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Chapter 1

The European Union as a System of Differentiated Integration

Jacques Delors, a former president of the European Commission, once called the European Union a UPO – an Unidentified Political Object. Already in the early 1970s, Donald Puchala (1971) likened students of European integration to blind men each examining a different body part of an elephant and, predictably, coming to divergent conclusions about the object of their study. Indeed, since its beginnings, scholars have debated the ‘nature of the beast’ without reaching consensus.

We argue that conceiving the EU as a ‘system of differentiated integration’ is an indispensable key to better understand its nature. In this chapter, we will make the case for this notion in two steps. First, we explore the nature of the EU by contrasting it with the two traditional and most widespread types of polities in the contemporary international system: the state and the international organization. This serves to show that the EU fits neither type and that it is like an international organization in some respects but more akin to a state in others. Second, we argue that this traditional comparison obscures the differentiated nature of European integration. We need three dimensions to understand the EU adequately: the level of centralization, the functional scope, and the territorial extension. Because the EU’s centralization and territorial shape vary across policies, the EU is a system of differentiated integration.

In the second part of the chapter, we measure and map differentiated integration. For each policy area of the EU, we measure the level of centralization (vertical integration) and the territorial extension (horizontal integration) over time. This allows us to capture both integration and differentiation for the EU system and for individual policies. We find that vertical integration increases over time. The data further show that vertical and horizontal integration are less conflicting than often claimed. ‘Deepening’ and ‘widening’ go largely hand in hand in the history of European integration. Yet, the analysis also reveals that integration has been accompanied by differentiation. The difference in the level of centralization across policies (vertical differentiation) is pronounced and has increased, rather than shrunk, over time. So has horizontal differentiation: following the 1980s, the territorial extension of EU integration has begun to vary increasingly across policies.

2 Differentiated Integration

Between International Organization and State

The European Union (EU) defies the classic dichotomous categories of public law, which distinguish two basic types of contemporary polities: the modern state and the international organization. Figure 1.1 contrasts the characteristics typically associated with the two types. Whereas there are differences in degree and individual exceptions, most states and international organizations cluster at either end of the spectrum. Figure 1.1 also shows where the EU fits in the picture. The further a cross ('X') is located to the right, the more the EU resembles an international organization; the further it is located to the left, the more it is akin to a state. The location of the EU on this spectrum is tentative and illustrative, it does not pretend to represent any exact measurement.

Membership

States are composed of citizens who mostly acquire their citizenship or nationality by birth. It is rare for individuals to change their citizenship or to be a citizen of more than one country. By contrast, the members of international organizations are states. The individual is not a subject of classic international law. Moreover, states become members of inter-

Figure 1.1 *The EU: between state and international organization*

	STATE	EU	IO
<i>Membership</i>			
Members	Citizens	————— X —————	States
Acquisition	By birth	————— X —————	Contractual
<i>Delimitation</i>			
Borders	Territorial, physical	— X —————	Functional, institutional
Issue scope	General	— X —————	Specialized
<i>Authority</i>			
Ordering principle	Hierarchy	————— X —————	Anarchy
Sovereignty	State sovereignty	————— X —————	Sovereignty of MS
Legal order	Hard, highly legalized	————— X —————	Soft, weakly legalized
Decision-making rule	Majoritarian	————— X —————	Non-majoritarian
Separation of powers	Yes	————— X —————	No, only executives
<i>Governance capacity</i>			
Coercive	Centralized	————— X —————	Decentralized
Administrative	Centralized	————— X —————	Decentralized
Fiscal	Taxation, large budget	————— X —————	State contributions
Welfare provision	Interventionist, redistributive	————— X —————	Regulatory
<i>Legitimacy</i>			
Cultural integration	National integration	————— X —————	Multinationalism
Basis of support	Identity	————— X —————	Efficiency

national organizations on a voluntary, contractual basis – usually by an international treaty. States are free to leave an international organization (although this is rather rare) and usually belong to many international organizations.

The EU's membership regime is clearly that of an international organization. Only states can become members. Accession is voluntary. It results from an accession treaty that needs to be accepted and ratified by all member states and the candidate state. The member states are also free, in principle, to leave the EU, even though this has not happened so far. In the most recent of the EU's treaty revisions, the Treaty of Lisbon, an exit procedure was formally introduced for the first time (Article 50). In contrast to other international organizations, however, the EU has citizens, too. Among other things, the EU accords them the right of free movement and residence throughout the EU, and the right to vote and stand in local and European elections in any member state. Yet, EU citizenship is derivative of and subordinated to national citizenship. Individuals acquire EU citizenship as an automatic consequence of citizenship in any of its member states, and the Treaty stipulates that EU citizenship shall supplement rather than replace national citizenship.

Delimitation

The system of states is a territorially ordered system. The borders between states are physical, geographical lines. State territories are also generally exclusive and exhaustive. It is rare for (land) territories to be governed by two or more states at the same time, or by no state at all. By the same token, states are functionally integrated. They possess the authority to deal with all areas of public policy on their territory: external and internal security, economy and welfare, individual rights and freedoms. By contrast, international organizations are typically functionally delimited. Their authority is task-specific: the North Atlantic Treaty Organization (NATO) is a security organization, the World Trade Organization (WTO) covers trade, the World Health Organization (WHO) deals with public health issues, and the Council of Europe focuses mainly on the rule of law and human rights protection. Obviously, the borders between these organizations are institutional rather than physical, and their competences are partially overlapping. For instance, both NATO and the United Nations Security Council may be involved in the same security issue either in cooperation or in competition, and both the WTO and World Intellectual Property Organization regulate intellectual property rights issues. Whereas states tend to integrate all task-specific competences on a single territory, (global) international organizations strive to regulate one specific issue for all territories.

4 *Differentiated Integration*

In this respect, the EU is more like a state than an international organization. The EU has a clearly demarcated (and fairly contiguous) territory, as well as a physical border. People enter the EU much as they would enter the United States of America – and not as they would ‘enter’ the WTO or NATO. European integration has thoroughly transformed borders in Europe. Borders between two member states have largely lost their traditional functions as barriers to the free movement of persons and goods. In many places, they look more like borders between administrative districts within a state, rather than traditional borders between states. By contrast, the borders between member states and non-member states have become EU borders at which the EU’s border regime is applied. Moreover, the EU covers all policy fields. Having started as an economic organization, it has expanded into all areas of public policy including foreign policy, internal and external security, and the protection of civil and social rights. Although its competences vary from issue-area to issue-area, there is hardly a field of policy-making that is not shaped in some way by the EU.

Authority

The modern state is sovereign – regardless of whether sovereignty ultimately rests with the people or an autocratic class or dictator. Its relationship to its citizen-members is hierarchical. The state alone has the authority to make and enforce laws that are binding for all people living on its territory. International organizations do not have these attributes of sovereignty. Their powers derive from the consent of the member states that do not give up their individual sovereignty upon founding or joining an international organization. The relationship between the international organization and its member states (as well as among the member states) is anarchical. Rather than being subordinated to an international organization, the member states coordinate their policies within its institutional framework. Decision-making is typically based on intergovernmental consensus. The member state executives that participate in international policy-making are not checked and balanced by parliamentary (citizen) representations, or by independent judiciaries at the international level. Adherence to the rules of an international regime is voluntary, and international law is typically soft law. Many rules are not legally binding and, even if they are, their interpretation and the settlement of disputes are subject to negotiations between the member states. Third-party adjudication is rare – and voluntary, where it exists.

To qualify as sovereign, the EU would have to be able to decide its constitutional order autonomously. Yet, its basic principles and rules remain treaty-based, and the member states remain the ‘masters of the treaties’. Any change in the EU’s ‘constitution’ needs to be negotiated

among the member governments, agreed by unanimity, and ratified in each member state. This is typical for international organizations. At the same time, however, the member states have transferred some sovereign rights permanently to the EU, most notably in external trade and monetary policy. This is rare for an international organization.

Short of sovereignty, however, the EU's institutions resemble those of a state. First and foremost, its legal system is highly integrated. The EU produces law-like legal acts that take direct effect in the member states and are superior to competing domestic law. Cases of non-compliance and legal disputes are ultimately settled by an independent court, the European Court of Justice (ECJ), which makes binding decisions and is entitled to fine the member states, if need be. National courts refer cases involving European law to the ECJ for binding preliminary rulings. Second, the separation of powers is more similar to (liberal-democratic) states than to international organizations. The EU not only has an independent judiciary, but also a directly elected European Parliament (EP). Nevertheless, executives play an important role in legislation and jurisdiction as well. The most powerful chamber of the legislature, the Council, is composed of nation-state governments, and the European Commission is not only the EU's executive, but also formally initiates all legislation and monitors member state compliance. Third, decision-making in the EU is mainly majoritarian. Around 75 per cent of all EU laws result from the 'ordinary legislative procedure', which combines majority voting in the Council and the EP and covers virtually all areas of EU policy-making. However, EU decisions generally require large ('qualified') majorities, and the Council normally takes decisions by consensus in practice. In sum, the EU has arguably travelled half way from anarchy to hierarchy. Whereas rule-making and adjudication are clearly hierarchical, ultimately, the EU is not sovereign and cannot order the use of force against non-compliant member states. EU authority is characterized by hierarchy in the shadow of anarchy.

Governance capacity

International organizations have weak policy-making capacity. Whereas in states, including most federal states, the centre normally has the strongest administration and receives the biggest share of state revenues, the bureaucracies of international organizations are typically small, weak, and without independent income, let alone the power of taxation. Whereas the modern welfare state can use its powers to intervene in the economy and engage in redistribution, international organizations typically focus on regulatory policies: they make rules that coordinate and constrain the actions of states, rather than intervening directly in market or social relations. And whereas the state has the

6 *Differentiated Integration*

legitimate monopoly of the use of force, international organizations do not have the means physically to coerce their members into compliance with their rules.

The advanced legal integration of the EU stands in marked contrast to its limited governance capacity. First, it is not matched by any coercive powers. The use of force remains firmly with the member states; there is neither an EU police force nor an EU army. Second, the administrative capacity of the EU is strong for an international organization but weak by comparison with the states of Europe. The European Commission has approximately 38,000 staff, roughly the same number as the federal administration of Switzerland, a highly decentralized European country. But whereas the Swiss federal administration serves a population of 7.7 million, the European Commission deals with half a billion. It is therefore not surprising that the EU relies strongly on the administrations of its member states to implement EU legal acts. Third, the EU has weak fiscal capacity. It cannot directly tax the EU citizens, it is not allowed to run deficits, and its expenses are limited to little more than 1 per cent of the EU's GDP. This contrasts starkly with the public expenditure quota of more than 45 per cent of GDP that the average member state spends. Given its limited budget, it is clear that the EU cannot engage in the same kind of interventionist, redistributive economic and welfare policies for which the member states use many of their revenues. In line with typical international organization activity, its policy-making activities are predominantly regulatory. It is in the area of economic regulatory policy that the EU has its most impressive powers: market integration, monetary policy, and competition policy.

Legitimacy

The modern state is, or aspires to be, a nation-state. With the help of institutions such as schools and the media, it promotes the idea that its citizens form a distinct community (a 'nation') that shares a common and distinctive history and destiny, language, culture, and/or religion. Ideally, the state rests on a common identity of its citizens, who regard and support it as the political form of their community. By contrast, international organizations do not have strong identity and cultural underpinnings. They are composed of states that represent multiple national communities with diverse cultures and do not establish direct relations of political loyalty with the citizens of these states. Their legitimacy therefore depends predominantly on efficiency: the production of benefits that the nation-state could not provide autonomously.

The EU's sources of support are more typical for an international organization. European identity is weak. According to *Eurobarometer* surveys, less than 10 per cent of the respondents identify themselves primarily as Europeans. This pattern of national identification has

proved extraordinarily stable in the past decades – and is likely to remain so, given that crucial resources and institutions of nation-building remain bound to the nation-state: mass media, education, and language. On the other hand, the EU's identity basis is stronger than that of most international organizations. It possesses a European regional and cultural identity, and the fact that its member states are exclusively liberal democracies creates a community of political values and norms. Hence, whereas the EU cannot rely on a 'thick' national identity as a diffuse source of loyalty, it benefits at least from a 'thin' civic identity based on abstract transnational values.

In sum, William Wallace's (1983) characterization of the European Community as 'less than a federation – more than a regime' certainly still holds at the time of writing. But it amounts to a purely negative definition: it tells us what the EU is *not*. In addition, the analysis has also shown that the EU does not end up uniformly on either the international organization or the state side of the spectrum. It is not simply a strong international organization or a weak state, but is similar to a state in some respects and an international organization in others. Whereas its constitutional foundations (state membership and sovereignty) and its social legitimacy (weak citizenship and identity) are typical for an international organization, the EU's territoriality, issue-scope, and policy-making process (separation of powers, majority voting, and law enforcement) are similar to those of a state. Another remarkable feature is the coexistence between strong legal integration and regulatory policy-making, on the one hand, and weak (administrative, coercive, and fiscal) governance capacity and redistributive policy-making, on the other (Bartolini 2005).

Whether and why the EU will remain more like an international organization or become more like a state is also the traditional core question and debate of integration theories. Supranationalism claims that the momentum created by initial, small steps of integration may lead to an expansion of the Community's tasks, competences, and capacities, and finally to a shift in citizens' identity and loyalty away from the nation-state and toward the new centre. Intergovernmentalist theory, by contrast, argues that member state governments will remain in control of European integration and guard their ultimate sovereignty. In addition, the weakness in capacity and identity will remain a structural obstacle blocking the EU's trajectory toward state-building.

Differentiated Integration

So far, we have looked at the EU as a whole and compared it with the typical state and the typical international organization. We have seen that the EU cannot be unequivocally subsumed under either type. This

8 Differentiated Integration

comparison, however, obscures further complexity in European integration: the variation among areas of EU policy and among European territories. Whereas it is true that the EU now deals with virtually all fields of policy, the nature and degree of integration in each area of EU policy differs significantly. And whereas the EU has a demarcated and rather contiguous territory with a physical EU border, there is variation in integration among, and even beyond, its member state territories.

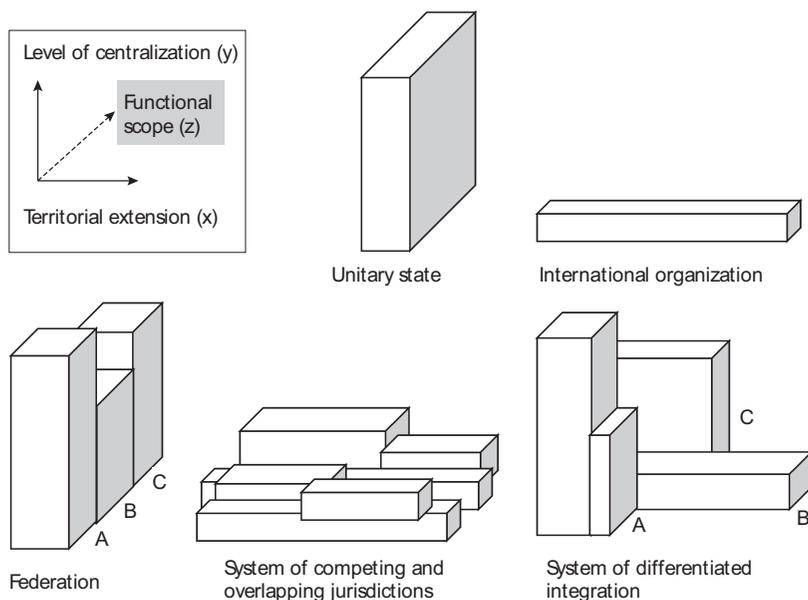
In order to better grasp this differentiation, let us think about European integration as a multi-dimensional process. To begin, we propose an understanding of polities more generally as three-dimensional configurations of authority.

- The *level of centralization* is the first dimension. It is on this dimension that the variation between the state, with its hierarchical authority and centralized governance capacity, and the anarchical and decentralized international organization is located. In abstract terms, polities where all authority is vested in one place (the centre) have the maximum level of centralization, whereas competences dispersed equally across a multitude of organizations indicate a low level of centralization.
- The *functional scope* of a polity is the second dimension. It varies between authority over a single issue (minimum functional scope) and authority over the entire range of policies (maximum functional scope). The state, with its all-encompassing policy competence, and the functionally specialized international organization differ strongly on this dimension as well.
- The third dimension is *territorial extension*. The authority of a polity can be limited to a single political territory (minimum territorial extension) or encompass the entire world (maximum territorial extension). Here again, the state and the (global) international organization (with universal membership) are potentially at the opposite extremes of the dimension.

Figure 1.2 illustrates different types of polities resulting from variation in the configuration of authority. Territorial extension is shown on the horizontal x-axis, the level of centralization on the vertical y-axis, and functional scope on the z-axis. The classical configurations are the (unitary) state and the international organization. In the unitary state, all policies are made at the same (central) level and cover the same (limited) territory. In addition, the state traditionally has maximum functional scope: it covers all policies. By contrast, international organizations are typically decentralized and task-specific, but cover more territories.

The lower three shapes represent more complex configurations of authority. Here, we need to distinguish between policies (A, B, and C

Figure 1.2 A three-dimensional representation of polity-types



in the figure) because the level of centralization and/or the territorial extension varies across the functional scope of the polity. The *federation* is the most familiar complex configuration. It differs from the unitary state in that at least one policy is governed at the subnational (regional) level (here: sector B) or co-governed by subnational and national authorities (sector C), whereas other policies are fully centralized (A). Federal states typically have areas of exclusive federal competences, areas of mixed or shared competences, and areas of exclusive subnational competences. Defence is normally a federal competence whereas education is often a subnational one. The territorial extension and functional scope of the federation, however, is of the same order as that of unitary states. It deals with all policies on a closed territory. This is also the basic model of federalist conceptions of European integration, which assume a set of member states that form a union and allocate the authority over policy sectors to themselves, to the union or, as mixed competences, to both states and the union.

The second and much ‘messier’ configuration of authority is the *system of competing and overlapping jurisdictions*. We take this concept from Bruno Frey and Reiner Eichenberger, who developed the idea of functional overlapping competing jurisdictions (FOCJ) as ‘the new democratic federalism for Europe’ (Frey and Eichenberger 1996). In this configuration, each jurisdiction focuses on a single policy or

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function, each policy is provided or offered by several jurisdictions that compete with each other, and the membership of the jurisdiction varies in size. In the international domain, the coexistence of hundreds of international organizations, most of them highly specialized, some working in the same policy fields, with variable and overlapping membership and different regional focus, is an (imperfect) approximation of this type. In the discussion about the form and future of European integration, Philippe Schmitter (1996: 136) called this type of polity ‘*condominio*’ and describes it as ‘many Europes’, in which ‘there would be multiple regional institutions acting autonomously to solve common problems and produce different public goods’. Liesbet Hooghe and Gary Marks (2003) label this configuration of task-specific jurisdictions with intersecting memberships ‘type-2 multi-level governance’ and contrast it with ‘type-1 multi-level governance’, which is exemplified by the federation.

In our view, however, the EU is a hybrid type. In contrast to federal type-1 governance, the territorial extension of the EU varies by policy or task. The EU has different borders for the eurozone, ‘Schengenland’, or the single market. On the other hand, categorizing the EU as functional type-2 governance ignores the extent to which the EU has developed an institutional centre and a membership core that reaches across the EU’s policies with their variation in centralization and territorial extension. This institutional core is constituted, first, by the Treaty on European Union. It covers all policies of the EU and – in the Lisbon Treaty – defines the EU as a single legal entity. The institutional core is furthermore constituted by the EU’s institutions. The European Council, composed of the member states’ heads of state and government, gives general directions for all policies of the EU and for treaty revisions. The Council, the Commission, the EP and the ECJ are also present (albeit to differing degrees and with varying competences) across the board of EU activities and across the territories into which the EU’s external relations reach. Finally, there is a core group of member states, mostly the original six member states, that takes part in all the policies of the EU at the highest level of centralization. The EU is not ‘many Europes’ with task-specific jurisdictions each having their own organization. It is one Europe with *an organizational and member state core but with a level of centralization and territorial extension that vary by function*. This is how we define a ‘system of differentiated integration’.

A representation of a system of differentiated integration is depicted in the lower right corner of Figure 1.2. It has the same functional scope as the state and the different levels of centralization for the policy areas A–C that characterize a federal state. In addition to variation in the level of centralization, however, the territorial extension varies by policy as well. In this example, the highly centralized sector A is

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