

Chapter 6

Governance Theory and Practice: The Case of Europe

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ABSTRACT

European political life involves a productive tension between liberalist and communitarian tendencies. This ‘Libero-Communitarianism’ in the EU is the backdrop to various governance policies and potentials. This chapter develops a broad analysis of the governance setting in Europe and draws out some key areas of potential problems. This is based in the Ethical Governance of Emerging Technologies (EGAIS) project findings, and mirrors some of the issues flagged as ethically important in the field of emerging technologies. That such issues permeate European research and approaches to governance is testimony to their centrality and to the influence of Libero-Communitarian interactions.

INTRODUCTION

Between the revisions of the Treaty of Rome in the single European Act of 1987 and the Lisbon Treaty’s coming into force in 2009, there has been a concerted effort to shift policymaking in Europe from simple community ‘harmonisation’ in law to representative, pluralistic governance, respectful of difference.

Community harmonisation lawmaking seeks uniformity in law across the union in order to ameliorate trade and national-cultural differences,¹ particularly in cases where national identity or culture cause (or are seen to cause) inequalities.

Governance, in contrast, seeks to account for difference by taking into account plurality and seeking authentic, representative dialogues on a ‘thick’ basis. Clifford Geertz made famous this term, one he adapted from Gilbert Ryle. A thick description of human actions is one that explains not just the action, but its context as well, so that the action becomes meaningful to an outside observer in terms amenable to the actor.²

National identity and culture are important here in terms of policy as the principle of subsidiarity³ means that national self-determination must be respected, not dominated. Subsidiarity requires that law must find its ultimate source

in nations, not supra-national authority. In other words, while the supra-national authority can make recommendations and even requirements for nations, it cannot actually enforce change at the national level:

Any national Parliament or any chamber of a national Parliament may, within six weeks from the date of transmission of a draft European legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.⁴

Ethics too is immediately brought up as autonomy and human interests are live issues when we attempt to account for pluralism – how different people conceive of their own possibilities as a function of their personal, historical, cultural or their national identity are elements that must come into play when the ambition to include difference in governance is voiced.

The analysis here will focus on these moments (policy, ethics) separately in order to illuminate where systematic governance approaches and ethics meet, how they meet and what the outcomes and limitations are.

BACKGROUND TO POLICY

The European Union has a difficult task. Across a diversity of nations, each home to a diversity of ethnic, linguistic, cultural and social differences, it seeks to bring some sort of unity in policy to permit the fair and free expression of identity, from a basis of universal human rights. This is evidenced in the adoption of the Charter of Fundamental Rights (CFR) in 2000 and its subsequent strengthening in the Lisbon Treaty. In fact, this

introduces a considerable tension from the start as regard the intentions of the practice of governance in Europe. This tension comes in the form of competing views of freedom and its realisation by political means – political liberalism and communitarianism. We look now to each in turn in order to flesh out this tension, thereby exposing a challenge for governance that any prospective recommendations we offer for improving the ethical governance of emerging technologies must address. With regard to ethics, this is important as we will see that for liberalism, ethics is only ever a matter of politics among a well-described group of individuals. Communitarianism, on the other hand, can be seen as operating on a basis that ethics ought to ground politics toward shaping a group's arena for autonomy.

POLITICAL LIBERALISM

It is an ambition of political liberalism in general to found policy despite difference. The idea is that, given broad enough consideration, policymaking can accommodate all individuals despite their ethical differences as well-argued for policy will convince universally by dint of its reasonableness (Lund, 2000). The idea is founded upon a deep notion that fairness involves annexing public deliberation from value, as value is a private reaction to the world, whereas public deliberation has to represent more than a narrow set of values, or else risk ruling out *a priori* certain conceptions of the good and their pursuit in given ways of life. As a prominent liberal thinker, John Rawls stands as a good representative of this thread of thinking.⁵

Rawls uses the fact of value pluralism as a basis to reject the role of value in public decision-making at all. In order to reasonably represent a people who will be divided on many matters of import, it is centrally important not to rule out *a priori* any particular conception of the good life. To this end, Rawls develops an account of public reason that tries to limit itself to the reasonable

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