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Hard and Soft Governance

Martino Maggetti

Introduction

'Hard' governance in the EU is operated through rules that arise from treaties, directives and regulations, while 'soft' governance involves the use of non-binding rules that are nevertheless expected to produce effects in practice (Trubek *et al.*, 2005). Using Hooghe and Marks' terminology hard governance relies on the 'type one' institutional architecture that composes the EU polity: the European Commission, the Council of Ministers and the European Parliament. Conversely, soft governance is characterised by 'type two' mechanisms, implying flexible structures and task-specific policy-making arrangements, such as committees, forums and networks. This chapter examines research designs and methods for the empirical study of EU governance with a special attention to soft governance. Before starting, it is necessary to summarise the main theoretical debates surrounding the concept of governance in EU studies.

Research questions and theoretical approaches

The term 'governance' connotes both the transformation of the steering capacity of political decision makers in a context of de-nationalisation (Zürn, 2000) and the coordination of complex social systems through formal and informal public-private interactions (Pierre and Peters, 2000). In the public policy literature, this term is commonly used to describe a 'new', de-centred process of governing, which is based on the interdependence between organisations in the public, private and voluntary sectors, and relies on self-organising networks, which can be at least imperfectly and indirectly steered by the state (Rhodes, 2007). However, Rhodes says, governance is a polysemic term, which has several uses that 'have little or nothing in common'. In order to reduce the risk of stretching this concept too much, it is convenient to focus on the *modes of governance*, that is, the empirically observable ways of coordinating the behaviour of political actors and make

political decisions. Early empirical studies of modes of governance in the EU focused on integration and institution building, while contemporary scholars broadened the scope of empirical research to new areas, which are summarised below.

The first topic is the impact of the Euro-polity on national and European policies and politics (Jachtenfuchs, 2001). The second is the study of the EU as a system of governance characterised by a set of regulatory institutions (Hix, 1998) that constitute a 'regulatory state' (Majone, 1996). The third set of questions relates to the increasingly fragmented, multilevel and polycentric form that the EU is adopting (Jordan and Schout, 2006). The fourth concerns the process of policy formulation and implementation in the EU (Kohler-Koch and Rittberger, 2006), which is increasingly relying on experimentalism and voluntary arrangements (Eberlein and Kerwer, 2004). Therefore, the study of EU governance follows four main agendas for empirical research, which are intertwined, but can be analytically distinguished: Europeanisation, the regulatory state, multilevel governance and soft governance as opposed to hard governance.

Europeanisation

The literature on Europeanisation examines the consequences of European integration for domestic political institutions, policies and politics (Börzel and Risse, 2000; Knill and Lehmkuhl, 1999; Radaelli, 2000b). More precisely, the concept of Europeanisation refers to 'processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies' (Radaelli, 2000b). Following Bache, the first wave of Europeanisation literature adopted a top-down perspective to explain domestic reactions to pressures from above, assuming a legal, institutional or procedural 'misfit' between the European level and member-states, leading to a reactive adaptation of polity and policies that was expected to produce change at the domestic level, through the mechanisms of 'inertia', 'retrenchment', 'absorption', 'accommodation' or 'transformation' (Bache, 2003). The second wave emphasised instead bottom-up and horizontal dimensions of Europeanisation with a greater emphasis on politics, interests, beliefs, values and ideas, which cover the phenomena of policy diffusion, policy transfer and learning, leading to a differential impact of Europe on member-states and beyond (Héritier *et al.*, 2001).

The regulatory state

The concept of the regulatory state has proven to be particularly helpful to define the style of policy making exerted by the supranational institutions of the EU, particularly the European Commission (Majone, 1996). Majone

famously argued that regulation, defined as 'the development of rules and regulation by independent agencies', is the most important mode of governance in Europe. While the increasing relevance of regulatory governance at the national level must be understood primarily as a reorientation of public priorities, following the 'post-Keynesian' shift of nation-states' function from direct interventionism in the economy to a more indirect approach, captured by the metaphor of 'steering' instead of 'rowing', at the EU level, this phenomenon derives from the inherent lack of modes of command and implementation at the disposal of European institutions. Specifically, the strong prominence of regulation as a mode of governance at the European level is due to two main characteristics of the European political system (Moran, 2002). On the one hand, the tight budget limits the capacity for positive policy making. On the other, regulation is a political strategy adopted in the absence of administrative means to implement European policies. Therefore, the Commission has followed the so-called principle of subsidiarity, by expanding European regulation, while delegating the competencies of implementing new policies to the member-states level in a number of economic and social domains, which are predominantly regulated through so-called non-majoritarian institutions, consisting above all of independent regulatory agencies (Maggetti, 2012). This kind of policy-making arrangement has been interpreted as part of a political strategy of 'subterfuge' adopted by the Commission and the Courts of Justice to prevent political impasses and promote innovative regulatory processes (Heritier, 1997).

Multilevel governance

Another prominent feature of EU governance is its multilevel nature. The concept of multilevel governance highlights the fact that decision-making authority is not monopolised by national governments but is diffused to sub-national, national, transnational and supranational levels of decision making, consistently with the functional development of the complex political system of the EU (Hooghe and Marks, 2001). The key features of multilevel governance are the complex interdependence between actors operating at different levels, the growing importance of non-hierarchical forms of policy making and the inclusion of non-public actors in crucial stages of decision making (Christiansen and Piattoni, 2003; Jordan and Schout, 2006). The empirical study of multilevel governance has evolved over time (Kohler-Koch and Rittberger, 2006). The governance of regions was one of the preferred topics in the 1990s, relating to the 'regionalisation' of Europe and the role of regions in EU governance. After the enlargement of Europe in the early 2000s, empirical research focused above all on trans-border cooperation and representation in EU decision making. Then, the framework of multilevel governance informed the study of policy implementation in different areas, such as economic policy and environment protection (Bache and Flinders, 2005). Lastly, it should be noted that

multilevel governance arrangements raised some concerns from the point of view of the European 'democratic deficit'. Recent research has shown that multilevel governance offers functional advantages for the management of complex political systems but it also entails problems of democratic legitimacy (Papadopoulos, 2007).

Hard and soft governance

The traditional procedure for hard governance in the EU is the so-called community method. This decision-making process is characterised by a 'joint-decision mode' (Scharpf, 1997). The European Commission makes a proposal to the Council and to the Parliament, who then debate it, propose amendments and eventually adopt it by qualified majority or unanimous vote as EU law. During the formulation and implementation of policies, the Commission and the European Parliament integrate private actors and organisations to inform decision making and gain consensus. What is more, committees of more or less independent experts are in charge of developing compromises and solutions to enhance implementation and enforcement at national and sub-national levels (Joerges and Vos, 1999). It has been observed that this decision mode involves the risk of a 'joint decision trap' producing a situation in which there is a tendency to take decisions at the lowest common denominator (Scharpf, 1988). The joint decision trap follows the institutional architecture of the EU, where members of governments are directly participating in EU decisions, disposing from considerable veto powers and adopting a prevailing 'bargaining' style of interaction.

As a reaction, 'new modes of governance' have been established to counteract the risk of deadlock in Community decision making. New modes of governance rely on 'soft law', which consists of non-binding rules that are negotiated through inclusive processes between public and public actors at different levels of decision making, whereby transposition and implementation is flexible and the details are left to each individual member-state (Héritier, 2003). In particular, the 'open method of co-ordination' was officially established by the 2000 Lisbon European Council (Borrás and Greve, 2004; Radaelli, 2003). It consists of a soft instrument for the intergovernmental coordination of national policies through the use of recommendations and guidelines, which is particularly developed in social policy (Schäfer, 2004). Other modes of soft governance are even more informal, as they rely on transnational groups and have an experimental character (Eberlein and Kerwer, 2004; Lenschow, 2006). This is the case of European regulatory networks, which federate national regulatory authorities, and bring into being a distinctive, flexible and relatively autonomous level of governance (Coen and Thatcher, 2008; Eberlein and Grande, 2005; Eberlein and Newman, 2008; Maggetti, 2014a, b). Their informal character is expected to promote policy learning through 'peer review' processes by contrasting 'best practices' and problem-solving strategies (Sabel and Zeitlin, 2010; Maggetti, 2014b).

Research designs

As mentioned above, theoretical approaches to EU hard governance mainly relate to decision-making procedures (Scharpf, 1994), integration (Cini, 2001; Egan, 1998), Europeanisation (Knill and Lehmkuhl, 1999) and enforcement (Tallberg, 2002). Top-down and bottom-up perspectives are adopted to portray the EU as a 'regulatory state' (Majone, 1996). Empirical studies based on these frameworks typically use 'thick descriptions' and comparative case study methods to examine supranational and intergovernmental deliberations, policy-making procedures, the implementation of community law in different countries and sectors, and the functioning of European institutions. In particular, Exadaktylos and Radaelli noted that Europeanisation literature mainly adopts a complex notion of causality focusing on mechanisms, but the awareness of research design is (comparatively) low (Exadaktylos and Radaelli, 2011). Soft governance refers instead to arrangements that are less stringent, multi-pronged, fragmented and 'horizontal' (Rhodes, 1996) and to compliance with soft law (Falkner *et al.*, 2005). In EU studies, classic examples of soft governance are consultation procedures and the open method of coordination (Egan and Wolf, 1998), which are mainly investigated with qualitative in-depth research, process tracing and comparative case studies. More recent empirical research on soft governance includes the systematic study of political interactions among transnational actors and the empirical examination of network governance with the help of formal social network analysis, policy diffusion theory and multilevel methods (Coen and Thatcher, 2008; Eberlein and Newman, 2008; Maggetti and Gilardi, 2011; Maggetti, 2014a, b). Accordingly, the network approach focuses on the interaction of actors within institutional structures. Diffusion theory operationalises horizontal interdependencies involving processes of policy learning, imitation, transfer, information exchange, harmonisation and so on. Multilevel methods allow researchers to make sense of the complex architecture of the European polity. The following sections deal with these points in detail.

The network approach

In investigations into the position of interdependent political actors and the characteristics of the structure of interaction, the network approach is particularly helpful for empirical research (see Chapter 11 in this volume). In terms of research design, the first step is to define what constitutes the relation between actors, that is, the 'tie' between the 'nodes' of the network. A relation is a specific kind of contact, connection or association between a given pair of actors (Knoke and Yang, 2008): institutional linkages, reputational data or various types of interaction proxies. These ties include social type relations, such as social proximity, communication, collaboration, information exchange, conflict and so on, but they can also be

exchanged resources, such as trade between countries, or joint membership in boards and organisations (Wasserman and Faust, 1994). The unit of analysis may be an individual but also a collective actor such as an organisation or a country. The crucial point at this stage is the determination of the boundaries of the social setting to be studied. Afterwards, the researcher must decide on which specific relations to collect data.

Next, the researcher has to create a matrix of relationships based on these pieces of information to draw a topographical representation of the network. Then it is possible to use network characteristics and data on the relative positions of actors to see how they affect or are affected by governance structures and arrangements. It is also possible to compare networks with simulative models or combine them with other analytical techniques (Carrington *et al.*, 2005). In that regard, two main analytical perspectives are applied to social networks: holistic analysis, based on the properties of the networks, and individual-based analysis, based on actor-level measures. Therefore, one distinguishes two main forms of social network analysis: global network analysis and, respectively, the ego network analysis. The former concentrates on the structural properties of one or more networks (Tindall and Wellman, 2001). An advanced procedure for the analysis of large and complex networks is available, that is, blockmodelling. It permits discernment of the structures present in the data and identification of, in a given network, clusters of actors that share structural characteristics in terms of some relation(s). The actors within a cluster should have the same (or similar) pattern of ties, and actors in different clusters should be connected through specific patterns of ties. Generalised blockmodelling can be seen as the process of selecting block types, assembling them into a blockmodel, and then fitting the resulting blockmodel to network data (Doreian *et al.*, 2005).

On the other hand, ego network analysis directly addresses the different roles of actors involved in various types of social relations (Wasserman and Faust, 1994). Graph theory defines a set of calculations on a relational matrix that provides a way of looking at the importance of individual, the nature of the relationship between individuals or the status or rank of an individual actor. These measures include: distance, degree, centrality, structural equivalence, cliques and so on. (Scott, 2000). In particular, different measures of an actor's centrality exist, which are relevant in identifying the 'most important' actors (or subgroups of actors) for specific areas or arenas of EU governance: degree centrality, closeness centrality and betweenness centrality. Degree centrality represents the number of relational ties between the actor and other actors in the network. Often this measure is normalised to the total number of ties available in the network so that centrality measures can be compared across networks of differing size. Closeness centrality assesses how close an actor is to all the other actors in the network: the more prominent members of the network will exhibit the minimum distance from the other actors in the network. This measure is calculated as the inverse of

the sum of all the distances, or number of relational ties, between an actor and all other actors in the network. Finally, betweenness centrality attempts to determine which actors have a 'mediating' role when evaluating the relational ties in the network. Actors are assigned values based on the probability of them being a part of all communication paths (Carrington *et al.*, 2005).

An example of social network analysis applied to the study of European governance is Maggetti and Gilardi's study of the impact of the policy-making structure of the Committee of European Securities Regulators on the domestic adoption of standards that were developed in this network (Maggetti and Gilardi, 2011). This formal social network analysis is based on linkages of co-participation in network subgroups, representing the framework of the institutionalised structure of communication and potential influence of actors within the network. Each actor represents an independent regulatory agency in charge of regulating financial institutions headquartered in their respective countries. Results show that representatives of countries with higher stakes at national level tend to occupy more central positions in the network, especially among newer member-states. In turn, network centrality is associated with a more prompt domestic adoption of the standards.

The diffusion approach

When the unit of analysis is a policy process, a policy diffusion approach can be advantageously applied. This approach is appropriate for examining interdependent decision making and therefore is particularly relevant for the study of European governance. Empirical studies of policy diffusion can show how decisions made in some entities (e.g. member-states) can influence decision making, policy instruments and policy outcomes in other entities, following horizontal mechanisms of interdependent decision making such as learning and emulation (Gilardi, 2012b). For example, when the government of a member-state decides to adopt a given policy, it is very likely that it takes into account factors such as success or failure of similar policies already implemented in other member-states. The researcher must therefore try to operationalise this interdependence, along with other types of factors that maintain their explanatory power, such as institutions or interests. It is clear that interdependence is supposed to be particularly strong in the case of the EU, where the territorial units are not only geographically close, but are also relatively homogeneous and constitute a coherent supranational system at European level, which also possesses structures, platforms and procedures to encourage the transfer of public policy between national and between regional units (Radaelli, 2000a). It is important to note that interdependence does not necessarily lead to policy convergence. While it may be that policy makers are urged to adopt similar policies by their interdependence, it is also possible that convergence is the result of common

pressures in the form of similar problems calling for similar solutions, or as a consequence of the influence of supranational European institutions.

In terms of methods, the analysis of the diffusion of public policy is based on qualitative techniques and, more frequently, on appropriate statistical analysis. Qualitative methods mainly rely on cross-case analysis and process tracing (Gilardi, 2012a). It is worth noting that these studies are mostly framed in terms of 'policy transfer', a concept close to that of policy diffusion, but showing some crucial distinctions (for a good review, see Marsh and Sharman, 2009). Cross-case analysis typically follows a 'diverse case' selection strategy in order to achieve maximum variance along relevant dimensions. This design permits exploration of whether and how interdependence matters in different contexts. Then, the close inspection of a single case with process tracing can give important information about the nature of interdependence. In particular, process tracing can provide evidence about the unfolding of diffusion/transfer processes. Different mechanisms, referred to as 'learning', 'competition', 'emulation' and 'coercion', are expected to shape the diffusion/transfer of public policies (Braun and Gilardi, 2006; Shipan and Volden, 2008). Conceptually, a mechanism for the diffusion/transfer of public policy can be seen as an analytical element which provides a plausible explanation of why the behaviour of a political actor affects that of another political actor, in order to qualify as interdependent decision making (Braun and Gilardi, 2006). Therefore, while macro-comparative analysis can provide important indications about the type of mechanisms at work, fine-grained evidence is required to validate the micro-foundations of diffusion/transfer mechanisms at work in specific situations.

Statistical techniques measure interdependence more systematically. They do not only allow for controlling the effects of interdependence, but also model them explicitly (Gilardi, 2012b). Two main techniques can be mentioned: spatial lag and dyadic approach. The first strategy for analysing the effects of interdependence is to add a variable to regression models, called spatial lag, which accounts for the dependent variable in the different units, weighted by a measure of their proximity. This proximity measure traditionally refers to the geographical distance, but can operationalise other aspects that indicate adjacencies that are more abstract and potentially more relevant, such as trade flows or position in social networks. The other technique that is used to account for interdependence is the dyadic approach. In this case, the units of analysis are not entities but dyads, that is to say, pairs of actors (Gilardi and Füglistler, 2008). The goal is to see if an actor was influenced by another actor, so that the two converge as regards the phenomenon under investigation and become increasingly similar. Then the researcher has to find factors that have a systematic influence on convergence. Using these methods, several empirical studies on policy diffusion showed how decisions made in some member-states can horizontally influence decision making and the conduct of public policies in other member-states.

In EU governance studies, empirical research on policy diffusion follows these two main approaches. On the one hand, qualitative case studies were used to study the phenomena of learning, context-sensitive lesson-drawing and isomorphic processes, which are sometimes actively promoted by EU institutions to facilitate policy change, namely by the European Commission (Radaelli, 2000a). According to this approach, Radaelli studied regulatory impact assessment (RIA) as the cornerstone of programmes for 'better regulation' and 'good regulatory governance' in the EU. Findings showed that RIA tools were introduced in member-states following a variety of reasons, that the outcomes differ markedly, and that similar instruments labelled 'impact assessment' correspond to different administrative practices (Radaelli, 2005). On the other hand, quantitative diffusion approaches have been applied to disentangle top-down, bottom-up and horizontal explanations of policy and institutional change. For instance, Perkins and Neumayer studied the uneven patterns of convergence and non-convergence in the context of European environmental policy with a macro-statistical comparison (Perkins and Neumayer, 2004). They expected that policy convergence could be driven by competition or by cross-national communication networks, while domestic regulatory institutions could lead to non-convergence in some cases. Their results suggest that certain regulatory environments are indeed more favourable to the adoption of environmental policies, for instance, member-states with less burdensome styles of regulation.

The multilevel analysis approach

Multilevel models are suitable when there is a theoretical or methodological need for explicitly modelling the fact that the units of analysis are organised at more than one level. Typical examples are: survey respondents that are nested in countries; students nested in classrooms, schools and cities; and individuals nested in groups that are nested in organisations. The main goal of multilevel models is to account for variance in a dependent variable by using information on all the relevant levels of analysis. There are both theoretical and methodological reasons to do so (Steenbergen and Jones, 2002). On the one hand, frequently, theories predict that the nesting or clustering of the units of analysis is relevant for explaining the outcomes accurately. The goal of studies that operationalise these theories is not only to account for the variations between the units of analysis (e.g. individuals) but also for higher-level contextual effects or group dynamics. Multilevel methods allow researchers to develop a comprehensive model that spans across different levels of analysis and to distinguish between the effects of individual and contextual factors. This type of conceptualisation is appropriate for the study of soft governance, where actors representing, for instance, member-states or interest groups are nested in different, partially overlapping layers of governance, as they are interacting in a variety of groups, platforms, forums and networks at local, regional or European level.

On the other hand, there are important methodological reasons for the use of multilevel models (Hox, 2010). Not taking into account existing group clustering will lead to biased results. Traditional multivariate techniques tend to estimate incorrect standard errors, and hence generate flawed positive significance tests, when data clustering is not recognised. This is because lower-level variables are likely to be influenced by the contextual factors; therefore the assumption of independence of observations and error terms is violated. Units within groups tend to be more similar than units compared between groups. For instance, survey respondents from the same country, on average, will display more similar behaviour, attitudes and so on than random respondents picked from different countries. Therefore, the average correlation between variables measured on respondents from the same country will be higher than the average correlation between variables measured on respondents from different countries. Multilevel methods allow researchers to explicitly model and control the effect of this data structure.

The typical multilevel research design first requires two or more levels of analysis to be defined (Bartholomew *et al.*, 2008; Bickel, 2007). The lower level is usually formed by individuals who are nested within contextual or aggregate groups at a higher level. In the basic version of the model, the researcher has to build a hierarchical data set, with one single dependent variable that is commonly measured at the lowest level, and explanatory variables that can be defined at any level of the hierarchy. The data set should include information on the groups by specifying each level. This means that there is at least one nesting variable that identifies group membership. The analysis is performed with dedicated software, such as the generalised linear latent and mixed models (gllamm) package for Stata. First of all, the researcher might be interested in examining group differences as regards the variance of the dependent variable, without explanatory variables (Steele, 2008). This is a descriptive operation that it is useful to get an idea of the pertinence of using multiple levels. Afterwards, lower-level explanatory variables can be added to test for within-groups and between-groups effects. At this point, the model can be extended by allowing both the intercept and the slope to vary randomly across groups, namely by adding random coefficients to explanatory variables. The following step is adding level-two (and possibly more) explanatory variables. As a key motivation for using multilevel modelling is to assess the effects of higher-level explanatory variables on lower-level results, group level factors can be tested, related to group characteristics and contextual effects. Finally, cross-level interactions can be added to study the conditional effects of variables across levels.

An interesting example of multilevel analysis is offered by Banducci *et al.*'s study of European citizens' support for the common currency (Banducci *et al.*, 2003). Their theory assumes a two-level structure, whereby economic factors measured for each country and year can combine with survey-based individual-level factors to explain the outcome. In fact, economic

considerations are expected to be important determinants of public support for specific policies such as the introduction of the euro. At the same time, it is also expected that citizens' diffuse support for the EU will mediate their attitude towards the common currency, considered as a key element of the supranational policy of the EU. Banducci *et al.*'s empirical analysis showed that adding these contextual effects improved the model considerably and allowed them to disentangle the complex relationships among variables. The results indicate that citizens' support for the euro is shaped by cross-level interactions. In particular, a positive individual-level attitude towards the EU reinforces support for the euro even when economic circumstances would suggest that this choice is not in the individual's self-interest.

Conclusions

New research questions about European governance should focus on the political dimension of governance and include changes in actors' constellations, the differential empowerment of domestic coalitions, the evolution of European institutions and the processes through which policies are made and implemented. The main issue when designing new research projects on hard and soft governance is how to operationalise empirically insights that are conceptually treated in a largely metaphorical way. To this aim, the researcher should specify the scope of governance instruments in the EU (advice, information exchange, policy transfer, harmonisation etc.) to situate the research along a continuum between hard and soft governance. Then she has to define what the unit of analysis is: namely, actors and/or structures or policies. A network approach is suitable for the study of the former, while policy diffusion is appropriate for the latter. What is more, the use of multilevel methods allows researchers to model the complex interaction of governance arrangements at different European and domestic levels. Further research should meet two main methodological challenges: to implement dynamic analytical perspectives to examine the evolution of modes of governance over time; and to combine – not only juxtapose – qualitative and quantitative techniques to connect the mechanisms shaping actors' behaviour with macro-outcomes in a unified framework of inference.

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