

Symposium:
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White Paper on Governance

Christoph Moellers
Policy, Politics or Political Theory?

Christian Joerges, Yves Meny & J.H.H.Weiler (eds.)
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European University Institute



The Robert Schuman Centre for Advanced Studies



&

Harvard Law School



The Jean Monnet Program

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New York University School of Law
New York, NY, 10012
USA

Policy, Politics or Political Theory?

Christoph Moellers, Heidelberg

1. Rhetoric and Type of Text

“White Papers are documents containing proposals for Community action *in a specific area*.”¹ This harmless definition on the Commission’s homepage does not give much of an idea of the universal demand in the White Paper for Governance.² Important White Papers such as the one for the completion of the internal market,³ always contained a clear element of programmatic Commission rhetoric. However, the charm in this rhetoric stemmed from the pathos of objectivity, from the Commission’s expertise, and from the belief in the existence of a correct solution for a definable and, therefore, limitable problem—‘in a certain area’. The Commission wanted to organize politically but, at the same time, work properly. The Commission’s goal was *policy*, not *politics*.

The approach of this White Paper disengages itself from the single subject problems. This already results from the term ‘governance’, which is to be studied even more closely and currently demands a different political rhetoric. In fact, the subtitle, ‘Deepening the Democracy in the European Union’,⁴ reminds one of the party-political programme ‘Venture more Democracy’ (Willy Brandt). Such language usage can be found throughout the entire White Paper: ‘include the citizens’ (16), ‘better policy, better rules, and better results’ (24), ‘better application in the Member States’ (32). This demanding programme strangely contrasts, however, with the colourless administrative-scientific language, which the White Paper uses: ‘the strengthening of the administrative machinery of the joining countries is already a key topic of the pre-accession strategy and must be continued after joining’ (32).

If the total claim of the governance topic demands a certain form of political journalism, then the White Paper does not just fall short in its style. The presentation on the internet already it proves to be a technocratic construction site: in a remarkable parallel to the European contracts, with their complicated apparatus made of various appendices, the White Paper communicates the impression of being provisional. The preferences of online communication, which have been explicitly utilised by the Commission in many areas, has led here to a potentially unlimited reference structure, in which further subtexts and discussions are linked to the actual text, and, with their own extraneous statements, break up the project⁵—a possibly involuntary performative metaphor, implied in the White Paper, for the disintegration of joint governance practices in a civil-socialised discourse.

If one wants to spend a moment considering the metaphor, then he/she may establish the fact that the White Paper is a White Paper, not a Red Paper or a Black Paper. But white was the colour of Ludwig XVI’s personal guard’s cockade during the French Revolution, the colour of the Restoration, but, at the same time, the colour of the denial of the coming democratic system, which makes political dispute its most important component. This denial of a political conflict on its part cannot, however, be anything other than political. This connection, which will become obvious in what follows, reminds one, in fact, of the Commission’s viewpoint. The White Paper has an appropriate place among the political colour symbolism.

¹ http://europa.eu.int/comm/off/white/index_de.htm, emphasis here.

² KOM(2001) 428 endg. Numbers in parenthesis in the main text refer to this document.

³ KOM(85) 310 endg.

⁴ Work programme for white paper SEK(2000) 1547/7 endg.

If, on the one hand, the White Paper contains almost no references to the single policies of the community, it also does not limit itself, on the other, to administrative-technical problems such as the reform of the internal structure, which has already been entirely worked over/out/examined by the Commission.⁶ At the moment, it is supposed to deal with the totality, in whatever way this can be defined. Through this, the text places itself in an area beyond concrete policy, without wanting, or being able, to begin a real political conflict (politics). What remains is a text that remains in no man's land, between political theory and a political programme.

Could the Commission not have also written a theoretical, informative pamphlet à la 'what is the third class' for the advancement of integration—maybe in the form of a booklet which could be passed out at schools and universities? Through this, it would have chosen a genre that would have met the serious need for a political catechism of European integration right at the moment of the introduction of the Euro. The White Paper would have been the opportunity to invent a political integration rhetoric and to help it to reach the interest of the general public. This opportunity was not taken up.

The conjecture of the following considerations is that the Commission *had to* fail the assignment that it gave itself in the White Paper on Governance. It could not solve the assignment without questioning its own functional understanding of itself. It did not do this. Consequently, from various points of view, the White Paper can be understood, in its result, as a self-contradicting document that is interlaced with the idea that the reflection on past achievements would be suitable to help it solve future assignments.

2. Self-Description and Political Function of the Commission

The memories of the heroic times of the Commission are present in the White Paper.⁷ They are, however, accompanied by the Commission's claim for an increase in authority, which, for its part, is not justified objectively or functionally. The goal that became clear at the beginning of the Prodi Commission, that of becoming a real government of the EU, finally shows itself, at the very least, in the suggested repression of the Council and Member States which occurred in many areas of the White Paper. The European Parliament is the only institutional political protagonist that is mentioned in a positive light in the White Paper, and it is also the only one that will not stand in the way of such a revaluation of the Commission in the long run.

From an institutional view point, there are many reasons why the Commission should be understood not only as the executive (44f.) but also as a sort of gubernative body for the Community: as in the governments of the Member States, the central purpose of the Commission is to develop law initiatives, to supervise the laws of the administrative sub-divisions, including the Member States, and to enact standard laws that make the basic decisions of the Community's 'legislator' concrete. All of these can be understood—without giving the term the wrong emphasis—as political tasks. The Commission guards the rights of the Community, but it has a great deal of elbow room with which to do this. It has defined goals, but also a large choice of methods, and it also has the right to deal with these methods experimentally.

However, this description of function fails when it comes to the exterior of the administrative system, which is called the political process. The addressees of the Commission's trade policy are, in most cases, the Member States or large companies, just as in laws for competition—at any rate, organizations. In this White Paper, this

⁵ http://www.europa.eu.int/comm/governance/areas/index_en.htm

⁶ The Reform of the Commission—a White Paper, KOM(2000) 200 endg.

⁷ F. J. Scharpf, European Governance: Common Concerns vs. The Challenge of Diversity, MPIfG Working Paper 01/6, sub 5.

limiting of its political structure of communication clearly influences the Commission's political and democratic concept; in contrast to the governments of the Member States, political communication with a public that has the right to vote does not play an institutional role for the Commission. And it is this that affects both its output and its input. The Commission is programmed by acts of law that are chiefly formulated by the Member States, and it addresses these with its own acts of law. The claim that is casually mentioned in the White Paper, that the competencies of the EU are ones that 'were carried over by the citizens' (10), is, however, neither legally nor theoretically democratic correct. On the contrary, the lack of contact with a democratic, political environment—and consequently a decision-making process that can be attributed the equal freedom of all participants—is a decisive institutional condition of the Commission, and even of the entire Union. Clearly, in the White Paper under consideration, the Commission is searching for a political public. But what will it find in this search?

3. Democracy without Politics: the Democratic Concept of the White Paper

Of the five basic principles of 'good governance' which the Commission develops in the White Paper, three can, without problem, be understood as elements of a modern democracy theory: openness, participation, and responsibility (13f.). However, at the same time, what these elements, in the form in which they are presented in the White Paper, have in common is that they give as little consideration to the Commission's commitment to decisions from outside as they do to the political discussion about the goals and methods. In this draft, neither the Council nor the voters are placed in a position to obligate the Commission. The closer one takes a look at the way the White Paper is formulated, the clearer this becomes.

The White Paper emphasises the term 'responsibility' but does not draw any concrete institutional consequences for the Commission's responsibility from it. Undoubtedly, a clear distribution of roles between the political protagonists is desirable (13). But the term 'responsibility' does not become a democratic concept until the attribution of responsibility can also lead to sanctions. In connection to this, the end of the Santer Commission could have been questioned more thoroughly about institutional consequences which go beyond the current rules. However, the White Paper does not want to deal with this kind of political sharpening of 'responsibility' which would surely strengthen the Commission. The term remains part of an unclear concept of discourse, of which the very simplified fault allocations to Member States' administration and courts (32) form a part.

Also, the use of the category of participation raises a certain amount of doubt. One does not have to be a follower of a democratic theory which argues for a strict intergovernmental community⁸ in order to be astonished by the unconditional comparison of the diplomatic and democratic process in the White Paper (38f.). On the contrary, phrases such as 'consultation culture' and 'coherence', used by the Commission, clearly remind one of the work of international organisations. Every international organisation that is somewhat differentiated makes use of the participation of those affected when it comes to working out standards⁹—but it is not these participation mechanisms that give reason for a democratic practice of government or that do justice to the special features of the European integration. Observation of the political relationships between the population and the government, on the one hand, and the Commission, on the other, are completely left out of consideration in this. The fact that the Commission, in its plea for the abolition of comitology (40f.), turns against the community-specific

⁸ For which there are still many reasons: M. Kaufmann, *Europäische Integration und Demokratieprinzip*, 1997.

⁹ For the participation of employees and employers in the setting of ILO standards, see, for example, <http://www.ilo.org/public/english/standards/norm/sources/noterole.htm>

institution whose example was followed when forming new democratic legitimations¹⁰ complements this impression; the definition of the term ‘civil society’ as a sum of all corporatist structures (19, comment 1) finally finishes it off. Presumably, it was not by accident that the Commission adopted this definition, which was taken from a statement from the Economic and Social Committee—an institution (which in German constitutional law is very similar to the Bavarian senate) which was dissolved two years ago through a referendum. With this, the Commission follows a tendency that can also be recognized in the political theory of the last few years. New forms of legitimation are being discussed under the heading of deliberative democracy. However, relatively little attention is being paid to the fact that democracy and deliberation represent two different elements of the concept.¹¹ Democratic self-determination requires more than the opportunity to voice one’s opinion.

In the limiting of democracy to a dialogue with élites and corporations, in the repression of the fact that the Commission exercises dominion, and in its removal from democratic processes, which were indeed developed on a national-state level but are not necessarily limited to this, the Commission’s continuing neo-functionalistic self-understanding is clearly shown, and this can hardly justify an extension of the Commission’s competencies. The fact that the Community will, in the future, transform more and more from distributing rights of freedom to interfering in them, *i.e.*, that the Community’s exercise of dominion will be felt more and more clearly, remains systematically misjudged.

4. Governance and Scientific Policy

The Commission’s difficulties with its own chosen form of discourse can also be described from a theoretically scientific perspective.

The White Paper defines its topic—governance—as ‘rules, procedures, and methods of conduct, that characterise the way and method that power is exercised at European level, particularly in relationship to openness, participation, responsibility, efficiency, and coherence’ (10, comment 1). The limits of this definition, however, remain unclear throughout the entire White Paper. Fundamentally, due to its lack of selectivity, the term ‘governance’ does not seem to offer an ideal instrument for describing systems with several levels. The indiscriminate inclusion of various levels, private and sovereign political protagonists as well as normative and descriptive characteristics is somewhat opposed to a differentiation of problems. The White Paper’s statement that the civil society must also observe the principles of good governance (20)—a statement that contains a hardly foreseeable potential for limiting freedoms, and assumes an equality of measurement for private and sovereign action, which is basically unknown to liberal political systems—is symptomatic of this vagueness of terms. Moreover, it is precisely this vagueness of the term ‘governance’ that provokes the question of whether the concept is actually supposed to exclude the observance of material policies, as occurs in the White Paper. Can one write about something so complex as the governance of the EU without concerning oneself with the type of its tasks?

The idea of a general lesson about ‘good governance’, which can automatically result from certain principles, seems to back up the statements of the White Paper. Independent of the status of the scientific democratic theory as well as the political constellation within the Community, the White Paper falls back upon the ‘good

¹⁰ Compare C. Joerges/J. Neyer, From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutional of Comitology, *European Law Journal* 3 (1997), 273–299.

¹¹ J. M. Bessette, *The Mild Voice of Reason*, 1997.

governance' figure, which found its most famous representation in Lorenzetti's Sienese frescos.¹² However, the idea of 'good governance' is pre-modern. It fits an authority that existed before the differentiation of a political sphere, whose fullness of power, which is not limited by procedural technology, must at least be obligated to a certain elementary principle of justice. The concept hardly corresponds with the communication of various kinds of democratic processes, which is to be accomplished through integration. The achievement of liberal constitutional states consists of solving the question of correct order procedurally. The commitment to principles is replaced by the commitment to decision-making procedures. There is not much evidence to support the idea that this achievement would have been superseded by integration. The formula of 'good governance' still falls back behind this.

The core of the White Paper's normative argument is the avowal of certain principles. However, the White Paper does not answer the question as to why exactly these values, and not others as well, were included in the presentation, even though many of the White Paper's suppositions, perhaps like the beneficial effect of electronic media for the political process, are very controversial.¹³

The White Paper's principles could also develop their own descriptive value without conclusive derivation, but only if they were confronted with concrete opposing concepts. No one wants an incoherent, vague or even bad form of governance; but just because no one wants it does not automatically mean that nothing is said when someone intercedes for a coherent, transparent or even good order.

5. Administrative Reform

Finally, the White Paper was written in the context of the Commission's continuing administrative reform agenda.¹⁴ The following also contains a certain amount of contradiction: on the one hand, the Commission is working towards a decentralisation of the implementation of the Community law in order to relieve its own resources. Administrative agencies and the administrations of the Member States are, in particular, to be employed in this. On the other hand, the Commission is currently trying to avoid the loss of power, in every form, that is connected to this. This conflict is only hinted at in the White Paper. Still, the White Paper's most concrete institutional suggestion is related to the abolition of comitology, *i.e.*, the Member States' influence at the level of the law of implementation. This concept becomes very clear through the outline of a co-operative administration in the information about the administrative externalisation. It becomes clear from this that the Commission is also striving for its own organisational power over the national administrations, by which the contribution of the Member States is limited to making both material means and personnel available. Thus, the Commission's administrative ideal consists of an extensive outsourcing of administrative individual questions by obtaining simultaneous complete control over their execution, which can be brought back to the level of the Commission at any time.

Whether or not the Commission's idea corresponds to the functional logic of federal administrative co-operations may remain open in this context. What is at least conspicuous is the lack of precision with which the institutional suggestions are balanced with its own principles. This is true for the criticism of comitology just as

¹² H. Hofmann, *Bilder des Friedens (Illustrations of Peace) or Die Vergessene Gerechtigkeit (The Forgotten Justice)*, 1997.

¹³ H. Buchstein, *Bytes that Bite. Internet and Deliberative Democracy*, *Constellations* 4 (1997), 248–263.

it is for the open method of co-ordination (28f.), whose case-by-case application promises neither more responsibility nor more coherence.

6. Conclusion

The peculiar emptiness that reading the White Paper communicates is neither accidental nor the result of a blunder which could have been avoided by its authors. However, this attempt by the Commission to pursue a political programme without taking leave of a technocratic or neo-functionalistic self-understanding was inevitably destined to fail. In this way, the White Paper's descriptive value limits itself to the documentation of the Commission's identity crisis. However, a political theory of European integration has not yet resulted from this crisis.

¹⁴ Suggestion of a Council VO with the statute of executive agencies KOM(2000) 788 endg; suggestion of a Council VO for the implementation of the rules of competition contained in Art. 81 und 82 EGV, KOM(2000) 582 endg.