The Structure-Agency Paradox of New Forms of Non-Binding Governance: Actor Networks, Multi-Level Governance and Canadian and EU Lessons

Dion Curry[1]

First Draft: Please do not quote without permission.

[1] The Social OMC network data component was prepared as part of a larger project by the Public Policy and Management Institute, along with some of the background research on the topic. All errors are the author's alone.

The typical framework of analysis for multi-level governance (MLG) looks at structural factors in determining the playing field for developing policy decisions, including issues such as geographical/function-specific boundaries between levels, as well as size, type and membership of jurisdiction. While the typical typology of MLG allows for some consideration of agency factors – namely through barriers to entry created by certain structures – the role of actors in shaping governance processes is less developed. This paper aims to examine the role of agency in shaping new multi-level governance processes – specifically the peer review process under the European Union's Social Open Method of Coordination (Social OMC) – and whether these findings have any salience in the Canadian MLG context.

The central questions of this paper are:

- What is the interplay between new structural governance reforms, particularly those falling under the Social Open Method of Coordination, and actor relations in shaping multi-level governance within states?
- What factors must be taken into account in determining the shape and effect of these new governance processes?
- Do these processes have any application in a Canadian context?

The paper will utilise qualitative and social network analysis of the peer review process, along with consideration of the key policy areas covered by this governance approach. The first section will briefly outline the theoretical and methodological underpinnings of the concepts explored in this paper, particularly structure and agency, legitimacy, multi-level governance and social network analysis, and outline a framework of analysis for MLG focusing on relative hierarchy and flexibility of governance processes. Then, the paper will look at the Social OMC process as an application of the interplay between structure and agency in shaping MLG, focusing on the peer review process. The process will be analysed over its entire period (2004-2011) using network analysis to establish what actors are central to the process, what topics are most prevalent, how actors interact with each other and how this has changed over time. This will be combined with other qualitative methods of analysing the process to provide insight into the role of structure and agency in shaping this governance process and its potential effects on social policy-making in the EU. Finally, this paper will examine whether this approach can gain any traction in a Canadian context, before developing conclusions. The research shows that the Social OMC has allowed for a more flexible approach to governance, but has not significantly altered the hierarchical nature of the process in which actors operate. While new forms of governance such as the Social OMC open up new avenues for actor entry into the policy process, they are less able to bridge the structural gap between policy input and policy output legitimacy.

Theoretical and Methodological Approach

Structure and Agency

Structure and agency have long presented a meta-theoretical dichotomy on which to analyse the effects of different factors on governance processes.[2] For the purposes of this research, the main focus will be on opportunities and constraints created by the interplay between structure and agency, and this work focuses on a few particular aspects of structure and agency to further develop the concept of MLG. First, structure and agency are necessarily intertwined and should not be seen as an either/or proposition, and both can influence each other, often in an iterative fashion. In addition, while structures affect agents, the actions of agents also inevitably have an impact on the social/political structures in which they operate. Structures can create either opportunities or constraints for actors to engage/influence the policy process, and in turn, actors can have an

[2] For example see Marsh, D. (2010). 'Meta-Theoretical Issues' in Marsh, D. and Stoker, G., eds. Theory and Methods in Political Science. 3rd edition. Basingstoke: Palgrave Macmillan, pp. 212-231.

influence over the way in which the structure is manifested and the opportunities presented by the structure. Actors can be both proactive and reactive, and structures may be influenced by the actions of the agents.[3] Finally, and most importantly for this research, different *levels* of structural constraints and opportunities can be created. Hay differentiates between material/physical constraints and social/political constraints, and while this work clearly focuses on the latter, within those categories additional gradations and levels can be discerned. Of particular importance to this work, Hay differentiates between structures that can be shaped by its actors (social/political) and those that do 'not include the opportunity to reconfigure the rules governing the operation of the system itself'.[4] When looked at in a multi-level, multi-actor context, this becomes more complex as some agents may not have the power to reconfigure even social/political rules, whilst others have more say over the structure. In these situations, a hierarchy of actors emerges, where some may be able to control the shape of social/political institutions, and some may not. In a multi-level context, this is especially important, as opportunities afforded to actors at one level or context (say, the local level, or, in another context, the lobbying level), may not be available to these actors at another level (such as the national level or the political level).

Multi-Level Governance

Multi-level governance is typically viewed as a dichotomy, set out in various works by Hooghe and Marks.[5] Type I systems refer to those that resemble federalist structures, with clearly defined jurisdictions, little overlap and stable relationships between levels. Type II systems are much messier, with overlapping jurisdictions, fluid, function-specific and sometimes unclear connections and ever-changing relationships between the levels. These two systems envisaged of course represent ideal types and are not necessarily as clearly evident in real politics, but the two types often complement each other and can operate successfully nested within the same overarching political system.[6]

While this framework proves useful in delineating the structural terms of MLG, it leaves less room for an actor-centric approach to understanding new governance processes. Hooghe and Marks' typology acknowledges the involvement of new actors (particularly in Type II systems) but does not clearly delineate *how* these actors are involved in the process, or the meaning of their relationship to the policy process. In other words, rather than focusing on actor relationships themselves, the standard typology of MLG just outlines the system that allows new actors into the process, thus leaving it mainly a structuralist approach to understanding governance. As Blatter notes regarding governance institutions, 'it is time to get beyond simple dichotomies',[7] and other related case studies show that the existence of a simple Type I/Type II dichotomy does not necessarily hold true in Europe, Canada or other contexts.[8] There is evidence that hierarchy and rigid institutional structures, and heterarchy and flexible structures, may in fact operate as independent factors in

[3] For a more in-depth analysis of structure and agency, see Hay, C. (2002). Political Analysis. Basingstoke: Palgrave Macmillan.

[4] Hay, C. (2009). "King Canute and the 'Problem' of Structure and Agency: On Times, Tides and Heresthetics," Political Studies 56: 260-279, pp. 266.

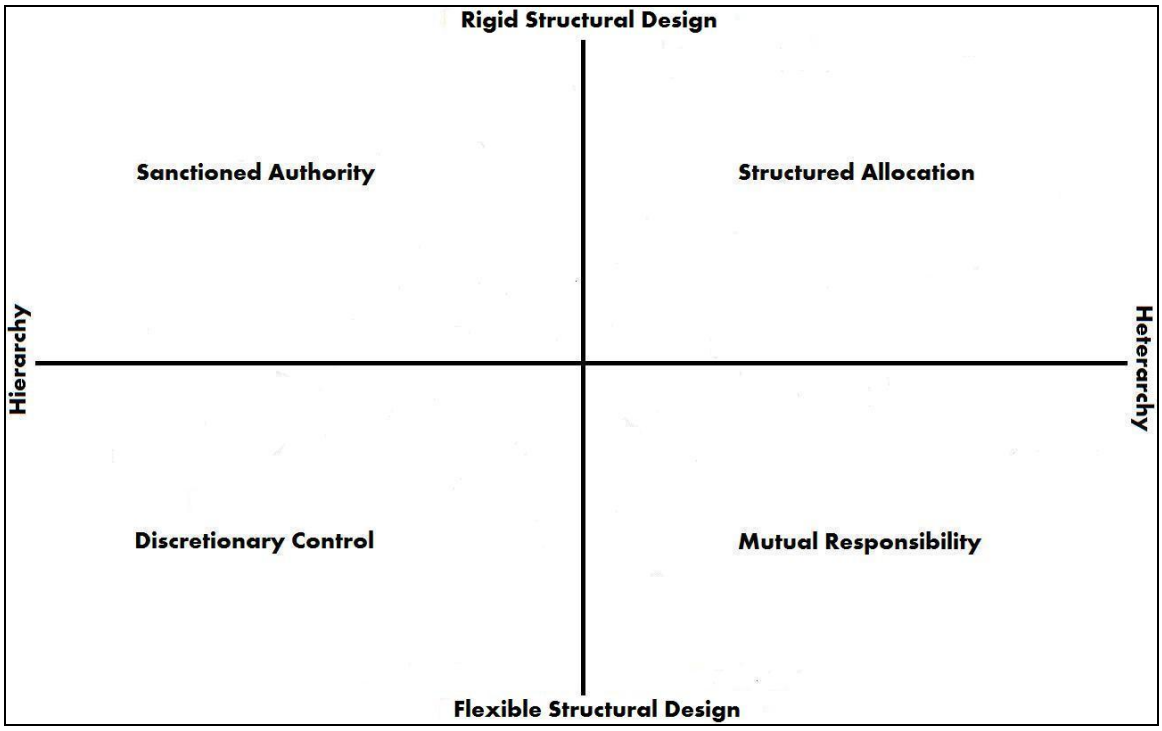
[5] Hooghe, L. and G. Marks (2001). Types of Multi-Level Governance. European Integration Online Papers, 1-24 DOI.

[6] Marks, G. and L. Hooghe (2004). Contrasting Visions of Multi-Level Governance. Multi-Level Governance. I. Bache and M. Flinders. Oxford, Oxford University Press: 15-30.

[7] Blatter, J. K. (2004). "From 'Spaces of Place' to 'Spaces of Flows'? Territorial and Functional Governance in Cross-Border Regions in Europe and North America." International Journal of Urban and Regional Research 28(3): 530-548.

[8] For example, see Leo, C. and J. Enns (2009). "Multi-Level Governance and Ideological Rigidity: The Failure of Deep Federalism." Canadian Journal of Political Science 42(1): 93-116, and Young, R. and C. Leuprecht, Eds. (2006). Municipal-Federal-Provincial Relations in Canada. Montreal and Kingston, McGill-Queen's University Press.

governance practice.[9] For example, actors may be allowed a large degree of discretionary flexibility in how and on what they operate, indicative of a Type II system of governance, but this power may be contingent on other actors and controlled hierarchically by these actors, more typical of a Type I system. Or, actors may operate within fairly rigid control bounds, as seen in Type I systems, but be allowed significant input in the limited areas over which they are responsible, more similar to a Type II approach. Some work has been done, mainly from a policy perspective, on establishing different political institutional arrangements by separating out formal and informal institutions from a hierarchical/non-hierarchical mode of governance,[10] and this work, based on previous research,[11] separates this dichotomy into a two-axis framework of analysis.



The rigid/flexible structural design axis refers to the flexibility within the political structure that actors have in dealing with issues as they see fit, which can exist with a hierarchical or a non-hierarchical power structure. This flexibility may arise through the use of policy instruments, differences in policy implementation, or other factors, while rigidity usually results from a strict adherence to statutory and legal procedures. The hierarchy/heterarchy axis refers to a spectrum of who has ultimate accountability and responsibility over decisions and/or the level of autonomy from government oversight. Heterarchy arises in situations where actors are able to operate freely, autonomously and in the way they best see fit within the bounds of their power. Hierarchy exists in situations where actors clearly control (or are controlled) by other actors even within the bounds of their power, or when they operate at the discretion of another actor. Hierarchy does not need to be

[9] Curry, D. (2013). Network Approaches to Multi-Level Governance: Understanding Power Between Levels. Basingstoke: Palgrave-Macmillan.

[10] See, for example, see Offe, C. (2006). Political Institutions and Social Power: Conceptual Explorations. Rethinking Political Institutions: the Art of the State. I. Shapiro, S. Skowronek and D. Galvin. New York, New York University Press: 9-31, Howlett, M., J. Rayner, et al. (2009). "From Government to Governance in Forest Planning? Lessons from the Case of the British Great Bear Rainforest Initiative." Forest Policy and Economics, or Weaver, R. K. and B. A. Rockman, Eds. (1993). Do Institutions Matter? Government Capabilites in the United States and Abroad. Washington, DC, Brookings. For an example especially relevant to this research, see Treib, O., H. Bähr, et al. (2007). "Modes of Governance: Towards a Conceptual Clarification." Journal of European Public Policy 14(1): 20.

[11] Curry, D. (2011). Multi-Level Governance Frameworks in Canada and the United Kingdom, or How I Learned to Stop Worrying and Love the Concept. University of Sheffield (PhD Thesis).

blatantly exercised to exist, as a shadow of hierarchy may still be present if there is the possibility of this control to be exercised,[12] and this is evident in both Canadian and European cases in different contexts.[13] Both axes have elements of structure and agency associated with them. Structural design is by its very name structural in nature, but movement along this axis also controls what actors are allowed to take part in the process. The level of hierarchy, meanwhile, can result from either structural or agential factors, or a combination of both.

This differentiation allows for further development of Hooghe and Marks approached to MLG by separating the nature of the organisation of governance (hierarchy versus heterarchy) and the nature of control over the organisation of these relations (rigid versus flexible mechanisms of control). In this framework and looking specifically at social policy, it could be argued that the EU, historically, would represent a case of sanctioned authority, as a clear hierarchy remains in place in social issues, and a rigid structural design (through the various treaties) ensures that Member States remain sole arbiters of social policy. Canada, in contrast (and at least on paper), would represent a case of structured allocation, where both provincial and federal governments have some level of control over social policy, but (after some post-war jockeying) operate within constitutionally-set and/or negotiated bounds.

Input and Output Legitimacy

Accountability may come in two forms: input (or process) legitimacy, whereby more actors are allowed to take part in political decision-making, thus opening up the process and making it more accountable to more stakeholders. On the other hand, if this opening up of the process is without democratic justification (ie. allowing unelected stakeholders to take part) it can have a negative effect on overall legitimacy. Accountability can also be seen as output based where the emphasis is on the legitimacy of the result rather than the legitimacy of the process.[14] The involvement of many actors here can be seen as improving outcome-based accountability if the interests of more stakeholders are met by a certain policy outcome, while traditional hierarchical forms do not allow for much flexibility or involvement of multiple actors in determining policy outcomes. The two conceptions of legitimacy do not have to be seen as mutually exclusive, but increases in one may result in trade-offs in the other. The interplay between the two has been extensively analysed in EU literature[15] and is relevant to this work's focus on the power of agents. While some actors may have a role to play in policy *input*, they may not have a role to play in shaping policy *output*.

In some ways, networks and governance can be seen as a potential way of enhancing legitimacy. The concept of networks removes (or minimises) the role of hierarchy in decision-making, and by allowing more actors (both public and private) into the process, more people and groups gain a voice in the decision-making process. In addition, horizontal links between actors helps to improve their influence over the process, and deliberation and participation can be increased in networks as well. As well, networks can provide a supplementary form of engagement above and beyond traditional channels of voting and old forms of political participation (such as engagement through new governance processes), although this does not necessarily equate to influence.[16] At the same time, the 'multi-levelness' of the process may hamper democratic accountability by clouding visibility and

[12] Héritier, A. and Lehmkuhl, D. (2008). "The Shadow of Hierarchy and New Modes of Governance," Journal of Public Policy 28(1): 1-17.

[13] Curry, D. (2011), and Smismans, S. (2008). "The European Social Dialogue in the Shadow of Hierarchy" 28(1): 161-180.

[14] Scharpf, Fritz W. (1999), Governing in Europe: Effective and Democratic?. Oxford: Oxford University Press.

[15] For example, see Lindgren, K-O. and Persson, T. (2010). "Input and output legitimacy: synergy or trade-off? Empirical evidence from an EU survey," Journal of European Public Policy 17(4): 449-467, Holzhacker, R. (2007). "Democratic Legitimacy and the European Union," European Integration 29(3): 257-269 or Meunier, S. (2003). "Trade Policy and Political Legitimacy in the European Union," Comparative European Politics 1: 67-90.

[16] Sørensen, E. and J. Torfing (2009). "Making Governance Networks Effective and Democratic Through Metagovernance." Public Administration 87(2): 234-258, pp. 244.

moving the policy process further away from representative institutions,[17] producing 'a complex structure of interlocking institutions and procedures, designed to generate consensus and obscure asymmetries in power and influence',[18] which can become pronounced when actors representing interests are one (governments) or more (NGOs and business interests) steps away from democracy.

Network Analysis

Governance as a concept can be understood as a series of networks, with EU governance in particular explainable as both governance *by* networks and governance *in* networks,[19] and network analysis provides a way of analysing these connections. Network analysis focuses on the relationships between actors as a way of explaining different phenomena, rather than focusing on the actors themselves, providing a way to clearly, numerically (although still relatively qualitatively) establish the roles, connections and overall nature of the actor relations in fitting into (and perhaps shaping) structural processes.[20] This rests on several assumptions. First, it rests on the idea that the ties between actors – which can be based on financial, political, procedural, social or other types of connections – are as important as the actors themselves. Second, network analysis assumes that actors are interdependent rather than autonomous. This is especially applicable in situations such as policy implementation in the EU where actors cannot easily operate alone and independently. In addition, direct ties are not the only important network relation, and thus the network as a whole must be analyzed. This allows for the consideration of indirect influence and other linkages that may not be immediately evident. This is decidedly different from the rational choice actor-centric approach, which takes actor preferences as the focus and somewhat ignores the linkages between actors.[21] Similar approaches to analysis have been used in understanding other EU multi-level concepts such as the Common Agricultural Policy,[22] although, as with all methods, the measures and interpretations are highly contingent on the issue under study.

Structure and agency, MLG and network analysis fit together to form a coherent framework for analysing the Social OMC and other new forms of governance. An MLG framework allows for the analysis of social policy development over different governmental levels and involving different governmental and non-governmental actors. This interlocks with the idea of structure and agency, which affects MLG and governance processes through structural opportunities and constraints that can affect agency (and vice versa) at different levels, in turn creating different levels of opportunity structures. This, in turn, has an effect on the idea and type of legitimacy.

Background

The European Commission first became interested in helping to coordinate social policy in the late 20th century.[23] Formal (but non-binding) EU involvement in social issues dates back to the Treaty of Nice, signed in 2001, which aimed to "support and complement the activities of the Member

[17] Papadopoulos, Y. (2010). "Accountability and Multi-Level Governance: More Accountability, Less Democracy?' West European Politics 33(5): 1030-1049.
[18] Brzezinski, Z. (1997). The Grand Chessboard. New York, Basic Books, pp. 27.
[19] Börzel, T. and Heard-Lauréote, K. (2009). "Networks in EU Multi-Level Governance: Concepts and Contributions," Journal of Public Policy 29(2): 135.152.
[20] Krackhardt, D. J. and H. Raider (2001). Intraorganizational Networks. Companion to Organizations. J. A. C. Baum. Oxford, Blackwell: 58-74.
[21] Wasserman, S. and K. Faust (1999). Social Network Analysis: Methods and Applications. Cambridge, Cambridge University Press and Wellman, B. and S. D. Berkowitz (1997). Social Structures: a Network Approach. Greenwich, JAI Press.
[22] Henning, C. (2009). "Networks of Power in the CAP System of the EU-15 and EU-27," Journal of Public Policy 29(2): 153-177.
[23] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. A concerted strategy for modernising social protection. COM(1999) 347 final.

States"[24] in several areas under Member State jurisdiction, including social exclusion and the modernisation of social protection systems, and established an advisory Social Protection Committee at the EU level.[25] These decisions created the core upon which the Social Open Method of Coordination was created. Under the Social OMC, Member States, through the European Commission (DG Employment, Social Affairs and Inclusion), work together to:

- 'Set common objectives to reach high-level, shared goals;
- Agree to common indicators for measuring progress towards the goals;
- Prepare national strategic reports, setting out how they will plan policies over an agreed period to meet the common objectives;
- Evaluate these strategies with each other and the European Commission;
- Prepare joint reports assessing progress made towards implementing the OMC; and
- Set key priorities and identify good practice of interest to all EU countries.'[26]

The Social OMC process was strengthened and consolidated in 2008, aiming to improve mainstreaming, horizontal coordination and analytical tools in developing a more coherent idea of social policy at the EU level.[27] Some research has examined the Social OMC, and mostly concluded that the Social OMC lacks the clear vision and authority necessary to effect policy change.[28] In contrast, some see the Social OMC as a first, interactional step between hard- and soft-law initiatives that can be further developed and integrated as time goes on.[29] While both of these are potentially valid arguments, this paper contends that the role of the Social OMC is not necessarily to bring about policy change, and that its role as a coordinating and facilitating instrument deserves to be examined in greater depth.

As a policy area where the EU does not have any formal jurisdiction, the main policy tools at its disposal are non-binding, including policy indicators, joint reporting, shared objectives and sharing of good practice. It is on the latter that this work focuses, in the form of the peer review process. Peer reviews were established in 2004 under the EU Social Inclusion Programme to address social issues, and broadened in 2005 to include pensions, health and long-term care. The current iteration of the Social Open Method of Coordination dates to the 2008 Communication on Reinforcing the Social OMC, which stated that:

---

[24] European Union Treaty of Nice, Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, 2001/C 80/01, Article 137.

[25] 2000/436/EC: Council Decision of 29 June 2000 setting up a Social Protection Committee. Official Journal L 172 , 12/07/2000 P. 0026 – 0027.

[26] European Commission: Eurostat. Open Method of Coordination on Social Inclusion and Social Protection (OMC). Available at http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_social_policy_equality/omc_social_inclusion_and_social_protection. Accessed 20.05.12.

[27] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - "A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion" {SEC(2008) 2153} {SEC(2008) 2169} {SEC(2008) 2170} {SEC(2008) 2179} /* COM/2008/0418 final.

[28] Song, W. (2011). "Open Method of Coordination and the Gloomy Future of Social Europe," Asia Europe Journal 9: 13-27, Kröger, Sandra. 2009. The Open Method of Coordination: Underconceptualisation, Overdetermination, Depoliticisation and Beyond. In: Kröger, Sandra (ed.): What We Have Learnt: Advances, Pitfalls and Remaining Questions in OMC research, European Integration Online Papers (EIoP), Special Issue 1, Vol. 13, Art. 5, http://eiop.or.at/eiop/texte/2009-005a.htm, Radulova, E. (2007). "The OMC: An Opaque Method of Consideration or Deliberative Governance in Action?" European Integration 29(3): 363-380.

[29] Dawson, M. (2011). New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy. Cambridge: Cambridge University Press.

> Peer reviews have proved to be useful and enriching exercises for enhancing mutual learning. They should be used more extensively in the Social OMC and in a more strategic manner. Better context information, a stronger analytical base and broader dissemination of the results would contribute to the identification of good practices and facilitate policy transfer. Ensuring greater involvement in peer reviews of officials at local and regional levels will also be important.[30]

The peer reviews are a sub-programme of PROGRESS, the EU Community Programme for Employment and Social Solidarity.[31] The peer reviews act as a coordinating and facilitating instrument for dialogue and sharing of good practice, and the overall aims of the peer reviews are

- 'To contribute to a better understanding of the Member States' policies, as laid down in their National Reports on Strategies for Social Protection and Social Inclusion and of their impact;
- To improve the efficiency and effectiveness of the policies and the strategies for social inclusion, pensions, healthcare and long term care in present and future Member States and at EU level, by learning from the experiences in the Member States; and
- To facilitate the transfer of key components of policies or of institutional arrangements, which have proved effective in their original context and are relevant to other contexts.'[32]

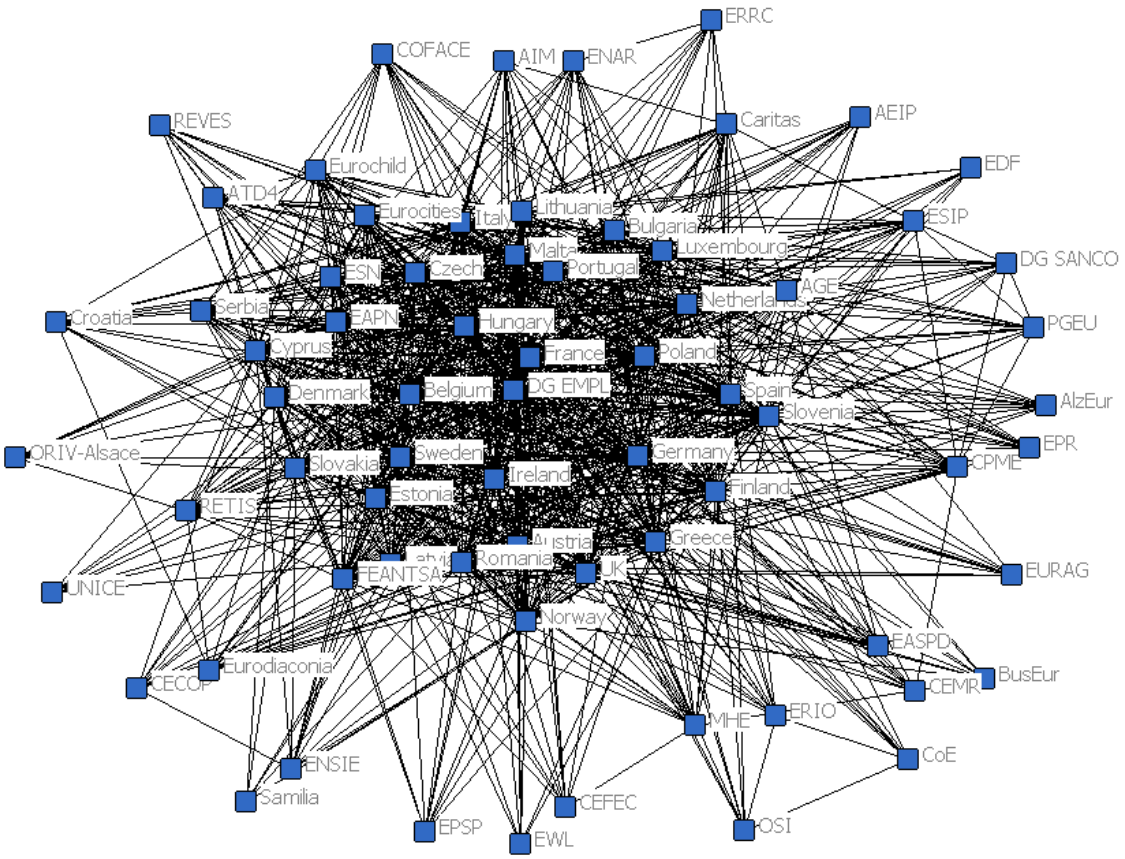
Peer reviews are hosted by one Member State, and allow that country to share good practice policy examples in a wide variety of social areas. The peer reviews are attended by other Member States, typically between seven and eight, and are also attended by EU-level stakeholder networks (NGOs) and the European Commission. Typically, 30-40 people are involved, including government representatives, independent experts, NGO representatives and EU officials. The peer reviews provide a forum to discuss good practice examples in that country and in other participating nations, as well as national-level issues, how these policy examples contribute to wider EU goals and how (or whether) they can be applied in other country contexts. While most peer reviews of policies are undertaken ex post, the process also allows for ex ante evaluation and information sharing if a country is looking to undertake future reforms.[33] In terms of outputs, the main focus of the peer review is provision of information and sharing of good practice, therefore the relational ties (flows) developed in the network analysis represent informational flow (rather than resource, influence or other ties).

Actor Involvement

The research used UCINET to analyse the networks present in the peer reviews, both overall and in specific policy areas, using an organisational level of analysis (actors were analysed by affiliation (ie. by country or NGO) rather than individually). The entire peer review process was analysed, both through one-mode analysis of participant connections and through two-mode analysis of participants over all 66 peer reviews. All networks were checked for cohesion (density of networks), centrality (both direct and indirect connections (for instance, actors who are able to connect new actors to the process who would otherwise not be connected) and distance between actors), core/periphery-ness of actors, factions and cliques (whether there are distinct groups forming within specific policy areas with few interconnections with other actors/policy areas). In addition, ego networks were developed for all key stakeholders and measured for relative density of individual

[30] Communication "A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion".
[31] Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress.
[32] European Commission, DG Employment, Social Affairs and Inclusion. Operational Guide – Peer Reviews. Available at www.peer-review-social-inclusion.eu/peer-reviews/operational-guide_en_peer-reviews, pp. 5.
[33] Ibid.

networks. Qualitative analysis of all 66 peer review synthesis reports was also undertaken to provide contextual and thematic depth.



Taken together, these measures revealed a relatively cohesive but indistinct network within the peer reviews. There were many interconnections, which is understandable given a relatively small pool of actors and 66 potential meeting points. However, no noticeable cliques or factions developed, which, given separate qualitative analysis, likely indicates that participation is linked more to stakeholder interest in topics rather than an overarching desire to network or develop connections. While certain Member States were more central to the process, the core actors were unsurprising, consisting mostly of Member States, along with DG Employment (the organisers of the peer reviews) and one NGO – the European Anti-Poverty Network. This shows that the peer reviews do well at integrating (most) countries into the process, but still lack adequate mechanisms to involve other social partners into the process. Given this, the analysis rests mainly on consideration of the relative density of the network and sub-networks, combined with qualitative analysis of the peer reviews based on thematic content. This allows for a clearer understanding of how the peer review process has developed connections between actors and how this fits into shaping a broader social policy perspective and framework.

There were a total of 66 peer reviews between 2004 and 2011, for an average of 8 peer reviews a year, with a low of 7 in 2005 and a high of 10 in 2009. In an eight-year period, all 27 EU Member States attended peer reviews, as did Croatia, Norway and Serbia. 20 of 27 Member States hosted peer reviews, with France and Germany hosting the most (each hosting seven), followed closely by Belgium (6) and Spain (5). All countries apart from Slovakia and Greece attended at least 15 peer reviews (Slovakia attended 10 and Greece 14), with Finland and Luxembourg attending the most (20 each). In addition, 33 non-governmental organisations representing a variety of interests attended peer reviews, with 14 of these organisations attending multiple peer reviews (the European Anti-Poverty Network attended the most, at 19 peer reviews).

Network measures basically align with these findings. France and Germany are shown to be most central to the process overall, but there is some fluctuation when other factors are taken into account. When looking at direct connections to other Member States and NGOs, Belgium proved to be the most central actor in forging these direct links, with Germany, Spain and the UK also establishing numerous direct connections. Combining hosting and participation into a weighted ranking of connections, Germany proves to be the most central country to the process, followed by France and the UK. In general, there was a trend for the EU-15 to be more actively involved in the peer review process than the new (2004 and 2007) accession countries. In terms of non-governmental actors, they were most active in the area of homelessness, and the European Anti-Poverty Network was the most central participant, followed by FEANTSA (the European Federation of National Organisations Working with the Homeless), AGE Platform Europe, Eurocities, the European Social Network and Eurochild.

Countries attended peer reviews strategically, with certain groupings of like-minded countries especially evident on issues such as integration of ethnic minorities and immigrants, homelessness and housing exclusion and health and long-term care. For instance, new countries of immigration (Czech Republic, Greece and Spain) were the most likely to engage in peer reviews on integrating ethnic minorities and migrants. There was some weak division in attendance based on type and topic of peer review. One group of countries slightly favoured peer reviews based on process[34] – those focused on best practice examples, governance and inclusion issues – while the other favoured those focused on general policy issues.[35] However, these linkages were weak and should not be overplayed. Indeed, the key finding in relation to actor alignment is the *lack* of a discernible pattern between actors over time, which can have an adverse effect on certain goals of the peer review process. On the one hand, the exchange of good practice is possible on an individual peer-review basis, and case-by-case involvement ensures that Member States can engage in areas that are particularly relevant to them. On the other hand, constantly changing participation can lead to shallow engagement and hamper deeper coordination across policy areas (and across the EU as a whole).

Key Themes of the Peer Reviews

Peer reviews focus on ten key themes in social policy.[36] 51

Key Peer Review Themes	Number of Peer Reviews in Each Thematic Area (2004-2011)
Integration of Ethnic Minorities and Immigrants	11
Quality and Accessibility of Social Services	17
Homelessness and Housing Exclusion	8
Children and Families	9
Promoting Active Inclusion	2
Over-Indebtedness and Financial Exclusion	3
Ageing and Providing Adequate and Sustainable Pensions	8

[34] Including these Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Malta, Estonia, Italy, France, Slovakia, Greece, Latvia, Lithuania, Luxembourg, UK and Romania.

[35] Including Finland, Denmark, Ireland, Poland, Hungary, Netherlands, Germany, Slovenia, Spain, Sweden and Portugal.

[36] Taken from the Peer Review website at http://www.peer-review-social-inclusion.eu/. Classification is based on those developed by DG EMPL. Note: there were 84 thematic issues covered over 66 peer reviews, as some peer reviews were categorised in more than one area.

Health and Long-Term Care	12
Interaction of Social, Economic and Employment Policies	2
Governance	12

The key themes fit into either policy-specific issues[37] or process-related issues,[38] although many combine policy and process. Promoting active inclusion, integration of ethnic minorities and immigrants, homelessness and housing exclusion, and children and families all received consistent attention over the period under study. While quality and accessibility of social services was the most prevalent theme, this topic became less common in later years. 61% of peer review themes focused on specific policy areas, although there was a move over time towards a greater focus on procedural topics. There was a significant uptick in peer reviews focused on governance, for instance, with half of the peer reviews in this area coming in 2010-2011. This does indicate a maturation of the peer review process, as there is a move from specific policy issues towards a deeper procedural understanding of issues. Over time, peer reviews became more self-reflective as well, often referencing previous peer reviews, and issues often cut across policy areas. Still, while there was general agreement on *what* issues needed to be address, there was little consensus on *how* these issues should be addressed, which indicates a shallower view of coordination. While the process has opened up dialogue on the issues, there is less evidence that it has created a forum where actual policy change takes place.

There were slight differences in how actors engaged with different policy areas. Compared to the baseline network overall, actors were less well connected in the areas of integration of ethnic minorities and immigrants, over-indebtedness and financial exclusion, promoting active inclusion and children and families. In contrast, interaction of social, economic and employment policies, health and long-term care, and ageing and providing adequate and sustainable pensions were moderately denser networks compared to the overall network. Networks can also be assessed in terms of performance; in this work, a high performing network could be seen as one that has a relatively small distance between actors, given its relative density. This would signify that connections are used efficiently in reaching other actors. In that regard, both promoting active inclusion and over-indebtedness and financial exclusion perform well, although these are small networks (only 2 and 3 peer reviews, respectively). Children and families is also a relatively efficient theme, with low density but also a relatively low distance between actors. In contrast, integration of ethnic minorities and immigrants and health and long-term care are the least efficient networks, with above-average density but further distance between actors.

It is also helpful to consider the nature of the policy mechanisms that were considered in peer reviews, and this highlights an important multi-level component to the process. Over the time period of the peer review process, there was a significant number of peer reviews that addressed local- or regional-level policy initiatives, as well as geographic issues affecting social policy provision. At least 13 peer reviews explicitly addressed the role of different levels of government (local, regional or central) in delivering and coordinating services, while more than half (35) discussed this issue in some detail. While this is understandable due to the federal nature of many EU states, it also points to an underlying understanding of multi-level governance issues in addressing social policy. However, this issue declined in prominence over the course of the time period. The involvement of different actors in the policy process was even more central to the peer review process, with at least 39 peer reviews touching on the involvement of governmental and non-governmental actors in developing and providing social services. Over time, there was also a shift from seeing non-

[37] Integration of Ethnic Minorities and Immigrants, Homelessness and Housing Exclusion, Children and Families, Over-Indebtedness and Financial Exclusion, Ageing and Providing Adequate and Sustainable Pensions, and Health and Long-Term Care.

[38] Quality and Accessibility of Social Services, Promoting Active Inclusion, Interaction of Social, Economic and Employment Policies, and Governance.

governmental actors as mere service providers towards a more active engagement with these actors in the policy process as a whole. Again, this highlights the importance of considering both (multi-level) structures and agency in assessing the efficacy of this new governance approach, with a deeper engagement of non-governmental actors in the policy process.

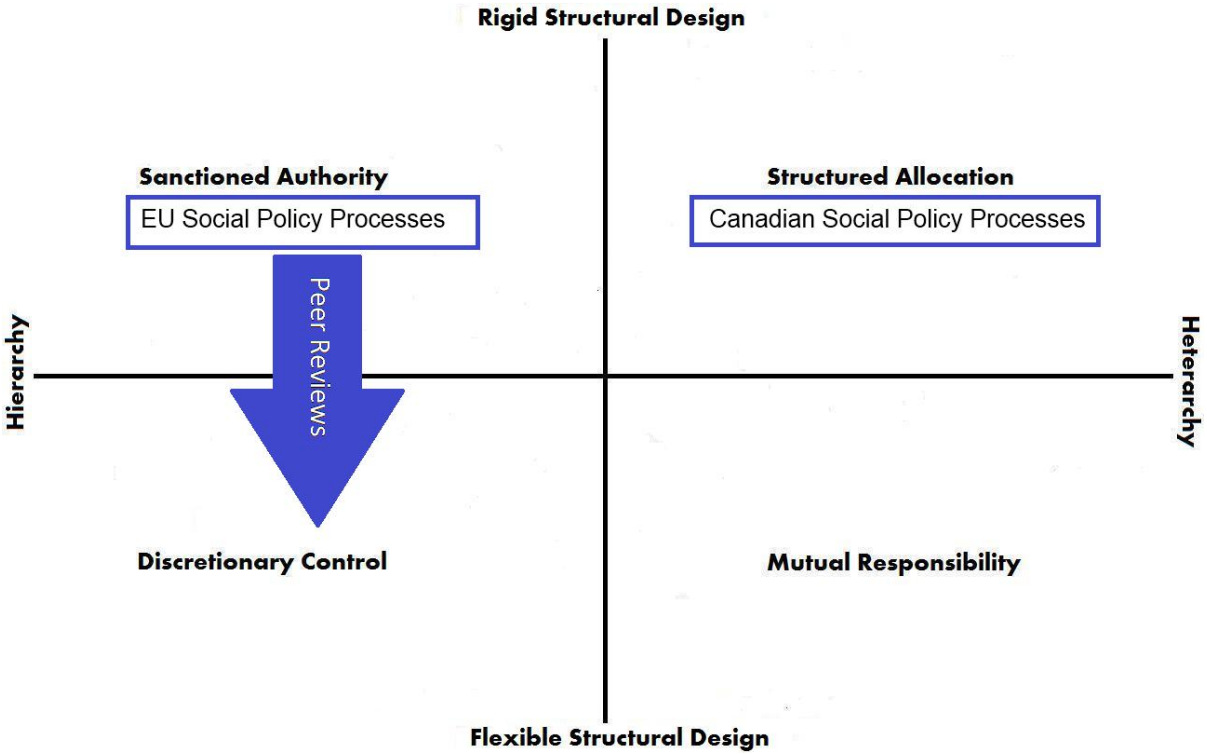
Much of the convergence in peer reviews emerged on approach, rather than identifiable policy solutions, with several key issues related to governance being particularly prominent. First, there was recognition of key aspects necessary for 'good' policy, such as common definitions and comparable data and indicators. Second, there was recognition of the division of responsibility between governmental levels, and also between developing universal and targeted approaches to public policy. Finally, there was awareness of the cross-cutting nature of social policy, and the need to address social issues across areas, as well as coordinate between actors. These factors all have an impact on understanding peer reviews through a multi-level governance, actor-centric lens. The prominence of these issues over time indicate that peer review participants are aware of both key facets - the involvement of different types of actors over multiple governmental and policy levels – in developing a new framework of multi-level governance, and are also conscious of the connection between structure (in the policy/governance approaches they discuss) and agency (the people who carry out the policy).[39]

Effects of New Governance Processes in Europe

Structurally, without a doubt the peer review opens up new opportunities for actor involvement, and these opportunities are capitalised on by many governmental and non-governmental actors. By involving more actors in the process and creating relatively dense social networks in various policy areas, the peer review process does open up the *potential* for more flexible governance processes through the sharing of best practices and increased dialogue, increasing the opportunity for *input* into the process. Time will tell whether this potential is then translated into concrete change in *output*. When viewed on the two-axes framework, the peer reviews have allowed for more flexibility to creep into the governance process shaping social policy at the EU level. However, they have not significantly altered the hierarchical (namely, state controlled) nature of social policy in any significant way, as Member States still hold ultimate control over the policy process. This hierarchy creates a structural gap between lower-level and higher-level agency. While the new governance structure creates *potential* involvement of new actors through dialogue, there remains structural blockage (due to the Social OMC's non-binding nature) that prevents conversion of this potential into kinetic policy effect. It is possible that other aspects of the Social OMC – namely the development of indicators[40] – may allow for more movement along the hierarchical/heterarchical axis, but the peer review has only created more flexibility in structural approach.

[39] This section is based partially on the author's own analysis, as well as on Public Policy and Management Institute (2012 [Publication forthcoming]). Analysis and Follow-up of Mutual Learning in the Context of Peer Review in the Social Protection and Social Inclusion Programme: Contribution of the Peer Reviews to 'Consensus' Framing. Prepared for European Commission: DG Employment, Social Affairs and Inclusion. While that publication only covered the 2004-2010 period, the author attempted to incorporate 2011 data when possible.

[40] Another paper entirely.



As outlined above, the peer review process (and the Social OMC as a whole) operates within a hierarchical environment, with Member States retaining sole binding control over social policy development, which is also rigidly structured through treaty mechanisms. However, the non-binding encroachment of the EU into social areas in a coordinating role (which is accepted by Member States) has in effect created more flexibility in structural design and created two asymmetric levels (one non-binding [EU] and one binding [Member State]) of opportunity structures for increased actor involvement.

On the higher level, Member States retain control over the decision-making (output) process. On the lower (input) level, the peer review process represents an opportunity for increased actor involvement at the non-binding EU level and creates new opportunities for actor involvement in an informational capacity. In essence, the lower-level agent (in this case, the EU, and more specifically DG Employment and Social Affairs) was able to develop a structure that supported increased agencification, albeit in a non-binding fashion. This presents a complex vision of the relationship between structure and agency, with increased agency (the EU) required to affect the structure (the Social OMC), which then allows for increased agencification. However, this interplay operates, at least at the current time, solely at the input level, and has not been translated into new actor involvement in outputs. Other research supports this finding, suggesting that the EU process helps to create fora for engagement, but this is not always easily translated into national-level policy effect.[41] This has significant ramifications for understanding MLG, presenting a two-level view of the policy process, which must also be reconciled with considerations of hierarchy and structural flexibility.

Applications in Canadian Politics

The bulk of this paper focused on the peer review process as a useful policy tool in a European context, but it is worth briefly considering how new governance processes such as the Social OMC could potentially fit into other contexts, such as the Canadian social policy field. Unlike in Europe, many social policy issues, such as welfare and pensions, are shared in Canada between levels of government (to varying degrees), and even in ostensibly provincial concerns, such as health and

[41] MacPhail, E. (2010). "Examining the Impact of the Open Method of Coordination on Sub-State Employment and Social Inclusion Policies: Evidence from the UK," Journal of European Social Policy 20 (4): 364-378.

education, the federal government often has some considerable influence, due to funding issues.[42] This creates a decidedly different relationship than that seen in EU-Member State relations, where Member States still clearly maintain jurisdiction over social policy. Given the shared nature of social policy in Canada, and the distinctive elements evident at (all ten) provincial levels, this work will focus only on generalities regarding the potential efficacy of the Social OMC structure in a Canadian context.

While it was shown that the two-level nature of opportunity structure created through EU/Member State hierarchy in social policy allowed for new forms of governance to develop in a non-binding manner in a European context, this two-level mechanism is not present in Canadian politics. As many aspects of social policy are shared provincial/federal jurisdiction, the principal agents (provinces and the federal government) both operate at a high (elite) level in terms of presenting an opportunity structure for the involvement of new actors into the process. Thus both provinces and federal governments act as gatekeepers through which new governance processes can be developed, as the number of agents is limited to one higher level.[43] Lacking lower level principal agents who can create non-binding forms of new governance mechanisms, the peer review process is unlikely to gain traction as a means of improving dialogue and allowing for increased actor involvement in Canadian social policy, which lacks a lower level entry point for new actors. While there is some evidence that local governments can play this lower non-binding role in creating dialogue, given the fact that local governments remain under provincial control and the national level is relatively reticent to engage with local governments directly,[44] the opportunity for local governments to create a non-binding structure of dialogue are severely limited. While recent federal government moves to cede more control to provincial governments in areas such as health may open the door for a second level to develop, these moves may be superficial at best, as financial impediments still act as de facto national constraints over provincial (and other level) policy development. At this time, the heterarchical and rigid structural nature of principal actor relations in Canadian social policy limit the development of new forms of non-binding governance mechanisms, and within these rigid structural confines, there is little room for entry for new actors into the process, other than in service delivery roles with little influence over the policy process (such as P3s). With little reason for either provincial or federal governments to cede any further control over the process, agential factors and a high structural threshold block the entry of new actors into the process.

Conclusions: The Paradox of Soft-Law Reform

New governance processes create a complex interplay between structure and agency, which then have an effect on the multi-level nature of governance, as well as the ideas of input and output legitimacy. In looking at the peer review process, the flexibility of the governance approach (structure) created in a non-binding way by the EU (who lack jurisdiction to create binding reform) has allowed for the introduction of new actors to the process (agency). While the peer review process *does* have a significant effect on governance in EU policy making, this movement has been confined mostly to a coordination/dialogue (rather than policy impact) role, creating a more flexible structural design, but one that has not seen any change in Member State control or the level of hierarchy. In contrast, in Canada there is significant heterarchy between federal and provincial levels in crafting social policy. However, as both key agents in social policy have significant power over the decision-making process, new actors lack the lower-level entry points into the policy process, provided in the EU through non-binding initiatives. And therein lies the paradox of soft-law reform. The two-level hierarchical agency structure does in fact create an entry point for new actors into the

[42] Bakvis, H. (2008). "The Three Federalisms: Social Policy and Intergovernmental Decision-Making," in Bakvis, H. and Skogstad, G. eds. Canadian Federalism: Performance, Effectiveness and Legitimacy, 2nd ed. (Toronto: Oxford University Press).

[43] Bache, I. (1999). "The extended gatekeeper: central government and the implementation of EC regional policy in the UK," Journal of European Public Policy 6(1): 28-45.

[44] Curry, D. (2011).

policy process. However, because of the hierarchy, new actors lack the means to move from a lower level of agency to a higher one. Conversely, in the Canadian system, a more heterarchical approach to social policy exists, which would potentially allow for more ways in which the new actors could influence the policy process. However, because there is no two-level, hierarchical agency structure, these new actors lack adequate entry points into the policy process.

This disconnection between inputs and outputs remains the largest sticking point. While the peer review process *does* have a high level of actor participation and facilitates connections throughout social policy areas, there is less evidence that this helps to develop consensus or coordination on social policy issues across Member States.[45] Likely, this represents some disconnection between the lower level opportunity structure created by the peer review process and the higher level opportunity structure needed to influence public policy. Impact would require some bridging of the gap between these levels, which would require engagement by high-level policy makers with the lower-level governance processes. The fact that Member States engage frequently and repeatedly with the peer review process can then be seen as at least a good first step in bridging that gap.

Therefore, new forms of non-binding governance processes should not be seen as useless. They allows the EU some discretionary control over aspects of social policy (namely dialogue) that the Member States are willing to cede, but this power remains wholly contingent on Member State support and lacks influential clout, making it an incomplete solution. While the process has, to a great extent, been institutionalised, it has not necessarily been translated downwards to 'couple' with national-level policies.[46] While it has affected the nature of MLG along the axis of flexible/rigid governance structures, it has not create any movement along the axis of hierarchy and heterarchy. The only way to ensure both adequate structural entry points for new actors, along with the ability to influence policy, is to create a heterarchical, flexible system of mutual responsibility, which is nice in theory but unlikely in practice. Unless a political system is born into that quadrant, it is unlikely to move there, with rigid heterarchical systems blocked from moving down by a lack of incentive for actors to cede control, flexible hierarchical structures blocked by structural factors, and rigid hierarchies blocked by both.

This paper does not attempt to resolve this paradox, and in the two cases presented, it might not even present a problem, as both approaches have different effects on the accountability and legitimacy of governance processes. In the case of Canada, there is reason to believe a rigid, heterarchical approach to policy may allow for clear rules of the game while also allowing participation by key, input-legitimate actors (provinces and the federal government), which may be a preferred outcome.[47] While coordination can be achieved in such a system, it can create barriers for entry of new actors into the policy process without the consent of higher-level agents. The EU Social OMC, in contrast, does not claim policy influence as one of its goals, and only aims to coordinate and create a conduit for dialogue – both processes that are facilitated by the peer reviews. While the Social OMC raises the input legitimacy, by involving more groups in the process, it does not affect the output legitimacy of these policies. However, this is not necessarily a bad thing, as the EU is commonly seen to be lacking input legitimacy,[48] so this new form of input is perhaps welcome. Still, there is no evidence that this approach actually improves policy learning as compared to approaches utilised in North America.[49] Ultimately, the preferred mélange of structural and agential factors comes down to the desired effect of the new type of governance reform, which has been attempted through the peer review process in the EU, but lacks a suitable driver in Canada.

---

[45] Public Policy and Management Institute, 2012.

[46] Heidenreich, M. and Bischoff, G. (2008). "The Open Method of Co-ordination: A Way to the Europeanization of Social and Employment Policies?" Journal of Common Market Studies 46(3): 497-532.

[47] Curry, D. (2011).

[48] Holzhacker (2007).

[49] Montpetit, É. (2009). "Governance and Policy Learning in the European Union: a Comparison with North America," Journal of European Public Policy 16(8): 1185-1203.

Bibliography

Bache, I. (1999). “The extended gatekeeper: central government and the implementation of EC regional policy in the UK,” Journal of European Public Policy 6(1): 28-45.

Bakvis, H. and Skogstad, G. eds. Canadian Federalism: Performance, Effectiveness and Legitimacy, 2nd ed. (Toronto: Oxford University Press).

Blatter, J. K. (2004). "From ‘Spaces of Place’ to ‘Spaces of Flows’? Territorial and Functional Governance in Cross-Border Regions in Europe and North America." International Journal of Urban and Regional Research 28(3): 530-548.

Borgatti, S.P., Everett, M.G. and Freeman, L.C. 2002. Ucinet for Windows: Software for Social Network Analysis. Harvard, MA: Analytic Technologies.

Börzel, T. and Heard-Lauréote, K. (2009). “Networks in EU Multi-Level Governance: Concepts and Contributions,” Journal of Public Policy 29(2): 135.152.

Brzezinski, Z. (1997). The Grand Chessboard. New York, Basic Books.

Curry, D. (2011). Multi-Level Governance Frameworks in Canada and the United Kingdom, or How I Learned to Stop Worrying and Love the Concept. University of Sheffield (PhD Thesis).

Curry, D. (2013). Network Approaches to Multi-Level Governance: Understanding Power Between Levels. Basingstoke: Palgrave-Macmillan.

Dawson, M. (2011). New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy. Cambridge: Cambridge University Press.

European Commission, DG Employment, Social Affairs and Inclusion. Operational Guide – Peer Reviews. Available at http://www.peer-review-social-inclusion.eu/peer-reviews/operational-guide_en_peer-reviews, pp. 5.

European Commission: Eurostat. Open Method of Coordination on Social Inclusion and Social Protection (OMC). Available at http://epp.eurostat.ec.europa.eu/portal/page/portal/employment_social_policy_equality/omc_social_inclusion_and_social_protection. Accessed 20.05.12.

European Union. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. A concerted strategy for modernising social protection. COM(1999) 347 final.

European Union. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - "A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion" {SEC(2008) 2153} {SEC(2008) 2169} {SEC(2008) 2170} {SEC(2008) 2179} /* COM/2008/0418 final.

European Union. 2000/436/EC: Council Decision of 29 June 2000 setting up a Social Protection Committee. Official Journal L 172 , 12/07/2000 P. 0026 – 0027.

European Union. Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress.

European Union. European Union Treaty of Nice, Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, 2001/C 80/01.

Hay, C. (2002). Political Analysis. Basingstoke: Palgrave Macmillan.

Hay, C. (2009). "King Canute and the 'Problem' of Structure and Agency: On Times, Tides and Heresthetics," Political Studies 56: 260-279.

Heidenreich, M. and Bischoff, G. (2008). "The Open Method of Co-ordination: A Way to the Europeanization of Social and Employment Policies?" Journal of Common Market Studies 46(3): 497-532.

Henning, C. (2009). "Networks of Power in the CAP System of the EU-15 and EU-27," Journal of Public Policy 29(2): 153-177.

Héritier, A. and Lehmkuhl, D. (2008). "The Shadow of Hierarchy and New Modes of Governance," Journal of Public Policy 28(1): 1-17.

Holzhacker, R. (2007). "Democratic Legitimacy and the European Union," European Integration 29(3): 257-269.

Hooghe, L. and G. Marks (2001). Types of Multi-Level Governance. European Integration Online Papers, 1-24 DOI.

Howlett, M., J. Rayner, et al. (2009). "From Government to Governance in Forest Planning? Lessons from the Case of the British Great Bear Rainforest Initiative." Forest Policy and Economics.

Krackhardt, D. J. and H. Raider (2001). Intraorganizational Networks. Companion to Organizations. J. A. C. Baum. Oxford, Blackwell: 58-74.

Kröger, Sandra (ed.): What We Have Learnt: Advances, Pitfalls and Remaining Questions in OMC research, European Integration Online Papers (EIoP), Special Issue 1, Vol. 13, Art. 5, http://eiop.or.at/eiop/texte/2009-005a.htm.

Leo, C. and J. Enns (2009). "Multi-Level Governance and Ideological Rigidity: The Failure of Deep Federalism." Canadian Journal of Political Science 42(1): 93-116.

Lindgren, K-O. and Persson, T. (2010). "Input and output legitimacy: synergy or trade-off? Empirical evidence from an EU survey," Journal of European Public Policy 17(4): 449-467.

MacPhail, E. (2010). "Examining the Impact of the Open Method of Coordination on Sub-State Employment and Social Inclusion Policies: Evidence from the UK," Journal of European Social Policy 20 (4): 364-378.

Marks, G. and L. Hooghe (2004). Contrasting Visions of Multi-Level Governance. Multi-Level Governance. I. Bache and M. Flinders. Oxford, Oxford University Press: 15-30.

Marsh, D. (2010). 'Meta-Theoretical Issues' in Marsh, D. and Stoker, G., eds. Theory and Methods in Political Science. 3rd edition. Basingstoke: Palgrave Macmillan, pp. 212-231.

Meunier, S. (2003). "Trade Policy and Political Legitimacy in the European Union," Comparative European Politics 1: 67-90.

Montpetit, É. (2009). "Governance and Policy Learning in the European Union: a Comparison with North America," Journal of European Public Policy 16(8): 1185-1203.

Offe, C. (2006). Political Institutions and Social Power: Conceptual Explorations. Rethinking Political Institutions: the Art of the State. I. Shapiro, S. Skowronek and D. Galvin. New York, New York University Press: 9-31.

Papadopoulos, Y. (2010). "Accountability and Multi-Level Governance: More Accountability, Less Democracy?' West European Politics 33(5): 1030-1049.

Public Policy and Management Institute (2012 [Publication forthcoming]). Analysis and Follow-up of Mutual Learning in the Context of Peer Review in the Social Protection and Social Inclusion Programme: Contribution of the Peer Reviews to 'Consensus' Framing. Prepared for European Commission: DG Employment, Social Affairs and Inclusion.

Radulova, E. (2007). "The OMC: An Opaque Method of Consideration or Deliberative Governance in Action?" European Integration 29(3): 363-380.

Scharpf, Fritz W. (1999), Governing in Europe: Effective and Democratic?. Oxford: Oxford University Press.

Smismans, S. (2008). "The European Social Dialogue in the Shadow of Hierarchy" 28(1): 161-180.

Song, W. (2011). "Open Method of Coordination and the Gloomy Future of Social Europe," Asia Europe Journal 9: 13-27.

Sørensen, E. and J. Torfing (2009). "Making Governance Networks Effective and Democratic Through Metagovernance." Public Administration 87(2): 234-258.

Treib, O., H. Bähr, et al. (2007). "Modes of Governance: Towards a Conceptual Clarification." Journal of European Public Policy 14(1): 20.

Wasserman, S. and K. Faust (1999). Social Network Analysis: Methods and Applications. Cambridge, Cambridge University Press.

Weaver, R. K. and B. A. Rockman, Eds. (1993). Do Institutions Matter? Government Capabilites in the United States and Abroad. Washington, DC, Brookings.

Wellman, B. and S. D. Berkowitz (1997). Social Structures: a Network Approach. Greenwich, JAI Press.

Young, R. and C. Leuprecht, Eds. (2006). Municipal-Federal-Provincial Relations in Canada. Montreal and Kingston, McGill-Queen's University Press.