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# ISSUES OF REGIONAL INTEGRATION

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## EVOLUTION OF AN APPROACH TO THE PROBLEM OF RELATIONS WHICH PUBLIC AUTHORITY MAY ENTER, AS A CONDITION FOR EU MEMBERSHIP

### ABSTRACT

In the light of the evolution of political systems the classical model of national state does not have the potential to fully explain the complex of a state (public power) both current state and international relations. The new forms of governing the international markets and other economic processes, currently emerging, are engaging national governments. However, given a new role, the countries begin to function less as “sovereign” beings and more as components of international political community. At the same time occurs the engagement of non-governmental actors, employed to make important public decisions – it redefines society from being an object of governance to being a potential resource that needs to be activated in the pursuit of good public governance.

That is why, moving away from the centrally understood model of decision-making known from the nation-state

### STRESZCZENIE

W świetle ewolucji systemów politycznych klasyczny model centrycznie rozumianego państwa narodowego nie jest w stanie w wystarczający sposób wyjaśnić złożonej roli władzy publicznej w ramach obecnych stosunków tak wewnętrznych, jak i zewnętrznych. Wyłaniające się obecnie nowe formy rządzenia międzynarodowymi rynkami i innymi ekonomicznymi procesami angażują rządy narodowe, jednak w nowej roli. Państwa zaczynają funkcjonować w mniejszym stopniu jako “suwerenne” byty, a w większym jako składniki międzynarodowej społeczności politycznej. W tym samym czasie następuje angażowanie się podmiotów poza-rządowych w podejmowaniu wiążących decyzji publicznych – redefiniuje to pozycję społeczeństwa, z bycia przedmiotem rządzenia, do pozycji bycia swego rodzaju zasobem (pewną polityczną siłą sprawczą), który to musi być zaktywizowany w procesie należytego publicznego zarządzania.

determines understanding of modern relations that public authority takes part in (such as the membership in the structures of the European Union – which is connected to a change in conditions of established patterns of governing). To explain that phenomenon it is used the concept of a hollow state.

### Key words

Government, governance, European Union, hollow state, non-governmental actors, public authority, Westphalian-type state

Dlatego właśnie odejście od centrycznie rozumianego modelu podejmowania decyzji w państwie narodowym warunkuje zrozumienie współczesnych relacji, w jakich kraje mogą brać udział (tak np. przynależność do struktur Unii Europejskiej – co łączy się ze zmianą warunków ustalonych wzorców rządzenia). Dla wyjaśnienia tego zjawiska używana jest koncepcja państwa wydrążonego (a hollow state).

### Słowa kluczowe

rząd, zarządzanie, Unia Europejska, państwo wydrążone, podmioty sektora pozarządowego, władza publiczna, państwa typu westfalskiego

## 1. Introductory remarks

The starting point or basis for determining the position of the state and pattern of decision making in government-subjects relations, as well as with other actors of IR (mainly states) is still the so-called “Westphalian system.” It is an order that was established in the sixteenth and seventeenth centuries (in Europe), which has since become, through imperialism and decolonization, genuinely global. The core principles of the Westphalian international law are: sovereign equality of states as well as the norms of non-aggression and non-intervention. The law is aimed at both supporting and constraining state sovereignty. Still, the law is not necessarily incompatible with war, which is a prerogative of states. Instead, such conflict ought to be conducted in accordance with commonly agreed rules, and, in principle, it must not involve civilians [regardless of the emergence of nationalism as a force in international relations].<sup>1</sup>

One of the fundamental characteristics of a Westphalian-type state is that it is a political construct set in motion and directed by information springing

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<sup>1</sup> Ch. Brown, *From International to Global Justice?* [in:] *The Oxford Handbook of Political Theory*, J.S. Dryzek, B. Honig, A. Phillips (eds.), New York 2006, pp. 621–635. Here p. 623.

from one distinct center, which is designed to coordinate various tasks.<sup>2</sup> Furthermore, bearing in mind the perspective mentioned above, states not only claim ultimate power within their realms ('internal sovereignty'), but they also claim independence from each other ('external sovereignty'). By rejecting the authority of popes and emperors, sovereigns asserted the state's autonomy of other states. The state is not only the author of its own laws (etymological meaning of *autonomos*), but the laws of others have no claim on it.<sup>3</sup> This clearly reduces the participation of other entities (both lower-level internal and external) in the process of political decision making.

Such a state of affairs gives rise to certain questions as far as the dynamics of current international processes is concerned with a special emphasis on the incredibly complex phenomenon of European integration. Apart from economic or political issues, the phenomenon in question also encompasses problems of *purely* constitutional nature. These are matters related to the essence of statehood, including relations of the state's power with other subjects. Following the logic presented above, the participation of a state in a structure such as the European Union would be impossible.

The purpose of this article is to present concepts which would include complexity of relations which public power takes part in. Special attention will be placed on the attempt to describe potential changes in the typical position of the public power, which, on one hand, allows joining the EU, and, on the other, is its consequences.

## 2. The change in defining state in the context of international relations

Nation-states tend to be defined primarily through their sovereignty. Sovereignty, as elucidated by Stephen Krasner, is attributed to states that have international recognition from other states; autonomy with regard to the exclusion of external authority from their own territory; control over activities within and across their borders; and exclusive power to organize authority within the polity.<sup>4</sup>

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<sup>2</sup> G. Poggi, *The Development of the Modern State*, London 1978, p. 98.

<sup>3</sup> Ch.W. Morris, *Modern State* [in:] *Handbook of Political Theory*, G.F. Gaus, Ch. Kukathas (eds.), London 2004, pp. 195–209. Here p. 198.

<sup>4</sup> V.A. Schmidt, *Democracy in Europe. The EU and National Politics*, New York 2006, p. 10.

Gianfranco Poggi claims that a state can be regarded as one, if it is homogenous and all its political activity comes from within, or can be directly related to it.<sup>5</sup> Other authors, such as Ralf Dahendorf, also remark that the conditions necessary for a working democracy (i.e. proper institutional structure) originate only in a state of the Westphalian type.<sup>6</sup>

Currently, however, it is difficult to deny that more often we hear various voices. For instance, Sylvia Walby notices that the tendency to identify a political or social unit with a territorial unit not only inappropriately reifies the nation-state, but, more importantly, leaves no room for other polities in this physical space. [...] Rethinking the concept of the polity is necessary. The traditional conceptualization of the polity as a state within sociology draws on Weber's definition of a state as a community that claims the monopoly of legitimate use of physical force within a given territory. However, many polities today do not have a monopoly on a territory, notwithstanding Weber's definition of the state, or the Westphalian concept of the sovereignty of the nation-state.<sup>7</sup>

The notion of a territorially defined nation-state was used as a shortcut to ensure the spatial congruence between rules (the nation-state) and subjects (the national society). Yet, this notion becomes problematic as soon as the nature of the relevant community is contested, as has happened in the course of societal denationalization.<sup>8</sup> The increase in cross-border transactions infringes on the normative dignity of political orders.<sup>9</sup>

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<sup>5</sup> G. Poggi, *The State: Its Nature, Development and Prospects*, Oxford 1990, p. 22.

<sup>6</sup> R. Dahendorf, *The Challenge for Democracy*, "Journal of Democracy" 2003, No. 4, Vol. 14, pp. 101–114. Here p. 107.

<sup>7</sup> S. Walby, *The Myth of the Nation-State: Theorizing Society and Polities in a Global Era*, "Sociology" 2003, No. 3, Vol. 37, pp. 529–546. Here pp. 540–541.

<sup>8</sup> Instead of globalization, which conveys a problematic notion of de-bordering, Michael Zürn uses the term denationalization. He sees it as an indication of the weakening link between territorial states and their corresponding national societies, i.e. the contextual condition that made the national constellation possible. So denationalization can be defined as the extension of social spaces, which are constituted by dense transactions, beyond national borders without being necessarily global in scope. Even though the scope of most of these cross-border transactions is indeed not global, they still cause a problem for national governance simply because the social space to be governed is no longer national.

<sup>9</sup> M. Zürn, *Democratic Governance beyond the Nation-State: The EU and Other International Institutions*, "European Journal of International Relations" 2000, No. 6, pp. 183–221. Here p. 188.

The new forms of governing international markets and other economic processes are engaging important national governments. However, given a new role, countries begin to function less as “sovereign” beings and more as components of the international political community. The main functions of a national state are, at this point, providing legitimization and guaranteeing supranational liability along with subnational mechanisms of governing.<sup>10</sup> The globalization of technologies, the growth of international markets, and the internationalization of corporate structures, is argued to have generated pressures on nation-states to be more attentive to competitiveness and efficiency standards. Responding to these, national policymakers rely on ‘signals,’ pointing towards private economy solutions to policy problems and the opening-up of markets to competition from the international system (The result is a ‘bandwagon’ effect, leading to the convergence of national policy and the end of diversity).<sup>11</sup>

Consequently, it can be argued that, during the last decade, national states transformed themselves from sovereign subjects into strategic actors, each enforcing their own interests as well as those, which represent, in the global interactional system, systematically shared sovereignty. Their influence is substantial, but, at the same time, they exercise authority within the network of interaction with supranational macro-forces and subnational micro-processes.<sup>12</sup>

According to Sylvia Walby, it is necessary to rethink the concept of ‘society,’ which is so often equated with ‘nation-state’ and that of ‘polity,’ which is wider than that of ‘state.’ She declares it is inappropriate to treat nation-states as the main type of society for four reasons:

- There are more nations than states<sup>13</sup>;
- Several key examples of supposed nation-states at their most developed moments were actually empires<sup>14</sup>;

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<sup>10</sup> P. Hirst, G. Thompson, *Globalization In Question: The International Economy and the Possibilities of Governance*, Cambridge 1996, p. 171.

<sup>11</sup> S. Bulmer, D. Dolowitz, P. Humphreys, S. Padgett, *Policy Transfer in European Union Governance. Regulating the Utilities*, London–New York 2007, pp. 4–5.

<sup>12</sup> M. Castells, *Siła tożsamości [The Power of Identity*, Malden 2004], Warszawa 2008, pp. 330–331.

<sup>13</sup> There are far more nations than states. It is rare for a territory to have one nation and the whole of that nation, and one state, and the whole of that state. There are nations that do not have a state of their own.

<sup>14</sup> However, several key examples of what have been claimed to be nation-states during the period of its supposed height (It is often considered that nation-states became a common political and social form after the Treaty of Westphalia in 1648, with the height

- Politics overlap, notwithstanding the popular myth of nation-state sovereignty over a given territory. This means that the economic, political, and cultural domains are not neatly over-lapping in discrete bounded units<sup>15</sup>;
- There are diverse and significant politics in addition to states, including the European Union (EU) and some organized religions, as well as the emergence of multi-lateral and global forms of governance.<sup>16</sup>

Although national states still exist and will continue to do so in the foreseeable future, they are (increasingly) the nodes of a much broader network of power. National states can keep their ability to make decisions. However, being a part of the network, they are dependent on a more extensive system of exercising power.<sup>17</sup>

### 3. Change in the process of public decision-making within a state

Another issue, as far as the problems here are discussed, is the engagement of actors, that are employed to make important public decisions. Dagmir Długosz, Jan Jakub Wygnański, and Maciej Tański argue that “to govern effectively at the beginning of the twenty-first century means taking into account (by politicians and civil servants working for the public administration) many conditionings which underline decision making by particular public institutions. The traditional decision-making model, which assumed limited access of various organizations representing a society in governmental decision-making processes, is currently undergoing change. Societies are becoming more demanding as to the quality of decisions made by public power at any level. Furthermore, they organize themselves so as to protect their own interests into particular claim-oriented branches, such as community-based organizations, trade associations, and business organizations. Both politicians and civil servants have to consider

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of this form existing from the 18<sup>th</sup> or 19<sup>th</sup> centuries until the mid-20<sup>th</sup> century), for example Britain or France were actually empires during the 19<sup>th</sup> century, not nation-states.

<sup>15</sup> Politics cut across each other and do not politically saturate a territory. Different kinds of politics may govern different areas of social life. For instance, a church and a state may divide between themselves the institutions over which they claim authority and jurisdiction. Sometimes politics will agree overtly or accommodate *de facto* to their division of jurisdiction over different institutions, although at other times it is contested.

<sup>16</sup> S. Walby, *op.cit.*, pp. 530–539.

<sup>17</sup> M. Castells, *op.cit.*, p. 324.

the presence and needs of such organizations interested in influencing the public decision making.<sup>18</sup> At this point, it is worth introducing the concept of “governance.”

The essence of governance, just like of government, is to reach binding decisions. The difference between government and governance is that government is the organization in charge of making binding decisions, resting on a constitutionally defined authority. A government is an agent furnished with explicit rights and subject to control according to established procedures. Governance will have different properties whenever it is enacted without government.<sup>19</sup>

Adrienne Heritier and Dirk Lehmkuhl share a similar point of view. These authors say that “in contrast to government, governance implies that private actors are involved in decision-making in order to provide common goods and that nonhierarchical means of guidance are employed... Where there is governance, private actors may independently engage in self-regulation, or a regulatory task may have been delegated to them by a public authority, or they may be regulating jointly with a public actor. This interaction may occur across levels (vertically) or across arenas (horizontally).”<sup>20</sup>

In this context, one may draw attention to the fact that, over the last 30 years, we have witnessed a slow but steady emergence of a new governance imagery that embodies a novel understanding of what it entails to govern in an efficient, effective, and democratic manner. One of the most striking features of this new governance imagery is that it redefines society from being an object of governance, which represents a burden to the governors, to being a potential resource that needs to be activated in the pursuit of efficient, effective, and democratic public governance.<sup>21</sup> Niklas Luhman comes to the conclusion that “central government

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<sup>18</sup> *Obywatele współdecydują. Przewodnik po partycypacji społecznej* [Citizens Decide. Guide to Social Participation], D. Długosz, J.J. Wygnański, M. Tański (eds.), Warszawa 2005, p. 10.

<sup>19</sup> B. Kohler-Koch, *The Evolution and Transformation of European Governance* [in:] B. Kohler-Koch, R. Eising, *The Transformation of Governance in the European Union*, London 1999, pp. 14–35. Here p. 14.

<sup>20</sup> A. Heritier, D. Lehmkuhl, *Introduction. The Shadow of Hierarchy and New Modes of Governance*, “Journal of Public Policy” 2008, No. 1, Vol. 28, pp. 1–17. Here p. 1.

<sup>21</sup> E. Sørensen, P. Triantafyllou, *The Politics of Self-Governance: An Introduction* [in:] E. Sørensen, P. Triantafyllou, *The Politics of Self-Governance*, Farnham-Burlington 2009, pp. 1–22. Here p. 1.



is no longer supreme. The political system is increasingly differentiated. We live in the centreless society.”<sup>22</sup>

We may say that the term ”governance” refers to involvement of a wide range of institutions and actors in the production of policy outcomes and/or a particular form of coordination.<sup>23</sup> It is about the ways and means in which the divergent preferences of citizens are translated into effective policy choices and about how the plurality of societal interests transformed into unitary action and the compliance of social actors is achieved.<sup>24</sup> Having all that in mind, one may say that current usage does not treat governance as synonym of government. Rather, governance marks a change in the meaning of government.<sup>25</sup>

Enrico Gualini formulates key assumptions about governance as emergent patterns of policymaking. These are: (a) dealing with the resolution of collective problems; (b) at the threshold between state, markets, and civil society; (c) under conditions that can be verified before the institutions of representative democracy.<sup>26</sup>

Rod A.W. Rhodes, on the other hand, analyses different approaches to the notion ‘governance’ and takes out the shared characteristics of each of them. These are:

- Interdependence between organizations. Governance is broader than government, covering non-state actors. Changing the boundaries of the state meant the boundaries between public, private, and voluntary sectors became shifting and opaque;
- Continuing interactions between network members, caused by the need to exchange resources and negotiate shared purposes;

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<sup>22</sup> N. Luhman, *The Differentiation of Society*, New York 1982, s. XV.

<sup>23</sup> T. Pikner, *Reorganizing Cross-Border Governance Capacity: The Case of the Helsinki-Tallinn Euregio*, “European Urban and Regional Studies” 2008, No. 15, pp. 211–227. Here p. 212.

<sup>24</sup> B. Kohler-Koch, *The Evolution and Transformation of European Governance* [in:] B. Kohler-Koch, R. Eising, *The Transformation of Governance In the European Union*, London 1999, pp. 14–35. Here p. 14.

<sup>25</sup> R.A.W. Rhodes, *The New Governance: Governing without Government*, “Political Studies” 1996, No. 4, Vol. 44, pp. 652–667. Here p. 652.

<sup>26</sup> E. Gualini, *Reconnecting Space, Place, and Institutions: Inquiring into ‘Local’ Governance Capacity in Urban and Regional Research* [in:] *The Network Society. A New Context for Planning?*, L. Albrechts, S.J. Mandelbaum (eds.), London 2005, pp. 272–307. Here p. 298.

- Game-like interactions, rooted in trust and regulated by rules of the game negotiated and agreed by network participants;
- A significant degree of autonomy from the state. Networks are not accountable to the state; they are self-organizing. Although the state does not occupy a sovereign position, it can indirectly and imperfectly steer networks.<sup>27</sup>

#### 4. Belonging of the state to the European Union

Having in mind all aspects that were mentioned until this moment, we may say that several processes have contributed to the contemporary position of the state as a political structure. Some of the state's functions have moved upward to international and regional organizations [such as the European Union]. Although nation-states remain important institutions, the growth of regional blocs, international law, and economic globalization have combined to limit their autonomy. Some of the state's functions have moved downward to local levels of government and to special purpose bodies. Devolution takes control of activities away from the center. Finally, some of the state's functions have moved outward as a result of the increased use of markets and networks as means of service delivery. Even when the state retains a dominant role within networks, it still has to enter negotiated relationships with organizations in civil society if it is to implement policies effectively.<sup>28</sup>

Furthermore, one can make a claim that the factors outlined above also have an impact on the EU membership of particular constituent countries. Without evolving, or rather departing from the traditional concept of a center-oriented nation, both the development and participation of countries in EU structures would be impossible.

It is a quite significant finding, taking into account the following claim, that, according to a widely accepted definition, a political system is a collection of state agencies, political parties, as well as community organizations and groups (both formal and informal) that take part in political affairs within the state. The definition also encompasses all the norms and rules, which regulate the

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<sup>27</sup> R.A.W. Rhodes, *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability*, Maidenhead 2008, p. 53.

<sup>28</sup> *Encyclopedia of Governance*, M. Bevir (ed.), Thousand Oaks–London–New Delhi 2007, pp. 418–419.

relations between each and every the agency, party, organization, or group.<sup>29</sup> The same can be said of the EU, with the exception that “The European Union is a special case since it represents a new type of political system, made up of national and European institutions that are constituted in relation to each other. European national institutions and the EU institutions are so closely interwoven that they can no longer be conceived as separate political systems.”<sup>30</sup>

The nation-states that make up the EU can no longer be said to have all the attributed sovereignty, having ‘pooled their sovereignty’ in the process of European integration, by agreeing in the treaty to share certain responsibilities that in the past were the purview of individual nations alone. In pooling their sovereignty, European countries accepted limits to nation-state sovereignty in exchange for the gains that have come from the exercise of collective power authority and the achievement of joint goals.<sup>31</sup> Such a state of affairs is a result of complicated political and legal relations, which occur between the EU and its members. The Union – an international integration-organization – is a suprasystem, with its constituent countries acting as subsystems.<sup>32</sup>

Moreover, across policy areas, EU member states have given up their exclusive authority to organize the polity in the process of accepting the precedence of EU institutions in setting policy and judging compliance in an ever-widening array of domains. In short, the originally indivisible sovereignty of EU member states has increasingly become ‘divided’ or shared through the transfer of nation-state competencies to different EU institutions.<sup>33</sup> It is typical policy transfer. This notion [‘policy transfer’] has been defined as a process by which ideas, policy, as well as administrative arrangements or institutions in one political setting are reproduced in another jurisdiction. In the present context, the EU plays an important role in facilitating policy transfer. The policy transfer process

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<sup>29</sup> *Wprowadzenie do nauki o państwie i prawie* [Introduction to the Study of State and Law], B. Szmulik, M. Żmigrodzki (eds.), Lublin 2007, p. 360.

<sup>30</sup> M. Zürn, *op.cit.*, p. 185.

<sup>31</sup> V.A. Schmidt, *op.cit.*, pp. 10–11.

<sup>32</sup> The terminology used is based on Assumption by James G. Miller, made in description of general theory of (living) systems. It shall be noted that the author distinguishes an eight-level scale of organization and complexity of a living system, where the last one – level eight – is the supranational system, and it is an organization gathering various societies and possessing in regard to them superior system of influence and control. See: J.G. Miller, *Living Systems*, New York 1978, pp. 595–746, and also pp. 903–1024.

<sup>33</sup> V.A. Schmidt, *op.cit.*, p. 11.

and mechanisms can be placed at any point along a continuum from ‘coercive’ transfer to ‘voluntary’ transfer, with a considerable amount (probably most) occurring in between these poles<sup>34</sup>.

If we take a look at the situation from the perspective of civilization development of Europe, we may say that member states have resigned from conflicts for territories and they protect influenced areas in a different way. Current conflicts refer only to cases of exclusion from European core and breaching procedures in power. Such issues are solved through complicated international tenders for procedures and laws. Acceptable is interference to inner policy of member states – in order to protect certain moral principles (i.e. human rights) or in order to make a state comply with agreed laws.<sup>35</sup> Here, as authority has drifted upward in the process of European integration, the EU members have moved from ‘sovereign nations’ to ‘member states.’<sup>36</sup>

Further consequences are derived from the aforementioned fact. Democracy in a nation-state has a clear governmental center and a clear allocation of competencies. The system is fairly hierarchical, although some countries allow a substantial devolution of power to local units. Moreover, functional boundaries usually correspond with territorial ones. The government enjoys its legal, economic, and administrative powers within the entire territory of the state. The structure of European governance, however, is much more complicated with numerous implications for democracy. The first is that EU governance operates at multiple levels: European, national, and regional<sup>37</sup>.

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<sup>34</sup> Voluntary transfer clearly involves ‘policy learning’ whereas coercive transfer occurs where a government is obliged, for instance, by a supranational institution, such as the Court of Justice or the EU competition authorities, to adopt a policy. In fact, the EU offers a number of governance patterns each with distinct institutional characteristics that can be expected to generate different transfer types. See: S. Bulmer, P. Humphreys (University of Manchester), Paper for EUSA conference, Montreal 2007, <http://aei.pitt.edu/7717/1/bulmer-s-04b.pdf> [access: 15.06.2011].

<sup>35</sup> J. Zielonka, *Europa jako imperium. Nowe spojrzenie na Unię Europejską* [Europe as Empire. A New Look at the European Union], Warszawa 2007, p. 218.

<sup>36</sup> A. Sbagia, *From “Nation-state” to “Member-Sate”: The Evolution of the European Community* [in:] *Europe after Maastricht: American and European Perspective*, P.M. Lützeler (ed.), Providence 1994, pp. 69–88. Here p. 70.

<sup>37</sup> J. Zielonka, *The Quality of Democracy after Joining the European Union Complex Governance Structure*, “East European Politics and Societies” 2007, No. 1, Vol. 21, pp. 162–180. Here p. 164.

Furthermore, now, as a result of the process of European integration, when we speak about the EU, we treat it as a unique system of division and management of bundles of competences. The multilevel system of the EU has two distinct features that separate it from other international institutions. First, the regulations issued in different European sectors are so closely related to each other that, as a network, they affect a number of political issue areas at once within a more or less clearly defined territory.<sup>38</sup> The second distinctive feature of the EU's multilevel system is that some European institutions, such as the European Court of Justice and the European Commission, are indeed supranational (they develop rules that are considered to be superior to national law and employ servants that possess autonomy from national governments in that they have authoritative powers which directly affect national administrations and societies) in contrast to most international regimes.<sup>39</sup>

Situation that refers to transfer of competences, or to dividing them by EU member states, is, however, far more complicated. It is due to a characteristic, horizontal division of competences in the Union, meaning – between institutions. Some commentators have described this phenomenon as dynamic confusion of power.<sup>40</sup> This construct describes significant transfers and mixing of competences of certain EU institutions' competences<sup>41</sup> (if we compare it to a classical division to legislative, executive, and judicial power).

The result is, among others, that the European Parliament – the representative organ – does not have legislative power (it lacks e.g. legislative initiative or unlimited competence within passing budget).<sup>42</sup> Huge role in such authority has, in turn, Council of the EU (CEU) – a body that gathers representatives of member states governments. The CEU also has some executive power, which it shares with the European Commission (EC), an organ responsible, first of all, for

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<sup>38</sup> In contrast, issue-specific international institutions such as international regimes are more functional, and the sum of any number of international regimes does not cover a recognizable territorial space.

<sup>39</sup> M. Zürn, *op.cit.*, p. 185.

<sup>40</sup> V.A. Schmidt, *op.cit.*, p. 47.

<sup>41</sup> According to art. 13 TUE these are: European Parliament, European Council, Council (of the European Union), European Commission, Court of Justice of the European Union, European Central Bank, Court of Auditors.

<sup>42</sup> Despite that Treaty of Lisbon regulations have enlarged EP authority in that matter, extending application of the so-called co-decision procedure, according to which the Parliament has the same authority as the CEU, see art. 294 Treaty on the Functioning of the European Union.

executing union policy. However, the EC takes part in legislation process; except for legislative initiative, it may enact laws, which is based on the comitology construct.<sup>43</sup> We also cannot deny that such a situation is far from Montesquieu division of power.<sup>44</sup>

And, as a consequence of all these comments, it would be legitimate to identify – as noticed Simon Bulmer, David Dolowitz, Peter Humphreys, and Stephen Padgett – that the EU’s multifaceted system of governance generates multiple forms of policy transfer. There are three identified dimensions of transfer. ‘Uploading’ occurs when a policy model drawn from one or more member states is incorporated in EU policy. ‘Downloading’ takes place when EU rules are applied in the member states either directly by supranational institutions or indirectly by national authorities acting in accordance with EU rules. ‘Horizontal transfer’ takes the form of reciprocal policy learning between member states.<sup>45</sup> These forms of policy transfer are generally connected with different modes of multi-level governance:

- **Uploading** – occurs in the context of governance by negotiation as EU policy is formulated and adopted. It reflects the process of policymaking centred on the Council of Ministers of the European Union.<sup>46</sup> Governance by negotiation amounts to policy transfer by consent.
- **Downloading policy to member states** – takes place via a more or less hierarchical mode of governance. It relates to those areas where a considerable amount of power has been delegated to the supranational institutions.<sup>47</sup> The hierarchy finds its form not only in the political institutions, but also in the judicial institutions of the EU. European law is an important part of its repertoire of policy instruments to reinforce obligation.
- **Horizontal transfer** – Occurs in a closely constituted ‘facilitated’ governance regime. It relates to those areas of EU policy where a more intergovernmental pattern prevails (i.e. where the member governments

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<sup>43</sup> I.e. legal authorization to enact legal act, given to the EC by the CEU.

<sup>44</sup> More on this topic see: P. Carrese, *The Cloaking of Power. Montesquieu, Blackstone and the Rise of Judicial Activism*, Chicago 2003, pp. 21–54.

<sup>45</sup> S. Bulmer, D. Dolowitz, P. Humphreys, S. Padgett, *op.cit.*, s. 11.

<sup>46</sup> Most of the important common rules and norms of the EU are determined through the Council, albeit involving interplay with other institutions such as the European Parliament and the Commission.

<sup>47</sup> Necessarily, there must have been a prior stage of negotiation in order to delegate authority, whether through legislation or through treaty negotiation.

are the most powerful actors). In this mode of governance, policy transfer will take the form of unilateral, voluntary policy transfer facilitated by the EU (transfer operates horizontally through the diffusion of policy between member states).<sup>48</sup> Examples can be found in the European Security and Defence Policy or in judicial and police cooperation and their predecessors.<sup>49</sup>

## 5. Concluding remarks

In the light of presented argument it is permissible to say that the classical model of national state does not have the potential to fully explain the complex role of a state (public power) within both current state and international relations. “In the modern era of globalization and governance, the sovereignty of the state, as the highest power in its particular territory, has been challenged by the role of new public and private actors. In the public domain, the state has seen its policy choices constrained by the pattern of multilevel governance that has arisen from the constantly changing network of regional, international, and supranational institutions that constitute contemporary global governance. In the private domain of non-state actors, both the power of the transnational corporation operating in liberalized markets for finance, trade, and investment, and also the capacity of terrorist networks [...] to penetrate the architecture of national security to a devastating effect have presented dramatic new threats.”<sup>50</sup>

It is then right to say that moving away from the centrally understood model of decision-making known from the nation-state determines the membership of each country in the structures of the European. This conclusion seems to be true as EU governance is penetrating the political life of member states and its particular mode of governing may disseminate across national borders. Beate Kohler-Koch draws two main conclusions from this. The first is that Europe’s supranational community functions according to a logic that is different from that of the representative democracies of its member states. Its purpose and institutional architecture are distinctive, promoting a particular mode of

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<sup>48</sup> In place of prescription it employs ‘soft’ or flexible rules alongside systems of benchmarking and performance monitoring to persuade national actors to reassess their policy practices. Data collection and dissemination replace coercive elements.

<sup>49</sup> S. Bulmer, D. Dolowitz, P. Humphreys, S. Padgett, *op.cit.*, pp. 11–12, 19–20, 24.

<sup>50</sup> M. Bevir (ed.), *op.cit.*, p. 922.

governance. The second is that the process of ‘Europeanization’ (i.e. extending the boundaries of the relevant political space beyond the member states) will contribute to a change of governance at national and sub-national levels. Being a member of the European Union is therefore linked with participation in such a ‘penetrated system’ which is connected to a change in conditions of established patterns of governing.<sup>51</sup> The key point is that policy transfer processes are not restricted to governments, but rather involve a wide variety of non-governmental actors.<sup>52</sup>

Consequently, we can talk about what Roderick A. W. Rhodes calls “a hollow state.” The phrase ‘the hollowing the state’ summarizes many of the changes that have taken and are currently taking place in national government.<sup>53</sup> It refers to:

- The privatization and limitations on the scope and forms of public intervention;  
The loss of functions by central and local governmental departments to alternative delivery systems (such as agencies);
- The loss of functions by national governments to european union institutions;
- Limiting the discretion of public servants through the new public management with its emphasis on managerial accountability and clearer political control through a sharper distinction between politics and administration.<sup>54</sup>

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<sup>51</sup> B. Kohler-Koch, *The Evolution and Transformation of European Governance* [in:] B. Kohler-Koch, R. Eising, *The Transformation of Governance in the European Union*, London 1999, pp. 14–35. Here pp. 14–15.

<sup>52</sup> S. Bulmer, D. Dolowitz, P. Humphreys, S. Padgett, *op.cit.*, p. 16.

<sup>53</sup> Rhodes refers – in this case – his analysis to the UK.

<sup>54</sup> R.A.W. Rhodes, *The Hollowing Out Of The State: The Changing Nature Of The Public Service In Britain*, “The Political Quarterly” 1994, No. 2, Vol. 65, pp. 138–151. Here pp. 138–139. Rhodes points out also that the public sector is becoming both smaller and fragmented and this process of hollowing out may raise several problems. And so one of them is that steering complex sets of organizations is difficult. Hollowing out erodes the capacity of the centre to co-ordinate and plan. Another result is (may be) institutional fragmentation. Because of that, policy implementation becomes more difficult because policy has to be negotiated with more and more organizations. Hollowing out also breaks up government organizations into separate units, creating barriers to communication between them (the units) and incentives to distort and conceal information. The hands-off approach to business and relaxing regulations (may) encourage lax enforcement and capture of the regulators. See: R.A.W. Rhodes, *Understanding...*, *op.cit.*, pp. 54–59, 100–103.



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The concept of a hollow state evokes a vision of the decline in state's power. The state is often thought of as a sovereign authority over a geographical area; it has the power to get much of what it wants done. In contemporary governance, the authority and power of the state are thought to have lessened. The state has become increasingly fragmented; it is less able to impose its will upon its territory.<sup>55</sup>

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<sup>55</sup> M. Bevir (ed.), *op.cit.*, p. 418.