INSTITUTIONAL TRANSFORMATION IN EUROPEAN POLITICAL ECONOMY: CORPORATISM, NEO-CORPORATISM AND GOVERNANCE RECONSIDERED

Conference at the Department of Business and Politics, Copenhagen Business School
30 - 31 January 2014.
Kilen, Kilevej 14, 2000 Frederiksberg. Room Ks.71

Private-public relations have undergone drastic transformations in recent decades. In the European context, one of the most crucial changes is that neo-corporatist institutional setups, which traditionally have stabilised the triangular relations between the state, employers and employees, have come under pressure and increasingly lost their centrality. At the same time new types of governance frameworks have emerged which partly substitutes and partly complement neo-corporatist institutions.

This conference, funded by the European Research Council project “Institutional Transformation in European Political Economy” (ITEPE), will shed new light on this development in several ways:

It will introduce different theoretical approaches seeking to explain the still ongoing transformation processes; develop a framework for understanding how the economic, political and legal dimensions of intermediary institutions, such as (neo-)corporatist and governance institutions, play together; and present a range of empirically cases concerning how these transformations unfold in practise within areas such as competition policy, corporate governance and social regulation.

For more information (including a list of abstracts) visit www.itepe.eu or contact Professor MSO Poul F. Kjær: pfkj.dbp@cbs.dk.

Registration: Mette Grue Nielsen: mgn.dbp@cbs.dk before Friday 24th January 2014.
Programme

Thursday 30th January 2014

8.45 – 9.00: Coffee and Registration

9.00.-9.10: Welcome

Session I: From Corporatism to Governance (Chair: Eva Hartmann)

10.00 – 10.50: Richard Münch (University of Bamberg): From Neo-Corporatism to Neo-Pluralism. The Liberal Drift of Multilevel Governance.
10.50 – 11.10: Coffee

12.00 – 13.00: Lunch

Session II: Governance and the Law (Chair: Martin Herberg)

14.40 – 15.00: Coffee

Session III: The Transformation of Europe’s Economic Model (Chair: Gert Verschraegen)

15.00 – 15.50: Eva Hartmann (University of Basel/Copenhagen Business School): The Competitive Solidarity of European Integration.
15.50 – 16.40: Hubert Buch-Hansen (Copenhagen Business School) and Angela Wigger (Radboud University Nijmegen): Competition Regulation and the Emerging EU State Apparatus: A Case of Authoritarian Neoliberalism?
16.40 – 17.30: Laura Horn (Roskilde University): Corporate Governance and the European Economic Model.
Friday 31st January 2014

Session IV: Professions and Knowledge-based Governance (Chair: Angela Wigger)

9.00 – 9.10: Coffee and Registration

9.10 – 10.00: Gert Verschraegen (University of Antwerp): The Problem of Epistemic Integration in European Social Governance.


10.50 – 11.10: Coffee

Session VI: The Constitutionalism of Intermediary Institutions (Chair: Laura Horn)

11.10 – 12.00: Grahame F. Thompson (Copenhagen Business School): The Constitutionalization of Everyday Life?

12.00 – 13.00: Lunch


14.40 – 15.00: Concluding remarks and perspectives
Abstracts, Biographies and List of Speakers

Abstracts and biographies:

Shadow of the Law: Intermediary Institutions and the Ruling Part of Governance

Alfons Bora (Bielefeld)

The term »governance«, in the social sciences as well as in political practise, has emerged as a result of a crisis of interventionist thinking. Post-interventionist theories and concepts of pluralist societies had raised questions that the idea of governance promised to answer by replacing more rigid concepts of social steering by new ideas of cooperation, negotiation, coproduction, hybrid communication, and self-regulation. Against this background, the recollection of the functional nucleus of governance is suggested with the term »regulation« and with a particular emphasis on the »ruling part« of governance that feeds on legal sources. Intermediary institutions are places where regulation and its legal context become visible, even in those forms of self-regulation, where at a first glance the law does not play a major part. Four types of relations between self-regulation and the law will be discussed, bearing upon examples from science governance, ethics councils, and technical standardization. They will be characterized as substitutive, pre-emptive, initiating, and integrative relations. These forms of self-regulation can be interpreted on a scale with growing influence of legal norms. In each type the specific reference to the law serves the function of regulation, namely stabilizing expectations within a system but also between different systems. Thus, even the most advanced forms of self-regulation in intermediary institutions on all levels of governance operate with the frame of »ruling« in the shadow the law.

Biography

Alfons Bora is sociologist and lawyer. Since 1999, he has been holding a chair in sociology at Bielefeld University. His interests are sociology of law, theory of regulation, sociological theory, and qualitative methods. He was a member of the German Ethics Council (appointed by the Federal Parliament and Government) from 2008 until 2012. Since 2010, he has been acting as deputy director of the Bielefeld Graduate School in History and Sociology (BGHS, funded by the German »Excellence Initiative«). From 2008 until 2012, he was executive editor of the Zeitschrift für Soziologie. Since 2000, he has been working as one of the editors of Zeitschrift für Rechtsssoziologie – The German Journal of Law and Society.
Competition regulation and the emerging EU state apparatus: a case of authoritarian neoliberalism?

Hubert Buch-Hansen (Copenhagen) and Angela Wigger (Nijmegen)

A range of critical political economy scholars has interpreted the EU’s responses to the current capitalist crisis as a manifestation of a rising authoritarian neoliberalism. Taking up the notion of authoritarian neoliberalism, this paper shows that, likewise other EU market regulatory fields, competition regulation has undergone a profound neoliberal transformation from the mid-1980s onwards, which gradually consolidated in the course of the 1990s and early 21st century. This transformation has not only reconfigured the social purpose of this central market regulatory domain, but also led to the incorporation of a range of “authoritarian neoliberal” elements in the institutional outlook of its governing agencies, particularly by strengthening the judiciary and the executive dimension. What has recently been identified as authoritarian neoliberalism hence needs to be understood as a process that has been going on for decades. Notably, the authoritarian dimension has been an essential component of neoliberalism from the start. Theoretically, the paper explains these developments from a critical political economy perspective that highlights the importance of regulatory discourses and underlying changes in the balance of power between configurations of social forces. In this context, the paper also engages critically with (neo) corporatism and governance approaches.

Biography

Hubert Buch-Hansen is an Associate Professor at the Department of Business and Politics, Copenhagen Business School, Denmark. His research currently focuses on competition regulation, cartels and economic crises. His book The Politics of European Competition Regulation: A Critical Political Economy Perspective, co-authored by Angela Wigger, was published by Routledge in 2011.

Angela Wigger is Lecturer in Global Political Economy and International Relations at the Institute of Management Research at the Radboud University, The Netherlands. Her current research focuses on analyzing the global economic crisis, crisis responses and power configurations with respect to political resistance. She is specialised in the transnational political economy of the EU - with a special focus on competition regulation from a critical (historical materialist) perspective. She has published amongst others the book The Politics of
Economic Policy as an Institutional Process: The State, Governance and Collective Action
Alexander Ebner (Frankfurt am Main)

This paper addresses economic policy as an institutional process, highlighting theoretical aspects of the shifting economic borders of the state. The position of ‘Keynesian corporatism’ with its advocacy of industrial bodies of regulation is confronted with the perspective of ‘Hayekian pluralism’ that deals with the impact of voluntary associations. Subsequent efforts in the anti-pluralist argumentation of Olson’s theory of collective action lend support to corporatist arrangements, yet they do not account for the variety of institutional patterns governing economic processes. This problem is taken to the fore by an institutionalist political economy, which highlights the role of governance and networks in economic policy, thus modifying pluralist arguments.

Biography
Alexander Ebner is Chair of Political Economy and Economic Sociology at Goethe University Frankfurt. Previously, he was an Associate Professor of Political Economy at Jacobs University Bremen. He has obtained degrees in economics and political sciences, received a doctorate in economics (summa cum laude) at Goethe University Frankfurt and proceeded with a habilitation in economics and political sciences at the University of Erfurt. His research focuses on the institutional dynamism of modern capitalism. International research affiliations have included the University of California at Berkeley and the Institute of Southeast Asian Studies in Singapore.

Serving Facts, Returning Norms: New Governance as Socio-Legal Ping Pong
Sabine Frerichs (Helsinki)

The debate on ‘law and (new) governance’ can be framed as an encounter between legal scholars and political scientists. As such, it bears all the difficulties of an ‘interdisciplinary project’ as it is pursued in ‘EU legal studies’ more generally. The latter has long been equated with ‘integration studies’, with intergovernmentalists and neofunctionalists debating the roles of member states and European courts in ‘integration through law’. With the ‘governance turn’, scholarly interest has shifted from the bigger questions of European integration to the
day-to-day functioning of the - already established - European polity. In the ‘governance paradigm’, old and new forms of governance are studied from a comparative-institutionalist point of view which is, as such, not premised on the ‘uniqueness’ of the European setting. With lawyers entering the field, the debate recently shifted to ‘law and (new) governance’. In fact, a major difference between ‘old’ and ‘new’ governance can precisely be seen in the changing role – or form - of (the) law.

From a sociological point of view, the ‘law and (new) governance’ debate can be depicted as a socio-legal ‘ping pong’ between different kinds of arguments: facts and norms, or the ‘is’ and ‘ought’ of governance in the shadow of the law, and law in the shadow of governance.

Thus understood, the governance game consists in a big ‘ping’ served by the political camp: (new) governance as a challenge to the law, and a big ‘pong’ returned by the legal camp: law’s respective challenge to (new) governance. However, this framing builds on an interdisciplinary division of labour which entrusts legal scholars with the normative point of view and political scientists with the empirical point of view, and which cannot really capture what emerges in-between: a ‘new variety of legal realism’, which is empirically informed and normatively committed at the same time. Situating new governance theories in the realm of new legal realism - which includes institutionalist and behaviouralist variants of law and economics - raises a crucial question: what’s economics got to do with it?

Going back to the roots of the governance concepts in institutional economics, I will explore what one might call an ‘unacknowledged slippage between economic and political modes of analyses’ in the ‘(law and) governance’ debate. By ‘economics’ I here refer to ‘law and economics’ and by ‘politics’ to ‘law and (new) governance’, that is, two varieties of legal realism which both include descriptive as well as prescriptive types of argument. The intuition behind this claim is that the move away from old ‘government’ structures and semantics can be understood as a move towards ‘law and economics’ and ‘law and governance’ at the same time. Hence, besides rivalries there are also affinities between the two approaches, which are both presented as alternatives to more traditional rights-and-principles or command-and-control approaches. Not surprisingly then, we find certain similarities in the terminology (‘from rights to incentives’) and can explore, on these grounds, how the two discourses (e.g., ‘minimalism’ and ‘experimentalism’) also complement and support each other in practice.

**Biography**

Sabine Frerichs is Assistant Professor at the Faculty of Law and Adjunct Professor in Sociology of Law at the University of Helsinki.
In her recent work, including her postdoctoral dissertation (2012), she focused on developing the economic sociology of law.

**The competitive solidarity of European integration**

**Eva Hartmann (Basel)**

The paper intends to strengthen a sociological turn within European Studies. It will provide insights into how the European integration process is about to establish a European society. At the core are new modes of societal integration which underpin the ‘state’ building project of the ‘postnational constellation’ (Habermas 2001). The study will outline how some of the modes profoundly change the distinction between the economy and other segments of society. This change also translates into a new relationship between competition and solidarity characterising the *sui generis* of European social policy and the current European reform of public services.

In a first part, the paper will develop a critical account of competition as a mode of social integration through abstraction. At the centre are standards of commensurability paving the way for a new regime of price and non-price competition. In a second part, the paper will study these changes on empirical grounds with a view to identifying the social struggles and the new intermediary institutions related to this emerging European mode of integration. At the centre is the strategy of the European Union to reorganise public services along the distinction between service of general interest (SGI), service of general economic interest (SGEI) and social service of general interest (SSGI). Each of these services is characterised by a different relationship between price and non-price competition and each combines differently private and public elements. Together they underpin a sea-change in the distinction between economy and other segments of society. This change has major consequences for how solidarity is organised, understood in a Durkheimian sense as a macro phenomenon binding society together.

**Biography**

Eva Hartmann is currently research fellow at the Institute for European Global Studies in Basel. Prior to joining the Institute for European Global Studies she was studying, researching and teaching at the universities of Basel, Lausanne, Frankfurt, Kassel, Hertfordshire, Zurich as well as at the Graduate Institute in Geneva and King’s College London. She has widely published in German, English and French on the internationalisation of higher education,
Professional Services under EC-Law: Deregulation, New Governance, and Institution-Building from Below

Martin Herberg (Bremen)

The regulation of professional services is one of the sectors in which the cleavage between *Wirtschaft und Gesellschaft* becomes visible. While in the era of the 'golden age nation state', professions enjoyed a high degree of autonomy, their autonomy seems to erode now due to processes of deregulation and trade liberalization. European antitrust and competition law played an important role in this transformation. However, while some of the European Community's major legal acts seem to indicate a decline of professionalism, there are also developments towards the opposite direction: Members of different professions are on their way to create their own transnational institutions, which are incorporated into both Community and national law. The aim of the research is twofold. Firstly, adopting the concept of 'institutional logics', the transformation under research will be reconstructed as a paradigmatic shift from professionalism towards managerialism. Besides, drawing on the concept of 'institutional work', the study will examine the strategic responses of professional actors to this situation. How do lawyers, doctors, financial auditors etc. respond to their changed institutional environment, and which functional equivalents are there in order to maintain a minimum level of professional autonomy? The research will combine theoretical and empirical aspects, although it has not been decided yet which field of professional practice will be examined more closely. Besides the general institutional structures as established by EC legislation, the study should also include case law as well as different forms of soft law emerging from the self-coordination and self-organization of transnational professional communities.

Biography

Martin Herberg is a Senior Research Fellow at the Department of Political Science at the University of Bremen. His research interests include global governance; corporate social responsibility; and the transnationalization of professional services. Martin is co-editor of "Transnational Administrative Rule-Making" (2011) and "Responsible Business" (2008). He is currently involved in a research project at the Collaborative Research Centre 'Statehood in Transition', entitled 'Transnational Governance and Environmental Protection'; an ongoing
Corporate Governance and the European Economic Model
Laura Horn (Roskilde)

In the context of financial, economic and political crises in the European Union, financial actors and intermediaries have been subject to a wide range of debates about accountability and regulation. Surprisingly, rather little interest has focused on corporate governance and company law as such. While for instance risk management and financial incentive structures in banks and financial corporations have been under intensive regulatory discussions, it seems that changes in corporate governance practices and regulation are much more limited.

This paper concentrates on the political economy of corporate governance against a background of a wide range of developments in the EU economic model. In particular, it seeks to chart an overview of regulatory responses to the crisis in the area of corporate governance at the EU level, focusing on e.g. the Action Plan on Company Law and Corporate Governance of late 2012. Crucially, while there has been a discursive shift about, and increasing questioning of shareholder value as ideological underpinning of corporate governance regulation and company law, few concrete legislative changes have occurred in the aftermath of the crisis. These developments are then discussed in the broader context of changes in the EU economic model, with specific focus on the political actors and interests involved.

Biography
Laura Horn is Associate Professor at the Department of Society and Globalisation, Roskilde University. Her research focuses on the critical political economy of European Integration. She has published on corporate governance regulation (The Transformation of Corporate Governance Regulation in the EU, 2011), organized labour, varieties of capitalism and critical political economy perspectives.

Corporatism and beyond? A strategic-relational approach
Bob Jessop (Lancaster)

The paper will do four things: (1) explore the meaning of societalization in Luhmannian and Marxist terms – identifying different principles of societalization, their articulation, and the question of dominant axes of societalization; (2) introduce the problem of complexity
reduction and the role of different forms of corporatism in governing in strategic-relational terms problems of complex reciprocal interdependence; (3) critically assess the significance of governance and identify its limits and crisis-tendencies; and (4) introduce the idea of meta-governance, meta-governance failure, and calibration.

**Biography**

Bob Jessop is Distinguished Professor of Sociology and Co-Director of the Cultural Political Economy Research Centre at Lancaster University. He has recently finished a 3.5 year ESRC Professorial Fellowship examining crises of crisis-management in relation to the North Atlantic Financial Crisis and the Eurozone Crisis. He is best known for his contributions to state theory, critical political economy, the analysis of welfare state restructuring, and critical governance studies.

**Towards A Sociology of Intermediary Institutions**

**Poul F. Kjaer (Copenhagen)**

The “switches” from corporatism to neo-corporatism and from neo-corporatism to governance implied deep-seated changes in the setup and composition of European society. This contribution seeks to analyse the *structural causes* guiding these switches. The focus will be on increases in social complexity, acceleration of social processes and spatial dynamics. This will be combined with a reconceptualization of the function of intermediary institutions under conditions of intensified modernity, just as the effects of these developments for the stability of social processes and for the relative centrality of intermediary institutions in society will be evaluated.

**Biography**

From Neo-Corporatism to Neo-Pluralism. The Liberal Drift of Multilevel Governance
Richard Münch (Bamberg)

The paper will focus on the replacement of national neo-corporatism by a kind of transnational neo-pluralism. Within the nation state the co-operation of government, industrial federations and trade unions mediated the laws of the economy with political and integrative requirements of national societies. With economic globalization this institutional arrangement is being replaced with an uncoordinated plurality of international organizations serving specific functions like the WTO, the IMF, the World Bank, the ILO, the WHO and specific regimes like the climate regime. This pluralization of governance is accompanied by the individualization of social inclusion. The constitutionalization of multilevel governance has to face this reality and tends therefore to the establishment of a liberal and pluralistic order as against the largely collectivistic neo-corporatist order of the national welfare state. The European Union in between the national and global level of governance cannot reconstitute the neo-corporatist arrangement on the transnational level but only mitigate the liberal drift of multilevel governance somewhat.

Biography
Richard Münch is Professor Emeritus of Sociology at the University of Bamberg, Germany. His research is focused on social theory and comparative macrosociology with a special emphasis on globalization, European integration and the impact of the globally spreading neoliberal reform agenda on society, especially social policy, education and academic research and teaching. His most recent publications include European Governmentality. The Liberal Drift of Multilevel Governance, London and New York, Routledge, 2010; Inclusion and Exclusion in the Liberal Competition State: The Cult of the Individual, London and New York, Routledge, 2012; Academic Capitalism. Universities in the Global Struggle for Excellence, London and New York, Routledge, 2014.

The Constitutionalization of Everyday Life?
Grahame F. Thompson (Copenhagen/London)

This presentation takes up the issue of how the constitutionalization of the social and political domain affects its everyday life aspects. How are we to understand the way micro-constitutional practices are invading the day to day existence of citizens and other social agents, and why is this happening now? It examines the impact of constitutionality on the routines of administration and institutional practice, what the consequences of this are, and
how it is reframing subjectivities and identities. These processes are often hidden or go unnoticed, hence the need to excavate them from everyday life and expose them to critical analytical scrutiny.

**Biography**

Grahame F. Thompson is Visiting Professor at the Department of Business and Politics, The Copenhagen Business School, Denmark, and Emeritus Professor of Political Economy at the Open University, England. His research interests are in the areas the political economy of the international system, global corporate citizenship and the consequences of globalization for the continuation of a broadly liberal domestic and international order. In 2009 a third edition of the book *Globalization in Question* was published by Polity Press. His latest book is *The Constitutionalization of the Global Corporate Sphere?*, Oxford University Press, 2012. He is currently preparing a manuscript titled *Globalization Revisited*, Routledge, 2014.

**The Crisis of Corporatism and the Sociological Foundations of International Law**

*Chris Thornhill (Manchester)*

This paper examines the growth of corporatism in its classical form as the result of an expansionary construction of state legitimacy, in which, after 1914, the legitimacy of public authority was made contingent on the internalisation of deeply embedded social conflicts (especially between classes) within the political system. It examines different cases of corporatism, in Europe, Latin America and West Africa, and it argues that only rarely, under very distinctive sociological conjunctures, were states able to assume the palliative/mediating functions ascribed to them under classical corporate doctrine. In most cases, the rise of corporatism led to an authoritarian crisis of state authority, typically marked by high levels of political reprivatization: i.e. the growth of clientelism and patronialism as means for sustaining state control.

The crisis of classical corporatism is rarely interpreted as background to the rise of international law after 1945. However, again using concrete examples, this paper argues that one of the reasons why international law has assumed such importance as a normative source of state legitimacy in the processes of democratization occurring in recent decades is that it has allowed states to confer legitimacy on laws (both primary and secondary) without being obliged comprehensively to internalize class conflicts. The recent and ongoing rise of the transnational constitution, in which international law penetrates deep into national jurisdictions, is thus driven sociologically by the fact that it forms an alternative to corporate
constitutionalism, and it alleviates and facilitates processes of legitimization which had traditionally exposed state institutions to acute risk of fragmentation. The growth of inter- or transnational law has its sociological foundation in the fact that it enables states to generate legitimacy from within an existing legal system, and it diminishes requirements for external social inclusion.

Biography

Chris Thornhill is Professor in Law at the University of Manchester, UK. He is the author of a number of publications on the sociological origins of constitutional law and transnational public law, and he has played a central role in promoting the sociology of constitutions as a sub-division of legal sociology. His works on legal sociology and jurisprudence have been translated into many languages. He is currently researching for a book on the sociology of transnational constitutional law. His research is funded by the European Research Council.

The problem of epistemic integration in European social governance

Gert Verschraegen (Antwerp)

Over the last decennia, there has been a progressive shift in both national and EU debates away from the goal of a single Social Europe (based on European social legislation) as a regulatory counterbalance to the single market in favour of a ‘new’ governance approach based on policy coordination and mutual learning processes (e.g. periodic monitoring, benchmarking and peer review). The shift to a non-binding, knowledge-based governance paradigm was partly motivated by failed legislative attempts to harmonize social standards across national borders, pitting alternative political cultures and institutional regimes against one another. The new governance paradigm appeared better suited for pursuing common European concerns while respecting legitimate national diversity because it commits Member States to collaborate in reaching joint goals and performance targets without seeking to homogenize their inherited policy regimes and institutional regimes. Knowledge-based governance, however also struggles with specific problems of standardization, requiring intensive technical and political cooperation. This paper will explore some tensions and limits of the knowledge-based governance approach to reconciling European action with national diversity. Drawing upon previous work in the field of pension reform and employment policy, it will assess the construction and use of knowledge in the European multi-level setting through governmental techniques such as performance monitoring and benchmarking. It will argue that knowledge-based governance is much more complicated than is often assumed and
struggles with problems of ‘epistemic integration’. The paper also assesses how a knowledge based governance paradigm relates to the so-called ‘structural deficit’—the putative inability of the EU not only to integrate markets but also to socially correct their outcomes.

**Biography**


**List of speakers:**

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