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Commentary

Europe's Crises: Preparing to Study Disintegration

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Abstract

The question of European ‘disintegration’ is drawing an increasing amount of scholarly attention. In light of Brexit, this is no surprise. Yet the seeming focus on proposing comprehensive theories at this point seems premature. The Brexit process is very much still in the making and it will be some time before the dust settles, leaving room for comprehensive analysis. Fortunately, there might be quite a few empirical puzzles already out there that can help lay the groundwork for future theories of disintegration. In this commentary, I argue that the emerging literature on disintegration would do well to consider the insights of New Institutional literature to investigate these. Tried and tested rational choice, sociological and historical institutionalist lenses can have a lot to say. After all, disintegration is a form of institutional change. Directing attention towards less glamorous but, all the same, interesting institutional changes manifesting signs of disintegration can steer the disintegration literature towards more deductive research designs. This commentary illustrates the point through an example from the Union’s Common Commercial Policy, suggesting some possible further avenues of research.

Keywords

Common commercial policy; Disintegration; European Union; Institutional change; New Institutionalism

Increasingly, a number of scholars have argued for a paradigm shift in EU studies in order to equip Europeanists better to study what seems to be the new normal: the EU in crisis (Börzel 2018; Rittberger & Blauburger 2018). A lively debate is unfolding around the question of how best to formulate comprehensive theories of disintegration, especially in light of Brexit. While acknowledging that the demise of the European project might not happen for some time – indeed it might not happen at all – this scholarship makes a valid observation. The current theoretical toolbox of EU studies is largely incapable of formulating expectations as to how disintegration might occur (Jones 2018). Filling this gap is no small task.

As Rittberger and Blauburger (2018) suggest, there is probably a systematic functionalist bias in EU scholarship, coming to affect the way the Union is conceived of, researched, taught and communicated about. For the most part, the emerging scholarship seeking to fill this gap has attempted to lay the foundations of grand theories of regional disintegration (Börzel 2018; Rittberger & Blauburger 2018; Vollaard 2014), while others have gone as far as conducting colourful thought experiments about what EU scholars themselves might do if the Union were to disintegrate (Hodson & Puetter 2018). However, looking to Brexit for empirical validation of any conjectures on disintegration has proven difficult. With little more than half a year left on the clock to negotiate the UK’s exit, fundamental questions relating to borders and trade are still fluid and changing on an almost weekly basis. As Hans Vollaard points out, the question of disintegration can be approached from several different starting points: intergovernmentalism, supranationalism and systems theory may all have something to say here (Vollaard 2014). Yet the messiness of Brexit will likely mean that little in terms of clear-sighted empirical analysis can be achieved in the near future. The purpose of this commentary then is to point out that beyond

theoretical discussions and a fascination with Brexit, scholarship can already start going empirical in relation to disintegration.

This would be an important step in the right direction. Ben Rosamond implicitly made the call to go empirical two years ago in this journal noting that: '[the EU's crises] should be understood within a much broader set of transformations, themselves disintegrative in character, that challenge the democratic capitalist compact which gave rise to the EU and within which it has been embedded' (Rosamond 2016: 8). In order to study these broader disintegrative transformations, that might be less spectacular than Brexit, I propose turning to the New Institutional (NI) literature on European institutional change. This strand of literature has arguably lost much of its appeal over the past decade or so. Theoretical refinements of NI lenses have become passé, perhaps even degenerate, in a Lakatosian sense. Yet, there is no apparent reason not to use these otherwise comprehensive theoretical frameworks or analytical lenses to study institutional rule changes under conditions of crises.

CHANGE, YES. BUT IN WHAT DIRECTION?

The NI turn in the social sciences came about to provide more systematic analytical tools to understand the lasting structural level effects that institutions have on political life. In other words, to theorise the importance of institutional stability, where institutions were understood as: 'shared concepts used by humans in repetitive situations organized by rules, norms and strategies' (Ostrom 2007: 23). In EU studies, however, the focus of the NI literature quickly shifted to make expectations about why and how institutional *change* would unfold in-between and at intergovernmental conferences (Stacey & Rittberger 2003). Different expectations are premised on the different assumptions of the three main 'brands' of the NI literature especially in relation to the importance of agency and structure and how these interact.¹

Agency can be understood as something akin to the capacity of institutions (on aggregate) or individual level political actors operating within institutional settings to have internalised agendas that they are willing to pursue in a consequentialist manner vis-à-vis other actors. Structure, in turn is understood as a conjuncture of acceptable norms (both procedural and substantive) that constrain the boundaries of agency by imposing value-positive visions of what constitutes appropriate institutional behaviour. Rational choice institutionalists (RCI) prioritise the importance of agency over structure – seeing norms as little more than tools for bargaining – while sociological institutionalists (SI) question whether agency is possible at all in settings where deeply embedded norms exist. Historical institutionalists (HI), in turn, employ an oftentimes eclectic approach in prioritising one over the other to explain how institutions respond to external shocks and why institutions maintain path dependencies over long periods of time (Hay 2006). In relation to shocks, the absence of an appropriate norm can lead to agency-based responses to crises. Alternatively, previously side-lined norms can come to gain recognition in times of uncertainty, shaping institutional responses to unforeseen challenges.

In the heat of competition, scholarship increasingly sought to turn RCI and SI from lenses of analysis into endogenous theories of institutional change, sometimes developing complex causal mechanisms to provide self-sustaining and cyclical explanations of both formal and informal change (Rittberger 2012; Windhoff-Héritier 2007); in a sense, developing their own narratives of path dependencies. Institutions can either be caught in perpetual loops of bargaining or be subject to the isomorphic spread of norms. Nonetheless HI's descriptors of how institutions respond to external shocks have oftentimes been used as the go-to mechanism for explaining deviations from these endogenously theorised patterns (Hay 2006). Indeed, the number of crises

identified by authors seeking to theorise disintegration are also formulated as such: changes attributed in part, or entirely to unforeseeable external events like the: ‘Financial crisis, euro crisis, Greek crisis, Crimean crisis, Ukraine crisis, Syria crisis, migration crisis, rule of law crisis’ (Börzel 2018: 1).

In seeking to move beyond the theoretical compartmentalisation of the different NI narratives, mature iterations of NI literature have suggested building on HI’s eclecticism to overcome the dichotomy between rigid assumptions about structure and agency. This has meant relaxed rationality assumptions and the acknowledgement that norms sometimes do take a backseat to bargaining (Aspinwall & Schneider 2000; Ethington and McDonagh 1995). However, the reason this literature still remains incapable of formulating theoretical expectations to consider the possibility of institutional disintegration, or ‘negative change’ as a result of external shocks is precisely because of its inability to shake its bias towards endogeneity. Expectations that solving crises situations amounts to finding more efficient bargains, or that new substantive norms will build on the explicit or implicit understanding that integration is elementally good, are present throughout the literature. Once new bargains are struck or a new norm is settled on, the cycle of pro-integration change is expected to go back to normal. New path dependencies are found or old ones are continued with new justifications. Perhaps this has to do with the biased responses that European elites have provided in practice to external shocks that have multiplied in the post-Maastricht Period. Two failed popular referenda failed to stop the Constitutional Treaty from being rebranded and reborn at Lisbon. The sovereign debt and Euro crisis was met with increased integration imposing more austerity in the field of fiscal policy, despite significant bottom-up contestation. And the exigency to make the EU more democratic, transparent and accountable has not led to more transparency in the Council, leaving national electorates in the dark as to the type of double dealing conducted by their elected governments.

However, there is nothing preventing us from ‘turning the tables’ on these theoretical expectations. Recognising that external shocks disrupt institutions and path dependencies leaves us with a simple realisation; depending on the context, institutional actors might prefer to (partially) *disintegrate* or *roll-back* institutions that prove to be problematic: meaning a decrease in formal or informal (member state) power delegation to the supranational level, or a loss of supranational institutions’ (quasi) autonomous decision-making powers, or loss of once obtained competences. This can occur because it is seen to be more appropriate or because it is seen to be more rational.

In a way, the *new intergovernmentalist* argument, which claims that in the post-Maastricht period member states have pursued integration through new means, side-stepping old modes of institutionalisation, is premised on a similar logic (Bickerton, Hodson & Puetter 2015). Namely that responding to external crises can prompt open-ended thinking on behalf of elites. We do not have to look far to discover precursory indicators of this. For instance, instead of proposing the end of integration, President Juncker’s White Paper on the Future of Europe envisioned the possibility of committing the EU to substantive institutional disintegration in two of five possible scenarios to counter the prolonged democratic and legitimacy crisis of the Union (European Commission 2017a).

At this point a brief demonstration is in order. Instead of suggesting any single *good* way to combine NI lenses, I illustrate one possible way of doing so in relation to EU trade policy.

DISINTEGRATION AND REINTEGRATION IN THE COMMON COMMERCIAL POLICY

On May 16th 2017, the Court of Justice of the European Union (the Court) brought an end to a 7-year period of institutional flux in the EU's common commercial policy (CCP) which started with the Lisbon Treaty taking effect. Following the creation of the World Trade Organization (WTO) in 1995, the international trading agenda expanded beyond tariffs and non-tariff barriers to include a variety of regulatory measures. From aiming to liberalise services, to imposing stricter intellectual property rights protections, to fostering regulatory cooperation, and harmonising investment standards, the *new trading agenda* was born (Young & Peterson 2014). The EU defined its trade strategy accordingly at the outset of the twenty first century (European Commission 2006).

Accordingly, member states delegated an increasing amount of trade competences to the Commission with the Amsterdam, Nice and Lisbon Treaty changes, to prepare the Union to be able to face these new challenges effectively. As is commonly known, many of the Lisbon changes were copy-pasted from the failed Constitutional Treaty, which was in large part elaborated at the Constitutional Convention; a unique venue for treaty change, where for the first time the Commission and Members of the European Parliament (MEPs) had a chance to influence treaty rules. And they did. Both the Commission (Meunier 2017) and MEPs (Márton 2018) obfuscated rule changes to their benefits that member states did not notice. One such rule change 'by stealth' was that the Commission managed to gain competences to negotiate foreign direct investment (FDI) on behalf of the Union (Meunier 2017). This meant that the Commission was free to include so called investor-to-state dispute settlement mechanisms (ISDS) in the Union's Free Trade Agreements.² The spectre of corporations pursuing private arbitration against sovereign states proved to be particularly problematic in the public eye. These mechanisms became the centrepiece of the public contestation of trade with protesters rallying against ISDS (Buonanno 2017).

In light of this contestation, with its ruling on advisory Opinion 2/15³ the Court effectively split EU trade policy into two (European Commission 2017b). On the one hand, the Court jettisoned investment policy from the EU's trade competences. By confirming national parliaments' right to ratify trade agreements containing ISDS and non-direct FDI provisions, the ruling has prompted the European Commission to consider systematically omitting comprehensive investment chapters from future agreements (European Commission 2018; Politico 2017). On the other hand, by finding that the EU has all the requisite competences to conclude the remaining elements of new generation FTAs exclusively, without involving national legislatures in the process, the ruling strengthened the EU's independent *actorness* significantly (Gáspár-Szilágyi 2017). It created the circumstances necessary for the EU to become a more effective and credible negotiator while vesting the European Parliament with the responsibility of providing democratic scrutiny and legitimacy for future agreements (European Commission 2017b). In this sense then, trade policy has become more integrated and less integrated, simultaneously. EU competences on FDI are clearly enshrined in the treaties (Article 207 TFEU), yet the investment competences of the EU have apparently been detached from the EU level, perhaps because of the way they were included in the treaties in the first place.

The Court's ruling was delivered amidst the heated debate on the Transatlantic Trade and Investment Partnership (TTIP), which has been seen as a response to the increased contestation of trade in Europe. The Seattle riots during the 1999 Seattle Ministerial of the WTO were an early yet powerful manifestation of just how strongly people felt about trade understood as market regulation (Laursen & Roederer-Rynning 2017). And while the size of protests at Ministerials might have dwindled over the years, public interest in trade has flared over the course of the past

decade in the EU. The plans for the EU to join the Anti-Counterfeiting Trade Agreement (ACTA) to combat internet piracy led to protests over the course of 2012, with tens of thousands marching for a 'free internet'. Similarly, plans of the TTIP and its little brother the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU envisioning wide spanning regulatory cooperation saw tens of thousands take to the street across European capitals. Quite simply, the move to more regulatory measures in trade making has meant that anti-trade groups have an easier job at problematising trade and galvanising public discourse (Laursen & Roederer-Rynning 2017; Roederer-Rynning & Kallestrup 2017).

Think of the spectre of Europeans being forced to eat chlorine washed chickens or GMO fed beef originating from the United States. Or the spectre of large corporations 'suing' countries for lost profits. It is difficult not to be reminded of Rosamond's point that the EU's crises are best understood as the results of a wider failure of the 'democratic capitalist compact' that has guided past integration by way of depoliticisation and technocracy (Rosamond 2017). While the EU's trade strategy was modelled on the WTO agenda, there was never any substantive discussion or dialogue in Europe to determine what policy agendas Europeans saw as being desirable.

CONCLUSIONS

Returning to the question of why and how a NI lenses could help analyse these changes from the point of view of (dis)integration I propose the following precursory observations.

While the politicisation of seemingly discrete trade agreements like ACTA, TTIP or CETA might be understood as separate external shocks, through the application of a HI perspective the contentiousness of trade in general could be conceptualised as an external factor coming, over time, to disrupt path dependent integration in this specific policy subsystem. The role and preference of the Court in mitigating this conflict might well fit with the RCI literature's expectation of the Court acting as a *third party arbiter* to settle bargaining disputes, especially when rules breed contention (Windhoff-Héritier 2007: 119), as was the case with the above FDI example.

Taking a broader perspective, research in this vein could investigate how policymakers respond to external shocks that challenge long, locked-in, 'sticky' patterns of change under a variety of different circumstances. Institutions can trivialise, amplify or otherwise steer responses depending on just how resilient the logic of consequentiality and/or appropriateness proves to be. When and why are EU decision-makers capable of providing effective as opposed to disjointed and tone-deaf responses to unforeseen challenges?

As the trade example seems to suggest, disintegration is not a certainty. Indeed, a fortification of past path dependencies might well prove to be sufficient to stop disintegration. But in some cases, de-institutionalisation might well be unavoidable, taking place simultaneously with institutionalisation. Better understanding the conditions of when this might be more likely than not would be useful to understanding the EU's multitude of crises.

These initial observations are, of course, in need of further development. Yet the point is this. European institutions are constantly changing. While the sudden implosion and disintegration of the EU is of course possible, it would seem more intuitive to conceive of a paradigm shift where some parts of the Union disintegrate while others are reinvigorated. Not having a single – or even several – framework(s) for recognising these processes would be a mistake. The NI literature can be particularly helpful here since it contains a number of well-developed and grounded

mechanisms. Of course, there may or may not be one single good formula as to how best to go about this. It is up to EU scholarship to start taking the first empirical steps to determine this.

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ENDNOTES

¹ For a comprehensive overview see: Hall & Taylor 1996; March & Olsen 2008.

² For a comprehensive overview see: Kuijper et al. 2014.

³ CJEU, *Opinion 2/15*, EU:C:2016:992.

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