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**Community and Autonomy Multilevel Policy-Making
in the European Union**

FRITZ W. SCHARPF

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European University Institute
Badia Fiesolana
I – 50016 San Domenico (FI)
Italy

COMMUNITY AND AUTONOMY MULTILEVEL POLICY-MAKING IN THE EUROPEAN UNION

Fritz W. Scharpf

INTRODUCTION

The completion of the internal market of the European Union has created a political dilemma for Western Europe from which there is no easy escape. On the one hand, the capacity of member states to shape the collective fate of their citizens by means of their own policies has been reduced. Aside from the factual constraints and limits to action generated by integration into the world economy and the globalization of capital markets, the formal policy-making capacities of the Western European states have been significantly limited by the guarantee of the four basic freedoms of movement within the internal market - of goods, persons, services, and capital. Thus, Western European nation states have less authority today than they did twenty years ago for resolving economic or economically generated problems.

On the other hand, the policy making capacities of the Union have not been strengthened nearly as much as capabilities at the level of member states have declined. In spite of the Commission's monopoly on policy initiatives and the return to qualified-majority voting in the Council of Ministers, the important decisions of the Community continue to come out of multilateral negotiations between national governments. They are cumbersome and time consuming, and they are easily blocked by conflicts of interest between member states.

These conditions are hard to change. National governments, which also control the constitutional development of the Community, resist any reduction of their powers (Scharpf 1988). But as long as the Community lacks its own democratic legitimation, normative reasons also speak against the rapid diminution of the powers of these governments. In the absence of European media, European political parties, and genuinely European processes of public-opinion formation, constitutional reforms could not, by themselves, overcome the present democratic deficit at the European level (Grimm 1992; Kielsmansegg 1992; Scharpf 1992a). In the short term, at any rate, expanding the legislative and budgetary powers of the European Parliament could render European decision processes, which are already much too complicated and time-consuming, even more cumbersome.

In reaction to Maastricht, some are now hoping for a re-nationalization of policy responsibilities, and they want to halt or even reverse the process of European integration. This is definitely not my view. But it seems to me equally implausible that national governments could simply continue to enlarge the competencies of the European Union while comforting themselves with the thought that they would still be able to control actual decisions in the Council of Ministers. The problem-solving capacities of member states and the integrity of their democratic processes are impaired even by agreed-upon European decisions

(and even more so, by European deadlocks). There is no question any more that European democracies are discrediting themselves when, for an ever growing number of urgent problems, national political leaders must admit their impotence by calling for "European solutions," while in Brussels interminable negotiations will, at best, lead to compromises that are declared unsatisfactory by all concerned, and for which nobody is willing to assume political responsibility.

Thus, even after Maastricht, the aim must be to improve the policy-making capacities of the European Union. However, it appears equally important to defend or win back the problem-solving capacity of member states. At first glance, these seem to be contradictory goals, which might be combined only if the respective areas of jurisdiction of the Union and of the member states were clearly separated, and if policy formation processes at both levels were uncoupled. But this is exactly what cannot be presumed.

I. SEPARATE OR INTERLOCKING POWERS?

The separation of powers was characteristic of the original model of United States federalism. There, the federal government and the states were expected to discharge their respective legislative, fiscal, and administrative responsibilities independently of one another. By contrast, in the German tradition of interlocking federalism, the legislative and fiscal powers of the nation as a whole are almost all exercised by the federal government. But for the formulation of its policies, the national government usually depends on the agreement of state governments in the Bundesrat, and for their implementation it must rely on the administrative systems of the states.

During the postwar period, the implicit compulsion to reach consensus among independent governments differing in their party-political make-up was widely viewed in a positive light. It was seen as another device for preventing the abuse of state power by dividing and constraining its exercise (Hesse 1962). In the reformist political climate of the early 1970s, however, and in the economically turbulent period thereafter, academic and political discussion has focused more on the corresponding disadvantages of interlocking federalism (Scharpf, Reissert, and Schnabel 1976): The dependence of national policy on the approval of state governments reduces the ability of the federal government to act flexibly and decisively in coping with new and rapidly changing problem situations. Conversely, being tied to uniform federal rules, state governments also have little autonomy to develop their own solutions to specific regional problems. Moreover, the predominance of negotiations between the federal and state levels generally lessens the effectiveness of parliamentary controls on both levels; state parliaments, in particular, usually find themselves called upon to merely ratify outcomes which they are not expected to influence. This is a major cause of the much lamented decline of parliamentarism at the state level in Germany (Große-Sender 1990).

In terms of formal organization, the European Union has followed the German rather than the American model. The Union does not have its own administrative base, and its resolutions require the approval of the national governments represented in the councils of ministers and in the European Council. Thus in Europe as well as in Germany, effective policy-making can only result from negotiations between politically autonomous governments. Nevertheless, these formal similarities should not obscure the significance of

substantive differences: The German federal government can draw on its parliamentary and electoral legitimation to exert political pressure on the states, and in negotiations it can bring to bear the weight of its larger budget. In contrast, the European Commission is completely dependent on the governments of the member states in both political and fiscal terms. Thus, in institutional terms, the center is much weaker in Europe than it is even in Germany, and important cultural and socio-economic differences are also pointing in the same direction.

Even though the interlocking German system of federalism can only act through negotiations, agreement among the states and between the federal and state governments was, at least before the German unification, greatly facilitated by three factors: by a relatively homogeneous political culture and a nationwide public opinion that was primarily interested in political issues at the federal level; by political parties, operating at both levels, whose competition served to discipline the pure pursuit of state interests; and by a high degree of economic and cultural homogeneity. All of these facilitating factors are absent in negotiations on the European level.

The European Union is, both in regards to political culture and in socio-economic terms, less homogeneous than any functioning nation state. Moreover, in contrast to most nation states, the desirability of "uniform living conditions" in Europe cannot even be assumed (Majone 1990a). In addition, European-level politics also

lacks the unifying factors of party competition that transcends the bounds of member states and of a public opinion whose primary focus is on central-state political issues. Thus, in its negotiations with member states, the Commission can neither count on interests and action orientations that are largely similar, nor can it mobilize party loyalties or use the pressure of public opinion in its own support. Without a common foundation in an encompassing, normatively binding political system with effective sanctions, the parties involved in European-level negotiations confront one another as independent actors, each in pursuit of its own, highly distinct, and often opposing interests, each oriented in terms of its own, culturally stabilized interpretation of the situation.

It is true, of course, that even negotiations between heterogeneous parties may result in policies that promote the common interest - but such negotiations are difficult and always threatened by failure. As a rule, their success presupposes complicated deals for compensating interests that have been, or claim to have been, adversely affected (Scharpf 1992b). In short: even in comparison to the complicated and time-consuming processes of interlocking federalism in Germany, the policy-making capacities of the EU are strictly limited, and it will be almost impossible to increase them significantly in the immediate future.

This suggests two normative conclusions: On the one hand, the limited policy-making capacities of the European Union ought to be used sparingly, and only for issues that need to be settled on the European level. On the other hand, an effort should be made to restrict as much as possible the negative repercussions of European integration on the problem-solving capacities of national politics. In this regard, the interlocking federalism of Germany, where the states have practically lost all legislative powers, would be a most unsuitable model indeed. The question is whether, structural similarities notwithstanding, the practice of European policy making may avoid the course taken in German federalism.

II. SUBSIDIARITY, DUAL FEDERALISM, AND FEDERAL COMITY

At present, hopes are placed on the explicit incorporation of the subsidiarity principle in the Maastricht treaty, which is supposed to constrain the presumed trend toward an expansion, and extensive interpretation, of European competencies. There is no question that this may have some influence on the general political climate in Europe. But if subsidiarity is expected to provide a justiciable constraints on European competencies, then Article 3b of the Maastricht Treaty provides few grounds for optimism. It reads:

"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

To begin with, the principle is not supposed to apply to matters under exclusive European jurisdiction - which, however, is nowhere explicitly defined. Secondly, in view of the extreme differences in the economic development and financial and administrative capacities of member states, it will always be possible to argue - if the matter falls within the purview of European powers at all - that "the objectives of the proposed action cannot be sufficiently achieved by the Member States..." And finally, there will be hardly any field of public policy for which it will not be possible to demonstrate a plausible connection to the guarantee of free movement of goods, persons, services, and capital - and thus to the core objectives of the European Union.

Under such conditions, the European Court would be well advised to respect the political discretion of the legislative institutions responsible. The U.S. Supreme Court, in any case, has desisted since 1937, for just such reasons, from setting constitutional limits on the federal power to regulate "interstate commerce" (which corresponds most closely to the core competencies of the European Union. In the same way, the German Federal Constitutional Court has consistently refused, when reviewing exercises of "concurrent federal powers" under Article 72 (2) of the Basic Law, to challenge the (mostly implicit) assumption of the legislature that there was a "need for federal regulation" in order to "assure legal and economic unity". Regardless of the presence or absence of a subsidiarity clause, the same outcome is to be expected if a multilevel constitution is constructed according to a unipolar logic. This, ironically, is always the case when such a constitution seeks to limit the scope of central government by enumerating its (primarily economy-related) responsibilities and competencies, while reserving to the constituent states the unspecified residual of governmental authority. Under such conditions, and with only minimal respect for the maxims of judicial self-restraint in the grey areas of the constitution, it is much easier for courts to be permissive in interpreting the explicitly enumerated powers of central government than it would be for them to provide conceptual substance, and substantive protection, to the unspecific notion of residual state powers.

The outcome could only be different if the constitutional system were structured according to a bipolar rather than a unipolar logic, specifying the core responsibilities and competencies of both levels of government with equal emphasis. If an exercise of central-government power were challenged under such conditions, courts would not merely be called upon to examine the factual conditions that might justify the measure in question, but they would also have to consider its potential impact on state authority. As a consequence, judicial review (and, in anticipation, political debate) would need to balance claims of equal constitutional legitimacy in the light of specific cases (Scharpf 1991). An important example was provided by the doctrine of "dual federalism" which the U.S. Supreme Court had applied before the "New-Deal revolution" of 1937. It had recognized a "police power" reserved to the states whose sphere the federal government was not permitted to invade, even in the exercise of its own "commerce power." Conversely, the states were also prevented from encroaching upon the federal prerogative of regulating interstate commerce. Dual federalism ultimately broke down when the expansion and growing interdependence of government activity at both levels frustrated the search for clear lines of demarcation between federal and state areas of responsibility. Since federal programs appeared to be indispensable in the economic crisis of the 1930s, dual federalism was jettisoned and, as far as the Supreme Court is concerned, the federal government now has a blank check whenever it chooses to employ the commerce power vis-à-vis the individual states (Hunter and Oakerson 1986).

The case law of the German Federal Constitutional Court shows, however, that this was by no means a logically inevitable conclusion. In its interpretation of the federal constitution, the court recognizes the existence of positively defined state responsibilities in the area of education and cultural affairs, including the regulation of the media (BVerfGE 6, 309; 12, 205). At least in this area of "Kulturhoheit", therefore, German constitutional law also must cope with the implications of "dual federalism" in a highly interdependent world. Unlike the pre-1937 U.S. Supreme Court, however, the German Court never assumed that the spheres of federal and state responsibilities could be clearly separated. Thus, it had no difficulty in acknowledging that the federal government, when exercising its own powers, might also pursue goals pertaining to cultural policy. By the same token, it is also presumed that the states, in exercising their cultural responsibilities, may employ measures that could interfere with the exercise of federal powers (e.g. with the power to conduct foreign relations). At the same time, however, both levels of government are obligated, even when acting within the limits of their uncontested jurisdictions, to act in due consideration of the responsibilities of their counterparts on the other level, and to avoid interference as far as possible. This principle of "federal comity" (Bundestreue) is supposed to "...set limits to the egoism of federal and state governments in as far as their constitutional authority would otherwise have given them the freedom and opportunity to "ruthlessly" realize their own conceptions and exclusively pursue their own interests." [BVerfGE 31, 314, 354f.]

Thus, the recognition of a bipolar constitutional order prevents the one-sided orientation of judicial review toward the enumerated powers of the central government, which is otherwise characteristic of federal states. It requires the court to balance competing jurisdictional claims with a view not only to their substantive justification, but also to the manner in which powers are exercised. The criterion is mutual compatibility, and the characteristic outcome is not the displacement of one jurisdiction by the other, but rather the obligation of both to choose mutually acceptable means when performing the proper functions of government at each level.

Applying this logic to the European Union, one would have to demand judicial recognition or, better still, the explicit specification of reserved powers of national (and subnational) governments in the constitutive treaties. The Maastricht treaty already makes a start in this direction by postulating, in Article F (1):

"The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy."

This would need to be further developed. Ultimately, of course, the content of the identity-related reserved powers of member states must be defined by political processes rather than scholarship. There is reason to think, however, that in the relationship between the Union and its members, just as in federal-state relations within the nation state, the core of reserved rights would lie in the protection of the cultural and institutional identity of the members. This certainly includes education and cultural policy and the shaping of the country's internal political and administrative institutions and procedures. In addition, one probably would also have to include historically evolved economic and social institutions. Neither the nationalized health service in Great Britain nor the corporatist self-administration of social-security systems in Germany, neither the legalistic "works constitution" in Germany nor the informal practices of workplace-based industrial relations in Great Britain should as such be a legitimate object of European-wide harmonization (cf. Wieland 1992).

But how much would be gained in practical terms by the recognition of reserved powers of national (and subnational) governments? The European Union is primarily and legitimately charged with safeguarding the four basic freedoms and regulating transnational problems - which also defines the obvious sources of potential conflict. The two opposing principles of national identity and transnational openness do not designate concrete subject areas between which a more or less precise dividing line could be drawn. Instead they define perspectives from which certain matters may be evaluated and regulated. The television directive, for instance, whose constitutionality was challenged by the German states, regulates aspects of a branch of the service sector which is of indisputable economic significance. On the other hand, the states are equally justified in pointing to the importance of media policy for their cultural autonomy. Similarly, rules for the recognition of semesters studied abroad or of foreign educational degrees doubtlessly interfere with national or subnational cultural autonomy, but their direct relation to the freedoms of movement in a unified European market are equally indisputable. The same holds for the conflict between the granting of voting rights to EU citizens in local elections and the institutional autonomy of subnational governments, or between a European company law and national systems of industrial relations.

In short: Just as the U.S. Supreme Court's post-1937 decisions have denied the possibility of substantively defined areas of state jurisdiction that are beyond the reach of the federal commerce power, so there cannot be any fields of national or subnational competence which cannot be touched by European measures safeguarding the four basic freedoms or regulating transnational problems. In an increasingly interdependent world, the goal can no longer be the clear separation of spheres of responsibility in accordance with the model of dual federalism.

The crucial question is therefore whether the relatively vague maxims of federal comity, which have not really been a major focus of German constitutional discourse, can acquire the analytical rigor and practicality to resolve the central dilemma of the European polity. The answer would have to be negative if the jurisdictional difficulties of multilevel policy-making were a zero-sum game in which any consideration

for the responsibilities of another level of government necessarily entailed corresponding sacrifices in the realization of one's own goals. If that were the case, Europe would also be involved in the basic power conflict between national and subnational authorities which, in the history of nation states, has almost inevitably ended either in complete centralization or in disintegration (Riker 1964; Hoffman 1966). Under such conditions, the maxims of federal comity might, at best, result in dilatory compromises, equally unproductive and unsatisfactory to all.

My paper is intended to show that this need not be the case: There are forms of multilevel policy-making in which central authority, instead of weakening or displacing the authority of member states, accepts and strengthens it - and in which member states, on their part, will respect and take advantage of the existence of central competencies in devising their own policies. My supporting arguments will be developed in three steps. First, I will refer to the example of technical standardization in order to show that different forms of coordination can be used to achieve similar purposes while differing significantly in the degree to which they restrict the freedom of coordinated subsystems. Secondly, I will argue that the European Commission has begun to experiment with techniques of regulation that are less restrictive of national policy choices than the previously practiced strategy of harmonization - and which, for this reason, are also less likely to be blocked by disagreement in the councils of ministers. Finally, I seek to show that this new Commission strategy can only succeed if the member states will also adopt policies that are more compatible with the objectives of the European Union.

III. DIGRESSION ON THE COORDINATION OF TECHNICAL SYSTEMS¹

¹ I thank Philipp Genschel for helpful suggestions and criticisms of this section.

The European Union is not, and cannot become, a unitary nation state; it can at best become a multi-level political system in which national and subnational units must retain their legitimacy and political viability. Thus, while for (many) nation states centralization and political, cultural, and legal unification were (and still may be) considered legitimate purposes in their own right, that is not true of Europe. The legitimacy of European rule making must rest on, and is limited by, functional justifications.

At the highest level of analytical abstraction, central-government rules in a multilevel system may serve three functions: redistribution of resources among constituent units, coordination for the prevention of negative external effects and for the achievement of collective goods, and coordination for the better achievement of private goods. Apart from redistribution (which so far has also not become a central objective of the European Union), these same purposes are also relevant for the increasingly important attempts at (international) technical standardization for instance, in the fields of telecommunication and information technology. Since the problems of technical standardization are by now relatively well-understood, an analogy seems helpful for the understanding of European options.

In technical systems, standardization serves two different functions, which are equally relevant for the integration of previously separate markets: On the one hand, the goal is compatibility among functionally heterogeneous components in order to facilitate interaction or exchange between the elements of a larger system. Individual telephones have to be connected to the telephone system via central exchanges; software programs have to run on computer hardware. On the other hand, the standardization of functionally

homogeneous components is useful for exploiting economies of scale and positive "network externalities." For fax users, the system becomes the more attractive, the more other users can be reached through the network; at the same time, the larger market allows producers to reduce unit prices or to amortize the higher development costs of more attractive products which, again, will increase the size of the market. However, both of these purposes can be achieved through rather different techniques of coordination - technical unification, interface standardization, and conversion technology - and through a variety of different coordination processes - hierarchical imposition, negotiations, and reciprocal adjustment. It is these differences which are of interest from the perspective of multi-level political systems.

Initially, many technical systems have begun their evolution in the form technically unified solutions that were hierarchically imposed within a single organization. Functionally heterogeneous components were integrated through a unified design, and functionally homogeneous components were technically identical. In telecommunications, for instance, (public or private) national monopolies set the technical specifications for telephones, connecting lines, network exchanges and transmission technologies. If that was assured, it was less important whether the monopolist also manufactured the telephones, laid the lines, and constructed the required equipment, or whether - as in Germany - this work was contracted out to private companies (Werle 1990). Gateways between technically different national telephone systems had to be established through bilateral or multilateral negotiations; and communication across these gateways was quantitatively and qualitatively inferior to intra-system communication.

In the case of computer systems, on the other hand, suppliers initially developed their own models, employing unified technical solutions from processors and operating systems, data formats, and software applications all the way to peripheral input and output devices - all of which were completely incompatible with the technical solutions adopted in other models. Coordination through technical unification thus reached only as far as the market share of the computer model of a particular supplier. When, at the end of the 1960s, it appeared that IBM might in fact achieve a worldwide monopoly position with its mainframe /360 model, there were political responses which compelled the firm to lay open the interface specifications of its computers. This created a new market for "interface-compatible" third-party printers, monitors, mass-storage and input devices and software packages for IBM computers, and it ultimately led to the emergence of a market for conversion technologies (adapters, converters, emulators, gateways) that facilitated data exchange between incompatible systems.

With the rapid advances in computer technology and the even more explosive expansion of markets for mini- and microcomputers, monopolistic coordination of the whole industry is no longer a possibility. At the same time, the need for interaction between computer systems and components of different suppliers has rapidly increased. In other words, the need for coordination has far outstripped the capacities of hierarchically integrated organizations to impose unified technical solutions. As a result, even the market for mainframes is now invaded by "open systems" in which hardware solutions must be compatible with several operating systems, while operating systems can be run on the hardware of diverse suppliers. The precondition is no longer simply the disclosure of interface specifications but, increasingly, interfaces that are explicitly defined through negotiation in large numbers of committees in which hardware and software suppliers as well as important users are represented.

Exactly the same development has occurred in telecommunications. Here, too, the quantitative and qualitative increase in the importance of transnational communications outstripped the coordinating capabilities of national monopolies. At the same time, the operators of national telecommunications systems have lost their monopoly on the supply of end-user equipment, value-added services, and increasingly now, even on the operation of networks themselves. Here, too, the rapidly growing need for transnational and transfunctional coordination is being met by an increasingly diverse network of functionally specialized standardization committees with regional or worldwide jurisdiction. In addition to the public and private operators of telecommunications networks, these committees also include manufacturers, service providers, and users from different areas of technology and branches of industry (Farrell and Saloner 1992; Genschel and Werle 1992; Genschel 1993).

Being dependent on voluntary collaboration, these committees are not, of course, in the position to hierarchically impose unified technical solutions. Their ability to achieve any results at all depends on broad consensus; and even then the standards so defined have only the character of recommendations which will be effective only to the extent that firms find it advantageous to adhere to them. For that reason, the committees cannot aim at the maximal technical unification which was characteristic of hierarchically imposed solutions; instead, they seek to achieve compatibility by standardizing the interfaces between different hard- and software components. Moreover, in areas where conflicts of interest have prevented even interface standardization, there is now a market for conversion technologies which provide gateways and networking options between incompatible systems.

Judged exclusively by the criterion of technical efficiency, unified technical solutions would probably score highest in a comparative assessment (Farrell and Saloner 1985; 1992). Informational requirements, training costs, communication difficulties, and inventory costs are all minimized, and economies of scale can be exploited in research, development, production, and marketing. By comparison, in interface standardization, the range of feasible communications is likely to be more restricted, and certain incompatibilities must almost always be tolerated. When coordination must be achieved through conversion, technical efficiency will be even lower, and the development of conversion technologies will impose additional costs.

However, the most perfect form of coordination by unified technical solutions also has serious disadvantages for the innovative capacities of socio-technological systems. The more aspects of components are standardized, and the more tightly they are coupled, the greater the prerequisites, repercussions, and hence the costs of any change, and consequently, the greater the resistance to innovation. By contrast, when interfaces are being standardized, elements will be less fully specified and more loosely coupled. Hence individual components can be changed and improved independently of each other, as long as the same outputs and inputs are transmitted across the interface. Nevertheless, interface coordination is also able to assure access to larger networks of compatible units and thus to create larger markets, which provide the economic incentives for developing innovative hardware and software products. Finally, conversion-based coordination places even fewer obstacles in the way of innovative developments, but their lower degree of technical efficiency, and hence their uncertain acceptance by the market, may also reduce the economic incentives for innovation.

But these criteria of technical and economic efficiency are probably not the most decisive factors determining the choice between different forms of coordination. What matters more are the substantive

implications of institutional constraints. It is true that, under conditions favoring "natural monopolies", unified technical solutions may also prevail through processes of mutual adjustment in competitive markets (Arthur 1988). More generally, however, the imposition of unified solutions, which must completely eliminate the technical choices of competitors and component suppliers, depends on strong capacities for hierarchical control. These may be provided by the state, and they are available within hierarchically integrated private sector firms. But as coordination needs have transcended the boundaries of national and organizational hierarchies, coordination through unified technical solutions has become much more difficult, and has lost its dominant position.

By contrast, interface standardization and converter technologies, which put fewer constraints on the design latitude of individual components, have gained in importance. Since participants generally have a common interest in achieving coordination (even if they differ in their preferences for a specific solution), standardization can usually be achieved through voluntary agreement in coordinating committees, or through mutual adaptation in the market (or through a combination of both mechanisms: Farrell and Saloner 1988). In other words, the rapidly growing need for transnational and transfunctional technical coordination can only be met by methods and procedures that no longer try to maximize uniformity, but which nevertheless are able to secure practically sufficient degrees of technical compatibility.

IV. COORDINATION IN EUROPEAN POLICY MAKING

The relevance of this digression on technical coordination to the problems of European policy making is apparent. The member states of the Union can also be described (in ideal-typical overstatement) as hierarchically integrated systems, in which unified solutions can be put into effect without the agreement of all those involved. However, at least since the completion of the internal market, the actual need for coordination in Europe has gone far beyond the capacity for hierarchical coordination within the framework of the nation-state. For the reasons discussed above, the European Union itself is not in the position to effectively exercise powers of hierarchical control. Thus, by analogy, one could also expect that coordination at the European level will succeed only if, and to the extent that, the range and intensity of attempted coordination is reduced.

Yet the differences between different types of coordinating needs must not be overlooked. In fact, the coordination of transnational "large-scale technical systems" in transportation, telecommunications, and energy (Mayntz and Hughes 1988) plays an important role in Europe. An example is air traffic control, where already in the 1950s the attempt to implement a technically unified hierarchical solution (EUROCONTROL) failed in the face of national resistance. Thus, national air traffic control systems continued to coexist side-by-side, each with its own type of radar equipment and with mutually incompatible computer systems; but even with technical improvements, this arrangement could no longer cope with the rapidly increasing volume of air traffic in the 1980s. Nevertheless, plans for a hierarchically integrated, unified solution were not revived. In 1990 instead, agreement was reached on the EATCHIP program which, while maintaining the organizational autonomy of national systems, will first standardize the interfaces for data transmission between national control centers, and will subsequently develop a joint procurement policy, joint training programs, and a joint system of flight-data processing (Resch 1993).

Thus, we have here another instance in which interface standardization has proved to be a kind of "saddle point solution" - from a technical point of view it is minimally adequate, while from an institutional perspective it represents the maximum sacrifice of autonomy that could be reached - in the absence of hierarchical enforcement capabilities - through voluntary agreement among national actors. Presumably, the situation will be similar in other instances where Europe-wide coordination is attempted for existing large-scale technical systems, such as electric power networks, high-speed rail transport, or even videotext. It seems that unified technical solutions only have a chance in negotiations among states as well as among firms, when completely new systems are to be introduced, as was true in the case of the mobile digital telephone network.

But while in the case of large-scale technical systems, transnational coordination is necessitated by technical interdependence, the need is less obvious for other European policy issues. A car that satisfies French emission standards would also run in Denmark; Spanish steel is none the worse for not having been produced according to the German large-scale furnace regulation; and foreign teachers could probably provide language instruction even without a German degree. If nevertheless European regulations are considered necessary, then this, as it were, artificial need for coordination arises from the discrepancy between the economically motivated decision to complete the internal market, on the one hand, and the persisting differences among national regulations governing production, training, and access to markets, on the other hand. Under the treaties, some of these national regulations could be removed as non-tariff barriers to free trade. But in cases where national regulations are legitimated by valid concerns for the environment, work safety and consumer protection, Europe was and is indeed faced with a choice among different coordination strategies to achieve a greater degree of compatibility between national legal systems.

Admittedly, the possibility of choice was not initially perceived. Until the mid-1980s, European harmonization strategies were clearly motivated by the goal of attaining maximal uniformity, and EC directives were notorious for attempting to regulate all matters in the most comprehensive fashion possible and down to the smallest detail. However, the institutional difficulties associated with this approach became ever more obvious. The Luxembourg compromise of 1966 had made EC action dependent upon unanimous agreement in the councils of ministers. As a consequence, harmonization bogged down in extremely cumbersome and time-consuming processes which could never keep up with the inventiveness of national regulatory practices. Thus attempts at harmonization may in fact have impeded, rather than expedited, the removal of national barriers to European free trade. Moreover, even when uniform European rules were finally adopted, their practical application would still depend upon highly diverse patterns of implementation in national administrative systems. In short, the attempt to integrate the European market by attempting to "unify" the diversity of national regulations through harmonization was, under the institutional conditions of the EC, a game that could not be won.

The Commission responded in its 1985 white book on the completion of the internal market by announcing that, in the future, harmonization should be replaced by the obligation of all member states to mutually recognize national decisions on product licensing (Commission 1985).² In effect this would have completely abandoned attempts at hierarchical or negotiated coordination in favor of a form of coordination by means of mutual adjustment in which the "competition among national regulatory systems" would have been decided by the consumer (or, in the case of educational and training systems, by the

employer). Since, however, consumers could only be expected to respond to those qualities of a given product which visibly affected their use - and not at all to the local conditions of its production - compulsory mutual recognition would ultimately have amounted to competitive deregulation for certain types of environmental or worksafety rules (Scharpf 1989).

2 A further step was the partial transition from the unanimity rule of the Luxembourg compromise to voting by qualified majority, which somewhat improved the institutional capacity of the EC to adopt uniform solutions.

This was apparently not the intention, however. The Commission has instead developed new regulatory methods, which uphold the goal of European coordination, but nevertheless seek to reduce the difficulties of consensus-building and to minimize the practical importance of differences in the implementation conditions existing in various national administrative systems. These solutions differ according to whether a product-related (or mobility-related) regulation is involved or a production-site-related one.

1. There are clear economic considerations favoring European harmonization of product-related regulations of work safety, environmental, and consumer protection: European industries remain at a disadvantage vis-à-vis their U.S. and Japanese competitors if their enlarged "home market" still requires adjustment to twelve different regulatory systems. Thus there was little resistance from industry when the Commission proceeded to reform the extremely slow and cumbersome process of harmonization. Under the new procedure the Council of Ministers will only decide on legally binding "principles" of product safety, whose detailed specification is then left to nongovernmental committees on standards, such as CEN, CENELEC, or ETSI (Commission 1990; 1991). National organizations on standards as well as European associations of the affected industries are represented on these committees, but there is also some representation of unions, consumers and environmental groups (whose organization on the European level was often initiated, or at least supported, by the Commission). The standards agreed upon in these committees are not legally binding. However, products that conform to them are presumed to be in accordance with the legally binding safety principles and must be automatically admitted in all member states. Firms are free to deviate from the agreed-upon standards - in which case, however, they carry the burden of proving conformity with the safety principles (Voelzkow 1993; Eichener 1993).

The more abstract formulation of safety principles has made it easier to reach agreement in the Council of Ministers. Governments need no longer fight to the last detail for the interests of their national industries; they can leave this to the representatives of affected interests in the standards committees. Even there, moreover, agreement is facilitated by the fact that it is ultimately left up to the firms themselves, whether they want to conform to the agreed-upon norms or to pursue their own solutions at their own risk. Those who choose to conform, however, are protected against the vagaries of national administrative procedures by the presumption that their product meets legally binding European requirements. Thus, the new standardization process not only facilitates consensus-building in the Council of Ministers, but also eliminates the problems of non-uniform implementation at the national level.

2. The economic necessity of European coordination is much less evident in production-related regulations

than in product-related regulations. By definition, what is involved here are not trade barriers that would prevent gasoline from refineries with high toxic emissions or chemicals from factories with low worker-safety standards from being marketed; involved here are the repercussions of free competition on production sites with high environmental-protection or worksafety costs. Hence, unlike the case of product-related safety standards, European interventions cannot be directly justified in terms of the guarantee of the four basic economic freedoms. According to the principles of free trade, countries with a low priority for environmental protection ought to be able to benefit from this comparative advantage in the European-wide competition among production sites. Conversely, countries with a high preference for environmental protection would have to pay for it through higher factor productivity or lower wages (Streit and Voigt 1991). However, this argument ignores the possibility that in a unified internal market, the unconstrained "competition among regulatory systems" could have the structure of a "prisoner's dilemma", in which even countries with a high preference for environmental protection would drive each other to competitive deregulation. Regulations against "ruinous competition" among European production sites may, therefore, be economically legitimate, even though here, in particular, interest conflicts among countries will make it difficult to reach agreement.

It is thus understandable that the EC has so far dealt with production-site-related regulations in only a few areas, such as in clean air policy, where European-wide coordination could be justified not only by considerations of equal competition, but also by the need to prevent the external effects of transborder air pollution. It is interesting to note, however, that the Commission has changed its regulatory strategy several times in this area (Héritier 1993a). Initially, directives were "intromission-related", defining air-quality standards at the local or regional level, but these ran into serious implementation problems and had little practical effect (Knoepfel and Weidner 1980). In the 1980s, therefore, the Commission took the German large-scale furnace regulation as its model which limited the maximum permissible emissions of certain types of industrial and power plants without regard to existing differences in local air quality. But due to the resistance of Great Britain and other countries with relatively low levels of air pollution, the limits that the Council of Ministers were able to pass did not, admittedly, represent very high standards. In the meantime, the Commission has returned to air-quality standards, on which it is easier to reach agreement, but they have supplemented these with procedural directives regulating the methods of measuring air pollution, the criteria for environmental impact assessments, rights of participation in evaluation and licensing procedures, and public access to all the data obtained in these ways (Héritier 1993a; 1993b).

Given the basic legitimation problems and conflicts of interest associated with production-site-related regulations, the new course of the Commission appears as a highly plausible strategy. By setting uniform (though not particularly high) emission standards, a lower limit was defined that at least reduces the temptation for national governments to gain major competitive advantages by foregoing environmental protection. If the Commission had tried to go further by prescribing uniform higher standards, it would have to exceed its mandate. But what it can and evidently will do is to create informational and procedural opportunities for political processes at the national and subnational levels which will critically examine and adjust their own levels of aspiration. This would be no mean accomplishment - and it is perhaps more than national governments and administrations will willingly implement.

3. Mobility-related education and training policy provides another example of the present strategy of the

Commission. Here, too, only very slow progress has been made in harmonizing national regulations for training and examinations. By contrast, the scholarship and grant programs for student and teacher exchange (COMETT, ERASMUS, LINGUA) have been relatively successful; they have now created a dense network of cooperating educational institutions and - especially at the level of polytechnics - a whole series of joint (multinational) courses of study. This has aroused interest, among the participating institutions and their associations themselves, in shared criteria for the mutual recognition of training certificates and periods of study, and in the development of common curricula. As a consequence, some observers have even identified an "autodynamic" convergence of European higher-education systems with regard to the duration and organization of courses of study, admission standards, curricula, and substantive content which in turn is preparing the ground for future directives on the mutual recognition of educational certificates (Teichler 1989; Schinck 1992).

All three examples reflect the efforts of the Commission to reduce the need for consensus in the Council of Ministers. Perhaps in anticipatory response to discussions of the subsidiarity principle, the previously predominant technique of fully "unified" harmonization is being supplemented or replaced by other, less conflict-prone coordinating techniques. Apparently, the intention is now to avoid, as far as possible, the detailed establishment of substantive norms in the Council of Ministers which would then have to be converted into national laws and administratively implemented in the member states. Instead, the aim is to take greatest possible advantage of corporatist, quasi-governmental, or subnational processes of norm formation, concretization, and enforcement. However, the three examples also demonstrate that the alternative procedures have highly divergent costs for the individual member states.

Thus, the new procedure for regulating equipment safety definitely reduces the need for consensus in the Council of Ministers, where agreement now is only needed on the safety principles, rather than on the details of regulation. As a consequence, the policy-making capacities of the EC are increased and, at the same time, national parliaments are spared the indignity of having to dutifully transform into national law all the over-detailed directives emanating from the Brussels bureaucracy. Moreover, European industry is left with sufficient room for innovation. But, clearly, this form of reduced political involvement will be fully attractive only for member states like Germany, which are already used to delegating considerable norm-setting authority to corporatist or professional associations (Voelzkow 1993). For them, the transition to a European standardization procedure may even amount to an increase in national influence. In those countries, however, where corporatist self-regulation has so far played a major role, because the state has retained control over the definition of technical standards of work safety, environmental, and consumer protection, the shift to European committees on standards implies an abdication of political responsibility, a loss of national influence, and possibly, even a loss of political legitimacy.

As is true of the delegation of authority to corporatist standardization associations in the field of product-related regulation, the shift toward informational and procedural requirements in the field of air-quality policy is also not equally attractive for all countries. In the German legal and administrative culture, for example, the dominant focus is on substantive law, whose application is fully controlled by an elaborate system of judicial review, while the procedural aspects of administrative decisions are treated as a relatively minor concern (Scharpf 1970). Precisely the opposite is true of the practice of U.S. regulatory agencies, which served as the point of reference for British environmental policy reforms in the 1980s, and which now defines the strategy of the European Commission (Majone 1990b; 1992). As a consequence,

from the point of view of German administrators and regulated firms, the new procedural directives of the Commission involve more far reaching, and uncomfortable changes of past practices than would have been true of a further tightening of substantive emission standards, while the opposite is for Great Britain (Héritier 1993).

In the field of education and training, finally, development is still in flux. But there is at least a chance here that the European Union might avoid the high degree of legislative standardization which has been characteristic of the German model of interlinked federalism. Instead, there is a possibility that non-governmental forms of self-coordination will be able to provide the transnational compatibility among educational institutions which is a prerequisite of personal mobility in a unified European market. This would be in keeping with the American model, where self-organizing accrediting institutions play a central role in defining and monitoring the standards of educational establishments and specific courses of study, while direct federal regulations are of only minor importance (Wiley and Zald 1968). If this pattern should prevail in Europe, it would again be more acceptable for those countries that already rely to some degree on the autonomous self-government of their universities and professions, while the costs of adaptation would be higher in countries where schools, universities, and the professions are strictly regulated and administered by the state.

V. CONTOURS OF A MULTILEVEL POLICY SYSTEM

These few examples are sufficient to show that it is even difficult to find a common understanding of what type of European policy would be most heedful of the political and institutional autonomy of national and subnational polities. In my view, this has two implications. On the one hand, the criteria for European solutions that are heedful of member state autonomy cannot be defined exclusively in terms of the institutional status quo of the member states or of their shortterm costs of adaptation. They must relate, instead, to the future constitution of a multi-level European polity which will require complementary adjustments of the forms of governance at both, the European level and at the level of member states. Secondly, given the general difficulty in defining forms of European regulation that are compatible with high degrees of member state autonomy attentive to autonomy issues, one cannot do without a more precise and restrictive definition of the types of problems for which coordination at the European level is indeed indispensable. Objectively unnecessary "over-coordination" is even more damaging in the European Union than it is in German federalism (Scharpf 1988).

Moreover, both conditions are closely connected. The connection is obvious if one looks at the American system of secondary and higher education which continues to exist under the authority of the individual states, with only a minimal degree of federal regulation and even without a German-style standing conference of state ministers of education. However, in a fully integrated economy and a highly mobile society, the absence of "harmonization" through central-government regulations, or explicit self-coordination among the states, seems tolerable only because the states themselves have not attempted to establish tight controls over their educational establishments, or to insist on the close linkages between the educational and occupational systems which are typical for Europe. Given the enormous diversity and qualitative differences among secondary schools, colleges, and universities, it would, for example, be completely impossible to make university access generally dependent on the graduation certificates of

secondary schools, as is the common practice in Europe. Instead, colleges and universities are free to select their students according to their own criteria. Among these criteria, however, the applicants' scores in the Scholastic Aptitude Test (SAT) play a special role. The test is administered nationwide (and even internationally) by a private testing organization; almost all college applicants take it; and secondary schools preparing their students for college must, at the very least, take the requirements of this test into account in the design of their curricula.

Thus, in the terminology of technical coordination, the SAT fulfils the function of a standardized interface between high schools and colleges. It makes the transition between systems possible, without divesting schools of their freedom to design their own curricula and without divesting colleges of the freedom to define their own admissions criteria. A somewhat greater degree of standardization is reached in the field of professionally oriented studies through the accreditation of medical and law school programs by the major professional associations (American Bar Association, American Medical Association). Moreover, at least in medical training, this is also a precondition for admission to the nationally administered certification examination (Döhler 1993a; 1993b). For law students, on the other hand, admission to the legal profession continues to depend on bar exams administered by the bar associations of individual states. Thus, there are no national regulations of legal education and no uniform rules governing the examination of law students at the end of their studies. Indeed, individual states are not even obligated by federal law to recognize the bar exams of other states. Instead, every law school defines its own curriculum and its own graduation requirements according to its own judgment, and there are private cramming courses in preparation for the bar exams of individual states. In the terms of technical coordination discussed above, what we have here is in fact nothing more than a conversion-based solution.

The American example shows two things: The need for central-government harmonization is drastically reduced if member states shape their own regulations so as to facilitate, rather than to restrict, interstate mobility. At a minimum, they must provide opportunities for outside applicants to achieve conformity to national standards without having to bear excessive costs. Even more important, by reducing the scope and comprehensiveness of their own regulations, member states may create space for nongovernmental forms of self-coordination which, in turn, will reduce the need for central coordination.

Conversely, the initial regulatory maximalism of the European Community is explained not only by an unthinking analogy to the practice uniformity-maximizing nation states, but also by the fact that the existing regulations of the member states were not only very heterogeneous, but were also very comprehensive and rigid - and whose effects were not only protectionist but also extremely hostile to transnational mobility. If this is the case, and if European regulatory maximalism can no longer be maintained, then the search for European forms of regulation that are more heedful of national and subnational autonomy can only succeed if member states will, with the same zeal, avoid policies that are incompatible with the purposes of the larger Community and with increasing mobility. In this regard, Europe could learn a lot from U.S. practices, which, in a completely integrated economy and a highly mobile society, have so far been able to avoid much of the harmonization of state policies which is generally considered indispensable for the creation of an integrated market in Europe.

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