NEWGOV
New Modes of Governance

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Free University Berlin, Author: Tanja A. Börzel

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Summary

This is the proposal for a special issue submitted to *West European Politics*. The special issue summarizes some of the major findings of our Project 12 Coping with Accession. It explores the role of new modes of governance in the accession of the Southern European countries in the early 1980s and the Central Eastern European countries in this decade. Our case studies on the adoption of and adaptation to the environmental *acquis communautaire* find only limited evidence for new modes of governance.

We argue that the accession countries of the Southern and Eastern enlargements have lacked the two fundamental preconditions for the emergence and effectiveness of new modes of governance that the governance literature tends to take for granted since it has almost exclusively focused on Western democracies. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

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1. The Problem

In recent years, the literature on governance within and beyond the state has focussed on a specific mode of governance, based on non-hierarchical coordination and the involvement of private actors in the formulation and implementation of public policies. In the 1970s, the comparative policy and politics literature already showed that non-hierarchical modes of governance might help to overcome problems of state failure (for a good overview of the literature see Mayntz and Scharpf 1995; Scharpf 1997). The direct participation of non-state actors in public policy-making would improve both the quality of public policies and the effectiveness of their implementation since target groups could bring in their expertise and their interests. 20 years later, this argument was reintroduced into the governance literature by students of International Relations and European Politics, who discuss “new modes of governance” as functional equivalents to the traditional top-down, command-and-control approach of hierarchical steering.

New modes of governance seem to be particularly appropriate for the study of international and European politics, which are essentially non-hierarchical. Unlike within the nation state, policy makers can hardly rely on majoritarian decision-making and coercive power to make effective and legitimate policies (Hix 1998; Kohler-Koch and Rittberger 2006). Yet, empirical research on new modes of governance in Europe clearly demonstrates that non-hierarchical coordination and the involvement of non-state actors does not necessarily increase either the effectiveness or the legitimacy of public policy-making. Moreover, new modes of governance are far less prevalent in European policy-making than the limited powers of the European Union would lead us to expect. ¹ This is also true for the previous enlargements of the EU to Southern and Central and Eastern Europe, which appear to be most likely cases for the emergence of new modes of governance. On the one hand, the EU cannot hierarchically impose the acquis communautaire on accession countries. Before they join, their relationship with the EU remains in the realm of classic diplomacy and international negotiations. The EU’s supranational institutions do not even cast a shadow of hierarchy, yet, since the supremacy of EU law and its direct effect which empower domestic courts to enforce EU Law without the consent of national governments only take effect after accession. On the other hand, the Southern and Central and Eastern European countries have been limited in their capacity to hierarchically coordinate the adoption of and adaptation to the acquis. The implementation of the acquis communautaire created an enormous policy load, which met with limited resources (expertise, money, personnel) that were already strained by managing the transition from authoritarian and socialist rule, respectively. Given the limited capacity of both the EU and the accession countries, it would be only rational for public actors to seek the cooperation with private actors to share or shift the burden by pooling resources and delegating certain tasks. Private actors, in turn, could exchange their resources for influence on policies which would significantly affect them. Finally, the European Commission strongly encouraged accession countries to involve non-state actors in the adoption of and adaptation to the acquis to ensure both greater effectiveness and legitimacy of the accession process.

¹ See the result of the Integrated Project „New Modes of Governance“, funded by the EU’s 6th Framework Programme and coordinated by the European University Institute in Florence (CITI-CT-2004-506392), http://www.eu-newgov.org/public/Research.asp, last access 29.3.2007.
2. The Argument

The governance literature leads us to assume that new modes of governance could compensate for the weak hierarchical steering capacity of both the EU and the accession countries in the implementation of EU policies since private actors can provide the governments of the accession countries with important resources (money, information, expertise, support) that are necessary to make EU policies work. Yet, our empirical research has found only limited evidence for the emergence of new modes of governance in the accession process. Traditional command-and-control approaches appear to prevail both in Southern and Central and Eastern European accession countries.

To address the puzzle, we argue that the literature has neglected an important finding of the early research on political steering. The work of Renate Mayntz and Fritz Scharpf, in particular, has shown that non-hierarchical modes of governance may produce better policy outcomes – but only if policy makers have the option to hierarchically impose the policy, i.e. have the capacity to adopt and enforce it without the involvement and against the opposition of private actors (Mayntz and Scharpf 1995; Scharpf 1997; Héritier 2003). This so called “shadow of hierarchy” has a crucial impact on the incentives of both public and private actors to engage in non-hierarchical coordination. It helps explain why we have found so little evidence on new modes of governance in Southern and Central and Eastern European accession countries. Their state capacities have often been too limited to cast a credible shadow of hierarchy providing sufficient incentives for non-state actors to cooperate. Moreover, state actors that command only limited resources have been themselves reluctant to cooperate with non-state actors for fear of agency capture. Finally, weak states are mirrored by weak societies – like state capacities, the degree of societal organization is significantly lower in Southern European and Central and Eastern European countries compared to the liberal democracies in Northern and Western Europe.

In sum, we argue that the accession countries of the Southern and Eastern enlargements have lacked the two fundamental preconditions for the emergence and effectiveness of new modes of governance that the governance literature tends to take for granted since it has almost exclusively focussed on Western democracies. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

3. The Findings

To assess the validity of the theoretical argument about the paradox of double weakness, we will analyze the implementation of six EU environmental policies in six accession countries. While our sample covers all three Southern European countries that joined the EC in the 1980s, we selected Poland and Hungary as two accession states that became members in 2004 and also included Romania, which joined in 2007. The three CEE countries share a common heritage of state socialism but have chosen different paths of economic and political transformation and have diverging histories of civil society involvement, including environmental mobilization. Since the conditions for accession differed between Southern and Eastern enlargement (e.g. regarding the use of conditionality, transition periods, size of the acquis), we decided to extend the time period of our analysis to the post-accession stage of the Southern European countries, where they felt the main burden of coping with accession, which also allows for a more direct comparison with the Central and Eastern European countries.
Our empirical investigation focuses on environmental policy as an area of positive, market correcting integration that imposes significant costs in the implementation rather than in the decision-making stage. We look at two sets of policies:

a) Traditional command-and-control policies, such as the Directives on Drinking Water and Large Combustion Plants (LCP). These policies impose considerable costs of domestic adaptation, especially on firms that have to internalize compliance costs to their production. Thus, both public and private actors may have an incentive to cooperate in order to share or shift the costs.

b) New environmental instruments, such as the Directives on Fauna, Flora, Habitats (FFH) the Environmental Impact Assessment (EIA), the Integrated Pollution Prevention and Control Directive, and the Water Framework Directive (WF). The application of these directives may stipulate the emergence of New Modes of Governance because their procedural regulations directly provide for private actors’ participation in the policy process.

Our study confirms that the implementation and application of EU environmental acquis has imposed significant costs on the accession countries. Next to the financial burden, particularly the application of technical sophisticated policies, such as FFH, IPPC and WFD requires significant personnel with the necessary legal, scientific and technical expertise. The capacity building programmes of the EU (PHARE, LIFE, twinning) only helped the accession countries to cover a small portion of the costs incurred. Thus, state actors had an incentive to seek the cooperation with corporations, scientific experts, and environmental groups, who often could offer important resources, such as technical know-how. Likewise, non-state actors had an interest in exchanging these resources against influence on the legal and administrative application of the Directives since their transposition into domestic law did not leave much leeway. While companies sought to reduce compliance costs by increasing flexibility and receiving derogations, environmental organizations wanted to secure the strict application of EU requirements.

Although state and non-state actors had an incentive to cooperate, non-state actors hardly got involved in public policy-making. But even where new modes of governance emerged, they hardly went beyond more or less regular consultations and the contracting out of public tasks. Non-state actors are most actively involved where EU directives explicitly require their participation. Voluntary agreements of business, the delegation of regulatory tasks to associations, or the formal participation of stakeholders in the application of state regulations, which are typical new modes of governance in Western countries, are extremely scarce in the Southern European states and practically absent in the three CEE countries. This is due to the overall weakness of both state and non-state actors. While civil society actors often do not have sufficient organizational capacities to serve as a reliable partner in the cooperation with state actors. Companies, in turn, shy away from cooperation because they doubt that state actors are capable of translating mutual agreements into policy outcomes given unstable majorities in parliament and frequent government turnovers. Political instability also weakens the credibility of state actors to unilaterally adopt and impose costly policies. State actors themselves see their weakness as a major obstacle for cooperation with

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2 According to estimates of the Commission, the implementation of the 89 core environmental policies has cost the CEE accession countries between three and five per cent of their GDP (OECD countries spend between one and two per cent of their GDP on environmental policy). For instance, in Poland, the IPPC directive alone has required investments worth of 6.9 million Euro (http://europa.eu.int/comm/environment/envco/prioritystudy/index.htm, last access 21.3.2007).
non-state actors. Not only has industry little incentive to offer its resources for the making of policies that incur significant costs upon them. State actors also fear to be captured by business, if it has superior resources. Next to the fear of “state capture”, policy-makers and administrators are often faced with public scepticism against new modes of governance, which are seen as part of the socialist legacy (clientelistic networks) and in contradiction to democratic institutions. This perception is reinforced by attempts of politicians to shift political decisions into civil society fora in order to circumvent opposition or deadlock in parliamentary or party arenas. Finally, the privatization or delegation of public tasks to private actors, particularly in the area of public services (drinking water) meets strong opposition at the local level.

In sum, our comparative case studies on the legal harmonization and implementation of six EU Environmental directives find only limited evidence of new modes of governance in all six accession countries. They are mostly likely to emerge in cases which legally require the involvement of non-state actors. But even there, they remain unstable and cannot be regarded as typical. The traditional command and control approach still prevails both in the South and the East of the European Union, where states and societies are still too weak to engage in sustainable forms of public-private co-regulation and private self-regulation, respectively.

4. The Implications

Our findings have important implications for research on (new modes of) governance. If it is correct that non-hierarchical modes of governance require both a strong state and a strong society, this results in a serious dilemma or even paradox: the lower the capacity of a state, the greater the need for new modes of governance to compensate for state weakness or state failure but the less likely they are to emerge. This is particularly true if there is indeed a dialectical relationship between the evolution of a strong state and a strong society as it is implicitly assumed or explicitly claimed by the governance literature (Mayntz 1993; Tilly 1975). Whether this is merely (another) fallacy of modernization theory or simply the result of a selection bias towards the OECD world in governance research, remains to be seen. We need more empirical research on countries which lack the prerequisites of a modern state to find out to what extent the governance paradox exist and how it can be eventually overcome.

5. The Structure

1. New Modes of Governance and Enlargement: The Paradox of Double Weakness; Tanja A. Börzel
   The introductory chapter will lay out the empirical puzzle and the theoretical challenge it poses to the literature on (new modes of) governance. It will also explain the research design of the empirical study and provide the analytical framework that will guide the comparative case studies.

2. New Modes and the Southern Enlargement: Greece, Portugal, and Spain; Ana Mar Fernandez, Nuria Font, Charalampos Koutalakis
   The second chapter provides a comparative analysis of the implementation of six EU environmental policies in the three Southern European countries that joined in the early 1980s.

3. New Modes of Governance and Eastern Enlargement: Hungary, Poland, and Romania; Aron Buzogany, Sonja Guttenbrunner
The third chapter mirrors the second chapter providing a comparative analysis of the implementation of the six EU environmental policies in three CEE countries, which joined in 2004 (Hungary and Poland) and 2006 (Romania).

4. New Modes of Governance and Enlargement – Paradox or Fallacy?; Tanja A. Börzel

The final chapter will summarize the major findings of the comparative case studies and discuss the implications of the paradox of double weakness for the literature on (new modes of) governance.

6. The contributors

The proposed special issue draws on the major findings of the project “Coping with Accession: New Modes of Governance and European Enlargement”, which is part of the Integrated Project „New Modes of Governance“, funded by the EU’s 6th Framework Programme and coordinated by the European University Institute in Florence (CITI-CT-2004-506392).

Tanja A. Börzel is professor of political science and chair of European integration at the Freie Universität Berlin. She coordinates the project “Coping with Accession: New Modes of Governance and European Enlargement.

Aron Buzogany is research associate in the project “Coping with Accession: New Modes of Governance and European Enlargement” working on Hungary and Romania. He will complete his PhD at the Freie Universität Berlin in summer 2008.

Ana Mar Fernandez is assistant professor of political science at the Universitat Autonoma de Barcelona and on Spain and Portugal.

Nuria Font is associate professor of political science at the Universitat Autonoma de Barcelona and coordinates the case studies on Spain and Portugal.

Sonja Guttenbrunner research associate in the project “Coping with Accession: New Modes of Governance and European Enlargement” working on Poland. She will complete her PhD at the Freie Universität Berlin in summer 2008.

Charalampos Koutalakis is professor of political science at the University of Athens. He is in charge of the case study on Greece.
7. Bibliography


