

**THE HEART OF POLITICAL STEERING:
THE EU'S ARENAS OF POWER AS TEMPLATE FOR A GOVERNANCE TYPOLOGY**

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ABSTRACT

The literature on the so-called *new modes of governance* in the European Union focuses on steering instruments beyond hierarchy and coercion. While it has repeatedly been put into question how ‘new’ these instruments are, no systematic attention has been paid to the mutual dependency between policy types marked by the specific conflict lines and choice of governance tools. On the contrary, some attempts to classify modes of governance explicitly disregard policy typologies. The paper argues conversely that in order to arrive at a comprehensive mapping of modes of governance – ‘old’ and ‘new’ – the most promising doorway is indeed to start from the actor constellations characteristic for the different policy types. A review of the European Union’s policies and modes of governance illustrates how modes of governance are pre-defined by the structures between policy-makers and –takers innate to the policy types that dominate supranational policy-making.

INTRODUCTION:

WHY POLICY TYPES AND GOVERNANCE SHOULD SPEAK TO EACH OTHER

In recent years the notion of *new* modes of governance has received considerable attention, particularly in the study of European integration. The present paper is a contribution to this body of literature from which it departs in a significant point, namely in taking policies as the starting point of governance and not the result that governance produces. The common concern of the ‘new’ governance scholars “is about how to maintain the ‘steering’ role of political institutions despite the internal and external challenges to the state” (Pierre 2000: 4). Accordingly, modes of interaction between governing and governed are systematically analysed beyond traditional hierarchical steering by the government. When “the ‘modern governance’ or ‘new governance’ perspective is adopted (Kooiman 1993; Rhodes 1997) then the question becomes one of how that centre of government interacts with society to reach mutually acceptable decision or whether society actually does more self-steering rather than depend upon guidance from government” (Peters 2000: 36). Although some authors occasionally hint to the fact that the political problem dealt with needs to be considered to evaluate the effects of certain modes of governance, no study systematically includes policy types as explanatory factor to understand the logic of different modes of governance. Much rather, policy types are analytically ignored, for instance proposing a classification of modes of governance Treib *et al.* sustain that “tracking down different styles of decision-making in terms of actor constellations or institutional structures is best done without simultaneously including the types of policies that are the result of the decision-making” (Treib, Bähr *et al.* 2005: 13). I will argue in the opposite direction: in order to conceptualise modes of governance, we ought to incorporate the perspective on policy types and *start* from here to establish a comprehensive and consistent classification.

Why should one bother about policy types when analysing governance? Studies on governance and policy types share a fundamental research interest but differ substantially in the focus of research. Both are concerned with the way state and citizens and thus the public and the private realms interact in society. Yet, *policy types* derive from different political problems how the state’s coercive authority differs according to a policy-specific arena of power while *governance* depicts a more comprehensive range of steering and self-steering to embrace all possibly observable modes of intentional societal organisation. The former approach is limited in the range of *political relationships* it categorises but suggests a causal link between the problem at stake and the structure of political decision-making and implementation whereas the latter is an analytical perspective open

to describe all kinds of *modes of governance* that can make certain generalisable statements on structures and mechanisms of coordination without a more genuine theoretical underpinning (Benz, Lütz *et al.* 2007: 16). Therefore, in causal models the governance perspective is mostly used within neo-institutionalist frameworks that put into the foreground that ‘institutions matter’ and shed light on institutionalised structure as explanatory. In contrast, the classical policy typology referred to is concerned with political conflict lines and therefore the very contents of public administration that influence the institutionalisation of political structures, in short: ‘policies matter’. This perception has been widely neglected in the dominant neo-institutional foci. It therefore promises to re-accentuate the analysis on governance to account for the basic assumption that “the nature of political organization depends on the conflicts exploited in the political system, which ultimately is what politics is about” (Schattschneider 1975: v). Moving around the same core question opens the door for the policy and governance literature to speak to each other. Centring attention on either causal links or a full depiction of empirical phenomena circumscribes what one has to say to the other. A theoretically sound link will therefore provide us with a grid to structure modes of governance according to the particular political content and conflict captured by the distinction between policy types.

The following section provides a basic introduction to the arenas of power and respective policy types as developed by Theodore Lowi in the 1960s and 1970s and an overview on the central aspects of the governance perspective to then demonstrate how the two connect. Section three illustrates the framework by discussing how the different arenas of power work present themselves from a governance perspective in EU policy-making. The article concludes by summarising the analytical contribution, practical implications and normative questions that arise from taking a governance perspective on the arenas of power.

2 THE ARENAS OF POWER AND MODES OF GOVERNANCE

The theoretical section will briefly introduce the two theoretical approaches to highlight the relevant conceptualisations of steering and political interaction between governing and governed units. While the arenas of power approach holds that different policy types imply different *political relationships*, the governance approach is more broadly concerned with *modes of interaction*. As Renate Mayntz points out, the turn from theories on political steering (*Steuerungstheorien*) to governance moved the attention from actors to the structures of governance (Mayntz 2008: 16). Both the arenas of power and governance focus on structures of state/society relationships. They differ in the scope of governance modes they consider and the causal explanations on the emergence of governance modes they offer. The arenas of power establish a causal link between pol-

icy types (that allude to different political problems) and coercive, hierarchical governing structures. The governance school describes structures of governance beyond hierarchical coercive mechanisms, without however linking these systematically back to policy types or conflict constellations of political problems at stake. How these two approaches link up to provide a comprehensive typology of modes of ‘new’ and ‘old’ governance will be developed along the empirical application to the European Union in section 3. The next pages provide the conceptual foundation for this purpose.

2.1 The Arenas of Power: Political Relationships according to Policy Type

Theodore Lowi’s classical typology of policy types foots on the assumption that policies determine politics rather than the other way around (Lowi 1964, 1972, 1988b). Lowi thus inversed the usually assumed causal direction in order to “turn political science on its head (or back on its feet)” (Lowi 1988b: xi). Accordingly, the political relationships between the state and the individual differ depending on the political problem at stake. Distinguishing between the impact a policy has on the individual (working through individual conduct/environment of conduct) and the form of expressed intention (immediate coercion or – in later versions – primary rule/remote coercion or secondary rule) provides the grid to define four arenas of power. Each arena brings forth a particular policy type (Table 1).

APPLICABILITY OF COERCION LIKELIHOOD OF COERCION	WORKS THROUGH INDIVIDUAL CONDUCT	WORKS THROUGH ENVIRONMENT OF CONDUCT
IMMEDIATE	REGULATORY POLICIES Example: elimination of substandard goods, unfair competition, fraudulent advertising	REDISTRIBUTIVE POLICIES Example: Federal Reserve controls of credit, progressive income tax, social security
REMOTE	DISTRIBUTIVE POLICIES Example: 19 th century land policies, tariffs, subsidies	CONSTITUENT POLICIES Example: reappointment, setting up a new agency, propaganda

Table 1: Arenas of Power/Policy Typology

(Lowi 1972: 300)

Regulatory policies, although rules stated in general terms, impact directly on individuals by raising costs and/or reducing or expanding alternative options. They are laws that focus on desired outcomes, imposing obligations and sanctions. In contrast to constituent rules that prescribe general procedures without prior definition of the substantive subject matters, regulatory policies have a concrete target. Accordingly, “[s]ince the most stable lines of perceived common impact

are the basic sectors of the economy, regulatory decisions are cumulative largely along sectoral lines; regulatory policies are usually disaggregable only down to the sector level” (Lowi 1964: 691). As regards the mode of interaction, regulatory policies evoke group conflict because they imply the betterment of some at the expense of others.

Redistributive policies are primary rules (immediate likelihood of coercion) that exert coercion by manipulating the environment of conduct rather than conduct of individuals directly. Redistributive policies categorise activities in that they impose classifications or statutes under which individuals are subsumed involuntarily (Lowi 1985: 73). They affect social classes (property itself, equal possession, and the ‘being’) and the effects are not disaggregable as under distributive policies – winners and losers are openly conveyed. State-society relationships therefore involve the major interest representations in order to channel strongly ideological positions.

Distributive or **patronage** (Lowi 1988b) policies are based on secondary rules (remote coercion) working through individual conduct without imposing obligations. Without regard of limited resources they confer privileges or facilities in a disaggregated manner. Privileges are allotted to small units or individuals that stand more or less in isolation from other units. Therefore distributive policies “are virtually no policies at all but are highly individualized decisions that only by accumulation can be called a policy” (Lowi 1964: 690). Coercion is remote because of the permissive and dispersed effect on citizens. Therefore, political interaction is marked by mutual non-interference, instead of compromises on opposed interests. Decision-making is characterised by logrolling and putting together in a ‘pork barrel’ unrelated interests. In contrast to redistributive policies, it is not directly visible who is paying for the disaggregated benefits and group conflict is not evoked.

Constituent policies did not feature in Lowi’s original model and were subsequently added as fourth type completing the typology. It remains empirically and conceptually the least developed arena of power but was an essential addition to complete the typology. In Lowi’s phrasing, “a fourth category of policy *closed the logic of the scheme*, giving me a system of public policy and a method of characterizing and reasoning in comparisons of policies *within a logical structure*” (2008: 15, italics in original). Constituent rules are secondary rules conferring powers of privileges, and work through the environment. They are “referred to as rules about powers or rules about rules” (Lowi 1985: 74) or, in other words, the monopoly to decide where and how to locate authority to coerce in a system of governance.

Important for relating policy types to modes of governance are the political relationships specific for each type. These take expression in the potential for conflict and how conflict is resolved in policy formulation. This relates directly to modes of governance that deal in essence with the

same question: how are state/society relations organised in different modes of interaction? The main tenet of Lowi's typology is that policies matter. The policy type links back to a specific political problem and shapes the institutional structures to resolve different kinds of conflicts. Although actors can frame problems differently and expectations play a decisive role in the choice of a policy type, the arena chosen and the policy type formulated determines eventually how state/society relations are organised. Thinking further in this logic suggested by Lowi, the kind of formal rule applied circumscribes a specific mode of governance.

2.2 Modes of Governance

In her review on the development from *steering* to *governance* research, Mayntz points out that the decisive insight of empirical policy research was that the success of policy-making did not depend alone on the ability to steer. A hierarchical top-down approach missed the need to account for sector-specific structures that determine the ability of policy-takers to oppose policies. Science and practice moved from top-down steering to include policy takers into the formulation and implementation of policies. Consequently, the distinctions between the subjects and objects of political steering were consequently blurred and negotiation became both a non-hierarchical mode of interaction and steering instrument (Mayntz 2008: 44). Although taking note of the relevance of sectoral differences for the structure of actor constellations, the governance school did not advance by systematically accounting for variance between policies. Instead the main attention lies on the procedural feature of *governance* in contrast to state-centred static notion of authoritative *government*. The political scientific definition of governance referred to in the following is the sum of all forms of intentional collective coordination and regulation of societal concerns (Mayntz 2008: 45). It encompasses every mode of political steering involving public and private actors (Héritier 2002). This definition is wide in the sense that it embraces both 'old' hierarchical and 'new' non-coercive forms of governance (Schuppert 2008: 24; Benz 2004b), and narrow in that it excludes societal self-coordination that is unrelated to public policy (e.g. industrial or corporate governance of private companies). Governance is an analytical perspective and not a theory proper, it serves to describe and evaluate real-life processes and can thus linked to various theories for causal analysis (Benz 2004a: 27).

As analytical perspective in political science, governance has been applied to account for increasing non-hierarchical cooperation due to changed internal and external roles of the state.¹ Thus,

¹ The definitions of governance referred to is by no means a comprehensive one and does not provide a balanced introduction of the variety the term covers across the discipline. The purpose is to highlight those aspects that are most relevant for the argument. Accordingly, throughout the present paper the

across the sub-disciplines of public administration and public policy, international relations and comparative policy, governance “refers to something broader than government, and it is about steering and the rules of the game” (Kjær 2004: 7). Inside the state, the governance perspective serves to account for a changed role of the state from hierarchical to cooperative steering, or network governance involving public and private actors (Rhodes 1997, 2007). Between states, due to increased internationalisation the context states act in has changed which has given a boost to the governance perspective in international relations as *governance without government* (Rosenau and Czempiel 1992). From this perspective other actors besides the state enter (or even take over) the international scene. Authors that sustain that states remain relevant actors point out how their role changes in an international system of *governance with governments* (Zürn 2005). The broadest concern of governance in all these variants is “how to steer, but also how to improve accountability” (Kjær 2004: 11) and thus how legitimacy, efficiency, democracy and accountability mutually influence each other. All these dimensions change if actor constellations in policy formulation and implementation change and the separation of public and private, policy-makers and -taker is blurred. The same applies to supranational governance where states as negotiating parties are also the addressees of a policy and thus a clear distinction between policy-makers and -takers becomes impossible (Mayntz 2008: 47). This holds also for important parts of policy-making in the European Union which, being more than a regime and less than a state. The EU has a well-developed institutional structure that equips it with means for limited hierarchical steering but leaves at the same time many areas subject to intergovernmental or transnational coordination. As the subsequent empirical section will illustrate, this makes the EU a particularly interesting polity to study a wide range of modes of governance.

Benz’ juxtaposition of the two the government and governance perspectives (Table 2) pinpoints the core difference between the political relationships contained in the arenas of power and modes of governance. A look at the left column reveals that the mechanisms and instruments correspondent intuitively well with the arenas of power. Lowi takes an unambiguous *government* perspective. Moreover, the different lines can be attributed to the different policy arenas. Constituent policies are indeed concerned with questions of the polity, they focus on the state and rules about rules and rules about power. The mechanisms linked to politics are related to the redistributive arena where zero-sum games are fought out along ideological conflict lines. What features as policies in table 2, finally, are regulative and distributive policies. Moving to the gov-

definition of governance applied builds strongly on public policy research. It stands thus in the tradition of governance research that moved the study of EU integration away from international relations theories (Kjær 2004: 99) but pushes the argument an essential bit further towards some basic concerns of public policy research.

ernance column, the mechanisms described are basically all outside those considered in the government-centred political relationships of the arenas of power. They represent an addition to these if we assume that both ‘old’ and ‘new’ governance are of relevance, especially in politics like the EU that lack decisive features of government and have only limited political authority. However, it is not intuitively clear how the features of governance listed here fit to a specific policy type. The next section will deal with this question, namely, how to link the government and governance perspective along the policy typology.

	GOVERNMENT State vs. market/society	GOVERNANCE State, market and networks as complementary modes of steering
POLITY	<ul style="list-style-type: none"> - Focus on the state; - Democracy based on majority rule and hierarchy as the most important institution 	<ul style="list-style-type: none"> - Institutional structure that combine elements of hierarchy, negotiation systems and competition mechanisms; - Networks
POLITICS	<ul style="list-style-type: none"> - Competition between parties for power and between interest groups for influence; - Conflict resolution by decision of responsible state bodies and enforcement of state decisions. 	<ul style="list-style-type: none"> - Conflicts between ruling / governing and ruled upon / affected actors - Steering and coordination in the context of systems of institutionalised rules - Negotiation between public and/or private actors; - Adaptation of systems of institutionalised rules.
POLICIES	<ul style="list-style-type: none"> - Legislation (command and prescriptions) - Distribution of public benefits 	<ul style="list-style-type: none"> - Communication (in networks and in communities), compromises, bartering; - Co-production of collective goods; - Network management; - Institutional policies (management of institutional change).

Table 2: Government and Governance as Perspectives in Political Science

(Benz 2004a: 21; own translation)

2.3 Governance in the Arenas of Power

If each policy type refers back a specific political conflict and if each arena of power establishes a distinct mode of conflict resolution, each policy type can also be attributed specific modes of governance. For Lowi, this means apparently hierarchical steering: “[p]ublic policy can be defined simply as an official expressed intention backed by sanction. Although synonymous with law, rule, statute, edict, and regulation, public policy is the term of preference today probably because it conveys more of an impression of flexibility and compassion than the other terms” (1988b: x). Building on M. Weber, he asserts that coercion is “basic to all state action” (Lowi 1985: 69). How can this view reconciled with non-hierarchical modes of governance?

A possible linkage becomes evident when taking a closer look at the fringes of each approach. On the one hand, Lowi's notion of remote coercion is not as restrictive and overlaps with what others call non-hierarchical steering. On the other hand, it has been pointed out convincingly that non-hierarchical steering is effective only under certain conditions and especially only under a credible shadow of hierarchy.

Lowi's conceptualisation of coercion has been criticised by many before.² The author himself replaced the dimension *likelihood of coercion* with *form of expressed intention* that can be primary or secondary rules (Lowi 1985). Yet, also these more legal expressions of how a policy is formulated do not break with the top-down government perspective. If we turn to the mechanisms through which the single policies work and thus the logic of the governance tools applied, the meaning of coercion seems less restrictive. "A great part of the ultimate success of a public policy may be attributable to the mere statement of the preferred future state of affairs. The purpose of good citizenship is to make public policies virtually self-executing. But most policies are accompanied by explicit means of imposing their intentions on their environments, and in all policies some techniques of control are inherent" (Lowi 1985: 69-70). Further, Lowi rejects the idea that coercion serves to bind those who oppose a policy. On the contrary he emphasises that "it is government coercion that makes participation inevitable (if permitted, so that we are speaking here only of liberal systems)" (Lowi 1988a: 727). To pay respect to the insight that policy-takers were actors in their own right (Pressman and Wildavsky 1973) that can reject public policies, which lead to a shift from steering to governance (see above p. 6), we need to admit that not

² In more generic terms, many have put into question Lowi's conception of coercion before (Spitzer 1987; Salisbury and Heinz 1970; Olson 1965, 1982; Wilson 1973; Kjellberg 1977; Kellow 1989). Spitzer expresses a similar critique as the one spelled out above (1987: 684), proposing the addition of the dimension of "new regulation". While the addition of a dimension has itself been criticised for distorting the elegance of the typology, the limitations of basing the taxonomy on the notion of 'coercion' has led other scholars to propose alternatives, especially linking Lowi's approach back to Schattschneider's conceptualisation of the scope of conflict as determining political relationships (Schattschneider 1975), as well as the differentiation between structural policies (rules for future allocation) and allocative policies (confering direct benefits) (Salisbury and Heinz 1970) and the concept costs and benefits (Olson 1965, 1982; Wilson 1973). In this vein, Kjellberg dwelled on the transactional perspective of the model and thus the inadequately reflected threefold distinction between the provision of goods and services, indirect allocation of benefits, and the most indirect form of impacting on welfare through governmental organisation (Kjellberg 1977: 558). Elaborating this further Kellow phrases this very issue most bluntly: a "typology based upon the nature of costs and benefits is preferable because it incorporates the relationships between government and beneficiaries in a way in which a coercion-based schema cannot. It makes no sense to talk of the recipient of a subsidy being coerced in any way; the taxpayer is coerced into paying for the subsidy, but it is the manner in which the benefit is sought and provided which determines the absence of active opposition from the taxpayer which gives rise to the patterns which characterize this arena" (Kellow 1989: 541). The common line of critique focuses on the problem the concept of coercion poses, most evidently in the distributive arena. This raises another point than the extension towards alternative modes of steering discussed above: the different arenas of power themselves are by the logic of their functioning more or less 'coercive', raising the question whether the voluntary adaptation of behaviour in exchange for benefits is a different category to 'coercion' altogether.

state coercion or the threat of sanctions alone trigger ‘good citizenship’ but that citizens themselves need to respond to and are therefore integral part of governance. Policies under of remote coercion, or secondary rules, that confer privileges or powers are backed by the only ‘coercive’ means of withdrawing rewards. In governance terminology, these are instruments such as incentive setting and supply by public bodies which trigger voluntary responses (Windhoff-Héritier 1987).

Whereas the arenas of power overemphasise the role of coercion as an ever present and effective tool to create cooperation, the governance perspective has been accused for being ‘power blind’ (Mayntz 2004) for assuming in some cases the intention of actors for collective cooperation. It does not account for the absence of an intention for steering altogether as cause for failed cooperation (Benz, Lütz *et al.* 2007: 18). More plainly still, if we want to account for the networks and hierarchies to coexist, “governance becomes a matter of confronting complex and varying institutional arrangements. In that sense, Rhodes’ title ‘The New Governance: Governing without Government’ is misleading. ‘Governing with *more than* government’ would be more the point” (Kjær 2004: 44; Rhodes 1996). In response, some governance research has shown that only under specific conditions non-hierarchical steering is successful. Most explicitly, the necessity of a ‘shadow of hierarchy’ for non-hierarchical governance to be effective has been pointed out (Scharpf 2002; Héritier 2003; Héritier and Lehmkuhl 2008; Héritier and Eckert 2008; Smismans 2008). Börzel refers in this vein to a paradox of non-hierarchical governance: states draw on new governance in cases in which they lack sufficient means to ‘command and control’ but they need nonetheless a minimum of authority to potentially impose a policy, else private actors lack the incentive to involve into self-steering. For new modes of governance to come to effect, a shadow of hierarchy is indispensable – even if it does not need to be all that long (Börzel 2007). It is this shadow of hierarchy for ‘new’ governance that matches Lowi’s notion of incentives as a form of coercion where the two approaches meet.

We can thus link the two views on collective cooperation to resolve political conflicts. To account for the degree of hierarchy implied in a mode of governance, the level of discretion captures the degree to which policy-takers are restricted by public policies. The more discretion, the less hierarchical is the mode of governance. To account for the content or intended objective of a public policy which has been pointed out to be decisive for the mode of governance, the way a policy goal is framed is decisive. The dimensions of Lowi’s typology can accordingly be transformed to the respective modes of governance that result from them. *Likelihood of coercion* is therefore implied by the *framing of coercion*. Instead of *applicability of coercion* that indicate whether an individual is affected directly or whether the environment of conduct is adapted, the *framing of policy*

objectives appeals to whether a governance instrument is explicit in prescribing the intended policy goal or implicit in that the instruments applied are intended to set off processes that to achieve a particular goal. Table 3 places the policy types into this grid of modes of governance. The ‘pure’ or ‘ordinary’ types are the restrictive or discretionary forms of framing coercion that differ according to policy type.

Beyond that, each policy type can be executed in a less restrictive or less discretionary manner. Therefore, I extend each cell by an additional box that defines the more discretionary regulative or redistributive policies and more restrictive distributive and constituent policies. Lowering restrictiveness, regulatory policies that are backed by sanctions, and standards for positions in society that are not imposed can be formulated. In turn, lowering the level of discretion, distribution can be conditional when rewards are bound to obligations as much as constituent policies that confer powers can further restrict these by informal norms or networks that introduce additional institutional rules.

FRAMING OF OBJECTIVES FRAMING OF COERCION	EXPLICIT (policy goals specific)	IMPLICIT (policy goals transmitted)
RESTRICTIVE (imposes obligations/positions)	REGULATORY POLICIES Rules imposing obligations, rules on individual conduct, criminal in form	REDISTRIBUTIVE POLICIES Rules imposing status; categorising activity
Extending discretion/ reducing restrictiveness softening coercion	Non-binding rules on individual conduct	Corporatism, negotiation between public / private actors
Extending restrictions/ limiting discretion/ hardening coercion	Rules conferring facilities or privileges in exchange for economic or membership rewards, conditionality	Network governance, institutional norms of behaviour
DISCRETIONARY (confers privileges/powers)	Rules conferring facilities or privileges unconditionally DISTRIBUTIVE POLICIES	Rules confer powers; rules about rules and about authority CONSTITUENT POLICIES

Table 3: Steering Instruments by Arena of Power

In sum, the attribution of modes of governance to policy types offers a differentiated grid for the analysis of intentional collective coordination of societal concerns. Policies matter because they limit the choice for restrictive or discretionary policy instruments. Within the realm of each arena of power itself, the degree of discretion for policy-takers can vary. It remains however restricted

by the scope the political relationships of the arena offer. The next section will illustrate this framework by applying it to the European Union's system of multi-level governance.

3 POLICY TYPES AND GOVERNANCE MODES OF THE EUROPEAN UNION

The following empirical illustration will bring two central points to the fore: (1) the European Union has not fully developed all four arenas of power, ergo its structures provide tools for traditional governmental steering ('old' governance) only in a limited sense; (2) the EU has developed a wide array on non-hierarchical steering ('new' governance) to supplement and substitute lacking political authority, ergo as much few stress the EU's 'old' governance characteristics (but Börzel 2008; Jachtenfuchs 2008), a lot of academic attention has focussed on 'new' governance in the EU. The empirical review embraces all steering instruments the EU applies to depict the elements of government and governance according to arena of power. This overview makes two contributions. First, it illustrates the typology of modes of governance within arenas of power. Second, it puts the different modes of governance ('old' and 'new') into a systematised relation to each other. In essence, starting from policies to understand the extension and dominance of different modes of governance renders comprehensible why the EU relies on which policy tools and defines some boundaries for the effectiveness of single modes of governance in the presence or absence of certain other modes.

I will skip through the four arenas of power to discuss which relevance and shape they have in EU policy-making from the 'old' and subsequently the 'new' governance perspective. Table 4 summarises which steering instruments are actually used in EU governance.

3.1 Governance in the Regulatory Arena

It is generally accepted that the EU produces predominantly regulative policies (Majone 1996 makes this point most rigidly). Restrictive steering is an established mode of exercising coercion as defined also by Lowi, namely binding legislative acts. Examples in the EU are the formally binding legal acts (regulations, directives and decisions) which leave at best limited leeway for interpretation to the member states. In cases of non-compliance, the Commission and European Court of Justice can sanction member states. Hard regulation in the EU concentrates predominantly on the economic sector and the core competences of the Community laid down in the founding Treaties. The political relationships in the regulative arena have changed over time. Interest representation has increased with the widening of the regulative agenda. In particular in order to raise the legitimacy of EU regulation, the EU Commission has promoted explicitly the

consultation and participation of non-state actors since the publication of the white book on governance (Commission of the European Communities 2001). Although interest groups do not have direct influence on decision-making, one can observe that in the regulative arena decision-making has developed well beyond intergovernmental cooperation. This is most evident in the strongly enhanced importance of the European Parliament in the legislative process.

Complementing hard regulation, the EU has a variety of tools, both in form of non-binding agreements among member states and as formalised regulation that leave considerable discretion to member states (especially recommendations, framework decisions and the instruments of the second and third pillar). In other words, the regular legislative procedures of the EU provide for instruments that are less coercive than simple top-down coercion that leave considerable discretion to the member states on how to transpose regulatory policies. Still more discretionary is EU soft law that has no binding effect but – in contrast to the redistributive arena subsequently discussed – can refer to a shadow of hierarchy because the regulatory arena and the respective possibility for coercive steering is well established (López-Santana 2006; Trubek and Trubek 2005; Sisson and Marginson 2001; Cini 2000).

3.2 Governance in the Redistributive Arena

Examples for redistributive policies in a strict sense are meagre. Most relevantly, the EU has no authority to raise taxes. It has to work on a balanced budget which is mostly based on member state contributions based on a fixed percentage of GDP each state has to contribute. The level of contributions is therefore not staggered but derives from relative differences in national GDPs. The European Council's budgetary negotiations on member state contributions are thus also the closest the EU gets to political relationships that classify member states. In essence the EU does not have a redistributive arena proper. EU social policy is accordingly also mostly framed as regulative policy, there is no EU pension or health security scheme. Accordingly, the EU also lacks the political relationships, such as strong EU social partners, that would represent broad ideological lines. Keeping redistributive competences – and with it ideological group conflict – off the EU agenda results also in the critique that the European Parliament remains a depoliticised body which does not work along a polarised left/right spectrum.

Moving to non-hierarchical governance, one condition for it to be successful is a well-established network of actors that are sufficiently committed to produce collective outcomes also in the absence of coercion. The EU lacks corporatist structures or compulsory negotiation networks between private actors, relevant policy-making is dominated by member state governments and not

private actors (Mayntz 2008). Chances for effective redistributive results should therefore be low. The EU has nonetheless developed ‘new’ governance especially in the redistributive arena to compensate for its lack of formal competences. In recent years, overwhelming attention has been paid to ‘new’ governance that has been established without the shadow of hierarchy to formulate redistributive policies backed by coercion on the EU level. Especially in connection with the *Lisbon Agenda* (Commission of the European Communities 2006a) new modes of governance have been introduced to substitute for restrictive redistributive policies. Working through means such as targeting, peer reviews and the development of non-binding standards adaptations of the national systems are to be promoted under the *open method of coordination*. Without the backing of restrictive policy instruments underpinned by identifiable political relationships in matters high conflict potential such as social policy, the effectiveness of these measures and their actual redistributive impact have been seriously brought into question (de la Porte 2002; Schäfer 2004; Scott and Trubek 2002) and the legitimacy of has become a matter of debate (Benz 2007).

3.3 Governance in the Distributive Arena

Although overall a midget in quantitative terms (Sbragia 2000: 323), distributive policies have a central qualitative importance for EU policy-making. Policy tools in the distributive arena guarantee by default more discretion to policy takers who receive unconditional benefits. Spending under the restricted and institutionally inflexible EU budgetary rules were created mostly as side-payments to some member states, either to create agreement for further integration or enlargement or to account for specific needs of newly entered states (van der Beek and Neal 2004). They establish patronage relationships because they are dispersed mostly to sub-national units whose revision is explicitly not subject to broad ideological conflict – the EU financial instruments confer privileges much rather than imposing societal positions. To illustrate the policy type with an example from the EU, its major characteristics are well reflected in about forty percent of the EU budget spent under the title of the *Common Agricultural Policy*. By nature of the political relationships they establish, also the EU’s *Cohesion* and *Regional Policy*, likewise established as side-payments, have the traits of patronage rather than redistributive policies. This classification foos especially on the way the EU disperses money, which is in a disaggregated manner to regional recipient units that make it impossible to trace concretely winners and losers. Wallace accordingly affirms that in the EU a “distributional mode” of policy-making prevails (Wallace 2005: 82-85). Thus, the way in which Community money is dispersed creates patronage relationships with specific beneficiaries which are traded off by log-rolling, rather than resembling conflict resolution typical for the redistributive arena. As the Commission states itself “[u]nlike in the case of national budgets, where progressive taxation plays an important redistributive role, in the EU

budget, contributions are proportional to the capacity to pay measured by nominal GNP at current exchange rates. Redistributive objectives, as noted above, are, therefore, pursued through expenditure alone” (Commission of the European Communities 2006b). Through ‘expenditure alone’ no truly redistributive policy can be established, it will perforce turn out distributive because the political relationships that emerge in the implementation phase will be patronage-like.

To counterbalance these established patronage policies, net-paying member states have increasingly pushed to lessen discretion of recipients. While patronage policies established at the EU level have shown very difficult to reform, let alone terminate (see British rebate or CAP), they have increasingly been bound to conditions. Conditional privileges increase the constraining control over recipients of funds. The patronage nature of political relationships is sustained but discretion of the policy-takers is reduced granting the implementing body considerable leverage in evaluating compliance with the conditions. We therefore see a clear development away from Lowi’s ideal typical definition of *unconditional* distributive policies.

‘New’ governance in terms of network governance has an ambiguous role. Generally, “in some environments, no interest group is continuously active. This occurs when a policy offers widely distributed benefits and widely distributed costs” (Kjær 2004: 48). Initially, cohesion policy limited the Commission’s role to dispersing money and only with enlargement to relatively poorer member states the Commission was given more influence to control EU funds (van der Beek and Neal 2004), which implied more control over and restrictions for the recipients. With the introduction of a uniform regulation framework for the design and implementation of EU funded programmes conditionality rose and with it networks between regional actors and the Commission came into being so that today regions are well represented and active participants in Brussels (Kjær 2004: 110).

3.4 Governance in the Constituent Arena

Formal Treaty articles, finally, are the expression of constituent policies. They are discretionary because they create powers for certain actors. At the same time, defining rules about authority and rules about rules also has restrictive effects because formal institutions impose constraints. Still, it makes sense to distinguish constituent rules from the redistributive arena. Accordingly, the institutional rules which make constituent policies are defined as enabling actors, i.e. creating discretion to coerce. Due to the official regime character of the EU, member states remain the ultimate masters of the Treaties. This implies essentially that ‘in the long run all EU policies are constituent’ because they are at the end of the day based on agreement between states that confer powers. According to the principle of conferral, the EU formally only *exists* where competences

have been shifted to the supranational level. *De facto*, the supranational level has, however, developed a life and authority that surmounts pure intergovernmental cooperation. In terms of control this is evident also in the fact the European Court of Justice (ECJ) can only judge on EU policies and has no powers beyond, while where it has stretched the interpretation of what it felt entitled to judge on, it has implicitly created powers. In the same vein, the intergovernmental second and third pillars that guarantee member states' ultimate authority over issues are excluded from ECJ jurisdiction. In practice, the application of the principles of direct effect and primacy of EU law give the EU Treaties a constitutional character (European Court of Justice 1986; Weiler 1991). These two legal principles are therefore the two constituting pillars the Union's coercive power beyond the regime character has found constitutional expression in, even if member state authority formally remains the bottom-line of the Treaties.³

Following this reasoning that constituent policies confer powers, informal rules that adjust the power relations of actors increase the level of restrictiveness for those who *originally* hold the monopoly on authority. Informal institutions are thus understood as limiting further those actors who are formally endowed with certain powers. Especially the work by Farrell and Héritier has focussed on the decisive role of informal institutions in the EU decision making process on the EU level (2003; 2005; 2007). Another important aspect are inter-institutional agreements which have an important role in EU policy-making processes (Slominski 2007; Hummer 2007b; Kietz and Maurer 2007; Eiselt, Pollak *et al.* 2007; Hummer 2007a; Eiselt and Slominski 2006). Network governance is at work and enables decision-making for example in the budgetary procedure that is strongly ruled by informal institutions all actors abide. Since restrictive decision-making rules in the EU do not only make joint decision-making difficult but render decisions also basically irreversible, informal institutions and networks are that limit the power of dominant actors are highly relevant for in the EU.

³ The ultimately constituent nature of EU law features in the revised founding Treaties that lack an explicit hierarchy of law, i.e. detailed rules on sectoral policies have the same status and are subject to the same revision procedures as rules of constitutional character and are thus also found in the Treaties themselves. In short, lacking a 'Kompetenzkompetenz', i.e. the competence to establish its own competences to create rules, the EU lacks constituent policies in the narrow sense of establishing rules about power. Room for manoeuvre exists only where the Treaties grant exclusive competences and where legislation based on this pushes the boundaries of formal competences.

Table 4 sums up which instruments the EU uses in each arena and which policies can be attributed to each policy type.

FRAMING OF COERCION \ FRAMING OF OBJECTIVES	EXPLICIT (policy goals specific)	IMPLICIT (policy goals transmitted)
RESTRICTIVE (imposes obligations/positions)	<p align="center">REGULATORY POLICIES</p> Rules imposing obligations, rules on individual conduct, criminal in form <i>Example EU:</i> <i>Regulations, directives, decisions in: competition, economics/finance, trade, environment, food safety/health/consumer affairs, transport; in CFSP: joined actions.</i>	<p align="center">REDISTRIBUTIVE POLICIES</p> Rules imposing status; categorising activity <i>Example EU:</i> <i>Setting of capped member state contributions to the EU budget</i>
Extending discretion/ reducing restrictiveness softening coercion	Soft law: Non-binding/flexible rules <i>Example EU:</i> <i>Recommendations, framework decisions, conventions, non-binding acquis (e.g. in nuclear safety); in CFSP: principles and general guidelines, common strategy, common positions (also JHA)</i>	Targeting, indicative standards <i>Example EU:</i> <i>Open Method of Coordination</i>
Extending restrictions/ limiting discretion/ hardening coercion	Conditional privileges, imposed patronage relationships <i>Example EU:</i> <i>Co-financing in Common Agricultural Policy, Structural Policy, Cohesion Policy; conditional targeting for funds (e.g. administrative capacity building), International Aid (ENP)</i>	Informal institutions (complementary/accommodating), norms of behaviour (additive) <i>Example:</i> <i>Informal institutions, inter-institutional procedures</i>
DISCRETIONARY (confers privileges/powers)	Rules conferring facilities or privileges unconditionally <i>Example EU:</i> <i>Direct payments to farmers (CAP), Education, International Emergency Aid, Science & Technology/Research</i> <p align="center">DISTRIBUTIVE POLICIES</p>	Rules confer powers; rules about rules and about authority <i>Example EU:</i> <i>Treaty competences, principles of conferral, proportionality, subsidiarity</i> <p align="center">CONSTITUENT POLICIES</p>

Table 3: Steering Instruments by Arena of Power

4 CONCLUSIONS: POLICIES DETERMINE GOVERNANCE

The key tenet of this article is not revolutionary but refers back to the most basic proposition of modern political science. The contribution made is an analytical framework to systematise the obvious link between political conflicts and the choice of policy tools, the central topos which has received breathtaking negligence in current work on governance beyond the state. The common concern that establishes the fruitful bond between policy types and governance modes is the relevance of actor constellations for achieving particular political objectives.

Linking systematically the arenas of power approach with a governance perspective offers a crucial value added: steering modes are conceptually related to questions of political power. Other than the most frequently applied broad *institutional* definition of governance that refers to the “setting of rules, the application of rules, and the enforcement of rules” (Kjær 2004: 10, original in italics), the arenas of power relate policy types back to the expectations actors have when framing the solution to a political problem at stake in a respective manner. Although policy types are empirically not always neatly separable and albeit policy-makers have certain scope in which arena to frame a policy, in the end these do refer back to particular political problems at stake and thus societal conflicts of different character. Thinking governance in the framework of the policy typology therefore provides a reply to the well-founded critique that questions of power and rule are utterly ignored in EU governance research (Jachtenfuchs 2001: 258). In turn, extending the arenas of power by a governance perspective overcomes the state-centred view to make the approach applicable also to political steering beyond the state. Talking to each other, governance in the arenas of power thus establishes a framework to analyse how ‘political systems exploit conflicts’ – and thus gets us to the heart of political steering.

The empirical illustration of policy types and modes of governance that dominate political processes in the European Union shows that linking the two approaches offers more than an interesting thought experiment. An analysis of the policy types supranational policy-making is based on shows which arenas of power with their respective political relationships are developed and accordingly which kinds of political conflict can be resolved on the supranational level and which conflicts remain outside the EU’s formal capacities for political action. Accordingly, traditional steering is limited to the areas in which arenas of power in terms of political relationships between the governing bodies of the EU and its citizens exist. Only in these areas can the EU establish a credible shadow of hierarchy for non-hierarchical steering. The governance perspective highlights in turn that non-hierarchical steering is applied not only as a supplement to such existing authority but also as a substitute for traditional steering of policy types that lack a supranational arena of power and hence the political relationships for policy formulation and implementation. Additionally, in most instances governments take up the position of citizens in representing private interests, which further blurs the picture. Accordingly, not only the absence of a shadow of hierarchy but also the void regarding actor constellations capable of expressing and contesting political conflict according to the political problem at stake render the legitimacy and effectiveness of such governance highly questionable because the modes of governance are not able to address the political conflict at stake in a way that includes the citizens affected.

Although formulated in terms of effectiveness and legitimacy, more fundamental underlying normative questions are evident. One may argue that a normative debate remains irrelevant as long as the EU has only non-hierarchical instruments in areas of high societal conflict – yet, in consequence one would need to accept that policies will be highly ineffective without a shadow of hierarchy and that they will thus promote a questionable political symbolism. The normative problem that ‘new governance only’ bares no danger since authority stays with the member states is that if we accept the undermining of the Union’s very output legitimacy. The much-acclaimed need for better policy delivery by the EU is a direct and inevitable consequence.⁴ If, however, granting the EU more competences to create shadows of hierarchy, the arenas of power ought to be completed and made accessible by political relationships that provide structures in which societal conflicts are fought out and traceable interest representation along societal cleavages needs to be established. Input legitimacy would need to get a big boost. Such a development seems at date highly unlikely and for many also not desirable because it would mean a fundamental shift of authority from the state to the supranational level to turn the polity substantially more state-like. In any case, if just dwelling on the status quo of EU integration a more accurate delimitation of political authority and, because this is the flip-side of the coin, a more honest depiction of political responsibility in the resolution of specific political conflicts would enhance a realistic assessment and with it the likelihood to achieve intended effects of collective coordination. ‘Policies determine governance’ may therefore appear less a consistent observation of EU governance but a plea to successfully govern the European Union.

⁴ Policy delivery has become a buzzword especially in the aftermath of the negative votes on the Constitutional Treaty in France and the Netherlands (Blair 2006; Commission of the European Communities 2005).

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