

This article was downloaded by:[University of Wisconsin Madison]  
On: 7 December 2007  
Access Details: [subscription number 769848743]  
Publisher: Routledge  
Informa Ltd Registered in England and Wales Registered Number: 1072954  
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Journal of European Public Policy

Publication details, including instructions for authors and subscription information:  
<http://www.informaworld.com/smpp/title~content=t713685697>

### Policy learning in Europe: the open method of co-ordination and laboratory federalism

Wolfgang Kerber; Martina Eckardt

Online Publication Date: 01 March 2007

To cite this Article: Kerber, Wolfgang and Eckardt, Martina (2007) 'Policy learning in Europe: the open method of co-ordination and laboratory federalism', Journal of European Public Policy, 14:2, 227 - 247

To link to this article: DOI: 10.1080/13501760601122480

URL: <http://dx.doi.org/10.1080/13501760601122480>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

# Policy learning in Europe: the open method of co-ordination and laboratory federalism

Wolfgang Kerber and Martina Eckardt

**ABSTRACT** This paper analyses the potential of the open method of co-ordination (OMC) and of laboratory federalism for policy innovation and learning in a multi-level system of jurisdictions. Our analysis shows that both can be seen as institutions that establish processes of generating and spreading new knowledge about appropriate public policies. However, the respective learning mechanisms are very different: in laboratory federalism learning takes place through a purely non-centralized process of experimentation with different new policies. In comparison, the OMC relies on a benchmarking process carried out on a higher-level jurisdiction from which, in a rather centralized way, policy recommendations are derived. In both cases, serious learning problems resulting from limited transferability of experiences gained with policies and from lacking or distorting incentives arise. We find that to fully use their potential the OMC should become an integral part of laboratory federalism, thus supporting the smooth working of yardstick, interjurisdictional and regulatory competition.

**KEY WORDS** European Union; governance; innovation; laboratory federalism; policy learning.

## 1. INTRODUCTION

With the European Union (EU) summit in Lisbon in March 2000, the EU introduced a new form of governance (open method of co-ordination; OMC) which should help to reform policies of the member states by establishing an effective process of mutual learning about appropriate public policies. The OMC is applied in a vast area of policy fields in which the competences for policy-making still rest almost exclusively with the national level. Its basic idea is that in a benchmarking process national policies are evaluated on the EU level, ‘best practices’ are identified, and policy recommendations are directed to the member states (Borrás and Jacobsson 2004; Laffan and Shaw 2005).

This paper does not deal with the specific experiences gained with the OMC as it has been implemented in the EU so far (VDR *et al.* 2003; Borrás and Greve 2004; Zeitlin *et al.* 2005; Eckardt 2005). Instead, we focus on the institutional design underlying the OMC which should establish a process of mutual learning

about successful policies within a two-level system of jurisdictions. Its basic mechanism of policy innovation and learning, however, can also be found in the economic theory of laboratory federalism, which claims that in a multi-level system of jurisdictions non-centralized public policies would lead to a process of experimentation with new policies (Oates 1999). Driven by yardstick or interjurisdictional competition, policy innovations and the imitation of superior policies through mutual learning would take place.

In the following, we compare the theoretical concepts of the OMC and laboratory federalism in regard to their capability of establishing effective processes of policy learning in a multi-level governance system like the EU. Our main hypothesis is that both the OMC as a more centralized method of benchmarking and spreading 'best practices' and laboratory federalism as a non-centralized approach are able to foster policy learning. However, their effectiveness is restricted by a number of problems. We analyse the main similarities and differences of their learning mechanisms with particular attention to their defects. Besides having a number of incentive problems, it is shown that the OMC promotes only the diffusion of policies, whereas laboratory federalism also includes the generation of policy innovations. Another important result of our analysis, particularly for its public policy implications, is that it is not compatible for the OMC as an institution to support long-term policy learning in order to additionally follow the objective of bringing about greater convergence of national policies.

This paper is structured as follows: *section 2* shows the importance of policy innovation and learning for overcoming knowledge problems and reform deadlocks. It also presents on a theoretical level why both the OMC and laboratory federalism can be seen as institutions for supporting policy learning. In *section 3*, we compare the advantages and problems of both mechanisms for policy learning in detail. The final *section 4* draws some policy conclusions.

## 2. THE OMC AND LABORATORY FEDERALISM AS INSTITUTIONS FOR SUPPORTING POLICY LEARNING

### 2.1 Knowledge problem, policy innovation, and policy learning

The starting point of the policy learning issue is the 'knowledge problem'. For most policy fields we do not have sufficient knowledge about the optimal public policies. In economics, Hayek (1996) in particular, in his critique of 'constructivism', pointed out that our knowledge about how to successfully steer highly complex systems, like modern human societies, is very limited. Although one need not be as sceptical as he was about the possibilities of improving welfare by applying public policies, this insight into the limitations of our knowledge about the effects of public policies is fundamental. We have to accept that the optimal policies for most of today's problems have not yet been found. Moreover, technological progress and social change continue to generate entirely new problems as well as qualitatively change old ones. This questions

even the effectiveness of so far successful policies. From the perspective of evolutionary economics, which focuses in particular on the problems of dynamic change, it is therefore necessary to continually search for improvements by finding new and better policies and by imitating superior policies from others (policy innovation and learning; Nooteboom 2000).

This perspective also implies much scepticism about the possibilities of the traditional approach of economic policy analysis which claims to be able to derive optimal public policies from (empirically tested) economic theories. It assesses current policies by comparing them with the so derived optimal ones. An important consequence of an evolutionary approach to economic policy is that reliable knowledge about the quality of policies requires taking into account the experiences gained with these policies under real-world conditions (Slembeck 2003; Wegner 2003). This is due to (1) the existence of imperfect and distorted information as well as the importance of local knowledge; and (2) the creative responses of economic actors to changed incentives set by policy reforms. Through adapting their behaviour they try to modify the implemented policy according to their own interests. If we define 'policy innovation' as the first application of a newly invented policy,<sup>1</sup> it can be interpreted as a kind of experiment which is carried out with this new policy. From the ensuing experiences conclusions can be drawn about its quality and the direction for further improvements. This leads to a trial-and-error process that is performed sequentially. If policies are tried out in different countries simultaneously, a parallel process of experimentation emerges. In this way more experiences are gained and more mutual learning can take place than otherwise would be the case – both in regard to superior policies, which should be imitated, and to failed policies, which should be avoided ('negative lesson drawing'; Rose 2002).

Such an evolutionary understanding is in line with some prominent theoretical and empirical literature on policy learning in political science. It also does not focus on theoretically derived optimal policies, but on the processes which generate policy innovations and spread them over jurisdictions. It emphasizes both the relevance of policy diffusion as well as the positive effects of overcoming the reform obstacles of modern democracies (Walker 1969; Freeman 1999; Newmark 1999; Dolowitz and Marsh 2000; Stone 2001). From that perspective, the definition of policy learning comprises both the search for and the accumulation of new information as well as its application in the form of the implementation of new policies: policy learning is 'a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process' (Hall 1993: 278). The advocacy coalition framework allows us to derive empirically testable hypotheses by providing hypotheses concerning learning across coalitions (Sabatier and Jenkins-Smith 1999). Similar to the general literature on diffusion in modern innovation economics (Rogers 1995), policy diffusion can be defined as 'the process by which an innovation is communicated through certain channels over time among members of a

social system' (Berry and Berry 1999: 171). Closely connected to this is the literature on policy transfer, which studies the processes of how 'knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting' (Dolowitz and Marsh 2000: 5). The related literature on policy convergence, however, focuses on the more general question; whether there is a tendency to a convergence of public policies and what its determinants are (Knill 2005; Holzinger and Knill 2005).

## 2.2 Policy learning in the OMC

As a new form of governance, the OMC was first explicitly introduced through the Social Agenda in 2000, which constitutes a core element of the Lisbon Strategy. At that time, reforms in the field of employment and social security in particular were put on the EU agenda. Although it still leaves the competence for these policies at the level of national governments, they are considered to be in need of assistance when it comes to the imitation of successful policies from other jurisdictions. Both the Commission and many proponents of the OMC view it also as an instrument for attaining a greater convergence of national policies (Working Group 4a 2001; Chalmers and Lodge 2003). This 'soft law' approach has evolved from the experiences gained by European monetary union (EMU), the Broad Economic Policy Guidelines and the European Employment Strategy (EES) (Radaelli 2003; Wincott 2003; Borrás and Jacobsson 2004; Laffan and Shaw 2005). The academic discussion on the OMC, mainly driven by political scientists and legal scholars, primarily focuses on the OMC as a new mode of governance, as part of the solution for the legitimacy crisis of the EU, and on its role in the discussion on a European Social Model.<sup>2</sup> However, from our view, the most vital aspect is the OMC as an institutional arrangement which organizes processes of policy learning among the member states. So far the empirical research on the OMC shows a rather critical picture about its effectiveness in regard to the policy learning that it should bring about.<sup>3</sup> Nevertheless, this need not imply that the OMC as a new form of governance will turn out to be a failure, because it might need some time to develop its full potential.

From a theoretical point of view, the basic idea of the OMC is to establish within a two-level system of jurisdictions systematically organized learning processes of lower-level jurisdictions about superior policies.<sup>4</sup> The central level has the task of evaluating the policies on the lower level, identifying the relatively best policies as 'best practices', and supporting their diffusion through the lower-level jurisdictions. This concept of benchmarking stems from business administration. Most interesting is the fact that the benchmark is not some kind of optimal policy. The OMC also starts with a sceptical view about the quality of our theoretical knowledge on optimal policies. It relies primarily on finding superior policies by drawing upon the experiences gained from a

variety of already implemented policies, not on generating policy innovations. Therefore, the OMC rests implicitly on a process of parallel experimentation with different policies in the lower-level jurisdictions (Eckardt and Kerber 2004).

To what extent such a two-level procedure of policy learning turns out to be dominated by the central level, and is thus primarily a 'top-down' dominated learning process, depends on the specific rules governing this process. The procedure of the OMC in the EU consists of the following steps (Borrás and Jacobsson 2004; Casey 2003): the Council of the EU agrees on common objectives (with indicators and benchmarks), mainly drafted by the Commission. The member states report regularly how far they have attained the objectives and what policies they have implemented and planned. The Commission assesses their efforts, identifies best practices and formulates recommendations for each member state. The results are laid down in a joint report that must be approved by the Council. Peer review processes can support these processes of policy learning among the national governments. In the follow-up stage, the member states implement the measures recommended to them. This procedure is repeated regularly.

A theoretical analysis of the design options of such a learning process in a two-level system of jurisdictions requires answers to the following main questions:

- 1 Who decides on the goals of the policies and the ensuing assessment criteria for the evaluation of the policies of the lower-level jurisdictions and on the recommendation of what the 'best policies' are? If the central level has much influence in this respect, it has the power to steer the whole learning process and to influence the policies actually adopted by the lower-level jurisdictions. Within the OMC the Council, and not the Commission, decides on policy recommendations. Nevertheless, the Commission plays a crucial role in organizing this process of defining common goals, collecting and assessing information, and suggesting policy recommendations.
- 2 What power and influence does the central level have for inducing the lower-level jurisdictions to carry out its policy recommendations? In an extreme variant, the central level would allow the lower levels to experiment with different policies for some time, evaluate the outcome, and then prescribe the 'best policy' to all lower-level jurisdictions. Since the OMC is applied to policies whose competences rest on the level of the member states, this is not possible. Therefore, the central level can only make non-mandatory policy recommendations to the lower levels. However, this does not preclude that the central level might use (positive and negative) incentives in order to encourage the diffusion of those 'best policies' which it supports. For example, the Commission could link financial support from EU programmes to the compliance of the member states with its policy recommendations (Jacobsson and Vifell 2004).

### 2.3 Policy innovation and policy learning in laboratory federalism

In economics the issue of policy innovations and policy learning is rather a new topic. Since the 1990s, some literature has developed in the context of the economic theory of federalism, which analyses the advantages of decentralized federal systems in regard to the innovation and diffusion of new policies. The concept of 'laboratory federalism' sees the experimentation with new policies and the ensuing possibility of mutual learning about superior policies as an essential characteristic of federal systems (Salmon 1987; Oates 1999; Kollman *et al.* 2000; Kerber 2005). Another strand of research encompasses theories which consider innovation and diffusion of public policies as an important aspect of interjurisdictional competition (Vanberg and Kerber 1994; Van den Bergh 2000).

For a more precise analysis of how policy innovations are generated and how mutual learning takes place within multi-level systems of jurisdictions, it is useful to differentiate between three kinds of horizontal transmission mechanisms between jurisdictions; for example, the EU member states (Kerber and Budzinski 2003):

- *Pure yardstick competition*: Here the only requirement for policy learning is that the citizens of two countries can mutually observe the policies of their governments and their performance. Therefore, only information must be mobile between jurisdictions. The citizens of each jurisdiction can use policy performance (e.g. unemployment and inflation rates) in foreign countries as 'yardsticks' to assess the performance of their domestic governments for their voting decisions (Salmon 1987; Besley and Case 1995). This sets incentives for governments to generate policy innovations or to imitate superior policies from other jurisdictions through *intra*jurisdictional political competition. Such parallel processes of experimentation with policies in different countries can increase overall knowledge about public policies through processes of mutual learning (Kollman *et al.* 2000; Van den Bergh 2000; Kerber 2005).
- *Interjurisdictional competition*: If additionally goods, production factors, firms, and individuals are mobile between jurisdictions, a market for locations emerges. Here jurisdictions supply packages of public goods, regulations, and taxes, while the demand side consists of mobile individuals, firms, and production factors. The importance of this *inter*jurisdictional (or locational) competition<sup>5</sup> has increased considerably through globalization and – within the EU – through the enforcement of the four basic freedoms by removing mobility barriers between member states. The danger of losing (and the chance of attracting) resources to (and from) other jurisdictions sets powerful incentives for domestic governments to increase their competitiveness as locations for mobile resources. The innovation of superior policies and/or the imitation of policies from successful competitors then become essential for the economic performance of single jurisdictions.

- *Competition among legal rules (regulatory competition via free choice of law)*: If individuals and firms have the right to choose between the legal rules of different jurisdictions without having to change their location (free choice of law), direct competition among legal rules emerges.<sup>6</sup> One well-known example of this kind of regulatory competition is competition among corporate laws within the US. The generation and diffusion of new legal rules (and thus of new policies) within corporate law give a prime example of the positive effects of this kind of competition (Romano 1985; Easterbrook and Fischel 1996). As a consequence of some important decisions of the European Court of Justice (i.e. ‘Centros’), a similar kind of competition among corporate laws might also develop within the EU (Wouters 2000; Heine 2003).<sup>7</sup> This mechanism can also trigger off a parallel process of experimentation, and through the direct choice of legal rules superior policies might be selected and spread through imitation.

However, these advantages of competition among jurisdictions for improving policies are only one of the effects which have to be taken into account if one is seeking for the appropriate design of a multi-level system of jurisdictions as within the EU. Both the economic theory of federalism and the theories of inter-jurisdictional and regulatory competition provide criteria according to which competences should be allocated vertically among different levels. They concern aspects like economies of scale, spill-over effects, heterogeneity of preferences, etc. Besides, the question arises: under what conditions and under what rules does interjurisdictional and regulatory competition result in more positive than negative effects, that is, whether a race-to-the-bottom or a race-to-the-top would prevail? Both theoretical and empirical research show that it depends on the specific policy field as to what extent and under what restrictions competition and decentralization can be recommended, or whether centralization or harmonization should be chosen (Breton 1996; Esty and Gerardin 2001; Kerber and Grundmann 2006). In any case, an optimal multi-level system of jurisdictions requires an all-encompassing institutional framework (‘competitive order’; Vanberg and Kerber 1994; Garcimartín 1999).

Consequently, from the perspective of laboratory federalism, a federal multi-level system of jurisdictions can be seen as an innovation system in which public policies are the object of innovation and imitation processes driven by decentralized experimentation, mutual learning, and competition (Kerber 2005). In this respect, laboratory federalism also starts from the sceptical assumption that the optimal policies are not known yet. Therefore, it is necessary to continually strive for improving policies by taking into account the experiences gained with already implemented policies. Contrary to the OMC, however, searching for better policies and evaluating them in a comparative benchmarking process is carried out on a non-centralized level by the jurisdictions themselves. *Intra*jurisdictional political processes and *inter*jurisdictional competition control this process of policy innovation and imitation. In the following, we discuss the similarities and differences as well as the problems of both

the OMC and laboratory federalism as institutional settings for effectively fostering policy innovation and learning.

### 3. THE OMC AND LABORATORY FEDERALISM: A COMPARATIVE ANALYSIS OF PROBLEMS FOR POLICY INNOVATION AND POLICY LEARNING

#### 3.1 Learning problems 1: evaluation, identifying 'best policies', and limited transferability

The most basic problem for learning about superior policies, both in the OMC and in laboratory federalism, is to what extent learning from positive or negative experiences of others is possible at all. The method of benchmarking and searching for best practices assumes implicitly that a 'best practice' for all can be identified. Nevertheless, this is a very critical assumption. If in different jurisdictions different policy aims and/or different problems and conditions exist, the theory of economic policy would suggest that different policies are also optimal. This certainly does not imply that no learning is possible. However, it often amounts to a much more complicated process than simply identifying 'best policies' which others can imitate directly. This is a problem for the OMC and for laboratory federalism because simplified versions of both are based upon the somewhat naïve notion that there are 'best policies' that merely have to be discovered, either through central evaluation or through interjurisdictional competition processes.

This is directly linked to a number of diffusion and imitation problems which are well known in innovation economics (Rogers 1995). Due to different conditions and capabilities, imitating successful policies is usually a difficult and time-consuming process, which can also fail. Imitation itself usually requires innovative adaptations. This has also been elaborated in the political science literature in which applying the benchmarking method and recommending 'best practices' have been criticized as too simplistic (Arrowsmith *et al.* 2004). Although the significance of 'cross-national learning' is emphasized (Hemerijck and Visser 2003), 'decontextualized' benchmarking in the form of a one-size-fits-all approach is not considered appropriate. Without rejecting the best practices approach, Radaelli (2003) favours a 'context-sensitive "lesson-drawing" approach', in which 'contextualized learning' should be carried out by putting more weight on the specific institutional conditions and traditions of a jurisdiction (Radaelli 2003: 42). Theories about competition among legal rules also recognize this insight that the efficacy of specific policies depends on the existence of other policies or institutions. The transfer of foreign legal rules into the domestic legal order can incur compatibility problems with other legal rules (problem of 'legal transplants'; Legrand 1997). Consequently, additional costs arise due to inconsistencies of the legal order with competition among legal rules being impeded (Heine and Kerber 2002). Nevertheless, this argument as to the limited transferability of policies should be used very cautiously. It can

easily be abused as an excuse for not learning from others and sticking to one's well-established but outdated policies.

In comparing the OMC and laboratory federalism the question arises as to which approach might be superior in identifying better policies. The central evaluation of policies in the OMC seems to have the advantage that evaluation costs have to be borne only once. The non-centralized form of comparing the performance of policies in laboratory federalism might lead to unnecessary parallel research with much higher costs. But the central evaluation of policies presupposes that there is a (often not existing) consensus about a uniform set of assessment criteria and methods of measuring performance. However, the agreement on which assessment criteria to apply is itself a political decision. In the institutional context of the OMC this can be expected to be the outcome of complex political bargaining processes (Arrowsmith *et al.* 2004; Eckardt 2005). Moreover, even a group of experts might come to an erroneous assessment and thus wrong policies might be recommended by the central level. Due to potentially ensuing lock-in effects and path dependences, it might become difficult to correct wrong developments. In that respect, the OMC involves some of the dangers of centralization and harmonization – although to a lesser extent.

In laboratory federalism the non-centralized form of evaluating policies implies different sets of assessment criteria and operationalization methods applied by different jurisdictions. It can be presumed that, on average, evaluations will be made less systematically. Besides, access to statistical and other information about the policies and their performance in other countries might be much more difficult than in the OMC where the member states must provide this information to the central EU level. Therefore, information problems might aggravate mutual learning. However, in laboratory federalism interjurisdictional competition controls the evaluation process. Since there is usually high uncertainty with respect to the correct evaluation of policies, the diversity of assessment criteria, and methods applied by non-centralized laboratory federalism, might turn out to be advantageous in the long run. In contrast to the OMC, evaluation errors might be more easily corrected, thus reducing the dangers of problematic path dependences and lock-ins.

### 3.2 Learning problems 2: lacking and distorting incentives

A detailed analysis of all the incentive problems of the OMC and of laboratory federalism is beyond the scope of this paper. Therefore, in the following we concentrate on the major issues which are relevant for either the OMC or laboratory federalism. A precise analysis might also require extending the traditional economic concept of rational agents (public choice, economic theories of democracy and bureaucracies) by also taking into account bounded rationality, ideologies (mental maps, belief systems), and informal rules (North 1990).

Analysing the incentive problems within the conceptual design of the OMC proves to be difficult, because the OMC is carried out within a very complex

institutional setting. It involves a large number of actors from different vertical and horizontal levels within and across different policy fields. For the OMC the most interesting aspects concern (1) the incentives for actors to actively participate in learning about better policies; and (2) the incentives to actually implement such better policies. The need for participation of all actors affected in a policy field is stressed both in official documents about the OMC as well as in the literature (Commission 2003; De la Porte and Pochet 2004, 2005). In contrast to that, the experiences gathered so far are disillusioning (Chalmers and Lodge 2003; Arrowsmith *et al.* 2004; De la Porte and Nanz 2004; De la Porte and Pochet 2005; Jacobsson and Vifell 2004). In most cases the national reports are prepared by a small circle of government officials in charge of EU affairs, for whom this is just another task to be performed for Brussels without getting additional resources. In most OMCs the participation of social partners, local actors, civil society representatives, or even national parliaments is weak or non-existent, despite the efforts of the Commission to increase their influence. Besides, there are also incentive problems for participation at the central EU level. Many actors are involved from different institutions (EU Commission, Commission Committees, Council of the European Union, European Parliament, associations of social partners) which all have different interests. Only by accident will their incentives to find out about the best policy solutions and their dissemination be identical. Struggles for power among different actors might hinder or even block policy learning processes at the EU level.

However, even if the OMC succeeds in identifying best practices, the incentives of the (governments of the) member states to implement policy recommendations are unclear and often weak (Schludi 2003; Arrowsmith *et al.* 2004; De la Porte and Nanz 2004; Eckardt 2005; Jacobsson and Vifell 2004). Both the Stability and Growth Pact and the EES show that the implementation of commonly agreed objectives works better, the stronger the positive and/or negative sanctions are. Soft sanctions, like publicity in the media or naming-and-shaming, seem to have far fewer effects than more formal monetary sanctions, like fines for non-compliance or additional funding of national policy measures. However, one can argue that member states should voluntarily comply with recommendations by the central level, if noticeably better, i.e. wealth-enhancing, policies are recommended. Then member states' self-interest should suffice for implementing these policy solutions. If policy reforms are impeded by powerful interest groups, positive and negative sanctions of the central level could help to overcome this political resistance.

In regard to laboratory federalism, the incentive problems are much better analysed. Again, the question arises as to whether jurisdictions have sufficient incentives for improving their policies through policy innovation and learning. In the case of interjurisdictional competition, where they compete for mobile resources, they have strong incentives to improve their packages of public goods, regulations, and taxes. But since failures of interjurisdictional competition cannot be excluded, it is necessary to ensure that jurisdictions

have undistorted incentives for improving their policies. For example, it might be individually worthwhile for jurisdictions to embark on strategic policies with negative externalities for others (beggar-my-neighbour policies), which can lead to race-to-the-bottom or prisoners' dilemma problems (Garcimartín 1999; Kerber and Budzinski 2003). In such cases jurisdictions would have incentives to improve their knowledge about policies which would reduce the overall welfare of all jurisdictions. In this case, welfare-reducing policies would be spread by mutual learning. The above mentioned institutional framework ('competition order') for a multi-level system must prevent such developments by channelling the efforts of jurisdictions to search only for welfare-enhancing policies.

Nevertheless, even if the incentive problems are solved on the level of jurisdictions as a whole, considerable incentive problems can occur through defective *intra*jurisdictional political processes. The economic literature on political economy (public choice, rent-seeking theory) offers many explanations of why governments might choose policies that do not correspond to the preferences and interests of their citizens (Mueller 2003). In particular, politicians may lack the appropriate incentives for policy innovation and policy learning. Some of these problems have been analysed by federalism theory. With respect to the efficacy of yardstick competition, empirical studies in the US have come to very different conclusions in regard to the extent to which voters compare the performance of governments from various jurisdictions (Besley and Case 1995). Another important problem is the 'rational ignorance' of voters. Since each voter only affects the outcome of elections to a very small degree, voters' incentives to undertake costly searches for information about the quality of policies in other jurisdictions are very small (Schnellenbach 2004). Besides, politicians might be inclined to avoid risks in regard to policy innovations so that free-rider problems occur (Rose-Ackerman 1980).

However, these incentive problems differ considerably according to the type of transmission mechanism in place (section 2.3): whereas 'rational ignorance' of voters is a great problem in the case of yardstick competition, it is not a problem in the case of interjurisdictional competition where mobile individuals and firms have sufficient incentives for improving their knowledge about the advantages and disadvantages of jurisdictions before deciding on their location. The same is true for competition among legal rules via free choice of law. The decisive difference is that, in the case of yardstick competition, information costs are borne by single voters, but contribute to a collective good (quality of collective decisions), whereas in the other cases the advantages of better information accrue directly to those who bear the information costs. However, interjurisdictional competition can suffer from considerable problems when compared to competition among legal rules and yardstick competition. These problems arise from mobility costs between jurisdictions and from the fact that mobile firms or individuals must decide between whole packages of public goods, regulations, and taxes. The latter implies that the incentive of a jurisdiction to improve specific policies, for example corporate laws, can be relatively small,

because they might only have a marginal effect on locational decisions. For competition among legal rules via free choice of law, however, neither the 'rational ignorance' problem nor the 'package' problem nor mobility costs are of relevance. But here the question arises whether jurisdictions have enough incentives to improve their domestic legal rules if domestic firms can also use foreign legal rules.<sup>8</sup>

In summary, both the OMC and laboratory federalism have a number of incentive problems. With the OMC, the main problem is that most of the actors have no real positive incentives for participating in policy learning and for implementing better policies, with negative incentives also being very weak. In laboratory federalism, within a workable system of competing jurisdictions it can be presumed that, in general, the incentives for policy innovation and policy learning are considerably higher than in the OMC. Here the main problems can be information problems and the distortion of incentives, which requires the establishment of an appropriate institutional framework to prevent the negative effects of wrong incentives.

### 3.3 Policy innovation

In this section we compare the OMC and laboratory federalism in regard to their (dis)advantages in creating policy innovations. Theories of laboratory federalism emphasize its advantages in regard to both generating and spreading policy innovations (Oates 1999; Kollman *et al.* 2000). This is reflected in the use of evolutionary approaches in the tradition of Schumpeter and Hayek and in the use of variation selection models in innovation economics (Hayek 1978; Nelson 1995; Kerber 2005). The competitive process of experimentation in laboratory federalism can be interpreted as a parallel trial-and-error process consisting of both the generation of new hypotheses about promising policy solutions (policy innovations) and the spreading of those policies that have turned out to be superior (policy imitation). From an evolutionary economics perspective, this process can be analysed as a never-ending process of variation and selection of policies, which – in an ideal case – leads to a step-by-step improvement of policies. A key insight from evolutionary economics is that maintaining this evolutionary process of knowledge generation requires a source that continually provides variety in the form of new policy innovations. Otherwise, the heterogeneity of applied policies would be reduced by selecting policies through imitation (Metcalf 1989). Therefore, a sustainable process of knowledge generation through parallel experimentation with policies also requires the preservation of some extent of diversity, fed by new policy innovations. Moreover, the effectiveness of laboratory federalism in generating policy innovations presupposes that lower-level jurisdictions have sufficient policy competences, and that a considerable amount of diversity is tolerated.

By contrast, a superficial analysis of the OMC already shows that it focuses only on the identification and diffusion of successful policies. Although it is acknowledged that within the OMC some creative adaptation of 'good

practices' to different local conditions is necessary (Zeitlin 2005), the development of new policy innovations is not explicitly part of this institutional design for policy learning. On the contrary, the OMC may even endanger the long-term capability of the whole system for generating policy innovations. This would be the case if a successful OMC in a particular policy field implied that all member states imitate the 'best policy' identified, thus leading to a convergence or even a harmonization of policies in the member states. This result is not surprising because a focus on the diffusion of superior policies, while the generation of innovations is neglected, is a major problem of the benchmarking concept itself (Arrowsmith *et al.* 2004). Nevertheless, a fast process of harmonization in the policy fields in which the OMC is applied is not very probable. The Commission, however, views the OMC also as an instrument for accomplishing a greater convergence in those policy fields, which so far are in the exclusive competence of the member states. Since the heterogeneity of national policies is negatively assessed, the diffusion of 'best policies' to the member states is also seen as a suitable means for attaining the aim of convergence (Chalmers and Lodge 2003; Working Group 4a 2001). This problem will be discussed more thoroughly in the next section. A crucial consequence for policy innovations, however, is that future processes of parallel experimentation with different policies might be eliminated (Arrowsmith *et al.* 2004; Lundvall and Tomlinson 2002; Radaelli 2003).

### 3.4 Policy co-ordination and convergence

In section 2.3 it was emphasized that the economic theories of federalism and interjurisdictional competition can provide a number of criteria for answering the question as to what extent centralization, (minimum) harmonization, and co-ordination are necessary in a multi-level system of jurisdictions. This implies some limitations to the scope for decentralized experimentation processes. Additionally, the establishment of an overall institutional framework, which ensures the workability of competition within a multi-level system of jurisdictions, presupposes a considerable amount of co-operation between the jurisdictions. Another question concerns to what extent laboratory federalism would lead to a convergence of policies. Within a competitive system of jurisdictions, in which innovation and imitation of policies take place, there are tendencies both for convergence through imitation and for divergence through innovation. It is not possible to predict which tendency will dominate. The claim, however, that interjurisdictional competition can be seen as an instrument for ex-post harmonization, because the best solutions would prevail (Siebert and Koop 1990), is misleading. It ignores the fact that competitive innovation-imitation processes never end. Through innovations new heterogeneity emerges, which is also necessary for maintaining the parallel processes of experimentation with new policies. Thus, for laboratory federalism, the extent of policy convergence is an endogenous result of the non-centralized processes of policy learning and experimentation.

On the contrary, in the literature on the OMC it appears to be self-evident that policy learning through the OMC leads to policy co-ordination and convergence and that this result should be assessed positively.<sup>9</sup> There are no profound analyses about the advantages and disadvantages either of more heterogeneous versus more uniform national policies or of the effects of more centralization/harmonization versus decentralization in the policy areas where the OMC is applied. This finding is closely linked to another neglected aspect in this discussion. If co-ordination and/or convergence in certain policy fields of the member states should be really necessary, the appropriate policy answer would be not to apply the OMC but to shift the competences for these policies to the central EU level. If, however, the competences for these policies should rest with the member states, it is unclear why convergence of these policies should be attained. Of course, this does not exclude the possibility that a certain degree of co-ordination in regard to particular aspects of national policies might be necessary (Radaelli 2003).

This inconsistency within the concept of the OMC, as it is put forward by the EU Commission and its proponents, need not emerge if the OMC is limited to its initial central purpose, namely to support policy learning. If the only task of the OMC is to provide a central institution that helps to establish processes of policy learning on the level of the member states, the OMC does not need to be an impediment to the heterogeneity of national policies, and, therefore, also not for non-centralized experimentation with new policies. From that perspective, the non-mandatory character of its policy recommendations has to be assessed positively, because the right of the member states to decide on the basis of their own objectives, problems, and knowledge about what policies to adopt is not restricted. Policy innovation on the level of the member states remains possible, and can be a valuable input for future evaluations of experiences with national policies. It might even be worthwhile to ponder how to improve the potential of the OMC to foster policy innovation; for example, by financially supporting experimentation with new policies in the member states (Oates 1999: 1133).

#### **4. POLICY INNOVATION AND POLICY LEARNING IN A MULTI-LEVEL SYSTEM OF JURISDICTIONS SUCH AS THE EU: SOME CONCLUSIONS**

In this paper we analysed the potential of the OMC and of laboratory federalism as instruments for policy innovation and learning in a multi-level system of jurisdictions. Our initial hypothesis has been confirmed. Both can be seen as institutions that establish processes of generating and spreading new knowledge about appropriate public policies. An important similarity is that both are sceptical in regard to our theoretical knowledge about optimal policies. Both see experiences from implemented policies as decisive for identifying superior policies. The learning mechanisms, however, are very different: in laboratory federalism, learning takes place through a purely non-centralized process of experimentation with different new policies which leads to mutual learning.

Depending on the transmission mechanisms of yardstick competition, interjurisdictional competition or regulatory competition, the learning processes work very differently. In comparison, the OMC relies primarily on a benchmarking process carried out on a higher-level jurisdiction from which, in a rather centralized way, policy recommendations for policies on the lower levels are derived.

In section 3 we showed that in both concepts there are a number of problems for the effectiveness of policy learning. Our analysis showed, in particular, that the OMC suffers from some specific problems. One main problem is that there might not be a 'best policy' for all the jurisdictions involved. This leads to the notion of 'contextualized learning'. Less well discussed are the many incentive problems within the complex process of the OMC. This requires much more detailed analyses of the working of the interaction of its many participating agents, interest groups, and institutions, both on the EU and the member state level. An important object of future research should be the complex political bargaining processes that lead to common goals, assessment criteria, and, ultimately, policy recommendations. It seems to be doubtful whether the 'best policies' will be selected through these bargaining processes.

Another key difference to laboratory federalism, and a serious problem for the OMC, is that it focuses only on the diffusion of successful policies, but neglects the dimension of policy innovation. This might be linked to the objective of bringing about policy convergence through the OMC implicitly followed by the EU Commission. Learning from parallel experimentation requires a constant flow of policy innovations and the acceptance of a considerable degree of diversity. Thus, any objective of convergence of national policies is not compatible with the long-term effectiveness of the OMC as an institution for generating and spreading new knowledge about better policies. Consequently, from our perspective the OMC should limit itself to supporting policy innovations and policy learning. Benchmarking processes could be carried out on the central level, but the member states should retain their freedom to decide for themselves whether they accept any policy recommendations or not.

This also shows that the OMC should be discussed within the general debate about the appropriate structure of the EU as a multi-level system of jurisdictions. This holds in particular regarding the recommendable extent of interjurisdictional and regulatory competition, and the necessary institutional framework for ensuring a workable competition within this multi-level system. The economic theories of federalism and of interjurisdictional competition can contribute to this discussion by providing a number of criteria for the optimal vertical allocation of competences. From the perspective of laboratory federalism, a rather non-centralized, multi-level system of jurisdictions is more capable of improving and adapting public policies in order to cope with the emergence of new problems,<sup>10</sup> because it allows for more parallel experimentation on lower-level jurisdictions. In this way, it would also strengthen the international competitiveness of the EU. Again, more detailed analyses about the feasibility and problems of such non-centralized processes of experimentation and mutual learning are necessary.

One final conclusion is that the OMC as a new form of governance could play an important role within such a multi-level system of jurisdictions by helping to overcome some of the problems of laboratory federalism. An appropriately designed OMC could work as a central evaluation agency which supports the workability of this multi-level system of jurisdictions as an innovation system. By providing low-cost information on the performance of national policies, citizens and firms could improve their voting and locational decisions. In this way, they would assess the performance of their governments and the policies of different locations or legal rules more correctly. Hence, the OMC could support the smooth working of yardstick, interjurisdictional, and regulatory competition and help to solve one of their main problems. However, this presupposes that the OMC commits itself solely to the goal of supporting policy learning.

**Biographical notes:** Wolfgang Kerber is Professor of Economics at Philipps-University Marburg, Germany. Martina Eckardt is Associate Professor of Economics at the Faculty of Management and Economics of the University Witten/Herdecke, Germany.

**Addresses for correspondence:** Wolfgang Kerber, Faculty of Business Administration and Economics, Philipps-University Marburg, Am Plan 1, D-35032 Marburg, Germany. email: kerber@wiwi.uni-marburg.de/Martina Eckardt, Faculty of Management and Economics, Witten/Herdecke University, Alfred-Herrhausen-Str. 50, D-58448 Witten, Germany. email: martina.eckardt@uni-wh.de

## NOTES

- 1 Note that a less strict definition of policy innovation is used, for example, by Walker (1969) or Rogers (1995), where a policy innovation is given whenever a policy is new to a jurisdiction although it is already known and/or adopted in other jurisdictions.
- 2 See Commission (2001); Scott and Trubek (2002); Wincott (2003); De la Porte and Pochet (2004); Borrás and Jacobsson (2004); De la Porte and Nanz (2004); Eberlein and Kerwer (2004); Trubek and Trubek (2005).
- 3 See VDR *et al.* (2003); Sakellerapoulos and Berghman (2004); Eckardt (2005); Zeitlin *et al.* (2005); and several articles in Borrás and Greve (2004).
- 4 For the discussion on multi-level governance in the political science literature, see, for example, Marks *et al.* (1996); Jordan (2001).
- 5 See Tiebout (1956); Oates and Schwab (1988); Siebert and Koop (1990); Vanberg and Kerber (1994); Breton (1996); Kerber (1998); Wellisch (2000); Sinn (2003).
- 6 For regulatory competition, see Sun and Pelkmans (1995); Vogel (1997); Bratton and McCahery (1997); Sinn (1997); Ogus (1999); Garcimartin (1999); Kerber (2000); Van den Bergh (2000); Esty and Gerardin (2001); Marciano and Josselin (2002, 2003); Kerber and Grundmann (2006). Note, however, that regulatory competition through mutual recognition (as in the case of product regulation after the Cassis de Dijon Judgment of the European Court of Justice) differs from regulatory competition via free choice of law because only in the latter case

can firms choose between regulations without having to change their location (Kerber 2000).

- 7 In this case, vertical learning processes through vertical competition between the different jurisdictional levels are also possible, because in the EU firms now have the right to choose between a European form of incorporation (*Societas Europea*) and national corporate laws (see Röpke and Heine 2005).
- 8 In the case of competition among corporate laws in the US, the incentives are franchise taxes which have to be paid by firms to the states for incorporation (Romano 1985). However, there are usually no direct fees for using legal rules.
- 9 For a more general discussion in the political sciences on the mechanisms of policy convergence, see Knill (2005); Holzinger and Knill (2005).
- 10 For contributions from that perspective in regard to the EU, see, for example, Kirchner (1998); Frey and Eichenberger (1999); Kerber (2005).

## REFERENCES

- Arrowsmith, J., Sisson, K. and Marginson, P. (2004) 'What can "benchmarking" offer the open method of co-ordination?', *Journal of European Public Policy* 11(2): 311–28.
- Berry, F.S. and Berry, W.D. (1999) 'Innovation and diffusion models in policy research', in P. Sabatier (ed.), *Theories of the Policy Process*, Boulder, CO: Westview Press.
- Besley, T. and Case, A. (1995) 'Incumbent behavior, tax-setting, and yardstick competition', *American Economic Review* 85: 25–45.
- Borrás, S. and Greve, B. (eds.) (2004) 'The Open Method of Co-ordination in the European Union', Special Issue of the *Journal of European Public Policy* 11(2).
- Borrás, S. and Jacobsson, K. (2004) 'The open method of co-ordination and new governance patterns in the EU', *Journal of European Public Policy* 11(2): 185–208.
- Bratton, W.W. and McCahery, J.A. (1997) 'The new economics of jurisdictional competition: devolutionary federalism in a second-best world', *The Georgetown Law Journal* 86: 201–78.
- Breton, A. (1996) *Competitive Governments. An Economic Theory of Politics and Public Finance*, Cambridge: Cambridge University Press.
- Casey, B.H. (2003) 'Coordinating "coordination": beyond "streamlining"', in VDR *et al.* (eds), *Open Method of Coordination in the Field of Pensions – Quo Vadis?*, International Conference on 26–27 March 2003, Berlin, Germany: DRV-Schriften 50, pp. 89–97.
- Chalmers, D. and Lodge, M. (2003) *The Open Method of Co-ordination and the European Welfare State*, ESRC Centre for Analysis of Risk and Regulation, Discussion Paper No. 11, June 2003, The London School of Economics and Political Science, <http://www.lse.ac.uk/collections/CARR/pdf/Disspaper11.pdf>, 5 January 2005.
- Commission (2001) *European Governance: A White Paper*, COM(2001) 428 final, Brussels, 25 July 2001.
- Commission (2003) *Strengthening the Social Dimension of the Lisbon Strategy: Streamlining Open Coordination in the Field of Social Protection*, COM(2003), Brussels.
- De la Porte, C. and Nanz, P. (2004) 'The OMC – a deliberative-democratic mode of governance? The cases of employment and pensions', *Journal of European Public Policy* 11(2): 267–88.
- De la Porte, C. and Pochet, P. (2004) 'The European Employment Strategy: existing research and remaining questions', *Journal of European Social Policy* 14: 71–9.
- De la Porte, C. and Pochet, P. (2005) 'Participation in the open method of co-ordination', in J. Zeitlin, and P. Pochet (eds), *The Open Method of Co-ordination in Action*, Brussels/Bern: Peter Lang, pp. 351–89.

- Dolowitz, D. and Marsh, D. (2000) 'Learning from abroad: the role of policy transfer in contemporary policy making', *Governance* 13: 1–24.
- Easterbrook, F.H. and Fischel, D.R. (1996) *The Economic Structure of Corporate Law*, Cambridge: Harvard University Press.
- Eberlein, B. and Kerwer, D. (2004) 'New governance in the European Union: a theoretical perspective', *Journal of Common Market Studies* 42: 121–42.
- Eckardt, M. (2005) 'The open method of co-ordination on pensions – an economic analysis of its effects on pension reforms', *Journal of European Social Policy* 15: 247–67.
- Eckardt, M. and Kerber, W. (2004) 'Best practices, yardstick competition und Lernen in der Wirtschaftspolitik – eine kritische Analyse der Offenen Methode der Koordinierung der EU', in W. Schäfer (ed.), *Institutionelle Grundlagen effizienter Wirtschaftspolitik*, Berlin: Duncker & Humblo, pp. 121–66.
- Esty, D.C. and Gerardin, D. (eds) (2001) *Regulatory Competition and Economic Integration. Comparative Perspectives*, Oxford: Oxford University Press.
- Freeman, R. (1999) *Policy Transfer in the Health Sector*, [http://www.pol.ed.ac.uk/research/working\\_paper1.html](http://www.pol.ed.ac.uk/research/working_paper1.html), 9 March 2004.
- Frey, B.S. and Eichenberger, R. (1999) *The New Democratic Federalism for Europe*, Cheltenham: Edward Elgar.
- Garcimartín, F.J. (1999) 'Regulatory competition: a private international law approach', *European Journal of Law and Economics* 8: 251–70.
- Hall, P.A. (1993) 'Policy paradigms, social learning, and the state. The case of economic policymaking in Britain', *Comparative Politics* 25: 275–96.
- Hayek, F.A. v. (1978) 'Competition as a discovery procedure', in F.A. v. Hayek (ed.), *Studies in Philosophy, Politics and Economics*, Chicago: Chicago University Press, pp. 66–81.
- Hayek, F.A. v. (1996) 'Die Irrtümer des Konstruktivismus und die Grundlagen legitimer Kritik gesellschaftlicher Gebilde', in F.A. v. Hayek, *Die Anmaßung von Wissen* (ed. by W. Kerber), Tübingen: Mohr Siebeck, pp. 16–36.
- Heine, K. (2003) *Regulierungswettbewerb im Gesellschaftsrecht. Zur Funktionsfähigkeit eines Wettbewerbs der Rechtsordnungen im europäischen Gesellschaftsrecht*, Berlin: Duncker & Humblo.
- Heine, K. and Kerber, W. (2002) 'European corporate laws, regulatory competition and path dependence', *European Journal of Law and Economics* 13: 43–71.
- Hemerijck, A. and Visser, J. (2003) *Policy Learning in European Welfare States*, Universities of Leyden and Amsterdam, <http://eucenter.wisc.edu/OMC/Papers/hemerijckVisser2.pdf>, 5 January 2005.
- Holzinger, K. and Knill, C. (2005) 'Causes and conditions of cross-national policy convergence', *Journal of European Public Policy* 12(5): 775–96.
- Jacobsson, K. and Vifell, A. (2004) 'New governance structures in employment policy-making? Taking stock of the European Employment Strategy', in W. Linsenmann, W. Meyer, and W. Wessels (eds), *Economic Governance in the EU*, Basingstoke: Palgrave Macmillan, forthcoming, [http://www.govcor.org/data/20040211120945\\_CHAPTER10\\_Analysing\\_the\\_role\\_of\\_committees.pdf](http://www.govcor.org/data/20040211120945_CHAPTER10_Analysing_the_role_of_committees.pdf), 13 March 2006.
- Jordan, A. (2001) 'The European Union: an evolving system of multi-level governance', *Policy and Politics* 29: 193–208.
- Kerber, W. (1998) 'Zum Problem einer Wettbewerbsordnung für den Systemwettbewerb', *Jahrbuch für Neue Politische Ökonomie* 17: 199–231.
- Kerber, W. (2000) 'Interjurisdictional competition within the European Union', *Fordham International Law Journal* 23: S217–49.
- Kerber, W. (2005) 'Applying evolutionary economics to public policy: the example of competitive federalism in the EU', in K. Dopfer (ed.), *Economics, Evolution and the State: The Governance of Complexity*, Cheltenham: Edward Elgar, pp. 296–324.

- Kerber, W. and Budzinski, O. (2003) 'Towards a differentiated analysis of competition of competition laws', *ZWeR – Journal of Competition Law* 1: 411–48.
- Kerber, W. and Grundmann, S. (2006) 'An optional European contract law code: advantages and disadvantages', *European Journal of Law and Economics* 21: 215–36.
- Kirchner, C. (1998) 'The principle of subsidiarity in the Treaty on European Union: a critique from the perspective of constitutional economics', *Tulane Journal of International and Comparative Law* 6: 291–308.
- Knill, C. (2005) 'Introduction: Cross-national policy convergence: concepts, approaches and explanatory factors', *Journal of European Public Policy* 12(5): 764–74.
- Kollman, K., Miller, J.H. and Page, S.E. (2000) 'Decentralization and the search for policy solutions', *Journal of Law, Economics & Organization* 16: 102–28.
- Laffan, B. and Shaw, C. (2005) 'Classifying and mapping OMC in different policy areas', *Report for NEWGOV New Modes of Governance* (Integrated Project Priority 7: Citizens and Governance in the Knowledge-based Society), [http://www.eu-newgov.org/database/DELIV/D01D12\\_Cluster\\_One\\_Interim\\_Report\\_Y1.pdf](http://www.eu-newgov.org/database/DELIV/D01D12_Cluster_One_Interim_Report_Y1.pdf), 13 December 2006.
- Legrand, P. (1997) 'The impossibility of legal transplants', *Maastricht Journal of European and Comparative Law*. 111ff.
- Lundvall, B.A. and Tomlinson, M. (2002) 'International benchmarking as a policy learning tool', in M.J. Rodrigues (ed.), *The New Knowledge Economy in Europe*, Cheltenham: Edward Elgar, pp. 203–31.
- Marciano, A. and Josselin, J.-M. (eds) (2002) *The Economics of Harmonizing European Law*, Cheltenham: Edward Elgar.
- Marciano, A. and Josselin, J.-M. (eds) (2003) *From Economic to Legal Competition. New Perspectives on Law and Institutions in Europe*, Cheltenham: Edward Elgar.
- Marks, G., Hooghe, L. and Blank, K. (1996) 'European integration from the 1980s: state-centric v. multi-level governance', *Journal of Common Market Studies* 34: 341–78.
- Metcalf, J.S. (1989) 'Evolution and economic change', in A. Silberston (ed.), *Technology and Economic Progress*, Basingstoke: Macmillan, pp. 544–85.
- Mueller, D.C. (2003) *Public Choice III*, Cambridge: Cambridge University Press.
- Nelson, R.R. (1995) 'Recent evolutionary theorizing about economic change', *Journal of Economic Literature* 33: 48–90.
- Newmark, A.J. (1999) 'An integrated approach to policy transfer and diffusion', *The Review of Policy Research* 19: 151–78.
- Nooteboom, B. (2000) *Learning and Innovation in Organizations and Economies*, Oxford: Oxford University Press.
- North, D.C. (1990) *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press.
- Oates, W.E. (1999) 'An essay on fiscal federalism', *Journal of Economic Literature* 37: 1120–49.
- Oates, W.E. and Schwab, R.M. (1988) 'Economic competition among jurisdictions: efficiency enhancing or distortion inducing?', *Journal of Public Economics* 35: 333–54.
- Ogus, A. (1999) 'Competition between national legal systems: a contribution of economic analysis to comparative law', *International and Comparative Law Quarterly* 48: 405–18.
- Radaelli, C.M. (2003) 'The open method of coordination: a new governance architecture for the European Union?', *Swedish Institute for European Policy Studies*, Rapport nr. 1, March 2003, [http://www.sieps.se/\\_pdf/Publikationer/CR20031.pdf](http://www.sieps.se/_pdf/Publikationer/CR20031.pdf), 5 January 2005.
- Rogers, E. (1995) *Diffusion of Innovations*, 4th edn, New York: The Free Press.
- Romano, R. (1985) 'Law as a product: some pieces of the incorporation puzzle', *Journal of Law, Economics and Organization* 1: 225–83.

- Röpke, K. and Heine, K. (2005) 'Vertikaler Regulierungswettbewerb und europäischer Binnenmarkt – die Europäische Aktiengesellschaft als supranationales Rechtsangebot', *ORDO* 56: 157–85.
- Rose, R. (2002) 'When all other conditions are not equal: the context of drawing lessons', in C. Jones Finer (ed.), *Social Policy Reform in Socialist Market China: Lessons for and from Abroad*, Aldershot: Ashgate.
- Rose-Ackerman, S. (1980) 'Risk-taking and re-election: does federalism promote innovation?', *Journal of Legal Studies* 9: 593–616.
- Sabatier, P.A. and Jenkins-Smith, H.C. (1999) 'The advocacy coalition framework. An assessment', in P.A. Sabatier (ed.), *Theories of the Policy Process*, Boulder, CO: Westview Press, pp. 117–66.
- Sakellerapoulos, T. and Berghman, J. (eds) (2004) *Connecting Welfare Diversity within the European Social Model*, Brussels: Intersentia.
- Salmon, P. (1987) 'Decentralisation as an incentive scheme', *Oxford Review of Economic Policy* 3: 24–42.
- Schludi, M. (2003) *Chances and Limitations of 'Benchmarking' in the Reform of Welfare State Structures – The Case of Pension Policy*, AIAS Working Paper No. 03/10, Amsterdam, <http://www.uva-aias.net/files/working-papers/WP10.pdf>, 5 January 2005.
- Schnellenbach, J. (2004) *Dezentrale Finanzpolitik und Modellunsicherheit. Eine theoretische Untersuchung zur Rolle des fiskalischen Wettbewerbs als Wissen generierender Prozeß*, Tübingen: Mohr Siebeck.
- Scott, J. and Trubek, D.M. (2002) 'Mind the gap: law and new approaches to governance in the European Union', *European Law Journal* 8: 1–18.
- Siebert, H. and Koop, M.J. (1990) 'Institutional competition. A concept for Europe?', *Aussenwirtschaft* 45: 439–62.
- Sinn, H.-W. (1997) 'The selection principle and market failure in systems competition', *Journal of Public Economics* 88: 247–74.
- Sinn, H.-W. (2003) *The New Systems Competition*, Oxford: Blackwell Publishing.
- Slembeck, T. (2003) 'Ideologies, beliefs, and economic advice – a cognitive evolutionary view on economic policy-making', in P. Pelikan and G. Wegner (eds.), *The Evolutionary Analysis of Economic Policy*, Cheltenham: Edward Elgar, pp. 128–61.
- Stone, D. (2001) *Learning Lessons, Policy Transfer and the International Diffusion of Policy Ideas*, CSGR Working Paper No. 69/01, University of Warwick, April 2001, <http://www.warwick.ac.uk/fac/soc/CSGR/wpapers/wp6901.pdf>, 9 March 2004.
- Sun, J.-M. and Pelkmans, J.J. (1995) 'Regulatory competition in the single market', *Journal of Common Market Studies* 33: 67–89.
- Tiebout, C.M. (1956) 'A pure theory of local expenditures', *Journal of Political Economy* 64: 416–24.
- Trubek, D.M. and Trubek, L.G. (2005) 'Hard and soft law in the construction of social Europe: the role of the open method of co-ordination', *European Law Journal* 11: 343–64.
- Van den Bergh, R. (2000) 'Towards an institutional legal framework for regulatory competition in Europe', *Kyklos* 53: 435–66.
- Vanberg, V. and Kerber, W. (1994) 'Institutional competition among jurisdictions: an evolutionary approach', *Constitutional Political Economy* 5: 193–219.
- VDR et al. (eds) (2003) *Open Method of Coordination in the Field of Pensions – Quo Vadis?*, International Conference on 26–27 March 2003, Berlin, Germany: DRV-Schriften 50.
- Vogel, D. (1997) 'Trading up and governing across: transnational governance and environmental protection', *Journal of European Public Policy* 4(4): 556–71.

- Walker, J.L. (1969) 'The diffusion of innovation among the American states', *American Political Science Review* 63: 880–99.
- Wegner, G. (2003) 'Evolutionary markets and the design of institutional policy', in P. Pelikan and G. Wegner (eds), *The Evolutionary Analysis of Economic Policy*, Cheltenham: Edward Elgar, pp. 46–66.
- Wellisch, D. (2000) *Theory of Public Finance in a Federal State*, Cambridge: Cambridge University Press.
- Wincott, D. (2003) 'Beyond social regulation? New instruments and/or a new agenda for social policy at Lisbon?', *Public Administration* 81: 533–53.
- Working Group 4a (2001) *European Commission: Involving Experts in the Process of National Policy Convergence*, Report by Working Group 4a, June, [http://europa.eu.int/comm/governance/areas/group8/report\\_en.pdf](http://europa.eu.int/comm/governance/areas/group8/report_en.pdf), 13 March 2006.
- Wouters, J. (2000) 'European company law: quo vadis?', *Common Market Law Review* 37: 257–307.
- Zeitlin, J. (2005) 'The open method of coordination in action: theoretical promise, empirical realities, reform strategy', in J. Zeitlin, P. Pochet and L. Magnusson (eds), *The Open Method of Coordination in Action: The European Employment and Social Inclusion Strategies*, Brussels: P.I.E.-Peter Lang, pp. 441–98.
- Zeitlin, J., Pochet, P. and Magnusson, L. (eds) (2005) *The Open Method of Coordination in Action: The European Employment and Social Inclusion Strategies*, Brussels: P.I.E.-Peter Lang.

Final version accepted for publication 21/10/06