision in substance, the remaining uncertainty notwithstanding. No different from other actors, legal officers can search for unknown information, and they can follow the precepts of game theory and mechanism design in order to overcome information asymmetries. The difference lies in the institutional framework. Is the institutional design of law making and law application well-prepared for an information search? Do information problems justify the transfer of jurisdiction to organisations or procedures that are more appropriate, like expert committees? Does the rule of law and the constitutional guarantee of democratic legitimation allow a government to use whatever tool it deems fit for the acquisition or generation of information?

This leads to a theory of legal action under uncertainty. On the part of the legislature, the project will critically analyse the existing doctrine of the margin of appreciation (*Einschätzungsprärogative*) as it has been established by the German Constitutional Court (*Bundesverfassungsgericht*). Another element of such a theory can be taken from constitutional rules that allow the legislator to generalise, provided atypical cases are treated differently by the administration or the courts, or that do not receive compensation. The law will also have to face insights from sociology and from political science. Uncertainty is socially perceived and construed, and it is part of the political process to highlight certain risks and to divert attention away from others.

The project will develop its general insights and test them against selected fields of law. At this juncture, it is linked to the work on waste management undertaken by the project group. A few examples taken from this field may serve as an illustration of the general hypotheses laid out above.

Waste management law proves to be a field which touches upon all relevant questions in regard to regulation under uncertainty. This field of law not only offers a view on various kinds of uncertainty (factual ignorance about possible reactions of the environment to certain substances and waste; sociological ignorance regarding the reaction of and interaction between consumers and producers in response to regulation) and a view on specific scenarios (e.g. increased uncertainty by allowing a mixture and combination of substances in waste; uncertainty about border-crossing effects; uncertainty on the combined actions of international institutions), it also allows the actual decision structure of the legislature and the executive to be scrutinised in the face of uncertainty, e.g. it allows the extensive use of open terminology (*unbestimmter Rechtsbegriff*) to be defined by the executive and the courts. In this regard one need only take the differentiation between disposal and utilisation (*Beseitigung – Verwertung*); the generalisation of dangers; the inclusion of interest groups prior to legislation and the encouragement of self-regulation of the involved parties by enabling and furthering the establishment of the German dual system (*Duales System Deutschland – grüner Punkt*).

8. State Decisions in the Face of Uncertainty

[Staatliche Entscheidungen unter Unsicherheit – juristische und ökonomische Vorgaben]. 2001. In *Genetic engineering in the non-human realm: What can and should law regulate?* ed. J. Lege, 51-86. Berlin: Spitz.

Indra Spiecker gen. Döhmann

The legal system encounters many problems when facing uncertainty. Neither does a particular legal theory exist how to recognize and clarify situations of missing knowledge nor has an explicit theory been designed about how to decide in such situations between possible alternative actions. One reason for this obvious difficulty lies in the structure of law itself: It is aimed at providing stability, predictability and durability. Its mechanism is one of declaring a precise decision rule in a static environment. Situations of uncertainty cause these mechanisms to falter, as missing knowledge and missing predictability do not allow for precision and determination.

This paper transfers insights from the economic perspective, especially decision theory, into a legal understanding that starts from the definition of Knightian risk and uncertainty as well as the concept of ignorance. Evolutionary approaches are sketched. After portraying these differentiations, a different decision-oriented definition of uncertainty versus risk is proposed than the Knightian approach, which aims specifically at the legal context. Based on this, emphasis is being laid on identifying categories of several different types, origins and reasons of uncertainty.

In an overview, the paper then further studies the different mechanisms of how legislation could and should deal with uncertainty and the conditions thereof. A particular focus is laid on the generation of knowledge as an intermediate step in the decision-making process. Here again, economic concepts are described and partly transferred to the legal understanding. In a final step, the paper then discusses possibilities of legal decision making based on economic and social propositions. A particular emphasis is laid on the concept of proportionality as understood in German public law and the functional loss of proportionality in situations of uncertainty.

Examples from the field of genetic engineering illustrate the importance of including economic concepts into a legal approach to uncertainty.

9. Problems with a Material Flow Economy

[Probleme der Stoffstromökonomik]. 2000. Konjunkturpolitik 46 (1-2): 164-189.

Erik Gawel

Given that the critique of traditional environmental policy and its scientific background is on the increase, it is questionable whether the deficiencies widely emphasized are due to shortcomings of the economic theory itself. Therefore, a first paper, published in 1998, evaluates the new approach of material flow analysis (dematerialization approach) as part of Ecological Economics, concerning its efficiency and feasibility for environmental policy. Furthermore, the claim in material flow theory to provide a new environmental economics was considered critically. It is argued that dematerialization approaches raise severe methodological problems and have not yet fulfilled the standards required for efficient and rational environmental management. The material flow analysis, however, might be useful as corrective, but not yet as a substitute for the traditional neoclassical analysis of environmental problems. In this discussion on the reduction of material flows in the same journal, Hinterberger, Luks and Stewen (Wuppertal Institute for Climate, Environment, Energy) answered to the author's critique of dematerialization, published in 1998. Hence, the authors' arguments on

the goal of dematerialization, on its efficiency and its chances of policy implementation are critically reconsidered in this second paper. It is argued that the problems of the economics of material flow reduction are still unsolved.

10. The Safeguarding of Limited Natural Resources as a New Concern for German Waste Management Legislation

Dissertation Project

Elke Fiebig-Bauer

The number of goals pursued by German waste management legislation has permanently increased, and the importance of some of the goals has also changed over time. Initially, the law served to improve hygiene in the cities and to prevent the spread of diseases, i.e. to directly protect human health. In the 70s and 80s, protecting environmental media from damage caused by inappropriate waste treatment became a key issue. The new "Closed Substance Cycle Economy and Waste Management Act" (KrW-/AbfG) endeavours to attain a closed substance cycle economy in order to safeguard limited natural resources (§ 1 KrW-/AbfG).

Unlike the newly introduced regulatory instruments, this new objective has been widely ignored in academic and political discourse. The objective seems to be generally accepted, even though no attempts have been made to make it operational. This state of affairs is all the more surprising in that the statute has to be implemented through a series of ordinances. How is it possible to test the provisions of these ordinances against the statute if the purpose of the enabling clause in the statute remains vague? Moreover, the statute contains several ambiguous phrases which can only be understood properly if the meaning of the new regulatory objective is definite. It is the purpose of this research project to fill this lacuna.

In accordance with conventional jurisprudence, the wording of the statute has to be interpreted and the legislative process which led to the KrW-/AbfG has to be studied. This process has been clearly influenced by the national and international debate on sustainable development. The KrW-/AbfG is expected to support sustainability by focusing on an efficient use of natural resources in the industrial production sector. For this purpose, the statute empowers the government to make manifold interventions in markets. But the text of the statute does not say what is meant by the efficient use of natural resources. Besides, regulating efficiency is generally a contradiction in terms.

The lawyer evidently needs help from economics to fully understand the statute's approach. According to neo-classical economics, regulatory interference in the market place can be rational in the event of a market failure, resulting from distorted prices, externalities or public goods. Actually, all these types of failures can be found in resource markets. Moreover, these problems intensify if – as postulated by modern environmental or ecological economics – natural resources are not only regarded as production inputs, but also as goods in themselves or as parts of the ecosystem. If, according to the sustainability doctrine, resources are to be safeguarded for future generations, another key problem arises as a result of the extremely long period of time: Is it rational to "discount the future"? If so, how can an efficient discount rate be determined? Can anything meaningful be said about it today, although the preferences of future generations are unknown? Even option or insurance markets, which traditionally deal with the problem of long-term decisions, cannot cope with a time horizon of several hundred years. It is not rational to calculate wins and losses that cannot be realised even by one's grandchildren. Does the normative judgement change if today's individuals have positive preferences for future generations? In the end, safeguarding natural resources is certainly an ethical issue but it is important to know to which extent rational argumentation is possible.

While the definition of regulatory goals might eventually become a philosophical endeavour, the suitability of different legislative principles and instruments can undoubtedly be discussed rationally. Precaution and probability are two competing basic principles of regulation. They are also important for the decision whether regulatory sub-aims should be quantified or not. Regulatory instruments differ very much depending on the extent that they are compatible with the market mechanism. The KrW-/AbfG works with a mixture of general appeals, threats and regulatory black boxes. It could also use strict and quantified orders or price incentives instead. Finally, it might be better to deal with the problem of safeguarding natural resources on an international level rather than in a national waste management act, although – or because – the states may find themselves in a prisoner's dilemma.

11. Institutions for Inducing, Selecting and Adapting to Technological Innovation as Applied to a Recycling Economy and to Material Flows Management

Habilitation Project

Raimund Bleischwitz

The 1996 German Waste Avoidance, Recycling and Disposal Act pursues two objectives that might appear contradictory at first sight. It introduces the ideas of resource saving and a recycling economy as new and ambitious regulatory ends. And it purports to leave more space for private initiative in the field of waste and material flows management. Actually, both objectives may be interpreted as complementary. In this perspective, the substantive goals of recycling and material flows management could not be reached without giving industry a greater role. The purpose of the study is to test this hypothesis, both theoretically and empirically. The theoretical analysis will focus on the most important argument for linking the two goals. A recycling economy, and, even more than that, material flows management, are knowledge-intense activities. It is already difficult enough for a regulator to know which technological options do already exist, and whether they are prohibitively expensive. Even less can he or she foresee the path of technological innovation. But it is precisely such innovation that allows real progress towards the substantive regulatory goal. Or, to be specific: it is not the mere novelty that increases welfare, but a path-breaking solution to a real social problem. Hence, the normative benchmark is the proper mix of inducing, selecting and adapting to technological innovation.

This does not, however, automatically mean that the proper scope of government in the field is zero. Government might use its power to coerce as a means of providing an impulse or a new framework for private innovation. And it might use the public budget and/or economic incentives as a positive sanction. Obviously, these and other imaginable tools for inducing innovation come at a cost be it for market participants, bureaucracy or others. A comparison must therefore be made of the different institutional regimes.

A reliable comparison may not be reduced to inner institutions, i.e. to instruments that are meant to meet the regulatory goal directly. But the analysis must include the pertinent outer institutions, vulgo the political institutions that decide upon inner institutions. The theoretical framework will, accordingly, combine economics and political sciences. Insights can, in particular, be expected from economics of learning, evolutionary economics, new growth theory and, of course, information economics and institutional economics. In political sciences, actor-centered institutionalism might prove the most fruitful conceptual ground for the topic.

The insights from the theoretical part of the study can, as a second step, be tested against the experience gained by the implementation of the 1996

Act. Of course, not every theoretically conceivable setting of inner and outer institutions will be found in reality. But a number of case studies should stimulate new conceptual insights. For the purpose, the study can partly rely on papers by Engel and Gawel on the concept of "producers' liability" (Produktverantwortung) and its implementation via voluntary restraint agreements. Linking theory to the evaluation of the Act should allow recommendations to be formulated for the German regulator at the end of the project.

12. Product Responsibility: Steering Product Risks in the Waste Industry

[Produktverantwortung zur Steuerung abfallwirtschaftlicher Poduktrisiken]. 1999. *Zeitschrift für angewandte Umweltforschung 10, Sonderheft = Umweltrisikopolitik,* ed. B. Hansjürgens, 188-205. Berlin: Analytica.

Erik Gawel

Since 1996, the new *German Kreislaufwirtschafts- und Abfallgesetz (KrW-/AbfG)* has shifted the internalization of the waste-related social consequences of product decisions to an earlier stage in the chain of causation, the primary goal being to restructure the product decisions of manufacturers, which should take into account subsequent waste-related risks (so-called "product responsibility"). This paper first reconstructs from an economic view point the ambiguous concept of "product responsibility" on the basis of cost-conscious behavior. It goes on to characterize the product responsibility referred to in the KrW-/AbfG as a specific form of "product responsibility", stating that this is basically a "responsibility of manufacturers" ("producer's responsibility"), motivated primarily by the instrumental lever of "physical internalization", that is, an obligation to accept returned goods. As this approach is not capable of correcting any distortions of relative prices in the waste sector, a complementary statutory ordinance concerning obligations of waste disposal is needed which, on a command-and-control basis, prescribes to the parties accepting returned goods what is to be done regarding residue (specifically by fixing quotas for re-use and recycling). Because the efficiency of the KrW-/AbfG's approach depends on the institutional design compared with alternative settings of product responsibility, an outline of consumers' responsibility and other levers of internalization are therefore included.

13. Product Responsibility from an Economic Point of View

[Produktverantwortung aus ökonomischer Sicht] 2000. In *Stoffstromsteuerung durch Produktregulierung. Rechtliche, ökonomische und politische Fragen*, ed. M. Führ, 143-160. Baden-Baden: Nomos,

Erik Gawel

The usage of a product is coupled with "waste-related risks": the risk of long-term physical "uselessness" as well as the risk of damage caused by the product once it becomes waste. The problem could be overcome by directly influencing the producers, inducing them to opt for a low-waste, recycling-friendly and less harmful product design. The German *Kreislaufwirtschafts- und Abfallgesetz* of 1994 intends to do precisely this. Manufacturers are encouraged to favour a product design that prevents the production of harmful waste, to develop and produce goods that can be easily reutilized and recycled, to optimize their technical durability and, in view of the overall social costs, to avoid socially "unprofitable" waste from the outset.

To create a suitable price differential between "waste-friendly" and "waste-intensive" products, all environmental policy instruments can in principle be used: Product responsibility could be realized, for instance, by a monetary equivalent of disposal costs (e.g. in the form of a product charge via waste-related fees), or by product standards laid down by command and control regulation. Apart from some command-and-control measures and trusting in consumers' intrinsic motivation, the statute places special emphasis on the "obligation to accept returned goods". After the consumption stage, manufacturers and producers, possibly including distributors, would be reconfronted with the residue of their products, as an incentive to avoid waste or to increase residue recycling.

Against this background, this paper first reconstructs the ambiguous concept of "product responsibility" on the basis of an allocative demand for a cost-conscious behaviour. It goes on to characterize the product responsibility referred to in the statute, stating that this is basically a "responsibility of manufacturers", motivated primarily by the idea of "physical internalization", that is, an obligation to accept returned goods. Finally, a comparison of alternative policy instruments to realize "product responsibility" is given, among them standard setting, intrinsic motivation and waste charges.

14. Conceptions and Instruments for Attaining Product Responsibility in Waste Law

[Konzeptionen und Instrumente zur Realisierung von Produktverantwortung im Abfallrecht]. Preprint 1999/4.

Erik Gawel

When a product is put into circulation on consumer markets the user's interest is focused exclusively on the utility to be derived from the product, but not on its carrier. Once the utility potential is exhausted, the physical carrier remains as waste to be disposed of. The usage of a product is therefore coupled with "waste-related risks": the risk of long-term physical "uselessness" as well as the risk of damage caused by the product once it becomes waste. The extent of waste-related risks is determined not only by the waste producers, that is, the final owners of a product, but also by all other actors, such as previous owners (of durable consumer goods), distributors, and particularly by manufacturers and suppliers. Normative economics would require that waste-related risks be taken into account at all stages of a product's life cycle. To reach this objective, different institutional arrangements are conceivable.

The problem could be overcome by directly influencing the producers, inducing them to opt for a low-waste, recycling-friendly and less harmful product design. The German *Kreislaufwirtschafts- und Abfallgesetz* of 1994 intends to do precisely this. Manufacturers are encouraged to favour a product design that prevents the production of harmful waste, to develop and produce goods that can be easily reutilized and recycled, to optimize their technical durability and, in view of the overall social costs, to avoid socially "unprofitable" waste from the outset.

Against this background, this project report first reconstructs the ambiguous concept of "product responsibility" on the basis of an allocative demand for a cost-conscious behaviour. It goes on to characterize the product responsibility referred to in the statute, stating that this is basically a "responsibility of manufacturers", motivated primarily by the idea of "physical internalization", that is, an obligation to accept returned goods. As this approach, in particular, is not capable of correcting any distortions of relative prices in the waste sector, a complementary statutory ordinance concerning obligations of waste disposal is needed which, on a command-and-control basis, prescribes to the parties accepting returned goods what is to be done regarding residue (specifically by fixing quotas of re-use and recycling).

The report discusses in detail the "obligation to accept returned goods", and it critically examines both the institutional conditions for the functioning of efficient return arrangements and the problems of the coordination, information and competition in their practical application in a closed cycle economy. The report concludes with economic reflections on the limits of product responsibility.

15. The Role of Consumers in Product Responsibility

[Konsumenten in der Produktverantwortung]. 2000. *Wirtschaftsdienst* 80 (6): 377-384.

Erik Gawel

The usage of a product is coupled with "waste-related risks": the risk of long-term physical "uselessness" as well as the risk of damage caused by the product once it becomes waste. The extent of waste-related risks is determined not only by the waste producers, that is, the final owners of a product, but also by all other actors, such as previous owners (of durable consumer goods), distributors, and particularly by manufacturers and suppliers. Normative economics would require that waste-related risks be taken into account at all stages of a product's life cycle. To reach this objective, different institutional arrangements are conceivable.

Traditionally, the organization of waste management has absolved waste producers from the task of waste disposal, as this was considered an accepted part of the services for the public, albeit subject to the payment of a specific waste-related fee. Since 1996, the new German *Kreislaufwirtschafts- und Abfallgesetz* (KrW-/AbfG) has shifted the internalization of the waste-related social consequences of product decisions to an earlier stage in the chain of causation, the primary goal being to restructure the product decisions of manufacturers, which should take into account subsequent waste-related risks (so-called "product responsibility"). This paper characterizes the product responsibility referred to in the KrW-/AbfG as a specific form of "product responsibility", stating that this is basically a "responsibility of manufacturers" ("producer's responsibility"), motivated primarily by the instrumental lever of "physical internalization", that is, an obligation to accept returned goods. Because the efficiency of the KrW-/AbfG's approach depends on the institutional design, compared with alternative settings of product responsibility, a theoretical and legal outline of consumers' responsibility for waste-related risks of product use is given. Inter alia, theoretical aspects of a waste-related moral hazard in product use as well as regulating techniques to avoid these impacts are analysed. The short paper in the journal "Wirtschaftsdienst" presents the findings in a nutshell.

16. On the Implementation of Product Responsibility in Used-Car Disposal: Cost Reimbursement Rather Than a Take-Back Obligation

[Zur Implementation der Produktverantwortung bei der Altautoentsorgung. Kostenerstattung statt Rücknahmeverpflichtung?]. Submitted to *Zeitschrift für angewandte Umweltforschung.*

Markus Lehmann

This paper compares two instruments for implementing producer responsibility for used cars. The German regulatory solution, relying on take-back obligations for producers, free for the last holder, is contrasted with a rule of partial cost recovery. It is shown that the cost-recovery rule saves infrastrucure costs and avoids the anti-competitive impacts of the take-back obligation. In contrast to the take-back obligation, the cost-recovery rule makes it possible to optimize between the environmental and competition policy objectives, and it can thus defuse the alleged tradoff between these policy areas. This paper concludes by giving a mixed judgement on the European Guideline.

17. Swedish Waste Management

Dissertation Project

Mikaela Hansel

This research project takes a closer look at two specific fields of Swedish waste management: the results of the experiences with the extended producer responsibility and the remediation of contaminated land along with the liability issues that are raised in connection with it. These issues are interesting in that they involve innovative solutions for securing means for future recovery and clean-up costs.

Extended producer responsibility aims at dealing with waste problems at an early stage in the production process, i.e. when designing a product, selecting materials and manufacturing the goods. This principle has broken the monopoly of municipal authorities on waste management and has instead made producers fully responsible for the management of waste emanating from their products. Their product-related responsibility comprises inter alia collection, transport and recovery. In addition, producers are also required to finance this system, in which they are obligated to take back free-of-charge the same kinds and amounts of products previously purchased by consumers. For producers, this is the most prominent issue because of the additional and uncertain costs that this part of the responsibility creates. The uncertainty is mainly attributable to the long period of time between the release of durables and the recovery of them. It is therefore essential to develop products that have a low cost once they reach the waste stage. Rather than focussing on a command-and-control regulation, new incentive-based strategies are needed to ensure the financing of the obligation in its entirety. Three credible solutions have evolved in respect to the financial part of this responsibility: (i) a jointly-owned funding system of material companies set up by the majority of Swedish producers, specifically to organize recycling operations and the funding thereof, (ii) producers who have chosen to stay independent of the materials companies and manage the entire production process, distribution and recycling themselves within their firms, (iii) recycling insurance provided by a Swedish insurance company, in which producers pay an amount to a separate and independent fund that bears the financial burden for the recycling. Of the three established solutions, the insurance concept seems the best alternative since it addresses the problem of thinly capitalised enti-

ties in a direct way. In situations where a producer bears the entire recovery cost, the impact on that business can be severe. When a producer pools its risk with other producers through the purchase of recycling insurance, the economic consequences of individual events, i.e. the recovery of products, are spread across a broader group, and the uncertain recovery cost is transformed into a fixed premium. Hence, the instrument of insurance is used as an economic steering device in order to enhance environmental efficiency in a broader sense; it is both a way to secure funds for environmental protection and a loss spreading mechanism.

While the present liability regime for contaminated land uses the polluter-pays principle as a first stepping-stone on the path to creating an effective legal framework for site remediation, this principle cannot always be upheld in reality. However, the regulations also provide the possibility of allocating responsibility – on a different person than the one who is actually responsible for the damage – in such cases where this is a more cost-efficient solution. Furthermore, the liability system aims at securing means for future clean-up activities by requiring operators to contribute to the environmental damage and/or clean-up insurance schemes and give financial securities (i.e. guarantees or blocked bank accounts). The issue arises primarily in connection with permit procedures and in situations where undertakings go into bankruptcy. In addition to the mandatory insurance schemes included in the Environmental Code, there is a private clean-up cost insurance, which covers costs arising from removal of debris.

18. Comparison of English and German Packaging Waste Management Law

[Verpackungsregulierung ohne den Grünen Punkt? Die britische und die deutsche Umsetzung der Europäischen Verpackungsrichtlinie im Vergleich]. 2002. Baden-Baden: Nomos. Forthcoming.

Uda Bastians

Both the British and the German system are subject to the European Union's Directive 94/62/EU (Packaging and Packaging Waste). This Directive prescribes the outcome of waste regulation policy for the member states, but leaves the choice of the forms and methods for achieving the desired results up to the nations' governments. Therefore, Germany and Britain differ substantially in the method of implementing the same directive.

Germany relies on a regulatory system with "command and control" regulation and has established the "Duales System Deutschland GmbH (DSD)", which has a monopoly on processing certain kinds of waste. This model has been adopted by other nations within the European Union. Britain, however, in its English statutory instrument regarding packaging, took another course, which aimed at achieving the European objectives as cheaply and efficiently as possible.

Two differences in the modes of implementation in these countries are particularly prominent. The first difference concerns the way the law treats different types of packaging waste (sales packaging, group packaging and tertiary packaging). In Germany targets are set for recovering and recycling each of these specific types of waste. In England, by contrast, all the different types of packaging waste are handled the same. The European targets for recovery and recycling can therefore be met using any sort of packaging waste.

The German system has extremely high collection rates for sales packaging. The DSD is forced to collect sales packaging at almost every private household's doorstep, which results in high collection costs. This procedure is not only expensive, it is also ecologically objectionable because the sales packaging that is collected often does not conform to recycling standards and is therefore

difficult and expensive to recycle. In addition, the collection itself is polluting the environment.

In contrast, England meets the European recovery requirements by concentrating on packaging waste which can be expected to be recycled more easily than sales packaging, partly because of the lower logistic expenses and the lower recycling costs of the mostly homogenous material. The result is that the obligated companies are able to recycle the share of packaging waste that is worth recycling. This leads to a more efficient allocation at a lower cost, while achieving the same European goals as the German system. Some ot the other results achieved by the German method are naturally not reached by the British system, as this has not been intended.

England also has other measures to promote the use of market forces. Companies forced to comply with the Directive can furnish proof of their compliance with tradable Packaging Recovery Notes (PRN), and this means (in terms of trade) that those PRNs may be sold to any other company or institution. Market forces determine the charge, and these charges cover the increased recovery and recycling costs that are incurred. This procedure contributes to meeting European targets.

Although the British approach to implementing the European Union's Directive is superior to the German one, there is little chance to change the German regulation. This is not only because there is a great deal of political support for the German regulation, it is also because of the high costs required to change a running system. Given these background conditions, it is even questionable whether a change would be a good idea at all.

Although it might be too late to model the existing German regulations for packaging waste management on Great Britian's policies, lessons can be learned from the British implementation approach that could pay off in future "producer-responsibility obligations".

19. Waste Management Self Regulation

[Selbstregulierung im Bereich der Produktverantwortung] 1998. *Staatswissenschaften und Staatspraxis* 9 (4): 535-591.

Christoph Engel

German waste management policy is determined to establish producer responsibility. The term is normative. It refers to waste generated by consumers. The policy starts from the idea that producers, by their decisions on product design and marketing, have an impact on how much waste consumers generate, and how dangerous it is. The typical tool is a take-back obligation. Producers are expected to anticipate that they will have to handle the waste. German waste policy has avoided unilaterally ordering a take-back obligation. Instead, government and business associations have negotiated "self-regulatory" regimes. This article explores the underlying incentive structure, using a rational choice approach. It uses the insights generated thereby for sketching a constitutional law framework.

20. Environmental Challenges to the Dutch Polder Model

Preprint. Forthcoming.

Henri Tjiong

This paper describes how market and technological change affect the corporatist model of policy coordination and implementation. It argues that the marketization of waste services and the introduction of ISO 14001 environmental management systems are likely to result in alternative regulatory approaches for both companies and regulators that may reduce the incentives for these actors to engage in associational politics. It demonstrates how creeping environmental regulation has gradually transformed the market environment for private players so as to allow a marketization of professional waste management services. The paper then proceeds to analyse the regulatory changes in the field of environmental licensing that were a response to the growing corporate application of ISO 14001 environmental management in business production processes. These changes concern the introduction of flexible licensing strategies that can tailor environmental licensing requirements to corporate production processes much more effectively than traditional command-and-control licensing requirements can. Together, these market and technological changes pave the way for alternative regulatory approaches that – under certain conditions – may displace the comprehensive corporatist policy covenants that characterize the Dutch polder model.

21. The Impact of Voluntary Agreements on Firms' Incentives for Technology Adoption

Fundazione Eni Enrico Mattei (FEEM) Nota di Lavoro 110.2000.

Markus Lehmann

This paper considers the relationship between voluntary agreements and the Porter hypothesis from the viewpoint of political economy. When environmental regulation can be politically contested by the affected industry, bargaining incentives emerge between the representative and a welfare-maximizing regulator over which policy instrument to apply with which stringency. Policy instruments differ in their impacts on firms' profits and market shares, which yields different incentives for technology adoption. A commitment of the regulator to exclusively use emissions taxation is shown to never increase welfare in equilibrium, although, within the model, it is the only instrument that generates the adequate incentives for technology adoption. When the regulator is ready to implement a voluntary agreement, incentives for technology adoption are lower than possible under given welfare, but might be traded against more stringent environmental regulation. Overall, however, bilateral voluntary agreements are always welfare-neutral. In consequence, the paper expresses skepticism about the positive incentive effect stated by the Porter hypothesis. When firms are not just passively implementing the environmental prescriptions of an omnipotent state, but can unfold political resistance, instruments may be implemented in the bargaining equilibirum which, despite being flexible – i.e. by not prescribing the use of specific technologies – even reduce the incentives to adopt more efficient and less polluting technologies.

22. Waste Disposal Morality as an Instrument of Social Control: Factual and Legal Boundaries of State-Initiated Education of the Citizenry

Dissertation Project

Jörn Lüdemann

"A person who does not properly separate his or her waste is not a good Frenchman". German authorities cannot rely on national pride, but they do attempt to rely on state-induced morality rather than on legal or economic instruments to meet the goals of waste management policy. This raises a whole bundle of positive and normative issues, which largely remain unaddressed by both economics and law.

From the standpoint of positive analysis, the first question to be answered is whether morality is a viable instrument for social control at all. An economic model takes preferences for granted and is only interested in restrictions. Economists would normally refrain from advising one to rely on human morality, but would recommend inducing the desired behaviour by providing the right external incentives instead. Environmental law has benefited in the past from this sort of economic insight. However, the closed cycle economy provides a striking example of the fact that external instruments of social control do not function in certain fields of politics as well as they do in others. In this respect, the classic social control by way of law almost completely fails to meet the goal of inducing people to separate different types of household waste because it cannot be enforced. The alternative instrument of setting different prices for different kinds of behaviour has the same deficiency, namely disproportionately high transaction costs.

In such situations, morality may serve as a viable alternative means of social control. But what is the criterion that distinguishes situations where state-induced morality works or where it is at least technically more efficient than external control?

A change of perspective from external to internal control requires an enlarged conceptual framework in order to study the social control beyond the fields of traditional law and economics. Social psychology seems especially apt to provide the knowledge needed to understand the emergence and effect of morality on human behaviour. Social psychology may also help to predict the effect of new institutional arrangements on existing attitudes. Only from this widened perspective is it possible to include morality as an instrument of social control in a comparative analysis of institutions.

Not every de facto option is legally available to the regulator. Before the instrument can be analysed in the light of the standards of German constitutional law, the conceptual peculiarities of morality as an instrument of social control need to be identified. The traditional legal canon of possible types of state action has shown itself to be too narrow in this respect. The particulars of intentional state influence on personal attitudes are certainly not captured by the category of "Schlichtes Verwaltungshandeln" in German law. Rather, it seems sensible to introduce a new type of state action, i.e. state-initiated education of the citizenry (Edukatorisches Staatshandeln).

The compatibility of state-initiated education of the citizenry with the basic rights and those provisions of the German constitution which structure the inner organisation of the state must be discussed. In a country committed to the rule of law, state intervention into peoples' opinions cannot remain unaffected by constitutional limitations.

23. Intrinsic Motivation and Environmental Policy Instruments

[Intrinsische Motivation und umweltpolitische Instrumente]. 2001. *Perspektiven der Wirtschaftspolitik* 2 (2): 145-165.

Erik Gawel

In the discussion on the rational choice model of individual behaviour, a growing emphasis has recently been placed on the importance of intrinsic motivation. Contrary to assumptions made in the standard economic literature, it is suggested that an individual's motivation to act may not be exclusively determined by external influences (incentives, restrictions) and (given) personal preferences, but that, in addition, it depends on intrinsically anchored ethical preferences. Intrinsic motivation may diminish if parallel external incentives, such as rewards or orders, come into play: Insofar as external intervention weakens the corresponding intrinsic motivation to act, the (normal) effect of relative prices is opposed by a (countervailing) effect of crowding out intrinsic motivation. The effect of (over-) crowding-out has especially been thematized in the context of environmental policy. It has been suggested that subsidies may support intrinsic incentives, whereas taxes and licences (especially though command-and-control measures) tend to undermine them. This paper critically analyses the impact of intrinsic behaviour considerations on the evaluation of environmental policy instruments. It is argued that, if at all, economists' standard recommendations for policy design with respect to subsidies need not be revised even if intrinsic motivation plays some role for the agents' environmental bevaviour. Furthermore, command-and-control policy might rather support than weaken intrinsic motivation.

24. Intrinsic Behavior and the Crowding-Out of Motivation: A Principal-Agent Approach for Environmental Policy

2000. *Journal of Economics and Statistics [Jahrbücher für nationalökonomie und Statistik]* 220: 599-609.

Erik Gawel

In the discussion on the rational choice model of individual behaviour, a growing emphasis has recently been placed on the importance of intrinsic motivation. This motivation may diminish if parallel external incentives, such as rewards or orders, come into play: The paper critically analyses the theoretical relevance of crowding-out with respect to environmental policy within a simple pincipal/ agent framework. It is argued that economists' standard recommendations for policy design need not be revised even if intrinsic motivation plays some role in the agents' environmental bevaviour and a crowding-out effect occurs.

25. Are Problems of Intrinsic Motivation Relevant for Environmental Policy?

[Sind Probleme intrinsischer Motivation für die Umweltpolitik relevant?]. 2000. *Zeitschrift für Umweltpolitik und Umweltrecht*, 23 (2): 187-222.

Erik Gawel

In the discussion on the rational choice model of individual behavior, a growing emphasis has recently been placed on the importance of intrinsic motivation. Contrary to assumptions made in the standard economic literature, it is suggested that an individual's motivation to act may not be exclusively determined by external influences (incentives, restrictions) and (given) personal preferences, but, in addition, that it depends on intrinsically anchored ethical preferences. Intrinsic motivation may diminish if parallel external incentives, such as rewards or orders, come into play: Insofar as external intervention weakens the corresponding intrinsic motivation to act, the (normal) effect of relative prices is opposed by a (countervailing) effect of crowding out intrinsic motivation. The effect of crowding out or over-crowding has especially been thematized in the context of governmental environmental policy. This article critically analyses the empirical and theoretical relevance of crowding-out with respect to environmental policy. It is argued that economists' standard recommendations for policy design need not be revised even if intrinsic motivation plays some role for the agents' environmental bevaviour.

26. Trade in Solid Waste – as Restricted by the Principles of Proximity and Autarky

Dissertation Project

Nicole te Heesen

To prevent human health and the environment from being damaged, international law has decided to avoid shipping waste (Preamble Basel Convention). European Community law has standardized two instruments to reach this aim: The principles of proximity and self-sufficiency (Article 5 of Council Directive No. 75/422/EEC on waste, as amended by Council Directive 91/156/EEC; Article 4 and 7 Council Regulation No. 259/93/EEC). If these instruments should remain, they must conform with the founding treaties. The free market is one of the most important issues of the Community. Although, in a democracy, government is not free to intervene in the market, the principle of self-sufficiency has allowed the Member States to prohibit the import of waste simply because it comes from abroad. The European Court of Justice has dealt this conflict by calling waste a "good of special character" and reasoning about the ecological effects of shipping waste.

Basically, waste is to be regarded as a commodity. The distinction between the free movement of good sand free services depends on the economical emphasis. Therefore it is necessary to take into account the profitability of re-used waste. From this viewpoint, waste is a good, when it is rare (mostly recyclable waste). Otherwise the economical emphasis lays on the service.

The principle of self-sufficiency itself is a measure capable of directly hindering potential intra-Community trade and having an effect equivalent to that of qualitative restrictions on import and exports (Article 30 and 34 EC Treaty, now, after amendment Article 28 and 29 EC). The principle therefore needs legitimate grounds. However, restriction on trade can be justified, if it is necessary for environmental protection (Article 36 EC Treaty, now Article 30 EC). Restriction on exports can only be justified, when waste disposal in another Mem-

ber State has a worse retroactive force on the exporting Member State. The imported products are usually not more harmful, thus the fear of importing waste shows that the import Member State does not trust in the quality of his waste disposal installations. The principle of self-sufficiency is also in conflict with the rules concerning the free market of services. It could be justified by Article 55 EC Treaty (now Article 45 EC), but waste disposal is not necessary connected with public power. A strict ban on exportation prevents an economy from specialising in waste treatment, even if it is ecologically better to do so. Especially when waste is not rare, the reduction of waste disposal opportunities lead to illegal waste disposal, thus the principle can not be accounted for by Article 56 EC Treaty (now Article 46 EC).

Other issues of the Community might well force the principle of self-sufficiency. The "polluter pays" principle might be invoked, and product responsibility as its derivative, but particularly where the standards of waste disposal prevailing elsewhere provide a higher level of protection to more efficient waste management structures in Europe. Consequently, the restriction of the free trade of waste on the basis of the principle of self-sufficiency can not be justified.

The principle of proximity limits the transport of waste to a minimum, so that it hinders the intra-Community trade, too. But because it does not pay attention to borders, it could not be considered discriminatory. Therefore the principle of proximity can be justified by environmental protection. The shipping of waste over long distances may damage or endanger the environment. But there is only a profit for the environment, when the far away waste disposal installation has a better standard.

27. Private Institutions in Waste Management Policy and Their Antitrust Implications – The Case of Germany's Dual Management System

Preprint 1999/13

Markus Lehmann

This paper takes the viewpoint of the neoinstitutional theory of the firm in order to analyze Germany's voluntary Dual Management System for Packaging Waste Collection and Recycling (*DSD*); namely, its governance structure and its contractual relations with upstream and downstream firms. Two aspects crucial for assessing the antitrust implications of voluntary environmental agreements are highlighted. First, the institutional fine-tuning of a voluntary agreement is significant for an assessment of its implications for market competition. Second, the design of the threat with respect to the instruments it prescribes is of crucial importance for the degree of centralization and the anti-competitive impact of the private institutions that subsequently emerge.

28. The Problem of Locating Contamination Sites: Incentives for Finding Information with the Use of Key Witness Rules?

[Das Problem der Altlastenentdeckung: Anreize zur Informationsenthüllung durch eine Kronzeugenregelung?]. *Zeitschrift für Umweltpolitik und Umweltrecht* 24 (3): 475-505. Preprint 2000/17.

Roswitha Kleineidam/Markus Lehmann

This paper argues that the existing German and American liability rules for the cleanup of Superfund sites do not generate incentives to reveal private information on the existence of a contaminated site. It presents an infinite-horizon, dynamic model of imperfect information and shows that such incentives are generated by appropriately reducing the liability of any potentially responsible party which reveals its private information. The necessary reduction is a function of the probability of exogenous discovery and of the discount factor of the potentially responsible party. By referring to the legal literature on State's evidence, the paper analyses the problems related to different possibilities of designing the reduction rule.

29. Implicit Cartelization and the Role of Voluntary Agreements in Environmental Policy

Submitted to *Journal of Environmental Economics and Management*.

Markus Lehmann

This paper analyses the emergence of voluntary agreements and their role within a set of environmental policy instruments. It presents a Rubinsteinian model of offer/counter-offer bargaining between a welfare-maximizing regulator and an industry representative over which instrument to apply with which stringency. Incentives to bargain result from the representative's possibility of politically contesting planned regulation. This contest is the parties' outside option in the bargaining model.

It is well-known that means of direct regulation may lead to an implicit cartelization of the industry and to rising profits. In the present model, this feature shapes the actors' equilibrium threat position, which, in turn, influences incentives to contest the regulation and the subsequent bargaining outcome. Depending on a parameter characterizing the parties' respective position in the political contest, the implementation of voluntary agreements or of other (negotiated or mandatory) policy instruments is endogenously derived.

Two policy results are shown. First, a commitment to exlusively use emissions taxation is shown to never increase welfare in equlibirum, although, within the model, it is the only instrument which can ensure the first-best allocation. Second, bilateral voluntary agreements are shown the be welfare-neutral. In consequence, the analysis gives a political-economy rationale for a legislative commitment that includes traditional command-and-control regulation via standards, but excludes bilateral voluntary agreements.

30. Regulatory Competition Re-Examined

Dissertation Project

Henri Tjiong

(See D II 2, 17)

D II 1 The Provision of Common Goods: Governance Across Multiple Arenas

The institutional and political perspective questions whether the properties of accessibility and non-rivalry are inherent properties of a good as such (see B). Proponents of this perspective point out that accessibility may depend on political and normative options, and the existence and socially embedded use of a technology. In the first case, common goods are understood as such because the accessibility to them and the non-rival consumption of them are considered desirable from a political and legal perspective. So, things such as health services or general education are considered common goods. In the second case, free access is linked to physical attributes of the good or the lack of a technology that would make exclusion possible; in other words, there is free access because property rights cannot be assigned.

But regardless of whether common goods are defined in terms of their inherent characteristics, or in terms of institutional and political goals, in each case we are confronted with problems of generating incentives to produce and provide these goods in institutions. If access to the good cannot be controlled, there are no motives for individuals to produce and provide the good on the market. This being the case, it was traditionally considered necessary that the state should produce and provide these goods; or if the goods are provided by nature, it was viewed as necessary that the government should protect them from depletion by means of specific institutional arrangements (Bator 1958; Cornes and Sandler 1996). However, more recently, it has been convincingly argued that it is not necessary for the state to secure the provision of common goods; they can also be provided by communal organizations and private actors, without centralized government (Ostrom 1990).

Under the specific conditions of problem interdependence across political boundaries, the institutional provision of common goods is faced with new challenges. The origin and scope of the impact of a particular problem do not coincide with the boundaries of a political unit. Rather, the source of a problem lies in one political unit (say, political unit A), whereas the impact of the problem is felt in another political unit (say, political unit B). Hence, in order to deal with this type of interdependent problem, the cooperation of the two political units is necessary: if B is not to bear the burden of the negative impacts of the problem caused by A, then A and B must cooperate. With the enormously increased international communication, trade, and mobility, which are rendered possible by modern technologies, and the worldwide liberalization of economies, problems of interdependence have multiplied and fundamentally changed. In order to tackle these problems and to provide for common goods under conditions of internationalization, the provision of common goods has to be reconsidered and increasingly has to be organized across national boundaries, across levels of government, across sectors, and in collaboration with public and private actors. The questions now to be asked are: Which modes of multilevel and multi-arena government and governance (Marks 1993; Grande 1995) have emerged to deal with the provision of common goods in this changed context of cross-boundary problem interdependence and which institutional arrangements are appropriate for providing the common goods under these conditions?

Multilevel government refers to the interaction of public actors vertically across multiple levels of government. The interaction is needed in order to come to a political decision (joint decision-making – Scharpf 2000). Thus member states in the European Council of Ministers have to accept draft legislation on the basis of unanimity or a qualified majority if such proposed legislation is to become law and then have to implement it. Multi-arena government – in the horizontal dimension – refers to the fact that the collaboration between different decision-making arenas may be necessary to arrive at a decision: examples of this include the co-decision procedure of the Council of Ministers and the European Parliament.

The notion of governance implies that private actors are involved in decision-making in order to provide common goods and that non-hierarchical means of guidance are employed. Private actors may be independently engaged in self-regulation; or a regulatory task may have been delegated to them by a

public authority; or they may be regulating jointly with a public actor. This interaction may occur across levels (vertically) or across arenas (horizontally).

The interaction between actors at different levels and across arenas reveals different decision-making styles (Scharpf 2000). In the case of spontaneous coordination/mutual adjustment, no institutionalized interaction takes place, but the individual actors anticipate the reaction of the other involved actors, and they adjust their behaviour accordingly. In the case of joint decision-making, all the independent actors involved from different levels and arenas engage in negotiation processes, and they have to come to a consensual decision. In a more deeply institutionalized setting, such as the Council of Ministers in the European Union, provision may have been made for a majority decision or take the form of an existing statute.

If private actors are engaged in cross-level and cross-arena decision-making to provide common goods under conditions of problem interdependence, the decision styles applied depend on the particular actor setting. Private actors jointly with other actors, engaged in self-regulation, will negotiate agreements among independent private actors. If private actors are engaged in co-regulation with public actors, the shadow of hierarchy always looms. Formally, public actors cannot negotiate on an equal standing with private actors. In practice, however, in view of the resources available to the latter, regulatory agreements are frequently negotiated between public and private actors. In this, however, the ultimate possibility for hierarchical intervention by public actors is one of their important resources.

The involvement of private actors is discussed here primarily in connection with policy formulation, and only to a lesser extent in connection with the policy-making phase of implementation. Precisely because policy making has traditionally been the exclusive role of public actors, the role of private actors here is particularly interesting and surprising. By contrast, private actors – besides administrative actors – have always played an important role in policy implementation. One important argument for involving private actors in policy formulation is precisely that if they have a role in shaping policy targets and instruments, they will have increased incentives to engage in implementation.

If it is true that providing common goods across political, administrative, and sectoral boundaries in order to deal with interdependent problems has become more frequent, then the following question arises: namely, what are the implications for the more traditional forms of governance at the national and the supranational European levels? There are many indications that the tasks traditionally performed by nation-states and European bodies will not become completely obsolete as state functions, but will very likely be transformed, instead. In other words, new governance is not a zero-sum game; rather, it is a positive-sum game that may be compared to two connecting pipes. The water rises in both arms of the pipes: the private and the public. Why would that be so? Many modes for providing common goods need a framework in which to operate; and these frameworks are established by public decision-making bodies. Frequently public actors delegate tasks to private actors, but maintain the possibility of stepping in and taking over the functions should private actors not perform well. Further, the new modes of operation may be challenged, not for their problem-solving capacity, but for the possibility of holding private actors accountable for their actions and for related problems of legal certainty and democratic legitimation.

The individual research conducted in this area approaches the topic from different angles starting from an emphasis on the type of common good, over the role of private actors in the provision of common goods to the impacts of new modes of governance. (see also 21)

Holzinger (1, 2) and in her habilitation project (22) focuses on the specific properties of common goods and the social context in which they are provided. The properties of a good, and in many cases the attributes of a social situation in which a good is provided, influence the incentive structure of the actors involved. They will determine whether actors find themselves in a dilemma situation or in a different type of strategic constellation. The interest constellation, in turn, influences the type of institutional solution found for the problem at hand.

Kölliker (3, 4) develops a theory on the impact of variations in the problem type in the provision of common goods by EU member states and discusses empirical evidence from several policy areas. According to the theory, the character of policies in terms of public goods theory (defined through the degree of excludability from, and rivalry in consumption) influences significantly the centripetal effects of closer cooperation among the most willing EU members on initially unwilling non-participants.

Knill (5) and Lehmkuhl (6) argue that governance capacity across arenas in general hinges upon three factors: the congruence of the scope of the problem and the scope of the regulatory structure; the problem type (co-ordination problems, agreement/redistribution problems and defection/free-riding problems), which gives rise to specific interest constellations; and finally the institutional context. Depending on the relative governance capacity – defined by the congruence of the problem scope and regulatory scope, the type of problem and institutional context – they derive four ideal types of governance involving different forms of interaction between public and private actors. Discussing various forms of Internet regulation, the authors show that internationalization gives rise to different paths of transition from one type of public-private regulation to another. Lehmkuhl (23) also analyses in his habilitation project the competition and co-evaluation of public and private adjudication in dispute resulotion in transnational trade.

Farrell (7) analyses a novel mode of "regulated private self-regulation" which was developed to solve a problem of international problem interdependence; namely, data protection in electronic commerce. He shows that globalization problems that spill over state borders can be solved by negotiating new solutions. Focusing on the political process in which the institutional solution was developed, he investigates the bargaining process between the EU and the US in what is known as the "Safe Harbour" arrangement on data protection and privacy.

Börzel (8, 9, 10, 11, 12, 13, 14, 15, 16) looks at questions of policy implementation. Assuming a mismatch between existing national policies and the requirements of international treaties, Börzel hypothesizes that state compliance with international rules is more likely if a hegemonic state provides incentives for compliance, if monitoring mechanisms are elaborated, and if there are autonomous international institutions involved in settling disputes; compliance is also more likely if there are a low number of domestic veto-players, if transnational networks mobilize pressure, and if the required rules are considered part of the general legal system. Similarly, compliance will be facilitated if addressees and target actors participate in the formulation of the rules, if the relevant rules are institutionalized at an international level, if norm-violators are implicated in a reasoned discourse about the (in)appropriateness of their behaviour, and if the state has the resources to ensure compliance, or has access to outside resources. The different hypotheses are subject to empirical testing in a quantitative study on compliance with European norms and rules.

Héritier (17) focuses on new modes of governance which avoid legislation and rely on private actors to provide common goods within European Union policy-making. She investigates two new modes of governance that have been strongly advocated in recent years: the "open method of coordination" and "voluntary accords". Both seek to avoid legislation, which is viewed as a cumbersome policy-making path, and rely upon private actors in policy formulation. Héritier develops the underlying rationale, pointing out the advantages of these new modes of governance: they are considered to allow speedier decision-making and to cause less political opposition, particularly when compared to the multilevel governmental decision processes of public actors, which are linked with a strong need for consensus; they are also regarded as more flexible, to have ready access to expertise and practical implementation knowledge. And because the implementors also participate in the formulation of the policy, they are thought to be committed to carrying it out. In short, these forms of governance are considered to have a superior institutional and instrumental capacity as compared to legislation. This claim is examined in the research.

Kerwer in his habilitation project (18, 24) analyses a sector characterized by particularly powerful dynamics of internationalization, the financial services sector. He deals with the role of private actors in offering information on activities in this sector, who thus provide a common good. Specifically, private actors strive to increase transparency and to reduce risk in the application of financial instruments. He

focuses on the accountability problematique of rating agencies. The standards of creditworthiness established by the rating agencies are difficult to challenge because, on the one hand, they are based on neutral expertise, yet, on the other, they are subject to mandatory enforcement by financial market regulation. The resulting compliance without the complementary right to complain substantially reduces the possibilities for learning by agencies. Hence the preconditions and institutional remedies for accountability problems in the case of global governance by private intermediary organizations are preeminent.

Verweij (19, 20) focuses on the question of whether multilateral organizations should become more deliberative. In recent years, the concept of 'deliberation' has received increasing attention. It entails decision making through consensus-seeking and arguing between those who hold alternative views of the problems at hand and their solutions. One reason for why deliberative decision-making has enjoyed increasing attention consists of the idea that deliberation might be a partial cure for the much-lamented 'democratic deficit' in international relations. Other benefits have also been claimed for deliberation: it should lead to richer learning processes; more robust decisions; and a higher degree of implementation and consent. Various authors have therefore argued in favour of institutions that invite the participation of groups and citizens representing a wide variety of perspectives and interests. This research project considers whether an argument can be built for making the decision-making procedures of the IMF and WTO more deliberative. It will attempt to build such an argument by analysing the activities and decisions of the WTO and IMF during the last fifteen years, and comparing these events with the experiences of the World Bank.

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1. Aggregation Technology of Common Goods and its Strategic Consequences. Global Warming, Biodiversity and Siting Conflicts

2001. In *European Journal of Political Research* 40. Forthcoming.

Katharina Holzinger

The analysis of common goods needs to look closely at the characteristics of the goods and the social situations of their provision. Different characteristics lead to different strategic constellations and therefore to different opportunities for institutional solutions to the problems of provision. Basic differences in strategic constellations can be shown clearly by employing matrix games. In this paper a particular attribute of common goods, their aggregation technology, is systematically analysed. Three variations in this dimension are exemplified by cases from environmental policy. It becomes clear that the analysis of one specific attribute of a good will seldom suffice to predict empirical behaviour. Nevertheless, rigorous game theoretic analysis provides valuable insights into the links between the characteristics of common goods and the need for institutions.

2. The Provision of Transnational Common Goods: Regulatory Competition for Environmental Standards

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Katharina Holzinger

Traditionally, the need for the collective provision of goods is based on non-rivalry of consumption and non-excludability from consumption. These two properties create an incentive structure for rational individuals, which prevents the efficient private provision of these goods. However, a social situation where a common good is to be provided is characterized by many more properties than the two just mentioned. A careful and systematic analysis of such attributes and their influence on the strategic constellation shows that common goods provision does not necessarily pose a prisoner's dilemma. This argument is exemplified by an analysis of regulatory competition in the case of environmental standards. It has been claimed that regulatory competition between states leads to a race to the bottom with regard to environmental standards. There is evidence, however, of both a race to the bottom and a race to the top in the environmental domain. As of yet, the analytical conditions under which either one of these effects arises have not fully been identified. Employing matrix games as a tool, the paper varies three important conditions: homogeneity of actors, the type of standards used, and the prevailing trade regime. It can be shown that the strategic constellation is only prisoner's dilemma, implying a race to the bottom, when there are homogeneous actors or a free trade regime. Whenever the states have heterogeneous preferences and the erection of trade barriers for environmental reasons is permitted, the coexistence of different standards or even a race to the top is the result.

3. Bringing Together or Driving Apart the Union? Towards a Theory of Differentiated Integration

2001. *West European Politics* 24 (4): 125-151. Forthcoming. Preprint 2001/5.

Alkuin Kölliker

This contribution develops a theory on the impact of differentiation on integration and unity among EU member states and discusses empirical evidence from four policy areas. According to the theory, the centripetal effects of closer cooperation among willing EU members on initially unwilling non-participants are strongly influenced by the character of the respective policy area in terms of public goods theory. The eventual participation of initially reluctant member states, which leads to the re-establishment of long-run unity despite short-run differentiation, is most likely in policy areas involving excludable network effects, and most unlikely in areas dealing with common pool resource problems (the four remaining types of goods ranking in between these two extremes). The theoretical conclusions are supported by empirical evidence from four EU-related policies, the three successful of which show strong characteristics of excludable network goods (EMU, Schengen and the Dublin Convention), while the one which has proved extraordinarily difficult so far involves a common pool resource problem (tax harmonization).

4. How to Make Use of Closer Cooperation? The Amsterdam Clauses and the Dynamics of European Integration

2001. *Forward Studies Unit Working Paper.* Brussels: European Commission. Co-authored with Francesco Milner.

Alkuin Kölliker

The aim of this paper is to show how and to what extent short-run differentiation through closer cooperation within the European Union can actually be made compatible with the objective of long-run unity. This question is addressed in a framework for analysis based on public goods theory and taking into account past European experiences. The paper tries to identify areas of potentially successful closer cooperation through a joint analysis of the legal framework, initial political preferences, and eventual centripetal effects on initially unwilling outsiders. The paper concludes that closer cooperation should mainly be used in policy areas that have the character of club or network goods and therefore develop strong centripetal effects.

5. Private Governance Across Multiple Arenas: European Interest Associations as Interface Actors

2001. *Journal of European Public Policy* 8 (2): 227-246.

Christoph Knill

As a result of growing economic globalization and rapid technological changes; governance in the field of information and communication policy increasingly requires policy coordination across multiple arenas, not only including vertical coordination across different institutional levels, but also horizontal coordination across different policy sectors. In view of these new coordination demands, the mediation and accommodation of heterogeneous interest positions at the interfaces of various institutional levels and sectoral boundaries have become a crucial governance function. The specific political, economic and technological conditions underlying ICT policy favour this function being carried out by European interest associations – a development which coincides with significant strengthening and structural integration of the system of European interest representation.

6. Changing Patterns of Public-Private Interaction in the Context of Europeanization and Globalization

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Christoph Knill/Dirk Lehmkuhl

To discuss the implications of political and economic internationalization for patterns of governance, Knill and Lehmkuhl start from a state-centric perspective. The actual patterns of governance in internationalized environments, in accord with their proposition, can be related to the respective governance capacity of public and private actors that hinges on the strategic constellation underlying the provision of a public good. The specific strategic constellation varies with three dimensions – namely the congruence between the scope of the underlying problem and the organizational structures of the related actors, the type of problem and the institutional context – all of which bundle a number of factors. With this concept in mind, they identify four ideal-type patterns of governance that are distinguished by different configurations of public and private capacities to formally or factually influence social, economic and political processes by which certain goods are provided.

7. Negotiating Privacy across Arenas – The EU-US „Safe Harbour" Discussions

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Henry Farrell

This chapter examines the "Safe Harbour" arrangement between the European Union and the United States, in which the United States sought adequacy for certain firms under the European Union's data protection directive. It seeks to provide an actor-centred institutionalist account of how the arrangement came into being, focusing on the interaction between the EU institutional arena, the arena of EU-US negotiations, and the US domestic political arena. It shows how actors in each of these arenas sought advantage by creating (or seeking to block) linkages with other arenas as appropriate to their goals. Actors in the US domestic political arena either sought to link EU-US negotiations to the more general debate on privacy, or to prevent such linkage, according to whether they wished to see more formal legislative restraints on firms or not. Actors within the EU-US negotiations also sought to make linkages, as EU negotiators used the opposition of the EU parliament and data protection officials to extract concessions from their US counterparts. However, when it became necessary to ratify Safe Harbour, they used precisely contrary tactics, and employed the threat of US intransigence to seek to persuade an unwilling Parliament to accept Safe Harbour.

8. On Environmental Leaders and Laggards in Europe. Why There is (Not) A Southern Problem

2002. London: Ashgate. Forthcoming.

Tanja A. Börzel

The European Union faces a serious implementation deficit, which is most striking in the field of environmental policy. Environmental policy accounts for over 20% of all infringements registered with the European Commission. Ineffective implementation is often considered a particular 'Southern problem'. But while implementation failure tends to be most prevalent in the Southern European member states, the environmentally more advanced Northern countries often encounter significant problems in effectively implementing EU environmental policies, too. How can we explain such variations in the implementation of EU environmental policies which cut across the North-South divide? This book argues that implementation problems result from an interplay of European and domestic factors. If an EU policy does not fit the regulatory structure in a member state, its legal transposition, practical application, and enforcement impose considerable costs of adaptation, which domestic actors are hardly inclined to bear. Implementation problems are therefore most likely in cases of policy misfit. If a European policy is compatible with domestic regulatory structures, there is no reason why its implementation should encounter substantial problems. Consequently, environmental firstcomers, like Germany, which have been able to upload their environmental regulations to the European level, are less likely to face implementation problems than environmental latecomers, like Spain, which are policy-takers rather than policy-makers in the European Union.

9. The Effect of International Institutions: From the Recognition of Norms to the Compliance with Them

[Die Wirkung internationaler Institutionen: Von der Normanerkennung zur Normeinhaltung]. In *Regieren in internationalen Institutionen*, ed. M. Jachtenfuchs and M. Knodt. Opladen: Leske + Budrich. Forthcoming.

Tanja A. Börzel

This contribution examines the mechanisms for inducing compliance with international norms and rules as one major form of institutional effects. More specifically, it tackles the process from norm recognition to norm compliance. Two social logics of institutional impact are distinguished. They share the common assumption that only "inconvenient" rules cause problems of non-compliance, since they either cause material and ideational costs or are not compatible with existing institutions and identities. Rationalist approaches concentrate on positive and negative incentives to induce behavioural changes. International institutions can deploy sanctions but also provide resources for strengthening the capacity necessary to comply. Compliance is further promoted if international norms and rules empower actors that favour domestic change. Constructivist approaches, by contrast, conceive of compliance as a process of norm internalization that affects actors' preferences. The legitimacy of international norms and rules, their internalization in domestic law, and the persuasion of "norm-entrepreneurs" are crucial factors in inducing compliance. Although rationalist and constructivist emphasize different logics of social action, their hypotheses about the impact of institutions are not mutually exclusive but relate to each other. Two case studies on compliance with European environmental law and international human rights norms illustrate how rationalist and constructivist compliance mechanisms may interact. The chapter concludes with some suggestions for future research on the effects of international institutions.

10. Non-Compliance in the European Union. Pathology or Statistical Artefact?

2001. *Journal of European Public Policy* 8 (5). Forthcoming.

Tanja A. Börzel

Does the EU have a compliance problem? This paper argues that we have simply no evidence that the European Union suffers from a serious compliance deficit, which is claimed by the European Commission and academics alike. First, there are no data that measure the actual level of non-compliance in the EU-member states. Second, the statistics published by the European Commission, which allow a comparison of non-compliance between the different member states, are often not properly interpreted. If we check for changes in the Commission's enforcement strategy on the one hand, and the increasing amount of legislation to be complied with, as well as of member states that have to comply, on the other hand, the level of non-compliance in the EU is not significantly decreasing over time. Moreover, non-compliance varies significantly and is focused on four particular member states that account for up to two-thirds of all violations of Community Law.

11. Non-State Actors and the Provision of Common Goods: Compliance with International Institutions

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Tanja A. Börzel

(Transnational) private actors have an important role in 'global governance'. But their influence varies significantly, both across time and issues. The major challenge for theorizing about non-state actors in world politics is not only to demonstrate that they matter, but also to explain where, when, and how they matter. This chapter takes issue with these challenges by looking at the role of private actors in compliance with international institutions for the provision of common goods. The first part of the chapter clarifies the concept of compliance and the distinction made between public and private actors. The second part reviews prominent approaches to compliance in the International Relations literature. Börzel distinguishes them, first, according to the relative weight they attribute to private actors in compliance, and second, according to the causal mechanisms through which compliance is induced granting private actors different ways of influencing compliance. Taking 'misfit' as a precondition of non-compliance, she derives 11 hypotheses about state compliance with inconvenient international rules which specify different causal mechanisms through which state actors, international institutions, and private actors, respectively, make an impact on compliance. The chapter concludes with some reflections on how the different hypotheses may relate to and interact with each other

12. Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization

2001. Working Paper. Belfast: Queens University.

Tanja A. Börzel

Europeanization is a two-way process which involves the evolution of European institutions that impact on political structures and processes of the member states. This paper develops an approach to conceptually link the two dimensions of Europeanization by focusing on the ways in which member state governments both shape European policy outcomes and adapt to them. Member states have an incentive to "up-load" their policies to the European level to minimize the costs in "down-loading" them at the domestic level. But they differ both in their policy preferences and their action capacities. Accordingly, member states have pursued different strategies in responding to Europeanization. The paper draws on evidence from the field of EU environmental policy-making to illustrate when member states are likely to engage in pace-setting, foot-dragging or fence-sitting. It concludes with a discussion on whether pace-setting, foot-dragging, and fence-sitting give rise to interest coalitions which systematically pitch member states of diverse levels of economic development against each other. Is a "North-South conflict" emerging in the European Union?

13. Improving Compliance through Domestic Mobilization? New Instruments and the Effectiveness of Implementation in Spain

2000. In *Implementing EU Environmental Policy: New Approaches to an Old Problem,* ed. C. Knill and A. Lenschow, 222-250. Manchester: Manchester University Press.

Tanja A. Börzel

This chapter tackles the question as to what extent new policy instruments may actually contribute to improving member state compliance with European environmental regulations. It argues that domestic mobilization is an important factor in enhancing the effective implementation of European policies at the domestic level. Not only can domestic societal actors serve as 'watchdogs' bringing the infringement of European regulations of member states to the attention of the Commission, thus triggering pressure from 'above'. Societal actors may also exert pressure from 'below' by pushing member state administrations to effectively apply and enforce European policies. Hence, there are good reasons to expect European policies, which provide societal actors with additional opportunities to 'pull' European regulations down to the domestic level, to improve member state compliance. A comparative case study on the implementation of two 'new' and two 'old' policy instruments in Germany and Spain shows that new policy instruments may indeed have the potential to mobilize societal actors. But societal actors significantly differ in their capacity to exploit such opportunities. Due to a lower level of environmental awareness as well as the weak political power of environmental interests, Spanish societal actors are far less able to invoke the rights provided by the new policy instruments than their German counterparts. The unequal strength of environmental interests in the different member states is something for which EU policies ultimately cannot compensate, no matter how many additional opportunities they may offer. Yet, such opportunities provide important incentives for domestic mobilization, even if societal actors have only limited resources, like in the case of Spain.

14. Why There Is No Southern Problem. On Environmental Leaders and Laggards in the European Union.

2000. *Journal of European Public Policy* 7 (1): 141-162.

Tanja A. Börzel

Non-compliance with EU (environmental) law is often considered to be a 'Southern' problem. Because of specific features of their political systems, the four southern European member states are believed to lack the capacity for effectively implementing EU policies. In contrast, Börzel argues in this paper that, first, there is significant variation in compliance with EU environmental laws across the European member states, which cannot be accommodated by a simple North-South divide. Second, the comparative study on the implementation of five different EU environmental policies in Spain and Germany shows that compliance may vary across different policies *within* one country. The paper puts forward a model which allows variations to be explained across both member states and policies. It is argued that non-compliance is most likely if an EU policy causes a significant 'policy misfit' *and* if there is no mobilization of domestic actors pressuring public authorities to bear the costs of implementing the 'misfitting' policy.

15. Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain

1999. *Journal of Common Market Studies* 37 (4): 573-596.

Tanja A. Börzel

A number of studies suggest that European integration impacts upon the domestic institutions of the member states by changing the distribution of resources among domestic actors. Börzel argues in this paper that resource dependency needs to be embedded in an institutionalist understanding of Europeanization in order to explain when and how Europe affects the domestic institutions of the member states. First, domestic institutions determine the distribution of resources among the domestic actors in a given member-state. Second, the compatibility of European and domestic institutions determines the degree to which Europeanization changes this distribution of resources and hence the degree of pressure for institutional adaptation. Third, the domestic institutional culture determines the dominant strategies of actors by which they respond to such a redistribution of resources, facilitating or prohibiting institutional adaptation. She demonstrates her argument empirically by comparing the impact of Europeanization on the territorial institutions of Germany and Spain. I conclude with some thoughts on whether we are likely to see convergence among the domestic institutions of the member states.

16. Private Actors on the Rise? The Role of Non-State Actors in Compliance with International Institutions

Preprint 2000/14

Tanja A. Börzel

(Transnational) private actors have a significant role in 'global governance'. But their influence varies significantly, both across time and issues. The major challenge for theorizing about non-state actors in world politics is not only to demonstrate that they matter but explain where, when, and how they matter. This paper takes issue with these challenges by looking at the role of private actors in compliance with international institutions. The first part of the paper clarifies the concept of compliance and the distinction made between public and private actors. The second part reviews prominent approaches to compliance in the International Relations literature. Börzel distinguishes them, first, according to the relative weight they attribute to private actors in compliance, and second, according to the causal mechanisms through which compliance is induced granting private actors different ways to influence compliance. Taking 'misfit' as a precondition of non-compliance, she derives 11 hypotheses about state compliance with inconvenient international rules which specify different causal mechanisms through which state actors, international institutions, and private actors, respectively, impact on compliance. The final part of the paper discusses the EU as a critical case for testing compliance theories.

17. New Modes of Governance in Europe: Policy-Making without Legislating?

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Adrienne Héritier

Adrienne Héritier analyses new modes of governance in Europe and distinguishes different types of new governance, the open coordination method and voluntary accords. The theoretical discussion about them points to the reasons for their emergence, their mode of operation and the links to the 'classical' forms of decision-making. Then the new modes of governance as European policy measures are empirically examined and gauged according to their institutional and instrumental capacity and, finally, the question is raised as to how these new modes of governance fit into the overall context of European government and governance.

18. Standardizing as Governance: The Case of Credit Rating Agencies

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming. Preprint 2001/3.

Dieter Kerwer

The global integration of financial markets has been accompanied by a transformation of its governance structures. Private intermediary organizations now play a more important role than in the past. A prominent example is the commercial credit rating agencies that have established themselves as influential gatekeepers of the international market for credit. A problem of this form of intermediation is that, in the case of errors, rating agencies can do considerable damage to borrowers and investors alike. Still, it is very difficult to hold rating agencies accountable. This paper proposes to compare the activity of credit rating agencies to standard-setting in order to explain this accountability gap. The argument is that the standards of creditworthiness established by the rating agencies are difficult to challenge because they are based on neutral expertise on the one hand but are subject to mandatory enforcement by financial market regulation on the other. The resulting 'compliance without complaints' substantially reduces the possibilities for learning. This perspective leads to an exciting research agenda, in which the preconditions and institutional remedies for accountability problems of global governance by private intermediary organizations can be explored in a comparative fashion.

19. Deliberately Democratizing Multilateral Organizations

2001. *Governance* 14, special issue. Forthcoming.

Marco Verweij and Tim Josling (eds.)

In this special issue of Governance, a group of political scientists, economists and lawyers analyse the need to democratize and diversify multilateral decision-making. Particular attention is paid to the roles that increased deliberative decision-making could play in this. Loren King provides an overview of the literature on deliberative democracy, and offers an input-argument for increased multilateral deliberation. Thereafter, Michael Thompson's notion of "clumsiness" offers an output-argument for more deliberation among the multilateral organizations. Susanne Lohmann makes a comparable claim. In her view, monetary institutions need to be "messy", that is, to function well they need to be monitored by a diverse set of audiences. She illustrates her argument with the German *Bundesbank*, the European Monetary Union, and the IMF. The other authors analyze the need for, and extent of, deliberative practices (and other forms of democracy) among particular multilateral organizations. Isabelle Grunberg looks at the United Nations system, Rob Howse and Kalypso Nicolaidis analyze the WTO, Archon Fung discusses a deliberative alternative to the efforts of the International Labor Organization, while Joseph Stiglitz takes the IMF and World Bank to task.

20. Deliberately Democratizing Multilateral Organizations

2001. *Governance* 14. Forthcoming.

Marco Verweij

Despite increased cooperation with civil society-groups and business' associations, multilateral organizations are still not sufficiently democratic or pluralistic. In particular, economic multilateral organizations appear to be lacking both "input"- and "output-legitimacy". As of late, various plans to increase international democracy have been promoted: global parliament; more international law; increased decision-making through global civil society; rolling back multilateral organization; and increasing national supervision of international organizations. All these proposals are interesting, but have their shortcomings as well. Hence, the need exists to consider yet another way in which to democratize and pluralize multilateral organization. By becoming more deliberative, multilateral organizations could increase their input- and output legitimacy, and also serve as facilitators of more democratic processes within non-democratic states.

21. Conference

Common Goods and Governance Across Multiple Arenas
30 June/1 July 2000
Bonn

Collective action problems frequently pose a conflict between individual short-term and collective long-term interests that have to be solved in order to provide common goods changes with the growth of problem interdependence. Institutional solutions increasingly have to be organized across national boundaries, across levels of government, across sectors and between public and private actors, therefore requiring new answers. These have important implications for the dominant modes of governance and the instruments applied, as well as for the relative importance of actors involved in the provision of common goods. Thus, hierarchical means of guidance, as can be applied within the classical nation-state, are less easily available, while negotiation and self-regulation which relies heavily on private actors interacting with public actors become more important. In turn, the new modes of governance have repercussions on the more traditional forms of governing within the nation-state, rendering some functions obsolete and requiring new ones to be adopted.

The conference tackled these general questions in three stages. In the first stage, the notion of common goods and their institutional provision were conceptualized and theorized. The theoretical building blocks needed to arrive at an institutional theory of the provision of collective goods were discussed, with an analysis of various types of collective action problems, such as the provision of public goods and common pool resources, the various types of actors involved (egoistic rational actors, conditional co-operators, norm enforcers), the various attributes of the particular group structure, and finally the different rules used in a collective action situation (Ostrom 1999). These theoretical considerations were then discussed from the specific perspective of the need to govern across multiple levels of government.

The second stage started with a session on the particular role of private actors in the provision of common goods which were conceptualized in general terms. Whereas patterns of social relations are increasingly transnational and governments are frequently unable to make international regulations quickly enough to keep abreast of them, the transnational character of non-state actors provides them with a high degree of flexibility for adjusting to changing environments. Leaving aside the (quasi) non governmental organizations (QANGOs) which have recently become ubiquitous and whose raison d'être is to influence public policy in specific areas of general public interest, the panel focused on private commercial actors who are not generally attributed with having any interest in the provision of goods other than their own. The purpose of the panel is to assess both the conditions under which private actors contribute to the provision of public goods and the consequences of these developments for the role of the state.

There then followed a session where the policy outcomes of changed regimes for providing common goods that rely heavily on private actors was analysed. How are these new regulatory regimes at the international and European level shaped in the first place? Which incentives and guidance possibilities do they offer the involved actors and what policy outcomes do they produce as measured by the expectation of guaranteeing the provision of common goods. These questions regarding the formation, functioning and performance of regulatory regimes across multiple arenas was conceptualized and theorized with reference to the public utilities, privacy protection in new information technologies, and the environment.

A further session discussed the new regimes in financial market regulation from the specific perspective of the role of private actors. Commercial information providers, so called 'credit rating agencies', analyse the creditworthiness of borrowers and publish their evaluation as a short symbol. As financial markets have become more important everywhere, rating agencies now assess borrowers world-wide. Furthermore, public regulators increasingly rely on ratings to contain the risk of financial markets. Credit rating agencies can thus be seen as private providers of a public orientation for evaluating credit risk. At least two questions merit closer attention. What are the prerequisites for the private provision of a public good in this case, and what consequences does this have for the public control of financial markets?

Finally, in a concluding round-table discussion, the consequences of the developments which have

been theorized and empirically analysed in the previous sessions were discussed with respect to their implications for the present structure and function of nation states. If well-defined territorial units become less significant as centres of policy-making and democratic legitimation, where then does the responsibility for market-correcting tasks and redistribution move to?

Adrienne Héritier	Introduction

1st stage: Common Goods

Elinor Ostrom	Context and Collective Action: Common Goods Provision in Multiple Arenas
Katharina Holzinger	Attributes of Common Good Provision: Strategic Constellations and Institutional Solutions
Discussant:	Reinhard Zintl

2nd stage: Common Goods and Role of Private Actors

Patterns of Public-Private Interaction at the International Level

A. Claire Cutter	Private Action and the Provision of Public Goods I
Christoph Knill/Dirk Lehmkuhl	Private Actors and the Provision of Public Goods II
Discussant:	Volker Schneider

New Regulatory Regimes: Policy Processes and Outcomes

B. Guy Peters	Contracting Out, Contracting In: Changing Mixes of Action in Governance
Adrienne Héritier/ Dominik Böllhoff	The European Regulatory Regime: Private Actors Providing Public Services
Tanja Börzel:	Private Actors on the Rise? Societal Mobilization in Compliance with International Regulations
Henry Farrell	International Regulation of Privacy in the Age of the Internet
Discussant:	Michael Zürn

Privatising Governance? The Role of Credit Rating Agencies in Financial Markets

Timothy Sinclair	Why Bond Rating Agencies are Private Makers of Global Public Policy
Torsten Struik	Rating Agencies and Systematic Risk: Paradoxes of Governance
Dieter Kerwer	Credit Ratings as Standards in the Regulation of Financial Market Risk: public good or public bad?
Discussant:	Helmut Wilke

3rd stage: Round Table. Governance Across Multiple Arenas: The Demise of the State?

Renate Mayntz
Christoph Engel
Edgar Grande
Helmut Wilke

22. The Provision of Common Goods in Multilevel Systems: Financial Markets and the Environment

Post-doctoral Thesis

Katharina Holzinger

As a consequence of globalization and of new types of derivative financial instruments the decisions of single market actors can lead to substantial externalities for the world economy as recent crises in the international financial markets have shown. Protection against this systemic risk has therefore become a global common good. Solutions to financial market problems at the international level have so far generally not been very successful. The same is true for global environmental goods like protection against global warming. On the other hand there are instances of international agreements in the financial market sector as well as in the environmental sector, e.g. the Basle accord, stratospheric ozone depletion and biodiversity conventions. The fact that these goods have common good characteristics and that there is no central governing body does not in itself explain the success or failure in specific cases of global commons.

Traditional economic analysis has often concluded that public goods should be provided by the state. Game theoretic analysis produces a similar result: the exploitation of commons or the provision of public goods is generally understood as a prisoners' dilemma. Given this incentive structure rational individuals will end up with an alternative which is both collectively and individually undesirable: no-one contributes to the public good. Even if everyone agrees to contribute, there is an incentive to take a free ride later. A prisoners' dilemma can only be solved by a binding contract which must be enforced by an exogenous power, for example the state. This view of the problem of common goods must be qualified in three respects.

First, it has been shown that common goods can be provided and prisoners' dilemmas can be solved without the help of the state: the general conclusion of experimental research is that a substantial amount of co-operation takes place and empirical case studies show that commons can be governed without the intervention of an exogenous power. These studies also show that situations where common goods are to be provided differ in many respects. Such differences may stem from properties of the good itself, but also from properties of the affected actors or other circumstances, like the distribution of property rights. All these properties influence the incentives for the actors and therefore the strategic constellation. The properties of the common good situation determine whether the actors face a dilemma, the type of dilemma it is, and the solutions which are required and appropriate.

Secondly, it is not always possible for the state to solve a common goods problem. In the cases of global common goods mentioned above, a state solution is not possible because there is no state at the global level. International negotiations are the only way out. Moreover, political borders and the scope of common goods are not always congruent. In the case of common goods which have no inherent geographical scope, such as defence, this does not cause a problem. Their scope can be adjusted to the scope of the jurisdiction. But in the case of common goods which do have an inherent geographical scope, such as many environmental goods, the provision of the common good requires the co-operation of several jurisdictions or several levels of jurisdictions. If several jurisdictions or several levels of jurisdictions are involved, this changes the strategic constellation.

Thirdly, economics and game theory diagnose market failure, but the question of whether state intervention leads to better results remains open. The solutions developed by economic "mechanism design" research ignore the procedures actually used by the affected groups, states, and multilevel systems in political decision-making on common goods. States are not governed by point-shaped central bodies which seek to maximize the collective welfare; rather, they are governed through the collaboration of a great number of actors pursuing individual and institutional interests within formal and informal political decision-making processes which co-determine the political goals and the outcome. Therefore co-ordination mechanisms and decision-making procedures influence the solutions to collective goods problems as well.

Building on these considerations the following questions are to be answered by the project:

- What are the strategic constellations and incentive structures for the actors which are created by different properties of common goods?
- How do the strategic constellations change if common goods are to be provided by multi-level systems, i.e. within a federal state, within the European Union, or at the international level?
- How are the strategic constellations related to the opportunities of finding self-governing solutions by the affected actors? Which types of collective decision-making procedures seem appropriate for different types of strategic constellations and what is their effect on the solutions?

The common goods constellations selected for analysis are to be exemplified by cases taken from environmental policy and the regulation of financial markets.

23. Private Governance of International Commercial Disputes

Post-doctoral Thesis

Dirk Lehmkuhl

Traditionally, it has been assumed that trade and commerce operate most effectively within a framework of rules that is set and enforced by governments. At national level, private law such as contract law or company law is crucial for commercial transactions. Yet, as transnational commercial exchange by definition touches the private law provisions of different legal systems, individual states have established private international law to decide which of the various domestic laws should apply. In methodological terms, the concept of private international law centres on attempts to specify rules of collisions or 'conflict rules' in order to 'localize' a legal relationship that touches more than the national legal order. In principle, however, these rules are not international in nature and there are as many private international law systems as there are states. Rather, the differences in national private laws, in their application and in legal cultures significantly restrict private international law from fulfilling its primary function, i.e. to designate an appropriate municipal law to govern the provisions of an international contract and to adjudicate cases involving foreign actors.

In other words, no legal order exists above the various national legal systems to deal with transborder interactions between private individuals and organizations. Neither public nor private international law provides a framework with a sufficient degree of possessive and transactional security for international business. Yet, today, as in the past, the absence of an international regulatory framework which guarantees rights in a way similar to that of a national legal framework does not prevent economic actors from crossing borders. Instead, two phenomena have emerged as solutions to the these problems. On the one hand, trade codes have developed into a set of principles and customary rules (so called lex mercatoria or law merchant) that guide economic transactions both at national and transnational level. On the other hand, transnational commercial arbitration constitutes a device of immense practical importance for resolving international trade disputes. These private institutions facilitate international trade and help provide transactional security and, as such, represent an important factor for resolving specific social dilemmas in international business.

In the context of this research, the most interesting aspect of these rules and institutions is that they do not derive from national or international legislation. Rather, they represent forms of self-governance of a particular transnational community which both pre-dates and post-dates national and international legislation on international trade. With a special focus on the 'private' aspects, the central concern of the present research is to describe and analyse these complex patterns which govern international trade and its disputes.

24. Managing Global Risk: The Role of Credit Rating Agencies in the Governance of Financial Markets

Post-doctoral Thesis

Dieter Kerwer

Throughout the industrialised world governments play an important role in the regulation of financial market risk. By protecting investors from fraud and by introducing preventive regulation to reduce the likelihood of financial crisis, they have contributed to the markets' efficiency and growth. However, the state's role in financial markets has become more difficult over the last two to three decades. The increasing global integration of nationally contained financial markets means that a financial crisis can spread more easily from one national system to another. Furthermore, the high mobility of capital makes the enforcement of rules more difficult. These problems raise the question as to whether and how the management of risk in financial markets takes place today.

In recent years credit rating agencies (CRA) have become increasingly important in the management of financial market risk. CRA are commercial firms that receive payment for publishing an evaluation of the creditworthiness of their clients. This information is especially useful when borrowing takes place through the issue of securities, rather than by bank loans, since buyers of securities do not know the issuers as well as banks usually know their customers. CRA originated in the USA at the turn of the century and concentrated on rating corporate bonds. Their activities subsequently increased in scope and scale. At present no major type of security, issuer or geographic area is excluded. CRA now define a truly global benchmark for credit risk. Published ratings are not only closely observed in the market place. They are significant for regulation as well. Since the Great Depression the CRA's benchmark has also been used in the regulation of financial markets. Banks or certain types of other investors, for example, are only allowed to hold lower risk securities rated 'investment grade'. By referring to the market benchmark for credit risk, regulation remains in touch with the changing credit risks in the market. As with the use of ratings in the market, their use as a regulatory benchmark is also spreading globally. Since CRA judgements define a globally uniform benchmark, they are attractive as a reference for international regulatory standards as well. A good case in point is the recent proposition by the Bank for International Settlements to use ratings to calculate capital adequacy ratios for banks.

The increasing prominence of the CRA in risk management in the market place and in regulation make them an important element in coping with the risk of globally interconnected financial markets. The question arising from this observation is: how effective are present rating-based risk management strategies? Given the rapidly changing nature of financial market risk, how well do rating agencies adapt to them? To answer this question, the dominant mode of action co-ordination between the actors involved is to be analysed. The question guiding the analysis will be whether rating-based risk management results in greater adaptability associated with networks or whether it will be limited to the trial and error learning of markets and hierarchies.

D II 2 Normative Analysis

The focus of the political scientists' work on governance across multiple arenas is on theoretically embedded empirical research. Only a smaller part of the political scientists' research extends to explicitly normative analysis, such as Verweij's work on democratic deliberation in international organizations (Verweij 1, 2) and Héritier's analysis of democratic processes in the European Union (Héritier 3, 4) as well as the analysis of the impact of network liberalization on the provision of public services in the liberalized utilities (Moral Soriano 5, 6, 7; Héritier 8, 9, 10). The legal and economic mirror programme adds a dominant normative perspective. There is, of course, earlier legal work on the blurring line between public and private regulatory activities in the national (e.g. Trute 1996; di Fabio 1997; Faber 2001) and the international context (e.g. Dicke, Hummer et al. 2000), and on systems competition (e.g. Müller 2000). But it is the privilege of the lawyers working at the project group to do this in close cooperation with a whole research programme on governance across multiple arenas conducted by political scientists.

A series of projects develops normative yardsticks for governance across political arenas. The cornerstones of this line of research are two postdoctoral projects. Becker (11) looks at the public/private divide, but restricts the analysis to the German national context. This project attempts to develop a coherent dogmatic framework of private actors' roles in national governance by law. Osthaus plans to look at transnational private or hybrid governance from a private law angle. Can the traditional openness for foreign private law still be upheld if it serves governance functions? Is the statutory framework properly prepared for private law that serves governance functions? Osthaus (12) also has a paper on the potential of private law and conflict of laws for overcoming transnational regulatory conflict. Engel (13) started with a normatively inspired taxonomy of institutions between market and state. Two papers (14, 15) apply the fundamental freedoms of the German Basic Law to private and to hybrid governance. Börzel, Risse and Engel (16) convoked the already mentioned workshop on global governance, bringing political scientists and lawyers together.

A second focus is regulatory competition. Tjiong (17, 18) has his Ph.D. project and an individual paper on it. Okruch (19, 20) has two papers on the issue. Engel (21) looks at the competitive pressure on the nation state originating from the Internet. Maier-Rigaud (22) has a piece on constitutional choice for international trade.

Papers by Lehmann (23, 24, 25), Tjiong (26), Engel (27) and Hansel (28) develop standards for voluntary agreements in the field of waste management. Another paper by Engel (29) systematises international environmental problems. The monographs by Bastians (30), Kleineidam (31) and te Heesen (32) analyse European Waste Management legislation. A paper by Engel (33) looks at European environmental law more generally.

Engel (34) also analyses corporatist solutions in another issue area, the labour markets.

Two more papers by Engel (35, 36) pursue the European thread, demonstrating how the European Charter of Fundamental Rights alters the political opportunity structure, and testing the impact of globalization on European telecommunications law.

The habilitation project of Okruch (37, 38, 39, 40) and a series of his papers are on a more abstract level. They develop standards for an evolutionary theory of economic policy.

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1. Deliberately Democratizing Multilateral Organizations

2001. *Governance* 14, special issue. Forthcoming in 2001.

Marco Verweij/Tim Josling (eds.)

(See D II 1, 19)

2. Deliberately Democratizing Multilateral Organizations

***Governance* 14. Forthcoming in 2001.**

Marco Verweij

(See D II 1, 20)

3. Elements of Democratic Legitimation in Europe: An Alternative Perspective

1999. *Journal of European Public Policy* 6 (2): 269-282.

Adrienne Héritier

(See D IV 2, 4)

4. Composite Democratic Legitimation in Europe: The Role of Transparency and Access to Information

2001. In *The Diffusion of Democracy: Emerging Forms and Norms of Democratic Control in the European Union,* eds. O. Costa and N. Jabko, Ch. Lequesne and P. Magnette. Submitted to Cambridge University Press.

Adrienne Héritier

(See D IV 2, 5)

5. Public Services: The Role of the European Court of Justice in Correcting the Market

2002. In *Regulating Utilities in Europe: The Creation and Correction of Markets*, eds. A. Héritier and D. Coen. To be submitted to Palgrave Press.

Leonor P. Moral Soriano

(See D IV 1, 8)

6. The Case of Public Mission against Competition Rules and Trade Rules

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Leonor P. Moral Soriano

(See D IV 1, 10)

7. Politics and Jurisdiction in European Electricity Policy: Problem Definition, Conflict Solution and Legitimation

2001. Submitted to *European Law Journal*. Co-authored with A. Héritier.

Leonor P. Moral Soriano

(See D IV 1, 5)

8. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation

2001. *Journal of European Public Policy* 8 (5): 825-852.

Adrienne Héritier

(See D IV 1, 4)

9. Politics and Jurisdiction in European Electricity Policy: Problem Definition, Conflict Solution and Legitimation

Submitted to European Law Journal. Co-authored with Leonor P. Moral Soriano.

Adrienne Héritier

(See D IV 1, 5)

10. After Liberalization: Public Interest Services and Employment in the Utilities

2000. In *Welfare and Work in the Open Economy*, eds. F.W. Scharpf and V.A. Schmidt, 554-596. Oxford: Oxford University Press. Co-authored with Susanne K. Schmidt.

Adrienne Héritier

(See D IV 1, 3)

11. The Provision of Norms by the State and Private Actors

Habilitation Project

Florian Becker

The constitutional state draws its power to promote liberty from general, abstract norms. It employs them to ensure the equal existential treatment of its citizens while simultaneously maintaining sufficient distance from powerful individual interests that from time to time run contrary to the desires of public welfare.

This common constitutional basis of modern statehood is confronted with a pessimism that has been spread by the social sciences in regard to governance, to which even jurisprudence can no longer shut itself off. A crisis can be acknowledged both in relation to state law as a governance tool as well as to the overall loss of authority by the state itself. The underlying reason can be found in the growing resistance to governance by complex social subsystems or even modern society as a whole.

The increasing inclusion of private actors in the norm-setting process represents one attempt to restrict such developments. The integration of private interests and private expertise in the norm-making process is intended to lend the rules that have been created in this way additional powers of legitimacy and efficacy. The idea of a cooperative state is then immediately conjured up – one that manages to overcome the organizational separation of state and society.

An excerpt from this development, from hierarchy to cooperation, is the subject of the project presented here. It is concerned with the drawing up of norms by the state and private actors. Constitutional law identifies and analyses the drawing up of norms first and foremost as a task of the state. In the sense of the theory of the state, norm-setting is viewed as belonging to the traditional canon of original state tasks. The constitutional order generally provides framework conditions of a formal and material nature for the creation of norms – who usually have the competence of state authori-

ties as their centre of interest, as well as the type of norm definitions and underlying procedures.

In addition, just as many regulations exist, individuals, experts, associations or other interest groups (private), in an institutionalized form can use to influence the declaration of norms: formalized participation rights can be found in all areas of norm creation, from parliamentary laws to administrative regulations, whereby the areas covered by the above are just as multifarious as the forms of participation.

The thus standardized unilateral, institutionalized participation of private actors in the provision of norms has now become only one of many forms of private actor participation. In addition, many other forms of cooperation between the state and private actors can be observed in this field. These extend from informal measures that are constitutionally hard to pinpoint in the preliminary stages of a defining a norm to the conclusion of agreements to draw up norms, based on legal rules between private interested parties and the owner of direct constitutional or delegated state authority.

In this connection, cases can also be categorized in which prima facie nongovernmental norm setting appears to be present. This initially meant self-regulation by private actors on the basis of state induction. It now also includes the regulation of the private associations induced, recognized or even appropriated by the state. One noteworthy case is the institutionalized participation of the state in the regulation of private associations, in which the state basically leaves it to the private sector to draw up regulations but retains a say in the design of the norms drawn up.

The relationship between the state and private actors is also guided by certain norms and both actors bear joint responsibility for their content. This is obviously and ideally the case when drawing up regulations and agreements. Norm-setting agreements, in particular, are finding an increasingly broad area of application. Following its emancipation from civil and, in particular, labour law, where it originated, public law is finding this newer legal model more and more attractive; it has already secured itself a firm place among the possible options in the areas of social insurance and environmental law.

There is no consistent concept for the different participation forms which describes the position of private actors in drawing up regulations and ties them together in a dogmatically satisfactory fashion. Their forms are too variable, and their areas of application too disparate.

Empirical evidence suggests, however, that the participation of private actors becomes more and more intensive and comprehensive, the sooner a regulated object can be categorized among the canon of common goods, i.e. the more it is prone to conflict.

Including at least those citizens affected by regulation in the norm-definition process is initially captivating for its charm, but is only feasible in a constitutional system that does not take decisions in autartic isolation, that demonstrates its openness to its citizens, and that grants opportunities to participate in governmental decisions. The Federal Constitutional Court, albeit in a different connection, has determined that, under the Basic Law, individuals are not subjects, but citizens: "hence, the necessity of conducting a dialogue between the administration and its citizens ... corresponds to the constitutional interpretation of the citizen's position in the state" (BVerfGE 45, 297 (335).

Nonetheless, even at first sight, constitutional law forces positive and politically desirable institutions under the magnifying glass, since its perspective is not confined to the individual politically or consensually derived legal norm, but has the state in its entirety as its focus. And, in fact, all the phenomena cited lead us into constitutional depths, which it is the main focus of this project to explore. Key constitutional principles are at stake.

The democratic principle assigns the state final responsibility for issuing regulations and the contents thereof. This responsibility displays signs of wear in those cases where it has been delegated by the state to private actors, even if only partially. Moreover, it is still far from clear to what extent the domestic sovereignty which is taken as a prerequisite, suffers as a result of the development (depicted above) in the type of the modern state as a law-, power- and decision-making instance.

The present project seeks to develop solutions to these and additional questions. In line with the project group's emphasis, revelations from political science will be incorporated into the analysis, whose constitutional burden-bearing capacity will be put to the test.

12. Local Values, Global Networks and the Return of Private Law – On the function of Civil Law and Private International Law in Cyberspace

2000. In *Understanding the Impact of Global Networks on Local, Social, Political and Cultural Values*, eds. Ch. Engel and K. H. Keller, 209-236. Baden-Baden: Nomos.

Wolf Osthaus

(See D III, 3)

13. Institutions Between the State and the Market

[Institutionen zwischen Staat und Markt]. 2001. *Die Verwaltung* 34 (1): 1-24.

Christoph Engel

Traditional wisdom starts from a dichotomy between the state and the market, between the socialist and the capitalist model, between central and decentralized governance. These distinctions provide a useful starting point for characterizing an economy. But at closer sight, even the most liberal economic system needs many of market-making institutions. Given the many instances of market failure, it will hardly be able to do without a number of market-correcting institutions. These institutions need not be provided by the state. To quite an extent, market participants can create them on their own. And a whole array of intermediate solutions exist whose central element need neither be governmental nor legal, but can instead be provided by more or less organized social forces. And there are hybrid mixtures of central and decentralized elements, like in "regulated self-regulation". This paper offers a taxonomy of institutions between the state and the market, and derives constitutional legal principles from it.

14. A Constitutional Framework for Private Governance

Submitted to *Governance*. Preprint 2001/4.

Christoph Engel

Regulation is almost a synonym for public law. Government, relying on its sovereign powers, intervenes into freedom for the sake of social betterment. Yet, reality less and less coincides with this traditional picture. Regulation is increasingly being replaced by private or hybrid governance, i.e. by blends of private and public elements. Constitutional doctrine is not well prepared for the ensuing four-polar conflict. The four actors are government, the private regulator, its addressees and the protectees. Constitutional doctrine treats private regulation as an exercise of freedom. The interest of protectees in good governance consequently lacks constitutional status. The conflict betwenn private regulators and addressees is treated as if it were a normal conflict between two groups of individuals having opposing interests. An appropriate solution makes a difference in the constitutional protection of freedom and autonomy. The German constitution does indeed also protect autonomy,

of municipalities, public broadcasters, universities, and private regulators. But the scope and level of protection against governmental interference reflects the governance task of private regulators. In a second respect, constitutional doctrine also ought to be amended. Private governance is rarely governance by law. It more often relies on social norms, technical code, incentives or mixtures of legal with non-legal governance tools. The normative value of governance by law can be reflected in objective constitutional law. Finally, from all this a first set of insights can be derived for the constitutional treatment of hybrid governance.

15. Hybrid Governance Across National Jurisdictions as a Challenge to Constitutional Law

***2001. European Business Organization Review*. Forthcoming.**

Christoph Engel

The constitutional movement has conquered the world. There is hardly a country left without a written constitution, and many also have an independent constitutional court entrusted with its enforcement. But constitutions have been developed for the nation-state, possessing a legal and factual monopoly of governance. This monopoly is eroding. Social ordering, i.e. governance, is increasingly private, and increasingly international. Yet, despite gloomy forecasts, empirically there is little reason to hail the demise of the nation-state. But nation states will increasingly have to share governance authority with private or foreign bodies. In the long run, constitutionalizing these hybrid schemes, or hybridizing the national constitutions are evolutionary options. But in the foreseeable future, the national constitutions will themselves have to cope with the challenge. This article explores the challenge and investigates dogmatic paths to parry it.

16. Global Governance Workshop

Florence, 6–7 April 2001
European University Institute/Max Planck Project Group

The purpose of the workshop was to engage in an interdisciplinary dialogue between law and political science, focussing on the challenges of globalization and global governance. What is new about "global governance?" To what extent can the analytical and normative toolboxes in law and social science cope with the challenges posed by globalization and governance? What are the most interesting themes/questions for future research in both disciplines and which issues provide most potential for interdisciplinary exchanges?

Session 1: Setting the Agenda

"Political Science and Governance Beyond the Nation State"
Renate Mayntz (MPI Cologne)

"Global Governance and the Challenges to Law"
Christian Joerges (EUI)

Discussant: Fritz Scharpf (MPI Cologne)

Session 2: The End of Sovereignty?

"Considerations on Late Sovereignty and Constitutional Pluralism"
Neil Walker (EUI)

"Globalization, Sovereignty, and the End of Foreign Policy as We Knew It"
Hans-Henrik Holm (EUI)

Discussant: Stefano Bartolini (EUI)

Session 3: Globalization as a Challenge to Methodological Nationalism

"Public Law Beyond the Nation State"
Thomas Vesting (EUI)

"Overcoming Methodological Nationalism"
Michael Zürn (Bremen University)

Discussant: Christoph Engel (MPP Bonn)

Session 4: Public-Private Forms of Governance

"Hybrid Governance Across National Jurisdictions as a Challenge to Constitutional Law"
Christoph Engel (MPP Bonn)

"What is Wrong With Public-Private Partnerships?"
Tanja A. Börzel/Thomas Risse (EUI)

Discussant: Renate Mayntz (MPI Cologne)

Session 5: Democracy and Legitimacy Beyond the Nation State

"International Trade Law and the Challenge to Democracy"
Armin von Bogdandy (Frankfurt University)

"European Governance: Effective and Legitimate?"
Fritz Scharpf (MPI Köln)

Discussant: Grainne de Burca (EUI)

17. Regulatory Competition Re-examined

Dissertation Project. Submitted to Stanford Law School, Stanford University.

Henri Tjiong

The mobility of goods, services and capital, and the integration of the global economy has had an impact on regulatory structures the world over. Regulators are confronted with demands to rationalize their regulatory regimes in order to track these changes, make rules more cost-effective or level the regulatory playing field. This shifting international economic context provides the backdrop for the contemporary rise and development of regulatory competition theory. Regulatory competition theory has been construed as a model to generate predictions about the effects of competition on government institutions. Building on Tiebout's theory of competition among public goods (1), a literature has been spawned in economics and political science that analyses the optimal allocation of government fiscal authority (2), or the effects of federalism (or a decentralized governance structure in general) of local government incentives (3). In legal scholarship regulatory competition theory has been used to analyze the effects of subsidiarity in European Community regulation (4), the effects of company mobility on incorporation charters (5) and environmental regulation (6), the impact of global financial markets integration on securities regulation (7), and so on. This growing literature constantly raises the question whether functional demands on regulation force regulators to adopt measures that perhaps too closely follow these demands. It is this lingering suspicion of international regulatory capture that raises the contemporary concern that national sovereignty and democratic institutions are hollowed out by international market competition.

This concern is reflected in the unresolved controversy in the literature over the effects of regulatory competition. It seems that no disagreement exists concerning the claim that mobility and arbitrage among regulations is a present reality. However, competing claims are presented on the anticipated effects regulatory competition would have on the

shape of regulations and the "level" of regulatory protection that would be compatible with these market forces. These are the convergence versus divergence theses and the reregulation versus deregulation (or race to the bottom) theses, which currently attract the focused attention of a large part of academic scholarship.

This controversy strongly suggests that it would be fruitful to refine the analytical tools which allow the separation and dissection of the various mechanisms through which competition might affect state institutions. However, such an effort must be interdisciplinary and must include the contributions of law and political science; such studies have to take seriously the fact that competition among regulations always is mediated through state institutions. A major critique of the functional approach is that it incompletely models the reaction of state institutions to the forces of the market. Institutional factors, such as the structure of interest intermediation, political culture, and existing regulatory approaches, influence the preferences of state regulators at all times, and contour the perception of appropriate solutions. In addition, these institutional factors combine with local exogenous variables, such as regulatory demand conditions and the capabilities of regulatory governance, to shape the outcome of the regulator's response to these market forces. The distinct effect of this mix of institutional factors and historical constraints on the policy process that structures a regulatory outcome is demonstrated by the divergent local and national regulatory responses to competition that governments have adopted.

For analytical purposes, it is possible to map out three different clusters of issues within this story that are, in reality, inter-related at several levels. We might call these (a) the framing of institutional responses, (b) the issue of implementation, and (c) the connection between law and democracy.

The framing of institutional responses would, as a research focus, concentrate on the institutional factors that underlie government behaviour. Political cultures, legal traditions and existing regulatory institutions affect the framing of policy questions. Of course, this role is played always in combination with the direct goals governments aim to achieve within a certain area. However, a story of the formation of regulatory beliefs provides a necessary competing as well as a complementary explanation to the story of market-adapting regulation. It would complement the market-adapting story to know how beliefs about policy-making, institutional structure and process influence the way in which problems are perceived, the timing of when search strategies are initialized, how issues get defined and what counts as appropriate solutions.

The second cluster of issues revolves around implementation. Regulatory competition and regulatory arbitrage has brought this issue to the fore in a very pragmatic manner. The fact that telecommunications, finance and transport costs have come down dramatically, has allowed people to undermine regulatory regimes simply by exiting them. This has led to a frantic search on the part of regulators for ways to enlarge their scope of regulatory instruments and to improve their regulatory techniques in order to retain a level of managing power over the economy. It is within this "problematic" that the concept of *multi level governance* (9) is most fruitfully understood. Market and technological forces are responsible for continually shifting the environment. How to retain or increase the effectiveness of public governance in this fluid environment is the problem regulators find themselves confronted with. A safe conjecture at the present time is that the solution to this problem will point in the direction of organizational adaptation.

Finally, apart from a concern with the effectiveness of governance structures, it is also relevant to look at the effects of deregulation on the liberal traditions of law and democracy. Is law being hollowed out by these new developments? Is the concern with effectiveness perhaps leading to an overemphasis on technological fixes within society? Are we, in this, perhaps missing out on the democratic dimension of the deregulation and reregulation movement? How might democratic values be harnessed to bring about a form of multi level governance that not only promises to deliver effective governance, but also legitimate governance?

18. Breaking the Spell of Regulatory Competition: Reframing the Problem of Regulatory Exit

2002. *Rabels Zeitschrift für öffentliches Recht.* Forthcoming. Preprint 2000/13.

Henri Tjiong

This essay provides a theoretical discussion of the concept of regulatory competition. It argues that the Tiebout model, which was originally advanced for the Samuelson problem of discerning consumer preferences for public goods, was unwisely retooled as an argument for federalism or governance allocation. Applied to the latter problem, it is largely irrelevant for policy purposes, since it starts with a purely endogenous conception of politics in public goods provision. An assumption of endogenous politics is perhaps justifiable in addressing the Samuelson problem, but it is clearly unjustifiable in dealing with the federalism problem. Nevertheless, this essay deems the model a useful starting point for discussing regulatory arbitrage effects resulting from economic integration. The essay examines two mechanisms of regulatory arbitrage: (1) consumer arbitrage in the product market where product regulations are exposed to arbitrage by consumer's product purchasing decisions; and (2) company arbitrage in the location market where regulations applicable to firms are exposed to arbitrage through company relocation and investment decisions. The essay discusses the general problems of regulatory choice in these contexts which relate to transaction costs, asymmetric information and transparency. It then proceeds to examine alternative avenues for theorizing about the effects of increased regulatory exit attending globalization and economic integration.

19. Economic Policy in an Open World: Mercantilism and Today's Competition among Economic Systems

[Wirtschaftspolitik in einer offenen Welt: Positiver und normativer Gehalt merkantilistischer Vorstellungen in einem ‚Wettbewerb der Systeme']. 2000. In *Merkantilismus und Globalisierung, eds.* H. Reinermann and Ch. Roßkopf, 123-151. Baden-Baden: Nomos.

Stefan Okruch

This article gives a new account of mercantilist economic policy and shows important implications for economic policy in the age of globalization.

At a first glance, the use of mercantilism for the twenty-first century seems to be paradoxical: While mercantilist policy aimed at a strict, albeit asymmetric closure of national economic frontiers, globalization is characterized by the free movement of merchandise and services, of capital and labour across borders and an intensified international division of labour due to technological progress. To resolve this paradox I first develop methodological criteria for the use of historically unique and apparently obsolete economic concepts. Secondly, I differentiate according to these criteria between the pragmatic recipes of mercantilist economic policy and its actual economic consequences. The modernizing effects of mercantilisms that have often been remarked in Economic History are, in that respect, an unintended effect, the result of (political) action but not of (political) design.

The instruments of mercantilist economic policy can only be understood in the historical context. This historical embeddedness as well as the obvious deficient theoretical foundation renders impossible any direct transfer of mercantilist concepts to the present. By focussing on the actual consequences of mercantilism, however, a striking similarity with globalization is apparent: the competition among jurisdictions, i.e. competition among national eco-

nomic systems, their institutions and regulations. Okruch argues that the competition among nations was intentionally implemented during the mercantilist era in a way that was conceived to be economically beneficial in the specific and restricted sense of an "accumulation of wealth" and that a modernization of the economies, which went far beyond the original intentions, resulted only as a side-effect. In contrast, globalization can be described as the consequence of technological progress combined with the removal of trade barriers, bringing along competitive pressure on national economic policy as a side-effect. Mercantilism can thus be seen as an example for the procedural control of economic policy within a competition among economic systems. As it is obviously difficult to develop robust and politically relevant substantive criteria for beneficial economic policy, economics should focus on such procedural criteria and on the organization of political processes. What had been a side-effect during the mercantilist era can now be actively organized in order to foster competition among jurisdictions as a discovery procedure.

20. Intercultural Economics: Foreign Trade as a Starting Point for a Transdisciplinary Supplement to Pure Theory

[Interkulturelle Ökonomie: Außenhandel als Anknüpfungspunkt einer transdisziplinären Ergänzung der ‚reinen' Theorie]. 2000. In *Kulturthema Kommunikation: Konzepte, Inhalte, Funktionen, ed. A. Wierlacher,* 175-188. Möhnesee: Résidence. Co-authored with Peter Oberender.

Stefan Okruch

Economics has detected many barriers to trade – legal and administrative as well as natural and economic. The fact that international trade is necessarily intercultural trade has, however, only been of minor interest to economists. This article – the third in a series of papers on interculturality and economics by the authors – outlines the problems connected with intercultural exchange, it surveys theoretical approaches from other disciplines, and it proposes "cultural distance" as a concept that could fruitfully be integrated into economic models of "social distance".

21. The Internet and the Nation State

2000. In *Understanding the Impact of Global Networks on Local Social, Political and Cultural Values,* ed. Ch. Engel and K.H. Keller, 201-260. Baden-Baden: Nomos.
German Version: Das Internet und der Nationalstaat. 2000. In *Berichte der Deutschen Gesellschaft für Völkerrecht* 39: 353-425.

Christoph Engel

(See D III, 2)

22. Free Trade and the Limits of Public Policy

2001. Masters Thesis. Department of Political Science, Indiana University Bloomington.

Frank P. Maier-Rigaud

A widely recognized claim is that free trade, as a general rule, increases welfare. Maier-Rigaud shows that benefits of trade largely depend on the international framework within which trade occurs. He demonstrates that as a general rule in the presence of certain types of externalities, free trade is not optimal since it forecloses the implementation of optimal domestic internalization policies. If optimal-response-policies aimed at internalizing a particular externality are not feasible, welfare losses are unavoidable. In particular, the question will be considered whether fully informed decentralized consumer choices can be an acceptable substitute for binding policy. The vertical differentiation model discussed in the paper shows that individual choice may not be an appropriate substitute for centralized political action as a result of collective decision-making processes. As a result, the current WTO rules with respect to tariff and non-tariff barriers need to be re-evaluated in order to properly address the issue of trade in democratic societies.

23. The Impact of Voluntary Environmental Agreements on Firms' Incentives for Technology Adoption

2000. *FEEM Nota di Lavoro* 02/01. Fondazione Eni Enrico Mattei, Milan: 110.

Markus Lehmann

(See D I, 21)

24. Implicit Cartelization and the Role of Voluntary Agreements in Environmental Policy

Submitted to *Journal of Environmental Economics and Management.*

Markus Lehmann

The paper analyses the emergence of voluntary agreements and their role within a set of environmental policy instruments. It presents a Rubinstein model of offer/counter-offer bargaining between a welfare-maximizing regulator and an industry representative over which instrument to apply with which stringency. Incentives to bargain result from the representative's possibility to politically contest planned regulation. This contest is the parties' outside option in the bargaining model.

It is well-known that means of direct regulation may lead to an implicit cartelization of the industry and to rising profits. In the present model, this feature shapes the actors' equilibrium threat position, which, in turn, influences incentives to contest the regulation and the subsequent bargaining outcome. Depending on a parameter characterizing the parties' respective position in the political contest, the implementation of voluntary agreements or of other (negotiated or mandatory) policy instruments is endogenously derived.

Two policy results are shown. First, a commitment to exclusively use emissions taxation is shown to never increase welfare in equilibirum, although, within the model, it is the only instrument which can ensure the first-best allocation. Second, bilateral voluntary agreements are shown to be welfare-neutral. In consequence, the analysis gives a political-economy rationale for a legislative commitment that includes traditional command-and-control regulation via standards, but excludes bilateral voluntary agreements.

25. Private Institutions in Waste Management and Their Antitrust Implications – The Case of Germany's Dual Management System

Preprint 1999/13

Markus Lehmann

(See D I, 27)

26. Environmental Challenges to the Dutch Polder Model

Conference Paper. Preprint. Forthcoming.

Henri Tjiong

(See D I, 20)

27. Waste Management Self-Regulation

[Selbstregulierung im Bereich der Produktverantwortung]. 1999. In *Staatswissenschaften und Staatspraxis* 9: 535-591.
Changed German Title: [Instrumente und deren inhaltliche Ausgestaltung: Selbstverpflichtungen, Zielfestlegungen, ökonomische Instrumente, Verordnungen]. 1999. In *Deregulierung im Abfallrecht: Druckschrift zu den 7. Kölner Abfalltagen*, eds. W. Klett, G. Schmitt-Gleser and H. Schnurer, 227-300. Köln: Gutke.

Christoph Engel

(See D I, 19)

28. Swedish Waste Management

Dissertation Project

Mikaela Hansel

(See D I, 17)

29. International Environmental Protection: A Conceptual Framework of the Problems and the Solutions

[Internationaler Umweltschutz: Systematik der Probleme und der Lösungen]. 1998. In *Festschrift für Ulrich Drobnig*, eds. J. Basedow, K.J. Hopf, H. Kötz, 247-276. Tübingen: Mohr.

Christoph Engel

Environmental protection has its own environmental problem. As long as protection is provided by legal rules, these rules typically are generated and implemented by nation-states. This is not an easy task if the environmental problems cross national borders. Governments can join forces by generating harmonized rules. But this is a cumbersome endeavour, and implementation is not easy to secure. It can therefore be preferable to rely on the conflict of laws, which means implementing foreign environmental rules to (some) transnational cases. Alternatively, governments can apply their autonomous rules extraterritorially. The transnational character is less of a problem if the environmental risk itself crosses borders, e.g. because it is embedded in a product. In these cases, governments often intervene for a different reason. They are afraid that foreign products that obey laxer standards will result in regulatory competition. The paper offers a conceptual framework for these problems.

30. Comparison of English and German Packaging Waste Management law

[Verpackungsregulierung ohne den Grünen Punkt? Die britische und die deutsche Umsetzung der Europäischen Verpackungsrichtlinie im Vergleich]. 2002. Baden-Baden: Nomos. Forthcoming.

Uda Bastians

(See D I, 18)

31. Waste Management Policy in Germany and the USA: A Law-and-Economics Analysis of Selected Problems

[Abfallwirtschaft in Deutschland und den USA. Ein ökonomisch informierter Rechtsvergleich ausgewählter Themen: Abfallverbringung, Entsorgungsgebühren und Altlastensanierung]. 2001. Baden-Baden: Nomos.

Roswitha Kleineidam

(See D I, 2)

32. Trade in Solid Waste – As Restricted by the Principles of Proximity and Autarky

Dissertation Project

Nicole te Heesen

(See D I, 26)

33. A Bird's-Eye View on European Environmental Law

[Europäisches Umweltrecht aus der Vogelperspektive]. 1999. In *Deutsches Verwaltungsblatt* 114: 1069-1077.

Christoph Engel

It is a *nobile officium* of academic lawyers to serve legal practice. Writing comprehensive treatises is one of the well-established forms for this. The Handbook on European and German Environmental Law is part of this tradition. This paper does not purport to contribute to the exercise. Instead it uses the more than three thousand pages of the handbook as a starting point for an outside view of this prospering field of law. It pinpoints instances of institutional innovation, questions the dominance of Europeanization in this field and calls for more constitutional reflection in the area.

34. Coordination on the Labour Markets and Governmental Interference

[Arbeitsmarkt und staatliche Lenkung]. 2000. *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 59: 56-98.

Christoph Engel

Persistently high rates of unemployment demonstrate that the labour markets are not in equilibrium. Other nations do much better than Germany. While these two facts are almost undisputed, there is lively controversy about both causes and remedies. The paper purports to demonstrate that the most profound reason rests in the combination of three institutions: protection against being laid off, determination of wages and working conditions through collective agreements between the unions and the employers associations, and compulsory unemployment insurance. Each of these institutions has been introduced for good reason. But as an institutional arrangement, they result in the persistent misallocation of human capital. The article explores two alternative ways of overcoming the dilemma: reforming the legal framework under pressure from the Constitutional Court, or a corporatist re-arrangement under the umbrella of the *Bündnis für Arbeit*.

35. The European Charter of Fundamental Rights: A Changed Political Opportunity Structure and its Dogmatic Consequences

2001. *European Law Journal* 7 (2): 151-170.

Christoph Engel

The European Community is about to enlarge its de facto constitution by a fundamental rights charter. It is intended to become legally binding, at least in the long run. If it is, it will profoundly change the political opportunity structure between the Community and its Member States, among the Member States, among the organs of the Community and in relation to outside political actors. When assessing the new opportunities, one has to keep in mind the weak democratic legitimation of European policy-making and its multi level character. The article sketches the foreseeable effects and draws consequences from these insights for the dogmatics of the new fundamental rights, their relation to (other) primary Community law and to other fundamental rights codes. It ends with a view to open flanks that cannot be closed by the dogmatics of the freedoms themselves, but calls for an appropriate design of the institutional framework.

36. European Telecommunications Law: Unaffected by Globalization?

2002. In *Deregulation in Europe and Japan, ed.* J. Basedow. Forthcoming.

Christoph Engel

Globalization can mean one of four things: a considerable degree of regulatory competition; a geographically relevant market transgressing national and regional borders; the transfer of significant regulatory power to supranational entities; or the public perception that nation-states have lost a remarkable degree of regulatory independence. Any of these four definitions can be applied to the shifting relationship between national and European regulatory powers as well. Accordingly, the clash between Europeanization and globalization opens up a host of exiting theoretical hypotheses. This paper elaborates on the options, and tests them empirically in the field of telecommunications, using the new regulatory framework proposed by the European Commission as evidence. The result is sobering. Signs of Europeanization abound, while there is hardly an unequivocal sign of globalization. Strategic neglect seems the most plausible explanation. The paper concludes by demonstrating why this is a political problem, and not a legal one.

37. Network Economics and Economic Policy: Assessment and Development

Habilitation Project

Stefan Okruch

The integrative focus of the project group is placed on the concept of common goods. As with any other class of common goods for goods with relevant network effects, the choice between the state and market is not a trivial one, i.e. only a comparative institutional approach can give a detailed answer to the question as to which kind of institutional arrangement is to be taken. The task of network economics would thus be to specify the conditions for different categories of goods in different markets in order to create a suitable regulatory regime. Beyond network effects and network externalities in different industries there might be, however, a greater understanding of those phenomena as dynamic effects sui generis. It is a promising, in this perspective, to examine the interdependence between market dynamics and institutional dynamics in order to explore the necessities and limits of economic policy in an environment which is experiencing increasingly rapid changes. The aim of this analysis is therefore to examine the consequences of network effects for economic policy and especially for competition policy. Network economics will be taken as the conceptual starting point for developing a wider theoretical framework for economic policy, viewed as a dynamic process.

The analysis will start by evaluating the rapidly growing volume of literature on network economics. There seems to be a consensus within the diverse models that network effects are caused by interdependency between individual choices and individual demand accordingly. All network effects have one element in common – frequency dependency. These interdependent choices on the demand side are made over time and can result in hysteretical effects. Path-dependent processes ensue, critical masses must be attained, bandwagon effects take place and lock-ins can result.

An analyst should, however, resist the temptation of drawing the conclusion that network effects make markets fail. The cases usually seen as "market failure" due to network externalities involved the non-existence of a market for network goods, the (negative) lock-in to "inferior" technologies or the "wrong" degree of compatibility. A distinction between network effects and externalities, however, is difficult to attain. A careful diagnosis of market failure should not only integrate technological aspects of the supply side because the economies of scale on the demand side are strongly interrelated with increasing returns to scale of production. It must integrate institutional arrangements of network ownership, too.

Additionally, the solutions for the apparent market failure must take into account the trade-off between the benefits of potential network effects and the economies of scope on the demand side. This trade-off is especially crucial, because network externalities are inframarginal and might be exhausted. Moreover, the beneficial dynamic effects of competing technologies and standards must not be neglected. It might be quite difficult to acquire the information and the knowledge that is necessary to substitute these competitive processes and to find ex ante the "superior" technology or degree of compatibility. Intermediate solutions might be more appropriate, such as committees or "expectation management" instead of subsidies or command and control regulation.

The critical survey is guided by the conjecture that some conclusions drawn in literature on network economics are valid only in a nirvana, where the strength of network effects and the superiority of new technologies are known and an omniscient authority can calculate an efficient balance between them. Consequently, the analysis of narrowly defined network effects is potentially misleading in order to draw the borderline between the state and the market. In fact, in the presence of network effects, even qualitative forecasts are difficult. Moreover, the view of market processes as path-dependent places economic theory far away from any notion of optimality, however complex the modelling might be.

This approach sheds a different light on the possibilities of political and institutional influence on the development of networks. A distinction between the different stages of this development and the ensuing market process is only rarely made in network economics literature. This temporal dimension has to be made explicit, and if an ahistoric theory of network effects is pointless, a historic investigation of actual network development might show the specific dynamics of networks and their interdependence with the institutional environment.

This evolutionary perspective on network development changes the notion of network effects as well as the view of institutional arrangement. This also means that the analogy often asserted between institutions and network goods has to be re-interpreted. This (static) analogy easily leads to the functionalist fallacy that relies on the beneficial social effects of institutions to "explain" their emergence and change. If an individual institution can no longer be said to be efficient, then, from a broader "ordo" point of view, the notion of equilibrium as a function of the market order (as a set of institutions) is problematic.

The impossibility of guaranteeing some kind of equilibrium via stable and more or less unchangeable institutions raises the question as to how institutions can cope with rapid technological change, what economic advice is to be given and whether institutional competition is a way of adapting to economic dynamics (within network phenomena and beyond).

38. The Misery of Theoretical Economic Policy: Is there an Evolutionary Exit?

[Das Elend der theoretischen Wirtschaftspolitik: Gibt es einen „evolutorischen" Ausweg?] 2001. In *Ökonomie ist Sozialwissenschaft*, eds. S. Panther and W. Ötsch. Marburg: Metropolis.

Stefan Okruch

There is growing discontentment within the discipline of the planned or unplanned irrelevance of economics for economic policy: Either economics is no longer willing or capable of deriving the normative conclusions of theoretical models, or economic advice is futile and does not apply to political practice. The question is raised as to whether evolutionary economics can point a way out of the crisis.

Although evolutionary economics has made seminal contributions to the explanation of the dynamics of firms, markets and institutions, it has been more reluctant to analyse the normative implications and it is thus not well-prepared to offer political advice.

With the emphasis on processes and dynamics instead of final states, evolutionary economics is necessarily unable to form policy recommendations on static criteria, i.e. an ideal norm for the outcome of an economic process. Instead, what has been suggested for evolutionary economic policy are goals such as "adaptive efficiency" or an "optimal speed of economic evolution". Economic policy is however only vaguely described by such goals; an operationalization is urgently needed. This article tries to take some steps toward an evolutionary theory of governance.

Two ways of operationalization are analysed: The attempt to determine beneficial economic policy by its (legal) form, on the one hand, and by (the modification of) political processes, on the other. Here it is argued that the formal solution, e.g. Hayek's approach, is neither convincing from a legal point of view, nor able to determine exactly those measures that are compatible with a spontaneous order. The procedural solution must not only focus on the description of the political process in evolutionary terms (Cognitive-evolutionary approach), it also has to deliver recommendations for the modification and organizational reform of the process. This article introduces a model of experimental economic policy that specifies the learning process of adaptive policy-making and can guide organizational reform.

39. Evolutionary Analysis of Economic Policy: Towards a Normative Theory

[Evolutorische Wirtschaftspolitik: Von der positiven zur normativen Theorie]. 2001. In *Handbuch zur Evolutorischen Ökonomik*, eds. C. Hermann-Pillath and M. Lehmann-Waffenschmidt. Heidelberg: Springer. In print.

Stefan Okruch

This article first presents a survey of the contributions to an evolutionary analysis of economic policy and then elaborates the policy recommendations that can be derived from evolutionary economics. While evolutionary economics has developed a coherent positive theory of economic policy, it has been more reluctant to draw normative conclusions and to give recommendations for economic

policy in general. Obviously, from an evolutionary point of view, the traditional economic criteria for the legitimization of political intervention cannot be upheld. The criterion of market failure, i.e. a deviation from the static optimum of allocative efficiency, is not sufficient in this respect. "Softer" criteria that have been suggested, such as adaptive efficiency or the coordinative efficiency in Austrian Economics, can give only a vague functional description of beneficial economic policy.

An operationalization must determine the possibilities and limitations of the political governance of a complex and evolving economic system. The fundamental scepticism towards governance, e.g. that of Hayek and Luhmann, is criticized. While there is a (logical) possibility of successful economic policy, the (practical and empirical) limitations are difficult to determine ex ante due to the creative responses of the addressees of intervention. This difficulty results from the lack of specific knowledge that not only plagues political actors but also the scientific spectator, e.g. the economist as adviser. What evolutionary economics can recommend, however, is the organization of the process of economic policy in a way that leaves room for policy experimentation and policy learning. While there are already a number of approaches to competitive and experimental policy-making, the crucial question of how to organize the political learning process deserves further research.

40. Puzzles in Eucken's and Hayek's Theory of Cultural Evolution

[„Hindrängen" zur Ordnung und „Entdeckung" des Rechts: Fragen zur kulturellen Evolution]. Preprint 1998/4.

Stefan Okruch

The order of rules, as a prerequisite of a workable market order, is an especially important common good. How it can be "produced", however, is still an open question.

Two traditional contributions are analysed, namely the Freiburg School of Constitutional Economics and Hayek's theory of cultural evolution. While the necessity or even possibility of consciously implementing an institutional frame is seen controversially, both approaches lack a detailed theory of the evolutionary emergence and change of norms. With regard to Hayek's theory of implicit (judicial) legal change Okruch suggests an intensified interdisciplinarity in order to analyse the order of rules as a "result of human action but not human design". These evolutionary processes can be better described and explained with the help of theories about the method of judicial decision-making. The judicial discovery procedure, too, can be seen as a competitive process that is constrained by e.g. legal principles. Thus, cultural evolution qua implicit legal change cannot qualify as beneficial per se, but only with respect to the legal-methodical framework. He concludes by analysing constraints to explicit legal change, criticising and elaborating the proposals of the Freiburg School, and by exploring the implications for economic policy.

D III Global Networks and Local Values
The European Charter of Fundamental Rights

The project group and the National Research Council (USA) jointly host a project on Global Networks and Local Values. The project is financed by the German-American Academic Council. It is co-chaired by Engel and Kenneth H. Keller (Political Sciences, University of Minnesota). The Steering Committee comprises Kenneth W. Dam (Law, University of Chicago Law School), Paul David (Economics, Stanford University and All Souls College, Oxford), Klaus W. Grewlich (Law, Freiburg University and College of Europe, Bruges), Bernd Holznagel (Law, University of Münster), Michael Hutter (Economics, Witten-Herdecke University), Kenneth Keniston (Technology and Society, MIT), Henry Perritt (Law, Chicago-Kent School of Law), Robert Spinrad (Technology, Xerox) and Raymund Werle (Political Sciences, Max Planck Institute for the Study of Societies, Cologne).

Opportunities and risks are twins. There are few who would deny the opportunities provided by global networks in general and the Internet in particular. But many fear the concomitant risks, or what they perceive as risks. Racist speech, pornography and misuse of personal data rank highest in public awareness. Some concerns are almost universal, such as child pornography. With respect to others there are at least differences of degree. In the light of its history, Germany has actually banned right-wing publications that would be allowed, even if not admired, in the United States. On the other hand, Americans in large numbers deem material pornographic which most Germans would find inoffensive. Privacy is also interpreted in different ways in these two societies. These contrasts lead some to a stark and simplistic assertion: global networks threaten local values. The reality of global networks, and of their interrelation with local values, is much more complex.

The steering committee convoked two international symposia of invited experts. The First Symposium (1) was dedicated to positive analysis. The fields covered ranged from cultural theory to law, from systems theory to economics, from sociology to political science. The Second Symposium (1) focused on Internet governance. It looked at democracy, culture, freedom of speech, privacy, freedom of information and at governance tools. The committee produced a final report (1) addressed to policy-makers in both countries. The report was evaluated in a review process organized by the National Research Council. The Committee is in the process of responding to the reviewers.

The project draws on earlier or simultaneous work from all the fields present in the Steering Committee. A major contribution on technology is (Dertouzos 1997). In economics (Shapiro and Varian 1998) stands out. In political science (Neuman, McKnight et al. 1997) are noteworthy, in sociology (Sassen 1996), in law (Lessig 1999).

Members of the project group provided individual contributions to the project. Engel (2) analysed the challenge to the nation state, and offered suggestions for appropriate institutional design. Osthaus (3) looked more specifically at the potential of private international law. Müller (4, 5) wrote on cybersociety and synthesised the rich discussion at the First Symposium. Rothfuchs (6) investigates how consumers can be protected in e-commerce.

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Dertouzos, M. (1997). What will be. How the new world of information will change our lives. San Francisco: Harper Edge.

Lessig, L. (1999). Code and other laws of cyberspace. New York: Basic Books.

Neuman, W. R., L. W. McKnight, et al. (1997). The Gordian Knot. Political gridlock on the information highway. Cambridge, Mass.: MIT Press.

Sassen, S. (1996). Losing control? Sovereignty in an age of globalization. New York, Columbia University Press.

Shapiro, C. and H. R. Varian (1998). Information rules. A strategic guide to the network economy. Boston, Mass.: Harvard Business School Press.

1. German American Academic Council's Project "Global Networks and Local Values"

Table of Contents

First Symposium of the German American Academic Council's Project "Global Networks and Local Values", Dresden, February 18-20, 1999

Opportunities and risks are twins. There are few to deny the opportunities of global networks in general and of the Internet in particular. But many fear for the concomitant risks, or what they perceive as a risk. Rascist speech, pornography and personality profiling rank highest in public awareness. Some concerns are quasi universal, like child pornography. But for others there are at least differences of degree. Following its history right wing publications are taboo in Germany. And the majority of Americans feel hurt by nudity, which most Germans find quite inoffensive. Such examples lure one into a simplistic opposition: global values threaten local values. The reality of global networks, and of their interrelation with local values, is much more complex. This volume explores different paths for understanding global networks, local values and their reciprocal impact. It streches from social philosophy to technology forecasting, from cultural theory to law, from systems theory to economic history, from sociology to external relations studies, from economics to political sciences.

Wolfgang Kersting, *Global Networks and Local Values. Some Philosophical Remarks from an Individualist Point of View*.

David J. Farber, *Predicting the Unpredictable – Technology and Society.*

Paul A. David, *The Internet and the Economics of Network Technology Evolution.*

Michael Hutter, *The Commercialization of the Internet. A Progress Report.*

Dirk Baecker, *Networking the Web*.

Michael Thompson, *Global Networks and Local Cultures: What are the Mismatches and what can be done about them?*

Kenneth Keniston, *Cultural Diversity or Global Monoculture. The Information Age in India.*

Miles Kahler, *Information Networks and Global Politics.*

Raymund Werle, *The Impact of Information Networks on the Structure of Political Systems.*

Saskia Sassen, *The Impact of the Internet on Sovereignity: Unfounded and real Worries.*

Christoph Engel, *The Internet and the Nation State*.

Lorenz Müller, *Global Networks and local Values.*

Second Symposium of the German American Academic Council's Project "Global Networks and Local Values", Woods Hole, Massachusetts, June 3–5, 1999.

Leviathan or Behemoth, Athens or Orwell, the end of the nation state or political power without limits – this is how differently global networks and the Internet in particular are perceived. Views do not only differ fundamentally in the public debate. Academics are also divided in their judgement and forecasts. These divergent views must be taken into account in developing the policies and governance structures to facilitate and regulate high bandwidth communications, encryption, intellectual property protection, e-commerce and even web content. But an overarching issue that must be addressed in developing policies and structures is the public's concern about the potential impact of the Net on the sustainability of differing local values. This is the perspective from which the present volume addresses the governance of global networks. The topics stretch from pornography and hate speech to culture, from privacy and freedom of information to democracy. For each of these topics, the volume looks at individual governance tools and how they are interrelated, be they legal or technical, public or private, or some hybrid mix.

Bernd Holznagel, *Responsibility for Harmful and Illegal Content as well as Free Speech on the Internet in the United States of America and Germany.*

Herbert Burkert, *Privacy-Data Protection – A German/European Perspective.*

Robert Gellman, *Privacy and Harmonization.*

Joachim Wieland, *Freedom of Information.*

Jacques Arlandis, *The Clerk, the Merchant and the Politician.*

Jeffrey Abramson, *Democracy and Global Communications.*

Hans-Heinrich Trute, *The Impact of Global Networks on Political Institutions and Democracy.*

Tommy Tranvik, Michael Thompson and Per Selle, *Doing Technology (and Democracy) the Pack-Donkey's Way: The Technomorphic Approach to ICT Policy.*

Jack Goldsmith, *The Internet, Conflicts of Regulation, and International Harmonization.*

Wolf Osthaus, *Local Values, Global Networks and the Return of Private Law – On the function of Civil Law and Private International Law in Cyberspace.*

Klaus W. Grewlich, *Conflict and good Governance in „Cyberspace" – Multi-level and Multi-actor Constitutionalisation.*

2. The Internet and the Nation State

2000. In *Understanding the Impact of Global Networks on Local Social, Political and Cultural Values*, ed. Ch. Engel and K.H. Keller, 201-260. Baden-Baden: Nomos.
German Version: Das Internet und der Nationalstaat. 2000. In *Berichte der Deutschen Gesellschaft für Völkerrecht* 39: 353-425.

Christoph Engel

The Internet enables global, decentralized, very cheap, very easy, digital and individual communication. Communication may also be wireless, secure, secret and anonymous if a person desires this. All these features make it virtually impossible for a government to intervene in communications on the Internet, and it has a hard time even observing it.

On the Internet, individuals gain new options for voice and exit. On the voice side, it becomes easier to observe government activities, even in fields that are not yet covered by the media. Protesting against an individual decision can be arranged quickly over the Net. The intermediaries are vulgarized. No more than about $50,000 are needed to become an independant Internet provider, and a homepage

or a mailing list costs almost nothing. It is now possible to organise diffuse interests, which can resist traditional, organised influences. On the exit side, physical mobility is somewhat eased by being able to stay in touch with one's old social environment cheaply. But it is the companies that profit most from the Net. It permits them to cut the value chain into small sections and to transfer only the highly regulated activities abroad. The Internet also allows play by the connecting factors of conflict of laws rules, leading to what one might label virtual exit.

Sovereignty is weakened. No individual sovereign state is in a position to regulate the Net by itself. Further, states can use the Internet as a means to gain information on the internal affairs of another state and can collaborate with the opposition. Anonymous e-cash would bring the power of national reserve banks to an end. Local values will be much harder to uphold once individuals are able to avoid them on the Net. Autarky is not the answer to this issue. New international conflicts may arise as virtually every other state can become one's neighbour on the Net.

At the same time, demands to step up international rules have been heard. Internet trade fears customs and duties. It requests uniform rules on intellectual property, digital signatures and electronic contracts. Electronic violence such as the spreading of computer viruses or mail bombing should be prevented and prosecuted.

It may be possible to solve some of these problems by a community of states concluding an international treaty or setting up an international organisation; child pornography is the most likely issue for this. An individual national state might deal with other problems; for instance, it might make going abroad less attractive by modifying income tax laws. It might also extraterritorially apply its municipal law to transborder activities or hope that foreign private international law asks not for the application of the *lex fori* but for the application of rules from the legal order of the first state. Yet another set of problems might be tackled by applying private legal rules, e.g. as applied by online arbitral tribunals. More frequently, however, the private rule-making bodies will merely create technical or social norms such as technical standards or the famous netiquette. The greatest importance seems to be attached to solutions by means of which a person is able to protect himself, rather than needing to rely on centralized interventions. Electronic filters are the most prominent example of this. Their quality is constantly improving due to competition.

This innovative and complex governance structure of the Internet works relatively well with the protection of single regulatory issues. Quite unsolved, however, is the question whether the Internet prevents national societies from being able to maintain a given set of local values. Even less is known about the effects of such a development on social integration and about possible counter-measures.

3. Local Values, Global Networks and the Return of Private Law: On the function of Civil Law and Private International Law in Cyberspace

2000. In *Understanding the Impact of Global Networks on Local, Social, Political and Cultural Values*, eds. Ch. Engel and K. H. Keller, 209-236. Baden-Baden: Nomos.

Wolf Osthaus

On the one hand this paper looks at specific values of private law. Some of them are more, others less affected by the changes brought about by modern information technology: property, especially with respect to intellectual goods, competition, the freedom to contract, equity in contracts, the protection of the weaker (e.g. consumer-protection), the protection of creditors, etc. The investigation will focus on whether these values are especially endangered by the new circumstances created by the "Information Marketplace". Then, the traditional mechanisms of private international law

to co-ordinate the national private laws have to be examined to see whether they still function under the new circumstances. One of the central questions will be: Can the concept of a *lex locus*, which is based on the localization of legal acts, survive in a virtual world?

On the other hand this paper will consider how private law can protect values which do not originate in private law. This is the task of tort law, which protects all legally allocated rights, for example, the physical integrity or the honour of human beings. Although it is primarily criminal law which protects these rights, it is possible to strengthen the protection by means of private tort law.

This could be helpful in dealing with the problems created by the non-existence of an internationally harmonized legal order. In particular, the enforcement of legal acts in a foreign state still involves a lot of – sometimes insoluble – problems. In the area of public law (and as it is a part of public law, also in the field of criminal law) the sovereignty of states prevents the recognition and enforcement of foreign legal decisions, unless an international law enforcement treaty exists.

The situation in private international law is different: Recognition of a foreign judgement is the rule, non-recognition the exception which has to be justified, usually by invocating the internal *ordre public* (i.e. public policy). This means that there has to be an explicit decision in favour of the internal value compared with the one which was protected in the original foreign judgement.

Even if the decision not to recognize the foreign legal act is taken by a court as an independent "third power", from an international point of view this decision will be seen as an act of that state. This 'active' statement against the protection of a certain value may provoke more protest and therefore needs more justification in the international state community than a 'passive' one, where the state simply does not participate in the negotiation of international treaties. Hence, private law at least makes it possible to force a state to show its true colours; but often it will prefer to avoid international friction by not rejecting the enforcement of the foreign judgement.

4. Cybersociety

2000. In *International Law Forum du Droit International* 2 (3): 163-169.

Lorenz Müller

This article discusses the development and meaning of what is called "Cybersociety". It describes the origins of the term in the libertarian dream of an independent, self-contained, self-ruled and unregulable society of equals in Cyberspace. This view was developed in the early 1990s, when the Net was small and the users formed a relatively homogenous group. Since then, the demographic and technological development of Cyberspace and Cybersociety has shown that the liberatarian view came true in some respects, but was wrong in many others. The predicted "egalitarian explosion" did not happen; instead the Internet deepend existing differences. Attempts at self-regulation have turned out to be insufficient in many cases. Technical tools to control the Internet are becoming more and more effective. And most people do not become libertarians when entering Cyberspace. In the future cybersociety will become more regulated and controled. In this respect Cyberspace and Cybersociety will become more similar to real space. But for technological reasons, regulation and control in Cyberspace can be a more dangeorous threat for personal liberties than in real space. Therefore it will be important to discuss ways to ensure that the same liberties enjoyed in real space can also be enjoyed in Cyberspace.

5. Global Networks and Local Values. Discussion Report

2000. In *Understanding the Impact of Global Networks on Local Social, Political and Cultural Values,* eds. Ch. Engel and K.H. Keller, 261-296. Baden-Baden: Nomos.

Lorenz Müller

This article is a report on the discussions held during the first symposium of the Max Planck Project Group on the Law of Common Goods and the Computer Science and Telecommunications Board of the National Reserach Council in 1999 in Dresden. It starts with a description of different concepts of values and locality and the technological and economical development of global communication networks. In a second step different methodological approaches for analysing the relationship between global networks and local values are discussed. This is the basis for an analysis of the interactions of global networks with local cultures and internal and international political structures. Public international law, rules for conflicts of laws and self-regulation are presented as possible tools for regulating global information networks. Finally, first normative attempts concerning the targets of regulation are described.

6. Protecting Cyber-Consumers

Dissertation Project

Martin Rothfuchs

"Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather."

This was John Perry Barlow's formulation of the Internet's Declaration of Independence from national regulatory structures on 8 February 1996. The liberation of an entire sphere from state sovereignty raises a number of questions, however. Does Internet regulation indeed confront the state with the boundaries of its legitimacy and capabilities (Johnson/Post)? Which alternative regulatory mechanisms are available? Can private or hybrid schemes of self-regulation be trusted? Do they possess greater problem-solving capacity? Are they more, equally, or at least sufficiently legitimate? Under which conditions is "global law without a state" (Teubner) feasible? Is the proper role of the state one of embedding global self-regulation in a procedural constitution, in the interest of maintaining the functional equivalent of the constitutional state (Habermas)?

For a consumer engaged in e-commerce, these are no theoretical questions. The Internet has dramatically reduced the transaction cost of exchanging information over a distance. If transportation costs are not prohibitive, goods can practically be purchased all over the world. Global trade is even easier if the product itself is digital, like software. Many services can be delivered over the Net with equal ease.

German law grants consumers fairly strong protection. Some elements may be exaggerated. But in principle there is good reason for protection. For consumers face real problems, rational information asymmetries, systematic, but inadvertent deviations from the rationality norm (biases) and a lack of effective legal protection, being the most important.

To solve these problems for cyber-consumers, a series of private and co-regulative "consumer protectors" have emerged on the market. Their effectiveness is to be estimated, with consumer sovereignty as the yardstick. And the proper role of the state is to be assessed.

D IV The Provision of Common Goods Across Multiple Arenas: European Union

D IV 1 Regulatory Regimes in Europe – The Process and Impact of the Liberalization of Network Industries

The cornerstone of the work on network industries is a comparative project on the liberalization of these industries. This project is jointly organized with the London Business School, and partially funded by the Anglo-German Foundation. The overall project pursues four lines of research on the liberalization of network industries. Böllhoff (1, 2) analyses the formation of new regulatory regimes in liberalized network industries. These regimes have been created to regulate the newly liberalized industries with two purposes: namely, to create and maintain markets, and to correct the negative external effects of markets. These regulatory functions can be provided in the context of various institutional arrangements: through regulation by ministries, through administrative agencies, through competition authorities, through the self-regulation of the industry, or through independent regulatory agencies. The question addressed by Böllhoff is: Why does one country opt for one specific institutional design and another for a different one? Another project (Héritier) analyses the new regulatory regimes under the angle of the provision of general interest services (3, 4, 5) and raises the question as to whether general interest services can be maintained under conditions of liberalization. She scrutinizes underlying political processes in Europe (4) and service performance in the telecommunications and rail sectors in Britain and Germany (3). A related project (Moral Soriano 8, 10) addresses the normative-legal implications of this new mode of governance, raising the question of the role of public missions in the provision of the network infrastructure and services. What role has the European Court of Justice (ECJ) played by taking issue with the question of the public mission of network utilities under conditions of liberalization? She scrutinizes how the ECJ deals with the conflict between free competition and the free movement of goods and services, and the public mission assigned to public monopolies and privileged undertakings. Two further projects investigate the interaction between regulatory authorities and the regulated firms in the rail sector (Héritier 11, 12) and in telecommunications and energy (David Coen. London Business School), focussing on the conditions under which firms have access to regulators and under which conditions the regulatee complies with the contract terms.

Yet another project (Suck 13) analyses the implications of liberalization on the energy sector with respect to the impact on environmental sustainability. He compares national approaches for achieving climate policy targets by promoting the share of renewable energy sources in the primary energy structure. And, finally, another project (Bauer 14) seeks to gauge the administrative costs of deregulation in the three sectors. Regulatory reform of the network utilities in the United Kingdom as well as in Germany was to a great deal promoted with the goal of boosting efficiency, in particular, in two ways: first, yielding better value for money for consumers, and second, decreasing financial burdens for taxpayers. All projects have completed the first phase of conceptualizing the research questions, then have developed a theoretical framework from which the working hypotheses are derived and have completed the first empirical step of qualitative data collection and data interpretation. Two conferences have been held where the results of the research were discussed (15, 16).

Some lawyers share the interest in telecommunications regulation. In his dissertation, Geiger (17) purports to interpret the constitutional rules on telecommunicatio ns (de)regulation. A comparative look at the US regulatory experiences helps design a regime for infrastructure provided by private enterprises. Engel (18) investigates more specifically mandatory access by new market entrants to an essential facility held by the previous monopolist. Finally, Becker (19) confronts the practice of auctioning scarce resources, like the UMTS frequencies, with constitutional prerequisites.

1. Developments in Regulatory Regimes: An Anglo-German Comparison on Telecommunications, Energy and Rail

2002. In *Regulating Utilities in Europe – The Creation and Correction of Markets*, eds. D. Coen and A. Héritier. To be submitted to Palgraves Press.

Dominik Böllhoff

The liberalization and privatization of network utilities led to the establishment of regulatory regimes. On the national level, regulatory regimes not only include a highly visible single regulatory body, they also combine three institutions: a sector-specific regulatory agency, a ministry and a competition authority. These three organizations are the central institutions within the regime. They share competencies and interact with each other to steer national utility sectors.

From a comparative administrative research perspective, this article explores developments in utility regulatory regimes in Britain and Germany, including telecommunications, energy (electricity and gas) and rail. The goal is to show that regulatory regimes are not stable entities, but that there are 'post-reform changes' which cause the redesign of regimes over time.

With respect to economic regulatory competencies of regulatory regimes, cross-country and cross-sectoral institutional dynamics are explored. The article reveals that there are general converging trends in Britain's regulatory regimes and partial convergence in Germany's regimes. An Ango-German cross-country comparison shows some similarities, for example, on the role of ministries within the regimes. However, the developments in the regimes do not result in overall cross-sectoral convergence. There is continuing divergence in the regulatory regimes.

2. The Polity of Regulation in Telecommunications: An Anglo-German Comparison of Regulatory Agencies within their Regulatory Regimes

Dissertation Project

Dominik Böllhoff

The focus of this doctoral thesis is on comparative administrative research on regulatory agencies within their regulatory regimes. Specifically, it focuses on an in-depth Anglo-German comparison of regulatory agencies in telecommunications, i.e. the British Office of Telecommunications Regulation (OFTEL) and the German Regulatory Authority for Telecommunications and Posts (Regulierungsbehörde für Telekommunikation und Post, RegTP). OFTEL was already set up by the British authorities as long ago as 1984 and thus represents the first European sector-specific regulatory agency in telecommunications. In contrast, until recently, the German state administration did not include sector-specific regulatory bodies. In parallel with the other European member states, it set up RegTP in January 1998 to regulate the national telecommunications sector. Both regulators are prominent institutions as they are the first sector-specific agencies for utility regulation in their respective countries.

OFTEL and RegTP are utilized for an Anglo-German comparison of regulatory agencies within their regimes. On the basis of comparative administrative research, the study gives an account on the 'polity of regulation', i.e. the institutional design of regulatory institutions, and reveals similarities and

differences of the institutional designs of the regimes in Britain and Germany. The core research goal is to analyse the role of regulatory agencies within their public multi-level regulatory regimes. The latter emerge where sector-specific regulators interact with other public bodies within a regulatory regime. The goal is to 'dive into regulatory structures' to research the 'inner face of the regulatory state', i.e. the formal and informal institutional designs and decision-making processes of regulatory agencies in the regimes.

The doctoral thesis proceeds in three steps. A first part on methodology and theory will define the term 'polity of regulation'. Additionally, a theoretical framework will be developed to analyse regulatory institutions rooted in inter-organization theory and the resource dependency approach. In a second step, the focus turns to the institutional evaluation within their respective regimes of the two regulatory agencies OFTEL and RegTP. Chapters on the intra-organizational institutional design on the regulatory are followed by research on the inter-organizational relations of OFTEL and RegTP with other public institutions of the regulatory network. Thirdly, a comparison will be made of the polity of regulation in telecommunications in Britain and Germany. An overall account of similarities and differences of the regulatory regimes is provided. The Anglo-German comparative administrative research will show that the regimes continue to diverge and do not result in overall cross-sectoral convergence.

3. After Liberalization: Public Interest Services and Employment in the Utilities

2000. In *Welfare and Work in the Open Economy,* eds. F.W. Scharpf and V.A. Schmidt, 554-596. Oxford: Oxford University Press. Co-authored with Susanne K. Schmidt.

Adrienne Héritier

When the European Community, in the course of its Single Market programme, came to require the liberalization of service markets, public monopolies in a number of Member States started becoming (and are still being) privatized as utility markets undergoing deregulation. So far, this process has mainly transformed the provision of road, air, and rail transport, telecommunications, postal services, and the supply of energy. While some countries took radical measures early on, others have been more hesitant. The experience of the early reformers allows us to tentatively take stock of the situation. In some instances, the privatization of public utilities and the establishment of market competition have reproduced the kinds of problems that had been predicted by theories of market failure. In those countries, the issue has now become a "reform of the reforms". While there is no trend toward re-establishing public monopolies, deregulation is generally being followed by re-regulation. The article raises questions concerning the extent to which earlier public service goals of universally accessible, secure, continuous, and affordable infrastructure facilities and services are still considered important concerns of national public policy? If so, to what extent are they still realized? What are the underlying causes, and what are the reasons for re-regulation?

4. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation

2001. *Journal of European Public Policy*, 8 (5): 825-852. Forthcoming.

Adrienne Héritier

Although the goal of market integration has not actually been challenged in recent years, it has nevertheless increasingly come to be considered incomplete and in need of complementary goals which serve the general interest by promoting social cohesion and equality. The debate has been conducted in various areas, such as in the fight against unemployment and poverty and in the provision of public utilities. In the latter case, regarding the provision of energy, water, communications and transport, the debate was sparked by the privatization of public monopolies and their infrastructure networks, and the deregulation of service provision. The network industries which had traditionally been shielded from competition and were run within national boundaries were dramatically transformed. This change – which in some countries resulted from European legislation – was meant to induce more producer competition, improved productivity, more consumer choice in the supply of network services, and lower prices. However, it has triggered concerns over the maintenance of general-interest goals in service provision, i.e., over safeguarding the accessibility, equality, continuity, security and affordability of these services after liberalization. There is a general political consensus that communicating by voice telephony, enjoying a certain degree of mobility, and using energy are basic needs that should be guaranteed and that firms operating in network industries should thus be subject to "public-service" objectives. This contribution raises the questions: why and to what extent does a conflict exist between economic liberalization and general-interest goals in the first place? I will then turn to the role of European policy-making, which aims at striking a balance between the poles of market integration and competition, on the one hand, and the provision of public services, on the other. What are the existing European policies and how do they fare when measured against these two goals? Héritier then focuses on the central question of the analysis: how can the pro-general-interest decisions at the cross-sectoral and sectoral level (in energy, telecommunications and rail) be accounted for in terms of the interaction of the formal political and legal actors involved in shaping the outcomes at the European level?

5. Politics and Jurisdiction in European Electricity Policy: Problem Definition, Conflict Solution and Legitimation

Submitted to *European Law Journal*. Co-authored with Leonor P. Moral Soriano.

Adrienne Héritier

How do political and legal institutions deal with the central problems of a society within their respective remits? How do they differ in the selection and definition of the problems that they are processing within their institutions? By which means do they typically solve the conflicts inevitably linked with the attempt to solve these problems, and how do they legitimize these solutions? Once decisions are made, how are their outcomes assessed in politics as compared to law-making? Finally, if – as is more and more frequently the case – decisions are made across multiple arenas at the vertical and horizontal level, what are the particular dynamics of multi-arena governance, and how do they differ in politics and jurisdiction? While there are clear differences in how politics and law institutionally deal with societal problems, the respective avenues for processing problems are frequently intimately linked and mutually dependent upon each other. Hence this article focuses on the differences as well as the

particular links between the two institutional avenues taken in processing problems.

While in politics the choice and definition of a problem to be dealt with in the political arena is frequently embedded in a power-driven political conflict, possibly decisively influenced by a political entrepreneur and favoured by external events, courts have less latitude in selecting the problems they deal with. Rather, problems to be solved by adjudication are brought before them by two litigating parties. Whether a court can take up an issue depends upon locus standi, jurisdiction, justiciability and ripeness. If these conditions are given, the way a problem is defined depends on the particular perspective of the involved parties: from the viewpoint of the litigating parties it depends on the latters' strategic interests and the outcomes the respective parties seek; from the court's view, by contrast, the categorization of a legal problem aims at the systematization of legal problems and also of legal answers. The legitimate solution of conflicts in politics is determined by the formal democratic decision-making rules in which conflicts, voting and negotiations between the involved more or less powerful actors are embedded. In adjudication, the legitimate solution of a conflict is a matter of interpreting existing law and justifying a decision solely in legal terms. In politics, the assessment of outcomes of a decision occurs through voting on the past performance of a government in subsequent elections, or systematic monitoring processes. In adjudication by contrast an "assessment" of judgements takes place by bringing issues to court again. This happens if the preceding rulings have not been able to create legal certainty or are inconsistent with other rulings.

6. Regulating Utilities: The Creation and Correction of Markets

2002. To be submitted to Palgrave Press. Co-authored with David Coen.

Adrienne Héritier

The volume investigates different angles of the liberalization of the network industries in Britain and Germany in the European context. It starts out with an analysis of the development of regulatory regimes arguing that while at the macro-organizational level the development of regulatory regimes can be accounted for by diffusion processes, at the micro-organizational, administrative level existing institutional structures and procedures tend to prevail in the countries under investigation (Böllhoff); the analysis of the policy outcomes of the regulatory regimes investigates the impact of reformed regulatory regimes with respect to general interest services and shows that there is an structural conflict of interest for the regulatees in that they have to take shareholders' interests into account while at the same time pursuing politically defined public interest goals (Héritier). The role of the European Court of Justice shows that in the conflict between competition goals and universal service goals, the European Court of Justice has increasingly taken the latter into consideration (Moral Soriano); in two other chapters the interaction between regulatory authorities and regulatees is analysed under the viewpoint of access to regulatory authorities and contract compliance in different sectors (rail – Héritier; telecommunications and energy – Coen). It emerges that – in view of a lack of contract compliance – there are many attempts on the part of regulatory authorities to overcome the informational asymmetry between regulator and regulatees. A further chapter investigates the institutional conditions under which renewable energy sources are promoted, arguing that a fragmented and decentralized sectoral regime favours the promotion of renewable energies as compared to a sectoral structure with a unified structure (Suck). A final chapter questions whether deregulation really reduces the costs of administration as has been claimed in the process of liberalization and shows that all kinds of new regulatory tasks have emerged with deregulation (Bauer).

7. Regulator-Regulatee Interaction in the Liberalized Utilities

2002. In *Regulating Utilities in Europe. The Creation and Correction of Markets,* eds. D. Coen and A. Héritier. To be submitted to Palgrave Press.

Adrienne Héritier

In the last decade the industrial landscape and regulatory structures of the network industries such as telecommunications, energy and rail transport, have undergone a profound transformation. Liberalization has fragmented the former natural monopoly sectors; new players with new preferences have emerged. New regulatory institutions have been created to regulate the market at the national and the European level to foster competition, and at the same time to compensate for the negative consequences of market integration in order to protect services of general interest. This altered regulatory environment raises many important research questions such as: How were the new regulatory structures shaped and how do they function? What is their impact on market creation and service provision? In this article Héritier focuses on one specific aspect which has not yet been analysed much: How do firms in these sectors interact with the newly created regulatory bodies at the national and European level? To whom do they seek access and why? And, inversely, how do the newly created regulatory authorities at the national and the European levels deal with the regulated firms in order to secure compliance? Is the much cited informational asymmetry between the regulator and regulatee used by the regulatee to interpret the regulatory contract so as to save costs, and if yes, how does the regulatory authority cope with it? And inversely, is there a law of "increasing regulatory intrusiveness", possibly linked to the size and number of regulatory bodies? I examine the interaction between the regulator and regulatee from two different systematic perspectives: firstly by focusing on the attempts by firms and industrial associations to gain access to and influence "ex ante" regulation, i.e. by focusing on their attempts to influence the setting of rules for businesses at the national and the European level, and secondly by examining "ex post" regulation, i.e. regulation that monitors behaviour and attempts to resolve disputes that arise in implementing the existing regulation at the national and European level in the day-to-day interaction between firms and regulators. The analysis focuses on regulator-regulatee interaction in the British and German rail sectors.

8. Public Services: The Role of the European Court of Justice in Correcting the Market

2002. In *Regulating Utilities in Europe. The Creation and Correction of Markets,* eds. D. Coen and A. Héritier. To be submitted to Palgrave Press.

Leonor P. Moral Soriano

The aim of this chapter is twofold. First it studies the influence of one major player in European politics, namely the European Court of Justice – hereafter referred to as the Court – in the design of the regulatory space in which regulators (institutions) and regulatees interact. Second, it analyses the case law concerning two policies equally embedded in European law, namely competition, and public services. This analysis shows that the consideration of public services as a non-market value, and the recognition of their priority over competition speak in favour of the Court's market-correcting or positive integration bias. This finding supports the notion of the Court as a policy catalyst. The analysis of the case law also shows that the role of national courts in applying European competition law is reinforced.

The regulation of public services, such as the utilities services this volume deals with, is dominated by the idea that the influence of market forces ought to be attenuated, because the market is unable to guarantee the universal access to public. This justifies the introduction of market intervention measures such as public monopolies and the granting of exclusive rights to privileged undertakings. These forms of intervention clearly hinder the free movement of goods and distort competition. Therefore, from the European law point of view, State's intervention in the area of public services needs to be tested against the rules for free movement of goods (Articles 28-31 EC) and undistorted competition (Articles 81-86 EC).

Rules for free movement and competition set the limits of states' discretionary powers, since both types of rules are intended to safeguard the European market from Member States' intervention. These rules provide thresholds according to which the Court controls the legality of State intervention measures. By so doing, the Court establishes the level of discretion of Member States that is compatible with European law, and fosters a negative form of integration which focuses on the elimination of obstacles to the free movement of goods and competition introduced by Member States. This definitively holds for the area of the free movement of goods; in competition law, in applying the rules of free movement of goods and competition the Court also promotes a positive form of integration, that is, their rulings are a catalyst for European legislation.

This chapter analyses how the Court applies the rules for the free movement of goods and competition rules in particular cases, namely when Member States have introduced anti-competition measures such as the granting of special or exclusive rights to certain undertakings in order to guarantee the provision of public services. The introduction of these measures rise conflicts between free movement and competition, on the one hand, and public services, on the other hand, which can simultaneously be depicted as a conflict between policies, a conflict between rules, and a conflict between institutions.

The solution of this multi-faced conflict is up to the Court which ought to assess the legality of anti - competitive state measures. To this aim, the Court applies the so-called public-mission exception, that is the derogation clause of competition law enshrined in Article 86(2) EC. According to it, the provision of a service of general economic interest – the public mission – justifies the disapplication of competition law. The analysis of the Court's case law concerning the application of the public-mission exception shed light on understanding crucial aspects of the European regulatory regime, namely: (i) the role of the law in the regulatory regime, that is, does either the market or the law regulate universal services sectors? (ii) the allocation of regulatory authority, that is, how far do member states intervene and regulate these sectors? What level of Member states' discretionary powers is compatible with European law? and (iii) the regulatory structure, that is, does the Court's case law jeopardize the institutional arrangement elaborated by member states to guarantee the provision of universal services? The answers to the former questions will point at the European main judicial body as an institution involved in market correction and positive integration.

9. Integration and Integrity in the Legal Reasoning of the European Court of Justice

2001. In *The European Court of Justice*, eds. J. Weiler and G. de Búrca. Oxford: Oxford University Press. Co-authored with N. MacCormick and J.R. Bengoextea.

Leonor P. Moral Soriano

The task set to the authors of this essay was to give an account of the legal reasoning of the European Court of Justice – to look at the style and method of reasoning adopted by the Court in the light of contemporary understandings of legal reasoning more generally. The Court has been criticized as

being activist; many argue that it has crossed the line between the legal and the political domains by being creative and interventionist. But does such a line really exist? Rather than a line, one should talk about an area in which law and policies overlap. The question is not how to separate one from the other – by drawing lines, but rather how to manage the overlap. Here is where attention has to be drawn to the ideal of overall *coherence* that governs the authors' view of the legal system as a system and hence gives weight to the interpretative approach favoured by arguments that draw upon the systemic character of a legal system. They depend on the idea, crucial for the 'Rule of Law', that the different parts of a whole legal order should hang together and make sense as a whole.

Once the general features of legal interpretation and justification have been sketched, the authors reconstruct the reasoning of the European Court of Justice. This is done by adapting the general theory of legal reasoning to the different idiosyncratic elements of the European legal system and to legal and judicial problems typical of the EC such as the law-making process at the European Communities and the EU; the legal order of the EC (and EU); judicial decision-making at the Court; and the interrelation between the EC legal order and the State and infra-State legal orders among others.

A differentiation is elaborated between internal and external justification. Internal justification is defined as the logical exercise of subsuming facts into the chosen legal norm. Despite the dominance of legal and deductive elements in this state of judicial justification, attention is paid to non-legal which may influence the reasoning – legal education of the judge, legal culture, language knowledge, etc. – although they do not justify the final decision. In the stage of external justification, judicial decision-making becomes a matter of justifying choices between colliding arguments, colliding interpretations, colliding rules, values, principles or even policies. All these are examples of conflicts of reasons the solution of which requires a coherent justification. In this sense a notion of coherence, i.e., a notion of what is 'making sense as a whole' is needed. It is claimed that this notion of coherence requires connections between the legal system and the political and constitutional theory of the Community.

10. The Case of Public Mission against Competition Rules and Trade Rules

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Leonor P. Moral Soriano

Network industries provide a particular common good, namely accessibility to services such as rail transport, energy supply, or telecommunications. Network industries provide access to universal services: they benefit all users throughout the territory at uniform tariffs and with similar quality conditions. The liberalization of network industries poses a conflict between unrestricted free trade and undistorted competition, on the one hand, and universal services, on the other, for providing such services may justify restrictions to free trade and distortions of competition. This contribution analyses the role of one major player in European politics, namely the European Court of Justice. The author specifically examines the role of the Court in solving the conflict posed between market values (free trade and competition) and non-market values (universal services). This case law concerns the application of competition rules, and in the public sector of universal service, it concerns the application of the derogation clause of competition rules (Article 86(2) EC), according to which restrictions on competition can be justified if a service of general economic interest is provided. From the Court's case law, "messages" are sent to the Commission, the Member States and the national court establishing the role that these institutions play in the provision of services of general economic interest. Certainly, this case law has major implications in constitutional and institutional terms.

11. Regulator-Regulatee Interaction in the Liberalized Utilities

D. Coen and A. Héritier (eds.). 2002. In *Regulating Utilities in Europe: The Creation and Correction of Markets.* To be submitted to Palgraves Press.

Adrienne Héritier

In the last decade the industrial landscape and regulatory structures of the network industries such as telecommunications, energy and rail transport, have undergone a profound transformation. Liberalization has fragmented the former natural monopoly sectors; new players with new preferences have emerged. New regulatory institutions have been created to regulate the market at the national and the European level to foster competition, and at the same time to compensate for the negative consequences of market integration in order to protect services of general interest. This altered regulatory environment raises many important research questions such as: How were the new regulatory structures shaped and how do they function? What is their impact on market creation and service provision (Héritier/Schmidt 2000)? In this article Héritier focuses on one specific aspect which has not yet been analysed to any great depth: How do firms in these sectors interact with the newly created regulatory bodies at the national and European level? To whom do they seek access and why? And, inversely, how do the newly created regulatory authorities at the national and the European levels deal with the regulated firms in order to secure compliance? Is the much cited informational asymmetry between the regulator and regulatee used by the regulatee to interpret the regulatory contract so as to save costs, and if yes, how does the regulatory authority cope with it? And inversely, is there a law of "increasing regulatory intrusiveness", possibly linked to the size and number of regulatory bodies? Héritier examines the interaction between the regulator and regulatee from two different systematic perspectives: firstly by focusing on the attempts by firms and industrial associations to gain access to and influence "ex ante" regulation, i.e. by focusing on their attempts to influence the setting of rules for businesses at the national and the European level, and secondly by examining "ex post" regulation, i.e. regulation that monitors behaviour and attempts to resolve disputes that arise in implementing the existing regulation at the national and European level in the day-to-day interaction between firms and regulators. The analysis focuses on regulator-regulatee interaction in the British and German rail sectors.

12. Business Perspectives on German and British Regulation: Telecoms, Energy and Rail

Co-authored with David Coen. 2000. *Business Strategy Review* 11. 29-37.

Adrienne Héritier

Regulation of network industries is very different in Germany and the UK, not least because privatization started earlier in the UK and has gone much further. This paper uses research among regulatory officials and senior executives in both incumbent and new entrant firms to compare and contrast the changing strategic relationships between regulators and firms in the two countries. It also discusses interaction between national regulatory processes and EU regulatory processes. The authors conclude that whilst the passage of time after privatization/liberalization is likely to reduce the amount of conflict and recourse to law, national and cultural differences will continue to dominate.

13. Chances and Limits of Environmental Agreements in Waste Management Policy in Germany

2000. In *Environmental Law Network International (ELNI), Newsletter = Integration of Voluntary Approaches into Existing Legal Systems*, 49-57.

André Suck

The article summarizes comparative research on two negotiated agreements as a new instrument in German waste management policy. Taking into account the specific legally non-binding character of this instrument, the article examines the preconditions for a successful implementation of this instrument.

Two cases with different outcomes were therefore chosen in order to scrutinize the influence of different variables on the performance of negotiated agreements, i.e. the successful case of the Paper Trade and the Publisher's Association for taking back and recycling scrap paper (1994) and the rather unsuccessful Agreement of the German Battery Industry and the Association of German Retail Business for the taking back and disposal of batteries (1988). Six variables are identified to support the success of negotiated agreements in the field of waste management: credible potential of the public administration to impose sanctions on the businesses and their associations in order to achieve their compliance; accordance with the legal order, especially competition law; specific regulatory provisions concerning the distribution of costs between private and public actors; complexity of industry structure and variety of interests, which have to be integrated by the self-regulatory regime; adequate provisions for a public control and information scheme; positive influence of market forces (supply/demand) on the realization of the targets. An analysis of the respective policy process describes the development of different approaches to implement the respective agreement, which specifically affected the success of each agreement. In this regard, the article gives insights into the logic behind successful self-regulatory environmental governance in waste policy.

14. Administrative Costs of Reforming Utilities: Mapping a Framework for Empirical Analysis

2002. In *Regulating Utilities in Europe. The Creation and Correction of Markets*, eds. D. Coen and A. Héritier. To be submitted to Palgrave Press.

Michael W. Bauer

Although administrative costs of regulating network utilities in the post-reform phase co-determine the governments' ability for correcting markets, they have not yet received the scholarly attention they deserve.

Paying heed to this gap, a theory-driven framework to approach 'administrative costs' is developed and six cases of recent utility reforms in the United Kingdom and Germany are analysed. The aim is to identify and assess the factors that determine residual public costs after utilities' reforms. Based on the normative theory of regulation amended by institutionalist features, four variables are outlined: (1) distance to the status-quo-ante, (2) distance to competitive market co-ordination, (3) market structure and (4) veto points of the respective governance regimes.

While the developed framework brings new insights into the 'politics of regulatory reform', more empirical analysis is needed if a coherent theory of administrative costs of the utilities' reforms is to be conceived.

15. Private Actors Providing Public Service

Conference "European and National Regulation"
London, 4/5 November 2000

In the context of the ongoing project jointly led by the Project Group and the London Business School and co-funded by the Anglo-German Foundation, two conferences dealing with "Private Actors Providing Public Service' have been organized.

The first conference on 'European and National Regulation' was held in London on 4 and 5 November 1999. It was organized by the Regulation Initiative of the London Business School and was meant to be a starting point for the co-operation of the two research institutions on the project. The overall aim of the conference was to give an overview of the most up to date scientific, as well as practical, debate on European and national regulation in the telecommunications, rail and energy sectors.

In a first round, national variations in the regulatory standards of Great Britain and Germany were outlined. It was pointed to developments of regulatory functions within regulated British firms and the liberalisation process of the German telecommunications sector. A second round focused on European regulation. Papers were presented on regulatory convergence within the EU, differing European regulatory frameworks for network utilities as well as on styles of regulation in Eastern Europe. A third round engaged in an analysis of national regulatory institutions, instruments and outcomes in Britain and Germany with case studies on telecommunications, energy and transport.

The following international scientists as well as practitioners from regulated companies contributed to the conference: Richard Budd, David Coen, David Currie, John Dodgson, Chris Doyle, Edgar Grande, Adrienne Héritier, Sandra Keegan, Christoph Knill, Jens-Peter Schneider, Marc Schroeder, John Small, John Stern, Marc Thatcher, David Vogel, and Paul Willman.

16. Private Actors Providing Public Services

Conference "Regulation in Europe: An Anglo-German Comparison"
Bonn, 27 April 2001

The second conference on 'Regulation in Europe – An Anglo-German Comparison' was held in Bonn on 27 April 2001 at the Max Planck Project Group. The conference aimed at presenting and debating first results of the co-operative research project on utility regulation in the telecommunications, rail, energy and rail sectors of Britain and Germany. Researchers of the project presented first findings, which were then thoroughly commented by the invited experts.

First, attention was drawn to institutional aspects of the transition of the regulatory regimes on the basis of an analysis of developments in a comparative perspective focusing Germany and Great Britain. Second, an account of administrative costs of utility reforms in both countries was presented. Third, the role of the European Court of Justice in the competition versus public services conflict was focused on. And finally there were presentations regarding the firm level perspective to regulatory regimes and their transition as well as the multi-level system of European regulation.

The following British and German scientists contributed to the conference: Michael Bauer, Dominik Böllhoff, David Coen, Burkard Eberlein, Edgar Grande, Leigh Hancher, Adrienne Héritier, Leonor Moral, Roland Sturm, Marc Thatcher, and Stephen Wilks.

17. Infrastructure by Private Enterprises

Legal Instruments for Government Regulation of Competitive Markets, exemplified by Telecommunications Law in the U.S. and Germany. Dissertation Project.

Christian A. Geiger

How open competition and the public goals of regulation, especially that of universal service, can be combined has long been a concern of US-economists and policy makers in the field of regulation. In Germany, this question has become a matter of Constitutional Law. In 1994, the new clause Art. 87 f was added to the German Constitution as part of the second stage of the deregulation of postal and telecommunications services. Simply stated, it forces the Government to open these markets to private competition and, at the same time, to ensure that a certain amount of service will remain available to the public.
As the governmental provision of these services has been ruled out by Art. 87 f, the introduction of suitable regulatory instruments is necessary to satisfy the constitutional mandate. In this respect, German law suffers from a lack of experience and conceptual sophistication. Services regarded as being "affected with a public interest" have simply been provided by a legally protected monopoly in Germany in the past. In the United States, however, telecommunications services have always been provided by private enterprises. In addition, over the course of the last three decades, the telecommunications market has been successively liberalized. Therefore, U.S. regulatory and antitrust law had to adapt much earlier to the new challenge of regulating competition instead of regulating monopoly.

By showing how the legal implementation of different regulatory approaches works, it is possible to compare German and American solutions with similar issues in the era of regulated monopoly and regulated competition. An analytical framework for sector-specific regulation facilitates this line of research and allows the main characteristics of the telecommunications industry to be pointed out. It is possible to derive four stylized regulatory regimes from this analysis. These insights from regulation theory lead to conclusions which assist in interpreting the German Constitution's new Article 87 f and to further develop German regulatory law as such.

18. The provisions of the German Telecommunications Act on access to essential facilities

[Die Vorschriften des Telekommunikationsgesetzes über den Zugang zu wesentlichen Leistungen. Eine juristisch-ökonomische Untersuchung] 1998. *Law and Economics of International Telecommunications* 37, 98 p. Baden-Baden: Nomos. Co-authored with Günter Knieps.

Christoph Engel

Under § 33 of the German Telecommunications Act, any provider of telecommunications services considered to possess a dominant market position is required to grant its competitors on this market non-discriminatory access, to essential services it uses internally or sells to the market „to the extent that they are essential". This essential facilities doctrine is the tailor-made answer to a specific competition problem: the vertical integration between a competitive market and a complementary, monopolistic bottleneck area. For the application of this tool, it is paramount to properly identify the bottleneck. Two conditions must be met simultaneously: It is, in effect, not possible to enter the complementary market without access to this facility; it is not possible for a provider in the complementary market to duplicate this facility at a reasonable cost, nor are any substitutes available. In

the German telecommunications markets, these conditions seem to hold for the access by long-distance competitors of the Deutsche Telekom to the local networks operated by this company. The monograph, and the more abridged German and English versions of the key arguments, explore the underlying economic concepts and use them for the interpretation of the legal provision.

19. The auction of the UMTS licences: Economic and constitutional aspects

[Ökonomische und verfassungsrechtliche Überlegungen zu der UMTS-Versteigerung in Deutschland]. Paper Project.

Florian Becker/Stefan Okruch

This article will be an interdisciplinary effort analysing the UMTS licences' auction in Germany from an economic as well as from a legal point of view. The economic part of the article will deal with the question whether an auction is an economically sensible instrument to ensure a fair distribution of open resources such as UMTS-frequencies by the state. The legal part focuses its primary attention on the question whether the constitution entitles the state to distribute legal positions to the highest bidder and whether the revenue of such an auction can be transferred to the regular state budget. The article will come to the conclusion that neither is the case.

D IV 2 Governance across Multiple Arenas – The European Institutional Context: Polity, Politics and Policies

A considerable number of research projects focus on the provision of common goods across multiple arenas in the context of the European Union. The particular institutional conditions offered by the European polity, which comprises considerably diverse institutional traditions and has to accommodate a variety of policy-making traditions, offer interesting insights into the development of new institutional solutions for the provision of common goods. (Scharpf 1999, 2000; Kohler-Koch 1996a, b; Leibfried and Pierson 1995; Mény, Muller, Quermonne 1996). Some of the projects related to Europe are more interested in the political/administrative structures of Europe, others more in policies.

Among the first, some focus on the federalist structure of Europe and the overall institutional arrangements (Börzel 1; Holzinger 2, 3), including the particular problems of democratic legitimation (Héritier 4, 5; Bauer with Schmitter 6, 7). Another focus is policy-oriented (Holzinger 8, 9, 10, 11; Bauer 12, 13; Kölliker 14, 15; Lehmkuhl 16, 17, 18, 19, 20, 21); in some, a particular emphasis is placed on the aspect of Europeanization, that is, the impact of European policies on existing national policies and implementation (Kerwer 22, 23, 24; Lehmkuhl 25; Knill 26, 27, 28, 29, 30, 31, 32; Héritier 33, 34; Börzel 35, 36, 37), but also on existing political and administrative structures (Knill 38, 39; Lehmkuhl 40; Boerzel 41, 42, 43). Another focus is the process of European policy-making as such (Héritier 44, 45, 46, 47; Bauer 48; Lehmkuhl/Knill 49, 50, 51, 52).

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1. Who Is Afraid of a European Federation? How to Constitutionalize a Multi-Level Governance System

2001. In *What Kind of Polity? Responses to Joschka Fischer*, eds. C. Joerges, Y. Meny and J. H. H. Weiler, 45-59. Florence: Robert Schuman Centre for Advanced Studies. Co-authored with Thomas Risse.

Tanja A. Börzel

The chapter is a comment on the vision of the future European order presented by the German foreign minister, Joschka Fischer in his speech at the Humboldt University. It applauds Fischer for striving to overcome the stylized dichotomy of the "Confederacy of European States" (*Staatenbund*) and the "European Federal State" (*Bundesstaat*), which has dominated the political debate about the "finalité politique" of the European integration process since its very beginning and which is also reflected by the international reaction to Fischer's speech. At the same time, Fischer's suggestions for a European federation are still rather ambivalent in this respect. It is argued that a further exploration of federalist concepts in a multilevel governance framework helps to escape such ambivalence because federalism provides principles for the territorial organization of political power but is not necessarily bound to statehood. Moreover, taking a federal perspective on the future European order draws attention to an issue that has been completely neglected in the debate so far: the tax and spending power, which is crucial for both the efficiency and legitimacy of a political system. The chapter proceeds in three steps. The first part demonstrates the inherent ambiguity of Fischer's vision and argues that this is due to the conceptual language he uses, which is ultimately still wedded to rather traditional notions of the nation state. The second part claims that neither the modern European nation states nor the current European order resemble such a system in which sovereignty resides in a legitimate authority over people and territory. Rather, both the European states and the European Union constitute structures of "multi-level governance". Finally, it is argued that the one tradition which provides constitutional structures of "divided sovereignty" and which can be applied to systems of multi-level governance, is federalism. But there are different federalisms which can be used to construct a future European order. The last part comments on the German, American, and Swiss models and suggest ways in which these can be applied to a future European federation.

2. Institutional Developmental Paths in the European Integration Process: A Constructive Critique of Joschka Fischer's Proposals

2001. *Zeitschrift für Politikwissenschaft*, 11 (3): 987-1010. Co-authored with Christoph Knill.

Katharina Holzinger

There is no doubt about the political necessity of the Eastern enlargement of the European Union and corresponding reforms of its political institutions. By contrast, the shape and content of these reforms are highly contested between the member states. In this context, the German Foreign Minister, Joschka Fischer, has presented his visions of future development for Europe which were refreshingly welcome. However, Fischer's ideas imply, in many respects, a turning away from hitherto accepted paths to European integration. The main claim in this paper is that, against the backdrop of this breach with the present European-level institutional system, the chance that the Fischer initia-

tives could come to political fruition must be viewed with scepticism. On the basis of this finding, which rests essentially upon a historical-institutionalist analysis, an alternative concept for a European constitution is developed.

3. Optimal Regulatory Units for Europe: Flexible Cooperation of Territorial and Functional Jurisdictions

[Optimale Regulierungsräume für Europa: Flexible Kooperation territorialer und funktionaler Jurisdiktionen]. 2001. In *Politik in einer entgrenzten Welt: Kongreßband zum DVPW-Kongreß in Halle,* ed. C. Langfried. Köln: Verlag Wissenschaft und Politik.

Katharina Holzinger

As a result of globalization, the functional scopes of economic and societal processes and political territories have become increasingly incongruent, which has several undesirable consequences. The article develops a concept of optimal regulatory areas in Europe, designed to re-establish the congruence of functional areas and territorial jurisdictions. It starts with an analysis of the various conceptions of a flexible and differentiated European Union, as well as of the economic theories of federalism. The analysis shows that it would be premature to give up the traditional link of policies to territories, and to introduce functional jurisdictions in its stead. Whether functional jurisdictions which are not linked to territories can be practically established is a matter of problem-specific conditions. These conditions are analysed, and they form the basis of a concept of optimal regulatory units. Finally, some suggestions are made about how to facilitate and encourage the development of such optimal regulatory units in the European Union.

4. Elements of Democratic Legitimation in Europe: An Alternative Perspective

***1999. Journal of European Public Policy* 6 (2): 269-282.**

Adrienne Héritier

While the lack of democratic legitimation in the European polity is striking when measured against member state parliamentarian democracies, this focus shifts attention off those less obvious empirical processes which enhance democratic legitimation in Europe. In order to compensate for the slow and incremental nature of democratization, the Commission has sought to develop elements of substitute democratic legitimation via the transparency programme which attempts to bridge the gap between Brussels and member state citizens, and the creation of supportive networks. Accountability is also strengthened by structural and processual elements inherent in European policy-making - mutual horizontal control and distrust among actors in a diverse, negotiational democracy, and competition among multiple authorities. the described strategies and processes reinforce democratic support and accountability but do not allow the democratic definition of overall goals for the European polity as such.

5. Composite Democratic Legitimation in Europe: The Role of Transparency and Access to Information

2002. In *The Diffusion of Democracy: Emerging Forms and Norms of Democratic Control in the European Union*, eds. Ch. Lequesne and P. Magnette. Cambridge: Cambridge University Press. Forthcoming.

Adrienne Héritier

The European Union is a composite democracy. It is comprised of diverse elements of democratic legitimation: the vertical legitimation through parliamentary representation in the EP; executive representation through delegates of democratically elected governments in the Council of Ministers; horizontal mutual control among member states; associative and experts' representation (delegation) in policy networks; and, finally, individual rights-based legitimacy. Together, these elements paint a variegated picture of the reality of democratic legitimation in Europe. The individual elements have not been developed and linked in a systematic and consistent way; rather, they have emerged from a series of pragmatic decisions, made among the range of limited possibilities allowed for by the unanimity requirements of intergovernmental conferences or as a result of incremental individual initiatives of the different European decision-making bodies. As a consequence, it does not come as a surprise that some elements are incompatible with each other, both with respect to their primary goals and their modes of operation. The nature, reasons and consequences of this type of incompatibility or compatibility are at the centre of this article. Of particular interest is the question of the relationship between the legimatory components of access to information and transparency, on the one hand, and the element of negotiative democracy that is, governance in policy networks, as an ubiquitous mode of governance in Europe, on the other. While transparency and access to information stress the input-oriented goals of democratic legitimation, that is the right to know who makes which decisions when, associative representation and negotiative democracy emphasize the output-oriented goals of democratic legitimation, that is, government legitimation through policy performance accommodating the widest possible scope of interests. Both – input- and output oriented legitimation – are important and have to be viewed in their reciprocal relationship.

6. A (Modest) Proposal for Expanding Social Citizenship in the European Union

***2001. Journal of European Social Policy* 11 (1): 55-67. Cco-authored with Philippe C. Schmitter.**

Michael W. Bauer

Is there any chance to introduce some truly redistributive social policies in the European Union? This paper puts forward the idea of a Euro-stipendium to fight poverty in the European Union. It proposes that the EU pays €1000 per annum to all citizens and denizens of the European Union living in extreme poverty by using CAP and Structural Fund resources. It is shown that the envisaged scheme holds even for enlargement when the Union will comprise 27 members. A Euro-stipendium would be a first step towards a meaningful Social Europe.

7. Dividend, Birth-Grant or Stipendium? A Reply to Van Parijs & Vanderborght and Matsaganis

***2001. Journal of European Social Policy* 11 (3). Forthcoming. Co-authored with Philippe C. Schmitter.**

Michael W. Bauer

This paper replies to the criticism of the Euro-Stipendium proposal. It is argued that a revised Euro-stipendium has still relatively the best chances of being implemented as compared to other schemes put forward by Van Parijs & Vanderborght and Matsaganis.

8. Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement

2000. Basel: Helbing & Lichtenhahn. Co-authored with Peter Knöpfel.

Katharina Holzinger

Will the impending Eastern enlargements of the European Union lead to a flexibilization of the Union's environmental policy? The nine contributions to this book give answers to this question from political and legal scientists. They illuminate the position of the present member states, the role of the European Commission and its instruments and the position of future eastern member states. The book deals with a rather normative perspective (Astrid Epiney, Katharina Holzinger), the consequences of the enlargement for the European Union's policy (Marie Soveroski, Alexander Carius, Ingmar von Homeyer, Stefani Bär), the consequences for accession countries (Ladislav Miko, Tomasz Zylicz, Ruta Baskyte, Arunas Kundrotas) and the effects of the new flexible instruments in central and eastern European countries (Frances Hines, Christoph Knill, Andrea Lenschow). The main conclusive message demonstrates the need to introduce more flexibility into the Union's environmental policies of tomorrow.

9. Optimal Regulatory Units: A Concept of Regional Differentiation of Environmental Standards in the European Union

2000. In *Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement*, eds. K. Holzinger and P. Knöpfel, 65-107. Basel: Helbing & Lichtenhahn. Preprint 1999/11.
2000. German Version in *Zeitschrift für Umweltpolitik und Umweltrecht* 23 (4): 547-582.

Katharina Holzinger

The development of a common European Union environmental policy in the 1970s was a result of the creation of the Common Market on the one hand, and of the acknowledgement of transboun-

dary pollution on the other. At first, the predominant approach was to harmonize national environmental standards as far as possible. This approach was often counteracted by the implementation practice of the member states. Opportunities for deviation from commonly set standards were only gradually built into European law. However, there is still no policy of positive regional differentiation of environmental standards within the EU. This contribution develops a concept of optimal regulatory units for European environmental policy. The responsibilities for regulation must be adapted as flexibly as possible to the geographical scope of the respective environmental problem. The rigid allocation of responsibilities to fixed federal levels is not in itself sufficient: co-operation of jurisdictions at and between all federal levels should also be made possible. Even for environmental problems where the EU is the optimal level of action, it is not necessary to harmonize the standards all over Europe. For reasons of efficiency or fair distribution it may be desirable for different regions to contribute to the solution of the problems to differing degrees. Minimum harmonization, a concept of multiple speeds, or the creation of groups of countries which apply different standards, are feasible methods of differentiation.

10. The Need for Flexibility: European Environmental Policy on the Brink of Eastern Enlargement

2000. In *Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement*, eds. K. Holzinger and P. Knöpfel, 3-35. Basel: Helbing & Lichtenhahn.

Katharina Holzinger

The Eastern enlargement of the European Union represents a challenge for its environmental policy. There seems to be agreement among political actors that more flexible solutions in European environmental policy are needed. However, what the political actors, both EU institutions and accession countries, have in mind is first and foremost the granting of individual transition periods to the Central and Eastern European countries. As a concept this is an even less "flexible concept" than the idea of a Europe of multiple speeds. Even the European Treaties provide for more flexibility in the concept of "closer co-operation". Not only individual but also collective and permanent deviations from the commonly set level of protection are permitted – as long as the functioning of the internal market is not put at risk.

From a normative perspective, far more flexibility is desirable which takes into account not only political preferences but also economic and, above all, ecological requirements. Not only temporary derogation and deviations upwards should be allowed. Flexibility should include the permission of permanently differentiated environmental goals within the EU. More flexibility should also be possible with respect to the means by which environmental quality goals are implemented. In particular, the EU should refrain from the prescription of technical solutions. However, the new, so-called flexible, instruments do not represent a very promising option in the Central and Eastern European countries.

11. Environmental Policy in Poland and the Consequences of Approximation to the European Union

2000. In *Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement*, eds. K. Holzinger and P. Knöpfel, 215-248. Basel: Helbing & Lichtenhahn. Co-authored with Tomasz Zylicz.

Katharina Holzinger

This contribution gives both an overview of environmental policy in Poland and evaluates the environmental consequences of the accession to the European Union for Poland. First, it briefly characterizes Poland's environmental policy and notes what effects it produced. Its relative success is not only the result of a more efficient use of natural resources, such as water and energy, in a market economy, but it is also a consequence of an active policy of the government – despite some flaws of the law. Second, it deals with the expected environmental effects of the planned accession to the EU. It can be concluded that some flexibility in taking over the complete environmental *acquis communautaire* would be desirable, both with respect to the aims and to the means of environmental policy and law. Generally, stricter quality standards in EU law can and should be adopted; however much more flexibility should be allowed for the use of instruments. Third, the challenges that result from exhausting relatively easy options for improvement, as well as from requirements imposed by European Union membership are identified. The main conclusion is that Poland has a good chance of continuing its fast and visible progress in the environmental field. However, pressures are identified that are likely to derail this process unless the government drastically strengthens its capacity to govern the country's natural capital.

12. A Creeping Transformation? The European Commission and the Management of EU Structural Funds in Germany

2001. Dordrecht: Kluwer.

Michael W. Bauer

This volume investigates whether and why the European Commission is becoming increasingly involved in the domestic implementation of EU policy programmes and how such new supranational involvement affects national administrative procedures. Resource dependence and principal/agent theory serve as a background for advancing an 'implementation management explanation'. At the very centre stands the hypothesis that the European Commission is about to be transformed into a co-manager of domestic policy execution. The main empirical questions are: Why is there a growing demand for the control of domestic policy implementation at the supranational level? And, how does supranational procedural change transform the national implementation of EU structural policy?

13. Limitations to Agency Control in European Union Policy-Making: The Commission and the Poverty Programmes

2001. Submitted to *Journal of Common Market Studies*.

Michael W. Bauer

The principal/agent model (PAM) has produced valid hypotheses to conceptualize actor-relationships, but its disadvantage – as an economic concept transferred from the field of industrial organization and the theory of the firm to that of European integration – is often overlooked. This article argues that the uncritical use of PAM in the study of European public policy-making may bias research results and proposes that it be flanked by inductively obtained propositions that allow us to recognize purposeful agent behaviour and to distinguish between agency strategies focusing on 'policy process' and those targeted at 'policy outcome'. This is done by taking the examples of 'discourse guidance', 'lobby sponsoring' and 'stretching' in order to determine the degree of Commission autonomy in European public policy-making, and to test the results against a case study of EU Poverty Programmes.

14. Bringing Together or Driving Apart the Union? Towards a Theory of Differentiated Integration

2001. West European Politics 24 (4): 125-151. Preprint 2001/5.

Alkuin Kölliker

(See D II 1, 3)

15. The Impact of Flexibility on the Dynamics of European Integration: Towards a Theory of Differentiated Integration

Dissertation Project

Alkuin Kölliker

This PhD project is an inquiry into the impact of legal differentiation (or flexibility) on the provision of common goods across EU member states and policy areas. Based on the theory of public goods and in combination with theories of collective action (Schelling), a theory of differentiated integration is developed. According to this theory, the centripetal effects of closer cooperation among willing EU members on initially unwilling non-participants are strongly influenced by the character of the respective policy area in terms of public goods theory. Two hypotheses are drawn from the theory. The first one claims that the eventual participation of initially reluctant member states, which leads to

the re-establishment of long run unity despite short run differentiation, is most likely in policy areas involving excludable network effects, and most unlikely in areas dealing with common pool resource problems (the four remaining types of goods ranking in between these two extremes). The second hypothesis suggests that, given the dangers for the unity of the EU, as well as the risk of benefits leaking from participants to non-participants, the use of flexibility by more integration-minded member states is less likely in policy areas involving common pool resource problems than in other fields. Fifteen small case studies are used to discuss empirical evidence from areas ranging from trade, monetary and security policy integration to justice and home affairs, as well as social, environmental and tax policies. The empirical results show that the mechanisms the theory describes can in fact be found in reality. However, they also point to important alternative and complementary factors which are required to explain some of the cases. One major result is that, on one hand, differentiation may in specific areas be a valuable tool to break deadlock while leaving the chances for long run unity within the EU intact. On the other hand, this tool becomes much less powerful if common pool resource problems are involved. The latter is the case in policy areas with a tendency towards regulatory competition, such as tax, environmental and social policies.

16. Differential Europe: European Union Impact on National Policy-Making

2001. eds. A. Héritier, D. Kerwer, C. Knill, D. Lehmkuhl, M. Teutsch, and A. Douillet. Boulder CO: Rowman & Littlefield.

Dirk Lehmkuhl

The European Community affects the policy fabric of the member states, but that impact is differential. In some instances, new policy goals have been added to national agendas and fresh instruments are applied, while old ones become less important or openly challenged. In other instances, when European and national policy objectives are concurrent, national practices may be reinforced, or even redirected by European policies. As a consequence, the outcomes of European policy-making tend to be much more diverse than one would expect and preclude any simplistic explanation of European-induced changes. In order to cope with Europe's differential impact, members of the Project Group think of European and national policy-making as two separate, but parallel policy streams that intermittently interlink. Within this dynamic perspective, three factors explain how and when 'Europe matters' at the national level: the stage of policy development, the prevailing belief system, and the reform capacity defined by the number of veto players and integrated political leadership. Varying systematically on these explanatory variables, an empirical investigation of market-making policies, namely road haulage and rail transport, in five countries is carried out: Britain, France, Germany, Italy, and the Netherlands.

17. The Importance of Small Differences: The Impact of European Integration on the Associations in the German and Dutch Road Haulage Industries

1999. Amsterdam: Thela Thesis.

Dirk Lehmkuhl

The study is concerned with the question of how European integration impacts on societal structures at the domestic level of two members states. By studying the relation between European integration and organized interests, the study not only links up the renewed interests in international sources of domestic politics, but also centres its focus of attention on a field which has traditionally been of interest for the development of the process of integration in Europe. To answer the question on the impact of European integration on systems of interest representation at the domestic level, the empirical study is embedded in a theoretical framework linking organizational theory with an institutional analysis which focuses on the impact of existing institutions as intervening factors between external changes and political outcomes. Associations are seen in their interaction with two different environments, the internal constituted by its members, and the external, its political and administrative environment, as well as other associations. Organizational structures and strategic behaviour of organiztions are seen as the main dimensions for describing how associations seek to match the differentiated demands of their environments in a co-ordinated manner. To associate organizational structures, the provision of resources and the strategic capacity of organizations with properties and demands of their environments implies that changes in both environments tend to impact on the demands imposed upon organizations. Especially when major input resources such as money and legitimacy are affected by alterations in the environment, associations might see themselves confronted with the necessity to adjust their organizational structures and strategies to maintain their autonomy.

In order to present the way in which associational systems in the Dutch and German road transport industry sector have been effected by European integration, this study opts for an inter-temporal and a cross-country comparison. While the inter-temporal comparison mainly displays the empirical cases in the way of a structured description, the cross-country comparison interprets the findings of the two cases systematically. The analysis provides answers to the questions of how the linkage between the European and the domestic level may be conceived and what factors mediate this linkage and lead to different findings in the countries under study. The advantages of this design are twofold. First, the chosen approach allows for studying individual associations representing specific economic interests as elements of complex associational systems. To access a field in this way has the advantage that detailed empirical findings can be incorporated into a higher level of analysis. Second, this perspective takes into consideration the wider socio-economic and political environment in which they are embedded. The benefit of this concept is that the study not only traces the way in which interests are intermediated into processes of political decision-making under the conditions of structural change in their environments, but also provides a structured presentation of the nature of these changes. To combine these two advantages results in an empirically saturated study in the field of interest organization which contributes interesting insights to questions on the impact of European integration on domestic socio-political structures.

18. Changing Patterns of Public-Private Interactions in the Context of Europeanization and Globalization

In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming. Co-authored with Christoph Knill.

Dirk Lehmkuhl

To discuss the implications of political and economic internationalization for patterns of governance, we start from a state-centric perspective. The actual patterns of governance in internationalized environments, so the proposition, can be related to the respective governance capacity of public and private actors that hinges on to the strategic constellation underlying the provision of a public good. The specific strategic constellation varies with three dimensions – namely the congruence between the scope of the underlying problem and the organizational structures of the related actors, the type of problem, and the institutional context – all of which bundle a number of factors. With this concept in mind we identify four ideal-typed patterns of governance that are distinguished by different configurations of public and private capacities to formally or factually influence social, economic and political processes by which certain goods are provided.

19. The National Impact of EU Regulatory Policy: Three Europeanization Mechanisms

2002. In *European Journal of Political Research* 41 (2). Forthcoming. Co-authored with Christoph Knill.

Dirk Lehmkuhl

While much has been written about the European Union (EU), most of the scholarly work is concerned with the developments at the European level. It is only recently that we observe increasing attempts to address this research deficit. Notwithstanding a growing number of studies explicitly concerned with the Europeanization of domestic institutions, we still lack consistent and systematic concepts to account for the varying patterns of institutional adjustment across countries and policy sectors. It is the aim of this paper to provide a more comprehensive framework for explaining the domestic impact of European policy-making. An analytical distinction is made between three mechanisms of Europeanization, namely institutional compliance, changing domestic opportunity structures, and framing domestic beliefs and expectations, each of which requires a distinctive approach in order to explain its domestic impact. We argue that it is this specific Europeanization mechanism rather than the nominal category of the policy area that is the most important factor to be considered when investigating the domestic impact of varying European policies.

20. From Regulation to Stimulation: Dutch Transport Policy in Europe

2001. In *Differential Europe. The EU Impact on Domestic Policies,* eds. A. Héritier et al., *217-255.* Boulder, CO: Rowman & Littlefield.

Dirk Lehmkuhl

Does the process of political and economic integration in Europe necessarily imply a loss of the member states' capacity to govern their economies? Does Community legislation lead to a convergence of administrative structures, instruments and forms of administrative interest intermediation? And does European policy-making crowd out traditional or newly emerging concerns from national agendas? With respect to the Common European Transport Policy and the reform of the transport markets in the Netherlands the response to all three questions is clearly negative. Without sacrificing its guiding function *vis-à-vis* socio-economic developments, Dutch governments matched their domestic policies with European policy demands calling for the liberalization and deregulation of international transport. European integration in general, and the reform of transport regulation in particular, actually reinforced characteristic features of the Dutch institutional context and led to a strengthening of corporatist patterns of concertation and consultation. The functional content of concertation shifted from the regulation of market access to the stimulation of market forces and industrial competition. Moreover, this shift strengthened the social responsibility and self-regulation of economic actors and allows policy-makers to incorporate emerging objectives, such as environmental issues, into national agendas. Three factors explain why the transformation of Dutch transport markets was neither a hard-core, pro-competitive disengagement of the state as in Britain, nor an Italian style refusal of reform by private actors: the functional change of existing institutions of interest intermediation, the compatibility of policies at the national and the European level, and the mutual reinforcement of the policies of the two levels.

21. Pushing Reform and Opposition Alike: Europe's Differential Impact on the French Transport Sector

2001. In *Differential Europe. The EU Impact on Domestic Policies,* eds. A. Héritier et al., 99-136. Boulder, CO: Rowman & Littlefield. Co-authored with Anne-Cécile Douillet.

Dirk Lehmkuhl

The contradiction in the way in which European integration affected governance structure and policies in France poses an analytical challenge. To cope with this challenge we refer to the dynamics of the two-level game. Using the concept as heuristic device allows us to account not only for the institutional and policy impact of European integration at the national level, but also to relate this impact to the domestic politics related to both the process of policy-making at the European level and the implementation of European policies at the national level.

On the one hand, we tend to confirm the neofunctionalist assumption that functionally specific bureaucracies at the national level are among the effective carriers of integration. Immersed in the process of European integration and its strong liberal bias by its frequent meetings with its European colleges, the transport administration was most active in implementing its concepts. It was the one that carried the ideas inherent in the European model into the domestic arena. On the other hand, this process was slowed down by the political executives. Given their need to follow the claims of

their constituencies, political leaders were necessarily much more sensitive to the loud voice of social interests. Put differently, the logic of party politics made French governments play the part of the brakemen in the intergovernmental negotiations at the European level. In sum, the division of labour between the administrative and the political leadership represents a mechanism to solve the country's cognitive dissonance deriving from the need to accommodate the domestic and European influences.

22. Elusive Europeanization: Liberalizing Road Haulage in the European Union

2001. Journal of European Public Policy 8 (1): 124-143. Co-authored with Michael Teutsch. Preprint 2000/11.

Dieter Kerwer

Having established itself as a robust level of governance, the European Union now potentially affects its member states in more ways than ever before. Road haulage policy is an area in which a strong impact of European Union policy-making can be expected. Liberalization at the European level contradicts the widespread interventionist transport policy traditions of the member states. In this article the question is asked how France, Germany, and Italy, three countries with an interventionist transport policy tradition, are affected by European liberalization. We find that all of the three countries have abandoned their policy traditions. However, domestic factors were more important than European factors in bringing about this change. European influence did not severely curtail national policy-making autonomy. In transport policy, Europeanization is elusive because national institutional intermediation largely muffled the impact of European policy-making

23. Going Through the Motions: The Modest Impact of Europe on Italian Transport Policy

2001. In *Differential Europe: The European Union Impact on National Policymaking*, A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A. Douillet, 173-215. Boulder, CO: Rowman & Littlefield.

Dieter Kerwer

More recently, the potential for the Europeanization of Italian transport policy has increased considerably. Nevertheless, despite the potential for policy congruence, the dynamics of domestic policies for road haulage and railways are largely characterized in Italy by inertia. In the last ten years, decision-making has remained on the traditional path and Italian transport policy in the sector of road and rail has been 'going through the motions' with old routines still dominating, despite widespread dissatisfaction with the results. In a nutshell, the paradoxical coexistence of the CTP at the European level and policy inertia at the domestic level is due to the strong tradition of state interventionism and the resistance of particularistic private interests in the transport sector which have undermined the capacity of public actors to introduce those key changes necessary for convergence.

24. The Development of European Transport Policy

2001. In *Differential Europe: The European Union Impact on National Policymaking*, A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A. Douillet, 173-215. Boulder, CO: Rowman & Littlefield.

Dieter Kerwer

Although the Treaty of Rome (1957) assigned a high priority to the issue of transport, a common policy only gained momentum in the mid-1980s. The policy development in the CTP had been a major disappointment to both academic observers and commentating practitioners alike, and one which this chapter tries to explain by posing two questions. First, why was European transport policy condemned to insignificance for such a long time? And second, what are the reasons for the increasing dynamics and relevance of this area of decision-making? In answering these questions we will reveal why it was possible for the dissenters to veto any progress in the past and why this has no longer been possible in more recent times. The common European policies developed for both road and rail reflect the high demand of consensus as a basis for European decisions. In both cases, policies do not impose broad and precise prescriptions on the member states to which these have to conform if they do not want to violate Community law. Instead, the EU pushes for realization of a common market, but within that framework considerable leeway is given to the member states on how to implement the European policies and how to react to new competitive situations. This finding is interesting in two different ways. On the one hand, it reveals specific characteristics of supranational integration processes and, specifically, certain limitations to the solution of particular policy problems. On the other hand, it is significant with respect to the European influence on the member states, which will be analysed in subsequent chapters. Given the ambiguous and flexible character of the EU policy output, Europeanization processes in the member states promise to be a complex process of adaptation following diverse patterns rather than a simple and uniform process of implementation.

25. The National Impact of EU Regulatory Policy: Three Europeanization Mechanisms

2002. In *European Journal of Political Research* 37. Co-authored with Christoph Knill.

Dirk Lehmkuhl

While much has been written about the European Union (EU), most of the scholarly work is concerned with the developments at the European level. It is only recently that increasing attempts to address this research deficit can be observed. Notwithstanding a growing number of studies explicitly concerned with the Europeanization of domestic institutions, consistent and systematic concepts to account for the varying patterns of institutional adjustment across countries and policy sectors are still lacking. It is the aim of this paper to provide a more comprehensive framework for explaining the domestic impact of European policy-making. An analytical distinction is made between three mechanisms of Europeanization, namely institutional compliance, changing domestic opportunity structures, and framing domestic beliefs and expectations, each of which requires a distinctive approach in order to explain its domestic impact. We argue that it is this specific Europeanization mechanism rather than the nominal category of the policy area that is the most important factor to be considered when investigating the domestic impact of varying European policies.

26. The Europanization of National Administrations: Patterns of Institutional Change and Persistence

2001. Cambridge: Cambridge University Press.

Christoph Knill

The analytical focus selected in this project was on the *Europeanization* of national administrations; i.e. the crucial question was how European integration affects administrative practices and structures at the domestic level. What are the effects of European policies on national administrative styles and structures? Under which conditions can one expect administrative change, and more specifically the convergence of administrative structures?

As indicated by empirical findings from various policy areas (including environment, road haulage and railways), the domestic impact of European policy-making is not characterized by a clear and consistent picture. Rather, patterns of domestic change and persistence vary from country to country and from policy to policy. Correspondingly, not only administrative convergence can be observed, but to a similar extent divergence or persistence of administrative differences across member states.

This ambiguous picture is to be understood in the light of three factors explaining domestic change or persistence in the context of Europeanization. First, the scope for domestic adaptation is restricted by the macro-institutional context of national administrative traditions; i.e., general patterns of administrative styles and structures which are institutionally strongly entrenched in the state tradition, the legal system as well as the political-administrative system. These core administrative patterns are conceived as highly resistant to substantive change, given the high institutional stability of these core administrative patterns, which may be the result of both their institutional depth (their ideological and normative entrenchment) and their institutional breadth (their fundamental impact on the distribution of power and resources between actors and corresponding lock-in effects).

Second, even where European requirements remain within the macro-institutional core, corresponding domestic adaptation cannot be taken for granted. Rather, the occurrence and outcome of domestic adaptation within the core depends on the extent to which European policies sufficiently alter the domestic policy context; i.e., affect the outcome of strategic interaction by modifying underlying interest constellations, beliefs and expectations or institutional opportunity structures at the domestic level.

Third, the extent to which European policies imply pressure for domestic change varies with the underlying logic of Europeanization. From an analytical perspective, three Europeanization logics can be distinguished which are related to different types of European integration. Policies of positive integration are institutionally most "demanding" for the member states, since they prescribe a concrete equilibrium solution to be achieved at the national level. Pressure for change is less explicit in cases of negative integration, where European influence is restricted to the modification of domestic opportunity structures, which in turn might affect the outcome of strategic interaction at the national level. No "pressure" to change can be assumed in cases where policies are restricted to increase domestic support for European policy objectives. In such cases, which are referred to as policies of preparing integration, domestic decision-making is not affected by changing opportunity structures, but by altering ideas, beliefs and expectations of domestic actors.

27. Implementing EU Environmental Policy: New Directions and Old Problems

2000. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight has led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments that take account of national context constellations. It was the aim of the project to investigate the extent to which these new forms of governance are successful tools to increase the problem-solving capacity of the European multi-level system. The research indicates three basic conclusions with respect to this question.

- As revealed by their empirical findings, new of forms of governance did not lead to better implementation results so far. When comparing old and new policies in terms of implementation effectiveness, no significant differences emerged. Empirical evidence indicates the absence of a direct causal linkage between policy type and effectiveness of implementation.
- The lacking success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings.
- These deficits can be partly addressed by applying an institutional perspective, indicating that, rather than being affected by the choice of the governance approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

28. An Alternative Route of European Integration: The Community's Railways Policy

2000. *West European Politics* 23 (1): 65-88. Co-authored with Dirk Lehmkuhl.

Christoph Knill

The process of European integration and policy-making is sometimes rather puzzling. On the one hand, it is well documented that with respect to the implementation of European legislation member states tend to do less than they are supposed to do. On the other hand, it is striking that with respect to the implementation of the Council Directive 91/440 on the development of the Community's railways many member states went far beyond the minimum required by the European legislation. Knill and Lehmkuhl argue that these differing evaluations of the success of implementation can be traced to different implementation approaches, which may be termed the 'compliance approach' and the 'support-building approach'. While the first is directed at prescribing domestic reforms "from above", the latter aims at triggering European integration within the existing political context at the national level. Here, successful implementation refers to the extent to which European legislation triggers domestic changes by stimulating and strengthening support for European reform ideas at the national level. In this respect, European legislation can influence the domestic arenas in basically three ways: by providing legitimization for political leadership, concepts for the solution of national problems, and strategic constraints for domestic actors opposing domestic reforms.

29. New Views of Old Problems? The Institutional Limits of Effective Implementation

[Neue Konzepte – alte Probleme? Die institutionellen Grenzen effektiver Implementation]. 1999. *Politische Vierteljahresschrift* 40 (4): 591-617. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight has led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments taking national context constellations into account. As revealed by empirical findings, however, these changes did not lead to better implementation results so far. The lacking success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings. We argue that these deficits can be partly addressed by applying an institutional perspective. It will be shown that, rather than being affected by the choice of the policy approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

30. Reforming Transport Policy in Britain: Concurrence with Europe but Separate Developments

2001. In *Differential Europe: The European Union Impact on National Policymaking*, A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A. Douillet, 57-97. Boulder, CO: Rowman & Littlefield.

Christoph Knill

In British road haulage and railways policies, fundamental reforms took place which, although concurrent with European policies, were the result of separate, purely national developments. This lack of connection is not surprising, given the time lapse between British (1968), and European (1993) road haulage liberalization. Much more striking, however, is the case of the railways, where British reforms occurred even *after* corresponding European activities. What explanation is there for the emergence of concurrent, but separate regulatory forms in British and European transport policy? Two aspects are of particular relevance in this respect: the liberal Anglo-Saxon approach dominant in British transport policy is in line with the regulatory philosophy that became dominant in EU transport policy during the 1980s; and the high reform capacity within the British political system which allows for the comparatively fast and far-reaching adaptation of regulatory strategies in the light of past experience. The high reform capacity can mainly be traced to the low number of institutional veto points in the British political system. In this way, opposing actors have limited opportunities to block or reduce the scope and scale of governmental reform proposals. Hence, regulatory reforms in both cases under study were basically shaped by learning from national experience. That is, the revision of past strategies in the light of their success or failure at achieving an efficient provision of services rather than reflecting the result of political compromises and package solutions.

31. On Deficient Implementation and Deficient Theories: The Need for an Institutional Perspective in Implementation Research

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems,* eds. Ch. Knill and A. Lenschow, 9-35. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight has led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments that take account of national context constellations. As revealed by empirical findings, however, these changes have so far failed to lead to better implementation results. The lacking success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings. Knill and Lenschow argue that these deficits can be partly addressed by applying an institutional perspective. It will be shown that, rather than being affected by the choice of the policy approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

32. Do New Brooms Really Sweep Cleaner? Implementation of New Instruments in EU Environmental Policy

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems,* eds. Ch. Knill and A. Lenschow, 251-286. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

In view of an ever-widening implementation gap, a significant shift in the Community's policy-making and implementation approach in recent years can be observed. This shift is characterized by the emergence of so-called new instruments, such as procedural regulation, self-regulation, public participation and voluntary agreements. In the hope of improving implementation effectiveness, new instruments are increasingly replacing or supplementing 'command-and-control' regulations which prescribe uniform, substantive objectives (such as emission standards, best available control technologies) in a detailed way. This chapter advances two arguments. First, in order to be able to understand the effectiveness of implementation in regard to European policies, the choice of policy instruments has to be considered in a broader institutional context. The institutional fit or misfit of national administrative traditions and European requirements is the decisive factor explaining the effectiveness of implementation, not the type of the policy instrument *per se*. Second, at least in the shorter term most new instruments have only limited capacities to mobilize support for environmental measures. Especially experience in the CEE indicates that more direct capacity-raising instruments are required here. Nevertheless, considering the insufficient financial means targeted at making top-down regulatory instruments effective in the CEE, even the limited effects of new communicative and economic instruments may make some difference.

33. Differential Europe: National Administrative Responses to Community Policy

2000. In *Transforming Europe: Europeanization and Domestic Change*, eds. M. Cowles, J. Caporaso and T. Risse, 44-59. Ithaca: Cornell University Press.

Adrienne Héritier

Community legislation is unquestionably a factor to be reckoned with in member-state policy-making. But the extent and mode of its impact on domestic policies and administrative structures will depend on the existing policy practices and the political and institutional structures of the country in question. In cases where there is a mismatch between an established policy of a member state and a clearly specified European policy mandate, there will be an expectation to adjust, which in turn constitutes a precondition for change.

Assuming the existence of a need to change, the ability to adapt will depend on the policy preferences of key actors, and the capacity of institutions to implement reform, realize policy change, and administratively adjust to European requirements. The policy preferences of key actors are influenced by the distributional consequences of the policies to be adopted (Milner 1996); the capacity to change depends on the degree of integrated political leadership, caused by a lack of formal veto points (Tsebelis 1995), or a decisional tradition capable of surmounting formal and factual veto points by way of consensual tripartite decision-making. Where there is a divergence of mismatch between European and national policies, and the policy preferences of political leaders are defined by a willingness to adapt, the absence of formal veto points and a cooperative decisional tradition will enhance the capacity to change and to adjust administrative structures in compliance with European policy mandates. The most far-reaching consequence – tantamount to innovation – is the replacement of old administrative structures with a comprehensive set of new ones. A less far-reaching form of adjustment occurs by "tinkering at the edges of old structures" (Lanzara 1998, 40), whereby new administrative units are patched onto existing organizational structures in order to accommodate the Europe-imposed policies. Another important measure of change is whether public actors, public and private actors, or only private actors are engaged in administering the sector and whether administrative functions pass from one form to another.

By contrast, the existence of a high number of formal or de facto veto points, which are not compensated by consensual decision-making patterns, makes adjustment to European policy demands more difficult and administrative change less probable because bids for change are blocked by veto players. This poses no problem as long as there is a basic congruence between the national policy, its administrative implementation structures, and European policy demands, one that allows the latter to be smoothly absorbed into current procedures and structures. If, however, there is a clear mismatch between national policies and European policy demands, political structures ridden with formal and factual veto points and the absence of cooperative decisional traditions will lead to non-implementation and in consequence to no, or only marginal, change in administrative structures.

34. Differential Europe: EU Impact on National Policy-Making

2001. eds. A. Héritier, D. Kerwer, C. Knill, D. Lehmkuhl, M. Teutsch, and A. Douillet. Boulder CO: Rowman & Littlefield.

Adrienne Héritier

The European Community affects the policy fabric of the member states, but that impact is differential. In some instances, new policy goals have been added to national agendas and fresh instruments are applied, while old ones become less important or openly challenged. In other instances, when European and national policy objectives are concurrent, national practices may be reinforced, or even redirected by European policies. As a consequence, the outcomes of European policy-making tend to be much more diverse than one would expect and preclude any simplistic explanation of European-induced changes. In order to cope with Europe's differential impact, we think of European and national policy-making as two separate, but parallel policy streams that intermittently interlink. Within this dynamic perspective, three factors explain how and when 'Europe matters' at the national level: the stage of policy development, the prevailing belief system, and the reform capacity defined by the number of veto players and integrated political leadership. Varying systematically on these explanatory variables, an empirical investigation of market-making policies, namely road haulage and rail transport, in five countries is carried out: Britain, France, Germany, Italy, and the Netherlands.

35. When Europe Hits Home. Europeanization and Domestic Change

2000. European Integration online Papers (EIoP) 4. http://eiop.or.at/eiop/texte/2000-015a.htm. Co-authored with Thomas Risse.

Tanja A. Börzel

Börzel argues in this paper in favour of a rather parsimonious theoretical approach to the study of the domestic impact of Europeanization. Whether policies, politics, or polities are studied, a misfit between European-level and domestic processes, policies, or institutions constitutes the necessary condition for expecting any change. However, adaptational pressures alone are insufficient. There must be mediating factors enabling or prohibiting domestic change and accounting for the empirically observable differential impact of Europe. She has then introduced two pathways leading to domestic changes which are theoretically grounded in rationalist and sociological institutionalisms, respectively. On the one hand, rationalist institutionalism follows a logic of resource redistribution emphasizing the absence of multiple veto points and the presence of supporting institutions as the main factors facilitating change. On the other hand, sociological institutionalism exhibits a socialization and learning account focusing on norm entrepreneurs as "change agents" and the presence of a cooperative political culture as the main mediating factors. She claims that Europeanization might lead to convergence in policy outcomes, but at best to "clustered convergence" and continuing divergence with regard to policy processes and instruments, politics, and polities.

36. Europeanization and Intrastate Transformation: Centralization and the Waning of Parliamentarianism

[Europäisierung und innerstaatlicher Wandel: Zentralisierung und Entparlamentarisierung?]. 2000. *Politische Vierteljahresschrift*, 41 (2): 225-250.

Tanja A. Börzel

A number of studies suggest that European integration impacts upon the domestic institutions of member states by changing the distribution of resources among domestic actors. Börzel argues in this paper that resource dependency needs to be embedded in an institutionalist understanding of Europeanization in order to explain when and how Europe affects the domestic institutions of the member states. First, domestic institutions determine the distribution of resources among the domestic actors in a given member-state. Second, the compatibility of European and domestic institutions determines the degree to which Europeanization changes this distribution of resources and hence the degree of pressure for institutional adaptation. Third, the domestic institutional culture determines the dominant strategies of actors by which they respond to such a redistribution of resources facilitating or prohibiting institutional adaptation. She demonstrates her argument empirically by comparing the impact of Europeanization on the territorial institutions of the five most decentralized member states, with special reference to Germany and Spain as representatives of opposite institutional cultures. The study shows that the regions succeeded in balancing the territorial centralization caused by Europeanization. However, the compensation of regional losses of competencies through the intrastate participation of the regions in the formulation and representation of the national bargaining position in European affairs reinforces executive dominance in European decision-making, contributing to the tendencies of deparlamentarization in the member states.

37. Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain

1999. *Journal of Common Market Studies* 37 (4): 573-596.

Tanja A: Börzel

(See D II 1, 15)

38. Private Governance across Multiple Arenas: European Interest Associations as Interface Actors

2001. *Journal of European Public Policy* 8 (2): 227-246.

Christoph Knill

As a result of growing economic globalization and rapid technological changes, governance in the field of information and communication policy increasingly requires policy coordination across multiple arenas, not only including vertical coordination across different institutional levels, but also

horizontal coordination across different policy sectors. In view of these new coordination demands, the mediation and accommodation of heterogeneous interest positions at the interfaces of various institutional levels and sectoral boundaries become a crucial governance function. The specific political, economic and technological conditions underlying ICT policy favour this function being carried out by European interest associations – a development which coincides with significant strengthening and structural integration of the system of European interest representation.

39. Adjusting to EU Regulatory Policy: Change and Persistence of Domestic Administrations

2001. In *Transforming Europe: Europeanization and Domestic Change,* eds. M. Cowles, J. Caporaso and T. Risse, 116-136. Ithaca: Cornell University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Europeanization may occur in multiple ways and the domestic structures affected by it are manifold, as shown in this volume. In this chapter Knill and Lenschow focus on the domestic impacts of European integration from a rather narrow perspective. Their study examines the impact of EU regulatory policies on national administrations. To answer these questions they draw on empirical results from the implementation of EU environmental policy in Britain and Germany. The empirical evidence presented shows that the level of adaptation can neither be directly deduced from the respective policy (one regulation facilitating national adaptation in contrast to another) nor do systematic country differences exist with respect to their capability to adapt. To nevertheless explain the seemingly confusing patterns of national adaptation they adopt a historical institutionalist perspective. Based on the understanding that institutionally grown structures and routines prevent easy adaptation to exogenous pressure, they trace administrative adaptation to the "goodness of fit" between European policy requirements and existing national structures and procedures. In developing this argument they suggest modifications to the often static historical-institutionalist framework; furthermore, they propose a link to an actor- or interest-centred analysis.

40. Under Stress: Europeanization and Trade Associations in the Member States

2000. *European Integration online Papers* (EIoP) 4 (14). http://eiop.or.at/eiop/texte/2000-014a.htm.

Dirk Lehmkuhl

Until today, it is relatively disputed how European integration impacts on domestic associations and the patterns of public-private interactions at the national level. While some predict a withering away of national corporatisms, others predict their reinforcement. By making organization theory available to institution-theoretical approaches, the paper offers a conceptual means that makes it pos-

sible to present an encompassing and theory-guided picture of the impact of European integration on societal structures in the member states. Associations – in the presented cases, business associations of the transport sector in Germany and the Netherlands – operate as intermediate organizations at the interface between private and public actors and incorporate the dynamics of their political and economic environments in both structural and strategic terms. It is argued that the way in which the configuration of associations within a sector changes in the course of European integration relates to efforts at this intermediate level to maintain or increase its relative autonomy from both its constituencies and its interlocutors.

41. Restructuring or Reinforcing the 'State': The German Länder as Transnational Actors in Europe

In *Germany's Power in International Politics*, ed. A.-M. LeGloannec. Forthcoming.

Tanja A. Börzel

A growing number of empirical studies clearly show that the strengthening-vs.-weakening of the state debate is too simplistic to capture the effect of European integration on the national state. This paper argues that European integration has affected the domestic distribution of power within the member states in very different ways. The European Union may provide domestic actors with the opportunity to circumvent the national state level. But the extent to which domestic actors exploit this opportunity depends first, on the degree to which domestic actors are affected by European integration, and second, on the amount of their domestic resources. Moreover, domestic mobilization at the European level does not necessarily imply a circumventing or by-passing of the national state. Whether domestic actors use their direct access to the European policy arena 'against' or 'pro' their national government depends very much on the domestic institutional culture - the collective understanding about appropriate behaviour within a given rule-structure. The case of the German *Länder* clearly indicates that a domestic institutional culture which embodies cooperative norms and practices prevents domestic actors from using European resources to circumvent their national government. The German *Länder* rely mainly on cooperation with the national government to influence European policy-making. Rather than restructuring the German state, European integration has tended to reinforce the German territorial structures of joint decision-making and interlocking politics.

42. States and Regions in the European Union. Institutional Adaptation in Germany and Spain

Cambridge: Cambridge University Press. Forthcoming.

Tanja A. Börzel

The book presents a model that allows the conditions to be specified under which Europeanization is likely to change the institutions of the member states. First, Europeanization must be "inconvenient," i.e., there must be some degree of "misfit" or incompatibility between European norms, rules, and procedures, on the one hand, and domestic norms, rules, and procedures, on the other. This

degree of fit or misfit constitutes adaptational pressure, which is a necessary but not sufficient condition for expecting change. Second, whether pressure results in domestic change depends on the capacity for adaptation of the member states. It is argued that domestic institutions which entail cooperative norms facilitate the accommodation of adaptational pressure; the scope of change will be limited. Non-cooperative institutions, by contrast, prohibit flexible adaptation, and as a result of change will be profound. The theoretical model is tested in a comparative study on how Europeanization has affected the relationship between the central state and regions in Germany and Spain. In both member states, Europeanization has undermined the power of the regions. While German cooperative federalism was able to accommodate centralization pressures by flexibly adjusting its institutions, competitive regionalism in Spain had initially prohibited adaptation. Only when the Spanish regions started to cooperate with the central state were they able to redress the territorial balance of power. Their turn to a more cooperative approach in European policy-making resulted in a significant change of Spanish territorial institutions.

43. Europeanization and Territorial Institutional Change. Towards Cooperative Regionalism?

2001. In *Transforming Europe: Europeanization and Domestic Change*, eds. M. Cowles, J. Caporaso and T. Risse, 116-136. Ithaca: Cornell University Press.

Tanja A. Börzel

The Europeanization and regionalization of the nation state are two of the most significant trends in the territorial organization of politics in post-war Western Europe. The chapter explores the link between the two processes. It argues that the impact of Europeanization on national territorial structures is diverse and 'institution dependent'. Domestic institutions mediate the impact of Europeanization in two fundamental ways: First, the 'goodness of fit' between European and domestic institutions determines the institutional pressure for adaptation which a member state is facing. Second, collective understandings – the institutional culture – determine the dominant strategy of domestic actors by which they respond to adaptational pressure. Börzel demonstrates her argument empirically by comparing the effect of Europeanization on the territorial institutions of Germany and Spain. Europeanization caused similar pressure for adaptation on the territorial institutions of both member states by weakening the legislative and administrative powers of the regions vis-à-vis the national government. In the case of Germany, however, the informal institutions of 'cooperative federalism' facilitated a cooperative strategy by the German Länder which allowed them to regain their competencies, and, thus, to adjust existing German territorial institutions to Europeanization, resulting in their reinforcement rather than their fundamental change. In contrast, the Spanish institutional culture of 'competitive regionalism' privileged a confrontative strategy by the Spanish regions which proved to be ineffective in redressing the territorial balance of power. As a result, the Spanish regions changed their dominant strategy toward increasing cooperation with the central state in a multilateral framework. This strategy change resulted in a significant transformation of the existing Spanish territorial institutions, turning them away from competitive towards more cooperative forms of intergovernmental relations.

44. Overt and Covert Institutionalization in Europe

2001. In *The Institutionalization of Europe*, eds. A. Stone, W. Sandholtz and N. Fligstein, 56-70. Oxford: Oxford University Press. Preprint 2000/12.

Adrienne Héritier

Observers of the European policy-making process are inevitably struck by the contrast between cumbersome decision-making processes on the one hand and simultaneous swift policy developments on the other. Many policies seem to be stuck for long periods in the Council, while at the same time similar measures are introduced under a different guise along a different path.

Why is it that European policies which stagnate in the main political arena, materialize in other shapes and forms elsewhere? And what are the typical escape routes when the main political avenue is blocked? Héritier argues that the formal institutional structure of the European Union together with the diversity of member states' interest would regularly lead to an impasse in decision-making were it not for the existence of different paths of institutionalization which have emerged to circumvent impending deadlock. This overt and covert institutionalization creates a European political space, meaning "a widely shared system of rules and procedures to define who actors are, how they make sense of each other's action and what types of actions are possible". It has developed in three different ways; firstly, straightforward changes made to existing rules as a result of interpretation and negotiated modifications; secondly, the explicit and implicit development of new soft or informal institutions, such as information and monitoring, mobilization and network building, and the spontaneous emergence of social conventions, as a way of expanding the areas of European activity; and thirdly, "kitchen politics", i. e. more covert ways of overcoming formal institutional obstacles to decision-making. Such covert ways involve committing actors to policy decisions, the implications of which are not spelt out in advance, by concealing planned or on-going changes from the general public, as well as by re-labelling and re-contextualizing issues in order to embed them in a different choice situation which helps overcome a deadlock. These three different modes of effecting change can be observed in the most diverse areas of European policy-making and generally result in a widening of European policy activities.

45. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation

2001. *Journal of European Public Policy* 8 (5): 825-852. Forthcoming.

Adriennne Héritier

Although the goal of market integration has not actually been challenged in recent years, it has nevertheless increasingly come to be considered incomplete and in need of complementary goals which serve the general interest by promoting social cohesion and equality. The debate has been conducted in various areas, such as in the fight against unemployment and poverty and in the provision of public utilities. In the latter case, regarding the provision of energy, water, communication and transport, the debate was sparked by the privatization of public monopolies and their infrastructure networks, and the deregulation of service provision. The network industries which had traditionally been shielded from competition and were run within national boundaries were dramatically transformed. This change – which in some countries resulted from European legislation - was meant to induce more producer competition, improved productivity, more consumer choice in the supply of network services, and lower prices. However, it has triggered concerns over the mainte-

nance of general-interest goals in service provision, i.e., over safeguarding the accessibility, equality, continuity, security and affordability of these services after liberalization. There is a general political consensus that communicating by voice telephony, enjoying a certain degree of mobility, and using energy are basic needs that should be guaranteed and that firms operating in network industries should thus be subject to „public-service" objectives. This contribution raises the questions: why and to what extent does a conflict exist between economic liberalization and general-interest goals in the first place? Héritier then turns to the role of European policy-making, which aims at striking a balance between the poles of market integration and competition, on the one hand, and the provision of public services, on the other. What are the existing European policies and how do they fare when measured against these two goals? She then focuses on the central question of the analysis: how can the pro-general-interest decisions at the cross-sectoral and sectoral level (in energy, telecommunications and rail) be accounted for in terms of the interaction of the formal political and legal actors involved in shaping the outcomes at the European level?

46. Policy-Making and Diversity in Europe: Escape from Deadlock

1999. Cambridge: Cambridge University Press.

Adrienne Héritier

The book examines the European polity and its policy-making processes. In particular, it asks how an institution which is so riddled with veto points manages to be such an active and aggressive policy maker. It is argued that the diversity of actors' interests and the consensus-forcing nature of European institutions would almost inevitably stall the decision-making process, were it not for the existence of creative informal strategies and policy-making patterns. Termed by the author 'subterfuge', these strategies prevent political impasses and 'make Europe work'. The book examines the presence of subterfuge in the policy domains of market-making, the provision of collective goods, redistribution and distribution. Subterfuge is seen to reinforce the primary functions of the European polity: the accommodation of diversity, policy innovation and democratic legitimation. The book concludes that the use of subterfuge to reconcile unity with diversity and competition with co-operation is the greatest challenge facing European policy-making.

47. Politics and Jurisdiction in European Electricity Policy: Problem Definition, Conflict Solution and Legitimation

Submitted to *European Law Journal.* Co-authored with Leonor P. Moral Soriano.

Adrienne Héritier

(See D IV 1, 5)

48. A Creeping Transformation? The European Commission and the Management of EU Structural Funds in Germany

2001. Dordrecht: Kluwer.

Michael W. Bauer

This volume investigates whether and why the European Commission is becoming increasingly involved in the domestic implementation of EU policy programmes and how such new supranational involvement affects national administrative procedures. Resource dependence and principal-agent theory serve as the background for advancing an 'implementation management explanation'. At the very centre stands the hypothesis that the European Commission is about to be transformed into a co-manager of domestic policy execution. The main empirical questions are: Why is there a growing demand for the control of domestic policy implementation at the supranational level? And, how does supranational procedural change transforms the national implementation of EU structural policy?

49. Europeanization Mechanisms: National Regulation Patterns and European Integration

[Mechanismen der Europäisierung: Nationale Regulierungsmuster und Europäische Integration]. 2000. *Schweizerische Zeitschrift für Politikwissenschaft* 6 (4): 19-50. Co-authored with Christoph Knill.

Dirk Lehmkuhl

Notwithstanding the growing number of studies on the domestic impact of European integration, this field of research still constitutes a relatively unexplored terrain in political science. A particular problem is the lack of a comprehensive explanatory framework which can account for the varying patterns of domestic adaptation across policies and countries. In this paper Lehmkuhl and Knill have developed an analytical concept to help develop this research area out of its infancy. They argue that the approach required for explaining domestic adaptation patterns may vary with the distinctive Europeanization mechanism underlying the European policy in question. In particular, in the area of regulatory policies they have distinguished institutional compliance, changing opportunity structures and the framing of domestic expectations and beliefs, each of which requires a distinctive approach to account for their domestic impact.

50. An Alternative Route of European Integration: The Community's Railways Policy

2000. *West European Politics* 23 (1): 65-88. Co-authored with Christoph Knill.

Dirk Lehmkuhl

The process of European integration and policy-making is sometimes rather puzzling. On the one hand, it is well documented that, with respect to the implementation of European legislation, member states tend to do less than they are supposed to do. On the other hand, it is striking that with respect to the implementation of the Council Directive 91/440 on the development of the Community's railways many member states went far beyond the minimum required by the European legislation. We argue that these differing evaluations of implementation success can be traced to different implementation approaches, which may be termed the „compliance approach" and the „support-building approach". While the first is directed at prescribing domestic reforms „from above", the latter aims at triggering European integration within the existing political context at the national level. Here, successful implementation refers to the extent to which European legislation triggers domestic changes by stimulating and strengthening support for European reform ideas at the national level. In this respect, European legislation can influence the domestic arenas in basically three ways: by providing legitimization for political leadership, concepts for the solution of national problems, and strategic constraints for domestic actors opposing domestic reforms.

51. New Structures for Environmental Governance in the European Commission: The Institutional Limits of Governance Change

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems,* eds. Ch. Knill and A. Lenschow, 39-61. Manchester: Manchester University Press. Co-authored with Marieva Favoino and Andrea Lenschow.

Christoph Knill

The Community's new approach to environmental policy, as it is developed in the 1993 fifth Environmental Action Programme (5th EAP) of the EU, implies a twofold strategy in order to address the increasing implementation deficit in the environmental field. Besides the development of new policy instruments and the reorientation of regulatory strategies and objectives, an important component of the new approach refers to institutional innovations at the European level. The Commission plans to rely on the participation and consultation of relevant public and private actors in the policy formulation process in order to improve the quality and legitimacy of policy design. It is the objective of this chapter to investigate and explain the implementation of these institutional innovations on the Commission level. The effective formal and practical adoption of these innovations themselves can be considered as the necessary condition in order to achieve their overall objective of improving the implementation performance of EU environmental policy.

52. „New" Environmental Policy Instruments as a Panacea? Their Limitations in Theory and Practice

2000. In *Environmental Policy in a European Community of Variable Geometry: The Challenge of the Next Enlargement*, K. Holzinger and P. Knoepfel, 317-348. Basel: Helbing & Lichtenhahn. Co-authored with Andrea Lenschow.

Christoph Knill

In view of an ever widening implementation gap in the environmental policy area, we observe in recent years a significant shift in the Community's policy making and implementation approach. As implementation problems are widely associated with classical forms of regulation and intervention, namely technocratic, interventionist policy making from the top (EU) down (national/local implementation), this shift is characterised by the emergence of so-called "new instruments", such as procedural regulation, self-regulation, public participation and voluntary agreements. It is the objective of this chapter to assess the merits of this change of approach first in general terms and to then evaluate the potential of "new instruments" in Central-Eastern European (CEE) states as part of their efforts to catch up and comply with the EU acquis communautaire. We will argue that the strong juxtaposition of new and old policy instruments obscures some of the "first order" conditions that are required for successful implementation, namely a relative "fit" with institutional structures and legacies as well as a minimum socio-economic capacity to adapt to new demands.

D V Common Goods and Rationality: Institutions for the Provision of Common Goods Adapted to how the Human Mind Really Works

If one narrows the concept of common goods down to the technical economic concept of public goods, one is also tempted to buy a specific view of the world, the one underlying the neoclassical economic model (basic Becker 1976; Kirchgässner 1991; Becker 1996). It is a deeply pessimistic view, on the one hand, and a strikingly optimistic one, on the other.

The view on individual motivation is conspicuously pessimistic. Individuals do not care for their neighbours if they cannot rationally expect to be paid off. The expected payoff must usually even be higher than the price an individual would have to pay if it bought help on the market and paid immediately. Among other things, this is due to positive time preferences. The actor values money at his disposal today higher than money at his disposal tomorrow. More specifically, he compares helping his neighbour to alternative opportunities for making money by using his human capital. If these opportunities immediately generate a wage, the individual can invest this money on the capital market. Being paid back later means losing the interest rate. A higher payment must make up for the difference. Secondly, future payments are usually also less secure than present payments. Your neighbour may fall ill before he can pay you back, or the implicit contract may be insufficiently protected against cheating. A rational actor estimates the probability of being paid back. It is smaller than one if there is any uncertainty. The actor multiplies the expected payoff by this probability. The product of this operation must be equal to the present value of his assistance, or it will not be given.

On the other hand, the view of individual capabilities underlying the neoclassical economic model is strikingly optimistic. The individual possesses a complete ordering of preferences. He knows these preferences before acting. He has no problems in fully understanding the situation to which he reacts. He has unlimited time to search for and process information. His capacity to calculate the optimal reaction is equally unlimited. Behind this is a set of assumptions about the world out there. Its evolution may be uncertain. But the individual at least knows the outer bounds of a space of possible future states of the world. Similarly, the economic model may open itself up to other individuals, motivated by disdain. But when calculating his reaction to such a compatriot, the individual can build rational expectations about the behaviour of the other.

The economic model does not claim that the world actually is like this. In the interest of learning more about incentives, it makes these assumptions, even if they sometimes are counterfactual. Getting the incentives right, or at least not patently wrong, is indeed an important precondition for the provision of common goods. But precisely what impact do incentives have on behaviour? Do scanty incentives to contribute to the provision of common goods in fact result in the perception that common goods are not being sufficiently provided? Are there other reasons for under-provision? To the extent that incentives are the core problem, can institutions simply redress them? (How) do the addressees become attentive? Are they likely to perceive the altered situation correctly, and to change their behaviour as expected? Should one not rather be more modest? To speak in accord with an alternative perspective, gross disincentives would make contributions to the common good unlikely. But behavioural change would not exclusively, maybe not even predominantly, be brought about by changing the incentives. Or even closer to the mark: the importance of incentive change for behavioural change might depend on the institutional framework. If behaviour is embedded in a framework with economic competition in a highly organised market, then small incentive corrections might indeed often make firms readjust their behaviour broadly as expected. A similar sensitivity to incentive changes might be present among politicians running for re-election. In this perspective, institutions would not, or at least not exclusively, restrict individual behaviour; they would mould it in the first place.

To answer these questions, one needs a theory of how people actually make decisions about whether (and how much) to contribute to the provision of a common good. This programme purports to build such a theory, mainly drawing on work from three fields: psychology, experimental economics and experimental legal studies. A preliminary approach has already been well-developed in psychology; it has been widely applied to economics; and it has begun to gain adherents in law, too. It takes the rational choice model of standard economics as a benchmark. Experiments demonstrate how individuals consistently violate this benchmark. The deviations are dubbed "biases" (Kahneman, Slovic et al. 1982; Kahneman and Tversky 2000; for the reception in law see Sunstein 2000). This view has two important implications for institutional design. The presence of biases may itself pose a common goods problem, or at least aggravate an existing one. This is clearly seen in consumer protection. There are rational choice explanations, like those showing the characteristic effects of economies of scale in terms of transaction costs. These can be more easily exploited by sellers. But consumers might also deserve protection, if the seller's exploitation of generic knowledge about biases is used to their disadvantage. Viewing debiasing as a task for law, Magen is planning a legal habilitation on subject. Rothfuchs (1), in his legal dissertation, looks more specifically at consumer protection. On a second, obvious, level, biases change the conditions for designing institutions, seeing to it that common goods are provided.

In a way, the "biases approach" follows the agenda set by the rational choice model. A competing psychological line of research objects that more often than not "heuristics" are quite functional for the individual. They dramatically save decision costs. They exploit the potentials of context and memory. They respect the computational limitations of the human mind. The more the situation differs from the optimistic assumptions inherent in the rational choice model, the more heuristics are even likely to perform better than attempts to optimise (Gigerenzer, Todd et al. 1999). These insights open up alternative opportunities for institutional design. A conference (2) jointly organised with the Berlin Max Planck Institute for Human Development shall cast light on the potential of this approach. It is meant to lead into a joint line of research with that institute. Two members of the Berlin Institute, Fiddick and Kurzenhäuser, spent a number of months in Bonn and helped the research unit to gain a better understanding of the psychological discussions.

People have to make thousands of decisions a day. Many of these decisions have an impact on the provision of common goods, like the choice between public and private transportation. People do not repeat the decision making process from scratch whenever they are confronted with such choices. Rather, their behaviour is patterned (Schlicht 1998). Governance attempts should see to it that such patterns are formed and stabilised. From an economic vantage point, Mantzavinos (3) wants to cast light on the underlying relationship between formal and informal institutions in general. Baehr (4), in his legal dissertation, looks more specifically at how command and control regulation is able to actually change behaviour. From a psychological angle, Beckenkamp (5) investigates schemata as a strategic variable for the provision of common goods. Another paper, by Beckenkamp (6), studies the role of thresholds for behaviour. Schmidt is planning a dissertation in economics, exploring the analytic potential of psychological learning theories for understanding the provision of common goods.

Social decisions about the provision of common goods are often to be taken under conditions of considerable uncertainty. Rational choice theory has sophisticated tools for dealing with uncertainty: rational expectations, in general, and Bayesian updating, more specifically (for a comparison see Martignon and Blackmond Laskey 1999). But these tools again pay for their elegance with strong assumptions. The minimum requirement is positive knowledge about possible future states of the world, even if probabilities are unknown. And in order to update their beliefs in light of new information, individuals must be assumed to possess outstanding computational capabilities. In her habilitation on regulation under conditions of uncertainty, Spiecker (7, 8) contrasts these views with behaviourally less demanding alternatives. Kurzenhäuser and Spiecker (9) have a joint psychological and legal paper on information processing as a source of problems in risk perception. Engel (10) adds the dimension of legal rule application under conditions of uncertainty. The latter is his contribution to a conference (11) on knowledge, ignorance and uncertainty convoked by the project group.

Often, mutual trust is a precondition for overcoming a common goods problem. Regularly the choice of institutions becomes richer, less costly and more elegant when the contributors can trust each other. Again, trust is not foreign to rational choice analysis. Farrell (12, 13, 14) has papers demonstrating how far rational choice can be pushed in this respect. But there are analytical limits, hard to overcome. They are the object of an essay by Engel (15).

Rational choice analysis starts from the dichotomy of preferences and restrictions. In reality, however, preferences are not out of reach of political action. In his legal dissertation, Lüdemann (16, 17) explores a specific instance. In order to induce the public at large to separate different fractions of waste, German policymakers successfully changed individual and social attitudes. From a constitutional viewpoint, however, this is a questionable strategy. The political scientist Verweij (18, 19, 20) goes one conceptual step further. In his work on the surprisingly successful clean-up of the Rhine, he starts from the premise that reality is socially constructed. Policy makers can try to exploit the competing logics of divergent views of the world. Verweij (21) applies this approach to global warming as well. Finally, Jonas/Maier-Rigaud (22), in a joint psychological and economic paper, look at how much the willingness to contribute to the provision of common goods is influenced by a sense of control over the governing institutions, rather than by incentives. Related to this, Jonas is planning a paper on procedural justice.

While all the foregoing rests on appropriately modelling individual or collective behaviour, a complementary approach, which is also part of the research programme, steps back and looks at the underlying concepts of rationality. In his economic habilitation, Okruch (23) searches for concepts of rationality appropriate for an evolutionary perspective of policy making. Bitter (24), in her legal dissertation, asks whether the economic concepts of signalling, screening and mechanism design can be transposed into law, or whether they clash with a different, legal form of rationality. Understanding the rationality concept inherent in legal command and control regulation is the purpose of a paper by Engel (25). Together with the Berlin Max Planck Institute on the History of Sciences, the project group will convoke a series of two conferences (26) investigating when there is value in inconsistency, and in which institutional framework inconsistency ought to be embedded.

A last, related activity is a conference (27) jointly prepared by the Munich Institute for Psychological Research and the project group. The conference outline starts from the observation that the process of arriving at legal decisions and the reasons officially given for the actual decision can be disjunct. On a very basic level, a similar disjuncture can be hypothesised for the way children acquire a self-conception. It seems quite possible that a self-conception does not come before an other-conception, but after it. By perceiving that other individuals are out there and have their own personality, the child generates the abstract idea of perception and, in a second step, applies it to itself. Both phenomena are obviously far away from each other. The conference intends to bridge the gap by inviting scientists from "interdisciplinary" fields, in particular from social psychology. For the provision of common goods, the organisers hope to learn about the specific role official reasoning has.

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1. Protecting Cyber-Consumers

Dissertation Project

Martin Rothfuchs

(see D III, 6)

2. Institutions for Homo Sapiens

Conference and Joint Project with the Max Planck Institute for Human Development
Part of Inter-Institute Research Initiative

Homo sapiens. Rationality distinguishes humans from animals. From this differentiating characteristic a value judgment is often quickly made. Instincts are base. Abstraction is turned into a quality standard. Finally, variations are no longer even perceived. On the basis of analytic behavioural presuppositions, claims are made about individual decision-making behaviour. But doubts increasingly gnaw away at us. Crystal-clear rational models can be experientially tested – and often they are rebutted. The list of systematic deviations grows longer each year. Conversely, the constructs of pure rationality fail us. Computers are able to defeat people in chess games. But if decision-making contexts are even a little less standardised, they are vastly inferior to people. Copying human rationality is considered the real challenge of software developers. So, we appear to have Homo sapiens, but not *homo rationalis* after all.

Human wisdom, the *sapientia,* entails the ability to act according to plans. Humans can share their workload with others, provide for the future, recognize and take advantage of successful behavioural patterns, avoid unsuccessful or harmful ones. They devise institutions for this purpose. They bind themselves, their partners, social groups or entire communities. They are able to do so with implied behavioural expectations. But they can also formulate explicit expectations or commission third parties to carry them out. Legal institutions are the most developed. They entail a normative expectation, and thus appeal to the social identity of the individual. The process of forming rules is democratically legitimated. The application of rules is monitored by the constitutional state. At the same time it provides for the evolution of the rules in light of experience gained through the practice of applying them. The detailed rule is embedded in the context of the legal order.

The governance effect of institutions is a central object of social scientific research. Action-theoretical approaches understand institutions from the perspective of individual actors. They need a behavioural model in order to do so. The rational choice model has been dominant thus far. It is not just the basis of neo-classical economics; it has also made its way into the political sciences, sociology and legal studies. Under the tag of economics (*"Ökonomik"*), economists have attempted to bring all of these strands together. The rational choice model is highly sophisticated. With game theory it even allows precise statements about strategic behaviour and information asymmetry. But strong assumptions are the price for its effectiveness. Preferences are strictly separated from restrictions. Every individual is imputed to have a complete order of preferences. It is assumed that individuals know their utility function before they interact with others. It has even claimed to correctly perceive the social problem. Altruism and jealousy do not exist. It is assumed that there are no preferences for institutions. Individuals have an unlimited amount of time to search for and process information and an unlimited capacity to compute optimal solutions.

If it is kept in mind that these assumptions have a model character, they lead to useful follow-up questions. Under which general conditions do people really act roughly as the rational choice model presumes: Under effective economic or political competition? When they have occasional contact?

When they interact over a distance and cannot see their partner? In contact between different cultures? For which questions can the individual deviations from the behavioural assumptions of the rational choice model be ignored: Those dependent upon the behaviour of the entire group or a group majority? Those concerned solely with long-term effects? In fact, in many situations people do not act even remotely like the rational choice model assumes. And the deviations from this model are not neutralized when aggregates are used. So the analysis of institutions has to be based on different foundations. This project is meant to contribute to that.

One initial way of thinking about this considers all deviations from the rational choice model to be web deficiencies of the human understanding. Partisans of this view speak of biases. But this judgement is rash. Many of the capabilities of the human understanding can only be utilized because we do not follow a rational model. Thus the rational model is often not good as a norm for differentiating between the quality of the performance of our understanding. In order to prevent this prejudice, it is better to speak of intelligent heuristics. At the same time it is possible for heuristics to be effectually dysfunctional in individual cases. They can be employed in situations that they are unsuited for. Heuristics that are genetically or culturally determined may have been adaptive in the past, but they no longer are today. Besides, those who study heuristics do not dispute that humans may have some ability to decontextualize decision-making problems. In the end, a rational model that is carried to extremes is really only able to be managed by rational devils. However, people are quite capable of considerable acts of abstraction. When are they rational, though? And when should they be? Do both decision-making mechanisms belong to two different worlds? If not, what are the junctions between the two worlds?

Once things have been viewed in this way, the need for institutions appears in a new light. Rational-theoretical glasses simply blind us to some functions of institutions. This is especially true insofar as our understanding really does lead us to dysfunctional solutions in individual cases. Institutions might then be able to help prevent deficiencies from harming individuals. At the very least, this strategy presumes intuitive knowledge about how the understanding functions in concrete situations. This knowledge can be distributed asymmetrically. It can then be exploited strategically. This is an explanatory model for an entire legal field, which the rational model hardly knows how to contend with, for instance, consumer protection. A related problem is based in the situational character of heuristics. They can be applied to the wrong situations. Or as a result of a small change in the environment, the situation may no longer be correctly recognized. Once again, there is a strategic dimension to the problem. Those with superior knowledge can falsely portray a situation on purpose, for example, by distorting a sample.

Conversely, from this perspective the rationally defensible need for central intervention can be rendered insecure. One example ought to suffice. The rational model considers public goods to be an obvious case of market failure. It does not help to clarify the incentive structure to the parties. Should they obligate themselves to commonly provide a good, for the game theorists this is just "cheap talk"; for each individual is best served when all the others abide by the agreement but he is able to free ride. Rational individuals see that from the start and they thus do not enter into the contract to begin with. By contrast, experiments and field research demonstrate a great willingness to enter into such contracts. In most cases they are also subsequently observed. The parties rely on the strong reciprocity norms. These can be understood as behavioural heuristics in contract situations. They by no means guarantee absolute certainty. But the role of central intervention changes. First of all, they must ensure that the heuristic is in fact employed. It thus makes a considerable difference whether the individuals really perceive the situation as a (social) contract or as a one-sided normative expectation. Besides, institutions are needed as safety nets should one of the parties rationally calculate his utility and violate the agreement.

The same two questions are also posed if the need for institutions is determined. Some institutions are completely invisible from the vantage point of rational choice; others appear in a different light. One example of each for state regulation ought to suffice. In accord with the rational model those addressed by rules seize their advantage if it is greater than the expected costs. State regulation is thus equated with a change in incentives. Instead of that, however, the state can proceed like a salesman who has gotten his foot in the door. Those who give an inch are much more likely to go the whole mile. They feel obligated to do so. Conversely, the correctly calculated state incentive can even be counterproductive; for it can colour the situa-

tion differently for those being addressed. What previously looked like a social exchange becomes a one-sided normative demand. Those who see things this way may even find it revolting that they are now supposed to pay for their decent behaviour.

In complex societies institutions are not always created ad hoc. More often, they are the work of other institutions. External ones step up along side internal ones. Regulative policy is the most important. Legislating is its central function. Legal institutions are thus conceived in a spirit of positivism. A democratically legitimated legislator can establish them and abolish them again. The constitution sets the parameters. Branches of rational theory are concerned with analysing them. Here too, a more realistic behavioural model shifts them. Thus, for example, the heuristic of availability attempts to explain why scandals are such effective mechanisms for agenda setting. Political parties, as well as the media, appear to be availability entrepreneurs.

If institutions are not created by those who they address, the use of them requires legitimation. At the limit, they must be allowed to overcome the resistance of those they address. The reason for the intervention and the means chosen for it thus must be able to be consistently justified. Above all, however, state coercion must remain a rare exception. That can only happen if most of those addressed support or at least tolerate the institutions. Democracy and the constitutional state are thus not merely enlightened benefits: they are functionally necessary. Given these insights, it is not easy for the state to react to the web deficiencies of our understanding. It is even more difficult for it to use them, for these peculiarities are not currently known by the individuals. At the very least, the state thus needs well-secured knowledge. Even then, one can question whether its authority will remain intact if it employs this knowledge.

The rational model has only been developed to its present high level in the past few decades. Those critical of it from the vantage point of psychological findings have indeed been able to rely on secure empirical knowledge and a coherent alternative conception from the beginning. But the dispute with the rational model has given their research a new boost. Many of the results were made early on. However, the explicit formulation is new. Human understanding has not changed radically in the past decades. If institutions have sought to fulfil their functions, they have thus always reacted to people as they are. At the peripheries they may have formed those addressed by them in their image. Besides, institutions have certainly not been created by benevolent dictators. Those who have driven the development have usually had their own future advantage in mind, or they have served a personal ideology. But institutions have only been able to prevail if they have also, at least in principle, been functional. Choices made in advance between the numerous possible institutions are better able to secure our own advantage than public subservientness. One assumption is derived from this: evolved institutions must contain implicit knowledge about how the human mind really works.

3. On the Interaction Between Formal and Informal Institutions: A Cognitive Approach with an Application to the Common Goods Problem

Post Habilitation Research Project

Chrysostomos Mantzavinos

Institutions are the rules of the game, in a society, that structure human interaction. They are made up of formal rules (constitutions, statute and common law, regulations), informal rules (conventions, moral rules and social norms) and the enforcement characteristics of each. Because they make up the incentive structure of a society, they define the way the game is played through time. When theorizing about institutions, it is useful to distinguish between two aspects: the external and the internal.

From the external point of view of the scientific observer, institutions are shared behavioral regularities or shared routines within a population. From an internal point of view, institutions are nothing more than shared mental models or shared solutions to recurrent problems of social interaction anchored in the minds of the people. Only because they are anchored there, do they ever become behaviorally relevant. The elucidation of the internal aspect is the crucial step in adequately explaining the emergence, evolution, and effects of institutions. This is what makes for the qualitative difference of a cognitive approach to institutions in comparison to other approaches.

Though we avail of theories of how the informal institutions of a society emerge and change in an evolutionary process of spontaneous interaction and of theories of how the formal institutions are imposed to the community as the product of the political process, we do not have a theory of the interaction between formal and informal institutions. This research project will therefore focus on three specific questions: (a) How do formal and informal institutions interact to produce social order? (b) What institutional mix of formal and informal rules lead to a wealth-creating economic game? (c) What are the formal and informal elements that are at work when common goods are provided? A promising avenue of research will be to incorporate the recent advancements in cognitive science that offer a promise of illuminating the cognitive processes, for example heuristics and analogies, that people employ when they are confronted with changes in their social environment.

4. Behavioral Modification through Command and Control Regulation

Dissertation Project

Thomas Baehr

Command and control regulation has fallen into disrepute. It is regarded to be "antiquated". Especially with regard to environmental law, its scanty enforcement has been criticized. Regulatory law is said to be in a crisis.

The claimed inefficiency of command and control regulation has predominantly been an issue of legal policy. But taken seriously, this poses normative concerns, too: Command and control regulation necessarily interferes with fundamental rights. If the widespread critique is valid, there will be problems concerning the constitutional justification of this interference.

In order to seriously evaluate the capacity of regulatory law in accordance with scientific standards, one first needs to understand the instrument's mode of operation. Existing concepts in the law and economics literature and the field of sociology offer valuable insights. However, on their own they are not sufficient to explain behavioral modification through regulatory law.

In an attempt to be broader in scope, this project is thus going to research the impact of command and control regulation on the addressee: In which way does regulatory law influence individual behavior? Which factors promote the success of regulatory policy? After a brief review of the literature on the issue, I am going to develop a behavioral-theoretical explanation that takes insights from social psychology into account. In doing so I am going to suggest potential restraints and negative effects as well.

Subsequently I am going to address the constitutional implications of this model. Most relevant in this respect are the proportionality principle and the principle of equality.

5. Schemes as a Strategic Instrument in Governing the Commons

Post Habilitation Research Project

Martin Beckenkamp

Both economists and psychologists are interested in when and why people deter from rationality. In this context human rationality is understood as a faculty which makes it possible to engage in completely perfect problem-solving with the goal of maximizing one's own benefits. *Homo oeconomicus* is understood as a scientific abstraction of a perfectly rational person in this sense. The analysis of the optimal behavior of *homo oeconomicus* is decisive in political measures for changes in the incentive structures (e.g. by taxes or subvention).

Besides the empirical question about the reasons for and conditions of deviations from rationality, research into different concepts of rationality is being carried out, which might shed new light on behaviour presumed to be irrational. Besides economists and psychologists, other members of the scientific community, from very different disciplines, are also interested in this issue: biologists and socio-biologists, sociologists, political scientists and lawyers. They pose questions like: How could evolution admit co-operation? How has a cooperative society developed and under which conditions does it function? Why do people go to elections to place their votes? When is somebody sane in the sense of criminal law?

Governing commons in such a way that Hardin's well-known threat of the "tragedy of the commons" can be avoided poses similar questions about the rationality of human behaviour. The tragedy of the commons is based on the fact that individual rationality and co-operative rationality offer contradictory solutions to problems. Consequently, efficient governance requires that the relevant actors recognize both that overusing a resource may be harmful to the group and that involvement in a specific group-structure can lead to externalities and thus foster overuse.

If information is adequately conveyed, such insights can be facilitated. In the context of "schema theories" in cognitive science, considerations can be found concerning how information can adequately be presented, given the "schemes", "frames" or "knowledge base" of the recipients and the constraints in our cognitive architecture. These considerations can be enriched by recent research about which heuristics are used to handle complex problems and about how and when they are used. Such heuristics can be understood as action plans, stemming from the activation of the respective schemes. Integrating scheme theory and research into heuristics makes it possible to investigate both how to convey adequate information and how to shape institutional formations in a way adapted to humans. The investigation must take into account both aspects: i.e the resources and the social interdependencies. Ideally, institutional rules would induce the use of adequate heuristics, conveyed by adequate information policies. For example, the activation of trust could be understood by triggering a useful heuristics, which helps in maintaining co-operativity.

To resume, the objective of the project is (1) to investigate the virtue of efficient information in order to induce adequate schemes both on resource issues and social interdependency issues, and (2) to investigate institutional formations fitting to both kinds of schemes, which people apply in the context of common-pool-resource problems.

6. The Usefulness of Aspiration-Levels in Heuristics

Paper Project

Martin Beckenkamp

This paper begins with a discussion of the similarities and differences in the definitions of heuristics and algorithms. Subsequently it refers to some problems in everyday life and in the evolution of man which necessitate the application of heuristics. After that, some problems are introduced where the application of heuristics is not necessary, but is nevertheless useful. In this context the paper refers to some heuristics from Gigerenzer, Todd & ABC-Group (1999). It also refers to Simon's (1955) "satisficing principle". It will be shown that a substantial feature of many heuristic methods and processes consists in the application of aspiration-levels. This leads to the consideration that the use of aspiration levels might generally be advantageous in some situations where decisions are uncertain. A mathematical illustration presented by Thomas Bruss in Scientific American exemplifies this consideration. Further reflections are added to this illustration, showing that the median is the best point for the aspiration level. Choosing the median as the aspiration level raises the probability of making the good choice from ½ to ¾. To resume, besides combinatory and psychological reasons for the usefulness of heuristics, this argument adds reasons from probability theory.

7. State Action in the Face of Uncertainty

Habilitation Project

Indra Spiecker, gen. Döhmann

(see D I, 7)

8. State Decisions in the Face of Uncertainty

2001. *Genetic engineering in the non-human realm: What can and should law regulate?* ed. J. Lege, 51-86. Berlin.

Indra Spiecker, gen. Döhmann

(see D I, 8)

9. Information Processing as Source of Risk Perception Problems and Its Legal Implications

Paper Project

Stephanie Kurzenhäuser/Indra Spiecker gen. Döhmann

Gathering information is considered to be a primary means of reducing existing uncertainty while preparing a decision. However, legal rules do not allow the state to collect all the information it desires. The constitutionally based principle of legitimate action (*Rechtsstaatsprinzip*) and the protection of individual rights hinder the free acquisition and use of knowledge. But psychological aspects also create difficulties in reaching the certainty the governmental decision-maker would like to have. The interpretation of information is highly variable. This project concentrates on showing two causes of variability in understanding information in the field of statistical data: the different forms of representation and the lack of contextual side-information. Examples are taken especially from the field of the new (2001) German infectious disease law, where medical data and experts played a major role. The authors will propose measures concerning how legislative action should be structured in order to react to the described variability in the understanding of information in the preparation of legislative decisions.

10. Legal Decisions Under Uncertainty

2002. In *Wissen, Nichtwissen, Unsicheres Wissen*, eds. Ch. Engel, J. Halfmann and M. Schulte. Baden-Baden: Nomos. In Press.

Christoph Engel

Lawyers routinely have to decide under considerable uncertainty. Those officially applying the law in force, like judges or public officials, often do not know all the facts of the case. And the legislator ought to know, understand and forecast much more than he usually does. Economics, psychology and systems and cultural theory address knowledge, ignorance and uncertainty, using sharp conceptual tools. This article explores how law might exploit the knowledge of its neighbouring disciplines. In each case, the assessment hinges upon understanding how the concept of knowledge in question differs from the legal one. If and when the open integration of a foreign concept proves unfeasible, two ways out are still worth investigating. The authorities entrusted with rule application often enjoy more latitude when tracing and selecting cases. Moreover, the legislator can step in and tune a statutory provision such that it can better exploit the generic knowledge offered by a neighbouring discipline.

11. Knowledge, Ignorance and Uncertainty

An interdisciplinary Conference
Potsdam, 6–9 December 2000
2002. Baden-Baden: Nomos. In press.

In Potsdam, from 6 December through the 9 December, 2000, the Project Group, in cooperation with the Institute for Technical and Environmental Law at the University of Dresden and the Volkswagon Foundation, held an interdisciplinary conference on information, knowledge and ignorance.

The conference aimed at giving prominent members of several disciplines the opportunity to present, compare and discuss their individual fields' research agenda and findings with individuals from other disciplines – especially with a focus on problems of the emerging knowledge society. The fields selected included economics (Prof. V. Weizsäcker, Cologne; Prof. Eichenberger, Fribourg), political science (Prof. Zintl, Bamberg; Prof. Stehr, Bremen), cultural theory (Prof. Thompson, Bergen/London), philosophy (Prof. Lübbe, Leipzig; Dr. Schüßler, Duisburg), systems theory (Prof. Japp, Bielefeld; Prof. Bora, Bielefeld), sociology (Prof. Halfmann, Dresden;), psychology (Prof. Fiedler, Heidelberg; Prof. Gigerenzer, Berlin) and law (Prof. Engel, Bonn, and Prof. Schulte, Dresden, as organizers; Prof. Scherzberg, Erfurt). The structure of the conference provided for main papers to be presented from all disciplines and then commented on in overview co-presentations by speakers of the other fields.

The starting point for the conference was the understanding that our times are being more and more determined by the importance of knowledge and comprehension. The increasing orientation of our society towards the future is forecasted, and thus the information on which future-oriented decisions are based is central to understanding the developments and movements of any science. However, the loss of traditions and past experiences as guides for upcoming action and the impossibility of predicting developments with certainty necessitates a different approach to understanding and comprehending existing information and almost more importantly, a strategy for how to deal with missing knowledge and uncertain information. Society itself has already changed in response to these needs and has slowly descended from the view of the Enlightenment movement. However, this process of becoming an information and knowledge society has not been completed, and it is not predictable where it will lead. Nor has it even been universally accepted.

The papers presented as well as the remarks of the commentators and the following discussions made clear that the different disciplines are far from reaching a common ground for research into knowledge, uncertain information and ignorance. Often enough, they do not share comparable questions, not even to mention similar solutions. Nevertheless, the conference showed that insights from the other fields often help to better understand already existing solutions and to develop new lines of thought. A follow-up conference on selected topics is being planned for the near future. All papers, including the overview commentaries and a systematic discussion report by Dr. Spiecker gen. Döhmann from the Project Group, are being published in a conference report.

Papers presented:

Main presentations:

Prof. Japp (systems theory): "*Structural effects of public risk communication on government level – on the function of ignorance in the BSE-conflict*"

Prof. Stehr (political science): "*Knowledge*"

Prof. Lübbe (philosophy): "*Epistemic duties in the 'knowledge society'*"

Prof. Eichenberger (economics): "*Knowledge and Information from the economic perspective*"

Prof. Zintl (political science): "*Political knowledge and knowledge in politics*"

Prof. Thompson (cultural theory): "*Varieties of Uncertainty*"

Prof. Gigerenzer (psychology) "*The adaptive toolbox. Toward Darwinian rationality*"

Prof. Scherzberg (law):"*Knowledge, ignorance and uncertainty in law*"

Overview Commentaries:

Prof. V. Weizsäcker (economics): "*Commentaries on the presentations of Japp, Stehr, Zintl*"

Prof. Engel (law): "Legal *Decisions under conditions of uncertainty*"

Prof. Schulte (law):"*Dealing with Knowledge, Ignorance and insecure knowledge in law – exemplified on the BSE and Mouth and Foot Disease conflicts*"

Prof. Fiedler (psychology): "*Insecure knowledge as starting point – not as frontier of science – a commentary on the presentations of Lübbe, Stehr, Scherzberg und Eichenberger from the psychological viewpoint*"

Prof. Bora (systems theory): "*Ecology of control. Regulation of technology under the conditions of ignorance*"

Prof. Halfmann (sociology): "*Science, method and technology. The test of scientific knowledge by technology*"

12. Trust and Political Economy: Comparing the Effects of Institutions on Inter-Firm Cooperation

Paper presented in Seminar Series of the Center for the Study of the New Institutional Social Science, Washington University (St. Louis), 15 February 2001.

Henry Farrell

Cooperation between small firms in "industrial districts", where the production process may be radically disintegrated, poses an important challenge to current political science theories of trust and cooperation. Neither the conventional Williamsonian transaction cost approach, nor political culture arguments about the importance of diffuse interpersonal trust, seem capable of explaining them. In this paper, I suggest that the problems posed by these districts – the existence of apparently "irrational" forms of trust in the political economy, and of "high trust" forms of cooperation in societies with low levels of interpersonal trust – may be explained if one adopts a more sophisticated institutional approach. By combining the recent arguments of Russell Hardin, Margaret Levi and others about trust as "encapsulated interests" with recent rational choice work on institutions and cooperation, I show how institutions may affect trust between economic actors, and thus cooperation. I apply these arguments to two case studies of "industrial districts", mechanical engineering in Bologna in Italy, and Stuttgart in Germany, and show that empirical evidence supports the hypothesis that trust may depend on institutions, and vary with institutional context.

13. Trust, Distrust and Power in Inter-Firm Relations

In *Distrust*, ed. R. Hardin. Submitted to Russell Sage Foundation. Forthcoming.

Henry Farrell

This article presents a theory of the relationship between power, trust and distrust. Clearly, trust is possible in relationships where there is some imbalance in power between the parties. Clearly, there also comes a point where disparities of power are such as to make trust impossible. In this paper, I identify the tipping point at which power inequalities make distrust the rational response as that point where the more powerful actor is no longer capable of making credible commitments to the other. I draw upon results from game theory, and empirical examples in order to illustrate the dynamic between trust, distrust and power.

14. The Political Economy of Trust: Exploring Cooperation between Mechanical Engineering Firms in Emilia-Romagna and Baden-Württemberg

Project Dissertation

Henry Farrell

In recent years, a great amount of scholarly attention has been devoted to the political, social and economic consequences of trust. In particular, one can point to the recent burgeoning of interest in the concept of "social capital". In this dissertation, I set out to examine the political economy of trust in so-called "industrial districts", geographically concentrated clusters of small firms, which, it has been argued, rely heavily on cooperation between firms in order to survive and prosper. These districts are clearly of considerable interest for the study of how trust may impact on economic cooperation. In particular, I examine two case studies, one in the packaging machinery district of Bologna, in Italy, and another in the machine tool industry of Stuttgart in Germany. I rely primarily on a series of interviews conducted with firms and other relevant actors in these districts in 1998-1999. Through analysis of these case studies I seek to test the merits of a version of the so-called "encapsulated interest" account of trust in explaining cooperation. I find that this account of trust provides a better fit with the data than competing accounts which refer to identity or culture as sources of trust. I then go on to argue that one may apply recent advances in the rational choice theory of institutions to understand why it is that individual actors come to trust each other as they do. Not only does an institutional theory of this sort provide a good explanation of the forms of cooperation observed in the two case studies, but it helps us understand why there are important differences in cooperation between the two cases. Study of industrial districts provides good reason to believe that the encapsulated interest account of trust, when combined with institutional theory, provides a good basis for the comparative analysis of trust.

15. An Essay on Trust

[Vertrauen: Ein Versuch]. Preprint 1999/12

Christoph Engel

Academics stand on the shoulders of their ancestors. It would not make sense to reinvent concepts from scratch when a phenomenon is not smoothly explained within the existing intellectual framework. This paper on trust is based on this methodological premise. It deliberately starts from rational-choice analysis. It interprets trust as an alternative mechanism for coping with the risk of opportunism. From this angle, trusting a person depends on the expected trustworthiness of the partner. It can be perfectly rational if the trusting partner has reliable information about the type of the person being trusted. Alternatively, the trusting partner can have a risk preference that allows him to take a risk above the level of a risk neutral actor. This paper contrasts this rational-choice view with alternative explanations taken from psychology and sociology. It distinguishes the case of opportunism from other instances of trust. And it compares trust to more formalised safeguards.

16. Waste Disposal Morality as an Instrument of Social Control

Factual and Legal Boundaries of State-Initiated Education of the Citizenry. Dissertation Project

Jörn Lüdemann

(See D I, 22)

17. The Public Spirit and Goods to Enhance it

[Gmeinsinnfördernde Güter: Die Rechtsordnung zwischen Restriktion und Gemeinsinn und die Folgerungen für einen interdisziplinären Zugang]. 1998. In Methodische Zugänge zu einem Recht der Gemeinschaftsgüter, hrsg. v. Ch. Engel, 121-229. Baden-Baden: Nomos.

Jörn Lüdemann

Law is the genuine regulatory instrument of the constitutional state. However, because the use of legal rules is not able to solve all regulatory problems, the state has increasingly had to look for other possibilities of regulating behaviour. In this, the economy has rightly directed attention to the advantages of steering through monetary incentives. But not even the best institutional design can prevent the state from being dependent upon the voluntary cooperation of its citizenry in some areas, that is, from being dependent upon their public spirit. This fact is easily overlooked by strong rational choice perspectives. However, an adequate regulatory/steering theory cannot overlook these interrelations. Social psychological insights could be of service here. Besides looking into methodological questions, I will draw attention in this study to goods that are capable of promoting the public spirit of the citizenry.

18. Transboundary Environmental Problems and Cultural Theory: The Protection of the Rhine and Great Lakes

2000. New York: Palgrave. With a foreword by Mary Douglas.

Marco Verweij

This book is the first all-out attempt to introduce the cultural theory developed by Mary Douglas, Michael Thompson, Aaron Wildavsky and others to the study of international relations. This cultural analysis has become the topic of a heated debate in other fields of social science. By extending the theory to the study of world politics, *Cultures and Institutions in Transboundary Relations* presents a new and challenging theoretical framework with which to understand world politics. Various other general theories of international relations have been construed in a similar fashion: by borrowing conceptual frameworks developed in other fields of study. What distinguishes this effort from other such attempts is that this framework can also be applied in rigorous empirical research. In *Cultures*

and Institutions in Transboundary Relations, cultural theory is used to reveal and solve a number of puzzles and paradoxes that have characterized the domestic and international efforts to clean up the river Rhine in Western Europe and the North American Great Lakes. These puzzles include: (1) What caused the intergovernmental relations concerning the environmental protection of the Rhine to suddenly change in 1987 from being limited, uncooperative and sometimes openly hostile to being extensive, effective and friendly? (2) What can explain the vast differences in cooperativeness with regard to the restoration of the Rhine between the relevant groups of public and private actors? (3) How is it possible that the discharges by US firms into the Great Lakes have been more polluting than the industrial effluents released into the Rhine, despite the existence of stricter national laws and international agreements, more powerful international organizations, an influential epistemic community and a more authoritative international organization? By answering these and other questions, the book also aims to contribute to a further understanding of international environmental policy.

19. A Watershed on the Rhine: Changing Approaches to International Environmental Cooperation

1999. *GeoJournal: An International Journal on Human Geography and Environmental Sciences* 47 (3): 453-461.

Marco Verweij

Since the 1950s, the governments of the riparian countries of the Rhine have attempted to protect the ecosystems of the river basin through international cooperation. Before 1987, their relations were unproductive and antagonistic. International programs for the protection of the Rhine were far less effective than domestic policies. From 1987 onwards, international cooperation on the protection of the Rhine has been exemplary, and has led the way in domestic and international water protection policies. Many existing frameworks of international relations are not able to offer an adequate explanation of this wholesale change. In this article, an attempt is undertaken with the help of the cultural theory developed by Mary Douglas, Michael Thompson, Aaron Wildavsky and others.

20. Why Is the River Rhine Cleaner than the Great Lakes (Despite Looser Regulation)?

2000. *Law & Society Review* 34 (4): 1007-1054.

Marco Verweij

In this article, I compare the efforts to protect two transboundary watersheds that are home to some of the largest industrial areas in the world: the Great Lakes basin in North America and the Rhine river in Western Europe. Specifically, I show that the industrial discharges into the Great Lakes have been more toxic than the releases into the Rhine. This is puzzling as the laws and international agreements pertaining to the Great Lakes have been more stringent than those concerning the Rhine. I solve this puzzle in three steps. First, I show that the many voluntary investments in water protection by com-

panies along the Rhine have outdone the considerable efforts that the U.S. laws have required of Great Lakes corporations. Thereafter, I argue that these different inclinations to invest in water protection have sprung from two alternative modes of conducting environmental politics: an adversarial one in the Great Lakes basin and a more consensual one in the Rhine valley. Last, I use an historical-institutional approach to show which institutional differences (at both the domestic and international levels) have led to the emergence of these different modes of conducting environmental politics in the two basins.

21. A Snowball against Global Warming: An Alternative to the Kyoto Protocol

Preprint 2001/11.

Marco Verweij

Last November, in The Hague, international cooperation on global warming came to a grinding halt. But even if this United Nations conference had been an unqualified success, it would still not have made any difference to the world's climate. Only a radically different approach to international decision-making can save the world from over-heating. This alternative approach would be less statist and formalistic, and would focus more on the development of cheap forms of energy and technology that do not emit greenhouse gases. In this essay, it is asserted that the current international cooperation on climate change is doomed to fail, and a more realistic solution is described.

22. Choice of Rules and the Provision of Local Public Goods

Project Outline

Eva Jonas/Frank Maier-Rigaud

Introduction

The interdisciplinary research project presented here is situated in-between the new research initiative "Rethinking Rationality", the "Normative Institutional Analysis" project and the "Governance Across Multiple Arenas" project. It is concerned with factors – that have not yet been identified explicitly – which influence the capabilities of actors to successfully provide for common goods in a decentralized setting, but appear to be irrelevant from the perspective of non-cooperative game theory since they lie outside the realm of the rules of the game. If these factors exist and if their effect is stable, normative lessons for institutional design in the provision of local public goods can be derived.

1. Theory

The theoretical predictions of control theory are the starting point of the analysis. Generally, control refers to the ability of a person to produce positive outcomes and to avoid or reduce the possibility of negative outcomes. Thus control refers to the ability of a person to influence results, i. e. to change outcomes via a causal link between behavior and outcomes. In addition, a lot of research shows that perceived control is a more powerful predictor of functioning than actual or objective control. A person's conviction of being in control is sufficient to mobilize action and modulate arousal.

Skinner (1996)[1] proposes the following framework (see table 1). Control refers to situations in which people want to reach a positive outcome or they want to prevent or reduce a negative outcome (= ends). "Means" refers to how one can reach the desired outcomes. Here we can differentiate between categories of actions, cognitions and attributes. Agents refers to the person who exercises control and to what extent a potential means is available.

Agents	Means	Ends
Self	Actions	maximize positive outcomes
Others	Cognitions	minimize negative outcomes
Group	Attributes	

The agent can be the person by herself, or other persons (this means delegation of control) or a group.

According to this framework, control requires that two conditions be met. There must be at least one mean that is effective in producing a desired outcome or in preventing an undesired outcome, and the individual must have access to it. In other words, a sense of control includes a view of the self as competent and efficacious and a view of the world as structured and responsive.

In addition Skinner lists potential antecedents of control, which are choice, information and predictability. They refer to a set of objective conditions that have the potential to influence experiences of perceptions of control.

In contrast to other theories, control theory stresses the importance of actions on the constitutional level.[2] The type of institution used to provide common goods is not the only important factor, how this institution was selected and whether it can be modified also plays a role, i.e. whether people have control over it.

According to control theory, people not only have preferences over strategies (where the game and the strategy set depends on the institution) that lead to particular outcomes within a specific game; they also have preferences over what type of game they are playing (i.e. preferences over strategy sets/ games).

The aim of our experimental research is to investigate whether predictions derived from control theory in a common good setting can be replicated in an experiment and whether insights from control theory can be used to increase the success rate in decentralized common good provision.

2. Experiment

The experiment is designed to check the validity of the theoretical predictions derived from control theory in a particular economic application. If the predictions can be replicated in an experimental setting, normative conclusions for institutional design can be derived.

In a public good setting, control theory would predict that the willingness to cooperate, and therefore performance, increases with the belief in the possibility of controlling the situation and influencing outcomes. In particular, group earnings in a common good experiment should increase when the participants perceive particular characteristics of the game as resulting from their choices and therefore as being in their control. The first experiment would therefore need to give participants a choice between treatments and then compare the performance of a group that freely chose a particular treatment with the performance of a group that was assigned to that treatment.

In a second experiment we would like to investigate the influence of predictability over aversive interventions. For example, should participants have to pay additional taxes, control theory would predict that people are more willing to bear these interventions if they have information about the duration because predictability indicates control over the aversive event. In an experiment we therefore would need to have two groups of participants: one group would get the information about how long an intervention will last and the other group would not get this information. The prediction is a better performance of the first group.

3. Summary

From the point of view of the economic discipline, such an undertaking appears to be fruitful since control theory has not yet been applied to economic analysis – in particular, since there are a few experimental papers in economics that describe an effect that is predicted by control theory without explicit reference made to the theory.

From the point of view of the psychological discipline, control theory has not yet been applied to

common goods. In addition, the concept lacks specification and we hope to be able to contribute to a clarification and to shed some light on mediating mechanisms.

1 A guide to constructs of control. Journal of Personality and Social Psychology, 71(3), 549-570.

2 Three levels of analysis are meaningful. The action level is the level where individuals make decisions within the limits and constraints of the institution (choice of game moves). The institutional level is the level where constraints for the action level are chosen (choice of rules) and the constitutional level is the level where general principles for the design of institutions are chosen.

23. Network Economics and Economic Policy: Assessment and Development

Habilitation Project

Stefan Okruch

(See D II 2, 37)

24. Gathering Private Information from the Citizenry: Are German Public Agencies Free to Follow the Recommendations of Game Theory?

Dissertation Project

Melanie Bitter

The subject of deficiencies in enforcing norms of administrative law is omnipresent in the German legal literature. These deficits are often cited in arguments to change from conventional command and control regulation to alternative forms of regulation. Some theorists also argue that the deficiencies in enforcement provide a reason for reducing regulation.

In this, it is not sufficiently taken into consideration that these shortfalls can often be traced back to a lack of information. This absence of information is frequently caused by informational asymmetries between the public agencies and the citizenry. The citizens are able to hide information; they thus possess private information, unknown by the state. Given this situation, the question arises as to how the informational asymmetries could be mitigated.

Other disciplines have investigated the context of imperfect information for a long time. Game theory analyses informational asymmetry, the way it affects peoples' behavior and the problems arising from it. And it tries to develop solutions. The proposed solutions could mitigate the informational asymmetry between agencies and citizens. The work focuses on three concepts: signaling; screening; and auction. They are all based on the idea that information is revealed by the other party's actions. These concepts will be portrayed: their techniques will be described; their preconditions shown; and their underlying assumptions elucidated. Subsequent possible applications of signaling, screening, and auction in agency/citizenry relationships will also be introduced and discussed.
Under the assumption that these game theoretic mechanisms succeed in revealing private informa-

tion, the question arises as to whether these potential options are legally available to the state. In answer to this question, I shall first present the conventional methods that public agencies use to gain information.

The basic principle is the principle of judicial investigation (*Untersuchungsgrundsatz*). This imposes an obligation on the agency to clarify every single relevant fact and a responsibility to ensure that investigations are sufficiently carried out.

Within the scope of this maxim, rules are laid down relating to the contribution of the citizens, specifically their participatory duties (*Mitwirkungspflichten*). Because these duties fix the scale and the mode of the citizens' participation in gathering information, they play a great role in reducing informational asymmetries. The participatory duties are part of the evidence available to the agencies. In a state governed by the rule of law, facts are legally relevant only if the agencies produce evidence. In other words, proven facts can serve as a basis for legal decision making, whereas facts merely known by the agencies are not a sufficient fundament. Thus, the rules of evidence are of particular importance for the official gathering of information.

In the framework of the rules of evidence, one specific problem concerned with applying game theoretic mechanisms to law arises: it is questionable whether the information conveyed by signaling, screening or auctions complies with the requirements of close reasoning.

Further reservations about applying game theory appear on a more abstract level. Game theory rests upon the economic model of rationality. Players behave rationally in the sense that they compare different possible actions and their outcomes, and afterwards choose the action that maximizes their anticipated utility. Behavior is guided by the principle of maximizing utilities. The law, however, does not start with the assumption of *homo economicus*.

This difference in the underlying rationalities gives rise to doubts about the ability to reconcile game theoretic mechanisms with the law. Most notably, it is questionable whether the public agencies can presume the rationality of man at all if they can allege that the citizens are only guided by the aim of utility maximization.

Furthermore, possible effects of using game theoretic models must be taken in to consideration. Empirical examinations point out that invoking self-interest-orientated rewards can reduce or even repress intrinsic motivation.

Starting from this insight, it is debatable whether public agencies can apply game theoretic models despite the risk of counter productivity.

25. Grammar of Law

[Die Grammatik des Rechts]. 2001. In *Instrumente des Umweltschutzes im Wirkungsverbund*, ed. H.-W. Rengeling and H. Hof, 17-19. Baden-Baden: Nomos.

Christoph Engel

Hardly a native speaker knows the grammar of his native tongue. The major exception are those who have to teach the language to foreigners. Those who engage in interdisciplinary work are in a similar situation. If they want to make their own voice heard, they must strive for making explicit what could well remain implicit knowledge for their own disciplinary purposes. In the case of the law, the urge for such an exercise is particularly pronounced. For the law is closer to an art than to a science. Accordingly the amount of implicit knowledge is pronounced. The paper purports to sketch this grammar for the specific case of command and control regulation. It cannot properly be analysed within the rational choice framework. This model can only see the sanction. The effect of the rule boils down to the expected negative utility inherent in the sanction, multiplied by the probability of detection and implementation. Command and control regulation, however, is fuzzy on purpose, and thereby robust to external shocks. The intensity of governance varies from case to case. Governance uses discourse in the interest of learning about resistance, and of convincing the addressees to be

obedient, rather than forcing them into obedience. Command and Control regulation has a pronounced cognitive side and is sensative to historic context. It has an evolutionary potential, and it has recourse to normativity, i.e. to social identity.

26. Can Inconsistency Be a Value?

Conference Series organised jointly with the Max Planck Institute on the History of Sciences
Part of Inter-Institute Research Initiative

Just asking some questions is enough to incite revolt. Can inconsistency be a value? Naturally, a scientist impulsively answers, no. For isn't consistency simply another word for intellectual fidelity? Should intellectual tricks now be ennobled? Isn't praising inconsistency the same thing as declaring the bankruptcy of science?

The fact that actions can be inconsistent may be due to the imperfection of the actors. The internal contradictions may also be the work of opportunistic individuals, seeking their own advantage. But the following list of examples shows that inconsistency can indeed be a value: in nature and in social reality, in law and even in science.

Does a hare act irrationally when it darts back and forth? The fact that its escape route is not predictable saves its life. Those who make decisions on the basis of rules of thumb and heuristics accept that their decisions are only consistent in the applicatory horizons of the heuristic. In return, however, they decide quicker and sometimes even better. Besides, it may serve to protect their self-esteem. Those who are scrupulous double-check themselves even if they are convinced that their first action was successful. If one's own maxims are well buttressed, then they do not break down because of unforeseen behavioural changes. Inconsistent elements are thus a sort of protective immunization.

If a perfect symmetrical game has numerous equilibria, it may only be possible to solve it if one player's hand 'trembles'. If the opponent sees that, this mistake leads to a resolution of the game for both players. Compromises are often only had if each side breaches its principles. If those involved were forced to change their principles for the sake of the compromise, compromises would be much more difficult to reach. Laws often join incommensurable elements; otherwise no agreement would be made between the interest groups. Then, at best, adjudication can subsequently bring about consistency. Those who want to win others over to their cause will often have it easier if they proceed according to the Latin motto: *divide et impera*! For different addressees, they find different, incommensurable reasons. The politician's craft can consist in conveying the impression to political groups that their conflicting demands have been met simultaneously. Identity is often founded upon formulas that everyone can understand as they wish. The Catholic solution is also inconsistent: honouring the principle from the pulpit, while offering mercifulness in the confessional. But the rule need not be abandoned because it cannot always be enforced. Those who are credibly threatened with heavy disadvantages will do well not knock their rights. But should they give in, they will inevitably come into conflict with the previous agreement.

Coherent conceptions are long-term cultural achievements. It is thus not smart to repudiate a conception if it is merely falsified in reference to one single matter. Judgement also ought to be employed when enhancing conceptions with additional elements. The trade off between parsimony and fit cannot be overcome. Again and again, progress in the natural sciences has only been possible because one science, aware of the state of the art in other sciences, has uncoupled itself from this knowledge base and searched for its own, consequently incommensurable, solutions. The more complex an object of research, the sooner even the science studying it will have to accept internal inconsistency as the price for knowledge. This applies, for example, to meteorology and to the physics of turbulences. One view from quantum mechanics has even had more unsettling effects. It was only possible to explain things here once it

was accepted that nature itself is inconsistent. The micro and macro levels of the same phenomenon follow contradictory laws. Natural scientists and philosophers are now asking whether this building principle applies much more generally. In any case historians of science can show why the natural sciences do not only differ in their methods, but also in their assumptions about nature.

Those who are searching for new solutions must willingly attempt what cannot be consistently done with the accepted model. Those who want to hold evolutionary paths open must allow the co-existence of inconsistent concepts. By doing so the chosen solution becomes more resistant to unexpected changes. Those familiar with the fundamental relativity of normative arguments must allow parallel mutually exclusive arguments for the very same finding.

It is hard to bear openly declared inconsistency. This is not just true for scholars. It appears even more applicable for the development and applications of law. The principle of equality is even defined as the prohibition of arbitrariness. The German Constitutional Court understands arbitrariness as being the differential treatment of facts that are essentially the same. It is also possible to offer an argument in terms of legitimation theory. If a decision is tagged as inconsistent, it shows that it cannot rely on output-legitimation. At best it can be grounded on input-legitimation. Hence where inconsistency is valuable, institutions see to it that it is made bearable.

There are divergently oriented and divergently encompassing strategies for this. If these incommensurable concerns are known, differentiation can help. Every concern is allocated to a different institution. The various institutions are not related to each other formally or lineally, but functionally. Every institution respects the autonomy of the others, and indeed counts on it. Systems theory has developed these ideas. One applicatory example from law is the separation of substantive law and procedural law. This separation makes it possible to entrust conflict resolution to procedural law, keeping substantive law free from the inconsistency with other cases less fraught with conflict.

A second strategy has been developed by cultural theory. It presumes that conflicting concerns will openly be kept in place. It desires to prevent one of the concerns from permanently gaining the upper hand. It strives for stability via permanent change. It is exemplified in reference to a swarm of mosquitoes. It appears to hang in the air. That is because every single mosquito is in constant motion. Their course is not pre-determined. Each reacts individually to the movement of the others. The legal technique of weighing competing values is not so far removed from this idea. It openly accounts for the incommensurable concerns 'and in individual cases relates them to one another'.

A third strategy contains the conflict field. It limits the decision. Sometimes the theoretical inconsistency does not matter in the concrete case. The restriction to the individual case leaves up for grabs whether the decision is consistent with other areas of life. Courts apply these strategies, for example, if they decide about a new social problem 'strictly in the case'. Another case in point is the selection of case law, as opposed to codification (which forces consistency).

The fourth strategy is more radical still. It waives all reasons; then it can also conceal that one decision contradicts other decisions. In German law this is by no means rare. Laws need not be substantiated (and the governmental arguments are not as open as they could be). This is taken even further in penal law. It requires that the judge be personally convinced of the guilt of the accused. It is categorically impossible to substantiate this. American law refers decisions that rely on inconsistency to a jury. Because it consists of laymen, no substantiation can be expected here either.

Inconsistency is not a categorical matter; it's a matter of degree and measure. The amount of inconsistency that can be accepted is at first dependent upon the object. A legal scholar has more difficulties with this than a practicing lawyer. It is easier to make inconsistent decisions for oneself than to have to justify them to others. At the same time the inconsistencies that are allowed are culturally determined. German law stands in the tradition of Roman law. It is scholarly law. It thus reacts to inconsistency much more sensitively than common law does, for example. As is well-known, common law does not generate law from abstract rules. It generates it by the technique of distinguishing, i.e. by estimating the degree of similarity between cases. German law considers the unity of the legal order dignified. Still, it might be possible to explain the widespread resistance of German lawyers to the integration of the social sciences on the basis of intuitive concerns about an excess of consistency. It is possible to view the developed legal methodology as an instrument that regulates the acceptable degree of inconsistency.

27. Discovery, Representation and Perception

Conference jointly organised with the Max Planck Institute on Psychological Research Part of Inter-Institute Research Initiative

What does a judge do when he justifies a sentence? What does a baby do when it perceives itself for the first time? It stands to reason that the first question moves legal studies, the second question, psychology. But how is it possible to bridge the gap between these two questions? We shall proceed inductively. First we shall introduce each question separately. Subsequently we shall go the whole distance and clarify which disciplinary supports might be of assistance.

1. Producing and Presenting Legal Decisions

A young law student needs many semesters to learn how to decide cases. The core of his task is hermeneutic. The parties present a conflict of life as they perceive it. The solicitor's knowledge of norms and case law enables him to formulate preliminary hypotheses about which legal problem might lie behind the conflict. By talking with the parties and looking back and forth between the conflict and the norm, at the same time, step by step the solicitor defines the problem and develops a solution. In all cases that are not completely trivial that is a creative process, with a decision required at the end. That is the reason that legal decisions are never right; at best they are convincing, or in any case, defensible.

Once the solicitor has gone through this process, he formulates the result. The texts that arise in this process are artificial products. This is especially clear with regard to court decisions. The statement of facts contains only those facts which the court needs in order to justify its decision. Social sciences would call these stylised facts. The reasons are just as stylised. They start with the basis for the claim, the norm from which the verdict follows. The judgement first determines that the presuppositions of this norm are fulfilled. In what follows, that claim is documented one piece of evidence at a time. The decision reads amazingly logical. It seems as if the judge were truly only *la bouche de la loi*.

The production and representation of the judicial decision are thus miles apart. But they are not opposed to one another because of that. Rather, the two stages of legal decision-making, the procedure and the means that have been created for it, are complementary. They can be viewed as different elements, jointly constituting the rationality of the legal decision-making process.

The subsequent representation operates like an instrument for self-control. Knowing that the decision will afterwards have to be presented *lege artis* affects the process of reaching that decision. The authorities become sensitised to dimensions of the case relevant for its decision, which they might have overlooked otherwise. That protects them from being seduced by the clarity of the concrete conflict or by the one-sided presentation of one of the parties. Finally, the effect of the representation *lege artis* is similar to the effect created by a judge's robe when the judge enters a courtroom. It creates distance between the person and his office. That increases the chance that the judge in fact will understand himself, in the inevitably creative part of his job, as serving the law, and not as the supporter of an ideology, the member of an interest group or as motivated by moods and emotions.

The judge is not a subsumtion machine. At the same time, that means that the people and the judge stand in a principal-agent relationship. If legal decisions are not justified, the agents enjoy a great deal of freedom. This freedom does not even disappear completely with skilful justifications, but it does become much less significant. More precisely, the latitude is reduced to the possible difference between production and representation.

There are two ideal types of rule legitimation: input and output legitimation. Input legitimation follows from delegation; output legitimation from the convincingness of outcomes and processes. Legal decisions are supported by both strands of legitimation. But both of them have weak force only. The judge does indeed owe his office to the sovereign. But the sovereign has only a limited influence on the judge's professional decisions. The judge is not politically liable for his decision. The judge's only professional bond to the sovereign consists in the text of norms. We have seen that the judge is not strictly bound, but only at the peripheries of legal doctrine.

The decision-making process and the representation of the decisions made close the legitimation gap. In the representation the court makes it clear why it has pronounced the right judgement. So, the legal system steers with open eyes. The representation makes it clear to the legal subjects why the legal system makes legal demands upon them. The judgement attempts to convince the addressee. It at least makes the conceptual foundations of the decision explicit.

Where legitimation is achieved, it is easier for the losers to comply with the decision. Reactance becomes less probable. They need not interpret the verdict as an unjustified infringement upon freedom or property. They need not resist the decision to secure their self-respect.

In the final analysis it is also possible to justify the legitimising effect of the representation differently. People are not indifferent to the way decisions about their lives are made. Put in economic terms: They do not only have a preference for goods, but also for institutions. Put in psychological terms: They assess the fairness of institutions differently. If a court decision is skilfully defended, the chances are better that those who have to comply with it will feel that it is fair.

Finally, the individual court decision is not isolated. It contributes to concretising and developing the law. That is only possible if the decision is skilfully defended and subsequently published for the legal community.

2. Interpretation of Strangers and the Regulation of One's Own Behaviour: Early Developmental Stages

The psychological sub-project is concerned both with the relationship between the steering (=production) of behaviour and the perception (=representation) of it. However, it differs from the analogous legal problem in two important dimensions. For one, here it is not a matter of the subsequent perception of previous actions, but of the reciprocal interplay occurring in real time between the steering of the action and the perception of it. For another, it is a matter of very simple action – the sort of action that can be produced and represented (i.e. measured) with manageable instruments under laboratory conditions. One important result of the simplification and de-contextualization is that normative defences and justifications initially play no role.

When Descartes reflected on what it was possible to know about the world with absolute certainty, he discovered himself. Only his own mental activity appeared to be certain; he believed that only the knowledge that he had of it was elevated above all doubt: *Cogito ergo sum*. Above all, everything else that we think we know about the world is merely indirectly acquired information, conveyed by the senses, which can be deceptive. Here, not only are doubts allowed, they are demanded.

In other words, Descartes' idea can also be formulated as follows: What we know from the activity of our own consciousness, we know because our knowing mind becomes aware of its own conditions. The knowing subject (our mind) and knowledge object (the facts we are conscious of) are joined. The rest of our knowledge is based on perception and representation: on the one hand, the knowing subject, on the other, the foreign (and categorically separate) object, and between them both a complex representational relationship, which admits all kinds of opportunity for error, deception or falsification.

The theoretical background of the given project forms a systematic principle that results from applying the Cartesian doctrine to the special domain of the perception of action and of people. It is often characterised (in accord with Wittgensteinean terminology) as the principle of the first person's privileged access to knowledge – the privilege over what we might know about the second or third person. It means that – when first approached – what the individual knows about himself is known from his own, immediate intuition, whereas what he knows about other people can only be deduced from their actions.

This principle can be understood in two different ways: structurally or genetically. Viewed structurally, it repeats for the special area of the perception of persons what the Cartesian doctrine teaches in any case: that our knowledge about the first person is immediate, our knowledge of the second and third person, by contrast, always mediated. Viewed genetically, it means that in its temporal/historical development our knowledge of others is derived from our knowledge of ourselves. First we understand ourselves, then we transfer or – as it is often put – project the categories with which we understand ourselves onto others.

James Russell has recently formulated both the structural and the genetic interpretations with particular incisiveness. In accord with his view, we have

"non-observational knowledge" of our own actions, and our only really "privileged, incorrigible knowledge" is about the goals of our own actions. By contrast, we only know about the goals of other people's action by observing their behaviour, which can deceive us. This difference has long been described with conceptual pairings such as authentic vs. mediated access or primary vs. secondary access. In any case, the basic idea is always the same. First a person understands himself (and how that is possible is a basic fact, which cannot be scrutinized further); then he understands others (and how that is possible can be specified with a developmental psychological theory).

Against the background of our Cartesian-influenced customary ways of thinking, the counter thesis – that one first understands others, then oneself – is not especially easy to convey. There is indeed a lot of information in the developmental psychology literature that can be interpreted (and that has long already been so interpreted) to indicate that children develop concepts of others before they develop a concept of themselves. But this evidence is not clear-cut, and a counter-position to the genetic interpretation of the principle of privileged first-person access has hardly been developed.

What would such an interpretation look like? It requires that we accept that our own mental/conscious I is constituted in precisely the same way that we previously (!) thought we constituted other persons (maybe even other animals or even physical experience) as mental or quasi-mental actors, i.e. that the I comes from the you or the he or she or it.

3. The Necessity of Interdisciplinary Research

That the two opening questions are not easy to answer within the strict parameters of one of the disciplines is not hard to show. The legal question assumes the observer's point of view about the decision-making activity of the practicing lawyer. So even the starting point lies outside of the field of law. The outline already uses categories from economics, political science and social psychology. The psychological question, in turn, is quite obviously close to the field of philosophy. We do not want to ignore these dimensions. Rather, we understand our opening questions as the furthest pole along a field of research approaches. At the same time, we count on the catalytic effect of the analogy between two objects that at first seem very far removed from one another, but that on second glance are seen to share many structural elements.

Psychology has never really been able to believe in the notion that decisions are the causal results of having weighed reasons and arguments. Large amounts of psychological research on action are pervaded by the suspicion that things might be completely different: that people somehow act and only then justify their activity by naming social contractual reasons and motives. In accord with the rational choice model, rationality is located in persons, and the time at which it takes effect is before a decision is made. In accord with the psychological suspicion, things are the other way around. Rationality is employed after the decision, and the source of rationality lies *outside* of the person, namely in the communications with the social world.

The goal of the project is to explain varieties of the relationship between production and representation at various levels of action. One of the primary approaches leads to the following points: production is a process with a result. There is one language (possibly only understandable to the individual himself) in which this result can be expressed. Under some conditions, beyond this there is a second language that can be used to describe the process. Even the discussion of the result and the result itself can be disrupted. Different addressees can understand the representation differently. The representation offers the process of production and the point of the result the possibility of a future. The reproduction opens up the possibility of detaching the result from the individual process of production, making it accessible to other individuals.

If one looks closer, however, it is not possible to see the connection between the production and representation of decisions in isolation. The perception of actions and decisions has to be incorporated as a third component. How the production of one's decisions is modulated through the requirements of the subsequent representation is not the only thing that is important; it is just as important how the production of one's own decision is modulated by the perception of decisions that others make (whereby it is obvious that perception and production are modelled on each other).

The way the project is arranged suggests, with the help of investigations about individual justification of action, a way to close the gaps between the two

opening questions. For the legal representation is a highly formalized social justification mechanism. Investigating it generates hypotheses for mechanisms of self-justification. It can thus be assumed that representations distance the individual from himself. With a (merely implicit) representation, the individual measures his action in reference to his views, especially in reference to internalised social norms. By using the form of representation, he can rhetorically court behaviour that appears to be contrary to rules. By doing so he can contribute to preserving his self-respect, creating some kind of legitimation. He can use the style of the representation to prevent inconsistencies in himself, thus creating the possibility of coping with greater complexity. He can use representations to examine his conscience, and accordingly as an instrument of (self-)control. Conversely, the analysis of individual justification strategies promises new insights about the function of social justification mechanisms. The questions arising from this make it advisable to include motivational and social psychologists.

E Laying Theoretical Foundations

E I Reflecting Interdisciplinarity
(apart from the interface of political science and law)

In section C of this report the interdisciplinary activities bringing law and political science together have already been portrayed. The project group has supplemented this with other interdisciplinary activities.

A good number of political science and legal projects add an economic or rational choice perspective. Holzinger (1) uses game theory to explain why different sets of political institutions correspond to different types of common goods. Héritier (2, 3, 4, 5, 6) uses a modified principal agent theory approach to analyse the interaction between regulatory authorities and firms as well as the service performances of firms in the liberalized network industries. Farrell (7) employs game theory to analyse the negotiation of the data protection agreement between the EU and the US. So does Kölliker (8, 9) in his analysis of centripetal and centrifugal forces of flexible integration in different policy areas of the European Community. The synthesis of the waste management programme by Engel (10) starts from an economic perspective and supplements it step by step with insights from political science, occasionally also psychology. Kleineidam (11) uses models of external trade and from principal agent theory in order to understand US waste management legislation. Bastians (12) relies on concepts from environmental economics for comparing the German and the British systems for treating packaging waste. Lüdemann (13) takes the classic economic model as a background for explaining why one needs psychological tools for understanding governmental activities in order to build a waste morality. Tjiong (14, 15) starts from the Tiebout model of systems competition and shows why it should be supplemented with insights from political science. Bitter (16) studies the impediments to integrating the economic concepts of signalling, screening and mechanism design into law. Spiecker (17, 18) shows why the Knightian distinction between risk and uncertainty is too narrow for understanding regulation under uncertainty, and must be supplemented with concepts taken from political science, psychology and sociology. A book edited by Engel (19) brings public choice theory and public law together. In his own contribution (20), he looks at public choice arguments as a restriction on the choice of governance tools in economic policy.

Vice versa, the economists working at the project group rely on insights from the other two disciplines. Okruch (21, 22, 23, 24) has a number of pieces on the evolution of law. His habilitation (25) and further papers on an evolutionary theory of economic policy use insights from both law and political science (26, 27, 28). Schubert (29, 30) starts from the observation that zoning, i.e. legal planning, exists almost everywhere in the world. He tries to explain in economic terms why this might make sense. Gawel (31, 32, 33) explores why the law seems to have such a hard time in accepting efficiency as a value. Lehmann (34, 35, 36, 37) takes a look, from an economic angle, at deterrence by judicial review, the role of the judiciary in enforcing bilateral contracts, the potential of primary witnesses and the antitrust implications of the green dot system for packaging waste.

Engel has – jointly with Schweizer from the Bonn Economics Department – taken over responsibility for the conference series on New Institutional Economics, best known under the name of the former conference facility at Wallerfangen. The first conference (38) under new direction targeted a core issue of the project group, the proper scope of government. The second conference (39), held in 2001, was on organizing and designing markets. The topic of the third conference (40) will be the causes and management of conflicts. These conferences bring together lawyers, economists, to a lesser extent also political scientists, sociologists and psychologists.

A second line of interdisciplinary research investigates the microfoundations of behaviour. This research has already been reported under the heading of the rationality project (D V). It is embedded in the research initiative, bringing the project group together with the Berlin Institute for Human Development (Gigerenzer 41), the Berlin Institute for the History of Sciences (Daston 42) and the Munich Institute for Psychological Research (Prinz 43).

1. Aggregation Technology of Common Goods and its Strategic Consequences: Global Warming, Biodiversity and Siting Conflicts

2001. *European Journal of Political Research* 40. Forthcoming.

Katharina Holzinger

(See D II 1, 1)

2. Business Perspectives on German and British Regulation: Telecoms, Energy and Rail

2000. *Business Strategy Review* 11 (4): 29-37. Co-authored with David Coen.

Adrienne Héritier

(See D IV 1, 12)

3. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation

2001. *Journal of European Public Policy* 8 (5): 825-852.

Adrienne Héritier

(See D IV 1, 4)

4. Regulating Utilities in Europe: The Creation and Correction of Markets

2002. To be submitted to Palgrave Press. Co-authored with David Coen.

Adrienne Héritier

(See D IV 1, 6)

5. Regulator-Regulatee Interaction in the Liberalized Utilities

In *Regulating Utilities in Europe: The Creation and Correction of Markets,* eds. D. Coen and A. Héritier. To be published by Palgrave Press.

Adrienne Héritier

(See IV 1, 7)

6. After Liberalization: Public Interest Services and Employment in the Utilities.

2000. In *Welfare and Work in the Open Economy*, eds. F.W. Scharpf and V.A. Schmidt, 554-596. Oxford: Oxford University Press. Co-authored with Susanne K. Schmidt.

Adrienne Héritier

(See D IV 1, 3)

7. Negotiating Privacy across Arenas – The EU-US "Safe Harbour"

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Henry Farrell

(See D II 1, 7)

8. Bringing Together or Driving Apart the Union? Towards a Theory of Differentiated Integration,

2001. *West European Politics 24 (4): 125-151.* Forthcoming. Preprint 2001/5.

Alkuin Kölliker

(See D II 1, 3)

9. How to Make Use of Closer Cooperation? The Amsterdam Clauses and the Dynamics of European Integration

2001. Forward Studies Unit Working Paper. **Brussels: European Commission. Co-authored with Francesco Milner.**

Alkuin Kölliker

(See D II 1, 4)

10. Waste Management Law and Policy

2002. Baden-Baden: Nomos. Forthcoming.

Christoph Engel

(See D I, 1)

11. Waste Management Policy in Germany and the USA: A Law-and-Economics Analysis of Selected Problems

[Abfallwirtschaft in Deutschland und den USA. Ein ökonomisch informierter Rechtsvergleich ausgewählter Themen: Abfallverbringung, Entsorgungsgebühren und Altlastensanierung]. 2001. Baden-Baden: Nomos.

Roswitha A. Kleineidam

(See D I, 2)

12. Comparison of English and German Packaging Waste Management Law

[Verpackungsregulierung ohne den Grünen Punkt? Die britische und die deutsche Umsetzung der Europäischen Verpackungsrichtlinie im Vergleich]. 2002. Baden-Baden: Nomos. Forthcoming.

Uda Bastians

(See D I, 18)

13. Waste Disposal Morality as an Instrument of Social Control: Factual and Legal Boundaries of State-Initiated Education of the Citizenry

Dissertation Project

Jörn Lüdemann

(See D I, 22)

14. Regulatory Competition Re-examined

Dissertation Project. Submitted to Stanford Law School, Stanford University.

Henry Tijong

(See D II 2, 17)

15. Breaking the Spell of Regulatory Competition:

2002. *Rabels Zeitschrift für öffentliches Recht.* Forthcoming. Preprint 2000/13.

Henri Tjiong

(See D II 2, 18)

16. Gathering Private Information from the Citizenry – are German Public Agencies Free to Follow the Recommendations of Game Theory?

Dissertation Project

Melanie Bitter

(See D V, 24)

17. State Action in the Face of Uncertainty

Habilitation project

Indra Spiecker gen. Döhmann

(See D I, 7)

18. State Decisions in the Face of Uncertainty

[Staatliche Entscheidungen unter Unsicherheit – juristische und ökonomische Vorgaben]. 2001. In *Genetic engineering in the non-human realm: What can and should law regulate?* ed. J. Lege, 51-86. Berlin: Spitz.

Indra Spiecker gen. Dähmann

(See D I, 8)

19. Public Law as an Object of Economic Research

[Öffentliches Recht als ein Gegenstand ökonomischer Forschung: Die Begegnung der deutschen Staatsrechtslehre mit der Konstitutionellen Politischen Ökonomie]. 1998. Tübingen: Mohr. Co-authored with Martin Morlok.

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20. Side Effects of Tools Used in Economic Policy

[Nebenwirkungen wirtschaftsrechtlicher Instrumente]. 1998. In *Öffentliches Recht als ein Gegenstand ökonomischer Forschung. Die Begegnung der deutschen Staatsrechtslehre mit der Konstitutionellen Politischen Ökonomie,* eds. Ch. Engel and M. Morlok, 173-206. Tübingen: Mohr.

Christoph Engel

Public choice analysis interprets politicians and public officials as the self-interested agents of the public. Constitutional and administrative law are sometimes thought to be implicitly based on the assumption that policy-makers and public employees are benevolent. Both assumptions are obviously too strong. The paper strives for a more realistic, but sufficiently robust approach. It adds behavioural assumptions for firms and interest associations. It looks at possible safeguards. It uses these insights for comparing tools for solving public goods problems.

21. Innovation and Diffusion of Rules: Principles and Elements of an Evolutionary Theory of Institutional Change

[Innovation und Diffusion von Normen: Grundlagen und Elemente einer evolutorischen Theorie des Institutionenwandels]. 1999. *Volkswirtschaftliche Schriften* 491. Berlin: Duncker & Humblot.

Stefan Okruch

This book offers an explanation for the emergence and change of legal norms in terms of an evolutionary process of innovation and diffusion. Special emphasis is put on implicit legal change within civil law systems, i.e. the change of judicial interpretation without legislatively changing the statutes. An analysis of this kind of legal change gives new insights into the institutional foundations of a market order: Given the possibility of implicit change, the "rules of the game" cannot be constitutionally determined once and for all, nor can institutional evolution be understood without focussing on this channel of change and without specifying the legal mechanisms that lead to a beneficial cultural evolution of norms.

After clarifying the different and often incommensurable concepts of norms and institutions, I explore the methodology for an evolutionary analysis and suggest an appropriate methodological standard. On the basis of that standard I present a broad-ranging interdisciplinary analysis of theories of the emergence and change of institutions. Although there has been analysis of codified legal norms, which are further specified as the norms of property law, most explanations are deficient in that they only give a functional description of legal change, i.e. the change of norms between flexibility and stability. In order to analyse the processes of implicit legal change, I examine contributions to an evolutionary theory developed by legal scholars. By integrating of these approaches into the theory of cultural evolution, I explore a generalized evolutionary theory of institutional change. I conclude by contrasting this approach with three examples from legal history.

22. Is Constitutional Evolution only a Matter of Transaction Costs?

[Ist Verfassungsevolutorik nur eine Sache von Transaktionskosten der Gewaltenteilung?] Koreferat zu Michael Kläver. 2001. In *Perspektiven des wirtschaftlichen Wandels. Evolutorische Ökonomie in der Anwendung*, ed. M. Lehmann-Waffenschmidt. Marburg: Metropolis. Forthcoming.

Stefan Okruch

This note on Klaever's article on "Evolutionary Constitutional Economics" srutinizes his claim of developing an evolutionary theory of constitutional change by integrating legal arguments into positive constitutional economics.

Klaever's approach – drawing on Voigt's positive economics approach to the explanation of constitutional change – mainly focusses on implicit constitutional change. This way of "changing the meaning of the constitution without changing the text of the document" is explained exclusively by "transaction costs of the separation of powers". Okruch argues first that this explanation substantially limits the scope of legal arguments that can be considered. Secondly, and consequently, only some parts of constitutional evolution can be explained.

In Klaever's approach, the structure of the separation of powers determines whether extent implicit constitutional change takes place. Implicit change can only occur to the extent that it cannot be overruled by explicit change, i.e. by the legislative power. While the separation of powers is obviously important, it only sets outer limits to the possibility of constitutional change by the constitutional court. It thereby gives only a few clues to the kind of evolution that will occur. Okruch argues that for an evolutionary theory it is indispensable to focus on the legal processes instead of constitutional structures. This results in a deeper analysis of a kind of change Klaever only alludes to, namely "implicit constitutional change due to changing interpretation over time". This analysis can also intensify interdisciplinarity.

Okruch suggests a reconstruction of implicit constitutional change due to changing judicial interpretation as an evolutionary discovery procedure, i.e. a rule-guided process in which knowledge is creatively generated and disseminated. This approach makes it possible to open the "black box" of judicial decision-making and to analyse the dynamics of the legal system. Recent contributions from legal science stress the inherent creativity of adjudication and allow a detailed description of those methods and legal principles that constrain the flow of constitutional innovations.

23. The Transformation of Legal Norms from an Evolutionary Perspective

[Der Wandel von Rechtsnormen in evolutorischer Perspektive] 1998. In *Formelle und Informelle Institution: Genese, Interaktion und Wandel*, eds. J. Wieland and G. Wegner, 101-150. Marburg: Metropolis.

Stefan Okruch

Most research about the evolution of formal institutions, i.e. about legal change, has been made with regard to common law, where the majority of legal innovations are made by judges. An evolutionary analysis of civilian legal systems seems to be incompatible with these approaches, as far as legal innovations can only be produced by the legislator.

A careful interdisciplinary analysis, drawing not only on early approaches to an evolutionary legal theory but also on recent contributions to legal method

and comparative law, shows that this viewpoint cannot be upheld. In contrast to the former idealization of civilian legal science, presenting judicial decisions as a purely logical operation, recent legal research stresses the creative aspects of in legal decision-making. An economic analysis of institutional change, even when focussing civil law systems, should therefore no longer neglect adjudication as a media of change.

This kind of legal change is characterised as an evolutionary method, generating and spreading (new) legal knowledge. In this respect adjudication is a way of adapting the order of rules to the dynamics of the order of actions. With an interdisciplinary analysis, the "judge as an institution of a spontaneous order" and the mechanism of implicit legal change can be better described. Two examples from civilian legal history illustrate the importance of adjudication and show the dissemination of legal knowledge within and among jurisdictions.

24. The Judge as an Institution of a Spontaneous Order: Some Critical Remarks on a Protagonist in Hayek's Theory of Cultural Evolution

2001. In *ORDO* 52. Forthcoming.

Stefan Okruch

The judge plays an important role in *Hayek*'s theory of cultural evolution. He argues that the universal rules of just conduct could only evolve in legal systems in which it was the task of judges to "discover" the appropriate rules. This article scrutinizes *Hayek*'s optimistic view on the judicial "shaping of the rule". It asks whether the beneficial effects of judge-made law are indeed to be as generally expected as *Hayek* maintained it.

The analysis follows *Hayek*'s own methodological guidelines, which are depicted at the beginning. The following portrayal of the theory of cultural evolution places special emphasis on the judge's contribution to legal development.

Hayek's theory in general has been criticized along two lines: on the one hand, it has been argued that the processes and the criteria of selection remain vague. On the other hand, it has been stressed that an evolutionary process can only be expected to lead to beneficial outcomes under certain conditions, which ought to be specified. Okruch argues that adjudication, seen as a mechanism in legal evolution, is not beneficial as such. As an example he presents an element of German Competition Law. This example is chosen because it is directly related to the spontaneous order of markets and because the statute only gives some guidelines for "fair" competition. Thus, like in common law systems, judge-made law is extremely important. This example shows that, in contrast to *Hayek*'s unconditional statement about judge-made law, adjudication can result in serious distortions to a spontaneous order.

From the perspective of legal philosophy Okruch argues that *Hayek,* in not accepting each formally correct enacted statute as law, rejects legal positivism only with respect to the legislator. Conceptualizing any formally correct judicial decision as a valuable contribution to cultural evolution, however, is only another kind of positivism. Finally, *Jhering*'s early contribution to a theory of legal evolution is presented as a promising approach that could complement *Hayek*'s theory of cultural evolution.

25. Network Economics and Economic Policy: Assessment and Development

Habilitation Project

Stefan Okruch

(See D II 2, 37)

26. The Misery of Theoretical Economic Policy: Is there an Evolutionary Exit?

[Das Elend der theoretischen Wirtschaftspolitik: Gibt es einen „evolutorischen" Ausweg?] 2001. In *Ökonomie ist Sozialwissenschaft,* eds. S. Panther and W. Ötsch. Marburg: Metropolis.

Stefan Okruch

(See D II 2, 38)

27. Evolutionary Economic Policy: From a Positive to a Normative Theory

[Evolutorische Wirtschaftspolitik: Von der positiven zur normativen Theorie]. 2001. In *Handbuch zur Evolutorischen Ökonomik*, eds. C. Hermann-Pillath and M. Lehmann-Waffenschmidt. Heidelberg: Springer. In print.

Stefan Okruch

(See D II 2, 39)

28. Economic Policy in an Open World: Mercantilism and Today's Competition among Economic Systems

[Wirtschaftspolitik in einer offenen Welt: Positiver und normativer Gehalt merkantilistischer Vorstellungen in einem ‚Wettbewerb der Systeme']. 2000. In *Merkantilismus und Globalisierung, eds.* H. Reinermann and Ch. Roßkopf, 123-151. Baden-Baden: Nomos.

Stefan Okruch

(See D II 2, 19)

29. Urban Change and the Law

Dissertation Project

Christian Schubert

(See D I, 3)

30. Law and Creativity in Space: A Note on the Legal Governance of Spatial Self-Organization

Paper presented at the 17th EALE Annual Conference at Ghent/Belgium, 14 September 2000.

Christian Schubert

(See D I, 4)

31. Efficient Environmental Law: Criteria and Limits

[Effizientes Umweltordnungsrecht: Kriterien und Grenzen.] 2000. Baden-Baden: Nomos.

Erik Gawel/ Gertrud Lübbe-Wolff

From an economic textbook point of view, measures of command-and-control as well as standard setting in environmental quality regulation are considered inefficient, that is, to preserve the environment, this type of policy instruments induces excessive costs. Nevertheless, these mechanisms, up to now, dominate the institutional design of environmental policy all over the world. Under what conditions can command-and-control measures be made more efficient? Are they, seen from an institutional economics point of view, really as inefficient as economic textbooks usually suggest? This reader contains legal, economic and social scientists' articles from the interdisciplinary Reseach Group „Rational Evironmental Policy – Rational Environmental Law" at the University of Bielefeld, which was set up in 1998/99 to answer these questions. By analyzing the efficiency of application procedures, environmental standards and technical rules, emission and immission strategies in the European context, enforcement structures as well as integrated prevention and pollution policies, the reader summarizes the research group's work in the field of efficient environmental law.

32. Efficiency in Environmental Law: Basic Questions of the Economic Use of the Environment from the Perspective of Economics and Social Science

[Effizienz im Umweltrecht: Grundsatzfragen einer wirtschaftlichen Umweltnutzung aus rechts-, wirtschafts- und sozialwissenschaftlicher Sicht] 2001. Baden-Baden: Nomos. Forthcoming.

Erik Gawel

From the economists' point of view environmental policy has to implement incentive-based mechanisms for efficient allocation. In opposition to this, environmental legislation has always been and is still dominated by command and control strategies and neglects the economists' call for more efficient structures in law. Economic efficiency is often reproached for lacking distributive justice and seems to be even unconstitutional. Economic efficiency is criticized by legal and social scientists as well. What might be, hence, the role of allocative efficiency in environmental law? This reader contains controversial legal, economic and social scientists' articles from the interdisciplinary Reseach Group "Rational Evironmental Policy – Rational Environmental Law" at the University of Bielefeld, which was set up in 1998/99. The reader summarizes the research group's work in the field of efficient environmental law. Inter alia, it is discussed whether constitutional law in Germany makes it essential for reasons of distributive justice that efficiency cannot be a relevant law principle.

33. Economic and Legal Thinking in Scientific Environmental Policy Consulting: The Problems of the Legal Reception of Efficiency

[Ökonomisches und juristisches Denken in der wissenschaftlichen Umweltpolitikberatung. Probleme einer juristischen Effizienzrezeption]. 2000. In *Staatshandeln im Umweltschutz: Perspektiven einer institutionellen Umweltökonomik*, eds. K. Bizer, B. Winscheidt and A. Truger, 89-110. Berlin: Duncker & Humblot.

Erik Gawel

This article is a brief essay about the role of economics and contiguous disciplines competing with each other on the market for scientific policy advice. The paper refers to enrionmental policy as exemplary field for this interdisciplinary case study. It is argued that, for several reasons, economics hardly stands a chance of succeeding in structuring environmental policy if its suggestions have to be implemented by legal or at least legally educated actors. A special reason for this failure can be seen in the shortcomings of the legal adoption of the idea of efficiency. It is pointed out that economic thought is scracely ever adopted correctly by policy-makers or implementation actors who are mainly socialized by academic jurisprudence. Therefore, this paper analyzes the different patterns of thought between economics and jurisprudence with respect to the concept of efficiency.

34. Error Minimization and Deterrence in Agency Control: Judicial Review and the Role of the Standard of Proof

To be published in *International Review of Law and Economics*.

Markus Lehmann

This paper presents a principal-supervisor-agent model in which a regulatory agency (the supervisor) may collude with a regulatee (the agent). A watchdog organization may scrutinize the agency's decision-making and find evidence speaking for collusive behaviour. The evidence found is specific, and stochastic. Courts will overturn an administrative decision when the evidence presented in court exceeds a minimum quality standard set by the political principal. Lowering the standard increases the odds of finding evidence of sufficient quality and, hence, leads to increasing collusion deterrence and to a lower probability of acquitting collusive administrators (type I error), but also to a higher probability of convicting an innocent administrator (type II error). It is shown that, when welfare-maximization gives rise to an interior solution, the welfare-maximizing standard of evidence is lower than the one that merely minimizes the costs of legal errors, but it will imply incomplete deterrence. However, conditions can and will be identified under which both errors in cost minimization and complete deterrence coincide with welfare-maximization.

35. Is Judicial Detection Skill Needed to Ensure Bilateral Contractual Compliance?

Submitted to *International Review of Law and Economics*.

Markus Lehmann/Indra Spiecker, gen. Döhmann

In this commentary the authors contradict some classical findings in the trial- and-settlement literature that judicial detection skills matter in the detecting and handling of opportunistic law suits. They argue to the contrary, that legislation has a different policy variable which may ensure bilateral contractual compliance even with zero detection skill: criminal punishment for filing such suits. The authors' main argument is derived from the existence of criminal offenses, such as judical fraud (Prozeßbetrug) or contempt of court, which neither depend on judicial detection skill nor on the detection skills of the judicial system as such. These criminal offenses react to a change in the state of the informational world. To prevent opportunistic law suits judicial detection skill is therefore not needed under all circumstances.

36. The Problem of Locating Contamination Sites: Incentives for Finding Information with the Use of Key Witness Rules?

[Das Problem der Altlastenentdeckung: Anreize zur Informationsenthüllung durch eine Kronzeugenregelung?]. *Zeitschrift für Umweltpolitik und Umweltrecht* 24 (3): 475-505. Preprint 2000/17.

Roswitha Kleineidam/Markus Lehmann

(See D I, 28)

37. Private Institutions in Waste Management Policy and their Antitrust Implications: The Case of Germany's Dual Management System

Preprint 1999/13

Markus Lehmann

(See D I, 27)

38. The Proper Scope of Government

18th International Seminar on New Institutional Economics
15–17 June 2000, Dresden

Normative theory is not fashionable these days, neither in economics nor in the other social sciences. Even the lawyers with an interest in interdisciplinary work lean towards analysing the mechanics of law with the sharp intellectual tools offered by the neighbouring fields, rather than formulating normative precepts. This reluctance does not come as a surprise. Some have read *Max Weber* and feel that normativity is just not their business. Others remember too well how much good academic advice has been neglected by those in power, and, relying on public choice theory; they explain why it could be no different. Yet others draw a dividing line between policy pragmatics and academic pragmatics, the latter calling for the selection of such issues that help develop the conceptual tools of the respective science. Finally those with philosophical inclinations point to the fact that it is impossible to overcome fundamental relativity, like the dichotomy between individualistic versus societal thinking.

Yet there are decisions to be taken in this world, and not all of them can be left to chance, power, charisma, history, custom, emotions or heuristics. And those who have power to decide about others' lives are asked for reasons, and if they are wise they will themselves strive for good reasons, conveying their action legitimacy. In short: despite all its inevitable limitations and shortcomings, there is still a lively demand for normative theory.

The 18th International Seminar on the New Institutional Economics took up this challenge. Economists, lawyers, political scientists and philosophers tried to come closer to the Proper Scope of Government. They did so on four levels. The first level was straightforward: economic power and education were discussed as two specific policy fields. The German ordoliberals were highly influential in both Germany and the European Community, but they face severe theoretical criticism. All over the world government feels entitled, if not obliged, to intervene into education, albeit with strongly varying degrees and forms. On the second level, the symposium looked at what one might call normative currencies: Is there a role for government in equilibrium selection? Is it time to bring fairness back in, as opposed to, in particular, the individualistic goal of efficiency? On the third level the conference discussed the possibility conditions for any normative discourse, given both fundamental relativity and fundamental ignorance. The seminar finally turned to a normative theory of the institutions that make normative judgements. What are the issues a democracy best ought to hand over to non-majoritarian institutions, like a central bank or the European Commission? Is delineating the proper scope of government a proper task for a constitutional court? Is the power to take normative decisions best checked by putting the institution under the pressure of regulatory competition?

Speakers:

Wernhard Möschel
Universität Tübingen
The Proper Scope of Government – Viewed from an Ordoliberal Perspective: The Example of Competition Policy

Jack Knight
Washington University at St. Louis
A Pragmatist Approach to the Proper Scope of Government

Giandomenico Majone
External Professor Grassina
Nonmajoritarian Institutions and the Limits of Democratic Governance: A Political Transaction-Cost Approach

Joachim Jickeli
Christian-Albrechts-Universität Kiel
A Role of Government in Human Capital Building and Education? Perspectives for a Research Programme in Institutional Economics

Roger Guesnerie
DELTA Paris
The Government and Market Expectations

Ken Binmore
University College London
Natural Justice and Political Stability

Bruno S. Frey
Universität Zürich
– A Utopia? Government without Territorial Monopoly

Christoph Engel
Max Planck Project Group on the Law of Common Goods Bonn
Delineating the Proper Scope of Government – A Proper Task for a Constitutional Court?

39. Organizing and Designing Markets

19th International Seminar on New Institutional Economics
14–16 June 2001, Schloß Ringberg, Rottach-Egern

Textbook economics starts from a number of classic dichotomies: market vs. government; market vs. organization; market vs. firm. But reality does not always bend to these dichotomies. A few examples may characterize degree and complexity. Government standardizes products (by producer liability rules) and transactions (by default rules), opens entirely new markets up (by auctioning frequencies), helps markets gain momentum (by subsidizing secondary raw materials from waste) or attract customers (by supporting a new industrial district). Entrepreneurs seek their chance in organizing new markets at their own risk (by organizing a fare, a stock exchange, or an Internet auction). Industry self regulation aims at creating opportunities for competition among participants (by

a cooperative shopping mall) or at reacting to preferences of consumers for "true" competition (by organizing a football league out of equally powerful teams). Hybrid schemes combining several of these inputs abound (take financial innovations standardized by industry cooperation, traded on a private stock exchange, and both supervised by a securities exchange commission). The conference analysed the organization and the design of markets from the combined angles of economics, law and sociology.

Speakers:

Friedrich Kübler
University of Frankfurt/Main
Clifford Chance Attorneys at Law
The Organization of Global Financial Markets

Erik Theissen
University of Bonn
Floor versus Screen Trading: Evidence from the German Stock Market

Benny Moldovanu
University of Mannheim
How to Dissolve a Partnership

Xavier Vives
Institute d'Anàlisi Econòmica Bellaterra Insider Trading and its Regulation

Randal Picker
University of Chicago Law School
Understanding Microsoft: The Decline of Centralized Coordination in a Peer-to-Peer World

Carlo Jaeger
Potsdam Institute for Climate Impact Research
Would the Real Frank Ramsey Please Stand Up? Designing Credit Markets for Optimal Growth

Avner Greif
Stanford University
Individual
Impersonal Exchange and the Origin of Markets: From the Community Responsibility System to Legal Responsibility in Pre-modern Europe

Harrison White
Columbia University
INSEAD Paris
Markets as Mobilizers

40. Causes and Management of Conflicts

20th International Seminar on New Institutional Economics
Wörlitz, June 2002

Conflicts tend to impose substantial costs on all parties and to destroy economic as well as other values. This is particularly the case when conflicts persist over a long period. Moreover, many resolutions that are achieved fail the criterion of efficiency in the sense that the final outcome could have been reached at much lower costs. For that reason, identifying the situations where conflicts arise, exploring the great variety of institutional responses to be observed in real life and to search for improved mechanisms of conflict resolution remains an important subject of interdisciplinary research.

There are many competing views why and how conflict originates. Rationalist explanations introduce factors like time (building the reputation of a tough negotiator) or group (sacrificing individual welfare for the benefit of a coalition). Cognitive explanations introduce factors like competing perceptions of the situation or the idea of domain specific rationalities. Motivational explanations introduce factors like reactance or emotions. Social psychology introduces factors like group identity and group dynamics. Sociological explanations point to the social embeddedness of behaviour and to the role of ideas.

Many institutions exist to cope with conflict. Public international law is bound to start from the premise that maintaining peace is more important than any specific legal rule. Globalisation might increasingly bring nation states into similar situations. The constitutional right for workers to strike and the German co-determination are sometimes justified by

their conflict prevention effects. Corporatism has a similar record among some political scientists. Settlements and commercial arbitration are said to do a better job of conflict resolution than ordinary court procedure. Similar hopes underpin proactive schemes of discourse, participation and mediation in the public administration.

A fruitful normative view starts from an angle of social contract theory: why do we not – as Hobbes and others suggested – write a complete social contract in the first place, in the interest of fully invalidating the individual violence options? Is the transaction cost for doing so prohibitive? Are the reciprocity norms so safely genetically determined that an (almost) complete social contract would waste this valuable resource? Or is conflict not only a bad, but also a good thing, in that it generates variety and hence enriches the pool of solutions? How could we appropriately model the ensuing incomplete social contract? By a simultaneous two-level game?

The conference aims at identifying situations leading to conflict, understanding mechanisms of conflict resolution and making proposals for improved management of conflict.

41. Institutions for Homo Sapiens

Conference and Joint Project with the Max Planck Institute for Human Development
Part of Inter-Institute Research Initiative

(See D V, 2)

42. Can Inconsistency Be a Value?

Conference Series organised jointly with the Max Planck Institute on the History of Sciences
Part of Inter-Institute Research Initiative

(See D V, 26)

43. Discovery, Representation and Perception

Conference jointly organised with the Max Planck Institute on Psychological Research
Part of Inter-Institute Research Initiative

(See D V, 27)

E II Legal Theory

Hardly a native speaker knows the grammar of his native tongue. The major exception are those who have to teach the language to foreigners. Those who engage in interdisciplinary work are in a similar situation. If they want to make their own voice heard, they must strive to make explicit what could well remain implicit knowledge for their own disciplinary purposes. In the case of law, the urge for such an exercise is particularly pronounced. For law is closer to an art than to a science. Accordingly the amount of implicit knowledge is pronounced.

The lawyers at the project group started this endeavour early on, even before the project group had been officially set up. Engel and collaborators (1, 2) looked at methodological foundations for a law of common goods, exploring legal theory, legal philosophy, psychology and legal history as tools. Engel (3, 4,5, 6, 7, 8, 9) pursued that line of research further with a series of papers. One is programmatically titled: the grammar of law. A second text studies the possibility conditions for legally defining the common good. A third tries to contrast the research in the social sciences on trust with implicit legal concepts. A fourth paper develops a legal concept of uncertainty, in opposing it to the views from economics, psychology and sociology. Finally, two papers explore the possibilities and limitations for a subsidiary political role of the Constitutional Court. Moral Soriano (10, 11, 12, 13, 14, 15) has a series of papers on legal reasoning exploring the role of substantive reasons – principles, rights and goals – and authority reasons – statutory norms and precedents – in legal adjudication. She also looks at the philosophical foundations of judicial precedents and defends the proposed theoretical model to rationalize the use of precedents in both Continental Law and Common Law systems. Finally, Moral Soriano analyses the structure of the European Court of Justice's legal reasoning and the embraced notion of coherence. Defining a rationality concept proper for law is the key question of the dissertation by Bitter (16), asking under what conditions the economic concepts of signalling, screening and mechanism design can be incorporated into law. Baehr (17) deliberately looks at the law from the exterior: how is it that command and control regulation actually affects the behaviour of its addressees, and what can be learned from this for designing and interpreting it? Finally, two economists also write with an interest in legal theory. Okruch (18, 19, 20, 21) has a monograph and a series of papers on understanding the evolution of law. Schubert (22) purports to formulate the rationale of zoning legislation in economic language.

1. Methodological Approaches to the Law of Common Goods

1998. Ed. Ch. Engel. Baden-Baden: Nomos.

Christoph Engel
The Task of Law Studies According to the Openness of The Legal Order for Social Scientific Theory

Stephan Tontrup
Economics in Dogmatic jurisprudence

Jörn Lüdemann
The Public Spirit Goods for ist Enhancement: The Legal Order between Restriction and the Public Spirit and the Consequences for Interdisciplinary Approach

Michael Timme
Legal History as a Methodological Approach to the Law of Common Goods

2. Law is Applied Social Science

[Rechtswissenschaft als angewandte Sozialwissenschaft] 1998. In *Methodische Zugänge zu einem Recht der Gemeinschaftsgüter,* ed. Ch. Engel, 11-40. Baden-Baden: Nomos.

Christoph Engel

Interdisciplinary work is rewarding, but risky. Not so rarely, both sides are disappointed. In the case of law and the social sciences, lawyers tend to miss the richness and flexibility of their own field, and social scientists tend to miss the rigour characteristic for their work. This paper distinguishes two dimensions of law: legal practice, and law as an academic field. It shows why legal practice could not fully adopt scientific standards. Although law as an academic field can go much further into the direction of the social sciences, it also must ultimately remain linked to legal practice. The proper role of academic law is best captured by a metaphor: lawyers are the engineers of the social sciences. Like a technical engineer, they ought to use, if necessary even further develop, the concepts from the social sciences. But they cannot exclusively use one methodology, if competing methodologies highlight aspects that are important for the solution of a policy problem. And ultimately, judgement is more important for their work than objectivity or originality.

3. The Law of Common Goods

[Das Recht der Gemeinschaftsgüter]. 1997. In *Die Verwaltung* 30: 429-479.

Christoph Engel

(See G I, 10)

4. The Grammar of Law

[Die Grammatik des Rechts]. 2001. In *Instrumente des Umweltschutzes im Wirkungsverbund*, ed. H.-W. Rengeling and H. Hof, 17-19. Baden-Baden: Nomos.

Christoph Engel

(See D V, 25)

5. A Definition of Public Welfare

[Offene Gemeinwohldefinitionen]. Rechtstheorie. In press.

Christoph Engel

Doesn't work. Has failed. Apolitical. Naïve. Premodern. Non-scientific. Such hardly ornamental epithets get pinned on anybody who still sets out to define public welfare today. Ideas and interests cannot be translated into one another without fracture. There is no abstract basic norm from which all normative decisions could be deduced. But neither can the individual, society and the state forego a definition of public welfare. The ostensive a priori dissolves when a closed definition of public welfare is exchanged for an open one. A definition of public welfare cannot claim validity once and for all, but always just for one time. Such openness is able to be created with numerous decision-making techniques. The co-existence of incommensurable ideas can be organized through distinctions. Institutions can keep the struggle between conflicting ideas open over the long run. Or decisions and reasons break up. It is easier if the conflict is only settled for the concrete circumstance to be decided upon. Sometimes there is even agreement in the concrete case about the causes; more often in any case there is agreement about the effect. The plasticity of the definition of the problem can also be used. The need for a decision does not completely disappear with any of these techniques. However, it does diminish. And if it does come to a decision, that decision is more controlled.

6. An Essay on Trust

[Vertrauen: Ein Versuch]. Preprint 1999/12

Christoph Engel

(See D V, 15)

7. Legal Decisions Under Uncertainty

2002. In *Wissen, Nichtwissen, Unsicheres Wissen*, eds. Ch. Engel, J. Halfmann and M. Schulte. Baden-Baden: Nomos. In Press.

Christoph Engel

(See D V, 10)

8. Delineating the Proper Scope of Government: A Proper Task for a Constitutional Court?

2001. *Journal of Institutional and Theoretical Economics* 157 (1): 187-219.

Christoph Engel

German Basic Law is open to an interpretation that would allow the Constitutional Court to test the normative adequacy of most statutes. If the court did, it could be modelled as the supervisor of the legislator, i.e. of the agent of the people. The model predicts collusion between the supervisor and the agent, or too little control. Actually, constitutional lawyers are concerned by the opposite, too much control. This article purports to solve the puzzle, and to put the principal/agent model into a broader framework needed for normative recommendations.

9. The Constitutional Court – Applying the Proportionality Principle – as a Subsidiary Authority for the Assessment of Political Outcomes

Preprint 2001/10

Christoph Engel

The Constitutional Court is one of the most characteristic features of the German constitution. The most important power of the Court rests in litigable fundamental rights. According to established jurisprudence, any governmental interference with freedom or property needs justification. It must pursue a legitimate aim, and the interference must be conducive to this end, it must be the least intrusive measure, and it may not be out of proportion. Conceptually, this dogmatic tool could become the vessel for a long-standing dream of (some) political scientists. It could turn the Constitutional Court into an authority for assessing political outcomes. The paper demonstrates the many obstacles, originating both from political sciences and from law. They call for high modesty and prudence. But they do not turn the dream into outright utopia. Systems theory, very liberally employed, allows us to define a subsidiary role for the Constitutional Court in assessing political outcomes. The paper concludes by analysing the dogmatic consequences for the interpretation of fundamental rights.

10. Is Law so Normative? Joseph Raz' Notion of 'Authority' in Practical Legal Reasoning

[¿Es el derecho tan normativo? La noción de autoridad de Joseph Raz en el razonamiento práctico jurídico]. 2001. *Anuario de Filosofía del Derecho* 17: 337-357.

Leonor Moral P. Soriano

This paper analyses Raz's thesis concerning the executive – also called normative – function of authority. From this point of view, Raz differentiates first order reasons from second order reasons, and further, the deliberative level of legal reasoning from the executive level of legal reasoning. It is argued that the law – a form of authority – does not have the normative function Raz attributes. The use of judicial precedents support this statement.

The law claims legitimate authority. It provides a system of second-order reasons, that is, they repeal the consideration of any other reasons, even first order reasons like fairness. Judicial precedents place this thesis into question. These certainly are authoritative reasons, consideration of which repeals any other reasons. However, an appropriate notion of precedents allow following and abandoning precedents. If judicial precedents are abandoned (either distinguished or overruled) it is because first order reasons have been justified, that is, reasons concerning the fairness of applying a precedent which lead to unfair outcomes.

If first order reasons have to be provided to justify the abandoning of a precedent, then these type of reasons have a place in legal reasoning, and they prove that legal reasoning is not executive, but also deliberative.

11. The Precedents of the Spanish Supreme Court. Bringing Jurisprudence Closer to the Theory of Precedents

[Los precedents en el Tribunal Supremo: El acercamiento de la jurisprudencia a la teoría de los precedentes]. 2000. *Revista del Poder Judicial* 57: 119-154.

Leonor P. Moral Soriano

The analysis of the role of Tribunal Supremo's *jurisprudence* has traditionally been conducted from the following perspectives: (i) *jurisprudence* as a cohesion element of the legal system; (ii) *jurisprudence* as a source of law; and (iii) *jurisprudence* as tool to interpret the law. There is, however, a new approach which this paper tries to explore according to which judicial precedents are techniques of argumentation.

This paper analyses the convergence of *jurisprudence* and precedents. First, it studies the foundations and use of the Tribunal Supremo's *jurisprudence* in the framework of the cassassion. Then, it describes a gradual foundation of the precedents and their relatively binding force. When doing so, attention is paid to the relevance of precedents in legal argumentation. Finally, the paper analyses how far the convergence of *jurisprudence* and precedent improves the way jurisprudence is used by lawyers and judges, and helps to overcome current flaws of the cassassion. This paper does not argue in favour of abandoning the unifying function of *jurisprudence*, but rather to consider it as an argumentative technique.

12. A Progressive Foundation for Precedents

2000. *Archiv für Rechts- und Sozialphilosophie* 86: 327-350.

Leonor P. Moral Soriano

This article aims to rationalize the use of precedents in legal argumentation. For this purpose, a normative model of justification and the use of precedents will be elaborated. This model combines both the interpretative and argumentative aspects of prior judicial decisions. The foundation of the normative model which will be defended is *progressive* since it is made up of three correlated arguments: the argument *ab exemplo*, the argument of *authority* and the *principle of justice*. (i) The argument *ab exemplo* justifies an essential aspect of precedents: prior decisions establish how the law must be interpreted. That is to say, precedents are models of interpretation. Despite that this is an obvious aspect of precedents, the argument *ab exemplo* provides a suitable point of departure towards a rational foundation of precedents. The argument of authority (ii) supplies an answer to the question of which precedents must be considered: those coming from superior courts. However, authority does not justify a strictly binding system. Authority reveals that departing from precedents is needed. The rule of justice (iii) provides the third foundation of precedents. It summarizes two further rules: formal justice and inertia. According to these rules, precedents are relevant in the argumentation of judicial decisions at two levels: at the level of internal justification, precedents contribute to the consistency of judicial decision; at the level of external justification, they contribute to the coherence of legal reasoning.

These arguments explain why precedents are relevant in legal argumentation and legal justification, which precedents judges should refer to, and how to use precedents in legal argumentation and legal justification. In this sense, the absolute binding force of precedents has been rejected, for such binding force is incompatible with a model of argumentative legal reasoning. Instead, this article defends the relative binding force of precedents: prior decisions must be followed unless departing from them is justified. Common law and civil law systems converge towards this model.

13. A Modest Notion of Coherence in Legal Reasoning: A Model for the European Court of Justice

***Ratio Juris.* Forthcoming.**

Leonor P. Moral Soriano

The aim of this article is to propose a theoretical theme for explaining coherence in legal reasoning. The main argument that this paper seeks to put forward is that theories of coherence in the legal system should be differentiated from theories of coherence of legal reasoning: theories of coherence of legal reasoning focus on the arguments, and on how the given arguments are connected. This paper argues that prior to asking whether the rule contained in a decision coheres with the legal system, one should ask whether the reasoning itself coheres. Legal reasoning, and in particular legal adjudication, is a matter of supporting judicial decisions by arguments or reasons which cumulate, form chains, or form cumulation/nets; theories of coherence of adjudication focuses on how to form coherent cumulations, chains or nets of reasons.

In particular, the notion of coherence of legal reasoning proposed here is a modest one. It is modest in different senses. It does not aim (as global notions of coherence do) to identify what the law is according to a principle, or set of principles. It aims instead at recognizing the value pluralism of the legal system, that is, the idea that different and in-

commensurable values belong to and collide within the legal system. The way of dealing with value pluralism is modest: with arguments. So is the notion of coherence, for it aims to provide tools to elaborate coherent supportive structures of arguments, rather than to provide a definitive answer.

This paper also analyses several court decisions on environmental matters, which concern the conflict between two incommensurable goods, namely environmental protection and economic freedoms. The absence of a metric to measure the weight of colliding interests does not imply that conflicts between incommensurable goods cannot be made in a fair and rational way. Choices can be made; the question is how can incommensurable goods – e.g. the environment and economic freedoms – be evaluated, and how choices can be made without being irrational or arbitrary (for no metric is supplied). Arguments, i.e. reasons, are the main tool to justify rational choices between incommensurable goods. Here, the modest notion of coherence is needed to evaluate how far the Court will comply with the theoretical theme this paper proposes, and to evaluate how coherent its legal reasoning is. The conclusions show that attempts to generate coherence by making all decisions fit into a single line, namely integration, and the criticisms of judicial activism of the Court are based on a poor understanding of coherence in legal reasoning, or even worse, the lack of such understanding.

14. Balancing Reasons at the European Court of Justice

2001. *Proceedings of the IVR Conference. Archiv für Rechts- und Sozialphilosophie*. Forthcoming.

Leonor P. Moral Soriano

This paper analyses conflicts of reasons, and in particular how the notion of coherence which is embraced by the judge determines the way these conflicts are solved. Conflicts between principles (both rights and goals) provide good examples of the content of legal reasoning since solving them requires a weighing and balancing exercise in order to find a compromise. To this aim, a notion of coherence is required. This does not establish a systematic order among rights and goals. Rather, it controls the correctness and rationality of the argumentation. To understand this notion better, the legal reasoning of the European Court of Justice (the Court) is analysed in this paper. Particular attention is paid to conflicts in which economic freedoms and environmental protection collide. What does this court understand by balancing colliding interests? How does it strike a balance? Which is the notion of coherence adopted? These are the main questions the paper deals with. To be published 2001.

15. Integration and Integrity in the Legal Reasoning of the European Court of Justice

2001. In *The European Court of Justice*, J. Weiler and G. de Búrca. Oxford: Oxford University Press. Forthcoming. Co-authored with N. MacCormick and J.R. Bengoetxea.

Leonor P. Moral Soriano

The task presented to the authors of this essay was to give an account of the legal reasoning of the European Court of Justice, to look at the style and method of reasoning adopted by the Court, in the light of contemporary understandings of legal reasoning more generally. The Court has been criticized for being activist; many argue that it has crossed the line between the legal and the political domains by being creative and interventionist. But does such a line really exist? Rather than a line, one should talk about an area in which law and policies overlap. The question is not how to separate one from the other – by drawing lines – but rather how to manage the overlap. Here is where attention has to be drawn to the ideal of overall *coherence* which governs the authors' view of the legal system as a system and hence gives weight to the interpretative approach favoured by arguments that draw upon the systemic character of a legal system. They depend on the idea, crucial for the 'Rule of Law', that the different parts of a whole legal order should hang together and make sense as a whole.

Once the general features of legal interpretation and justification have been sketched, the authors reconstruct the reasoning of the European Court of Justice. This is done by adapting the general theory of legal reasoning to the different idiosyncratic elements of the European legal system and to legal and judicial problems typical of the EC such as the law-making process at the European Communities and the EU, the legal order of the EC (and EU), judicial decision-making at the Court, and the interrelation between the EC legal order and the state and infra-state legal orders, among other things.

A differentiation is elaborated between internal and external justification. Internal justification is defined as the logical exercise of subsuming facts under the chosen legal norm. Despite the dominance of legal and deductive elements in this state of judicial justification, attention is paid to non-legal elements which may influence the reasoning – the legal education of the judge, legal culture, language knowledge, etc. – although they do not justify the final decision. In the stage of external justification, judicial decision-making becomes a matter of justifying choices between colliding arguments, colliding interpretations, colliding rules, values, principles or even policies. All these are examples of conflicts of reasons the solution of which requires a coherent justification. In this sense a notion of coherence, i.e. a notion of what is 'making sense as a whole' is needed. It is claimed that this notion of coherence requires connections between the legal system and the political and constitutional theory of the Community.

16. Gathering Private Information from the Citizenry: Are German Public Agencies Free to Follow the Recommendations of Game Theory?

Dissertation Project

Melanie Bitter

(See D V, 24)

17. Behavioural Modification through Command-and-Control Regulation

Dissertation Project

Thomas Baehr

(See D V, 4)

18. Innovation and Diffusion of Rules: Principles and Elements of an Evolutionary Theory of Institutional Change

[Innovation und Diffusion von Normen: Grundlagen und Elemente einer evolutorischen Theorie des Institutionenwandels]. 1999. *Volkswirtschaftliche Schriften* 491. Berlin: Duncker & Humblot.

Stefan Okruch

(See E I, 21)

19. Is Constitutional Evolution only a Matter of Transaction Costs?

[Ist Verfassungsevolutorik nur eine Sache von Transaktionskosten der Gewaltenteilung?] Koreferat zu Michael Kläver. 2001. In *Perspektiven des wirtschaftlichen Wandels. Evolutorische Ökonomie in der Anwendung*, ed. M. Lehmann-Waffenschmidt. Marburg: Metropolis. Forthcoming.

Stefan Okruch

(See E I, 22)

20. The Transformation of Legal Norms from an Evolutionary Perspective

[Der Wandel von Rechtsnormen in evolutorischer Perspektive] 1998. In *Formelle und Informelle Institution: Genese, Interaktion und Wandel*, eds. J. Wieland and G. Wegner, 101-150. Marburg: Metropolis.

Stefan Okruch

(See E I, 23)

21. The Judge as an Institution of a Spontaneous Order: Some Critical Remarks on a Protagonist in Hayek's Theory of Cultural Evolution

2001. In *ORDO* 52. Forthcoming.

Stefan Okruch

(See E I, 24)

22. Urban Change and the Law

Dissertation Project

Christian Schubert

(See D I, 3)

E III Political Science Theory

New lines of theoretical argumentation are emerging from various areas of research:

The first such area is the conceptualization and theorization of common goods: A systematic game-theoretical argument is developed by Holzinger (1, 2), studying the relationship between a particular type of good (common pool resource, public good, or club good) and its attributes, the underlying interest constellations and possible institutional modes of provision of this good in environmental policy. Also along game-theoretical lines, Kölliker (3, 4) develops an argument linking the type of common good (public good, common pool resource, or club good) provided by the European Community and centripetal and centrifugal forces for states outside the communitization of a policy area. Maier-Rigaud develops a theory on the decentralized institutional provision of collective goods (66).

The second area around which new general theoretical arguments are being developed is governance across multiple arenas and the particular role private actors play in it: The institutional provision of common goods across multiple arenas relying on private actors has proven to be quite a challenge for conceptualization, theoretical generalizations and empirical analysis. The analysis (horizontal dimension) based on the interaction of public and private actors has produced general arguments as to the conditions under which private actors and their functions play an important role in the provision of common goods, and to what effect (in an international context (Knill 5 and Lehmkuhl 6), and in a European context (Héritier 7). New theoretical arguments have also been developed with respect to the emergence of common goods as a result of positive external effects of private commercial activities (for rating agencies Kerwer 8; for private third-party dispute resolution Lehmkuhl 9).

The third area which has lent itself to new theoretical arguments is the aspect of democratic legitimation in the institutional provision of common goods. One line of argument takes up the lack of democratic legitimation of large international bureaucracies providing common goods and argues that democratic deliberative decision-making structures would make for better outcomes (Verweij 10, 11). Another looks at the composite nature of European democratic legitimation and the particular link of transparency and access to information pointing to the diverse elements of democratic legitimation in Europe and the inherent tension or compatibility of the different components (Héritier 12, 13); other work studies the interaction between informal and formal institutions: in the European Union, the increased weight of the European Parliament in its dealings with the Council of Ministers under the new co-decision procedure with its new informal institutions of "early agreements" comes at a cost, namely the loss of democratic debate (Farrell and Héritier 14). Finally, ways of enhancing democratic legitimation and participation at the national level, such as deliberative democracy (discourse), direct democracy (referenda) and consensus-based dispute resolution (mediation) are analysed and evaluated, using the concrete case of a conflict about an environmental common good (Holzinger 15, 16, 17, 18, 19, 20).

The fourth area in which new concepts and theoretical explanations have been developed is Europeanization research investigating the impact of European policies on national policies, political and administrative structures and the study of the implementation of European policies (Börzel 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34; Héritier 35, 36; Kerwer 37, 38, 39; Knill 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50; Lehmkuhl 51, 52, 53, 54, 55, 56, 57, 58). It is argued that Europe "matters" but in a differential way, depending upon national stages of policy development, prevailing belief systems and reform capacity (Héritier 59); different logics of Europeanization are pointed out: institutional compliance, changing domestic opportunity structures and the framing of domestic beliefs (Knill 60/Lehmkuhl) and the role of domestic private actors in enhancing implementation of European legislation is pointed out (Börzel 61, 62).

This research links into the investigation of the implementation of international treaties in the provision of common goods. Among other aspects the following questions are analyzed: What role does the mobilization of private actors play in securing implementation? How can new forms of associative self-regulation be given a bite across national boundaries in order to secure compliance with international agreements to provide common goods (Farrell 63)?

Another area where general explanatory arguments have emerged is found at the interface of law and political science and could be called the court-induced definition of political arenas and opportunity structures. In this research it is systematically scrutinized how ECJ ruling define the scope of relevant actors of a political arena in a certain issue area and thereby influence the relative weight of political actors with particular preferences and the likely outcome of policy-making processes (Héritier and Moral Soriano 64; Héritier 65).

1. Aggregation Technology of Common Goods and its Strategic Consequences. Global Warming, Biodiversity and Siting Conflicts

2001. In *European Journal of Political Research* 40. Forthcoming.

Katharina Holzinger

(See D II 1, 1)

2. The Provision of Transnational Common Goods: Regulatory Competition for Environmental Standards

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Katharina Holzinger

(See D II 1, 2)

3. Bringing Together or Driving Apart the Union? Towards a Theory of Differentiated Integration

2001. *West European Politics* 24 (4): 125-151. Forthcoming. Preprint 2001/5.

Alkuin Kölliker

(See D II 1, 3)

4. How to Make Use of Closer Cooperation? The Amsterdam Clauses and the Dynamics of European Integration

2001. *Forward Studies Unit Working Paper.* Brussels: European Commission. Co-authored with Francesco Milner.

Alkuin Kölliker

(See D II 1, 4)

5. Private Governance across Multiple Arenas: European Interest Associations as Interface Actors.

2001. *Journal of European Public Policy* 8 (2): 227-246.

Christoph Knill

(See D II 1, 5)

6. Changing Patterns of Public-Private Interaction in the Context of Europeanization and Globalization.

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Dirk Lehmkuhl

(See D II 1, 6)

7. New Modes of Governance in Europe: Policy-making Without Legislating?

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Adrienne Héritier

(See D II 1, 17)

8. Standardizing as Governance: The case of credit rating agencies.

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming. Preprint 2001/3.

Dieter Kerwer

(See D II 1, 18)

9. Competition and Co-Evolution of Public and Private Adjudication: The Institutionalization of Dispute Resolving Authority in Transnational Trade

2001. In *Globalization and its Institutions: Redefining the Rules of the Economic Game*, eds. M.L. Djelic and S. Quack. In Preparation.

Dirk Lehmkuhl

An analysis of the dynamics in the institutionalization of authority that settles transnational disputes provides a number of insights. At the most general level it has been worthwhile to conceive the institutionalization of authority in transnational economic exchange in terms of continuous interactions between institutions and organizations or actors living in these institutions. In the present context, these interactions have been described as competition and co-evolution of institutions belonging either to the public or to the private realm and include formal rules such as constitutional laws, mandatory provisions and international conventions and their enforcement characteristics, as well as self-enforced codes and trade norms. These developments are interpreted as a pluralization of jurisgenerative locations and adjudicative authority.

10. Deliberately Democratizing Multilateral Organizations

2001. *Governance* 14, special issue. Forthcoming.

Marco Verweij/Tim Josling (eds.)

(See D II 1, 19)

11. Deliberately Democratizing Multilateral Organizations

2001. *Governance* 14. Forthcoming.

Marco Verweij

(See D II 1, 20)

12. Elements of Democratic Legitimation in Europe: An Alternative Perspective

1999. *Journal of European Public Policy* 6 (2): 269-282.

Adrienne Héritier

While the lack of democratic legitimation in the European polity is striking when measured against member state parliamentarian democracies, this focus shifts attention off those less obvious empirical processes which enhance democratic legitimation in Europe. In order to compensate for the slow and incremental nature of democratization, the Commission has sought to develop elements of substitute democratic legitimation via the transparency programme which attempts to bridge the gap between Brussels and member state citizens, and the creation of supportive networks. Accountability is also strengthened by structural and processual elements inherent in European policy-making – mutual horizontal control and distrust among actors in a diverse, negotiational democracy, and competition among multiple authorities. the described strategies and processes reinforce democratic support and accountability but do not allow the democratic definition of overall goals for the European polity as such.

13. Composite Democracy in Europe: The Role of Transparency and Access to Information

2002. In *The Diffusion of Democracy: Emerging Forms and Norms of Democratic Control in the European Union*, eds. O. Costa, H. Jabko, Ch. Lequesne and P. Magnette. Submitted to Cambridge University Press.

Adrienne Héritier

The European Union is a composite democracy. It is comprised of diverse elements of democratic legitimation: the vertical legitimation through parliamentary representation in the EP; executive representation through delegates of democratically elected governments in the Council of Ministers; horizontal mutual control among member states; associative and experts' representation (delegation) in policy networks; and, finally, individual rights-based legitimacy. Together, these elements paint a variegated picture of the reality of democratic legitimation in Europe. The individual elements have not been developed and linked in a systematic and consistent way; rather, they have emerged from a series of pragmatic decisions, made among the range of limited possibilities allowed for by the unanimity requirements of the intergovernmental conferences or as a result of incremental individual initiatives of the different European decision-making bodies. As a consequence, it does not come as a surprise that some elements are incompatible with each other, both with respect to their primary goals and their modes of operation. The nature, reasons and consequences of this type of incompatibility or compatibility are at the centre of this article. Of particular interest is the question of relationship between the legimatory components of access to information and transparency, on the one hand, and the element of negotiative democracy, that is, governance in policy networks, as an ubiquitous mode of governance in Europe, on the other. While transparency and access to information stress the input-oriented goals of democratic legitimation, that is, the right to know who makes which decisions when, associative representation and negotiative democracy emphasize the output-oriented goals of democratic legitimation, that is government legitimation through policy performance accommodating the widest possible scope of interests. Both input- and output oriented legitimation are important and have to be viewed in their reciprocal relationship.

14. Continuous Constitution-Building in Europe: Informal and Formal Institutions under Co-Decision

Manuscript. Bonn, 2001.

Henry Farrell/Adrienne Héritier

Debates between European Union scholars have shifted from disputes between neo-functionalism and intergovernmentalism, to debates between rational choice and constructivism, and has begun more directly to address the sources and effects of institutions. However, relatively little work has been done on institutional evolution and change. While much recent work has sought to examine the effects of formal institutions on legislative outcomes, this work has failed to take account of the importance of informal institutions. Furthermore, it has been relatively static in character.

In this paper, we seek to develop and test a model of institutional evolution in the European Union, which specifically includes informal institutionalization as a key stage of the process. We suggest that formal institutions are likely to give rise to informal rules of conduct as they are applied, and that these informal rules, far from being a mere subordinate product of formal institutions, are likely to be a product of power relations between legislative actors. Thus, formal institutions will give rise to struggles between legislative actors, which will in turn eventually give rise to informal institutions.

We further argue that this process will be *recursive*. Insofar as the European Union is subject to "continuous constitution building," in which the constitutional rules of the game are altered every few years, actors which are largely excluded from the formal rule-creation stage of the game, will seek to use their informal leverage in order to seek (and sometimes gain) formal concessions. As all actors are engaged in an indefinitely iterated game, the two stages – formal institution-building and informal institutionalization – will be likely to become linked.

After developing our model, we seek to apply it to empirical evidence. The co-decision process, in which the European Parliament and Council interact in the legislative process, has recently been the subject of much academic debate. We analyse the development of the co-decision process over time. We show that the formal institutional changes which introduced the co-decision process gave rise to vigorous processes of bargaining between the Council and Parliament. We then show that these bargaining processes gave rise to informal institutions, and seek to show how this process of informal institutionalization in turn affected future stages of the formal negotiation game.

15. Bargaining by Arguing: An Empirical Analysis of the Relationship between Arguing and Bargaining on the Basis of Speech Act Theory

2001. *Politische Vierteljahresschrift* 42: 414-446.

Katharina Holzinger

In a recent debate in German political science the terms "bargaining and arguing" have been construed as semantic opposites in the same dichotomous way as the terms "strategic action and communicative action" and "game theory and discourse theory". This paper rejects the notion of these dichotomies and presents a new theoretical approach to distinguish bargaining and arguing as modes of communicative resolution of conflicts. On the basis of speech act theory, a method for the empirical analysis of bargaining and arguing processes is developed and demonstrated with an ex-

ample of interest conflict resolution by mediation. Three conclusions can be drawn: First, in empirical processes of communicative conflict resolution, in almost all cases both arguing and bargaining will be present. Second, within the context of an interest conflict, arguing is not an alternative to bargaining, but a means for bargaining. Third, in the example in question, a sequential structure could be observed: In general, the resolution of disagreements over facts and values by arguing took place before the resolution of interest conflict by bargaining.

16. Negotiation in Public Policy-Making: Exogenous Barriers to Succesful Dispute Resolution

2001. *Journal of Public Policy* 21: 81-106.

Katharina Holzinger

In recent decades the number of public policy conflicts has increased sharply in most Western democracies, especially in the fields of planning, regional development, and environmental policy. Attempts have been made to find a way out through new forms of negotiation-based conflict resolution. Alternative Dispute Resolution is confronted with high expectations as to its potential for reaching consensual solutions. This shall be achieved through extended participation, transparency, and procedural justice. However, success or failure of negotiations do not only depend on the procedure itself, but also on factors exogenous to it. The first section addresses the question which exogenous factors affect the opportunities for an agreement in public policy negotiations and how they exert their influence. Spatial representation of bargaining is used as an analytical framework. In the second section, it is shown how outside options, exogenous restrictions, and political directives for the negotiators affected the negotiation space and the final outcome in a case of environmental mediation in Germany.

17. Evaluating Environmental Mediation: Mediation in the Waste Management Programme of Neuss County, Germany. Results of a Participant Survey

2001. *Mediation Quarterly* 18: 397-427.

Katharina Holzinger

Little empirically based research has been carried out with the aim of evaluating mediation procedures in the area of environmental policy. Generally, such procedures are evaluated retrospectively and on the basis of very general criteria. The Social Science Research Center Berlin (WZB) conducted a research project into mediation procedures in the field of environmental protection, the central object of study being the mediation procedure undertaken to resolve the dispute over the waste management programme of Neuss County in Germany. This paper presents some results of the accompanying social scientific research, with the aim of evaluating the success of the mediation. It begins by describing the problems underlying the mediation procedure in Neuss, the proce-

dure itself and the results achieved. There then follows an evaluation of this procedure, based on eighteen key procedural and results-related criteria for evaluating the success of the mediation. The analysis shows that the evaluation of mediation procedures is a highly complex affair, and that this is reflected in the evaluations made by the participants themselves.

18. Limits of Cooperation: A German Case of Environmental Mediation

2000. *European Environment* 10: 293-305.

Katharina Holzinger

Alternative Dispute Resolution (ADR) has been very successful as a mechanism for resolving environmental conflict in the United States. Although it has rarely been used in Europe, European social scientists still have high expectations of its potential to achieve consensual, fair solutions and, in so doing, to increase the general welfare. The promised outcome, it is hoped, can be accomplished through a cooperative procedure resting on extended participation, transparency, and procedural justice. In the first part of this paper it is argued that the success or failure of ADR not only depends on the procedure itself, but also on exogenous factors. Three types of exogenous factors can be distinguished. First, there are *exogenous restrictions* to possible solutions: the opportunities for negotiated agreements depend upon the physical, technical and economic feasibility of potential solutions, as well as upon the law. Second, the course and the result of the negotiation is restricted by the *Best Alternatives to a Negotiated Agreement (BATNA)* of the disputants; these alternatives are mostly determined by external factors. Third, in collective bargaining the room for negotiation is also limited by *political directives* from the negotiator's constituencies or supervisors. The second part of this paper is devoted to a case study of the mediation in the waste managment program of Neuss County, Germany. This mediation attempted mainly to resolve a conflict over the siting of a waste incineration plant. It ended without consensus. It will be shown how exogenous restrictions, outside options and political guidelines influenced the course of the mediation, how they enlarged or diminished the negotiation space and, ultimately, how they determined the final outcome.

19. The Performance of Cooperative Solutions in Environmental Policy

1999. *In Cooperative Environmental Policy*, eds. H. Bartmann and K. D. John, 41-74. Aachen: Shaaker. Preprint 1998/6.

Katharina Holzinger

In recent times new cooperative procedures to resolve conflicts over environmental common goods have been proposed and experimented with. It is expected that these consensus-oriented and discursive procedures will be much better able to resolve conflicts than the conventional procedures in representative democracies. This contribution provides a theoretical evaluation of the performance of the alternative, compared to the conventional procedures. Four types of procedures are

taken into account: negotiated conflict resolution, hierarchical procedures, voting in representative democracies, and referenda. These procedures are evaluated by three performance criteria: their welfare effects, their distributional consequences, and their objectivity and functionality with respect to factual matters. Negotiation and discursive procedures have several advantages over the other procedures. The intensity of preferences can be expressed, their consensus-orientation secures pareto-optimality, they have a potential to compensate for solutions; and the direct communication they are based on leads to greater objectivity in dealing with conflicts.

20. Communicative Arguing versus Strategic Bargaining: A Misleading Dichotomy

2001. *Zeitschrift für Internationale Beziehungen* 8 (2).

Katharina Holzinger

Recently there has been a debate in German political science and especially in the journal „Zeitschrift für Internationale Beziehungen" (Journal of International Relations) which has established three dichotomies and set them up as equivalent pairs: arguing and bargaining, communicative and strategic action, as well as discourse theory and game theory. This article shows first of all, that discourse ethics and game theoretic bargaining theory are not alternative explanatory models in social science. Secondly, the analysis of the various pairs of terms shows that most of these dichotomies and equivalencies cannot be maintained. Thirdly, arguing and bargaining are not opposite modes of communication, which alternatively perform the same function, instead they perform different functions in the communicative resolution of conflicts.

21. On Environmental Leaders and Laggards in Europe: Why There is (Not) A Southern Problem

2002. London: Ashgate. Forthcoming.

Tanja A. Börzel

(See D II 1, 8)

22. States and Regions in the European Union: Institutional Adaptation in Germany and Spain

2001. Cambridge: Cambridge University Press.

Tanja A. Börzel

The book presents a model that allows us to specify conditions under which Europeanization is likely to change the institutions of the member states. First, Europeanization must be "inconvenient", i.e., there must be some degree of "misfit" or incompatibility between European norms, rules, and procedures, on the one hand, and domestic norms, rules, and procedures, on the other. This degree of fit or misfit constitutes adaptational pressure, which is a necessary but not sufficient condition for expecting change. Second, whether pressure results in domestic change depends on the capacity for adaptation of the member states. It is argued that domestic institutions, which entail cooperative norms, facilitate the accommodation of adaptational pressure; the scope of change will be limited. Non-cooperative institutions, by contrast, prohibit flexible adaptation as a result of change will be profound. The theoretical model is tested in a comparative study on how Europeanization has affected the relationship between central state and regions in Germany and Spain. In both member states, Europeanization has undermined the power of the regions. While German cooperative federalism was able to accommodate centralization pressures by flexibly adjusting its institutions, Spanish competitive regionalism had first prohibited adaptation. Only when the Spanish regions started to cooperate with the central state, were they able to redress the territorial balance of power. Their turn to a more cooperative approach in European policy-making resulted in a significant change of Spanish territorial institutions.

23. The Effect of International Institutions: From the Recognition of Norms to the Compliance with Them

[Die Wirkung internationaler Institutionen: Von der Normanerkennung zur Normeinhaltung] M. Jachtenfuchs and M. Knodt (eds.). In *Regieren in internationalen Institutionen*. Opladen: Leske + Budrich.

Tanja A. Börzel

(See D II 1, 9)

24. Non-Compliance in the European Union: Pathology or Statistical Artefact?

2001. *Journal of European Public Policy* 8 (5). Forthcoming.

Tanja A. Börzel

(See D II 1, 10)

25. Non-State Actors and the Provision of Common Goods: Compliance with International Institutions

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Tanja A. Börzel

(See D II 1, 11)

26. Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization

2001. Working Paper. Belfast: Queens University.

Tanja A. Börzel

(See D II 1, 12)

27. Europeanization and Territorial Institutional Change. Towards Cooperative Regionalism?

2001: In *Transforming Europe. Europeanization and Domestic Change*, edited by J. A. Caporaso, M. Green Cowles and T. Risse, Ithaca, NY: Cornell University Press.

Tanja A. Börzel

The Europeanization and regionalization of the nation state are two of the most significant trends in the territorial organization of politics in post-war Western Europe. The chapter explores the link between the two processes. It argues that the impact of Europeanization on national territorial structures is diverse and "institution dependent". Domestic institutions mediate the impact of Europeanization in two fundamental ways: First, the 'exactness of fit' between European and domestic institutions determines the institutional pressure for adaptation which a member state is facing. Second, collective understandings – the institutional culture – determine the dominant strategy of domestic actors by which they respond to adaptational pressure. She demonstrates her argument empirically by comparing the effect of Europeanization on the territorial institutions of Germany and Spain. Europeanization caused similar adaptation pressure on the territorial institutions of both member states by weakening the legislative and administrative powers of the regions vis-à-vis the national government. In the case of Germany, however, the informal institutions of 'cooperative federalism' facilitated a cooperative strategy by the German Länder which allowed them to regain their competencies, and, thus, to adjust existing German territorial institutions to Europeanization resulting reinforcing rather than fundamentally changing them. In contrast, the Spanish institutional culture of 'competitive regionalism' privileged a confrontative strategy by the Spanish regions which proved

to be ineffective in redressing the territorial balance of power. As a result, the Spanish regions changed their dominant strategy toward increasing cooperation with the central state in a multilateral framework. This strategy change resulted in a significant transformation of the existing Spanish territorial institutions turning them away from competitive towards more cooperative forms of intergovernmental relations.

28. When Europe Hits Home: Europeanization and Domestic Change

2000. *European Integration online Papers* (EIoP) 4 (15). http://eiop.or.at/eiop/texte/2000-015a.htm. Co-authored with Thomas Risse.

Tanja A. Börzel

Börzel argues in this paper in favour of a rather parsimonious theoretical approach to the study of the domestic impact of Europeanization. Whether one studies policies, politics, or polities, a misfit between European-level and domestic processes, policies, or institutions constitutes the necessary condition for expecting *any* change. However, adaptational pressures alone are insufficient. There must be mediating factors enabling or prohibiting domestic change and accounting for the empirically observable differential impact of Europe. Two pathways have then been introduced leading to domestic changes which are theoretically grounded in rationalist and sociological institutionalisms, respectively. On the one hand, rationalist institutionalism follows a logic of resource redistribution emphasizing the absence of multiple veto points and the presence of supporting institutions as the main factors facilitating change. On the other hand, sociological institutionalism exhibits a socialization and learning account focusing on norm entrepreneurs as "change agents" and the presence of a cooperative political culture as the main mediating factors. She claims that Europeanization might lead to convergence in policy outcomes, but at best to "clustered convergence" and continuing divergence with regard to policy processes and instruments, politics, and polities.

29. Improving Compliance through Domestic Mobilization? New Instruments and the Effectiveness of Implementation in Spain

2000. In *Implementing EU Environmental Policy: New Approaches to an Old Problem*, ed. C. Knill and A. Lenschow, 222-250. Manchester: Manchester University Press.

Tanja A. Börzel

(See D II 1, 13)

30. From Competitive Regionalism to Cooperative Federalism: The Europeanization of the Spanish State of the Autonomies

2000. *Publius: The Journal of Federalism* 30 (2): 17-142.

Tanja A. Börzel

Intergovernmental relations in Spain have undergone a significant transformation during the past 22 years. With the transition to democracy, Spain has developed from a unitary-centralist into a quasi-federal state in which the 17 autonomous communities enjoy significant political autonomy. However, Spain is not only moving toward federal democracy, it is also approaching a cooperative model of federalism in which multilateral intergovernmental cooperation and joint decision-making supersede the bilateral negotiations and regional competition that traditionally characterized Spanish intergovernmental relations. The shift from competitive regionalism to cooperative federalism is the result of the progressive Europeanization of the Spanish state and its autonomous communities, which has encouraged mutual consultation and cooperation between the central state and the regions. As traditional forms of intergovernmental relations proved ineffective for the necessary coordination and cooperation, the Spanish government and the autonomous communities established a new procedure for cooperating in European affairs – the first institutional framework to provide for the joint participation of all 17 autonomous communities in central-state decision-making.

31. Europeanization and Domestic Transformation: Centralization and the Waning Role of the Parliament?

[Europäisierung und innerstaatlicher Wandel: Zentralisierung und Entparlamentarisierung?] 2000. *Politische Vierteljahresschrift* 40 (2): 225-250.

Tanja A. Börzel

A number of studies suggest that European integration impacts upon the domestic institutions of the member states by changing the distribution of resources among domestic actors. Börzel argues in this paper that resource dependency needs to be embedded in an institutionalist understanding of Europeanization in order to explain when and how Europe affects the domestic institutions of the member states. First, domestic institutions determine the distribution of resources among the domestic actors in a given member-state. Second, the compatibility of European and domestic institutions determines the degree to which Europeanization changes this distribution of resources and hence the degree of pressure for institutional adaptation. Third, the domestic institutional culture determines the dominant strategies of actors by which they respond to such a redistribution of resources facilitating or prohibiting institutional adaptation. She demonstrates in her argument empirically by comparing the impact of Europeanization on the territorial institutions of the five most decentralized member states, with special reference to Germany and Spain as representatives of opposite institutional cultures. The study shows that the regions succeeded in balancing the territorial centralization caused by Europeanization. However, the compensation of regional competency losses through the intrastate participation of the regions in the formulation and representation of the national bargaining position in European affairs reinforces executive dominance in European decision-making, contributing to the tendencies of deparlamentarization in the member states.

32. Why There Is No Southern Problem: On Environmental Leaders and Laggards in the European Union

2000. *Journal of European Public Policy* 7 (1): 141-162.

Tanja A. Börzel

(See D II 1, 14)

33. Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain

1999. *Journal of Common Market Studies* 37 (4): 573-596.

Tanja A. Börzel

(See D II 1, 15)

34. Private Actors on the Rise? The Role of Non-State Actors in Compliance with International Institutions

Preprint 2000/14

Tanja A. Börzel

(See D II 1, 16)

35. Differential Europe: National Administrative Responses to Community Policy

2001. In *Transforming Europe. Europeanization and Domestic Change,* eds. M. Cowles, J. Caporaso and T. Risse, 44-59. Ithaca, NY: Cornell University Press.

Adrienne Héritier

Community legislation is unquestionably a factor to be reckoned with in member-state policy-making. But the extent and mode of its impact on domestic policies and administrative structures will

depend on the existing policy practices and the political and institutional structures of the country in question. In cases where there is a mismatch between an established policy of a member state and a clearly specified European policy mandate, there will be an expectation to adjust, which in turn constitutes a precondition for change.

Assuming the existence of a need for change, the ability to adapt will depend on the policy preferences of key actors, and the capacity of institutions to implement reform, realize policy change, and administratively adjust to European requirements. The policy preferences of key actors are influenced by the distributional consequences of the policies to be adopted (Milner 1996); the capacity to change depends on the degree of integrated political leadership, caused by a lack of formal veto points (Tsebelis 1995), or a decisional tradition capable of surmounting formal and factual veto points by way of consensual tripartite decision-making. Where there is a divergence of mismatch between European and national policies, and the policy preferences of political leaders are defined by a willingness to adapt, the absence of formal veto points and a cooperative decisional tradition will enhance the capacity to change and to adjust administrative structures in compliance with European policy mandates. The most far-reaching consequence – tantamount to innovation – is the replacement of old administrative structures with a comprehensive set of new ones. A less far-reaching form of adjustment occurs by "tinkering at the edges of old structures" (Lanzara 1998, 40), whereby new administrative units are patched onto existing organizational structures in order to accommodate the Europe-imposed policies. Another important measure of change is whether public actors, public and private actors, or only private actors are engaged in administering the sector and whether administrative functions pass from one form to another.

By contrast, the existence of a high number of formal or de facto veto points, which are not compensated by consensual decision-making patterns, makes adjustment to European policy demands more difficult and administrative change less probable because bids for change are blocked by veto players. This poses no problem as long as there is a basic congruence between the national policy, its administrative implementation structures, and European policy demands, one that allows the latter to be smoothly absorbed into current procedures and structures. If, however, there is a clear mismatch between national policies and European policy demands, political structures ridden with formal and factual veto points and the absence of cooperative decisional traditions will lead to non-implementation and in consequence to no, or only marginal, change in administrative structures.

36. Differential Europe: European Union Impact on National Policymaking

2001. A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet. Boulder, CO: Rowman & Littlefield.

Adrienne Héritier

The European Community affects the policy fabric of the member states, but that impact is differential. In some instances, new policy goals have been added to national agendas and fresh instruments are applied, while old ones become less important or openly challenged. In other instances, when European and national policy objectives are concurrent, national practices may be reinforced, or even redirected by European policies. As a consequence, the outcomes of European policy-making tend to be much more diverse than one would expect and preclude any simplistic explanation of European-induced changes. In order to cope with Europe's differential impact, we think of European and national policy-making as two separate, but parallel, policy streams that intermittently interlink. Within this dynamic perspective, three factors explain how and when 'Europe matters' at the na-

tional level: the stage of policy development, the prevailing system of beliefs, and the reform capacity defined by the number of veto players and integrated political leadership. Varying systematically on these explanatory variables, an empirical investigation of market-making policies, namely road haulage and rail transport, in five countries is carried out: Britain, France, Germany, Italy, and the Netherlands.

37. Elusive Europeanization: Liberalizing Road Haulage in the European Union

2001. *Journal of European Public Policy* 8 (1): 124-143. Co-authored with Michael Teutsch.

Dieter Kerwer

Having established itself as a robust level of governance, the European Union now potentially affects its member states in more ways than ever before. Road haulage policy is an area in which a strong impact of European Union policy-making can be expected. Liberalization at the European level contradicts widespread interventionist transport policy traditions of the member states. In this article we ask how France, Germany, and Italy, three countries with an interventionist transport policy tradition, are affected by European liberalization. We find that all three countries have abandoned their policy traditions. However, domestic factors were more important than European factors in bringing about this change. European influence did not severely curtail national policy-making autonomy. In transport policy, Europeanization is elusive because national institutional intermediation largely muffled the impact of European policy-making

38. Regulatory Reforms in Italy: A Case Study in Europeanization

2001. Aldershot: Ashgate.

Dieter Kerwer

This book consists of a study of Italian transport policy from a European perspective. The main question pursued is: how does the European Common Transport Policy affect Italian transport reforms? What difference does Europe make to decision processes and outcomes? Are national policy traditions disrupted or left intact?

Kerwer's main motivation to write this book was to contribute to an understanding of how European integration impacts on the member states. This question is largely neglected by European integration research, which still focuses almost exclusively on the European level in an attempt to explain the integration process.

The developement of Italian transport policy is well suited to a study of Europeanization. In fact, it poses a formidable puzzle. Although Italy is under considerable pressure due to European liberalization, the impact of European policy is weak. This is surprising since the Italian antitrust authority in many sectors worked as a transmission belt linking Italy to Europe by enforcing European legislation at the national level. The first question is: what explains the weak European impact? If the two

major transport sectors are compared, another question arises. The Italian road haulage sector is characterized by a strong continuity of protectionist policy to shield national hauliers from competition. Until recently, the threat of enhanced competition at the community level even enforced this trend. This contrasts with the case of railways, in which some cautious moves towards liberalization has taken place. The differences between the sector may not be accounted for by the development of the European transport policy. European road haulage policy is developed much better than European railway policy. The question is, why does the stronger European pressure lead to a weaker response in Italy and vice-versa?

In order to establish the causal influence of European policy-making on the national level, two rival explanatory models are developed. The *functionalist* model envisages Europeanization as a process of coercion. In this perspective, the force of supranational Community law and of regulatory competition leave little leeway for national policy makers. National policy goals, instruments and styles will converge with European prescriptions. In contrast, the *institutionalist* model sees Europeanization as a process of institutional mediation. The force of supranational Community law and of regulatory competition is not denied, but their effect will depend on the national institutional setting. If Europeanization triggers a process of convergence of national policy-making or if significant differences persist depends on the national policy-making routines.

The empirical part of the book consists of a case study of the effects of the European Common transport policy on the Italian transport sector. The investigation focuses on the sector of road and rail. This is a suitable choice for the purpose of studying Europeanization. For about a decade, European transport policy has developed into an important policy-making area at the community level. As its main thrust is liberalization of the Community's transport markets, it is opposed to traditional Italian transport policy-making. Therefore, any European influence is likely to be visible in the Italian case. The two transport sectors, road and rail, are both relatively insulated from global competition and are not subject to strong technological pressure. These factors may therefore be excluded as explanatory factors for policy change.

The main empirical result of the book is the description of the impact of European policy-making at the national level. A variety of patterns of Europeanization are identified. In road haulage, European influence on the Italian context underpinned the protectionist tendencies for a long time. This pattern can be termed 'deviation amplification'. In the case of rail, European influence had an effect whenever it could be used to achieve national goals. This pattern can be termed 'random enforcement'. This variety of patterns of Europeanization in the area of transportation suggests that, even in the area of market liberalization, strong, direct European influence cannot be taken for granted.

The main theoretical conclusion of the book is that the functionalist model is *irrelevant* for explaining the Europeanization of Italian transport policy. Neither the legal obligations of the CTP nor regulatory competition has forced developments at the national level. In contrast the *institutionalist* model can account for the specific patterns of Europeanization found at the national level. It shows the central role of the institutionalized policy-making patterns in shaping and transforming the European influence to lead to different policy outcomes. There is reason to believe that the institutionalist account is the rule for European influence, and functionalist adaptation due to external coercion the exception.

39. Transport Policy in the European Union

2001. In *Differential Europe. The European Union Impact on National Transport Policy, eds.* A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet, 23-56. Boulder, CO: Rowman & Littlefield. Co-authored with Michael Teutsch.

Dieter Kerwer

Although the Treaty of Rome (1957) assigned a high priority to the issue of transport, a common policy only gained momentum in the mid-1980s. The policy development in the CTP had been a major disappointment to both academic observers and commentating practitioners alike, and one which this chapter tries to explain by posing two questions. First, why was European transport policy condemned to insignificance for such a long time? And second, what are the reasons for the increasing dynamics and relevance of this area of decision-making? In answering these questions it will be revealed why it was possible for the dissenters to veto any progress in the past and why this has no longer been possible in more recent times. The common European policies developed for both road and rail reflect the high demand for consensus as a basis for European decisions. In both cases, policies do not impose broad and precise prescriptions on the member states to which these have to conform, if they do not want to violate Community law. Instead, the EU pushes for realization of a common market, but within that framework considerable leeway is given to the member states how to implement the European policies and how to react to new competitive situations. This finding is interesting in two different ways. On the one hand, it reveals specific characteristics of supranational integration processes and, specifically, certain limitations to the solution of particular policy problems. On the other hand, it is significant with respect to European influence on member states, which will be analysed in subsequent chapters. Given the ambiguous and flexible character of the EU policy output, Europeanization processes in the member states promise to be a complex process of adaptation following diverse patterns rather than a simple and uniform process of implementation.

40. The Europanization of National Administrations: Patterns of Institutional Change and Persistence

2001. Cambridge: Cambridge University Press.

Christoph Knill

The analytical focus selected in this project was on the *Europeanization* of national administrations; i.e. the crucial question was how European integration affects administrative practices and structures at the domestic level. What are the effects of European policies on national administrative styles and structures? Under which conditions can we expect administrative change, and more specifically a convergence of administrative structures?

As indicated by empirical findings from various policy areas (including environment, road haulage and railways), the domestic impact of European policy-making is not characterized by a clear, consistent picture. Rather, patterns of domestic change and persistence vary from country to country and from policy to policy. Correspondingly, we observe not only administrative convergence, but to a similar extent divergence or persistence of administrative differences across member states.

This ambiguous picture is to be understood in the light of three factors explaining domestic change or persistence in the context of Europeanization. First, the scope for domestic adaptation is restricted by the macro-institutional context of national administrative traditions; i.e., general patterns of administrative styles and structures which are institu-

tionally strongly entrenched in the state tradition, the legal system as well as the political-administrative system. These administrative core patterns are conceived as highly resistant to substantive change, given high institutional stability of these core administrative patterns, which may be the result of both their institutional depth (their ideological and normative entrenchment) and their institutional breadth (their fundamental impact on the distribution of power and resources between actors and corresponding lock-in effects).

Second, even where European requirements remain within the macro-institutional core, corresponding domestic adaptation cannot be taken for granted. Rather the occurrence and outcome of domestic adaptation within the core depends on the extent to which European policies sufficiently alter the domestic policy context; i.e., affect the outcome of strategic interaction by modifying underlying interest constellations, beliefs and expectations or institutional opportunity structures at the domestic level.

Third, the extent to which European policies imply pressures for domestic change varies with the underlying logic of Europeanization. From an analytical perspective, three Europeanization logics can be distinguished which are related to different types of European integration. Policies of positive integration are institutionally most "demanding" for the member states, since they prescribe a concrete equilibrium solution to be achieved at the national level. Pressure for change is less explicit in cases of negative integration, where European influence is restricted to the modification of domestic opportunity structures, which in turn might affect the outcome of strategic interaction at the national level. No "pressure" to change can be assumed in cases where policies are restricted to increase domestic support for European policy objectives. In such cases, which are referred to as policies of preparing integration, domestic decision-making is not affected by changing opportunity structures, but by altering ideas, beliefs and expectations of domestic actors.

41. Implementing EU Environmental Policy: New Directions and Old Problems

2000. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments taking account of national context constellations. It was the aim of the project to investigate the extent to which these new forms of governance are successful tools to increase the problem-solving capacity of the European multilevel system. The research of Knill and Lenschow indicates three basic conclusions with respect to this question.

As revealed by their empirical findings, new of forms of governance have not lead to better implementation results so far. When comparing old and new policies in terms of implementation effectiveness, no significant differences emerge. Empirical evidence indicates the absence of a direct causal linkage between policy type and implementation effectiveness.

The lack of success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings.

These deficits can be partly addressed by applying an institutional perspective, indicating that, rather than being affected by the choice of the governance approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

42. New Concepts – Old Problems? The Institutional Boundaries of Effective Implementation

[Neue Konzepte – alte Probleme? Die institutionellen Grenzen effektiver Implementation]. 1999. *Politische Vierteljahresschrift* 40 (4): 591-617. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments taking account of national context constellations. As revealed by empirical findings, however, these changes have so far failed to lead to better implementation results. The lacking success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings. We argue that these deficits can be partly addressed by applying an institutional perspective. It will be shown that, rather than being affected by the choice of the policy approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

43. Europeanization Mechanisms: National Regulation Patterns and European Integration

[Mechanismen der Europäisierung: Nationale Regulierungsmuster und europäische Integration]. 2000. *Schweizerische Zeitschrift für Politikwissenschaft* 6 (4): 19-50. Co-authored with Dirk Lehmkuhl.

Christoph Knill

While much has been written about the European Union (EU), most of the scholarly work is concerned with the developments at the European level. It is only recently that we observe increasing attempts to address this research deficit. Notwithstanding a growing number of studies explicitly concerned with the Europeanization of domestic institutions, we still lack consistent and systematic concepts to account for the varying patterns of institutional adjustment across countries and policy sectors. It is the aim of this paper to provide a more comprehensive framework for explaining the domestic impact of European policy-making. We make an analytical distinction between three mechanisms of Europeanization, namely institutional compliance, changing domestic opportunity structures, and framing domestic beliefs and expectations, each of which requires a distinctive approach in order to explain its domestic impact. We argue that it is this specific Europeanization mechanism rather than the nominal category of the policy area that is the most important factor to be considered when investigating the domestic impact of varying European policies.

44. Adjusting to EU Regulatory Policy: Change and Persistence of Domestic Administrations

2001. In *Transforming Europe: Europeanization and Domestic Change,* J. Caporaso, M. Cowles, T. Risse, 116-136. Ithaca, NY: Cornell University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Europeanization may occur in multiple ways, and the domestic structures affected by it are manifold, as shown in this volume. The focus of this chapter is on the domestic impacts of European integration from a rather narrow perspective. The study of Knill and Lenschow examines the impact of EU regulatory policies on national administrations. To answer these questions they draw on empirical results from the implementation of EU environmental policy in Britain and Germany. The empirical evidence presented below shows that the level of adaptation can neither be directly deduced from the respective policy (one regulation facilitating national adaptation in contrast to another) nor do systematic country differences exist with respect to their capability to adapt. To nevertheless explain the seemingly confusing patterns of national adaptation we adopt a historical institutionalist perspective. Based on the understanding that institutionally grown structures and routines prevent easy adaptation to exogenous pressure, we trace administrative adaptation to the „exactness of fit" between European policy requirements and existing national structures and procedures. In developing this argument modifications are suggested to the often static historical-institutionalist framework; furthermore, a link is proposed to an actor- or interest-centred analysis.

45. Reforming Transport Policy in Britain: Concurrence with Europe But Separate Developments

2001. In *Differential Europe: The European Union Impact on National Policymaking, eds.* A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet, 57-98. Boulder, CO: Rowman & Littlefield.

Christoph Knill

In British road haulage and railway policies, fundamental reforms took place which, although concurrent with European policies, were the result of separate, purely national developments. This lack of connection is not surprising, given the time lapse between British (1968), and European (1993) road haulage liberalization. Much more striking, however, is the case of the railways, where British reforms occurred even *after* corresponding European activities. What explanation is there for the emergence of concurrent, but separate regulatory forms in British and European transport policy? Two aspects are of particular relevance in this respect: the liberal Anglo-Saxon approach dominant in British transport policy is in line with the regulatory philosophy that became dominant in EU transport policy during the 1980s; and the high reform capacity within the British political system which allows for the comparatively fast and far-reaching adaptation of regulatory strategies in the light of past experiences. The high reform capacity can mainly be traced to the low number of institutional veto points in the British political system. In this way, opposing actors have limited opportunities to block or reduce the scope and scale of governmental reform proposals. Hence, regulatory reforms in both cases under study were basically shaped by learning from national experience. That is, the revision of past strategies in the light of their success or failure at achieving an efficient provision of services rather than reflecting the result of political compromises and package solutions.

46. Differential Responses to European Policies: A Comparison

2001. In *Differential Europe: The European Union Impact on National Policymaking, eds.* A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douilllet, 257-294. Boulder, CO: Rowman & Littlefield. Co-authored with A. Héritier.

Christoph Knill

What is puzzling about member states' policies is that they respond so differently to identical European policy demands and similar external and internal conditions, such as the internationalization of markets or fiscal pressure. While Britain has radically liberalized its transport sector, France has been hesitant in privatizing its railways, whilst simultaneously carrying out a step-by-step deregulation and re-regulation of road haulage. In the Netherlands, a mixed strategy of market liberalization and state intervention has been applied to both sectors. Germany reveals a significant degree of transformation in both sectors. And Italy has made only very modest reforms in either. How can these different responses to the same challenges be explained? In other words, how and why do the responses to European policy stimuli vary? They argue that the differences in reform policy output and structural adjustment are a function of three factors: the stage of liberalization prevailing in a given country; the dominant belief system or problem-solving approach; and national reform capacity. Those influences which are basically the same for all countries studied, such as the impact of world-wide liberalization in both sectors, pronounced fiscal strain in the rail sector, and the need for a functioning transport system as a central precondition for an efficient economy, are defined as contextual factors.

47. On Deficient Implementation and Deficient Theories: The Need for an Institutional Perspective in Implementation Research

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems*, eds. Ch. Knill and A. Lenschow, 9-35. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

Effective implementation is an important indicator of the EU's problem-solving capacity. Especially in the environmental field, an area where implementation deficits are most prominent, this insight has led to a significant change in policy instruments. Rather than relying on patterns of interventionist regulation, EU environmental policy is increasingly based on flexible instruments taking account of national context constellations. As revealed by empirical findings, however, these changes have so far failed to lead to better implementation results. The lack of success of new instruments can be explained in the light of several factors, including both the ambiguity of implementation theory and the deficient application of theoretical findings. We argue that these deficits can be partly addressed by applying an institutional perspective. It will be shown that, rather than being affected by the choice of the policy approach *per se*, effective implementation is basically dependent on the degree of fit between national arrangements and the institutional implications emerging from European policies.

48. New Structures for Environmental Governance in the European Commission: The Institutional Limits of Governance Change

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems,* eds. Ch. Knill and A. Lenschow, 39-61. Manchester: Manchester University Press.Co-authored with Marieva Favoino and Andrea Lenschow.

Christoph Knill

The Community's new approach to environmental policy, as it is developed in the 1993 fifth Environmental Action Programme (5th EAP) of the European Union, implies a twofold strategy in order to address the increasing implementation deficit in the environmental field. Besides the development of new policy instruments and the reorientation of regulatory strategies and objectives, an important component of the new approach refers to institutional innovations at the European level. The Commission plans to rely on the participation and consultation of relevant public and private actors in the policy formulation process in order to improve the quality and legitimacy of policy design. It is the objective of this chapter to investigate and explain the implementation of these institutional innovations at the Commission level. The effective formal and practical adoption of these innovations themselves can be considered as the necessary condition in order to achieve their overall objective of improving the implementation performance of EU environmental policy.

49. Do New Brooms Really Sweep Cleaner? Implementation of New Instruments in EU Environmental Policy

2000. In *Implementing EU Environmental Policy: New Directions and Old Problems,* eds. Ch. Knill and A. Lenschow, 251-286. Manchester: Manchester University Press. Co-authored with Andrea Lenschow.

Christoph Knill

In view of an ever-widening implementation gap, one can observe in recent years a significant shift in the Community's approach to policy-making and implementation. This shift is characterized by the emergence of so-called new instruments, such as procedural regulation, self-regulation, public participation and voluntary agreements. In the hope of improving implementation effectiveness, new instruments are increasingly replacing or supplementing 'command-and-control' regulations which prescribe uniform, substantive objectives (such as emission standards, best available control technologies) in a detailed way. This chapter advances two arguments. First, to understand the implementation effectiveness of European policies, the choice of policy instruments has to be considered in a broader institutional context. The institutional fit or misfit of national administrative traditions and European requirements is the decisive factor explaining implementation effectiveness, not the type of the policy instrument *per se*. Second, at least in the shorter term, most new instruments have only limited capacities to mobilize support for environmental measures. Especially experience in CEE indicates that more direct capacity-raising instruments are required here. Nevertheless, considering the insufficient financial means targeted at making top-down regulatory instruments effective in CEE, even the limited effects of new communicative and economic instruments may make some difference.

50. "New" Environmental Policy Instruments as a Panacea? Their Limitations in Theory and Practice.

Co-authored with Andrea Lenschow. Katharina Holzinger and Peter Knoepfel (eds.). 2000. In *Environmental Policy in a European Community of Variable Geometry. The Challenge of the Next Enlargement.* Basel: Helbing & Lichtenhahn, 317-348.

Christoph Knill

In view of an ever-widening implementation gap in the environmental policy area, one can observe in recent years a significant shift in the Community's approach to policy-making and implementation. As implementation problems are widely associated with classical forms of regulation and intervention, namely technocratic, interventionist policy-making from the top (EU) down (national/local implementation), this shift is characterized by the emergence of so-called "new instruments", such as procedural regulation, self-regulation, public participation and voluntary agreements. It is the objective of this chapter to assess the merits of this change of approach first in general terms and to then evaluate the potential of "new instruments" in Central-Eastern European (CEE) states as part of their efforts to catch up and comply with the EU *acquis communautaire*. Knill and Lenschow will argue that the strong juxtaposition of new and old policy instruments obscures some of the "first order" conditions that are required for successful implementation, namely a relative "fit" with institutional structures and legacies as well as a minimum socio-economic capacity to adapt to new demands.

51. Differential Europe: The European Union Impact on National Policymaking

2001. A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet. Boulder, CO: Rowman & Littlefield.

Dirk Lehmkuhl

The European Community affects the policy fabric of the member states, but that impact is differential. In some instances, new policy goals have been added to national agendas and fresh instruments are applied, while old ones become less important or openly challenged. In other instances, when European and national policy objectives are concurrent, national practices may be reinforced, or even redirected by European policies. As a consequence, the outcomes of European policy-making tend to be much more diverse than one would expect and preclude any simplistic explanation of European-induced changes. In order to cope with Europe's differential impact, we think of European and national policy-making as two separate, but parallel, policy streams that intermittently interlink. Within this dynamic perspective, three factors explain how and when 'Europe matters' at the national level: the stage of policy development, the prevailing system of belief, and the reform capacity defined by the number of veto players and integrated political leadership. Varying systematically on these explanatory variables, an empirical investigation of market-making policies, namely road haulage and rail transport, in five countries is carried out: Britain, France, Germany, Italy, and the Netherlands.

52. The Importance of Small Differences: The Impact of European Integration on the Associations in the German and Dutch Road Haulage Industries

1999. Amsterdam: Thela Thesis.

Dirk Lehmkuhl

The study is concerned with the question of how European integration impacts on societal structures at the domestic level of two member states. By studying the relation between European integration and organized interests, the study not only links up the renewed interests in international sources of domestic politics, but also centres its focus of attention on a field which has traditionally been of interest for the development of the process of integration in Europe. To answer the question on the impact of European integration on systems of interest representation at the domestic level, the empirical study is embedded in a theoretical framework linking organizational theory with an institutional analysis which focuses on the impact of existing institutions as intervening factors between external changes and political outcomes. Associations are seen in their interaction with two different environments, the internal constituted by its members, and the external, its political and administrative environment, as well as other associations. Organizational structures and strategic behaviour of organizations are seen as the main dimensions for describing how associations seek to match the differentiated demands of their environments in a co-ordinated manner. To associate organizational structures, the provision of resources and the strategic capacity of organizations with properties and demands of their environments implies that changes in both environments tend to impact on the demands imposed upon organizations. Especially when major input resources such as money and legitimacy are effected by changes in the environment, associations might see themselves confronted with the necessity of having to adjust their organizational structures and strategies to maintain their autonomy.

In order to present the way in which associational systems in the Dutch and German road transport industry sector have been affected by European integration, this study opts for an intertemporal and a cross-country comparison. While the intertemporal comparison mainly displays the empirical cases by way of a structured description, the cross-country comparison makes a systematic interpretation of the findings from the two cases. The analysis provides answers to the questions how the linkage between the European and the domestic level may be conceived and what factors mediate this linkage and lead to different findings in the countries under study. The advantages of this design are twofold. First, the chosen approach allows for studying individual associations representing specific economic interests as elements of complex associational systems. To access a field in this way has the advantage that detailed empirical findings can be incorporated into a higher level of analysis. Second, this perspective takes into consideration the wider socio-economic and political environment in which they are embedded. The benefit of this concept is that the study not only traces the way in which interests are intermediated into processes of political decision-making under the conditions of structural change in their environments, but also provides a structured presentation of the nature of these changes. To combine these two advantages results in an empirically saturated study in the field of interest organization which contributes interesting insights to questions on the impact of European integration on domestic socio-political structures.

53. The National Impact of EU Regulatory Policy: Three Europeanization Mechanisms

2002. In *European Journal of Political Research* 41 (2). Forthcoming. Co-authored with Christoph Knill.

Dirk Lehmkuhl

(See D IV 2, 19)

54. From Regulation to Stimulation: Dutch Transport Policy in Europe

2001. *Differential Europe: The European Union Impact on National Policymaking,* eds. A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet, 217-255. Boulder, CO: Rowman & Littlefield.

Dirk Lehmkuhl

Does the process of political and economic integration in Europe necessarily imply a loss of the member states' capacity to govern their economies? Does Community legislation lead to a convergence of administrative structures, instruments and forms of administrative interest intermediation? And does European policy-making crowd out traditional or newly emerging concerns from national agendas? With respect to the Common European Transport Policy and the reform of the transport markets in the Netherlands, the response to all three questions is clearly negative. Without sacrificing its guiding function *vis-à-vis* socio-economic developments, Dutch governments matched their domestic policies with European policy demands calling for the liberalization and deregulation of international transport. European integration in general, and the reform of transport regulations in particular, actually reinforced characteristic features of the Dutch institutional context and led to a strengthening of corporatist patterns of concertation and consultation. The functional content of concertation shifted from the regulation of market access to the stimulation of market forces and industrial competition. Moreover, this shift strengthened the social responsibility and self-regulation of economic actors and allows policy makers to incorporate emerging objectives, such as environmental issues, into national agendas. Three factors explain why the transformation of the Dutch transport markets was neither a hard-core, pro-competitive disengagement of the state as in Britain, nor an Italian style refusal of reform by private actors: the functional change of existing institutions of interest intermediation, the compatibility of policies at the national and the European level, and the mutual reinforcement of the policies of the two levels.

55. Strengthening the Opposition and Pushing Change: The Paradoxical Impact of Europe on the Reform of French Transport

2001. *Differential Europe: The European Union Impact on National Policymaking*, eds. A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet, 99-131. Boulder, CO: Rowman & Littlefield. Co-authored with Anne-Cécile Douillet.

Dirk Lehmkuhl

The contradiction in the way in which European integration affected governance structure and policies in France poses an analytical challenge. To cope with this challenge reference is made to the dynamics of the two-level game. Using the concept as a heuristic device allows one to account not only for the institutional and policy impact of European integration at the national level, but also to relate this impact to the domestic politics related to both the process of policy-making at the European level and the implementation of European policies at the national level.

On the one hand, the neofunctionalist assumption tends to be confirmed that functionally specific bureaucracies at the national level are among the effective carriers of integration. Immersed into the process of European integration and its strong liberal bias by its frequent meetings with its European colleges, the transport administration was most active in implementing its concepts. It was the one that carried the ideas inherent in the European model into the domestic arena. On the other hand, this process was slowed down by the political executives. Given their need to follow the claims of their constituencies, political leaders were necessarily much more sensitive to the loud voice of social interests. Put differently, the logic of party politics made French governments play the part of the brakemen in the intergovernmental negotiations at the European level. In sum, the division of labour between the administrative and the political leadership represents a mechanism to solve the country's cognitive dissonance deriving from the need to accommodate domestic and European influences.

56. European Mechanisms: National Regulation Patterns and European Integration

[Mechanismen der Europäisierung: nationale Regulierungsmuster und europäische Integration]. 2000. *Schweizerische Zeitschrift für Politikwissenschaft* 6 (4): 19-50. Co-authored with Christoph Knill.

Dirk Lehmkuhl

Notwithstanding the growing number of studies on the domestic impact of European integration, this field of research still constitutes a relatively unexplored terrain in political science. A particular problem is the lack of a comprehensive explanatory framework which can account for the varying patterns of domestic adaptation across policies and countries. In this paper Lehmkuhl and Knill have developed an analytical concept to help develop this research area out of its infancy. We have argued that the approach required for explaining domestic adaptation patterns may vary with the distinctive Europeanization mechanism underlying the European policy in question. In particular, in the area of regulatory policies we have distinguished institutional compliance, changing opportunity structures and the framing of domestic expectations and beliefs, each of which requires a distinctive approach to account for their domestic impact.

57. Under Stress: Europeanization and Trade Associations in Member States

2000. *European Integration online Papers (EIoP)* 4 (14). http://eiop.or.at/eiop/texte/2000-014a.htm.

Dirk Lehmkuhl

Until today, it was relatively little disputed how European integration impacts on domestic associations and the patterns of public-private interactions at the national level. While some predict a withering away of national corporatisms, others predict they will be reinforced. By making organization theory available to institution-theoretical approaches, the paper offers a conceptual means that makes it possible to present an encompassing and theory-guided picture of the impact of European integration on societal structures in member states. Associations – in the presented cases, business associations of the transport sector in Germany and the Netherlands –, as intermediate organizations operating at the interface between private and public actors and incorporating the dynamics of their political and economic environments in both structural and strategic terms. It is argued that the way in which the configuration of associations within a sector changes in the course of European integration relates to efforts at this intermediate level to maintain or increase its relative autonomy from both its constituencies and its interlocutors.

58. An Alternative Route to European Integration: The Community's Railways Policy

2000. *West European Politics* 23 (1): 65-88. Co-authored with Christoph Knill.

Dirk Lehmkuhl

The process of European integration and policy-making is sometimes rather puzzling. On the one hand, it is well documented that, with respect to the implementation of European legislation, member states tend to do less than they are supposed to do. On the other hand, it is striking that with respect to the implementation of Council Directive 91/440 on the development of the Community's railways, many member states went far beyond the minimum required by the European legislation. Lehmkuhl and Knill argue that these differing evaluations of implementation success can be traced to different implementation approaches, which may be termed the 'compliance approach' and the 'support-building approach'. While the first is directed at prescribing domestic reforms "from above", the latter aims at triggering European integration within the existing political context at the national level. Here, successful implementation refers to the extent to which European legislation triggers domestic changes by stimulating and strengthening support for European reform ideas at the national level. In this respect, European legislation can influence the domestic arenas in basically three ways: by providing legitimization for political leadership, concepts for the solution of national problems, and strategic constraints for domestic actors opposing domestic reforms.

59. Differential Europe: EU Impact on National Policymaking

2001. A. Héritier, D. Kerwer, Ch. Knill, D. Lehmkuhl, M. Teutsch and A.-C. Douillet. Boulder, CO: Rowman & Littlefield.

Adrienne Héritier

The European Community affects the policy fabric of the member states, but that impact is differential. In some instances, new policy goals have been added to national agendas and fresh instruments are applied, while old ones become less important or openly challenged. In other instances, when European and national policy objectives are concurrent, national practices may be reinforced, or even redirected by European policies. As a consequence, the outcomes of European policy-making tend to be much more diverse than one would expect and preclude any simplistic explanation of European-induced changes. In order to cope with Europe's differential impact, we think of European and national policy-making as two separate, but parallel policy streams that intermittently interlink. Within this dynamic perspective, three factors explain how and when 'Europe matters' at the national level: the stage of policy development, the prevailing belief system, and the reform capacity defined by the number of veto players and integrated political leadership. Varying systematically on these explanatory variables, an empirical investigation of market-making policies, namely road haulage and rail transport, in five countries is carried out: Britain, France, Germany, Italy, and the Netherlands.

60. Mechanisms of Europeanization: National Regulation Patterns and European Integration

[Mechanismen der Europäisierung: Nationale Regulierungsmuster und europäische Integration] 2000. *Schweizerische Zeitschrift für Politikwissenschaft* 6 (4): 19-50. Co-authored with Dirk Lehmkuhl.

Christoph Knill

While much has been written about the European Union (EU), most of the scholarly work is concerned with the developments at the European level. It is only recently, that we observe increasing attempts to address this research deficit. Notwithstanding a growing number of studies explicitly concerned with the Europeanization of domestic institutions, we still lack consistent and systematic concepts to account for the varying patterns of institutional adjustment across countries and policy sectors. It is the aim of this paper to provide a more comprehensive framework for explaining the domestic impact of European policy-making. We make an analytical distinction between three mechanisms of Europeanization, namely institutional compliance, changing domestic opportunity structures, and framing domestic beliefs and expectations, each of which requires a distinctive approach in order to explain its domestic impact. We argue that it is this specific Europeanization mechanism rather than the nominal category of the policy area that is the most important factor to be considered when investigating the domestic impact of varying European policies.

61. Improving Compliance through Domestic Mobilization? New Instruments and the Effectiveness of Implementation in Spain.

2000. In *Implementing EU Environmental Policy: New Approaches to an Old Problem*, eds. C. Knill and A. Lenschow, 225-250. Manchester: Manchester University Press.

Tanja A. Börzel

This chapter tackles the question to what extent new policy instruments may actually contribute to improving member state compliance with European environmental regulations. It argues that domestic mobilization is an important factor in enhancing the effective implementation of European policies at the domestic level. Not only can domestic societal actors serve as 'watchdogs' which bring member states' infringements of European regulations to the attention of the Commission, thus, triggering pressure from 'above'. Societal actors may also exert pressure from 'below' by pushing member state administrations to effectively apply and enforce European policies. Hence, there are good reasons to expect European policies, which provide societal actors with additional opportunities to 'pull' European regulations down to the domestic level, to improve member state compliance. A comparative case study on the implementation of two 'new' and two 'old' policy instruments in Germany and Spain shows that new policy instruments may indeed have the potential to mobilize societal actors. But societal actors significantly differ in their capacity to exploit such opportunities. Due to a lower level of environmental awareness as well as the weak political power of environmental interests, Spanish societal actors are far less able to invoke the rights provided by the new policy instruments than their German counterparts. The unequal strength of environmental interests in the different member states is something for which EU policies ultimately cannot compensate, no matter how many additional opportunities they may offer. Yet, such opportunities provide important incentives for domestic mobilization, even if societal actors have only limited resources, like in the case of Spain.

62. Private Actors on the Rise? The Role of Non-State Actors in Compliance with International Institutions

Preprint 2000/14

Tanja A. Börzel

(See D II 1, 16)

63. Negotiating Privacy across Arenas – The EU-US "Safe Harbour"

2001. In *Common Goods: Reinventing European and International Governance*, ed. A. Héritier. Boulder, CO: Rowman & Littlefield. Forthcoming.

Henry Farrell

(See D II 1, 7)

64. Politics and Jurisdiction in European Electricity Policy: Problem Definition, Conflict Solution and Legitimation

2001. Submitted to *European Law Journal*. Co-authored with Adrienne Héritier.

Leonor Moral P. Soriano

How do political and legal institutions deal with the central problems of a society within their respective remits? How do they differ in the selection and definition of the problems that they are processing within their institutions? By which means do they typically solve the conflicts inevitably linked with the attempt to solve these problems, and how do they legitimize these solutions? Finally, if – as is more and more frequently the case – decisions are made across multiple arenas at the vertical level, what are the particular dynamics of multi-level government, and how do they differ in politics and adjudication? While there are clear differences in how politics and law institutionally deal with societal problems, frequently the respective avenues for processing problems are intimately linked and mutually dependent upon each other. Hence, in this article, Moral Soriano focuses on the specificities as well as the particular links between the two institutional avenues which are taken in processing problems.

While in politics the choice and definition of a problem to be dealt with in the political arena is frequently embedded in power driven political conflict, possibly decisively influenced by a political entrepreneur and favoured by external events, courts have less latitude in selecting the problems they deal with. Rather problems to be solved by adjudication are brought before them by two litigating parties. Whether a court can take up an issue depends upon locus standi, jurisdiction, justiciability and ripeness. If these conditions are given, the way a problem is defined depends on the particular perspective of the involved parties: from the viewpoint of the litigating parties, it depends on the latter's strategic interests and the outcomes that the respective parties seek; from the court's point-of-view, by contrast, the categorization of legal problems aims at systematizing the legal problems and the legal answers.

The legitimate solution to conflicts in politics is determined by the formal democratic decision-making rules against which voting and negotiations between the (more or less powerful) actors involved take place, and by the legality and constitutionality of their solutions. In adjudication, legitimately solving a conflict is a matter of interpreting and applying existing law and justifying a decision in *legal* terms. In politics the assessment of outcomes of a decision occurs through voting on the past performance of a government in subsequent elections, or systematic monitoring processes. In adjudication, by contrast, an "assessment" of judgments takes place by bringing issues to court again. This happens if the precedent rulings have not been able to create legal certainty or are inconsistent with other rulings.

65. Market Integration and Social Cohesion: The Politics of Public Services in European Regulation

2001. *Journal of European Public Policy* 8: 825-852.

Adrienne Héritier

Although the goal of market integration has not actually been challenged in recent years, it has nevertheless increasingly come to be considered incomplete and in need of complementary goals which serve the general interest by promoting social cohesion and equality. The debate has been conducted in various areas, such as in the fight against unemployment and poverty and in the provision of public utilities. In the latter case, regarding the provision of energy, water, communication and transport, the debate was sparked by the privatization of public monopolies and their infrastructure networks, and the deregulation of service provision. The network industries which had traditionally been shielded from competition and were run within national boundaries were dramatically transformed. This change – which in some countries resulted from European legislation – was meant to induce more producer competition, improved productivity, more consumer choice in the supply of network services, and lower prices. However, it has triggered concerns over the maintenance of general-interest goals in service provision, i.e., over safeguarding the accessibility, equality, continuity, security and affordability of these services after liberalization. There is a general political consensus that communicating by voice telephony, enjoying a certain degree of mobility, and using energy are basic needs that should be guaranteed and that firms operating in network industries should thus be subject to "public-service" objectives. This contribution raises the questions: why and to what extent does a conflict exist between economic liberalization and general-interest goals in the first place? Then the role of European policy-making, which aims at striking a balance between the poles of market integration and competition, on the one hand, and the provision of public services, on the other is scrutinized. What are the existing European policies and how do they fare when measured against these two goals? How can the pro-general-interest decisions at the cross-sectoral and sectoral level (in energy, telecommunications and rail) be accounted for in terms of the interaction of the formal political and legal actors involved in shaping the outcomes at the European level?

66. Towards a General Theory of Decentralized Non-Market Behaviour: The Limits and Chances of Collective Action

Dissertation Project

Frank P. Maier-Rigaud

(See E IV, 2)

E IV Economic Theory

Economics is certainly not an undertheorized field. Mainstream economics does even define the disciplinary boundaries by the use of neoclassical methodology. But the daily contact with political scientists and lawyers can make economists think about alternative methodological approaches. This is what many of the economists at the project group in some way or other do. The most pronounced strand of thinking is evolutionary. Okruch (1, 2, 3) focuses in his habilitation on defining proper standards for an evolutionary theory of economic policy, and he has other papers on evolutionary economics. Schubert (4, 5) uses evolutionary theorizing for addressing zoning legislation from an economic angle. He also has a paper (6) exploring the value of Hodgson's concept of reconstitutivity for evolutionary economics. Two workshops (7, 8) jointly organized with the Jena Max Planck Institute on Research into Economic Systems also centre around evolutionary issues.

A second line of research broadens the micro-foundations of behaviour beyond the concept of homo oeconomicus dominant in neoclassical economics. This work has already been portrayed in the section on Institutions for the Provision of Common Goods Adapted to how the Human Mind Really Works (D V). The following economists contribute to the programme: Mantzavinos (9), Maier-Rigaud and Schmidt.

Finally, Mantzavinos (10) plans to investigate the possible role of hermeneutics for economics, and the social sciences more generally. Maier-Rigaud (11, 12) prepares a paper on the distinction between externalities and common goods.

1. Network Economics and Economic Policy: Assessment and Development

Habilitation Project

Stefan Okruch

(See D II 2, 37)

2. The Misery of Theoretical Economic Policy: Is there an Evolutionary Exit?

[Das Elend der theoretischen Wirtschaftspolitik: Gibt es einen „evolutorischen" Ausweg?] 2001. In *Ökonomie ist Sozialwissenschaft,* eds. S. Panther and W. Ötsch. Marburg: Metropolis.

Stefan Okruch

(See D II 2, 38)

3. Evolutionary Analysis of Economic Policy: Towards a Normative Theory

[Evolutorische Wirtschaftspolitik: Von der positiven zur normativen Theorie]. 2001. In *Handbuch zur Evolutorischen Ökonomik*, eds. C. Hermann-Pillath and M. Lehmann-Waffenschmidt. Heidelberg: Springer. In print.

Stefan Okruch

(See D II 2, 39)

4. Urban Change and the Law

Dissertation Project

Christian Schubert

(See D I, 3)

5. Law and Creativity in Space: A note on the legal governance of spatial self-organization

Paper presented at the 17th EALE Annual Conference at Ghent/Belgium, September 14, 2000.

Christian Schubert

(See D I, 4)

6. On the Knowledge Content and Interpretation of Routines

[Wissensgehalt und Interpretation von Routinen. Koreferat zu Markus Becker]. 2001. In *Perspektiven des Wandels. Evolutorische Ökonomie in der Anwendung,* ed. M. Lehmann-Waffenschmidt. Marburg: Metropolis. Forthcoming.

Christian Schubert

The evolution of routines in business firms has been an important theoretical puzzle in the Theory of the Firm since Nelson & Winter´s famous (1982) "Evolutionary Theory of Economic Change". This paper discusses a recent approach by Markus Becker to model the unconscious modification of routines. He stresses the possibility that routines may affect the agents who use them in a "reconstitutive" way, thereby causing their own persistence. It is argued that this approach suffers from several shortcomings. Making theoretical progress regarding the evolution of rules depend on complex cognitive science questions would presumably stifle the whole endeavour. In order to understand the variation and persistence of routines, it may be more fruitful to focus on (i) the *coherence* of different sets of routines within firms and (ii) their *interpretation* in historical time. For instance, the more tacit knowledge a routine contains, the more persistent it will be, since its operativeness depends on demanding interpretatory efforts. Arguably, thus, the knowledge content of routines is a more important factor determining their variation than any vague "reconstitutive" impact.

7. The Law and Economics of Common Goods

Joint Workshop in Jena, 15–16 April 1999
MPI for Research into Economic Systems, Jena and MPP "Common Goods: Law, Politics and Economics", Bonn

Programme: 15 April

Ulrich Witt (Jena)
"Common Goods: Neo-classical and Evolutionary Perspectives"

Christoph Engel (Bonn)
"The Significance of Social Psychology for Understanding the Development of Institutions"

Eva Jonas (Bonn)
"The Change in Preferences from a (Social-) Psychological Perspective"

Christian Schubert (Bonn)
"Space, Planning and the Failure of the Market: How Can Economics Learn from Law?"

Thomas Brenner (Jena)
"The Evolution of Industrial Districts: Dynamics of Externalities"

Wilhelm Ruprecht (Jena)
"The Politics of Engineering from the Perspective of Evolutionary Economics: The Instrument of Foresight"

Programme: 16 April

Stefan Okruch (Bonn)
"Towards an Evolutionary Theory of Law and Legal Change".
Questions about Cultural Evolution

Christian Sartorius (Jena)
"The Evolution of Welfare: A Matter of Accomodation"

Raimund Bleischwitz (Bonn)
"Using Ecological Efficiency to Attain Environmentally Sustainable Welfare: Theses and Open Questions about the Research"

Concluding Discussion

8. Preferences and the Transformation of Preferences

Joint Workshop in Jena, 27 January 2000
MPI for Research into Economic Systems, Jena and MPP "Common Goods: Law, Politics and Economics", Bonn

Programme:

Ulrich Witt (Jena)
"Genetic Adaptation, Cultural Learning, and the Utilitarian Program in Economics"

Christian Sartorius (Jena)
"The Causes for Action and Their Influence on Human Well-being"

Wilhelm Ruprecht (Jena)
"On Novelty and Quality Change in Consumption"

Jörn Lüdemann (Bonn)
"The Transformation of Preferences and the Constitutional State"

Eva Jonas (Bonn)
"Institutions and the Transformation of Preferences"

Raimund Bleischwitz (Bonn)
"Learning Processes as the Basis for Path Dependencies and Path Change"

9. On the Interaction Between Formal and Informal Institutions: A Cognitive Approach with an Application to the Common Goods Problem

Post Habilitation Research Project

Chrysostomos Mantzavinos

(See D V, 3)

10. Hermeneutics in Controversy

Post Habilitation Research Project

Chrysostomos Mantzavinos

The realization that we are interpreting whenever we describe actions has led many social scientists to reject empirical and causal approaches entirely and announce that the social sciences have taken an "interpretive turn". One main source of such claims is the alleged prevalence of what is called the "hermeneutic circle" that supposedly justifies skepticism about the possibility of social scientific knowledge. The circle was originally applied to the parts-whole relationship in interpretations: the interpretation of each of the parts depends on the interpretation of the whole, and vice-versa; this dependency implies that interpretation is bound to remain always incomplete. Besides incompleteness, hermeneutic circularity is supposed to possess another important feature: interpretation takes place against a "background" of unspecifiable assumptions and presuppositions, a network of beliefs and practices not always fully available to the agent. Accordingly, authors operating in the hermeneutic tradition tend to question the possibility of a genuine explanation of human behaviour, to stress the prevalence of interpretation in human action and interaction and to propagate *Verstehen* instead of causal explanation as the proper methodology of the social sciences.

In this project a critical review of some main hermeneutic approaches will be attained and the main arguments offered by the hermeneutic camp will be discussed in juxtaposition to the standard methodology that led to all the important discoveries in the natural sciences. The main issue will be addressed as to whether the formulation of hypotheses and the rigorous testing of them with all means available to the social scientists should be favoured against the suggestions of hermeneutic philosophy. The question will be asked whether logic avails of the means to offer a logically adequate explanation of human action without referring or employing the notion of *Verstehen*. Besides, some recent developments in cognitive science will be discussed that promise to offer a theory of meaning and interpretation that could be more testable than the standard hermeneutic approaches.

11. Externality or Public Good? Choosing an Adequate Framework to Analyse Institutional Aspects of Common Goods

Paper Project

Frank P. Maier-Rigaud

Economic theory provides two approaches to analyse the allocation of common goods: Externality theory and public good theory. Arriving at the same result, both theories vary in their explanation of the problem of optimal allocation of common goods and resources. A combination of both approaches, retaining only the respective strengths of each theory is proposed. This new approach is motivated by the importance of institutional aspects neglected so far.

The externality approach is found particularly useful in identifying the endogenous potential for internalization whereas public good theory is particularly strong in capturing the problem of demand and the role of third actor interventions. As a result, the paper proposes a unification of both theories that explicitly recognizes institutional aspects of the problem of optimal allocation of common goods.

Such an institutional analysis of the problem requires the explicit distinction between market variables such as cost and profits, measured in terms of relative prices and variables that remain unrecognized outside the realm of market coordination, namely utilities not reflected in relative prices.

Based on that distinction, the notion of externality is reinterpreted and restricted to *external costs measured in terms of relative market prices*. (This classic notion of external cost is also what Coase had in mind.) Aspects of public good theory are used to specify the demand for the particular good as measured by preferences. Such a framework allows the separation of two distinct aspects. As long as property rights are well defined and transaction costs are not prohibitive, external costs, as redefined here, are internalized through endogenous processes. Public good aspects are introduced because external costs measured by relative market prices represent only one aspect of the common good problem. Since preferences for common goods are not captured by relative prices and remain systematically not recognized by the market mechanism, demand has to be introduced using a public good approach. The present analysis has no solution to the problems of preference revelation and aggregation; it is only concerned with the limits of endogenous coordination. This is the reason why market variables such as costs and profits as determined by relative prices are analytically separated from demand aspects as reflected in preferences that are not marketable.

These two aspects should not be confounded. Internalization based on relative prices is not motivated by an original preference for the respective common good but is simply a byproduct resulting from a more efficient production of private goods. The tendency to optimize production leads to a "spontaneous" internalization of such external costs. In addition to this aspect, the direct demand for the common good needs to be determined. Since demand for common goods cannot be measured by relative prices, a public good approach is needed.

12. Towards a General Theory of Decentralized Non-Market Behaviour: The Limits and Chances of Collective Action

Dissertation Project

Frank P. Maier-Rigaud

The dissertation develops a new approach to the institutional analysis of common goods. It demonstrates the analytical advantages of such an approach, applying the general theory to the specific case of Common Pool Resources (CPRs). The basis for a new institutional approach is the explicit distinction between market variables such as cost and profits measured in terms of relative prices and variables that remain unrecognized outside the reach of market coordination, namely utilities. In particular the dissertation will demonstrate that the reduction of CPR problems to collective action (CA) problems may be inappropriate and is responsible for the difficulties in generalizing the analysis to larger scale CPR problems. In contrast to existing theory, CPR problems are not exclusively analysed as collective action problems. The analysis of the tension between individual and collective incentives does not fully capture the theoretical problems involved in CPR dilemmas. The reason for the failure of current approaches in giving a complete theoretical picture of CPR problems is found in the neglected interdependency between market coordination and collective action. Depending on the research question, market coordination and coordination through decentralized collective mechanisms cannot be analysed independently of each other.

The dissertation proposes a twofold synthesis. First, a synthesis of the economic (externality approach) and the political science (collective action approach) literature on non-excludable and rival goods and resources is provided. Second and more importantly, a general framework of analysis is

developed that encompasses the seemingly opposed strands of thought concerning the role of a third actor. In "rough and dirty" terms, it is a synthesis of the classic approach to market failures (e.g. Pigou and Hardin) emphasizing the necessity of exogenous intervention on the one hand and more recent developments (e.g. Coase and Ostrom) emphasizing the endogenous problem solving potential.

As a result of this synthesis, the legitimate domains of these two approaches can be specified in a unified framework. The analytical aim is to identify the conditions under which decentralized collective action embedded in a market system is likely to solve CPR problems and when collective action is likely to be unsuccessful. The ultimate goal is the development of a general theory of decentralized non-market behaviour, embedded in a market system that is capable of identifying the limits and opportunities of decentralized collective action.

F Mid- and Long-Term Research Perspectives

F I Political Science

In the mid-term and long-term planning, the main problem focus in political science – to a large extent jointly with law – will remain "the institutional provision of common goods under conditions of governance across multiple arenas". It is useful to distinguish between a middle-range planning context, on the one hand, in which on-going projects will be completed and newly conceived, and a long-term planning context, on the other.

The mid-term plan (until the end of 2003) is for the following individual research projects to be continued and completed: One such undertaking is the joint project on "Market creation and market correction in the liberalized utilities" (Héritier, Coen, Boellhoff, Moral Soriano, Suck, Bauer). One particular aspect focussing on the tension between liberalization in the public service provision within network industries (Héritier and Moral Soriano) will be widened and extended to other sectors, that is, postal services and public banks. The particular role of the European Court of Justice in European policy-making in these sectors will also be investigated. Another project planned within the next year will analyse "court-induced" political arenas, that is, the impact of court rulings on the structure of political arenas, the scope and nature of the political actors involved, their strategic opportunities and the likely policy outcomes of these constellations (Héritier and Moral Soriano).

Additionally, the research focus addressing multi-arena governance in environmental policy at the European and international level will continue and be brought to completion within two to three years. Two research projects are to be mentioned in this context: One is the investigation of institutional structures, that is, democratic structures and deliberation in international institutions, and arguably better problem-solving capacities in climate politics (Verweij). The other main mid-term project in this context focuses on environmental policy in Europe. In this project the factors, processes and outcomes of European environmental policy in member states will be analysed under the aspect of convergence or divergence. A research proposal with international cooperating partners (among others, The University of Nijmegen) has been submitted to the European Commission for funding under the Sixth Research Framework Programme (Holzinger, Knill).

Another important research focus of mid- and, indeed, long-range planning relates to the role of private actors in policy formulation at the European and international level (Héritier; Farrell; Kerwer). The conditions, modes and consequences of non-state actors' participation in policy formulation to provide common goods will continue to be scrutinized from different angles. Jointly with the Max-Planck Institute for the Study of Societies in Cologne, a project proposal for a "network of excellence", to be funded by the European Commission under the Sixth Research Framework Programme, also centres around this topic: "Governing without legislating? Comparative studies on voluntary coordination and consensual regulation".

Within the context of the project group's long-term planning, matters surrounding the institutional provision of common goods under conditions of governance across multiple arenas *constitute* a long-term perspective, and this will remain the dominant research perspective at the project group. Many of the issues from the general research questions presented in the evaluation procedure of July 2000 (See tables below) are still to be investigated. How and why do specific forms of institutional provision develop? How do they function? What are their outcomes in terms of problem-solving and distributional impacts? What are their structural impacts upon existing political and administrative structures? Within this large research area significant steps have been taken since the political scientists took up their work at the Project Group in February 1999, but a lot still remains to be done. In particular, questions are to be investigated concerning the policy and structural impacts of specific institutional solutions aimed at providing common goods both with respect to the existing political and administrative structures and with respect to the existing policies.

Structure Process	Type Common Good	Contextual Aspects	Type Governance across multiple arenas	Institutional Arrangements	Instruments
I Problem Definition	1 public good	5 number	7 co-operation	9 hierarchy	16 command + control
II Development institutional solution	2 CPR	+	8 multiple-actor-solution	10 voting/ majorit	17 bargaining
III Implementation	3 club good	6 nature of actors		11 negotiation	18 information
IV Impact	4 network good			12 self-regulation	19 persuasion
				13 market	20 arguing
				14 trust	21 incentives

Börzel	III IV	2 7 11 17	Implementation of European legislation by member states and the role of non-state actors
Farrell	II	7 11 17	Negotiating international agreements; New instruments in electronic commerce USA-EU personal data protection
Héritier	II III IV	7 8 13 21	Liberalization of network utilities in EU => need for reregulation; – services publics – rail, telecoms, energy
Holzinger	IV	1-3 7 10	Multi-level government, decision-making rules in provision of common goods and their impacts; – policy-comparison, environment, financial markets
Kerwer	III IV	8 13 14	Private actors as providers of common goods; – financial markets, rating agencies
Knill	II III	7 8 11	Private actors in multi-arena governance; information technologies
Lehmkuhl	II III IV	12 16	Common goods offered by private actors – its impact on structural relationship between public and private actors; 3rd party dispute resolution in trade
Verweij	II	14	Deliberative democracy in international bureaucracies
Böllhoff	II	9	The institutional design of telecommunicatons regulation
Moral Soriano	IV	9	Public mission *versus* competition
Suck	II		Renewable energy policy in a comparative perspective
Bauer	IV		The administrative costs of deregulation

F II Law

Both the waste management and the Internet research programmes are about to be finished. This increasingly frees up resources for two new research programmes. They constitute the mid-term plans for research originating from or centring around the lawyers of the project group. The programme on a normative theory of governance across multiple arenas deliberately mirrors the cornerstone of the political scientists' work. The programme on the limits of rationality purports to lay the micro-foundations for analysing common goods problems, and for designing institutions that help to provide common goods.

In a long-term perspective, the project group should again select specific common goods, such as it did in the waste management programme. It will be the task of lawyers to understand, interpret and further develop the pertinent legal rules, or the institutions for the provision of these goods, more generally. The following rank among promising classes of common goods for this purpose: global commons (like natural resources, the climate, or biodiversity); man-made common goods (like cultural heritage); knowledge and education; or the legitimate interests of future generations.

A second long-term dimension follows the example of the new programme regarding a normative theory of governance across multiple arenas. It takes up other key concepts political scientists use for understanding the provision of common goods, and turns them into a research agenda for lawyers. One promising example contrasts the pertinent rules of existing constitutional law with the work of political scientists on the policy cycle. There is, for instance, hardly any legal work on agenda setting, and fairly little on implementation. Yet, both are of high relevance for the institutional provision of common goods.

A third long-term dimension is methodological. The project group is one of the few places where lawyers and (theoretically guided, empirically rigorous) political scientists collaborate on a day to day basis. This makes the project group a natural place for further developing a methodology bridging the divide between both fields. In particular, thus far rigorous empirical methodology has hardly been integrated into legal research. The rationality programme makes the project group a place for what is now in the US typically called behavioural law and economics. The outline of this programme demonstrates, however, why this approach, culled from the biases research, is too narrow. Even when the rationality programme proper at some point comes to an end, the methodological challenge will remain with the project group. Likewise, the urge to further develop proper methodological standards for legal policy research remains from the waste management programme.

A fourth long-term dimension is dogmatic. Common goods are at the centre of a process blurring the traditional dogmatic divide between public and private law. The distinct general principles of both areas are increasingly less fitting for legal reality. A promising approach is to replace or at least supplement them with the general dogmatic principles of a law of common goods. The legacy of the waste management programme is a series of fruitful research questions to be covered by such a set of general principles: How are regulatory aims to be defined in the face of incompatible normative starting points? How are general principles to be found for setting priorities and for the positive or negative side effects upon other regulatory concerns? How are we to legislate in the face of pervasive uncertainty? How can general principles for operationalising abstract regulatory aims be found? How can generic knowledge about the effects of regulatory tools be integrated into constitutional dogmatics? How can we constitutionally assess regulation that is triggered by earlier regulation, not by an independent social problem?

F III Economics

Research agendas are written by individual researchers. The *Harnack principle* even makes this explicit for the Max Planck Society. Since a third, economic head of the project group has not yet been selected, this section cannot lay out a true research programme. It can only sketch options that might be fruitful, or logical given the previous work and the researchers present at the project group.

The obvious seems the least likely: an economist looking at public goods in the tradition of welfare economics. Although this concept remains crucial for understanding the incentive structure, it is already so well-developed that a whole, long-term research unit might find it hard to do sufficiently original work. But economists within such a unit would surely want to contribute to this discussion, e.g. from the angle of the anti-commons problem; or they might want to apply tools from mechanism design to existing institutions for the provision of common goods.

The existing work of economists within the project group points into alternative directions. Economists participating in the rationality programme model behaviour differently from the classic rational utility maximiser. This seems a particularly promising avenue for both understanding common goods problems and the institutions set up for solving them. This approach does not impose a research strategy that dispenses with as little as possible from the traditional economic model, and thus maintains as much of its strength and richness as possible, but the approach certainly does allow such a strategy.

A further logical step would be to replace the concept of utility with a concept of individual and social problems, partly predetermined by existing formal and informal institutions. This would add a historical dimension and the idea of path dependence. This is not an easy strategic move for economists, however. While it is obviously helpful for understanding common goods problems, it makes scientific exchange with the economic mainstream difficult.

Whatever choice the third head of the project group makes, he or she will have to develop a proper theory of common goods, transcending the existing and already well-developed theory of public goods.

G Related Work

G I Exploring Further Common Goods

For the first period of its work, the project group has selected a relatively small number of common goods: the environment, communications and network industries. Some of the researchers in their individual work have broadened the scope and explored other common goods. Timme (1) in his dissertation looks at preventing epidemic diseases. Holzinger (2) in her habilitation compares environmental issues with the governance of financial markets. Kerwer (3) in his habilitation investigates the governance exercised by rating agencies. Müller (4) has a monograph on electronic money. Okruch (5, 6, 7) has a series of papers on social security in general, and on public health care in particular. Lehmkuhl (8) in his habilitation looks at ways of providing conflict resolution in international trade. Müller (9) prepares a paper on listed buildings. More possible goods are explored in an early article by Engel (10).

1. Insights from the Economic Theory of Network Goods: The Prevention of Epidemic Diseases in Past and Present Law

[Die juristische Bewältigung eines ökonomischen Netzwerkgutes: Epidemieprävention in Rechtsgeschichte und Gegenwart]. 2001. Common Goods: Law, Politics and Economics 2. Baden-Baden: Nomos.

Michael Timme

The vaccination against Hepatitis B is cheap, easy and almost without risk. Nonetheless an epidemic would have disastrous results in Germany, since only a very small portion of the population is vaccinated. This knowledge is nothing new. The media has pointed this fact out time and time again. Economic analysis helps to understand why the level of prophylaxis against epidemic diseases remains nonetheless at a low level.

In economic terms, protection against epidemic diseases may be modelled as a network good. Such goods are characterized by the fact that individual demand is related to the demand of others, i.e. the individual value of the good increases, if others acquire it as well. The prototypical example is a telecommunications network. In principle, protection against an epidemic has the same characteristics. If people are vaccinated, they not only protect themselves in doing so, but also decrease the risk of an epidemic outbreak. The network effect becomes evident if one defines the good not negatively as the absence of the disease, but positively as the maintenance of the social environment. This is a public good, since neither excludability nor rivalry in consumption is present. It is, as a positive externality, produced together with the private protection against the risk of the disease.

Experience gained in the course of legal history shows that the public element is not the only reason for the insufficient supply of this good. The second reason might be labelled "hidden demand". Vaccination is virtually useless once the epidemic has reached a territory. It has to be taken at a time when there is no danger present. In such a situation, however, individuals tend to systematically underestimate the risk of the disease and overestimate the cost and risk of the vaccination. This can be explained as being an element of bounded rationality. Once the danger has attracted public attention, however, it is generally overrated, which then often leads to hysteria. Similar experiences hold true for other forms of prevention, such as public hygiene or quarantine.

One should be cautious, however, not to derive a normative recommendation of state activism from these experiences of the past. For history also shows that public officials suffer from the same myopia. Even if they know better themselves or are informed in time, they find it difficult to organize public support for prevention when the risk is not clear for all to see. Technocratic decisions by councils of doctors suffer from a flaw of an opposite nature. They tend to make decisions without taking the cost, be it monetary or political, into account at all.

A legal solution to this problem that considers the deficits of governmental decisions as well as the above-mentioned difficulties of individual perception should be to authorize a board composed of doctors' organizations and social insurers. They act as trustees of the public with the competence to decide over necessary measures of prevention.

The topic is of current interest because the German government has lately released a new statute on the protection against infectious diseases.

As a conclusion to be drawn from the experience gained over the last one and a half centuries since epidemic diseases were understood, the legislator should consider the economic insights of network goods as well as the historical experience with regulations.

1. The Provision of Common Goods in Multilevel Systems: Financial Markets and the Environment

Post-doctoral Thesis

Katharina Holzinger

(See D II 1, 21)

2. Managing Global Risk: the Role of Credit Rating Agencies in the Governance of Financial Markets

Post-doctoral Thesis

Dieter Kerwer

(See D II 1, 24)

4. Electronic Money and Monetary Sovereignty

Common Goods: Law, Politics and Economics 4. Baden-Baden: Nomos. Forthcoming.

Lorenz Müller

The emergence of a "digital economy" creates a demand for payment methods which are suitable for the conditions of global electronic commerce. Anonymous electronic cash is already technically feasible. It may be issued by private entrepreneurs. It need not have defined exchange rates with public, governmental money. This development is often described as a threat to the monetary sovereignty of states, for monetary sovereignty depends on the monopoly over the supply of money by central banks and their ability to implement a monetary policy e.g. via open market operations and reserve requirements.

The paper discusses the question of how policy makers should react to the emergence of electronic money. Should they follow a "preventive approach" and regulate electronic money before it has any market as Germany and the European Communities do? Or should they adopt a wait-and-see-position? The author comes to the conclusion that the second way is the appropriate approach for several reasons. Firstly, electronic money is not a real threat to the role of central banks. Initial experience and theoretical considerations indicate that electronic will not be used as frequently in the foreseeable future as was originally expected. Secondly, the attempt to regulate electronic money by single nation states or supra-national organizations such as the European Communities will most likely fail due to the borderlessness of the Internet. Thirdly, government's monopoly on money historically has produced a history of debasement and devaluation rather than stable money. Competitive pressure exerted by private issuers of electronic money may hinder governments in exploiting their citizens in the future and have the same positive effects as the abolition of other government monopolies e.g. in the areas of postal services, traffic and power supply.

Electronic money poses not only questions to monetary policy, but also to constitutional law.

The paper argues that the constitution neither obliges the state to adhere to its monopoly nor legitimates to restrict the freedom of private issuers of electronic money at least as long as electronic money poses no real threat to monetary stability. Fundamental freedoms suggest rather that the free emission of electronic money should be permitted, at least as a legislative experiment.

5. Health Care Policy: Experimental Economic Policy as the Cause and Solution to the Health Care Crisis?

[Gesundheitspolitik: Wirtschaftspolitik der Experimente als Ursache und Lösung der Krise im Gesundheitswesen?]. 2001. In *Wirtschaftspolitik im Wandel*, eds. L. T. Koch, 113-136. München: Oldenbourg.

Stefan Okruch

This contribution to an edited volume on economic policy for graduate students first gives a rationale for the regulation of a specific common good, i.e. health care. The economic characteristics of health as a common good are analysed; it is concluded that a – rather restricted – regulation can be legitimized. This result is then contrasted with the actual evolution of health care systems with special emphasis on the "mixed" system implemented in Germany. Both theoretically and empirically this system of central regulation is allocatively and adaptively inefficient. The health care system not only sets wrong incentives for short-term behaviour, but it also cannot cope with long-term developments such as demographic change, the medico-technological progress or the liberalization of trade in services. While (health) economics can easily contribute to the theoretical improvement of the incentives within the system, both concepts for the improvement of adaptive efficiency and concepts for policy implementation are lacking. Okruch suggests a model of adaptive policy-making that does not require a far-reaching reform of the whole health care system, which has proven to be politically impossible. His proposal aims at the decentralization of competences and at a system of managed competition among different jurisdictions. The process of decentral experimentation and central monitoring, which can be implemented more easily, is at the same time potentially superior in terms of adaptive efficiency. He concludes by pointing to the tendencies towards a system of managed experimentalism that resulted from recent reforms of the German health care system.

6. The Development of Social Policy from the Perspective of *Ordnungspolitik*

[Die Entwicklung der Sozialpolitik aus ordnungspolitischer Sicht]. 1997. In ORDO: Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft 48 = *Soziale Marktwirtschaft: Anspruch und Wirklichkeit seit fünfzig Jahren*, 465-482. Co-authored with P. Oberender.

Stefan Okruch

The concept of social market order aims at combining freedom and social justice, efficiency and social progress. The political competence in the field of social policy covers *Ordnungspolitik* as social policy, the *special social policy* and the protection of equal opportunities. Though the range of social policy differs significantly among the several exponents of the concept, it is widely acknowledged that all political measures must comply with the principles of subsidiarity and conformity in order to secure the market order. The development of social policy in Germany during the last fifty years shows that those principles were not sufficient to restrict the steady growth of the social system budget. As the idea of *Ordnungspolitik* is not limited to the economic order, this article examines the political order and its significance for the development of social policy. Public choice makes it plausible why the principles of *Ordnungspolitik* are systematically neglected. This approach, however, can also give some clues to a reform of the political order.

7. Demographic Trends, Solidarity and Subsidiarity: The Necessity of Reforming the Social Security System

[Bevölkerungsentwicklung, Solidarität und Subsidiarität: Reformnotwendigkeit des sozialen Sicherungssystems zwischen individueller und kollektiver Daseinsvorsorge]. 1998. In *50 Jahre Soziale Marktwirtschaft: Ordnungstheoretische Grundlagen, Realisierungsprobleme und Zukunftsperspektiven einer wirtschaftspolitischen Konzeption*, ed. D. Cassel, 535-550. Stuttgart: Lucius & Lucius. Co-authored with P. Oberender.

Stefan Okruch

Demographic change will put many of the existing systems of social security increasingly under pressure. The devastating influence of demographic developments on the stability of the social security system can be seen, in the short term, as a built-in lack of adaptiveness to exogenous change. In the long term, however, the demographic change can be conceived as endogenous, i.e. caused by the security system itself. Thus, the institutional arrangement is not only ill-prepared for exogenous developments, but "contains the seeds of its own destruction".

After scrutinizing some traditional legitimizations of the existing system, we analyze the implementation of social security systems from a Public Choice perspective. We conclude by presenting an agenda for the reform of the German social security system.

8. Private Governance of International Commercial Disputes

Post-doctoral Thesis

Dirk Lehmkuhl

(See D II 1, 23)

9. Economics and German Monumental Protection Law

Paper Project

Lorenz Müller

The paper undertakes an economic analysis of the German law of monumental protection. Applying the theory of public goods to cultural heritage, it comes to the conclusion that the theory and practice of the German regulation neglects the crucial question of the value of cultural heritage. Therefore decisions on preserving monuments often lack rationality and founded reasoning. The paper argues in favour of a more demand-oriented approach in order to determine the optimal quantum of monumental protection. The integration of willingness-to-pay-studies into the practice of German monumental protection law is presented as one possibility to determine the demand for monumental protection.

10. The Law of Common Goods

[Das Recht der Gemeinschaftsgüter]. 1997. In *Die Verwaltung* 30: 429-479.

Christoph Engel

This was the very first publication from the project group on common goods. It is the written version of a talk outlining possible lines of research to the commission setting up the project group. This history explains both the exploratory character of the paper, and the fact that part of it is now dated. But the project group has not yet exhausted the options outlined in the paper. There are many common goods mentioned in the article that we have not yet investigated, like fisheries, the cultural patrimony of past generations, terrestrial frequencies, basic research, internal and external security, or the safety of traffic. Some of the conceptual dimensions might also prove helpful at later stages of our work, like the (ir)reversibility of decisions for or against the provision of a common, the lack of immediate visibility of (under)provision, or common goods of specific groups that clash with common goods of society at large.

G II Further Related Work: Political Science

1. A Creeping Transformation? The European Commission and the Management of EU Structural Funds in Germany

2001. Dordrecht: Kluwer

Michael W. Bauer

(See D IV 2, 48)

2. Economic Dynamics and Political Sluggishness: Europe in the Wake of the East-West Conflict

[Wirtschaftsdynamik und politische Langsamkeit: Europa nach dem Ost-West-Konflikt]. 1999. Leviathan Sonderheft 19 = Von der Bonner zur Berliner Republik, eds. R. Czada, H. Wollmann, 141–155. Wiesbaden: Westdeutscher Verlag.

Adrienne Héritier

The European Community has reacted antithetically to the challenges of globalisation and the end of the East-West conflict: It has reacted dynamically in matters of economic liberalization, but sluggishly in politics when it has been important to soften the disparate consequences of market integration with the help of redistribution policies. Europe thus responded to the increasing economic internationalisation by introducing the European Single Market and the European Monetary Union, but the political ability to redress possible losers of the market liberalization and the monetary union, by contrast, has proven to be very limited. In short, Europe has little capacity to process political problems concerning redistribution, security and defence, while it has had and continues to have a considerable capacity to ride the wave of market liberalization that has been spreading over the world since the 1990's.

And yet, this fundamental asymmetry reflects an essential, albeit partial, reality of Europe. For political changes can continually be found that aim to correct the market and seek to compensate for losses.

In what follows it is to be shown – in accord with an outline of the theoretical interpretation – how Europe is reacting to the double challenge of globalisation and the end of the East-West conflict. The discrepancy will be presented between the possibilities unleashed by the market dynamic, on the one hand, and the political capacity to deal with the problems resulting from that liberalization, on the other. Finally, 'escape paths' will be pointed out, which have been chosen in day-to-day European politics in order to enhance the limited possibilities for actively shaping policies, which result from the diversity and the requirement of consensus and which, despite the existing political resistance, are suited to correct market effects.

3. „Seek and Ye Shall Find“: Linking Different Perspectives on Institutional Change

2001. *Comparative Political Studies* 34 (2): 187-215. Co-authored with Andrea Lenschow.

Christoph Knill

Two theoretical schools – rationalist and constructivist approaches – dominate the literature on policy and institutional change. They tend to focus the debate on the ontological understanding of human behaviour and hence the logic behind change. Notwithstanding the importance of these questions, we note that another dimension of change – namely its scope – is treated unsatisfactorily in the literature due to a neglect of the level of analysis used as a point of departure by different studies. Hence, Knill and Lenschow find the literature littered with “false debates” couched in the language of ontological disagreement. They argue that a regrouping of the literature into structure- and agency-based approaches will help to make for more systematic account of the levels of analysis problem and therefore the varying measuring rods applied to assess the scope of change. Their analytical focus runs orthogonal to the question of ontology and complements the dominant debate by allowing for a separation of different analytical dimensions in the study of political change.

Im Folgenden ist – nach der Skizzierung des theoretischen Interpretationsrahmens – zu zeigen, wie Europa auf die doppelte Herausforderung von Globalisierung und Ende des Ost-West-Konfliktes reagiert(e). Die Diskrepanz zwischen einer Ermöglichung von Marktdynamik einerseits und politischer Kapazität, die Folgeprobleme der Liberalisierung zu bearbeitn, andererseits, wird dargestellt. Schließlich werden „Fluchtwege“ aufgezeigt, die im europäischen Politikalltag gewählt werden, um die begrenzten Möglichkeiten der aktiven Politikgestaltung, die sich aus Diversität und Konsensuszwang ergeben, zu erweitern und die trotz bestehender politischer Widerstände geeignet sind, Marktfolgen zu korrigieren.

4. Explaining Cross-National Variance in Administrative Reform: Autonomous versus Instrumental Bureaucracies

1999. *Journal of Public Policy* 19 (2): 113-139.

Christoph Knill

Notwithstanding an ever-growing body of literature on administrative reforms, the studies either focus on single countries or emphasize common tendencies in all countries; hence providing little systematic insight for the evaluation and explanation of administrative change from a comparative perspective. In the light of this deficit, it is the aim of this article to develop an analytical concept for explaining cross-national variances in patterns of administrative development. For this purpose, the concept of national administrative reform capacity is developed, arguing that the potential for reforming different administrative systems is basically dependent on the general institutional context in which these systems are embedded. On this basis, two ideal type constellations of administrative reform capacity and corresponding patterns of administrative development are identified and illustrated by a systematic comparison of administrative reform capacities and administrative changes in Germany and Britain.

5. Policy Networks: The Analytical Concept and the Form of Appearance of Modern Policy Regulation

[Policy-Netzwerke: Analytisches Konzept und Erscheinungsform moderner Politiksteuerung]. 2000. In *Soziale Netzwerke. Konzepte und Methoden der sozialwissenschaftlichen Netzwerkforschung*, ed. J. Weyer, 111-133. Munich: Oldenbourg.

Christoph Knill

Policy-Netzwerke haben seit einigen Jahren Hochkonjunktur in der Politikwissenschaft. In regelmäßigen Abständen werden von einschlägigen wissenschaftlichen Zeitschriften Schwerpunkthefte veröffentlicht, in denen der aktuelle Stand der Forschung in diesem Bereich dokumentiert wird. Die wesentliche Ursache für diesen "Boom" liegt in der zunehmenden Bedeutung des Netzwerkkonzeptes für die Untersuchung und Erklärung staatlichen Handelns. Trotz der großen Aufmerksamkeit, die Policy-Netzwerken in der politikwissenschaftlichen Literatur zuteil wird, hat sich jedoch bislang kein einheitliches Verständnis über die Konzeption, den analytischen Nutzen und die theoretische Bedeutung solcher Netzwerke herausgebildet. Vor dem Hintergrund variierender Konzeptionen von Policy-Netzwerken verfolgt dieser Beitrag mehrere Ziele. Erstens sollen die einzelnen Konzepte im einzelnen vorgestellt und deren Unterschiede herausgearbeitet werden. Auf der Basis dieses allgemeinen Überblicks werden in einem zweiten Schritt die analytischen und theoretischen Errungenschaften des Policy-Netzwerkansatzes kritisch hinterfragt. Drittens wird die konkrete Anwendung des Policy-Netzwerkansatzes anhand eines empirischen Fallbeispiels illustriert.

6. Public Aid to R&D in Business Enterprises: The Case of the United States from an EU Perspective

2001. *Revue d'Economie Industrielle* 94: 21-48.

Alkuin Kölliker

This article aims to highlight government support for private sector R&D in the United States, where appropriate, complemented by some comparisons with the European Union. After giving an overview of the objectives and resources of US R&D policy, the article analyses R&D cooperation among firms, as well as between firms and different levels of government. The results show that, with regard to government funding for private sector R&D, the US by far outspends EU member states. And while anti-trust barriers against R&D cooperation amongst businesses have been gradually removed on both sides of the Atlantic in the course of the past few decades, only the EU provides for a framework that limits state aid, albeit one with a special regime applying to R&D. An overall assessment suggests that public aid to business R&D has recently been handled more permissively in the US than in Europe.

7. Euro Economic Governance

Workshop Jointly Organized by the Robert Schuman Centre and the Forward Studies Unit
2001. Brussels: European Commission. Together with Tue Fosdal and Lucio Pench.

Alkuin Kölliker

This report presents the results of a workshop jointly organized by the Forward Studies Unit (European Commission) and the Robert Schuman Centre (European University Institute). The objective was to investigate the main aspects of the emerging Euro economic governance and suggest ways of accelerating its evolution. The report addresses (1) the rationale for closer economic policy coordination in the Euro area, (2) the scope and limits of the EU's current economic policy constitution, (3) the issue of enlargement, as well as (4) the involvement of actors and institutions at the national level. In order to make the workshop as policy-relevant as possible, participation was restricted to a number of experts, all of whom have been closely involved with the development of economic policy co-ordination in the Euro area, either on the academic or the policy-making side. The report has served as a basis for a respective note by the Forward Studies Unit to the President of the European Commission.

8. Whose Behaviour Is Affected by International Anarchy?

1999. In *Cultural Theory as Political Science,* eds. M. Thompson, G. Grendstad and P. Selle, 27-42. London: Routledge.

Marco Verweij

In this essay, it is argued that the cultural theory developed by Mary Douglas, Michael Thompson and Aaron Wildavsky is a useful tool with which to analyse international relations. The essay starts by looking at the ways in which approaches to international relations have theorized the preferences of transboundary actors. Two camps are discerned and critiqued: those approaches (neorealism and neoliberalism) that assume that all international actors react similarly to the absence of world government, and those frameworks (constructivism and postmodernism) that assume an endless variety of responses to international anarchy. It is shown that the cultural analysis of Douglas *et. al*. allows us to tread a more discerning path by offering a useful, fourfold typology that maps alternative ways in which actors perceive, and attempt to deal with, international issues.

9. Where Does Time Come from? The Social Construction of Time

***2003. Dædelus* 132 (1). Co-authored with Mary Douglas.**

Marco Verweij

This (commissioned) article will be published in a special issue of *Dædelus*, in which the idea of "time" is analysed from the vantage point of various academic disciplines, including physics, neuroscience, biology, history, literature, and theology. Our contribution will present an anthropological view of time in arguing that different perceptions of time are intertwined with alternative ways of structuring and justifying social relations. This hypothesis will be illustrated by drawing on extensive ethnographic material. It will also be argued that successful democratic institutions simultaneously incorporate, and balance, different conceptions of time.

10. Why Brushing Your Teeth Can Harm Your International Career, and That of Others. The Individual Athlete Between Transnational Governance and Domestic Constitutional Protection

To be submitted to *RabelsZeitschrift*.

Dirk Lehmkuhl/Florian Becker

In principle, governance across multiple arenas is concerned with two themes. On the one hand, the analytical focus is on the dynamics of the process of internationalization. These dynamics include the interaction of actors and organizations within the framework of multiple interwoven institutions such states, international organizations and international regimes that both overlap and complement one another in their jurisdictional reach. On the other hand, the implications of these dynamic processes for the state, its sub-units and for the state-society relationship at the national level are at the heart of the analytical interest. Both themes are closely related and therefore an encompassing picture requires the taking into account of their mutual impact on each other.

By applying these considerations to the doping case of the German long-distance runner Dieter Baumann, this article has double interest. Firstly, it examines the interaction between two functionally specialized private associations on different planes, i.e. the International Athletic Associations' Federation and the German Athletics Association on the one hand, and German domestic law as applied by the German Oberlandesgericht at Frankfurt on the other. In this regard, the question is whether transnational norms not only govern their functionally specific jurisdiction, but can also level out the national diversity of domestic provisions. Secondly, Lehmkuhl and Becker are interested in the question whether the existence of private transnational regimes erodes domestically protected basic rights or whether the latter manage to rein in undesirable aspects of the former by protecting individual freedoms such as the freedom of professional pursuit and by preserving the fundamental right of a fair trial compromising access to proper procedural safeguards.

11. Great Britain: Falling through the Holes in the Network Concept

2001. In *Local Economies in Europe: Rise or Demise?* eds. C. Crouch, P. LeGalés, C. Trigilia and H. Voelzkow, 154-211. Oxford: Oxford University Press. Co-authored with Colin Crouch.

Henry Farrell

In this book chapter (which forms part of a wider research project of the Max-Planck Institut in Cologne and the European University Institute in Florence Farrell et al. seek to examine the extent to which local economies exist in the United Kingdom. They analyse the success or otherwise of local economies as a consequence of *collective competition goods* provided by political or social actors, which allow for small firm success. They provide a short historical account of the evolution of industrial policy in the United Kingdom, and then turn to more recent evidence. In particular, they draw on three sources. First, they provide an overview of the current literature and debates. Second, they draw on a substantial array of qualitative evidence, based on material solicited from TECs (Training and Enterprise Councils) across the United Kingdom. Finally, they draw on a large statistical database to ascertain local concentrations of industry within the United Kingdom according to the same statistical tests that have been used to discover local economies in Italy. They conclude with an examination of the current state of play, a discussion of the extent to which collective competition goods have helped foster local development in particular instances, and an examination of how they are likely to be affected by institutional changes which are now in motion.

12. Trust, Distrust and Power in Inter-Firm Relations

In *Distrust*, ed. R. Hardin. Submitted to Russell Sage Foundation. Forthcoming.

Henry Farrell

(See D V, 13)

13. Collective Goods in the Local Economy: The Packaging Machinery Cluster in Bologna.

2001. In *Local Production Systems in Europe: Volume II*, eds. C. Crouch, P. LeGalés, C. Trigilia and H. Voelzkow. Oxford: Oxford University Press. Forthcoming. Co-authored with Ann-Louise Lauridsen.

Henry Farrell

This chapter examines a particular local economy in Italy: the packaging machinery industry in Bologna. It seeks to explore how collective competition goods have been important to the success of this cluster in becoming a dominant force in national markets, and a strong competitor on world markets. It provides a detailed account of the economic functioning of the district, drawing from a rich body

of interviews with firms and other important local actors. It examines the relationship between the government provision of certain collective competition goods and their economic consequences, showing how changes in government funding have had pronounced effects. The chapter then goes on to examine relations between firms themselves, and how these have changed over time. It concludes by seeking to root the provision of collective competition goods in struggles between actors over distribution, rather than the simple functionalist account which characterizes much of the existing literature. This viewpoint, under-represented in the current literature, arguably presents an important corrective to it.

14. The Political Economy of Trust: Exploring Cooperation between Mechanical Engineering Firms in Emilia-Romagna and Baden-Württemberg

Dissertation defended June 2000 at Georgetown University. Mentor: Samuel H. Barnes, Ph.D.

Henry Farrell

In recent years, a great amount of scholarly attention has been devoted to the political, social, and economic consequences of trust. In particular, one can point to the recent burgeoning of interest in the concept of "social capital." In this dissertation, Farrell set out to examine the political economy of trust in so-called "industrial districts," geographically concentrated clusters of small firms, which, it has been argued, rely heavily on cooperation between firms in order to survive and prosper. These districts are clearly of considerable interest for the study of how trust may impact on economic cooperation. In particular, he examines two case studies, one in the packaging machinery district of Bologna, in Italy and another in the machine tool industry of Stuttgart in Germany. He relies primarily on a series of interviews conducted with firms and other relevant actors in these districts in 1998-1999. Through analysis of these case studies Farrell seeks to test the merits of a version of the so-called "encapsulated interest" account of trust in explaining cooperation. He finds that this account of trust provides a better fit with the data than competing accounts which refer to identity or culture as sources of trust. He then proceeds to argue that one may apply recent advances in the rational choice theory of institutions to understand why it is that individual actors come to trust each other as they do. Not only does an institutional theory of this sort provide a good explanation of the forms of cooperation observed in the two case studies, but it helps us understand why there are important differences in cooperation between the two cases. Study of industrial districts provides good reason to believe that the encapsulated interest account of trust, when combined with institutional theory, provides a good basis for the comparative analysis of trust.

15. Federal States in a World without Boundaries: Regional On-Site Competition or Common Governance Beyond the Nation State

[Föderative Staaten in einer entgrenzten Welt: Regionaler Standortwettbewerb oder gemeinsames Regieren jenseits des Nationalstaates]. 2001. *PVS*, special issue 32 = Föderalismus, eds. A. Benz and G. Lehmbruch. Forthcoming.

Tanja A. Börzel

Globalization and Europeanization are often referred to as debordering processes that challenge the territorial organization of politics and thus federalism as a principle of order. In contrast, this article argues that debordering processes entail an economic as well as a political dynamic, which have a contradictory impact on federal systems. Whereas the former induces more competition among subnational units, the latter provides a strong incentive for cooperation and coordination. On the one hand, growing cross-border transfers of goods, services, capital and information challenge the problem-solving capacity of national governments. On the other hand, national governments have responded to these challenges by pooling their action capacities at the international level. The emergence of international and European institutions has generated political pressure on federal systems for more cooperation, which has counteracted decentralization processes as well as demands for more competition. A comparative study of the four federal member states of the European Union demonstrates that it is not only institutional inertia that prevents more competitive forms of federalism to emerge. Federal units have to cooperate both with their central government and among each other if they want to have systematic access to governance institutions "beyond the nation state". The article concludes with a summary of the most important findings and discussion on their implications for the future of federal states in a debordering world.

16. Europeanization and Territorial Institutional Change: Towards Cooperative Regionalism?

2001. In *Transforming Europe: Europeanization and Domestic Change,* eds. J.A. Caporaso, M. Green Cowles and T. Risse. Ithaca, NY: Cornell University Press.

Tanja A. Börzel

The Europeanization and regionalization of the nation state are two of the most significant trends in the territorial organization of politics in post-war Western Europe. The chapter explores the link between the two processes. It aruges that the impact of Europeanization on national territorial structures is diverse and 'institution dependent'. Domestic institutions mediate the impact of Europeanization in two fundamental ways: First, the 'goodness of fit' between European and domestic institutions determine the institutional pressure for adaptation which a member state is facing. Second, collective understandings – the institutional culture – determine the dominant strategy of domestic actors by which they respond to adaptational pressure. I demonstrate my argument empirically by comparing the effect of Europeanization on the territorial institutions of Germany and Spain. Europeanization caused similar pressure for adaptation on the territorial institutions of both member states by weakening the legislative and administrative powers of the regions vis-à-vis the national government. In the case of Germany, however, the informal institutions of 'cooperative federalism' facilitated a

cooperative strategy by the German Länder which allowed to regain their competencies, and, thus, to adjust existing German territorial institutions to Europeanization resulting reinforcing rather than fundamentally changing them. In contrast, the Spanish institutional culture of 'competitive regionalism' privileged a confrontative strategy by the Spanish regions which proved to be ineffective in redressing the territorial balance of power. As a result, the Spanish regions changed their dominant strategy toward increasing cooperation with the central state in a multilateral framework. This strategy change resulted in a significant transformation of the existing Spanish territorial institutions turning them away from competitive towards more cooperative forms of intergovernmental relations.

H Lectures, Workshops and Conferences

Guest Lectures 2001

Prof. Dr. Oded Stark
Oslo University, Sweden
"On the Evolution of Altruism"
22 January 2001

Dr. Georg von Wangenheim
University of Hamburg, Germany
"The Duration and the Susceptibility to Mistakes of the Public Legal Licensing Procedures – The Economic Basis and the Legal Applications"*)
(Dauer und Fehleranfälligkeit von öffentlich-rechtlichen Genehmigungsverfahren – ökonomische Grundlagen und juristische Anwendungen)
12 March 2001

Prof. Dr. Elinor Ostrom
Indiana University, Bloomington, USA
"Redundancy: How Does It Influence Optimal Management"
28 March 2001

Dr. Milos Vec
Max Planck Institut for European Legal History, Frankfurt, Germany
"Technology or Law? Governance Demands in the Second Industrial Revolution"
(Technik oder Recht? Steuerungsansprüche in der Zweiten Industriellen Revolution)
2 April 2001

Prof. Dr. Vivien Schmidt
Boston University, USA
"Does Discourse Matter in the Politics of Welfare State Adjustment?"
3 April 2001

Prof. Dr. David Over
University of Sunderland, Great Britan
"Massive Modularity versus Dual Processes"
9 April 2001

Prof. Dr. Reiner Eichenberger
University of Fribourg, Switzerland
"Deregulation of the Political Process – A new Path to Better Politics"
(Die Deregulierung des politischen Prozesses – Ein neuer Weg zu besserer Politik)
30 April 2001

Prof. Dr. Reinhard Selten
Rheinische Friedrich-Wilhelms-Universität Bonn, Germany
"The Winner's Curse and Learning Direction Theory"
28 May 2001

Dr. Minoti Chakravarty-Kaul
Lady Shri Ram College, New Delhi, India
"The Institutional Impact of the State and the Market on Common Property Resources in Eco-Systems of Northern India (incl. Pakistan)"
11 June 2001

Prof. Dr. Randall Picker
University of Chicago, USA
"Endogenous Neighborhoods and Norms"
11 June 2001

Prof. Dr. Francesco Parisi
George Mason University, USA
"The Problem of the Anti-Commons"
18 June 2001

Prof. Dr. Wolfram Richter
University of Dortmund, Germany
"The Competitive Provision of Local Public Goods"
(Die wettbewerbliche Bereitstellung lokaler öffentlicher Güter)
25 June 2001

Prof. Dr. Winand Emons
University of Bern, Switzerland
"Truth Revealing Mechanisms for Courts of Law"
(Wahrheitsoffenbarende Mechanism für Gerichte)
28 June 2001

Dr. Arndt Schmehl
University of Giessen, Germany
"The Transformation of Berlin's Water Utilities into a Private/Public Partnership"
(Umwandlung der Berliner Wasserbetriebe in eine private-public-Partnership)
2 July 2001

*) All German lecture titles are here translated into English.

Prof. Dr. Susanne Lohmann
University of California at Los Angeles, USA
"Do People Have a Taste for Doing Good, or Do They Have a Taste for Punishing Others for Not Doing Good, Which is Why They Do Good?"
5 July 2001

Dr. Andrea Eisenberg
Max Planck Institut for Research into Economic Systems, Jena, Germany
"The Reciprocity of Formal and Informal Institutions"
(Wechselwirkungen formeller und informeller Institutionen)
9 July 2001

Prof. Dr. Avner Ben-Ner
University of Minnesota, Industrial Relations Center, USA
"The Shifting Boundaries of the Mixed Economy and the Future of the Non-profit Sector"
1 August 2001

Dr. Mandeep Dhami
University of Victoria, Canada
"Fast and Frugal Judges: Psychological Reality Confronts Legal Idealism"
16 August 2001

Prof. Dr. Miguel Poiares Maduro
University of Lisbon, Portugal
"Europe and the Constitution: What if this is as Good as it Gets?"
4 October 2001

Prof. Dr. Robert Boyd
University of California, USA
"Economic Man in Cross-Cultural Perspective: Experiments in 15 Small-Scale Societies"
15 October2001

Prof. Dr. Jan Sieckmann
Otto-Friedrich-Universität Bamberg, Germany
"The Structure and Justification of Weighing Judgements"
(Struktur und Begründung von Abwägungsurteilen)
19 November 2001

Prof. Dr. Nils Brunsson
Stockholm School of Economics, Sweden
"Standardisation as a Mode of Governance"
26 November 2001

Prof. Dr. Carlo Jäger
Potsdam Institute for Climate, Germany
"Post-Antique Property Rights"
(Post-Antike Eigentumsrechte)
3 December 2001

Prof. Dr. Peter Knöpfel
University of Lausanne, Switzerland
"Institutional Regime of Natural Resources – Concepts and Applications"
(Institutionelle Regime natürlicher Ressourcen – Konzept und Anwendungen)
17 December 2001

Guest Lectures in 2000

Prof. Dr. Gerhard Wegner
Ruhr University Bochum, Germany
"How Effective is Systems Competition?"
(Wie funktionsfähig ist der Systemwettbewerb?)
14 February 2000

Dr. Rachel A. Cichowski
University of California, Irvine, USA
"Judicial Rule-Making and EU Environmental Policy"
21 February 2000

Prof. Dr. Werner Güth
Humboldt University zu Berlin, Germany
Prof. Dr. Hartmut Kliemt
University of Duisburg, Germany
"The Indirect Evolutionary Approach"
31 March 2000

Prof. Dr. Arthur Benz
FernUniversität Hagen, Germany
"The Problem of Representation in the Provision of Cross-Border Common Goods"
(Das Repräsentationsproblem bei der Erstellung grenzüberschreitender Gemeinschaftsgüter)
15 May 2000

Prof. Dr. Viktor J. Vanberg
Albert-Ludwigs-Universität Freiburg, Germany
"Rationality and/or Rule-Oriented Behaviour"
(Rationalität und/oder regelorientiertes Verhalten)
22 May 2000

Prof. Dr. James Johnson
University of Rochester, New York, USA
"Liberalism and the Politics of Cultural Authenticity" and "Why Respect Culture?"
19 June 2000

Prof. Dr. Jack Knight
Washington University, St. Louis, USA
"Social Norms and the Rule of Law: Fostering Trust in a Socially Diverse World"
26 June 2000

Prof. Dr. David Vogel
Haas Business School, University of California, Berkeley, USA
"Apples and Oranges: Comparing the Regulation of Genetically Modified Food in Europe and the United States"
13 November 2000

Prof. Dr. Gerald Spindler
University of Göttingen, Germany
"Deregulating Public Law via Organization Duties of Companies – Certification and Auditing as an Instrument for Overcoming Performance Deficits"
(Deregulierung des öffentlichen Rechts durch Organisationspflichten der Unternehmen – Zertifizierung und Auditierung als Instrument zur Beseitigung des Defizits im Vollzug)
20 November 2000

Prof. Dr. Tom Heller
Stanford University, USA
"Impact on Global Warming of Development and Structural Changes"
21 November 2000

Prof. Dr. Sonja Wälti
Georgetown Public Policy Institute, Washington, USA
"The Impact of Multilevel Structures on the Diffusion of Environmental Policy Innovation in Switzerland"
4 December 2000

Prof. Dr. Hannelore Weck-Hannemann
University of Innsbruck, Switzerland
"The Opportunities and Limits of an Incentive-Based Environmental Policy"
(Chancen und Grenzen einer anreizorientierten Umweltpolitik)
11 December 2000

Guest Lectures 1999

Prof. Dr. Wulf Gaertner
University of Osnabrück, Germany
"Evaluation via Extended Orderings: Empirical Findings from West and East"
1 March 1999

Prof. Dr. Edgar Grande/
Dr. Burkhard Eberlein
Technical University of Munich, Germany
"On the Transformation of the Political Economy of the Federal Republic of Germany"
(Zur Transformation der politischen Ökonomie der Bundesrepublik Deutschland)
23 March 1999

Dr. Susanne Lütz
Max Planck Institute for the Study of Societies, Cologne, Germany
'Between "Regime" and "Cooperative State" – Banking Regulation in the International Multilevel System'
(Zwischen "Regime" und "kooperativen Staat" – Bankenregulierung im international Mehr-Ebenen-System)
1 April 1999

Prof. Dr. Thomas Bräuninger/ Thomas König
University of Mannheim, Germany
"Making Rules for Governing the Global Commons: The Case of Deep-Sea Mining"
12 April 1999

Dr. Harald Baum
Max Planck Institute for Foreign and Private International Law, Hamburg, Germany
"Company Takeovers from an Economic and Legal Perspective"
(Unternehmensübernahmen aus ökonomischer und rechtlicher Sicht)
3 May 1999

Dr. Christof Gramm
Federal Ministry of Justice, Bonn, Germany
"Public Tasks and Public Goods"
(Staatsaufgaben und öffentliche Güter)
10 May 1999

Prof. Tom Heller
Stanford University, USA
"Changing the Meaning of the Rule of Law – From the Rule of Law to the Regulatory State"
8 June 1999

Dr. Markus Haverland
University Nijmegen, The Netherlands
"National Adaptation to European Integration: The Importance of Institutional Veto Points"
21 June 1999

Prof. Dr. Erich Weede
University of Bonn, Germany
"World Views and Property Rights as Determinants of the Long-Term Economic Development of China, India and the West"
(Weltanschauungen und Eigentumsrechte als Determinanten der langfristigen wirtschaftlichen Entwicklung in China, Indien und dem Westen)
5 July 1999

Prof. Dr. Wolfgang Kersting
University of Kiel, Germany
"The Political Philosophy of the Social Contract: Metacontractual Observations"
(Die politische Philosophie des Gesellschaftsvertrags: Metakontraktualistische Betrachtungen)
9 August 1999

Prof. Dr. Peter von Wilmowsky
University of Hannover, Germany
"Discussion with the Waste Management Group of the Project Group"
(Diskussion mit der Abfallgruppe der Projektgruppe)
24 August 1999

Dr. Jürgen Neyer
University of Bremen, Germany
"Legitimate Law above the Democratic State's Rule of Law? The Challenge of Supranationality for Political Science"
(Legitimes Recht oberhalb des demokratischen Rechtsstaats? Supranationalität als Herausforderung für die Politikwissenschaft)
31 August 1999

Prof. Dr. Gerd Roellecke
University of Mannheim, Germany
"On the Distinction and Coupling of Law and the Economy"
(Zur Unterscheidung und Kopplung von Recht und Wirtschaft)
25 October 1999

Prof. Dr. Christian Kirchner
Humbold University of Berlin, Germany
"European Economic Policy, Law and Institutional Economics"
(Europäische Wirtschaftspolitik, Recht und Institutionenökonomik)
15 November 1999

Alison Harcourt
University of Leeds, Great Britan
"The Europeanization of Media Ownership Policy – the Role of the European Institutions in Determining National Policy Choices"
29 November 1999

Prof. Dr. Uwe Schimank
Open University Hagen, Germany
"The Implications for Governance of Concepts such as Polycontextual Society, Organizational Society, Risk Society"
(Steuerungstheoretische Implikationen von Konzepten wie polykontexturale Gesellschaft, Organisationsgesellschaft, Risikogesellschaft)
1 December 1999

C.F. Bergström
European University Institute, Florence, Italy
"Less but Better? Recent Directions in European Community Legislative Policy"
6 December 1999

Prof. Dr. Renate Mayntz
Max Planck Institute for the Study of Societies, Cologne, Germany
"Theories of Governance in Social Science: Argumentative Foundations and Modifications"
(Begründung und Veränderung steuerungstheoretischer Ansätze in der Sozialwissenschaft)
7 December 1999

Guest Lectures 1998

Prof. Dr. Wolfgang Kerber
University of Marburg, Germany
"The Problem of a Competitive Framework for Competition among Systems"
(Zum Problem einer Wettbewerbsordnung für den Systemwettbewerb)
11 May 1998

Karla Foerste
University of Osnabrück
"The Negotiator as an Institution of Ancient Chinese Law – Legal Institutions for the Avoidance of Conflict Solution via Legal Means"
(Der Vermittler als Institution des alten chinesischen Rechts – rechtliche Institutionen zur Vermeidung der Konfliktlösung mit den Mitteln des Rechts)
15 June 1998

Dr. Marcel Thum
University of Munich, Germany
"Market Structure and Timing of Technology Choices in the Case of Network Externalities"
(Marktstruktur und Timing der Technologiewahl bei Netzwerkexternalitäten)
29 June 1998

Prof. Dr. Urs Schweizer
University of Bonn, Germany
"Expropriation from the Perspective of Contract Theory"
(Enteignung aus vertragstheoretischer Sicht)
30 June 1998

Prof. Dr. Matthias Rohe
University of Erlangen-Nürnberg, Germany
"Network Agreements: The Legal Problems of Complex Contractual Links"
(Netzwerkverträge, Rechtsprobleme komplexer Vertragsverbindungen)
1 October 1998

Prof. Dr. Gebhard Kirchgässner
University of St. Gallen, Switzerland
"The Neutral Design of an Ecological Tax Reform in Terms of Foreign Trade"
(Außenhandelsneutrale Ausgestaltung einer ökologischen Steuerreform)
5 October 1998

Prof. Dr. Martin Führ/Dr. Kilian Bizer
Sofia Darmstadt, Germany
"Responsive Regulation and Institutional Analysis – The Balance between Intrinsic Motives and Exogenous Incentives"
(Responsive Regulierung und institutionelle Analyse – zur Balance intrinsischer Motive und exogener Anreize)
29 October 1998

Dr. Petersen
Heidelberg, Germany
"Homo oeconomicus und homo politicus"
26 November 1998

Lectures

Uda Bastians
"Der andere Weg: Die britische Regulierung der Verpackungsabfälle" (The Alternative Path: The Regulation of Packaging Waste in Great Britain).

Colloquium on Waste-Management Laws and Policies, Max Planck Project Group on Common Goods: Law, Politics and Economics, 29 October 1999; Bonn.

Dr. Raimund Bleischwitz
"Rethinking Productivity: Why has Economic Analysis Focused on Labour instead of Resources?"

Second International Conference of the European Society for Ecological Economics; 4-7 March, 1998; Geneva, Switzerland and Meeting of the International Advisory Board of the Wuppertal Institute, 11–12 June 1998; Wuppertal.

"Stellungnahme zum Zukunftsfähigkeitsplan Luxembourgs" (Statement on Luxembourg's Plan on its Ability to Compete in the Future). Workshop of the Ministry of the Environment in Luxembourg, together with other ministries and associations; 14 September 1998; Luxembourg.

"Eco-Efficiency, Productivity and Development. Towards Integrative Policies"

Lecture and Seminar at the Centre for Development Research, Bonn.

"Energie und Klima" (Energy and Climate). Panel discussion with B. Westphal, IG BCE Wuppertal; 2 November 1998; Bonn.

"Wege zu einem sozial- und umweltverträglichen technischen Wandel" (Paths towards Technological Change from Social and Ecological Standpoints) ESG and AStA RWTH, 16 March 1999, Aachen.

"Mit Öko-Effizienz zu einem umweltverträglichen Wohlstand" (Eco-Efficiency as a Means of Promoting Ecologically Compatible Prosperity) Workshop MPI EW and MPP RdG, 15-16 April 1999; Jena.

"Ressourcenproduktivität. Innovationen für Umwelt und Beschäftigung" (The Productivity of Resources. Innovations for the Environment and Employment)

Presentation; Workshop RKW-Innovationszentrum, 19-20 April 1999; Berlin.

"Green Productivity. Doubling Wealth, Halving Resource Use"

Keynote Lecture and Background Paper to the Asia Pacific NGO Forum on Effective Consumer Information for Sustainable Energy Use, organized by CACPK, UN ESCAP and others, 19-22 May 1999, Seoul, Korea; Conference Proceedings, pp. 1–12 as well as under <www.cacpk.org/cacpk/cacpk-en/forum/forum.html>.

'Zukunftsfähiges Deutschland'. Ein Überblick, Reaktionen und aktuelle Projekte" (Study on the Future Competitive Situation in Germany – an Overview, Reactions and Current Projects)

Keynote Lecture, Zweite Schulische Umweltgespräche Sachsen, 8 July 1999; Dresden.

"Institutionelle Aspekte des technischen Wandels" (Institutional Aspects of Technological Change)

Fb Wirtschaftswissenschaft, Uni GH, 2 November 1999; Kassel.

"Diffusion of Environmental Technologies" Workshop-Presentation at Maastricht Economic Research Institute on Innovation and Technology (MERIT), Maastricht University, 10 December 1999; Netherlands.

"On the Evolution of New Rules: The Case of Waste Policies", A Comment on Katsumi Yorimoto´s Paper "Building a Society of Synergystic Roles and Governance"

Symposium "Global Interdisciplinary Research for New Public Management", Convened by the Japanese Waseda University at Bonn University; 17-18 December 1999; Bonn.

"Inducement, Selection and Adaptation of Environmental Technologies. Path-Dependency and Other Institutional Aspects as Critical Factors to Success and Failure". Accepted paper (20 p.) at the 3rd Biannual Conference of the European Society for Ecological Economics (ESEE); May 2000; Vienna, Austria.

Dominik Böllhoff, MPA

„New Regulatory Agencies in British-German Comparison - The Impact of Public Sector Reform Policies". Presentation at workshop on „National Regulatory Reform in an Internationalized Environment". Organizers: Prof. Adrienne Héritier, Dr. Marc Thatcher; ECPR, 29th Joint Sessions of Workshops, 6-11 April, 2001; Grenoble, France.

„The New Regulatory Regime – The Institutional Design of Telecommunications Regulation at the National Level". Presentation at „Regulation in Europe Workshop – An Anglo-German Comparison", Max Planck Project Group Bonn. Organizers: Prof. Adrienne Héritier, Dr. David Coen. 27 April 2001; Bonn.

„The New Regulatory Regime – The Institutional Design of Telecommunications Regulation at the National Level" Presentation at the ECSA: European Community Studies Association, Biennial International Conference; Panel session on the „The European Regulatory Regime". Chair: Prof. Dr. Adrienne Héritier; 31 May–2 June 2001; Madison, USA.

Dr. Tanja A. Börzel

"Europeanization and Territorial Institutional Change. Towards Cooperative Regionalism?" Biannual Convention of the Council of Europeanists (CES); 25-28 February 1998; Baltimore, USA.

"Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain" Annual Convention of the American Political Science Association; 4-6 September 1998; Boston, USA.

"Brussels, Bern and Bonn: Comparative Federalism, Subsidiarity, and the European Union" co-authored with Madeleine Hosli. Annual Convention of the American Political Science Association, 4-6 September 1998; Boston, USA.

"Restructuring or Reinforcing the 'State'. The German Länder as Transnational Actors in Europe". Third Pan-European Conference on International Relations; 16-19 September 1998; Vienna, Austria.

"Circumventing the State? The German Länder as Transnational Actors in Europe". Presented at "Germany and the European Integration" organized by CERI and Pôle Européen de Sciences Pô; 11-12 February 1999; Paris, France.

"Why there is no Southern Problem. On Environmental Leaders and Laggards in the European Union". ECPR Joint Sessions of Workshops, 27-31 March 1999; Mannheim.

"'Best Practice' – Solution or Problem of the Effective Implementation of European Environmental Policy" Presented at "The Effectiveness of European Environmental Policy", organized by the Institute of European Environmental Policy; 11-14 November 1999; Copenhagen, Denmark.

"Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain". Biannual Convention of the Council of European Studies; 30 March–2 April 2000; Chicago.

"When Europe Hits Home. Europeanization and Domestic Change", co-authored with Thomas Risse. Annual Convention of the American Political Science Association; 1-3 September 2000; Washington D.C., USA.

"Private Actors on the Rise? The Role of Non-State Actors in Compliance with International and Supranational Institutions". Annual Convention of the American Political Science Association; 1-3 September 2000; Washington D.C., USA.

"A New North-South Conflict? Regulatory Competition in International and European Environmental Policy-Making", co-authored with Joyeeta Gupta. Final conference of the Concerted Action Network on the Effectiveness of International and European Environmental Law; 9-11 November 2000; Barcelona, Spain.

"Non-compliance in the European Union. Pathology or Statistical Artefact?". European Community Studies Association; 30 May – 3 June 2001; Madison, USA.

"Pace-Setting, Foot-Dragging, and Fence-Sitting. Member State Responses to Europeanization". European Community Studies Association; 30 May – 3 June 2001; Madison, USA.

Prof. Dr. rer. Pol. Erik Gawel, Dipl.-Volkswirt

"Beschleunigung von Genehmigungsverfahren im Umweltrecht" (Accelerating the Environmental Permit Process) Economics Colloquium, Ruhr-Universität Bochum, 12 January 1999; Bochum.

"Das Rechtskleid für Umweltabgaben. Abgabengestützte Umweltlenkung zwischen Steuer- und Gebührenlösung" (The Legal Mantle for Environmental Levies. Levy-based Governance of the Environment as Opposed to Taxes and Contributions)

Conference "Vom Steuerstaat zum Gebührenstaat?" (Away from a Taxing State towards Financing via Fees), Centre for Interdisciplinary Research, University of Bielefeld; 28-29 January 1999; Bielefeld..

"Is Intrinsic Motivation Relevant to Environmental Policy?" Committee for Environmental and Resource Economics of the Verein für Socialpolitik; 23-24 April 1999; Innsbruck, Austria.

Nicole te Heesen

"Binnen- und Außenhandel mit Abfällen nach dem Recht der Europäischen Union" (Trade in Domestic and Foreign Waste based on European Union Law)

Colloquium on "Waste Law and Waste Policy" Max Planck Project Group Common Goods: Law, Politics and Economics, 29 October 1999; Bonn.

Dr. Katharina Holzinger

"Public Bads, Transboundary Pollution, and the Harmonization Approach of the European Union" European University Institute, Department of Political and Social Science; 27 October 1997; San Domenico di Fiesole, Italy.

"Harmonization or Regional Differentiation? International Environmental Goods and Multi-Level Governance in the European Union"; at Europa zwischen Integration und Ausschluss (Europe between Integration and Exclusion). Joint Conference of the Austrian Political Science Association (ÖGPVW), the German Political Science Association (DVPW), and the Swiss Political Science Association (SVPW); 5-7 June 1998; Vienna, Austria.

"Harmonisierung oder regionale Differenzierung umweltpolitischer Standards in der EU" (Harmonization or Regional Differentiation of Environmental Standards in the EU).

Workshop on "European Integration", Max Planck Institute for the Study of Societies, 9 June 1998; Cologne.

"Limits of Cooperation. Barriers to Successful Negotiation Away from the Table".

Cooperation – a Pandora's Box? Experiences with the Effectiveness and Legitimacy of Cooperative Instruments, Otto-Friedrich University of Bamberg; 5-8 November 1998; Bamberg.

"Lokale und globale öffentliche Güter in der Mehrebenen-Analyse (Multi-level analysis of local and global public goods)"

Opening Colloquium of the Max Planck Project Group on the Law of Common Goods, 14 January 1999; Bonn.

"Communicative Bargaining or Strategic Arguing? A Case of Environmental Mediation"

European University Institute, Department of Political and Social Science; 13 December 1999; San Domenico di Fiesole, Italy.

"Optimal Regulatory Units for Europe. Flexible Cooperation of Territorial and Functional Jurisdictions." Plenary talk at the 21st congress "Politics in a World without Borders" of the German Political Science Association (DVPW); 1-5 October 2000; Halle.

"Opening towards Eastern Europe: Is a Uniform European Environmental Policy Still Possible?" Environmental Policy in a World without Borders.

Conference of the Working Group "Environmental Policy" of the German Political Science Association (DVPW); 4-5 October 2000; Halle.

Conference organized by Katharina Holzinger, Christoph Knill and Dirk Lehmkuhl: "New Challenges for Governance". Conference of the Ad-hoc-Group "Governance in Transition" of the German Political Science Association (DVPW); 5 October 2000; Halle.

"Optimal Jurisdictions for Common Goods." Conference "German Administration at the Turn to the 21st Century" at the University for Public Administration; 3-4 November 2000; Speyer.

Conference organized by Katharina Holzinger, Christoph Knill and Dirk Lehmkuhl: "Conditions and Patterns of Governance in Historical Comparison". Conference of the Ad-hoc-Group "Governance in Transition" of the German Political Science Association (DVPW); 30-31 March 2001; Bonn.

"Perspectives of Substainability at the National and International Level." University of Oldenburg; 20 June 2001; Oldenbourg.

"Managing Transnational Commons. Capital Income Tax Coordination in the European Union." 2001 Hong Kong Convention of International Studies „Globalization and Its Challenges in the 21st Century"; 26-28 July 2001; Hong Kong, China.

Dr. Dieter Kerwer

"Credit Rating Agencies and the Governance of Financial Markets"

Globalization and the Good Society (Annual Meeting of the 'Society for the Advancement of Socio-Economics); 8-11 July 1999; Madison (WI), USA.

"Credit Rating Agencies and the Governance of Financial Markets: Empirical Research Results"

Weekly Breakfast Colloquium, German-American Center for Visiting Scholars, Washington D.C., USA, 25 January 2000.

"Credit Rating Agencies and the Governance of Financial Markets. Outline of a research project". Society for the Advancement of Socio-Economics, annual conference, University of Wisconsin; June 1999, Madison, USA.

"Governance in a World Society: the Perspective of Systems Theory". European Consortium for Political Research (ECPR), April 2000; Copenhagen, Denmark.

"Standardisierung als Steuerung. Das Beispiel Ratingagenturen" Governance Across Multiple Arenas workshop, MPP-RdG; June 2000; Bonn.

"Governance by Standardization. The Case of Credit Rating Agencies". Society for the Advancement of Socio-Economics, Annual conference, London School of Economics; July 2000; London, UK.

"Ratingagenturen: Macht des Marktes, Ohnmacht des Staates?" DVPW; October 2000; Halle/Saale.

"Die politische und rechtliche Konstitution globaler Finanzmärkte. Das Beispiel Ratingagenturen". Workshop "Politik und Recht", MPI für Gesellschaftsforschung, December 2000; Cologne.

"Private Actors and Global Public Policy. The Case of Banking Regulation"

Presented at annual conference of the Society for the Advancement of Socio-Economics, University of Amsterdam; June 2001; Amsterdam, Netherlands.

„Democratic Experimentalism in the European Union". Faculty of Political Science, Technische Universität; July 2001; Munich.

"Private Akteure in der internationalen Ordnungspolitik: Ratingagenturen in der internationalen Bankenregulierung". European Consortium for Political Research (ECPR); September 2001; Canterbury, UK.

Workshop organized with Henri Tjiong on "Democratic Experimentalism – A Choice for Europe?" Max Planck Project Group; May 2000; Bonn.

Dr. Roswitha Kleineidam

"German and US-American Waste Management – A Comparative Analysis from a Legal and an Economic Viewpoint"

Presentation Series of the European Visiting Scholars at the Columbia Law School, 1998 / 1999, New York, US.

"German Waste Management: Recycling and Reuse Systems and the Green Dot in Theory and Everyday Handling"

Presentation at the Citywide Recycling Advisory Board, New York (CRAB), 2 December 1998.

Prof. Dr. Christoph Knill

"Die Implementation europäischer Umweltpolitik: Der Einfluß nationaler administrativer Traditionen" (The Implementation of European Environmental Policy: The Influence of National Administrative Traditions)

Administrative Science Research Colloquium, Hochschule für Verwaltungswissenschaften, Speyer.

"Die nationale Einfluß europäischer Regulierung: Wandel und Persistenz nationaler Verwaltungssysteme" (The National Influence of European Regulation: How National Administrative Systems Persist and Change)

Political Science Research Colloquium, Department of Political Science, University of Hagen, 8 December 1998.

"Innovationsansätze in der europäischen Umweltpolitik" (Innovative Attempts in European Environmental Policy)

"Zukunftsfähigkeit durch institutionelle Innovation" (Future Competitivity via Institutional Innovation), Conference of the section 'Environmental Policy' of the German Political Science Association (DVPW), 11-12 December 1998, Free University of Berlin.

"Administrative Reformkapazität im internationalen Vergleich" (An International Comparison of Administrative Reform Capabilities)

University of Osnabrück, Faculty of Social Science, 18 January 1999.

"Autonome versus instrumentelle Bürokratien: Zur Verwaltungsentwicklung in Deutschland und Groß-britannien" (Autonomous versus instrumental Bureaucracies: On the Development of Administra-tive Authorities in Germany and the United Kingdom)

University of Salzburg, Senatsinstitut für Sozialwissenschaft, 14 April 1999.

"Schnittstellenakteure im Europäischen Mehrebenensystem: Die Rolle von europäischen Interessenverbänden in der Unterhaltungselektronikindustrie" (Interface Actors in the European Multilevel System: The Role of European Interest Groups in the Electronic Entertainment Industry) FernUniversität Hagen, Fakultät für Geistes-, Erziehungs- und Sozialwissenschaft Senatsinstitut für Sozialwissenschaft, 13 August 1999.

"The Europeanization of National Administrations: Patterns of Change and Persistence" University of Oslo, ARENA Research Centre, 7 September 1999.

"Die Europäisierung nationaler Verwaltungen" (The Europeanization of National Administrations)

Cologne, Max Planck Institut for the Study of Societies, 23 October 1999.

„Linking Different Perspectives on Institutional Change". International Studies Association; 12-15 March 2000: Los Angeles, USA.

„Europäisierung und nationaler Wandel". Universität Jena; 6 June 2000; Jena.

„Politische Steuerung aus historischer Perspektive". Universität Halle, DVPW conference, ad-hoc group „Governance in Transition"; 6 October 2000; Halle.

Prof. Dr. Christoph Knill and Dr. Dirk Lehmkuhl

"Die Globalisierung europäischer Interessenvertretung: Das Beispiel der Unterhaltungselektronikindustrie" (The Globalization of European Interest Groups: The Example of the Electronic Entertainment Industry). "Europa zwischen Integration und Anschluß. Die Europäisierung der Politik als Chance und Herausforderung" (Europe between Integration and Connection. Europeanization of the Political Process as an Opportunity and a Challenge)

Common Conference of the Austrian, German and Swiss Associations for Political Science (ÖGPW, DVPW and SVPW), 5-7 June 1998, University of Vienna, Austria.

"Der Einfluß der Globalisierung auf das Verhältnis staatlicher und privater Akteuere". Max-Planck Institut für Gesellschaftsforschung, Meeting of DVPW Political Economy Section; 26-28 March 2000 (with D. Lehmkuhl) Cologne.

Prof. Dr. Christoph Knill and Andrea Lenschow

"Do New Brooms Really Sweep Cleaner? Implementation of New Instruments in EU Environmental Policy" – "Europa zwischen Integration und Anschluß. Die Europäisierung der Politik als Chance

und Herausforderung" (Europe between Integration and Connection. The Europeanization of Policy as an Opportunity and a Challenge)

Common Conference of the Austrian, German and Swiss Associations for Political Science (ÖGPW, DVPW und SVPW), 5-7 June 1998, University of Vienna, Austria.

"Neue Ansätze zur Implementation europäischer Umweltpolitik". (New Attempts at Implementing European Environmental Policy). "Wie problemlösungsfähig ist die EU? Regieren im europäischen Mehrebenensystem" (The Extent of the EU's Ability to find Solutions to Problems)

Common Conference of the working groups "Integrationsforschung" and "Staatslehre und politische Verwaltung" of the German Political Science Association (DVPW), 29-31 October 1998, Technical University of Munich.

"Explaining the Implementation Effectiveness of EU Environmental Policy: Towards an Institutional Perspective"
European Consortium for Political Research, Workshop Meetings, Mannheim University, 26-31 March 1999.

"Where you stand depends on where you sit: Linking different perspectives on institutional change"
Sixth Biennial Meeting of the European Community Studies Association, 2-5 June 1999, Pittsburgh.

"Auswirkungen der europäischen Integration auf nationale Politik- und Verwaltungsmuster" (The Effects of European Integration on Examples of Domestic Policy and Administration) Europäische Integration als Prozeß von Angleichung und Differenzierung (European Integration as a Process of Harmoniation and Differentiation)
University of Osnabrück, Social Sciences Faculty, 1-2 December 1999.

Prof. Dr. Christoph Knill and Prof. Dr. Adrienne Héritier
"Differential Responses to European Policies: A Comparison"
London, London Business School, 2 November 1999.

Alkuin Kölliker

"The Impact of Flexibility on the Dynamics of European Integration". Presented at the Departmental Seminar of the Department of Political and Social Sciences. European University Institute; 15 November 2000; Florence, Italy.

"Euro Economic Governance", Workshop jointly organized by the Robert Schuman Centre and the European Commission (Forward Studies Unit), European University Institute, (workshop report together with Tue Fosdal and Lucio Pench). Participation in the preparation and as a rapporteur of the workshop; 19 February 2001; Florence, Italy.

"Towards a Theory of Differentiated Integration". Presented at the conference "Comparative Regional Integration", organized by the Danish Section of the European Community Studies Association (ECSA). Odense, University of Southern Denmark, 25-26 May 2001.

4th ECPR International Relations Conference, University of Kent. Panel convenor, together with Eric Philippart, of the Panel "New Methods of Flexible Integration in the EU" (within Section 10: "Decision-Making and Negotiations within the EU", chaired by Thomas Christiansen and Jeremy Richardson); 8-10 September 2001; Canterbury, UK.

"Methods of Differentiated Integration and Their Impact on EU Integration and Unity. Insights from Public Goods Theory". 4th ECPR International Relations Conference, University of Kent; 8-10 September 2001; Canterbury, UK.

"Theory and Empirics of Differentiated Integration in the European Union". 1st General Conference of the ECPR. University of Kent, 10-12 September 2001; Canterbury, UK.

Dr. Markus Lehmann

Annual Conference of the European Association for Law and Economics (EALE); 2000; Ghent, Belgium.

Annual Congress of the European Association of Environmental and Resource Economists (EAERE); 2000; Rethymnon, Crete.

CAVA-Workshop on Voluntary Approaches, Competition and Competitiveness, Fundazione ENI Enrico Mattei (FEEM); 2000; Milan, Italy.

Annual Congress of the European Public Choice Society (EPCS); 2000; Siena, Italy.

Workshop of the ERASMUS Programme of Law and Economics, University of Hamburg; 2001; Hamburg.

Dr. Dirk Lehmkuhl

"How Europe Matters: Different Mechanisms of Europeanization"
11th Annual Meeting of the 'Society for the Advancement of Socio-Economics': Globalization and the Good Society, 8-11 July 1999, Madison, Wisconsin.

"Commercial Arbitration – A Case of Private Transnational Self-Governance?"
11th Annual Meeting of the 'Society for the Advancement of Socio-Economics': Globalization and the Good Society, 8-11 July 1999, Madison, Wisconsin

"Liberalisierung der Verkehrsmärkte und deren Auswirkung auf den Umweltschutz in der Europäischen Union? Fördert oder behindert die Liberalisierung der Märkte den Umwelt- und Konsumentenschutz?" (The Liberalization of Transport Markets and their Effect on Environmental Protection in the European Union? Does market liberalization facilitate or hamper environmental and consumer protection?)
Zentrum für Internationale Studien (Centre for International Studies), Eidgenössische Technische Hoch-schule/University of Zürich, 6 December 1999, Zürich, Switzerland.

"Der Einfluß der Globalisierung auf das Verhältnis staatlicher und privater Akteuere". Max-Planck Institut für Gesellschaftsforschung, Meeting of DVPW Political Economy Section; 26-28 March 2000 (with C. Knill); Cologne.

Frank P. Maier-Rigaud, PhD candidate

"The Limits of Institutional Competition"
Evangelische Akademie Villigst, Seminar C3 Germany, France and Euro, 3 September 1999.

Alexander Rüstow and the Failure of Economic Liberalism, presented at the 4th Annual Conference of the European Scoiety for the History of Economic Thought (ESHET) "Is there Progress in Economics", University of Graz; February 2000; Graz, Austria.

Common Pool Resources: An Indirect Evolutionary Approach, presented at the research group "Making Choices" at the Centre for Interdisciplinary Research (ZiF); 4 May 2000; Bielefeld.

"Under what conditions are decentralized solutions to collective action problems likely to emerge?" Presented at the 8th Conference of the International Association for the Study of Common Property (IASCP), Indiana University Bloomington; May/June 2000; Indiana, USA.

"Alexander Rüstow und das Versagen des Wirtschaftsliberalismus – 50 Jahre danach", presented at the Institut für Allgemeine Wirtschaftsforschung, Abteilung für Wirtschaftspolitik, Albert-Ludwigs-Universität; 18 July 2000; Freiburg i. Br.

"Under what conditions are decentralized solutions to collective action problems likely to emerge?" presented at the Workshop in Political Theory and Policy Analysis, Indiana University Bloomington; 13 November 2000; Indiana, USA.

"Quality Competition, Insurance, and Consumer Choice, presented at the Kelley School of Business, Indiana University Bloomington; 29 January 2001; Indiana, USA.

"Free Trade and the Limits of Public Policy", presented at the Department of Political Science, Indiana University Bloomington; 29 March 2001; Indiana, USA.

Dr. Leonor P. Moral Soriano

„Politics and Jurisdiction in European Electricity Policy". Max Planck Project Group; February 2001; Bonn.

"The Case of Public Services against Competition Rules and Trade Rules". Max Planck Project Group; April 2001, Bonn.

"The Role of the European Court of Justice in the Design of Regulatory Space". ECSA Conference; May 2001; Madison, USA.

"The Role of the European Court of Justice in the Design of Regulatory Space." Max Planck Institute; June 2001; Frankfurt.

Dr. Stefan Okruch

"Kehrtwende in Wohlfahrtsstaat und Staatswirtschaft. Die Politische Ökonomie von Reformen und das Beispiel Neuseeland" (The Political Economy of Reforms: The New Zealand Example)

8th Congress "Junge Wissenschaft und Wirtschaft" of the Hanns Martin Schleyer Foundation; 3-5 June 1998, Innsbruck, Austria.

"Hindrängen zur Ordnung und 'Entdeckung' des Rechts: Fragen zur kulturellen Evolution" (Historicism in Eucken's Ordoliberalism and Hayek's Theory of Cultural Evolution. Towards an Evolutionary Synthesis) Workshop "Ordnungs-ökonomie and Recht" (Prof. Dr. Viktor J. Vanberg); 17-20 June 1998, Obernai, France.

"Staatsaufgaben in der Sozialen Marktwirtschaft" (The State in German Social Market Economy) Annual meeting 1998 of the Max-Planck-Gesellschaft; 23-25 June 1998, Weimar; School lecture at Adolf-Reichwein-Gymnasium, Jena.

"Die Weltwirtschaft im Wandel und die Gestaltung ihrer Ordnung durch Wettbewerb". (Globalization and Competition among Economic Systems)

Economic Faculty, University of Jena, Lecture for the Walter Eucken Award 1998, 28 January 1999.

"Towards an Evolutionary Theory of Law and Legal Change"
Max Planck Institute for the Research into Economic Systems and Max Planck Project Group on the Law of Common Goods, Joint Workshop on Law and Evolution, 14-16 April 1999, Jena.

"Is Constitutional Evolution Only a Matter of Transaction Cost? Some Critical Remarks on Michael Kläver" Fourth Buchenbach Workshop on Evolutionary Economics, 12-15 May 1999, Buchenbach.

"Globalisierung: Gefahr oder Chance für die Soziale Marktwirtschaft?" (Globalization and its Con-sequences for Germany's Social Market Order)

School lectures during the annual meeting of the Max-Planck-Gesellschaft, 8-11 June 1999, Dortmund.

"A Global Economic Constitution: Interests and Theories in Constitutional Evolution. Some Critical Remarks on Peter Behrens". Annual Meeting "Neue Politische Ökonomie", 6-9 October 1999, Bleibach.

"Beyond the Static Concepts of the Freiburg School of Law and Economics – An Evolutionary Approach" Interdisciplinary Post-Doc Seminar; 4 Mar 2000; Tübingen.

"Can 'Good' Economic Policy be Determined by its Legal Form?", Remarks on Gerhard Wegner's "Evolutionary Analysis of Economic Policy"

Workshop "Economies in Evolution – What Can Policy Do?"; 4-6 May 2000; Bochum.

"The Evolution of Property Rights in European Civil Law: Competition and Cooperation among Jurisdictions". 4th Annual Conference of the International Society for New Institutional Economics (ISNIE); 22-24 September 2000; Tübingen.

"The Crisis of the Theory of Economic Policy – Is there an "Evolutionary" Way Out?" Annual Meeting "Arbeitskreis Politische Ökonomie"; 5-8 October 2001; Strobl, Austria.

"Experimental Policy and its Legal Form". 2nd Workshop "Ordnungsökonomie und Recht" (Constitutional Political Economy and the Law); 11-13 October 2000; Heuweiler.

"'Rational' Economic Policy – From Substantive to Procedural Rationality?"

Max Planck Institute for the History of Science and Max Planck Project Group on the Law of the Common Goods, Joint Workshop on the Limits of Rationality; 16 March 2001; Berlin.

"Why Political Economy is the Blind Spot of Evolutionary Economics – and What an Evolutionary Political Economy Could Be", Fifth Buchenbach Workshop on Evolutionary Economics; 23-26 May 2001; Buchenbach.

"What Kinds of Governance are Compatible with a Spontaneous Order?" Annual Meeting of the F.A.v.Hayek Society; 31 May–1 June 2001; Freiburg.

"Democratic Experimentalism as an Evolutionary Method". Workshop on Evolutionary Economics and Economic Policy at University of Rostock; 22–24 June 2001; Rostock.

"The Constitution of Economic Policy – an Evolutionary Approach". Annual Meeting of the German Economics Association's Committee for Evolutionary Economics; 5-7 July 2001; St. Gallen, Switzerland.

"The Constitution of Economic Policy – an Evolutionary Approach"

University of Bayreuth, Law & Economics Faculty, Lecture Series "Interdisciplinary Perspectives"; 17 July 2001; Bayreuth.

Christian Schubert
"Space, Planning, and Market Failure: What can Economists learn from the Law?"

Workshop "Recht und Ökonomik der Gemeinschaftsgüter" at the Max Planck Institute for Research into Economic Systems; 15-16 April 1999; Jena, Germany.

"Der steinige Weg der Rekonstitutivität" (The Stony Path to Reconstitutivity). Supplementary Paper on Markus Becker: "Routines, recurrent action patterns and heuristics".

Buchenbach IV, 4th Workshop on Evolutionary Economics; 12-15 May 1999; Buchenbach, Germany.

"Routines: Their knowledge content and interpretation", comment on a paper presented by Markus Becker; 4th Workshop on Evolutionary Economics, 12-15 May 1999; Buchenbach.

"Law and Creativity in Space. A Note on the Legal Governance of Spatial Self-Organization"; paper presented at the Annual Conference, European Association of Law & Economics; September 2000; Ghent, Belgium.

"Applying the technological paradigm concept on the evolution of law", comment on a paper presented by Klaus Heine, Workshop on the Theory of Economic Policy; October 2000; Heuweiler.

"Urban Economics", seminar given at a two-week-workshop organized by the University of Kosice/ Slovakia and the University of Bayreuth; October 2000; Zemplinska Sirava/Slovakia.

"Urban Change and the Law", paper presented at the 5th Workshop on Evolutionary Economics; May 2001; Buchenbach.

"An Evolutionary Approach to Nuisance and Planning Law", paper presented at the Workshop on "Contemporary Topics in the Theory of Economic Policy"; July 2001; Rostock.

Dr. jur. Indra Spiecker gen. Döhmann, LL.M

"State Decision under the Condition of Uncertainty" in the Authors' Bazaar of the Annual Meeting of the American Law and Economics Association 2001; 11-12 May, 2001; Washington DC, USA.

"Party Financing – a Public Good?" 13th International Symposium on Political Party Law; 12-13 October 2001; Hagen.

"Unsicherheit und Risiko im Recht" (Legal Insecurity and Risks). Max Planck Institute for the Study of Societies; January 2001; Cologne.

Henri Tjiong, MA

„Environmental Challenges to the Dutch Polder Model" Presented at the 2001 SASE (Society for the Advancement of Socio-Economics) conference; Amsterdam, Netherlands.

Dr. Marco Verweij

"The Clumsy World Bank and the Uncivil IMF" Workshop on Deliberative Decision-Making (Department of Law, Catholic University Tilburg); 9 November 1999; the Netherlands.

"The Mysterious Clean-up of the Rhine and its Lessons for International Environmental Policy", seminar given in the seminar series of the European Forum at Stanford University; 19 April 2000; Stanford, USA.

Convenor of the working group on „Trade and the Environment" at the Workshop entitled: „Producing Justice in the Face of Power: World Trade and Critics" organized by the Minnesota-Wisconsin-Stanford MacArthur Consort on Peace and International Cooperation; University of Minnesota; 15-17 June 2000.

„Deliberately Democratizing Multilateral Organizations", workshop organized by Marco Verweij and Tim Josling (Convenor of the European Forum at Stanford University); Stanford University; 29 September 2000; Stanford, USA.

„Building and Sustaining Trust and Trustworthiness", conference organized by Karen Cook, Margaret Levi and Russell Hardin (for the Sage Foundation), Fritz Scharpf (on behalf of the Max Planck Institute for the Study of Societies) as well as Henry Farrell and Marco Verweij of the Max Planck Project Group); Max Planck Institute for the Study of Societies; 15 December 2000; Cologne.

„A Snowball against Global Warming: An Alternative to the Kyoto Protocol". International Institute for Applied Systems Analysis; 18 January 2001; Laxenburg, Austria.

„Forget the Kyoto Protocol: Curb Global Warming Instead". Presentation at the conference Biopolitics II: Rational Choice is Nearly xx . Center for Governance at UCLA; 30 March–2 April 2001.

Conferences and Workshops organized by the Project Group

„Institutions for Homo Sapiens“
Conference and joint project organized with the Max Planck Institute for Human Development and Education. (See D V)

“Can Inconsistency be a Value?”
Conference series jointly organized with the Max Planck Institute for the History of Science. (See D V)

“Discovery, Representation and Perception”
Conference organized with the Max Planck Institute for Psychological Research. (See D V)

“Causes and Management of Conflicts”
20th International Seminar on New Institutional Economics. Joint project with the Rheinische Friedrich-Wilhelms-Universität Bonn, 20–22 June 2002; Wörlitz. (See E I)

“Law Beyond the Nation State” [Recht jenseits des Nationalstaats]
Workshop organized in collaboration with the World Society, Bielefeld University and the Center for Transnational Law (CENTRAL), Universität Münster, 8–10 October 2001; Bielefeld. (See xx)

Regular Joint Workshop with the Max Planck Institute for the Study of Societies,
Cologne, 8 October 2001; Bonn.

“Organizing and Designing Markets”
19th International Seminar on New Institutional Economics, joint project with the Rheinische Friedrich-Wilhelms-Universität Bonn, 14-16 June 2001; Schloß Ringberg, Rottach-Egern. (See E I)

“Politics and Law under the Conditions of Globalization and Decentralization”
Workshop with the Max Planck Institute of European Legal History, 8/9 June 2001; Frankfurt/Main.

“Regulation in Europe - An Anglo-German Comparison”
Conference, 27 April 2001; Bonn. (See D IV 1)

“National Regulatory Reform in an Internationalized Environment”
Workshop organized by Prof. Dr. Adrienne Héritier and Dr. Marc Thatcher; ECPR, 29th Joint Sessions of Workshops, 6-11 April, 2001; Grenoble, France.

“Global Governance”

Workshop organized in collaboration with the European University Institute, Florence, 6-7 April 2001; Florence. (See D II 2)

“Conditions and Patterns of Governance in Historical Comparison”

Conference of the Ad-hoc-Group “Governance in Transition” (Katharina Holzinger, Christoph Knill and Dirk Lehmkuhl) of the German Political Science Association (DVPW), 30-31 March 2001; Bonn.

“’Rational’ Economic Policy – From Substantive to Procedural Rationality?”

Joint workshop on the limits of rationality organized in collaboration with the Max Planck Institute for the History of Science, 16 March 2001; Berlin. (See xx)

“Euro Economic Governance”

Workshop jointly organized by the Robert Schuman Centre and the European Commission (Forward Studies Unit), European University Institute). Alkuin Kölliker assisted with the preparation of the workshop and as a rapporteur, 19 February 2001; Florence, Italy. (See G II)

“Linking Political Science and the Law” Conference, 1/2 February 2001; Bonn. (See C)

Regular Joint Workshop with the Max Planck Institute for the Study of Societies,
Cologne, 10 January 2001; Cologne.

“Building and Sustaining Trust and Trustworthiness”

Conference organized by Henry Farrell and Marco Verweij in collaboration with the Sage Foundation and the Max Planck Institute for the Study of Societies, 15/16 December 2000; Cologne.

“Politics and Law under the Conditions of Globalization and Decentralization”.

Workshop with the Max Planck Institute for the Study of Societies, 1/2 December 2000; Cologne.

"Knowledge, Ignorance and Uncertainty"
Interdisciplinary conference organized in collaboration with the Institute for Technical and Environmental Law at the University of Dresden and the Volkswagenstiftung, 6-9 December 2000; Potsdam. (See D V)

Private Actors Providing Public Services Conference "European and National Regulation"
Jointly organized with the London Business School (co-funded by the Anglo-German Foundation),
4/5 November 2000; London. (See D IV 1)

"New Challenges for Governance"
Conference of the Ad-hoc-Group "Governance in Transition" (Katharina Holzinger, Christoph Knill and Dirk Lehmkuhl) of the German Political Science Association (DVPW); 5 October 2000; Halle.

"Deliberately Democratizing Multilateral Organizations"
Workshop organized by Tim Josling and Marco Verweij at the European Forum, Stanford University, 29 September 2000; Stanford, USA.

Regular Joint Workshop with the Max Planck Institute for the Study of Societies, Cologne, 28 August 2000, Bonn.

"Common Goods and Governance Across Multiple Arenas"
Conference, 30 June–1 July 2000; Bonn.
(See D II 1)

"The Proper Scope of Government"
18th International Seminar on New Institutional Economics, organized in collaboration with the Rheinische Friedrich-Wilhelms-Universität Bonn, 15-17 June 2000; Schloß Eckberg, Dresden.
(See E I)

"Democratic Experimentalism – A Choice for Europe?"
Workshop by Dieter Kerwer and Henri Tjiong, May 2000; Bonn.

"Preferences and the Transformation of Preferences"
Joint workshop with the Max Planck Institute for Research into Economic Systems Jena,
27 January 2000; Bonn. (See E IV)

"European and National Regulation"
Conference jointly organized with the London Business School, 4/5 November 1999; London.

Colloquium on Waste Management Law and Policy, 29 October 1999; Bonn.

Second symposium of the German-American Academic Council's Project "Global Networks and Local Values", 3-5 June 1999; Woods Hole, USA. (See D III)

"The Law and Economics of Common Goods"
Workshop in collaboration with the Max Planck Institute for Research into Economic Systems, 15/16 April 1999; Jena. (See E IV)

First symposium of the German-American Academic Council's Project
"Global Networks and Local Values", 18-20 February 1999; Dresden. (See D III)

Opening colloquium of the Max Planck Project Group "Common Goods: Law, Politics and Economics", 14 January 1999, Bonn.

Colloquium on Waste Management Law and Policy, 3 March 1998; Bonn.

I Publications

Publications

I. The Publication Series of the Project Group

"Common Goods: Law, Politics and Economics". Baden-Baden: Nomos.

1. **Methodische Zugänge zu einem Recht der Gemeinschaftsgüter**, hrsg. von Ch. Engel. 1998.
   - Engel, Christoph: Rechtswissenschaft als angewandte Sozialwissenschaft: Die Aufgabe der Rechtswissenschaft nach der Öffnung der Rechtsordnung für sozialwissenschaftliche Theorie, 11-40.
   - Tontrup, Stephan: Ökonomik in der dogmatischen Jurisprudenz, 41-120.
   - Lüdemann, Jörn: Gemeinsinnfördernde Güter: Die Rechtsordnung zwischen Restriktion und Gemeinsinn und die Folgerungen für einen interdisziplinären Zugang, 121-142.
   - Timme, Michael: Rechtsgeschichte als methodischer Zugang zu einem Recht der Gemeinschaftsgüter, 143-157.
2. **Timme, Michael: Die juristische Bewältigung eines ökonomischen Netzwerkgutes:** Epidemieprävention in Rechtsgeschichte und Gegenwart. 2001.
3. **Kleineidam, Roswitha A.: Abfallwirtschaft in Deutschland und den USA:** Ein ökonomisch informierter Rechtsvergleich ausgewählter Themen: Abfallverbringung, Entsorgungsgebühren und Altlastensanierung. 2001.

Müller, Lorenz: Electronic Money and Monetary Sovereignty. *Forthcoming.*

Bastians, Uda: Verpackungsregulierung ohne den Grünen Punkt? Die britische und die deutsche Umsetzung der Europäischen Verpackungsrichtlinie im Vergleich. 2002. *Im Erscheinen.*

Wissen, Nicht-Wissen, Unsicheres Wissen, *hrsg. von Ch. Engel, M. Schulte und J. Halfmann.* Im Erscheinen.

II. Preprints of the Max Planck Project Group „Common Goods: Law, Politics and Economics" with their subsequent Publications:

1998

1. **Engel, Christoph: Rechtswissenschaft als angewandte Sozialwissenschaft.** Preprint 1998/1.
   Veröffentlicht in:
   Methodische Zugänge zu einem Recht der Gemeinschaftsgüter, hrsg. von Ch. Engel. (Common Goods: Law, Politics and Economics 1). Baden-Baden: Nomos, 1998, 11-40.
2. **Engel, Christoph: Die privatnützige Enteignung als Steuerungsinstrument.** Preprint 1998/2.
   Veröffentlicht in:
   Die Verwaltung 31, 1998, 543-558.
3. **Héritier, Adrienne: Second-Order Institutionalization in Europe: How to Solve Collective Action Problems under Conditions of Diversity.** Preprint 1998/3.
   Revised Version published under the Title:
   Overt and Covert Institutionalization in Europe. In *The Institutionalization of Europe*, ed. by A. Sweet Stone, W. Sandholtz and N. Fligstein. Oxford: Oxford University Press, 2001, 56-70.
4. **Okruch, Stefan: „Hindrängen" zur Ordnung und „Entdeckung" des Rechts:** Fragen zur kulturellen Evolution. Preprint 1998/4.
   Bisher keine weitere Veröffentlichung.

5. **Héritier, Adrienne: After Liberalization: Public-Interest Services in the Utilities.** Preprint 1998/5.
   Published in:
   Welfare and Work in the Open Economy: Volume II, Diverse Responses to Common Challenges, ed. by F. W. Scharpf and V. Schmidt. Oxford: Oxford University Press 2000, 554-596.

6. **Holzinger, Katharina: Die Leistungsfähigkeit umweltpolitischer Kooperationslösung.** Preprint 1998/6.
   Veröffentlicht in:
   Kooperative Umweltpolitik, hrsg. von H. Bartmann und K. D. John. Aachen: Shaker, 1999, 39-73.

7. **Engel, Christoph: Selbstregulierung im Bereich der Produktverantwortung:** Instrumente und deren Ausgestaltung. Preprint 1998/7.
   Veröffentlicht in:
   Staatswissenschaften und Staatspraxis 9, 1998, 535-591.
   Auch veröffentlicht als:
   Instrumente und deren inhaltliche Ausgestaltung: Selbstverpflichtungen, Zielfestlegungen, ökonomische Instrumente, Verordnungen. In *Deregulierung im Abfallrecht: Druckschrift zu den 7. Kölner Abfalltagen*, hrsg. von W. Klett, G. Schmitt-Gleser u. H. Schnurer. Köln: Gutke, 1999, 227-300.

1999

8. **Knill, Christoph und A. Lenschow: Governance im Mehrebenensystem:** Die institutionellen Grenzen effektiver Implementation in der europäischen Umweltpolitik. Preprint 1999/1.
   Veröffentlicht als:
   Neue Konzepte – alte Probleme? Die institutionellen Grenzen effektiver Implementation, mit A. Lenschow. In *Politische Vierteljahresschrift* 40, 1999, 591-617.

9. **Foerste, Karla: Streitvermeidung im traditionellen China:** Die „dritte Partei" bei Begründung und Durchsetzung von Verträgen. Preprint 1999/2.
   Veröffentlicht als:
   Eine Methode der Streitvermeidung: Die „dritte Partei" bei Begründung und Durchsetzung von Verträgen im traditionellen China. In *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 64, 2000, 123-142.

10. **Engel, Christoph: Institutionen zwischen Staat und Markt.** Preprint 1999/3.
    Veröffentlicht in:
    Die Verwaltung 34, 2001, 1-24.

11. **Gawel, Erik: Konzeptionen und Instrumente zur Realisierung von Produktverantwortung im Abfallrecht.** Preprint 1999/4.
    Jeweils in Auszügen veröffentlicht als:
    - Konsumenten in der Produktverantwortung. In *Wirtschaftsdienst* 80, 2000, 377-384.
    - Produktverantwortung zur Steuerung abfallwirtschaftlicher Produktrisiken. In *Zeitschrift für angewandte Umweltforschung 10, Sonderheft = Umweltrisikopolitik*, hrsg. von B. Hansjürgens. Berlin: Analytica, 1999, 188-205.
    - Produktverantwortung aus ökonomischer Sicht. In *Stoffstromsteuerung durch Produktregulierung: Rechtliche, ökonomische und politische Fragen*, hrsg. von M. Führ. Baden-Baden: Nomos, 2000, 143-160.
    - Konsumenten in der Produktverantwortung: Zur Interpretation von Produktverantwortung nach dem KrW-/AbfG. In *Jahrbuch des Umwelt- und Technikrechts* 58, 2001, 407-429.

12. **Kirchgässner, Gebhard: Trade Neutrality Environmental Policy: Some Theoretical Considerations and Simulation Results for Switzerland.** Preprint 1999/5.
Published in:
Internationalization of the Economy and Environmental Policy Options, ed. by P. J. J. Welfens. Berlin: Springer, 2001, 125-152.

13. **Héritier, Adrienne: Elements of Democratic Legitimation in Europe:** Seen from a Different Angle. Preprint 1999/6.
Published as:
Elements of Democratic Legitimation in Europe: An Alternative Perspective. In *Journal of European Public Policy* 6, 1999, 269-282.

14. **Engel, Christoph: The Internet and the Nation State.** Preprint 1999/7.
Published in:
Understanding the Impact of Global Networks on Local Social, Political and Cultural Values, ed. with K. H. Keller. (Law and Economics of International Telecommunications 42). Baden-Baden: Nomos, 2000, 201-260.
English version of:
Das Internet und der Nationalstaat. In *Völkerrecht und internationales Privatrecht in einem sich globalisierenden internationalen System*, von K. Dicke u. a. (Berichte der Deutschen Gesellschaft für Völkerrecht 39). Heidelberg: Müller, 2000, 353-425.

15. **Knill, Christoph: Autonomous and Instrumental Bureaucracies**: Institutional Indicators for the Explanation of Administrative Change. Preprint 1999/8.
Published as:
Explaining Cross-National Variance in Administrative Reform: Autonomous versus Instrumental Bureaucracies. In *Journal of Public Policy* 19, 1999, 113-139.

16. **Knill, Christoph and D. Lehmkuhl: How Europe Matters:** Different Mechanisms of Europeanization. Preprint 1999/9.
Published as:
   - Mechanismen der Europäisierung: Nationale Regulierungsmuster und europäische Integration. In *Schweizerische Zeitschrift für Politikwissenschaft* 6, 2000, 19-50.
   - The National Impact of EU Regulatory Policy: Three Europeanization Mechanisms. In *European Journal of Political Research* 35, 2002. *Forthcoming.*
   - How Europe Matters: Different Mechanisms of Europeanization. *European Integration online Papers (EIoP)* 3 (7), 1999. http://www.eiop.or.at/eiop/texte/1999-007a.htm.

17. **Lehmann, Markus: Granting Discretion to Collusive Agencies:** The Role of the "Standing" Doctrine. Preprint 1999/10.
Revised Version to be published as:
Error Minimization and Deterrence in Agency Control: Judicial Review and the Role of the Standard of Proof. *To be published in International Review of Law and Economics*.

18. **Holzinger, Katharina: Optimal Regulatory Units:** A Concept of Regional Differentiation of Environmental Standards in the European Union. Preprint 1999/11.
Published as:
Environmental Policy in a European Union of Variable Geometry? Ed. by K. Holzinger and P. Knoepfel. Basel: Helbing & Lichtenhahn, 2000, 65-107.
Optimale Regulierungseinheiten: Ein Konzept für die regionale Differenzierung von Umweltstandards in der Europäischen Union. In *Zeitschrift für Umweltrecht und Umweltpolitik* 23, 2000, 547-582.

19. **Engel, Christoph: Vertrauen:** Ein Versuch. Preprint 1999/12.
Erscheint in erweiterter Fassung als Band unserer Schriftenreihe *Common Goods: Law, Politics and Economics*. Baden-Baden: Nomos.

20. Lehmann, Markus: Private Institutions in Waste Management Policy and their Antitrust Implications: The Case of Germany´s Dual Management System. Preprint 1999/13.

2000

21. Lehmkuhl, Dirk: Commercial Arbitration: A Case of Private Transnational Self-Governance? Preprint 2000/1.
Published as:
Multiple Providers of Governance Services: The Private Settlement of Transnational Disputes. *Under Review since 9/2000*.
Competition and Co-evolution of Public and Private Adjudication: The Institutionalization of Dispute Resolving Authority in Transnational Trade. In *Globalisation and Institutions: Redefining the Rules of the Economic Game*, ed. by M. L. Djelic and S. Quack. Cheltenham: Elgar. *Forthcoming*.

22. Verweij, Marco: Two Ways of Solving Environmental Problems: A Comparative Study of Instustrial Releases into the Rhine and the Great Lakes. Preprint 2000/2.
Revised Version published as:
Why Is the River Rhine Cleaner than the Great Lakes (Despite Looser Regulation)?
In *Law & Society Review* 34, 2000, 1007-1054.

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The Impact of Scale, Scope and Heterogeneity in Governing Local and Global Commons. What Economics can Learn from the Approach of Ostrom, Keohane and Martin, 24 September 1998

Jörn Lüdemann:
Josef Essers "Vorverständnis und Methodenwahl in der Rechtsfindung" (Pre-Understanding and Choice of Methods in Legal Determination),
22 October 1998

Christian Schubert:
Mechanism Design: An Introduction,
28 September 1998

Dieter Kerwer:
Collective Action Beyond the Nation State. The Political Economy Approach of Philip Cerny,
6 November 1998

Jörn Lüdemann:
Waste Disposal Morality as an Instrument of Social Control, 11 November 1998

Eva Jonas:
The Relationship Between Attitudes and Behaviour, 26 November 1998

Katharina Holzinger:
Incentive Structures Resulting from Different Properties of Common Goods, 26 November 1998

Uda Bastians:
Packaging Waste in Germany and England – Different Approaches to the Same Problem, 22 December 1998

Lectures in 1997

Eva Jonas:
The Waste Disposal Problem from a Psychological Perspective, 1 December 1997

Jörn Lüdemann
How to Foster the Public Spirit, 1 December 1997

Ad-hoc-Group "Governance in Transition"

In summer 2000, the Ad-hoc-Group, "Governance in Transition", of the German Association of Political Science (DVPW), was established by three members of the Project Group: Katharina Holzinger, Christoph Knill, and Dirk Lehmkuhl.

Governance is a classical object of theorizing in political science, sociology, and legal science. Not only political governance, but also theories of governance are permanently in transition. Several disciplines and especially some sub-disciplines of political science analyse various aspects of governance. It is the aim of the Ad-hoc-Group to bring together the fragmented discussion on governance, as well as to respond to an increasing need for research. Governance structures are rapidly changing both as a consequence of globalization and Europeanization of politics and markets, and of the reform of domestic policies and policy-making. These developments imply far-reaching challenges to the theoretical and empirical research on political governance.

The first workshop of the Ad-hoc-Group was held on 5 October 2000, in Halle, Germany. Several papers on multi-level governance in Europe, on the role of private actors in governance, and on governance by international organizations were presented.

The second conference, on the "Conditions and Patterns of Governance in Historical Comparison", took place on 30/31 March 2001, at the Max Plack Project Group in Bonn. A number of empirical studies were presented and discussed; they analyse the relationship between patterns of governance, conditions for governance, and ideas about governance. A third conference on the same subject, where additional papers will be presented, is to be held on 18/19 January 2002. The contributions to both conferences will be published in an edited volume in 2002.

Katharina Holzinger, Christoph Knill, and Dirk Lehmkuhl (eds.): Conditions and Patterns of Governance in Historical Perspective. Opladen: Leske & Budrich (forthcoming).

Dogmatic Club

The Dogmatic Club was set up at the start of 2001 with the aim of providing lawyers and interested researchers within the Project Group an understanding of recent developments in public, constitutional and administrative law. Once a month, a recent judgement of a high German Court is presented by one member of the group and discussed within the circle.

The following topics have been presented:

15 January 2001	Indra Spiecker gen. Döhmann: The Status of the Religious Group Jehovah's Witnesses – Conditions of the Recognition as a Religion under the Constitution
20 February 2001	Thomas Baehr: The Constitutionality of TV in Courtrooms
20 March 2001	Florian Becker: Recent Developments of the German State Bank's System: The Saxonian Holding-Solution
15 May 2001	Christian Schmies: On the Constitutionality of Shock Advertisement (Benetton-Case)
19 June 2001	Christian Schmies: New Faces of the Unlimited Company /Gesellschaft Bürgerlichen Rechts
21 August 2001	Martin Rothfuchs: The Injunction of the Constitutional Court on the Law of Same-Sex Marriages
16 October 2001	Melanie Bitter: to be announced
20 November 2001	Stephan Magen: to be announced
18 December 2001	Indra Spiecker gen. Döhmann: to be announced

Rationality Group

Overview of the meetings of the Rationality Club

2000	
31 May 2000	Planning session in Berlin with Prof. Dr. Lorraine Daston, Prof. Dr. Gerd Gigerenzer, Prof. Dr. Wolfgang Prinz and Prof. Dr. Ulrich Witt. Presentations by Prof. Dr. Lorraine Daston, Henry Farrell, Leonor Moral, Prof. Dr. Wolfgang Prinz
26 June 2000	Workshop in Bonn: Limits of Rationality. Presentations by Christoph Engel, Lawrence Fiddick, Eva Jonas, Stephanie Kurzenhäuser, Jörg Rieskamp, Indra Spiecker gen. Döhmann
17 July 2000	Neil MacCormick: My Philosophy of Law. Presentation by Leonor Moral Soriano.
25 July 2000	Planning session with Lorraine Daston, Christoph Engel and W. Prinz in Bonn. Further participants: Melanie Bitter, Stefan Okruch, Indra Spiecker gen. Döhmann.

9 October 2000	Rationality in the Theory of Action and in Behavioural Theory. Presentation by Stefan Okruch.
13 November 2001	Korobkin/Ulen: Law and Behavioural Science: Removing the Assumption from Law and Economics. Presentation by Indra Spiecker gen. Döhmann
27 November 2001	Cass Sunstein: Cognition and Cost-Benefit-Analysis. Presentation by Melanie Bitter.
11 December 2001	Keith Stanovich/Richard West: Individual Differences in Reasoning: Implications for the Rationality Debate? Presentation by Lawrence Fiddick.
2001	
15 January 2001	Fiske, Alan Page: The Multiplicity of Fundamental Social Orientations. Fiske, Alan Page: The Inherent Socialbility of Homo Sapiens. Presentation by Henri Tjiong.
6 February 2001	Leda Cosmides/John Tooby: Better than Rational: Evolutionary Psychology and the Invisible Hand. Presentation by Jörn Lüdemann.
19 February 2001	Fiedler, Klaus: Beware of Samples! A Cognitive-Ecological Sampling Approach to Judgment Biases. Presentation by Christian Schubert.
16 March 2001	Workshop in Berlin: Different Layers of Rationality. Presentations given by Melanie Bitter, Lorraine Daston, Stefan Okruch, Otto Sibum, Marco Verweij.
20 March 2001	Debriefing of the workshop.
2 April 2001	Game Theory in the Procurement of Information by Public Authorities. Presentation by Melanie Bitter.
9 April 2001	Gary Klein: The Fiction of Optimization. Jonathon Evans/David Over: Are People Rational? Yes, No and Sometimes. Ralph Hertwig, Andreas Ortmann, Gerd Gigerenzer: Deductive Competence: A desert devoid of content and context. Presentation by Stephanie Kurzenhäuser.
23 April 2001	Lorraine Daston: Can Inconsistency be a Value? Christoph Engel: Institutions for Homo Sapiens.
15 May 2001	Todd J. Zywicki: Evolutionary Psychology and the Social Sciences. Presentation by Thomas Baehr
23 May 2001	Gerd Gigerenzer: Adaptive Thinking. Rationality in the Real World.
28 May 2001	Critical Comments on Duel Process Theories of Reasoning. Presentation by Stephanie Kurzenhäuser
25 June 2001	Gerd Bohner: Attitudes. Presentation by Stephanie Kurzenhäuser.
9 July 2001	Dieter Zimmer: Memory. The World in One's Head (Das Gedächtnis. Im Kopf die ganze Welt.) Frederic Bartlett: Remembering. A Study in Experimental and Social Psychology. Presentation by Martin Beckenkamp

Trust Club

The aim of the Trust Club was to investigate to what extent, and in which ways, the research undertaken at the Project Group might benefit from the emerging academic debate on the roles that trust and social capital play within societies, economies and politics. The relevance of these two concepts for the production of common goods seems clear. Social capital is usually defined as those norms and social networks that enable a group of people to overcome collective-action problems, i.e., to produce comon goods. Trust between people is usually seen as one of the main components of social capital. It can therefore be argued that the components of social capital (including trust) may be important determinants of the extent to which people can bring forth common goods.

To address this issue in detail, seven meetings of the Trust Club were held at the Project Group between March and October 1999. The meetings were organized and chaired by Marco Verweij, while the other participants comprised a varying group of researchers from the Project Group, with an occasional visit from guest professors. At each meeting, a central text from the literature on social capital and trust was presented and discussed, and attention was given to the implications of the text for the research undertaken at the Project Group.

The concrete output of the Trust Club has been the following. First, a working paper by Christoph Engel, entitled Vertrauen, Ein Versuch (Preprint 1999/12).

Second, a paper by Mary Douglas and Marco Verweij, entitled "Poverty in the Moral Vision", in Vijayendra Rao and Michael Walton (eds), *Culture and Economic Development* (Washington, DC: The World Bank, forthcoming in 2002).

And last, but most importantly, the decision to co-host and co-fund (together with the Max Planck Institute for the Study of Societies in Cologne, as well as the Russell Sage Foundation from New York) a conference on the topic of trust and cooperation in December 2000.

The Trust Club has now ceased its activities.

Internal Colloquium on Game Theory and the Law

The "Games Club" was founded in 1998. During the discussion of a paper presented by Professor Schweitzer, an economist at the University of Bonn, the need for a more structured introduction to the highly formalized concepts of game theory had become apparent.

Game theory uses a different conceptual framework than classical economics and is, therefore, a challenge to scholars trained in the traditional law-and-economics paradigm. On the other hand, the integration of game theory offers the chance to deepen the understanding of situations marked by strategic interaction between the players involved - almost the prototypical situation of law in action.

The club's agenda was oriented towards the goal of achieving a common level of game theoretic concept knowledge. A different member of the club lectured at each session on a specific topic of applied game theory, such as "signalling and screening", based on an article or chapter in a book previously read by all members. In the ensuing discussion, the emphasis was placed on exploring the possibility of applying the theoretical game concept to the analysis of specific legal problems, such as the malfunctioning of laws aimed at preventing discrimination.

Christian Schubert:
Disclosure of Verifiable Information and Renegotiations, 8 March 1999

Christian A. Geiger:
Signalling, Screening and Non-verifiable Information, 1 April 1999

Katharina Holzinger:
Repeated Games, Folk-Theorems, and Collusive Behaviour, 4 April 1999

Markus Lehmann:
The Strategic Foundation of Nash's Bargaining Solution and the Outside Option Principle, 25 May 1999

Stefan Okruch:
Embedded Games and the Bankruptcy Code: Some Critical Remarks on Baird, Gertner and Picker, 25 May 1999

Indra Spiecker genannt Döhmann:
Bargaining and Information, 27 July 1999

Indra Spiecker gen. Döhmann and Markus Lehmann:
"Is Judicial Detection Skill Needed to Ensure Bilateral Contractual Compliance?" and "Illegitimate Clauses in Public Contracts", 30 November 1999

Frank Maier-Rigaud:
Environmental Policy as a Constitutional Choice ' The ORDO Approach to Environmental Economics, 1 December 1999

Katharina Holzinger:
Equilibrium Concepts for the Normal Form Game and Liability Rules, 21 October 1998

Markus Lehmann:
The Role of Communication, Cheap Talk and Commitment in Simple 2x2 Games, 19 November 1998

Christian A. Geiger:
Game Theory as Applied to Common Goods, 17 November 1997

Christian Schubert:
Game-theoretic Notions and Solution Concepts: A Brief Introduction, 17 November 1997

Waste Management Discussion Group

Within the Project Group, different discussion groups were established as a forum for researchers who are connected by the same topic of research. Through this medium, substantive topics are examined from the different viewpoints of the three disciplines, thus not only deepening scientific insights, but also broadening the intellectual horizon of each participant into other disciplines. The monthly meeting of the Waste Management Discussion Group gathered all MPP researchers working on waste law, policy and management.

One of the first actions of the waste management group was the compilation of the most prominent topics in the public and political waste management discussion. Later sessions were either dedicated to special questions, or dealt with problems of a more general character, but with clear ramifications for waste management regulation. Most presentations were prepared by two researchers from different disciplines. All three disciplines were involved in the discussions which dealt with, e.g., the changing role of the state and instruments of social control, sustainable resource management and policy mix, as well as neoclassic and evolutionary economic theory and their differing viewpoints on waste management problems. Later meetings addressed the synthesis of the project's research results that are now presented in the book on waste management law and policy (see D I, 1).

The Provision of Common Goods: Governance Across Multiple Arenas

The Group was established to discuss specific political science questions with regard to the provision of common goods. On the basis of a paper presented by A. Héritier, the following various perspectives were discussed:

This political science research programme deals with the issue of common goods. Common goods can be, but need not necessarily be characterized by a social dilemma in which the pursuit of individual interests reduces the chances of the interests of all concerned being enhanced. The programme focuses on how a common good is defined in the first place, how collective action is brought about and what institutional solutions it produces. Solving collective action problems is difficult even when the scope for decision-making and decisional impacts are congruent, such as in the classic nation state. Here, the government, on the basis of a legislative majority decision, may resort to hierarchical means of guidance in order to overcome resistance to the provision of such goods. Where there is a growing cross-national problem-interdependence, a congruence of decision-making and decisional impacts is increasingly rare. Very often, decision-making has to rely on the voluntary cooperation of autonomous and independent public and private actors across national boundaries. As a consequence, the political difficulties in overcoming collective action problems are compounded. New forms of problem-definition, decision-making, institutional and instrumental solutions and their implementation have to be found. These new modes of providing common goods where there is no hierarchical guidance are the core interest of this political science research programme. In the course of the theoretical and empirical studies of how common good problems are defined and what institutional solutions there are for them, particular attention is paid to the role of private actors cooperating with public actors in the provision of common goods. What form does the cooperation take where there is international interdependence, and what are the implications for existing structures of governance?

Economists have classically defined the central attributes of common goods in terms of non-excludability and non-rival consumption. The market - it has been traditionally argued - does not provide this type of good, therefore the state has to intervene. Political science takes this definition into account, but also insists on a processual view of common goods which argues that what constitutes a common good and how it is provided for institutionally is defined in a political and scoial process.

First of all, it is not clear in many cases what constitutes a common good, insofar as there are rarely absolute and objective criteria for defining them. Instead, what constitutes a common good depends, for example, on the specific situational context of provision and consumption of the good and the technical properties of a good. To make matters even more difficult, what constitutes a common good may – in a more subtle way – depend on the way in which its desirability, i.e., its universal accessibility, is defined politically and socio-culturally.

Secondly, political science also asks questions, as does more recent economic theory, whether the government needs to be the institutional provider of the common good. The focus is therefore on the political and social processes which produce alternative institutional modes that lend themselves to securing common goods, such as the self-organization of the actors, possibly "under the shadow of hierarchy" (Ostrom 1990).

Focusing in particular on the provison of common goods across multiple levels and arenas, involving public and private actors, this research programme raises the questions: how does the definition of common goods evolve if multiple and diverse views of public and private actors have to be reconciled? What institutional answers arise for the provision of such goods where there is non-hierarchical guidance and multiple authorities exist? Which are best suited to solving particular problems under particular conditions? How are these solutions implemented? How efficient, just, and effective are they? But also: how do they affect existing nation-state governance structures and existing notions of the state?

K External Relations

In order to disseminate the work of the Project Group to a wider public, an electronic journal was established in Spring 2001 with the Social Science Research Network. Interested parties, whose names are included in an electronic mailing list, receive a regular update with PDF files of the Project Group's latest preprints.

Projects with Foreign Partners

Global Networks and Local Values

Project Description: Chances and Risks are twins. On the one hand, it is hardly disputed that the global network in general and the Internet in particular offer great possibilities. On the other hand, the accompanying risks – or those things perceived as risks – are feared. Racist rally cries, pornography and the misuse of personal data are on the top of the list in the public consciousness. While the fears, for example, related to child pornography, differ from each other worldwide only in degree, views about other issues can nearly be seen as antithetic. As a result of its history, Germany has forbidden all right-wing extremist publications; the United States is much more liberal in dealing with such publications. On the other hand, many Americans find certain sorts of pornography to be grave, which Germans would classify as harmless. Protection of the individual is also viewed very differently in these two societies. These contrasts can easily fool us into accepting a very simplified claim: namely, that global networks threaten local values. The reality of global networks and their reciprocal relationship to local values is much more complex than that. The task of this sort of bi-national research project is to look into these questions and to work out recommendations for the decision-makers in Germany and the United States.

The following foreign partners participated in this project: Kennert H. Keller, National Research Council, Computer Science and Telecommunications Board, The National Academics (National Academy of Science), USA

With David Coen
Regulating Utilities: The Creation and Correction of Markets.
To be submitted to Palgreaves, 2002

Project Description: This research project investigates the process of the liberalization and deregulation of the energy provision and network industries in Europe, giving especial consideration to Great Britain and Germany. The emphasis of this interdisciplinary project is on the analysis of European and national regulatory structures in the three key industries: energy (electricity and gas), telecommunications and the railways. In a second step, the interactive relationship between regulated companies and regulating instruments at the European and national level in a developing multi-level system are investigated. In this, the following questions play a central role: What are the relationships between regulators and regulatees, and how is the problem of information symmetry managed? How much regulation is necessary to achieve "public service" goals, for example, regarding the access and financing of network services? Two further conferences have been carried out since this one.

The following foreign partners participated in this project: Prof. David Currie; Dr. David Coen, London Business School, Great Britain and North Ireland

Environmental Policy in the European Union – of variable Geometry? The Challenges of the Next Enlargement

Project Description: This project looks into the consequences of the UN's Eastern enlargement for the environmental policies of the future union. From a normative perspective, the contributions deal with the issues of the suitability of a harmonized, instead of a regionally differentiated, environmental policy. They deal with the effect of legal restrictions on a flexible environmental policy in accord with the Amsterdam contract, with the consequences of Eastern enlargement for the EU itself, with the consequences that joining has on some of the membership candidates and with the effectiveness of what are known as new instruments of environmental policy in the Eastern countries. The contributions are from political scientists, economists and lawyers from Eastern and Western Europe.

The following foreign partners participated in this project: Prof. D. Peter Knoepfel, Institute de Hautes Études en Adminstration Publique, Lusanne, University of Lusanne, Switzerland.

EU Social Citizenship

Project Description: Within the parameters of the democratization debate of the EU, the view of "social civil rights" is analysed, and the dimension of "the fight against poverty" is focused upon. The potential poverty of the candidate countries is estimated on the basis of the most recent data, and the financial dynamic of a possible EU policy to fight poverty is presented in the context of the Eastern enlargement.

The following foreign partners participated in this project: Prof. Philippe Schmitter, European University Institute, Florence, Italy.

Database on Member State Compliance with EU Law

Project Description: Does the European Union have a compliance problem? The truth is – we don't really know. For more than a decade, the European Commission and scientists alike have been denouncing a growing implementation deficit, which is believed to threaten both the effectiveness and the legitimacy of European policy-making. But we simply lack reliable data that would allow us to assess the level of member state compliance with Community Law. There are, of course, the annual monitoring reports published by the European Commission. They report member state infringements in the various policy sector for the last 20 years. Yet, despite their richness, the data are neither complete nor without major deficiencies. The purpose of the project is to put together a more reliable database on member state compliance with Community Law. The database draws on the annual reports of the Commission, because it is the only comprehensive source of information that exists. But instead of using aggregate numbers, each infringement case reported is individually coded according to its infringement number, the policy sector it falls into, the infringing member state, the type of infringement, the year when the infringement proceedings were opened, and the current stage in the proceedings. This database serves as the basis for a quantitative study on causes of non-compliance with „"law beyond the nation state"" conducted at the Max-Planck-Project Group on the Law of Common Goods.

The following foreign partners participated in this project: Yves Meny/Helen Wallace, Robert Schuman Centre for Advanced Studies, European University Institute, Florence Italien

Permanent Consultations with Foreign or International Organizations

OFGEM (Office for Gas and Electricity Regulation), Great Britain and North Ireland

Activities Abroad of Individual Institute Members

Marco Verweij: A stay abroad to facilitate his research activities. Social and behavioural sciences (GWS). Institute for International Studies, Stanford University. USA.

Dieter Kerwer: A stay abroad to facilitate his research activities. Social and behavioural sciences (GWS). German-American Center for Visiting Scholars, Washington DC, USA.

Adrienne Héritier: guest lectures, guest professorship. Social and behavioural sciences (GWS). European University Institute, Florence, Italy. Summer semester 2000: The European Regulatory Regime Between Market Integration and General Interest Goals: The public utilities (energy, telecoms, transport). Winter semester 2000: Comparative Case Studies in European Studies and Internal Relations.

Leonor Moral Soriano: Governance Across Multiple Arenas. guest lectures, guest lectureship. Legal Studies (GWS). Universidad de Granada, Faculty of Law, Spain.

International Events of the Institute

Conference on "Deliberately Democratizing Multilateral Organizations"
Location: Institute for International Studies, Stanford University, USA
Research area: Social and behavioural sciences (GWS)
Note: Marco Verweij (MPP RDG) and Prof. Tim Josling (Institute for International Studies, Stanford University) held this conference on October 2000.

Regulation in Europe – An Anglo-German Comparison
Location: Max Planck Project Group, Bonn
Research area: Social and behavioural sciences (GWS)

Trust Conference and Workshop 15-16 December 2000
Location: Max Planck Institute for the Study of Societies, Cologne
Research area: Social and behavioural sciences (GWS)

With and Without the State: International Trade, Its Norms and Its Dispute Resolutions
Location: International Studies Association, Los Angeles, USA
Research area: Anthropology and Psychobiology (BMS)

Common Goods and Governance Across Multiple Arenas
Location: MPP Bonn
Research Area: Anthropology and Psychobiology (BMS)

Translation Commercial Arbitration: Conflict-Resolution Denationalized of Shadow of Law? ESRI Thematic Research Workshop. Forms of Transnational Governance and Paths of Economoic Development
Location: Lisbon, Portugal
Research Area: Anthropology and Psychobiology (BMS)

Migration, Law, and Politics, Workshop "Immigration Policy in Europe: Between Domestic Reform and Europeanization"
Location: Center for International Studies (ETH/University of Zurich) Swiss Forum of Migration Studies (Neuchâtel), Schweiz
Research Area: Anthropology and Psychobiology (BMS)

Internationalization and Changing Patterns of Governance; 25th Annual Conference of the British International Studies Association
Location: Bradford
Research Area: Anthropology and Psychobiology (BMS)

L Researchers

Research Staff

Thomas Baehr
Academic Career: Studied Law at the University of Bonn.
December 2000 First Law Degree.
September 1998 Undergraduate Research Assistant at the Project Group.
Since January 2001 Research Fellowship at the Project Group.
Junior Research Fellow.
Main Research Focus: Regulatory Law, Constitutional Law, Social Psychology in Legal Contexts.
Project: Behavioural Modification through Command and Control Regulation.

Dr. Uda Bastians
Academic Career: Studied law at the universities of Osnabrück and Florence. Undergraduate Law Degree 1997. Research Fellowship at the Institute of Advanced Legal Studies, London (UK), April-October 1998. Since 1999 also a judicial trainee at the Court of Appeal, Cologne. May 2001 Doctorate in Law at the University of Osnabrück.
Junior Research Fellow.
Main Research Focus: Environment and Waste Management Law in Germany and Great Britain, Law and Economics.
Research Project: Comparison of British and German Packaging Waste Management Law.

Dr. Michael W. Bauer
Academic Career: 1990-1993 Courses in Social Science, German Philology and History at the Universities of Mannheim, Frankfurt am Main and Vienna. 1996 Diploma of Social Sciences Humboldt-University Berlin. 1995 Robert-Schumann Fellow of the European Parliament. 1996-97 Master of European Studies, College of Europe, Bruges. 1997-2000 Doctorate in Social and Political Sciences at the European University Institute in Florence. Since October 2000 research fellow at the Project-Group.
Research Focus: European Public Policy and Public Administration.
Research Projects: Governance Across Multiple Arenas; Administrative Costs of Reforming the Utilities; Agency Control in the EU.

Dr. Martin Beckenkamp
Academic Career: 1981-1987 studied Psychology and Economics at the University of Saarland: Diploma in Psychology (minor in Psychology and Economics). 1993 Doctorate in Psychology. May 2001 turned in the habilitation text "The Environment as a Social Dilemma – Psychological and Game-theoretic Aspects", Habilitation proceedings are scheduled to end November 2001.
Presently employed as a Senior Research Fellow.
Main Research Focus: Commons dilemmas, social dilemmas, bounded rationality, co-operative rationality.
Research Projects: "Protection Policies Using Incentives" and "The Strategic Use of Schemes in the Governance of the Commons".

Dr. jur. Florian Becker, LL.M
Academic Career: 1990-1994, studied law at the Friedrich Wilhelms University of Bonn. 1992 studied English legal methods at the summer school of University of Cambridge, UK. March 1995 Undergraduate Law Degree. June 1995 employed as Junior Research Assistant, and from May to September 1996 as Research Assistant to the Chair for Constitutional Law and Administrative Law at the University of Cologne (Professor Dr. J. Burmeister). October 1996 – June 1997, DAAD scholarship to study on LL.M course in international and European law, including English administrative law, at the University of Cambridge. Awarded the Clive Parry Prize (Overseas Students) for International Law at the University of Cambridge in June 1997. Awarded title 'Doctor of Law' at the University of Cologne in June 1997. Doctoral thesis entitled: "The German Landesbanken – An investigation into the legal constitutional limitations of reciprocal purchases of Landesbanken/Girozentralen and the establishment of transregional institutions". October 1997 – November 1999 junior clerk in the regional court of North-Rhine Westphalia. November 1999 Graduate Law Degree. Lecturership at the Academy of Administration and Economics in Cologne.
Research Fellow.
Main Research Focus: Constitutional law, administrative law, European law and international public law.
Research Project: Normative Agreements between Governance and Private Actors

Melanie Bitter
Academic Career: Studied law at the universities of Bochum 1994-1996, and Osnabrück 1996-1999. Undergraduate Research Assistant at the

Project Group 1998–1999. University of Tver 1997 (Scholarship by the EU). Undergraduate Law Degree 1999.
Junior Research Fellow
Research Project: Game Theory and Public Agencies.

Dr. Raimund Bleischwitz
Academic Career: 1987-1988 Consultant to the parliamentary Social Democratic Party (SPD). 1988-1991 Research at the Institute for European Environmental Policy. Since 1991 Director of Research/Scientific Planning and Coordination at the Wuppertal Institute for Climate Energy Environment. 1997 Doctorate (Dr. rer. oec) at the BUGH Wuppertal. Lecturer at the University of Bonn.
Since June 2000 Head, Sector for Research Desk, Wuppertal Institute for Climate, Energy and Environment. Also now Adviser to the Japanese Government on environmental policy (waste and materials flows).
Research Fellow.
Main Research Focus: Environmental economy and policy, sustainable development, resource productivity, economic policy, economics and culture.
Research Project: Institutions for Inducing, Selecting and Adapting to Techological Innovation as Applied to a Recycling Economy and to Material Flows Management.

Dominik Böllhoff, MPA
Academic Career: 1994-1996, Intermediate diploma in sociology, economics and political sciences, Freie Universität Berlin. 1996-1999, masters degree in public policy and management, University of Potsdam. 1997-1998, Masters of Public Administration (MPA), University of Liverpool. 1999, Junior Research Assistant to the Chair of Public Management, University of Potsdam (Prof. Reichard).
Junior Research Fellow.
Main Research Focus: Comparative public administration, public management, regulatory institutions in energy, rail and telecommunications policy.
Research Projects: The Polity of Regulation in Telecommunications – Anglo-German Comparison of Regulatory Agencies within their Regulatory Regimes.
The European Regime: Private Actors Providing Public Service? (together with A. Héritier, André Suck, Michael Bauer and E. Moral Soriano).

Dr. Tanja Börzel
Academic Career: 1989-1995, studied at the Faculty of Public Policy and Management at the University of Constance. 1999 Doctorate in Political and Social Sciences at the European University Institute in Florence. Since 1999 Research Fellow and Coordinator for Environmental Studies at the Robert Schuman Centre of the European University Institute in Florence.
Research Fellow.
Main Research Focus: European integration, institutionalism, policy networks, implementation research, governance (compliance) in multi-level systems.
Research Projects: Private Actors on the Rise? The Substantive and Structural Impact of Societal Mobilization in Compliance with International Regulations.
On Environmental Leaders and Laggards in the European Union.
New Database on EU Member State Compliance with Community Law (1979-99).

Joachim Dölken
Academic Career: 1995, Undergraduate Law Degree; 1993 one term's study and examinations at the University of Edinburgh, Scotland; 1993-1997, Undergraduate/Postgraduate Research Assistant to the Chair for Media and Telecommunications Law, Prof. Dr. Engel, University of Osnabrück; 1995-1996, a year's residence as Research Assistant at the University of Chicago Law School, USA, sponsored by an ERP scholarship of the Studienstiftung des Deutschen Volkes; currently also a trainee law clerk at District Appeals Court, Cologne.
Junior Research Fellow.
Main Research Focus: Media and telecommunications law; cartel law; law and economics.

Dr. Henry Farrell
Academic Career: 1991-1993 Master of Arts in Political Science, University College Dublin. 1993-1996 Master of Arts in German and European Studies, Georgetown University. Beneficiary of several scholarships. 2000 PhD in Government at Georgetown University, Washingthon, D.C.
Research Fellow.
Research Focus: Comparative Political Economy, International Political Economy, Theories of Trust, Governance of E-Commerce, Institutional Theory

Research Project: Governing Privacy in the Age of the Internet: The EU-US Negotiations on the Implementation of the Data Protection Directive.

Elke Fiebig-Bauer
Academic Career: From 1992 employed as Undergraduate Research Assistant for Prof. Dr. C. Engel and as Postgraduate Research Assistant after taking Undergraduate Law Degree in 1996 at the University of Osnabrück. Awarded Master of Business Management from the Verwaltungs- und Wirtschaftsakademie Bochum.
Research Assistant. Main Research Focus: Safeguarding natural resources through the closed substance cycle economy and waste management act.
Main Research Focus: Media and telecommunications law, waste management law, law and economics.
Research Project: The Safeguarding of Limited Natural Resources as a New Concern for German Waste Management Legislation.

Prof. Dr. rer. pol. Erik Gawel
Academic Career: 1983-1988 studied economics, business management ans statistics at the University of Cologne, Germany. 1989 Graduate Economist, University of Cologne. 1990-1995 Research Assistant at the Research Institute for Public Finance at the University of Cologne. Lecturer at the University of Applied Sciences (Fachhochschule) and the University of Cologne, Department of Economics and Social Sciences. 1994-1995 Lecturer at the Academy of the German Savings Banks Association (Deutsche Sparkassen-Akademie), Bonn. 1995 Visiting Professor of Law and Economics of at the Interdisciplinary Centre for Postgraduate Studies, focusing on risk-regulation and civil law at the University of Bremen, Department of Law. 1995-1998 postdoctoral fellowship from the German Research Society. 1998/1999 member of the international research group "Rational Environmental Policy – Rational Environmental Law" at the Centre for Interdisciplinary Research, University of Bielefeld, Germany. 2000/2001 member of the scientific panel of the Study Commission "Sustainable Energy Supplies in View of Globalisation and Liberalisation" of the German Parliament, Berlin.
Since 2000 Lecturer of Statistics and Business Mangement at the University of Applied Sciences Hamburg.
Since 2001 Full Professor of Economics at the University of Applied Sciences Frankfurt/Main, Germany. Freelance expert for local charges and price calculation for public services.
Research fellow 1998 and 1999/2000.

Christian A. Geiger, LL.M
Academic Career: 1989-1994, studied law at the Universities of Freiburg (Germany) and Osnabrück. 1992-1993, Research Assistant at the Institute for International Civil Law and Comparative Law. 1995-1996, studied US Law at the University of Virginia and awarded LL.M. degree. Has been working since 1996 on a dissertation comparing German and U.S. telecommunications law. Since 1998 also a trainee law clerk at District Appeals Court, Cologne.
Junior Research Fellow.
Main Research Focus: Public economic law (in particular telecommunications law) and economic analysis of law, in particular the legal instruments for regulating the effects of networks.

Mikaela Hansel
Academic Career: Studied law at the University of Stockholm; one term's study at the University of Surrey, UK; Swedish law degree, March 1999.
Junior Research Fellow.
Main Research Focus: Waste management law in Sweden.
Research Project: Extended Producer Responsibility in Swedish Waste Management Law.

Nicole te Heesen
Academic Career: Research Assistant for Prof. Dr. Engel at the University of Osnabrück, from 1994 as undergraduate and subsequently after Undergraduate Degree (October 1998), as Postgraduate Research Assistant in the Project Group.
Junior Research Fellow.
Main Research Focus: The waste management principles of proximity and autarky.
Research Project: Trade in Solid Waste – As Restricted by the Principles of Proximity and Autarky.
Left the Project Group in September 1999 to become a trainee law clerk.

Dr. Katharina Holzinger
Academic Career: 1986, Masters degree in political science at the University of Munich (stipend from the bursary for gifted students of the state of Bavaria). 1988-1992, Research projects for the Chair of Economics at the Technical University of Munich, the Ifo-Institute Munich and for the Chair of Political Science at the University of Augsburg. 1993, Doctorate at the University of Augsburg (sti-

pend for doctoral dissertation from Hanns-Seidel-Stiftung). 1993-1997, Research Fellow at the Social Science Research Centre, Berlin (in the Research Unit "Standard Setting and the Environment").
Research Fellow.
Main Research Focus: Rational choice theories; political decision-making procedures; bargaining theory; multi-level analysis; European Union; environmental policy; financial markets.
Research Projects: The Provision of Common Goods in Multi-level Systems. Financial Markets and the Environment.
Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement.

Dr. Eva Jonas

Academic Career: Studied psychology and economics at the Universities of Marburg and Zurich. 1995 Degree in Psychology. 1996 Degree in Economics. Employed since 1997 as research assistant at the Institute of Psychology, Ludwig-Maximilians University Munich, since 2001 assistant professor. 2000 Doctorate at the University of Munich under Prof. Dr. Dieter Frey, Sauermann award for dissertations of the society of experimental economics, 2000/2001 visiting scholar at the University of Arizona, Tucson.
Guest researcher.
Main Research Focus: Decision making and information seeking, procedural justice, psychology of money, mortality salience and morality.
Research Project: Waste disposal morality as an instrument of social control, Choice of rules and the provision of local public goods.

Dr. Dieter Kerwer

Academic Career: Masters degree in sociology at the University of Bielefeld (1994). Doctorate in political and social science at the European University Institute in Florence (1999). Collaboration in the Leibnitz-Project on Environment and Transport Policy under the direction of Prof. Dr. A. Héritier (1994-1998). Joined the Project Group in 1998. Fellow at the German-American Center for Visiting Scholars, Washington D.C., October 1999-January 2000.
Research Fellow.
Main Research Focus: Political governance, organisation theory, European integration, international financial markets.
Research Project: Managing Global Risk: the Role of Credit Rating Agencies in the Governance of Financial Markets.
Differential Europe: New Opportunities and Restrictions for Policy-Making (together with Adrienne Héritier, Anne-Cécile Douillet, Christoph Knill, Dirk Lehmkuhl and Micheal Teutsch.

Dr. Roswitha Kleineidam

Academic Career: Studied law at the University of Osnabrück. Undergraduate Law Degree, April 1997. Visiting scholar at Columbia Law School, New York, from September 1998 to February 1999. 2000 Doctorate in Law at the University of Osnabrück.
Junior Research Fellow.
Main Research Focus: German and US waste management law.
Research Projects: A Comparison of German and US Waste Management Law.
Institutional Incentives to Uncover Contaminated Sites (in co-operation with Markus Lehmann).
Left the Project Group in May 2000 for White and Case, Feddersen (Attorneys at Law), Berlin

Prof. Dr. Christoph Knill

Academic Career: Studied public administration at the University for Applied Sciences in Ludwigsburg 1984-1988. Studied Political and Administrative Science at the University of Constance 1988-1991. 1992-1994, Research Fellow at the University of Bielefeld. 1994, Doctorate at the University of Bielefeld. 1994-1995, Guest researcher at the Max Planck Institute for the Study of Societies, Cologne. 1995-1998, Senior Research Fellow at the European University Institute in Florence. 1998-2000 Research Fellow, MPP Bonn. Since 2001 Prof. of Political Science, University of Jena.
Main Research Focus: Comparative politics, comparative public administration, institution theory, governance in multi-level systems, European integration.
Research Projects: The Provision of Network Goods in Multiple Arenas: The Role of "Interface Actors".
Effective Governance in Multi-level Systems: The Implementation Effectiveness of EU Environmental Policy.
The Transformation of National Administrations in Europe: Patterns of Change and Persistence.
Differential Europe: New Opportunities and Restrictions for Policy-Making (together with Adrienne Héritier, Anne-Cécile Douillet, Dieter Kerwer, Dirk Lehmkuhl and Micheal Teutsch).

Alkuin Kölliker
Academic Career: Studies in Economics, Political Science and European Law at the Universities of Bern and Liège (1992-1997). Degree in Economics at the University of Bern (1997). Doctoral Studies in Political Science at the European University Institute, Florence (since 1997). Internship with the European Commission's *Cellule de prospective*, Brussels (1999). Research Fellow at the Max Planck Project Group on Common Goods, Bonn (since 2000).
Research Fellow.
Main Research Focus: European Integration, Differentiation within the EU, Public Goods Theory, Regional Integration, Economic and Monetary Union.
Research Project: Public Goods and Flexible Integration in the European Union. Towards a Theory of Differentiated Integration.

Dr. Markus Lehmann
Academic Career: 1990 Masters degree in economics, Free University, Berlin. 1992-1998, Research Assistant and Junior Lecturer at the Faculty of Economic Science, Free University, Berlin. 1996-1997, Visiting Research Fellow at the New School for Social Research (New York City), Graduate Faculty, Department of Economics, sponsored by the German Marshall Fund of the United States. 1999, Doctorate in economics, Free University Berlin. Member of the Project Group from 1998–April 2001.
Research Fellow.
Main Research Focus: Environmental economics; economic theory of law; game theory.
Research Projects: German Policy on Packaging Waste and its Implications for Market Competition.
The Role of Voluntary Agreements in the Arsenal of Environmental Instruments.
Institutional Incentives to Uncover Contaminated Sites (with Roswitha Kleineidam.
Left the Project Group in April 2001 to join the Stiftung Wissenschaft und Politik (SWP), Berlin.

Dr. Dirk Lehmkuhl
Masters degree in Public Policy and Management at the University of Constance (1993). Research fellow for the Chair for Domestic Policies and Public Administration in the Faculty of Public Policy and Management at the University of Constance (1993-94). Research fellow in the Faculty of Sociology, University of Bielefeld (1994-98). Doctorate in Political and Social Sciences at the European University Institute, Florence (1998).
Research fellow.
Main Research Focus: European Integration, Multilevel Analysis; Patterns of Public-Private Interactions; Law and Politics;
Projects: Internationalization and Patterns of Public-Private Interaction (4); Multiple Providers of Governance Services; Law Beyond the Nation State.

Jörn Lüdemann
Academic Career: Studied Law at the Universities of Osnabrück and Leiden (NL). Scholarship holder of the Cusanuswerk. Undergraduate Research Assistant for the Chair of Legal History and for the Chair of Media Law at the University of Osnabrück. First law degree, October 1997. Joined the Project Group in November 1997. Since 2000 trainee clerk at the Appeals Court, Koblenz.
Junior Research Fellow.
Main Research Focus: Environmental and media law, constitutional law, law and economics.
Research Projects: Waste Disposal Morality as an Instrument of Social Control.

Frank P. Maier-Rigaud
Academic Career: Since 1995 studies at: Albert-Ludwigs-Universität Freiburg i. Br., Germany (Economics, Philosophy, Political Science, Sociology), Indiana University Bloomington, USA (Economics, Political Science), Rheinische Friedrich-Wilhelms-Universität Bonn, Germany (Economics), Université de Neuchâtel, Switzerland (Economics, Sociology), University of California, Berkeley, USA (Economics, Political Science).
1997 BA in Economics/Business Administration, 1998 MA in Economics, 2001 MA in Political Science.
1996-1997 Research Assistant, Institut für Allgemeine Wirtschaftsforschung, Abteilung für Wirtschaftspolitik, Albert-Ludwigs-Universität Freiburg i. Br.; 1997-1998 Rainer Horstmann Fellow, Indiana University, Bloomington; 1999-2000 Member of the Project Group „Making Choices" organized by Joachim Frohn, Werner Güth, Hartmut Kliemt and Reinhard Selten at the Center for Interdisciplinary Research (ZiF), Bielefeld, Germany; since 1998 Research Associate and Teaching Assistant, Indiana University Bloomington; since 1998 Research Associate at the Workshop in Political Theory and Policy Analysis, Indiana University Bloomington.
Junior Research Fellow.
Main Research Focus: Theory of the Commons/ Public Economics, Game Theory/Experimental

Economics, Industrial Organization, Political Economy/Constitutional Political Economy, Methodology/Epistemology, Monetary Macroeconomics.
Research Projects: Towards a General Theory of Decentralized Non-Market Behavior: The Limits and Chances of Collective Action (dissertation project). Externality or Common Good? Choosing an Adequate Framework to Analyse Institutional Aspects of Common Goods. Choice of Rules and the Provision of Local Public Goods – An Experimental Analysis.

Dr. Chrysostomos Mantzavinos
Senior Research Fellow

Dr. Leonor Moral Soriano
Academic Career: Law degree at the University of Granada (1992); Research Assistant at the European University Institute (1995-1997); PhD in law at the European University Institute Florence (1997); Training and Mobility of Researchers (TMR) Postdoctoral Marie Curie Fellow at the Centre for Law and Society, Edinburgh (1998-2000); Tutor in ordinary jurisprudence (1998-2000); Member of the Spanish research group Alternativas (ongoing from the year 2000); Member of the Seminar on Comparative Law at the University of Granada (2000 ongoing); 2001 lecturer in Public Law at the University of Granada, Law Faculty;
Research Fellow.
Main Research Focus: Legal reasoning at the European Court of Justice, European integration, theories of legal reasoning and legal interpretation, European environmental law, comparative law.
Research Project: The European Regime: Private Actors Providing Public Service? (together with A. Héritier and D. Böllhoff.

Dr. Lorenz Müller
Academic Career: After four years as a journalist, studies of law, Arabic and Islamic studies in Hamburg and Damascus. First and second state exam for lawyers 1991 and 1995 in Hamburg. 1996 doctor of law awarded with a thesis on the relationship between modern Islamic theory and the idea of human rights. Since 1996, Higher Executive Officer in the administration of the German Bundestag. 1996-1998 Research Assistant of the Parliamentary Study Commission "Future of the Media in the Economy and Society – Germany´s Road into the Information Society". Currently Research Assistant in a division of the Bundestag dealing with Media Policy and Cultural Policy.
Research Fellow.
Main Research Focus: Public Internet law; legal and economic implications of monetary institutions.

Dr. Stefan Okruch
Academic Career: 1987-1992, studied economics at the University of Bayreuth. 1992-1997, Research Assistant to the Chair of Economics (Economic Theory) at the University of Bayreuth. Doctoral thesis under Prof. Dr. Peter Oberender.
Research Fellow.
Main Research Focus: Competition theory and policy, institutional economics (new institutional economics, ordo-liberalism); evolutionary economics (Market process theory, institutional and legal evolution), methodology; in particular network economics.
Research Project: Network Economics and Economic Policy: Assessment and Development.

Wolf Osthaus
Academic Career: Studied law at the universities of Osnabrück, Paris (XII) and Florence. 1997 First State Exam in law. Awarded the "Deutsche-Telekom-Prize 1997" (students) at the University Osnabrück. 1997 Junior Research Assistant at the Institute for International Law and Comparative Law in Osnabrück (Prof. Dr. Chr. v. Bar). 1997-1999 Graduate College "Internationalization of Private Law" in Freiburg/Germany (DFG-scholarship). Joined the Project Group in 1998. 1999-2001 also a judicial trainee at the Court of Appeal, Cologne. 2001 Second State Exam in law.
Junior Research Fellow.
Main Research Focus: Private international law, international civil procedure, Internet law.

Martin Rothfuchs, LLM
Academic Career: Studied Law and Economics at the Universities of Bayreuth and Bonn.
First Law Degree in March 2000. 2000: Research Assistant at the Chair of Prof. Fenn/Bonn.
Studied Legal Informatics in Hannover and Leuven (LL.M.)
Since March 2001 PhD-Student at the Project Group, holds a scholarship of the Konrad-Adenauer-foundation
Project: Protecting Cyber-Consumers.

Dorothee Schmidt
Academic Career: Studied Economics at the Universities of Bonn and York (UK),
May 1998-April 2001 Scholarship of the "Stiftung der Deutschen Wirtschaft"
April 2001 Masters Degree in Economics at the

University of Bonn.
Since June 2001 Junior Research Fellow at the Project Group.
Main Research Focus: Bounded Rationality and its implications for institutional design, evolutionary economics and learning theories, regulation.

Christian Schubert
Academic Career: Studied economics at the Universities of Osnabrück and Lausanne 1991-1998. Masters degree in economics.
Junior Research Fellow.
Main Research Focus: Evolutionary economics, environmental economics, law and economics.
Research Projects: Law and Creativity in Space.

Dr. jur. Indra Spiecker gen. Döhmann, LLM
Career: 1990-1994, studied law at the universities of Bonn and Mainz. 1992-1994, undergraduate Research Assistant at the Institute for Private International Law and Comparative Law at the University of Bonn. 1994-1995, Research Assistant at the Institute for Private International Law and Comparative Law at the University of Bonn. 1995-1996, Master of Laws (LLM) at Georgetown University, Washington D.C., USA, sponsored by a scholarship of the Studienstiftung des Dt. Volkes (ERP-Scholarship) and the Fulbright Commission. 1995-1998, Doctoral thesis under Prof. Dr. M. Heinze, University of Bonn, entitled "Rechtskraftwirkungen des ausländischen anerkennungsfähigen Urteils – eine Untersuchung zur Fortgeltung des ne-bis-in-idem", sponsored by a scholarship ot the Studienstiftung des Dt. Volkes. 1996-1997, Research Assistant at the University of Heidelberg. 1997-1998, Research Assistant at the Institute for Private International Law and Comparative Law at the University of Bonn. 1997-1999, trainee law clerk at the Appeals Court, Koblenz. 1999 second legal state exam. Joined the Project Group in 1998.
Research Fellow.
Main Research Focus: Law and economics, public and administrative law, procedural law.
Research Project: State Action in the Face of Uncertainty.

André Suck
Academic Career:
Masters Degree in Public Policy and Management, University of Constance, 1999.
Junior Research Fellow at the Faculty of Economics and Business Administration, University of Ghent, Belgium, EU-Project: NEAPOL; CAVA – Concerted Action on Voluntary Approaches, 2000.
Since 2001 Junior Research Fellow at the Max Planck Project Group.
Junior Research Fellow.
Main Research Focus: Environmental and Energy Regulation, Political Governance, Institutionalism, European Integration.
Research Projects: The Creation of an Internal Energy Market: European and National Approaches for the Electricity Markets Between the Requirements of Competition and Sustainability.
The European Regime: Private Actors Providing Public Service? (together with A. Héritier, E. Moral-Soriano, M. Bauer, D. Böllhoff.

Dr. Michael Timme
Academic Career: 1992-1996, studied law at the University of Osnabrück. 1996 Förderpreis der Universität Osnabrück. Stipendiat der Studienstiftung des Deutschen Volkes. 1997-1998, Research Assistant at the University of Osnabrück (under Prof. Dr. Voß).
1998-2000, judicial trainee in Schleswig-Holstein. Research Assistant at the Institut für Europäisches und Internationales Privat- und Verfahrensrecht der Christian-Albrechts-Universität zu Kiel (under Prof. Dr. Haimo Schack).
November 2000, further law degree. Since December 2000 Lawyer at the law firm Bode Bokern & Partner in Dinklage. Guest Researcher since 1997.
Main Research Focus: Network goods, civil law, law of civil procedure.
Research Project: The Prevention of Epidemic Diseases as a Network Good.

Henri Tjiong
Academic Career: 1994 Meester in de Rechten, Faculty of Law, Erasmus University Rotterdam, with a specialisation in European law and international law. 1995-1996, Fellow at the Stanford Program in International Legal Studies (SPILS), J.S.M., since 1997 JSD Candidate, School of Law, Stanford University.
Junior Research Fellow.
Main Research Focus: Regulatory competition theory, globalisation and the law, legal theory.
Research project: The Political Economy of Regulatory Competition – Towards a Dynamic Theory of the Impact of Globalization on National Legal Systems. The research project analyzses and reworks regulatory competition theory from the perspective of globalization. It emphasizes market and

technological change as the underlying forces constituting regulatory competition and regulatory arbitrage. These forces underlie the economic expansion that produces the gap between political authority and economic activity commonly associated with globalization and regulatory competition. By analysing the responses of regulators to these independent forces, the dissertation seeks to map the impact of globalization on legal systems. A case study of Dutch and European environmental regulation is presented, so as to provide an appropriate context to the new theory advanced.

Dr. Marco Verweij

Academic Career: 1991 Masters degree in economics at the Erasmus University, Rotterdam. 1992: Masters degree in Politics of the World Economy at the London School of Economics and Political Science. 1998 Doctorate in Political and Social Sciences at the European University Institute, Florence. 1993 Editor of the journal "Millennium: Journal of International Studies".
Research Fellow.
Main Research Focus: Theory of international relations; international trade and finance; international environmental policy; pluralism in decision-making processes.
Research Project: Marco Verweij focuses on the question of whether multilateral organizations and international regimes should become more deliberative. In recent years, the concept of 'deliberation' has received increasing attention. It entails decision-making through consensus-seeking and arguing between those who hold alternative views of the problems at hand and their solutions. One reason for why deliberative decision-making has enjoyed increasing attention consists of the idea that deliberation might be a partial cure for the much-lamented 'democratic deficit' in international relations. Other benefits have also been claimed for deliberation: it should lead to richer learning processes; more robust decisions; and a higher degree of implementation and consent. Various authors have therefore argued in favour of institutions that invite the participation of groups and citizens representing a wide variety of perspectives and interests. This research project considers whether an argument can be built for making the decision-making procedures of the IMF and WTO, as well as the international global warming-regime, more deliberative and pluralistic. It attempts to build such an argument by analysing the activities and decisions of the WTO and IMF during the last fifteen years, and comparing these events with the experiences of the World Bank. In addition, the highly technocratic nature of the international regime for climate change is criticized, and an alternative, more effective set of domestic and international policies is advocated.

Visiting Researchers

Prof. Dr. Walter Mattli	Switzerland/USA	3 July 2001 – 2 August 2001
Stefanie Kurzenhäuser	Germany	1 April 2001 – 31 July 2001
Prof. Dr. Elinor Ostrom	USA	10 May 2001 – 17 June 2001
Dr. Laurens Fiddick	USA	15 November 2000 – 28 February 2001
Prof. Dr. Jack Knight	USA	31 May 2000 – 1 July 2000
Dr. Ulrike Malmendier	Germany/USA	26 June 2000 – 26 July 2000
Dr. Rachel Cichowski	USA	7 February 2000 – 11 March 2000
Dr. Alison Harcourt	Great Britain	22 November 1999 – 13 December 1999
Dr. Jürgen Neyer	Germany	1 September 1999 – 30 September 1999
Prof. Dr. Wolfgang Kersting	Germany	1 August 1999 – 30 September 1999
Prof. Dr. Michael Thompson	Great Britain	1 August 1999 – 30 September 1999
Prof. Dr. Gebhard Kirchgässner	Switzerland	3 September 1998 – 11 October 1998

Fellowships of the Project Group's Researchers

Uda Bastians
Institute of Advanced Legal Studies, London, Great Britain
April–September 1998.

Dr. Michael W. Bauer
Robert-Schumann Fellow of the European Parliament, 1995
DAAD Fellow at College of Europe, Bruges, 1996-1997.

Dr. jur. Florian Becker, LL.M
DAAD scholarship, Cambridge University, October 1996–June 1997.

Melanie Bitter
European Union Scholarship, University of Tver, 1997.

Dr. Raimund Bleischwitz
FES South Korea (and various institutions)
15-23 May 1999.

Dr. Tanja A. Börzel
European University Institute, Robert Schuman Centre for Advanced Studies, Florence, Italy. Collaboration project „The Greening of the South"
Since January 1999.

Joachim Dölken
ERP scholarship of Studienstiftung des Deutschen Volkes, 1995-1996.

Dr. Henry Farrell
Postgraduate Scholarship, University College, Dublin, 1991-1992.
Fulbright Fellowship 1993-1994.
Fellowship Georgetown University, 1994-1996.
21st Century Trust Fellowships, summer 1996 and summer 1997.
European Union Social Sciences Information Resource Fellowship 2000.

Prof. Dr. rer. pol. Erik Gawel
Postdoctoral fellowship from German Research Society. 1995-1998.

Dr. Katharina Holzinger
Stipend from the bursary for gifted students fo the State of Bavaria, 1986.
Stipend from Hanns-Seidel-Stiftung for doctoral dissertation.

Dr. Dieter Kerwer
German-American Center for Visiting Scholars, Washington, D.C., USA
1 October 1999 – 31 January 2000.

Dr. Markus Lehmann
Fellowship from German Marshall Fund of the United States, Graduate Faculty, Department of Economics, New School for Social Research, New York city, 1996-1997.

Dr. Dirk Lehmkuhl
European University Institute, Florence, Italy.
July–August 1998.

Jörn Lüdemann
Scholarship holder of the Cusanuswerk.

Frank Maier-Rigaud, Ph.D. candidate
Department of Economics, Indiana University, Bloomington, USA
January 1999–July 1999; August 2000–May 2001.
Department of Economics, Indiana University, Bloomington, USA
Workshop in Political Theory and Policy Analysis.
January 1999–July 1999; August 2000–May 2001.

Dr. Leonor Moral Soriano
Postdoctoral Marie Curie Fellow at the Centre for Law and Society, Edinburgh, 1998-2000.

Martin Rothfuchs, LL.M
Scholarship from Konrad-Adenauer-Foundation.

Dorothee Schmidt
Stiftung der Deutschen Wirtschaft, May 1998-April 2001.

Dr. jur. Indra Spiecker, gen. Döhmann, LL.M
ERP stipend, Studienstiftung des Deutschen Volkes and the Fulbright Commission (Master of Laws), 1995-1996.
Studienstiftung des Deutschen Volkes and the Fulbright Commission (doctorate), 1995-1998.

Dr. Michael Timme
Studienstiftung des Deutschen Volkes, University of Osnabrück 1996.

Dr. Marco Verweij
Department of International Relations, London School of Economics, and Political Science, London, United Kingdom, 1–11 February 1999.
Institute for International Studies, Stanford University, USA.
1 February–31 July 2000.

Appointments, Academic Awards and Memberships

Dr. Tanja Börzel
Salvador de Madariaga Grant 1998, Government of Spain
Rudolf Wildenmann Award 1999
European Consortium of Political Research.

Dr. Raimund Bleischwitz
Deutsche Forschungsgemeinschaft, IHDP award, July 2000.

Prof. Dr. rer. pol. Erik Gawel
Member of international research group „Rational Environmental Policy". Rational Environmental Law", Centre for Interdisciplinary Research, University of Bielefeld, October 1998 - September 1999.
Member of the scientific panel of the Study Commission „Sustainable Energy Supplies in View of Globalization and Liberalization" of the German Parliament, Berlin, 2000/2001.
Referee for „Public Choice".

Prof. Dr. Christoph Knill
C 3 Professorship for European Studies, University of Jena

Dr. Eva Jonas
Sauermann award for dissertations of the Society of Experimental Economics.

Dr. Markus Lehmann
Award for Younger Economic Scholars of the Gesellschaft für Wirtschafts- und Sozialwissenschaften – Verein für Socialpolitik, 1997, 1998.

Dr. Leonor Moral Soriano
Member of the Spanish research group Alternativeas (ongoing from 2000).
Member of the Seminar on Comparative Law at the University of Granada (2000 ongoing).

Dr. Stefan Okruch
J.J. Becher Prize (2nd prize, merit), 1999, Johann-Joachim-Becher-Stiftung, Speyer.

Walter Eucken Prize 1998, Economics Faculty, Friedrich-Schiller University, Jena.

Wolf Osthaus
Deutsche-Telekom Prize at University of Osnabrück, 1997.

Dr. Michael Timme
Deutsche-Telekom Prize, University of Osnabrück, 1996.

Participation in Teaching

Dr. jur. Florian Becker, LL.M
Academy of Administration and Economics, Cologne. *Lecturership, until 1999.*

Dr. Raimund Bleischwitz
1999, summer term
University of Bonn. Undergraduate seminar: "International Environmental Policy".
1999/00, winter term
University of Bonn. Graduate seminar: "Waste Management Policy".
2000, winter term
University of Bonn. Graduate seminar in economic policy.
2001, summer term
University of Bonn. Undergraduate seminar in economic policy.
2001, summer term
Cologne Business School. Undergraduate economics seminar, 6 hrs/wk.

Dominik Bölhoff, MPA
Fachhochschule für Verwaltung und Rechtspflege (FHVR), Berlin. Lecturer in seminar "European Administrative Management".

Dr. Tanja A. Börzel
University of Victoria, Canada, 1-31 July 1999. Summer School, "Western European Government and Politics".

Prof. Dr. rer. Pol. Erik Gawel
University of Applied Sciences, Hamburg, Lecturer of Statistics and Business Management, since 2000.
University of Applied Sciences, Frankfurt/Main. Professor of Economics since 2001.

Dr. Katharina Holzinger
1998/99, winter term
Otto Friedrich University of Bamberg; Faculty for Social Sciences and Economics. Seminar, 2 hours weekly: "Bargaining as a Form of Political Decision-Making".
1999, summer term
Otto Friedrich University of Bamberg, Faculty for Social Sciences and Economics. Seminar, 2 hours weekly: " Theory of International Common Goods".
1999, summer term
Otto Friedrich University of Bamberg, *Faculty for Social Sciences and Economics. Seminar, 2 hours weekly: "Multi-Level Governance in the European Union".*
1999, summer term
Otto Friedrich University of Bamberg, *Faculty for Social Sciences and Economics. Seminar, 2 hours weekly: "Introduction into European Integration".*

Dr. Eva Jonas
1998, summer term
Ludwig Maximilian University, Munich, Institute of Psychology. Lecture: "Waste Disposal Policy and Morality".

Dr. Dieter Kerwer
2001, summer term
University of Bielefeld, *Faculty of Sociology, Seminar, 4 hours weekly: "Global Public Policy". With Prof. Dr. Helmut Willke and Dr. Torsten Strulik.*

Prof. Dr. Christoph Knill
1999, summer term
University of Salzburg, Senate Institute of Political Science. Seminar: "Does Less Mean More? International Comparison of the Backgrounds and Consequences of Modernizing the State".

Frank Maier-Rigaud, PhD candidate
1998/99, winter and summer
Indiana University Bloomington. Semester course: „Econometrics for Graduate Students".
1999, summer
Indiana University Bloomington. "Statistics for Undergraduate Students".

Dr. Leonor Moral Soriano
University of Granada, Law Faculty. Lecturer in Public Law.

Dr. Stefan Okruch
December 1997
Josef-Šafarik-University, Institute for Public Administration, Faculty of Law, Košice, Slovac Republic. Undergraduate lectures: "Microeconomics".
March 1998
Josef-Šafarik-University, Institute for Public Administration, Faculty of Law, Košice, Slovac Republic. Graduate lectures: "Providing Common Goods: The German Social Security System and its Economic Implications".
June 1998
Adolf-Reichwein-Gymnasium, Jena, 23-25 June 1998. "Staatsaufgaben in der Sozialen Marktwirtschaft" (The State in a German Social Market Economy). School lecture at the annual meeting of the Max Planck Society, Weimar.
June 1999
"Globalisierung: Gefahr oder Chance für die Soziale Marktwirtschaft?" (Globalization and its Consequences for Germany's Social Market Order), school lectures on the occasion of the annual meeting of the Max Planck Society, 8-11 June 1999, Dortmund.
1999/2000 winter term
University of Bayreuth, Law & Economics Faculty. Graduate lectures, 2 hours weekly: "The New Institutional Economics of Production and Production Factors".
2000/2001, winter term
University of Bayreuth, Law & Economics Faculty. Graduate lectures, 2 hours weekly: "The New Institutional Economics of Production and Production Factors".
2000/2001, winter term
University of Bayreuth, Law & Economics Faculty. Graduate seminar, 2 hours weekly: "Common Goods: Concept and Political Consequences". (With Prof. Peter Oberender)

Dr. Michael Timme
2001, summer term
Universität Osnabrück. "Vertiefungsvorlesung Schuldrecht" (intensive lectures on contractual law).

M Heads of the Project Group

Christoph Engel

Curriculum Vitae

Since 1997	Head (Law) of the Max Planck Project Group "Common Goods: Law, Politics and Economics", Bonn
1992-1997	C 4-Professor of Law, Chair of Media and Communications Law at the University of Osnabrück, Faculty of Law
1992	Habilitation (Public Law, Economic Law, European Law, Public International Law) University of Hamburg, Faculty of Law
1987-1992	Research fellow, Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg
1987	Second State Exam for Lawyers at the Oberlandesgericht Schleswig
1988	PhD in Law at the University of Tübingen, Faculty of Law
1983-1987	Research associate, Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg
1980-1983	Research associate, Prof. Hans von Mangoldt, University of Tübingen
1976-1981	Study of Law and History at the University of Tübingen and University of Geneva, Faculty of Law and Faculty of History. First State Exam for Lawyers

Academic awards and memberships

Since 1999	Member of the Board of the Studienkreis Presserecht und Pressefreiheit
Since 1997	Member of the Academic Advisory Council to the German Ministry of Economics
Since 1994	Co-editor, Archiv für Presserecht
Since 1990	Co-editor, Rabels Zeitschrift
1989	Friedwart Bruckhaus Förderpreis, Hanns Martin Schleyer Stiftung
1986	Otto-Hahn-Medaille, Max Planck Society

Presentations and conferences

Windows as an Institution Organising the Markets for Applications Software; International Seminar on the New Institutional Economics: *Organizing and Designing Markets;* 14-16 June 2001, Schloss Ringberg, Rottach-Egern

Zugang zu Infrastruktureinrichtungen. Der schwierige Weg von der Theorie zur Praxis (Access to Essential Facilities: The Difficult Path from Theory to Practice), Monopolkommission; 18 May 2001, Bonn

Der lange Weg vom Marktversagen zur staatlichen Intervention – Überlegungen an der Schnittstelle zwischen Verfassungsrecht und Volkswirtschaftslehre (The Long Way from Market Failure to Governmental Intervention – Exploring an Interface between Constitutional Law and Economics); Universität Osnabrück, Fachbereich Wirtschaftswissenschaften; 3 Mai 2001, Osnabrück

Hybrid Governance Across National Jurisdictions as a Challenge to Constitutional Law; Global Governance, Workshop; 6-7 April 2001, Florence

The Constitutional Court – Applying the Proportionality Principle – as a Subsidiary Authority for

the Assessment of Political Outcomes; Linking Political Science and the Law – The Provision of Common Goods: An Analysis in the Intersection of Two Disciplines, Conference; 1-2 February 2001, Bonn

The Role of Law in the Governance of the Internet; idem

The Role of Heroes in the Political Process. Innovations in Political Economics and Political Institutions, Conference; 25-27 January 2001, Lugano

Rechtliche Entscheidungen unter Unsicherheit (Legal Decisions under Uncertainty); Conference *Wissen, Nichtwissen, Unsicheres Wissen* (Knowledge, Ignorance, and Uncertainty); 6-8 December 2000, Potsdam

E-Commerce als Aufgabe für die Ordnungspolitik (E-commerce as an Antitrust Issue), Workshop Zentrum für Europäische Integration; 12 July 2000, Bonn

Offene Gemeinwohldefinitionen (Open Definitions of the Common Good); Symposium anlässlich des 60. Geburtstags von Prof. Mangoldt; 8 Juli 2000, Stuttgart

A Constitutional Framework for Private Governance; Common Goods and Governance Across Multiple Arenas; Conference, 30 June-1 July 2000, Bonn

Delineating the Proper Scope of Government – A Proper Task for a Constitutional Court?; International Seminar on the New Institutional Economics: The Proper Scope of Government; 15-17 June 2000, Dresden

Offene Gemeinwohldefinitionen – Annäherungsversuche verschiedener Wissenschaftsdisziplinen an den Gemeinwohlbegriff (Open Definitions of the Common Good – Transdisciplinary Attempts to Understand the Concept of Common Goods); Wissenschaftszentrum Berlin; 30 Mai 2000, Berlin

Institutions Adapted to How Our Mind Really Works; Joint Workshop MPI Human Development and MPP; 27 January 2000, Bonn

Die Grammatik des Rechts (The Grammar of Law); Osnabrücker Umweltrechtsgespräche – Osnabrück Environmental Discussions; 10-12 November 1999, Osnabrück

Systemwettbewerb (Systems Competition); Comment on Papers by Wolfgang Kerber and Christian Koenig; Workshop on Systems Competition, Zentrum für Europäische Integration; 5 November 1999, Bonn

Arbeitsmarkt und staatliche Lenkung (The Employment Market and State Guidance);Vereinigung der Deutschen Staatsrechtslehrer; 6-9 Oktober 1999, Heidelberg

Das Internet und der Nationalstaat (The Internet and the Nation State); Lecture, Max-Planck-Institute for Research into Economic Systems; 30 May 1999, Jena.

Das Internet und der Nationalstaat (The Internet and the Nation State); Deutsche Gesellschaft für Völkerrecht; 10-12 March 1999, Kiel

Institutionen zwischen Staat und Markt (Institutions between the State and the Market); Opening colloquium of the Max Planck Project Group *Common Goods: Law, Politics and Economics*; 14 January 1999, Bonn

Selbstregulierung im Bereich der Produktverantwortung (Self-regulation and Product Responsibility); Abfalltage 1998 – Waste Management Days 1998 (Gurke-Verlag); 2-3 December 1998, Köln

Die Bedeutung der Sozialpsychologie für das Verständnis und die Ausgestaltung von Institutionen (The Significance of Social Psychology for the Design and Comprehension of Institutions); Perspektivendiskussion der Geisteswissenschaftlichen Sektion der Max-Planck-Gesellschaft (Max-Planck-Institut für Bildungsforschung); 1 December 1998, Berlin

Das Internet und der Nationalstaat (The Internet an the Nation State); Gottlieb Daimler und Carl Benz-Stiftung; 13-14 November 1998, Ladenburg

The Main Shortcomings of European Waste Law (Conference on European Waste Law); IGBE´Info-Environment Service; 12 June 1998, Brussels, Belgium

Der Weg der deutschen Telekommunikation in den Wettbewerb (The Path Towards Competition of German Telecommunications); Universität Bonn, Industrierechtliches Seminar, 27 April 1998, Bonn

Die Grammatik des Rechts (The Grammar of Law); Osnabrücker Umweltrechtsgespräche – Osnabrück Environmental Discussions, 10 – 12 November 1999, Osnabrück

Arbeitsmarkt und staatliche Lenkung (The Employment Market and State Guidance) Vereinigung der Deutschen Staatsrechtslehrer, 6-9 October 1999, Heidelberg

Das Internet und der Nationalstaat (The Internet and the Nation State); Jena Lecture, Max Planck Institute for Research into Economic Systems, 30 May 1999, Jena

Das Internet und der Nationalstaat (The Internet and the Nation State); Deutsche Gesellschaft für Völkerrecht, 10-12 March 1999, Kiel

Institutionen Zwischen Staat und Markt (Institutions between the State and the Market); Opening colloquium of the Max Planck Project Group "Common Goods: Law, Politics and Economics", 14 January 1999, Bonn

Selbstregulierung im Bereich der Produktverantwortung (Self-regulation and Product Responsibility)

Abfalltage 1998 – Waste Management Days 1998 (Gutke-Verlag), 2/3 December 1998, Cologne

Perspektivendiskussion der Geisteswissenschaftlichen Sektion der Max-Planck-Gesellschaft (Max-Planck-Institut für Bildungsforschung), 1 December 1998, Berlin

Die Bedeutung der Sozialpsychologie für das Verständnis und die Ausgestaltung *von Institutionen (The Significance of Social Psychology for the Design and Comprehension of Institutions)*

Das Internet und der Nationalstaat (The Internet and the Nation State); Gottlieb Daimler und Carl Benz-Stiftung, 13-14 November 1998, Ladenburg

Tbe Main Shortcomings of European Waste Law; Conference on European Waste Law (IGBE Info-Environment Service), 12 June 1998, Brussels, Belgium

Der Weg der deutschen Telekommunikation in den Wettbewerb (The Path Towards Competition in German Telecommunications), Universität Bonn, Industrierechtliches Seminar, 27 April 1998, Bonn

Internet und lokale Werte (Tbe Internet and Local Values); Gottlieb Daimler und Carl Benz-Stiftung, 26-27 January 1998, Ladenburg

Internet und lokale Werte (The Internet and Local Values); Gottlieb Daimler und Carl Benz-Stiftung; 26-27 January 1998, Ladenburg

Teaching activities

2001/2002
Winter term University of Bonn: 2 hours per week "Zur Person in Recht und Wirtschaft. Juristisches und ökonomisches Seminar" ["The View of the Person in Law and Economics: Legal and Economic Seminar"] (together with Prof. Jakobs and Prof. Schweizer)

2001
Spring term University of Bonn and University of Witten-Herdecke: Legal and Economic block seminar "Cyber Law and the New Economy" (together with Prof. Hutter)

2000/2001
Winter term University of Bonn: 2 hours per week Legal and Economic Seminar on the "Economic Analysis of Liability Law" (together with Prof. Schweizer and Prof. Wagner)

1999/2000
Winter term University of Bonn: 2 hours per week "Verfassungsrechtlicher Eigentumsschutz, juristisches und ökonomisches Seminar" (Constitutional Protection of Property, A Legal and Economic Seminar) (together with Prof. Pietzcker and Prof. Schweizer, Bonn)

1999/2000
Winter term University of Osnabrück: 2 hours per week block seminar "Systemtheorie und Recht" (Systems Theory and the Law) (together with Prof. Schulz, Osnabrück)

1999
Summer term University of Bonn: 2 hours per week block seminar "Arbeitsmarkt und staatliche Lenkung" (The Regulation of Labour Markets) (jointly with Prof. Zimmermann [Bonn], Prof Berthold [Würzburg] and Privatdozent Dr. Sesselmeier [Darmstadt])

1998/1999:
Winter term University of Bonn: 2 hour course per week in "Wirtschaftsrecht" (Economic Law)

1998/1999
Winter term University of Osnabrück: Block seminar "Das Recht der Netzwerkgüter" (The Law of Network Goods)

1998/99
Winter term University of Bonn: Course "Recht und Ökonomie" (Law and Economics)

1998
Summer term University of Bonn: Seminar "Abfallrecht und Abfallpolitik" (Waste Management Law and Policy) (together with Dr. Ludger Giesberts, Attorney at Law, Cologne)

1997/98
Winter term University of Osnabrück: Seminar "Medien und Telekommunikation: Grenzgebiete und Vergleich der Regelungskonzepte" (Media and Telecommunications. Border Areas and a Comparison of Regulatory Concepts) (together with Prof. Dr. Matthias Schwarz, Attorney at Law, Munich)

Doctoral and postdoctoral theses completed under Christoph Engel's guidance

Michael Timme
Die juristische Bewältigung des ökonomischen Netzwerkgutes der Epidemieprävention in

Rechtsgeschichte und Gegenwart (The Prevention of Epidemics as a Network Good. Insights from Economic Theory and Legal History into Legal Reform)

Roswitha Kleineidam
Ausgewählte Probleme der Abfallwirtschaft in Deutschland und den USA. Ein ökonomisch informierter Rechtsvergleich (Selective Problems of Waste Management Policy in Germany and the USA. A Legal Comparison Aided by Economic Tools)

Uda Bastians
Verpackungsregulierung ohne den Grünen Punkt? Die britische und die deutsche Umsetzung der Europäischen Verpackungsrichtlinie im Vergleich (Regulating Packaging Waste without the Green Dot? Comparison of English and German Packaging Waste Management Law)

Activities in academic self-administration

Selection Committee Max-Planck-Institut zur Erforschung von Wirtschaftssystemen (Max Planck Institute for Research into Economic Systems), Jena

Selection Committee Successor Prof. Simon, Max-Planck-Institut für europäische Rechtsgeschichte (Max Planck Institute for European Legal History), Frankfurt/Main

Selection Committee Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht (Max Planck Institute for Foreign and International Patent, Copyright and Competition Law), Munich

Selection Committee Successor Prof. Frowein, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Max Planck Institute for Comparative Public Law and International Law), Heidelberg

Scientific Advisory Board of the Federal Ministry of Economics

Prof. Engel has been a member of the Scientific Advisory Board of the Federal Ministry of Economics since 2 June 1997. He has actively participated in the preparation of the following advisory opinions:

6-7 July 2001
Competitive policy for the cyberspace.

16 December 2000
Letter concerning the reform of the mandatory retirement insurance.

1 July 2000
Reform of European Anti-Trust Policy.

26-27 May 2000
Current forms of corporatism.

15-16 October 1999
Media regulation

4 March 1999
Letter on exchange rate targets and currency bands.

18-19 December 1998
Reorganization of the financing system of the European Union.

2 October 1998
Letter on the reform of income and corporate tax.

20-21 February 1998
Basic reform of the mandatory retirement insurance.

11 June 1997
Letter concerning the protocol to Article 222 of the EU treaty, regarding the position of public entities as lenders of last resort for public banks.

11 June 1997
Letter concerning the chapter on employment in the Maastricht II treaty.

6-7 July 2001
Competitive policy for cyberspace

16 December 2000
Letter concerning the reform of the mandatory retirement insurance scheme

1 July 2000
Reform of European Anti-Trust Policy

1 July 2000
Reform of the European cartel policy

26-27 May 2000
Existing forms of corporatism

15-16 October 1999
Public media regulations

4 March 1999
Letter on exchange rate targets and currency bands

18-19 December 1998
Reorganization of the financing system of the European Union

2 October 1998
Letter on the reform of income and corporate tax

20-21 February 1998
Basic reform of the mandatory retirement insurance scheme

11 June 1997
Brief (or letter?) concerning the chapter on employment in the Maastricht II contract

11 June 1997
Letter to the protocol to Article 222 of the EU contract regarding the entry duty of public legal bodies for their public legal banks

Major publications

Monographs:

Abfallrecht und Abfallpolitik. 250 p. In press.

Medienordnungsrecht (Law and Economics of International Telecommunications 28) 1996. Baden-Baden: Nomos. 144 p.

Privater Rundfunk vor der Europäischen Menschenrechtskonvention (Law and Economics of International Telecommunications 19) 1993. Baden-Baden: Nomos. 487 p.

Planungssicherheit für Unternehmen durch Verwaltungsakt. 1992. Tübingen. 195 p.

Völkerrecht als Tatbestandsmerkmal deutscher Normen (Tübinger Schriften zum internationalen und europäischen Recht 19) 1989. Berlin. 359 p.

Articles in edited volumes:

Die Grammatik des Rechts. 2001. Hans-Werner Rengeling/Hagen Hof (eds.): In *Instrumente des Umweltschutzes im Wirkungsverbund*. Baden-Baden. 17-49.

Arbeitsmarkt und staatliche Lenkung. 2000. In *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 59. 56-98.

Das Internet und der Nationalstaat. 2000. In *Berichte der Deutschen Gesellschaft für Völkerrecht 39*. 353-425.

Die öffentliche Hand zwischen Innen- und Außensteuerung. 1998. Hans-Günther Henneke (ed.). In *Organisation kommunaler Aufgabenerfüllung* (Schriften zum deutschen und europäischen Kommunalrecht 6). Stuttgart. 145-222.

Legal Experiences in Competition among Institutions. Lüder Gerken (ed.). 1995. In *Competition among Institutions* (Hayek Symposium 1994). London. 89-118.

Articles in joumals:

The European Charter of Fundamental Rights. A Changed Politial Opportunity Structure and its Normative Consequences. 2001. In *European Law Journal* 7. 151-170.

Die Grammatik des Rechts. In Hans-Werner Rengeling/Hagen Hof (ed). Instrumente des Umweltschutzes im Wirkungsverbund. Baden-Baden 2001, 17-49.

Delineating the Proper Scope of Government: A Proper Task for a Constitutional Court? 2001. In *Journal of Institutional and Theoretical Economics* 17. 187-219.

Institutionen zwischen Staat und Markt. 2001. In *Die Verwaltung* 34, 1-24.

Selbstregulierung im Bereich der Produktverantwortung. 1998 [published 1999]. In *Staatswissenschaften und Staatspraxis* 9. 535-591.

Eigentumsschutz für Unternehmen. 1993. In *Archiv des Öffentlichen Rechts*. 169-236.

Adrienne Héritier

Curriculum vitae

Since 1999	Head (Political Science) of the Max Planck Project Group "Common Goods: Law, Politics and Economics", Bonn
1995-1999	Chair for Public Policy, Department of Political and Social Sciences, European University Institute, Florence
1989-1995	C4-Professor of Political Science at the University of Bielefeld, Faculty for Sociology
1981	C2-Professor of Political Science at the Faculty of Political and Administrative Science, University of Constance
1975	PhD in Sociology at the Justus-Liebig University of Gießen
1967-1971	Masters degree in Sociology, Political Science and Psychoanalysis at the Justus Liebig University of Gießen

Academic awards and memberships

Since 2001	Honorary Professorship at Humboldt University, Berlin
1996-1997	Member of Scientific Advisory Council on the Environment of the German Government
Since 1995	Member of Berlin-Brandenburg Academy of Sciences and Humanities
1994	Gottfried Wilhelm Leibniz Prize bestowed by Deutsche Forschungsgemeinschaft (jointly with Helmut Willke)
1991-1995	Chief Editor of "Politische Vierteljahresschrift"
1987-1991	Delegate of the Council of the International Political Science Association
1986-1995	Member of the Executive Committee of the German Association of Political Science

Presentations and conferences

Differential Europe: New Opportunities and Restrictions for Member States; Scandinavian Consortium for Organizational Research (Scancor) Workshop Transnational Regulation and the Transformation of States, Stanford University, 22-23 June 2001, Palo Alto, CA, USA

Regulator-Regulatee Interaction in the Liberalized Utilities; Access and Contract Compliance in the Rail Sector; ECSA 7th Biennial International Conference, 31 May – 2 June 2001, Madison, WI, USA

Composite Democratic Legitimation in Europe: The Role of Transparency and Access to Information; Diffuse Democracy in the EU, Centre d'Etudes et de Recherches Internationales (CERI), 18-19 April 2001, Paris, France

National Regulatory Reform in an Internationalized Environment; 29th ECPR Joint workshop sessions, Institute of Political Studies (IEP), 6-11 April 2001, Grenoble, France

Governance across Multiple Arenas; Linking Political Science and the Law. The Provision of Common Goods: An Analysis at the Intersection of Two Disciplines (Max Planck Project Group "Common Goods: Law, Politics and Economics"), 1-2 February 2001, Bonn, Germany

The Politics of Public Services in European Regulation; Democratic and Participatory Governance:

From Citizens to Holders? (European University Institute), 14-15 September 2000, Florence, Italy

Convergences de l'action publique en Europe; European Integration: Institution Building and Transformation of the State (Science Po) 26-27 May 2000, Paris, France

Differential responses to European Policies; International Workshop on Europeanization: Concept and Reality (Research Unit on Europeanization (RUE) Bradford University), 5-6 May 2000, Bradford, UK

Strategie per Evitare Situazioni di Stallo nella Comunita Europea; University Bologna, 11 April 2000, Bologna, Italy

Policy-making by Subterfuge: Interest Accommodation, Innovation and Substitute Democratic Legitimation in Europe – Perspectives from Distinctive Policy Areas; Leiden Honours Class on European Governance (Leiden University), 3 March 2000, Leiden, Netherlands

Second Order Institutionalization in Europe; Workshop on 'The Institutionalization of Europe', Laguna Beach, University of California, 13-14 November 1999, Irvine, USA

European Rail Regulation; Regulation Initiative (London Business School (LBS)), 22-24 September 1999, London, UK

European Policy-making between Liberalization and General Interest Goals: The Case of the Network Industries; The Coherence of the EU as a Polity (Centre for European Politics, Economics and Society (CEPES) University of Oxford) Research Seminar Series, 30 April–7 May, 1999, Oxford, UK

Services publics après la Libéralisation; Service publics nationaux er construction européenne (Institut de Recherche Interdisciplinaire en Socio-Economie (IRIS)), 8 March, 1999, Paris, France

Teaching activities

European University Institute, Florence

Five three-hour sessions per term:

2001

Summer term: Theories of Institutional Change: Discussed on the Basis of the European Polity

2000

Summer term: The European Regulatory Regime Between Market Integration and General Interest Goals: The Public Utilities (energy, telecoms, transport)

Winter term: Comparative Case Studies in European Studies and Internal Relations

1999

Summer term: European Policy-making (with Vivien Schmidt, Boston University)

Winter term: Comparative Case Studies in European Studies and International Relations (with Thomas Risse, European University Institute, Florence)

Doctoral and postdoctoral theses completed under Professor Héritier's guidance

Postdoctoral defence:

Christoph Knill, Fernuniversität Hagen
The Transformation of National Administrations in Europe: Patterns of Change and Persistence

Doctoral defences: European University Institute

Dieter Kerwer
Reforming Transport in Italy: A Case Study in Europeanization

Eckard Kämper
Decision-Making under Risk in Organizations: The Case of German Waste Management

Tanja Börzel
The Domestic Impact of Europe: Institutional Adaptation in Germany and Spain

Sandra Lavenex
The Europeanization of Refugee Policies: Between Human Rights and Internal Security

Nektarios Alexopoulos
The European Commission as Policy Innovator: Bureaucratic Politics in Perspective

Sonja Bugdahn
Capacity-Building against National Traditions. The Implementation of Access to Environmental Information Directives

Charalampos Koutalakis
Local Development Strategies in the EU: An Evaluation of their Impact on the Greek System of Local Governance

Michael Bauer
The Transformation of the European Commission: A Study of Supranational Management Capacity in EU Structural Funds' Implementation in Germany

Rosarie McCarthy
Comparing Institutional Change: A Study of Partnership in the Implementation of European Union Structural Funds in Brittany and the Mid-West of Ireland

Ole Resen
From Bismarck to Benchmark? German Federal Administration at the Crossroads

Activities in academic self-administration, in business, politics, etc.

Selection Committee Successor Prof. Von Maydell, Max-Planck-Institut für ausländisches und internationales Sozialrecht (Max Planck Institute for Foreign and International Social Law), Munich

Selection Committee Successor Prof. Frowein, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Max Planck Institute for Comparative Public Law and International Law), Heidelberg

Selection Committee Successor Prof. Scharpf, Max-Planck-Institut für Gesellschaftsforschung (Max Planck Institute for the Study of Societies), Cologne

Member of Presidential Commission: Institut für internationales und vergleichendes Sozialrecht (Institute for International and Comparative Social Law), Munich

Evaluating Institutions:

Strategic Review Committee: European University Institute, Florence

Evaluation Committee: Centre for Social Policy Research, University Bremen

Evaluation Committee: FernUniversität Hagen

Major publications

Monographs (selection):

Policy-Making and Diversity in Europe: Escape from Deadlock. 1999. Cambridge: Cambridge University Press. 113 p.

City of the Poor, City of the Rich. Politics and Policy in New York City. 1992. Berlin/New York: De Gruyter. 274 p.

Policy Analyse – Eine Einführung (An Introduction to Policy Analysis). 1987. Frankfurt/New York: Campus.184 p.

Politikimplementation – Ziel und Wirklichkeit politischer Entscheidungen (Policy Implementation – The Target of Political Decisions and their Reality). 1980. Königstein: Hain. 239 p.

Co-authored books (selection):

2001. With Dieter Kerwer, Christoph Knill, Dirk Lehmkuhl, Michael Teutsch, Anne-Cécile Douillet.

Differential Europe: EU Impact on National Policymaking. Boulder, CO: Rowman & Littlefield., 342p.

1996. With Ch. Knill, S. Mingers: *Ringing the Changes in Europe – Regulatory Competition and Transformation of the State: Britain, France, Germany*. De Gruyter Berfin/New York, XIV. 363 p.

Edited volumes (selection):

Common Goods: Reinventing European and International Governance. Boulder, CO: Rowman & Littlefield. In print.

1996. *Institutions and Political Choice. On the Limits of Rationality* R. Czada, A. Héritier, H. Keman (eds.). Amsterdam: Vrije Universiteit Press. 297 p.

1993. *Policy-Analyse. Kritik und Neuorientierung*. Sonderheft Politische Vierteljahresschrift. Wiesbaden: Westdeutscher Verlag. 485 p.

Articles in edited volumes (selection)

Composite Democracy in Europe: The Role of Transparency and Access to Information. O. Costa, H. Jabko, Ch. Lequesne and P. Magnette (eds.). In *The Diffusion of Democracy: Emerging Forms and Norms of Democratic Control in the European Union*. To be published in 2002.

New Modes of Governance in Europe; Policy-Making without Legislating. A. Héritier (ed.). In *Common Goods: Reinventing European and International Governance*. Lanham/Boulder/New York/ Oxford: Rowman & Littlefield. In print.

Co-authored with Leonor Moral Soriano

Politics and Jurisdiction in European Electricity Policy – Problem Definition, Conflict Solution and Legitimation. Submitted to *European Law Journal*.

Regulator-Regulatee Interaction in the Liberalized Utilities. D. Coen and A. Héritier (eds.). In *Regulating Utilities: The Creation and Correction of Markets*. To be submitted to Palgraves.

Public Service Provision after Liberalization. D. Coen and A. Héritier (eds.). 2002. In *Regulating Utilities: The Creation and Correction of Markets*. To be submitted to Palgraves.

Differential Europe: National Administrative Responses to Community Policy. M. Cowles, J. Caporaso and T. Risse (eds.). 2001. In *Transforming Europe. Europeanization and Domestic Change*. Cornell University Press. 44-59.

Overt and Covert Institutionalization in Europe. A. Stone, W. Sandholtz, N. Fligstein (eds.). 2001. In *Structuring the European Space*. Oxford: Oxford University Press.

Co-authored with S. Schmidt

After Liberalization. Public Interest Services and Employment in the Utilities. F. Scharpf, V. Schmidt (eds.), 2000. In *Welfare and Work in the Open Economy. Volume II Diverse Responses to Common Challenges*. Oxford: Oxford University Press. 554-96.

State and Society in German Social Policy: "Path-dependent" responses to new challenges, M. Muramatsu, F. Naschold. De Gruyter (eds.). 1997. In *State and Administration in Japan and Germany. A Comparative Perspective on Continuity and Change*. Berlin/New York. 133-56.

Articles in journals (selection)

Market Integration and Social Cohesion: The Politics of Public Services in European Regulation. J. Richardson (ed.). In *Journal of European Public Policy* 8. 825-52.

Wirtschaftsdynamik und politische Langsamkeit. Europa nach dem Ost-West-Konflikt. R. Czada, H. Wollmann. 2000. In *Leviathan*, Special Volume 19/ 1999. 141-155.

Elements of Democratic Legitimation in Europe: An Alternative Perspective, 1999. *Journal of European Public Policy* 6. 269-82.

Policy-making by Subterfuge: Interest Accommodation, Innovation and Substitute Democratic Legitimation in Europe – Perspectives from Distinctive Policy Areas. 1997. *Journal of European Public Policy*. 4, 171-89.

Market-making Policy in Europe: Its Impact on Member-State Policies. The Case of Road Haulage in Britain, the Netherlands, Germany and Italy. F.W. Scharpf (ed.). 1997. In *Journal of European Public Policy*, special volume on Governance in the internal market, 4. 539-55.

The Accommodation of Diversity in European Policy-making and its Outcomes: Regulatory Policy as a Patchwork. 1996. *Journal of European Public Policy* 3. 149-67.

Policy-Analyse. Elemente der Kritik und Perspektiven der Neuorientierung. A. Héritier (ed.). 1993. In *Policy-Analyse. Kritik und Neuorientierung. Politische Vierteljahresschrift,* special edition. 9-36.

Institutionelle Interessenvermittlung im Sozialsektor – Strukturmuster verbandlicher Beteiligung und deren Folgen. 1989. *Leviathan* 17. Jahrgang, No. 1. 108-26.