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**The Political System of the European Union –
Somewhere between Category Error and Refusal
of Categorization**

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Introduction¹

When I was asked a few weeks ago to participate in this first European-American dialogue I was very pleased, of course. However, I found it also slightly ironic due to the fact that, in the end, it's me who should give a talk about the European Union under the panel title, "Comparison of Two Systems *sui generis*," seeing as in previous discussions on the European Union, I have rather been used to criticizing the classification as system *sui generis* or at least some sort of use of this essentially helpful description. I will return to this topic of classification and my style of nuanced critique in my conclusion.

However, in the first place, it is not clear if we can even talk about the EU as a political system in general. We should at least be careful not to commit a category error. I mean, when political scientists talk about political systems they normally talk about states, nation states and their institutional design of political governance. Yet the EU is not a state, not today, and I would say – by looking at the developments all around the constitutional process, as well as the financial crisis – it certainly will not become a state in the near future either. What is more, the EU literally contains 27 nation states, that means 27 unique political systems, and thus seems to represent some kind of superior category. Likewise, our concept of Europe does not exist on the same categorical level as the European nation states do, but actually refers to a superior, comprehensive concept. The idea of such categorical confusion, or more accurately termed 'category error,' has been developed by the analytical philosopher Gilbert Ryle in his main work, *The Concept of Mind*. He explains the confusion with a descriptive example from university life:

"A foreigner visiting Oxford or Cambridge for the first time is shown a number of colleges, libraries, playing fields, museums, scientific departments and administrative offices. He then asks 'But where is the University? I have seen where the members of the colleges live, where the Registrar works, where the scientists experiment and the rest. But I have not yet seen the University in which reside and work the members of your University.' It has then to be explained to him that the University is not another collateral institution, some ulterior counterpart to the colleges, laboratories and offices

¹ This paper is based on a talk given by the author under the title "Similar Structures – Comparison of the two systems *sui generis*" during the 'European-American Dialog: Similar Structures – Common Challenges?' which was held at the European Academy Otzenhausen (EAO) from 5-7 November 2010.

which he has seen. The University is just the way in which all that he has already seen is organized. When they are seen and when their co-ordination is understood, the University has been seen. His mistake lay in his innocent assumption that it was correct to speak [...] as if 'the University' stood for an extra member of the class of which these other units are members. He was mistakenly allocating the University to the same category as that to which the other institutions belong."²

The analogy of Ryle's concept that I want to figure out would probably be easier to understand with another example. Imagine another foreigner travelling through Europe for the first time. He is guided by a friend all around the continent, who shows him France, Sweden, Greece, Poland, Estonia and Malta, etc. At the end of his trip, the tourist turns to his friend asking with a notion of disappointment: "Ok, now you have shown me a number of nation states, but where can I find Europe?" Without a doubt, in this moment the tourist commits a blatant category error. Now we can possibly understand the ways in which examples of category errors can serve as good illustrations of what I would describe as categorical challenges, which we face when analyzing the EU.

The term 'political system' can then be seen as a measure to avoid the categorical problem. Indeed the use of the functionalist system category in the classification of the EU was established quite recently, only within the last two decades. Before the Maastricht Treaty in 1992/1993 and the qualitative transformation of European integration – which may have already begun with the Single European Act some years before, but accomplished only with the Maastricht Treaty and the consistent declamatory transformation of the community into the union – before these events, political scientists had considered the European Community to be rather an international organization, aligning and comparing it to other international and global multilateral institutions such as the United Nations, regional free trade associations like NAFTA or other more specified organizations like OPEC. And still today you will find important textbooks for students of political science and international relations, which of course include a chapter on the European Union.³

² Ryle, Gilbert: *The Concept of Mind*, Chicago 2002 [1949], p. 16.

³ Examples from the German field would be Woyke, Wichard: *Europäische Organisationen. Einführung*, München 1995; Rittberger, Volker/Zangl, Bernhard (Hrsg.): *Internationale Organisationen – Politik und Geschichte. Europäische und weltweite internationale Zusammenschlüsse*, Opladen ³2003; Gehring, Thomas: *Die Europäische Union als komplexe internationale Organisation. Wie durch Kommunikation und Entscheidung soziale Ordnung entsteht*, Baden-Baden 2002.

The European Union as an international organization

In such books the EU is analyzed as an International Governmental Organization, a special kind indeed, and the most supranational if you like, but still mainly an IGO, with nation states as founders, members and principals. There is nothing wrong with that description. Basically, you just have to consider the fact that every European treaty from the Treaties of Paris or Rome to the Treaty of Lisbon – including the failed Constitutional Treaty – have been nothing other than international treaties in international law, existing between nation states as sovereign treaty subjects. And maybe today, in November 2010, keeping in mind the headlines regarding the last European Council in Brussels a few days ago, and of course the magazine titles surrounding the difficulties with Greece in the spring as well, we have the tendency to go back to a more interstate or intergovernmental view. Nonetheless, if you look at the concrete application of the more international relations approach – and there are rather good examples, such as the volume *Internationale Organisationen* written for this approach by the German political scientists Volker Rittberger and Bernhard Zangl. In analyzing the EU with the instruments and typologies they have developed for international organizations in general, the two scholars have to admit some difficulties with the special institutional design of the European Union.⁴ Of course you can consider the Council a plenary body of the EU analyzed as IO, or you can consider the Commission an executive and administrative council like the UN General Secretary, for instance. You can even consider the European Parliament to be a parliamentary assembly like its precedent institution indeed was called in the 1950s and 60s. Yet to many analysts today, all of these classifications seem quite odd, old-fashioned and a bit artificial. The traditional typologies do not seem to fit anymore. The institutional design of the EU incorporates some features that seem to be less compatible with the traditional IO label. For example: If the Council is just a conventional plenary body, how can it be that the classical rule for such boards, 'One state, one vote,' does not count when it comes to decision making – at least in many policy fields? And why on earth is majority voting applied in these same fields just so that sovereign nation states can be overruled by majority decisions? And of course we can consider the Commission to be an IO General Secretary, but how can it be that this administrative body has a monopoly of legislative initiative? And indeed, the European Parliament can be seen simply as a parliamentary assembly, just as we find in other IOs. However, why do the Members of Parliament group themselves in the Strasbourg plenum along ideological lines? Why don't they group themselves in caucuses

⁴ Rittberger/Zangl: *Internationale Organisationen*, op. cit.

according to their respective national backgrounds? And how can it be that deputies are not just sent by member states' parliaments, but are actually elected in, at least nominally, European elections held once every five years?

Nonetheless, even if you succeed in integrating these special features into a traditional view of the European Union as an International Organization, probably extended by the attribution 'supranational,' there is still one element in the EU's institutional design that you should especially struggle with – it is the European Court of Justice. In the IO sphere it will not be easy to find a comparable institution to the ECJ, at least nothing with a comparable set of powers. The ECJ and European law, which has a de facto primacy, are without parallel among the scope of international organizations. So perhaps it is the more conventional concept of the theory of international relations and international organizations that no longer fits into the dimensions of a transformed European Union because the institution has developed beyond the limits of that concept. And so in the end it might be the classical path which leads to some kind of category error. The best expression for such a conceptual risk can perhaps be found in another innovation in European treaty law: The de facto existing and largely accepted primacy of EU law over national law. This had been an integral part of the European Constitution and was indeed removed from the document in order to ensure the outcome of a more conventional treaty revision procedure – thus the Lisbon Treaty that finally came into effect one year ago – and in order to make that document less constitutional.⁵ By contrast, the codification of a legal personality in international law for the EU as such is still included, and you can find it in the new Art. 47 of the EU Treaty. This has of course some practical implications. The most relevant for this conceptual discussion is that, from now on, the EU itself can sign international treaties and can participate as a full member in international regimes and organizations. The fact that the EU itself can be a member of other IOs (as it already is in the WTO) alongside the other members, which are normally nation states, is a quite lucid manifestation of its categorical ambiguity. Yet now I would like to continue with the other perspective, thus analyzing the EU as a political system.

The European Union as a political system

As I already mentioned, with the qualitative transformation of the EU the academic approach to the object changed as well, and analysis of the EU has been transferred increasingly from

⁵ A reference to the primacy of Union law can only be found in a legally not binding declaration (declaration No. 17).

international relations to the comparative government sub-discipline, its methods, typologies and other instruments. Today you would hardly find a comparative collection of European political systems without a chapter on the political system of the EU itself. So for instance in the respective standard reader in German political science, *Die politischen Systeme Westeuropas* edited by Ismayr, where you have a chapter on the political system of France and as well as one on the political system of Germany – you also have one on the political system of the EU.⁶ Many single EU-textbooks today also have titles like the very helpful book written by Simon Hix, *The Political System of the European Union*.⁷ In these volumes and works, the European Union is either explicitly placed alongside nation states, the most of which are even EU member states and their political systems, or at least implicitly compared to them. So, on the one hand, the use of the political system category moves the EU further away from the classical type of international organization – or have you ever seen a book titled, *The Political System of the United Nations Organization?* On the other hand, by using the functionalist concept of system theory, the category error – and thus misunderstanding in academic discourse at least – can be avoided. For following the important definition of the political system by David Easton from the 1950s⁸, a political system is a complicated mechanism executing the fundamental political function, which can be described as the authoritative allocation of values, or in other words: making collectively binding decisions on 'who gets what, when and how'⁹. And this system by definition does not need to be a state in the modern sense. On the contrary, Easton was looking for a new, more abstract unit of political practice, avoiding any notion of the concept of the nation state which for him is just one contingent political institution: "However, since there are periods in history when such states did not exist, and perhaps the same may be true in the unknown future, the state is revealed as a political institution peculiar to certain historical conditions."¹⁰ So, in this view, the European Union could be seen as the prototype of another, of a new political institution beyond the nation state. In fact, making collectively binding decisions for the European societies, in many policy fields at least, and thus executing the political function, is exactly what the EU

⁶ Ismayr, Wolfgang (Hrsg.): *Die politischen Systeme Westeuropas*, Opladen ³2003.

⁷ Hix, Simon: *The Political System of the European Union*, Houndmills et al. 2005; also: Tömmel, Ingeborg: *Das politische System der EU*, München ³2008; Hartmann, Jürgen: *Das politische System der Europäischen Union. Eine Einführung*, Frankfurt/Main 2001.

⁸ Easton, David: *The Political System. An Inquiry into the State of Political Science*, New York 1953; Easton: *A Systems Analysis of Political Life*, New York 1965; also: Almond, Gabriel A.: *Comparative Political Systems*, in: *Journal of Politics* (2) 1956 (18), p. 391-409.

⁹ Lasswell, Harold Dwight: *Politics: Who gets What, When and How*, New York 1936.

¹⁰ Easton: *The Political System*, op. cit., p. 113.

does. All in all, it appears to be self-evident that the EU can of course be called a political system and can be analyzed as such.

So, the next step would normally be to apply one of the most fundamental typologies of the comparative government discipline to the EU. That means asking the question: whether the European Union is a democracy or whether it represents another type of rule. And, as you probably know, this fundamental question is already widely discussed and perhaps first emerged on the wider scene with the transformation in Maastricht. This legitimacy question is discussed in the political debate, as well as in the academic debate, under the label of the 'democratic deficit.' This term is particularly telling because by using it, a comparative approach with nation states as objects of comparison is always implied. You cannot define a deficit without having a standard in mind, for instance the democratic control in France, or especially interesting for this conference, the democratic control in the United States. Of course, we do not have any clear result of this debate, firstly because it is still going on, and secondly because it is quite obvious that we cannot expect a result of either black or white, but rather something in the middle, probably closer to the democratic pole. That is why we talk about a 'democratic deficit' which shall not imply that there are not any democratic structures at the European level at all.

Yet beyond this more fundamental typology, it can be quite instructive to premise that the EU is a new kind of democratic system, and to ask which type of democratic regime has been applied to the institutional construction of the EU. In other words: Is the EU a more parliamentary or more presidential system?¹¹ At first glance, the answer to this question seems to be quite easy. Assuming that the power of parliament to recall the government is the most important criterion for that dichotomy, you would probably say the EU system is clearly parliamentary because the European Parliament is empowered to recall the Commission as a whole. Furthermore, the President of the Commission is nowadays, at least nominally, elected by the EP. However, at second glance, the whole thing becomes much more difficult. Firstly, this motion of no-confidence needs a two-thirds majority in the Parliament and not just an absolute majority as we know it from the correspondent national systems. So, at the European level, a motion of no-confidence is in fact almost as hard to accomplish as an impeachment in the US. Secondly, we have to ask ourselves whether the Commission can truly be compared to a national government. Of course the main executive body of the EU has structural similarities with a national government, at least in regards to its top go-

¹¹ Referring to the classic definitions of Winfried Steffani: *Parlamentarische und präsidentielle Demokratie*, Opladen 1979.

vernmental board, the College of Commissioners. However, by doing its executive work, the Commission is supervised and controlled by the Council, which is built by members of the 27 national executives. Consequently, there are scholars who would rather identify the Council as a kind of EU government. In this case the system suddenly seems to be quite presidential, particularly now, i.e. after Lisbon, because now we have a permanent president at the top of the European Council. In the debates before the ratification of the Lisbon Treaty, it was often even referred to as a 'European President,' and this president is not elected by the European Parliament. So, in this view, there seems to be a clear institutional separation between administration and parliament, which we would know rather from presidential systems and which certainly stands against the classification as parliamentarian. However, on the other hand, we have to admit that the President of the Council is certainly not elected by the European people, so it is not pure presidentialism either. And what is more, this President only oversees the work of the European Council, and we have to make a difference between the European Council as a college of the heads of state and governments and the Council of Ministers. There are again other scholars who now, as a last resort, refer to the mixed version, to the concept of semi-presidentialism that you probably know from the French case, and, again, there are also reasons to try it this way.¹² So, as you may have noticed, the EU system is quite complicated and it is far from easy to apply the comparative government typologies to it. Yet nonetheless, the work is worthwhile. Before giving some concluding remarks I would like to summarize this special political system with the help of an organizational chart.

¹² Knelangen, Wilhelm: Regierungssystem sui generis? Die institutionelle Ordnung der EU in vergleichender Sicht, in: Zeitschrift für Staats- und Europawissenschaften (3/1) 2005, p. 7-33.

EU or for the heads of state and government in the European Council. Secondly, you can see that legislative decisions are taken in common procedures between the European Parliament and the Council of Ministers, whereby nowadays the so-called co-decision procedure is mostly used as 'ordinary legislative procedure' after Lisbon. It makes the EP an almost equally powerful co-legislator. Even after Lisbon, there are still policy areas where co-decision is not applied. In these cases, the special procedures of either consultation or consent are used. The consent procedure, where the EP has to give its direct consent, is traditionally intended for use in the budget procedure as well as in enlargement decisions. The more 'sovereignty-sensitive' consultation procedure, where the EP must be heard but with which the Council has not to comply, is still mainly applied in the field of foreign and security policy. As to legislation, it is also very important to mention that the formal monopoly of legislative initiative is still held by the Commission. Beyond that, the Commission is the main executive body, which thereby is controlled and influenced by the Council and rather formally controlled by the Parliament. The EP, Council and Commission together build the institutional triangle which forms the centre of the whole system. Besides these main institutions, there are of course other important bodies: the European Council, which plays an important role in fixing the guidelines and deciding on further development of the system's design; then definitely the powerful Court of Justice, which is in most areas responsible for the jurisdiction; the extraordinarily independent and – on the field of monetary policy – particularly powerful European Central Bank; the European Court of Auditors; as well as the exclusively consultative bodies of the European Economic and Social Committee and the Committee of the Regions.

The European Union as a system *sui generis* – From category error to refusal of categorization?

For my conclusion, I would like to return to the beginning and the classification of the EU as a system *sui generis*. This concept has been introduced in the academic discourse on European institutions by the German constitutional law scholar, Knut Ipsen, and makes much sense in and of itself. The EU is, needless to say, a very special political system that is always different, always in between, which is of course still an international organization that can be compared to the UN, for instance. On the other hand, it has developed into a veritable political system, which can and must be compared with other political systems as well, which are normally nation states. Comparisons of both methods, using typologies and instruments from both schools can be very helpful and instructive. That is what I wanted to

convey with my talk. Now the term *sui generis* is often used to avoid comparisons – to protect the EU against comparisons which perhaps do not fit completely. For instance some scholars and politicians argue that we should not apply our conventional democratic criteria to the EU because it is *sui generis*. However, in my opinion, we instead have to avoid this kind of – as a colleague of mine, Wilhelm Knelangen, has called it – “isolation of *sui-generis*-argumentation”¹³. Being afraid of category errors, we should not commit a much larger mistake: the total refusal of any categorization. Of course it is a hybrid system that we have to deal with, a system *sui generis* if you like, but at least we have to deal with it. And therefore we need all of the concepts, categories, standards and typologies that we can get. Things do not have to be equal in order to be comparable or visually spoken: You can indeed compare apples and oranges to one another. In this spirit, I have to say that for the EU-apple, the US of course constitutes a very adequate orange.

¹³ Knelangen, Wilhelm: Europäische Union ein Fall für die Vergleichende Regierungslehre? In: Varwick, Johannes/Knelangen, Wilhelm (Hrsg.): Neues Europa – alte EU? Fragen an den europäischen Integrationsprozess, Opladen 2004, p. 113-131.