THE EUROPEAN UNION AS A HERALD OF INSTITUTIONALISM

Lisa-Maria ACHIMESCU, PhD*

Institutionalism, a doctrine that stems from the theory of the institution, formulated by the Maurice Hauriou[1] at the beginning of the century, remains particularly stimulating for a theoretical analysis of the law, as an understanding of its social dimension and an incursion in the emergence and development of the institutional construct of the European Union[2]. The article attempts to analyze all the facets of institutionalism, at least, from a theoretical point of view and create the link between the European architecture and institutionalism as a doctrine. Like all significant concepts that contributed to the creation of the European architectural design, institutionalism has a genesis and evolution that can be traced back to legal doctrine. Therefore, viewing institutional idealism from a critical standpoint, and taking into account the contribution of institutionalism analyses, outside the sphere of the legal doctrine, we deconstruct the interest prompted by critical reflection on the theory and doctrine of institutionalism, as well as, its use.

Keywords: institution; institutionalism; European Union; doctrine; norms; European architecture; analysis; theory.

Introduction

Institutionalism, as a doctrine, which is positioned at the heart of this research posture, has contributed significantly to emphasizing and shaping the idea according to which "the organization of political life is important"[3] and "bureaucratic agencies, legislative committees an courts of justice are arenas for confrontational social forces, but they also represent collections of standard procedures and structures that define and defend values, norms, interests, identities and beliefs"[4]. This brings a new approach to power politics as an expression of institutional, rather than state, confrontation to the forefront of international relations. Our current research focuses on the manner and circumstances in which, over the last years, a growing number of European integration specialists have appropriated institutionalism and neo-institutionalism approaches to construct their goals, problematize their research and create a foundation for future structural and developmental research.

Institutionalism as a doctrine in abstracto

The institutionalism and neo-institutionalism doctrines analysis has the great merit of attacking head-on the thorny issue of the so-called "European problem" by showing that its emergence can be more often explained by the long and often risky conception and evolution period it has undergone over the decades. According to institutionalism, studying the processes of institutionalization implies, therefore, a targeted research on several *strata of development,* out of which the most important are: the gradual emergence of cooperation and social conflicts that constitute the basis of transnational regulation preferences on issues of great interest to all member states; the importance of European Union law and the construction of formal institutions as a process which makes it difficult to *re-nationalize* certain problems; and, last but not least, the role played by the institutions of the European Union, in particular the Commission and the European Court of Justice[5], as vectors in the creation and consolidation of European decision-making bodies. *In nuce*, this approach emphasizes that institutionalization takes place over a long period of time and involves a whole range of actors seldom scrutinized by intergovernmental analysis.

Institutional analysis represents, first and foremost, an epistemological position, which can be presented simply by Hauriou's famous phrase: "A little sociology distances from the law, bringing back much more"[6]. It is thus the search for an intellectual construction that goes beyond description in an attempt to constitute an

* *"Carol I" National Defence University*
e-mail: *lisa.achimescu@gmail.com*

explanatory model to be applied, in particular, to the state and the law. This construction is based on two crucial elements: the connection between all the theory and knowledge pertaining to the law and the assignment of a rightful place of the law, as a norm construct, within the social structure.

Because it is rooted in this explanatory model, unlike the classic theories surrounding legal systems, institutionalism tends to take into account the social dimensions of the state and the law, thusly, acknowledging the concept of power intrinsic to both. Therefore, in order to build a *theory of law* that examines it from a different perspective, other than that of the classical legal theory, one should take into account the social dimension of the law, which represents the scaffolding of a comprehensive legal theory, allowing true interdisciplinary, adding just a sprinkling of non-legal elements on the analysis of the law, which has lead us to the "academic kleptomania"[7] of multidisciplinary in analyzing institutional and stat behavior.

A theory cannot appear *ex nihilo*; it has to be inspired by a set of previous theories and doctrines that were in public discussion, provoked reactions and aroused interest. The diversity of these sources of inspiration, alongside the need for a reaction from specialists, largely explains why it took a significant amount of time to go from the first sketch of the concept of *institution* to an elaborate theory, *id est* institutionalism.

Initially, institutionalism was a specifically American school of thought, contemporary with the structuring of capitalism that emerged at the end of the 19th century in the United States. Thus, institutionalism, as a dissident doctrine of the epoch's orthodoxy, was marked by an obvious heterogeneity where the will of social control was opposed to the society's radical desire for transformation and evolution.

The institutionalism's emergence was closely linked to concepts as rules, norms, behaviors, practices, organization and order. Due to the plethora of meanings given to the concept of *institution* it proves difficult to reach a general conceptual core.

Considering the connotations and denotations of the term "institution", one has to bring into focus the ontological question related to the existence of institutions and the epistemological ones corresponding to our knowledge about institutions.

The place of institutions in social and political life can be compared to a game of chess, where we have a clear set of rules about how to move the chess pieces; institutionalism as well as a game of chess takes into account the behavior of each actor involved with regard to the said rules.[8] Each actor uses strategy in order to maximize their winning potential, thus using institutionalized practices and rules.[9] *Ergo*, institutions are like chess pieces placed on a competitive basis on the great chess board of the international society, requiring the organization of international competition.[10] It is also true that the relative power of each pion is merely a component of game play, while strategy is the key component in maximizing outcomes, which can also be said in reference to institutions; it is our ability to use instruments and positions within institutions that translates towards then *power*, extending the area of political confrontation into a seemingly neutral ground.

Hans Kelsen[11] considers that there is a "one-to-one" relationship between an act of will and a norm. A standard is valid only if it is laid down by the will of an authority empowered to do so. This does not exclude that legal actors, when elaborating norms of law, are rarely content with a pure and simple *fiat lex* - "let there be law". The fact that each legal actor faces other actors and that different actors interact with each other under constraint of justification of their normative powers and the use they make of them, constitutes in this case a very relevant description of Kelsen's theory. Rather than starkly claiming that this represents their will and pleasure, the actors involved try to justify their decision by means of argumentation. One of the essential objectives of these discourses is to diminish the degree of free choice – and therefore the exercise of free will – that is offered to them in the norms of law creation. We can therefore draw the conclusion that voluntarism in the act of norm creation, represents, in fact, solidarity with an unspoken *anti-voluntarism* in the argumentation, which result from the means employed by actors to justify certain actions on the basis of their chosen doctrine.[12] Institutionalism offers a particularly illuminating reading grid for the functioning of the rationale demonstration intended to mask the will of the legal actors and, thus, to offer justification to normative powers.

The institutionalist thesis constitutes a general theory of collective phenomena, being therefore possible to update it, on the basis of this reasoning, within relatively numerous legal arguments.

Whether it is expressly formulated or that it is only possible to rationalize implicit or fragmentary reasoning by means of this theory, institutionalist argumentation presents itself as a real system designed to capture all aspects of normative power that can be summarized as follows: "by virtue of their institutional nature, these institutions implement their own competence that is not transferred by the public authorities. They develop spontaneously a particular legal life which is expressed by statutory and disciplinary powers that govern the functioning of the institution. In essence, the institution produces authority and command phenomena. Thus, it generates a real legal order"[13].

The strength of institutionalist argumentation in order to justify the attribution or the existence of the normative power of a given legal actor is primarily self-sufficiency. To do this, it does not need to rely on a pre-existing enabling standard, and therefore on a pre-existing act of will. In particular, it does not need to rely on the elements of other standards of accreditation to increase their scope or field of regulation. It thus justifies not only the extension of a pre-existing authority in this domain, but also its initial existence.

However, the institutionalist justification is particularly powerful in that, strictly speaking, the authority standard does not result from any human decision. It is presented as "classified"[14] by a complex of social phenomena, so much so that "one can see the law from inception"[15]. That is why the very idea of "conferring" power seem superfluous to the institutionalist doctrine.

From the point of view of the dynamics of the relationships that are formed within the legal system between different actors, institutionalist argumentation has an important property. Indeed, it is often the responsibility of the supervisory bodies to decide on the validity of norms created by other actors. The normative production of the *regulator-actors* is aimed at the normative production of the *regulated-actors*. The extent of the empowerment to control is therefore commensurate with the activity of the supervised actors, so that if possible for the regulator-actor to control the empowerment of the regulated-actor, they would be able to indirectly determine their own power.

Institutionalism, therefore, is not content to punctually offer, to such or such actor, a particularly powerful justification of the norms creation and development process by presenting them as strictly independent of any form of will, but proposes a general *legal ideology*[16].

The European Union versus Institutionalism

Commencing with the Coal and Steel Community, established in 1951, followed by the Treaty of Paris, and continuing our analysis with the emblematic Treaties like Maastricht, Rome or Lisbon that demonstrate how the general norms adopted by the heads of government shape the institutional capacities of the state-actors, the policy sub-system formed around the regulation of the accession process was configured.[17] This evolution makes it possible to compare the effects on the Commission's power over the drafting of the treaties, whose objectives were precise (*e.g.* the case of the Treaty of Paris) with the inter-state agreements which took form of a *constitutional framework* seeking to limit the area of intervention of the Community institutions (*e.g.* the case of the Maastricht Treaty).

Less focused on the genesis of Community policies, institutionalist analysis focuses more on Union law as an active framework of the competences of each institutional actor involved, unlike the formalism of "old" institutionalism.

However, researchers point out that Union law takes effect not only as a constraint or a sanction, but because it delineates the *appropriate behavior* of actors in such areas as public intervention.[18]

According to the intergovernmental approach, the power of national governments and the Council of Ministers produces two weaknesses in the other European Union institutions. First, they are condemned to simply implementing inter-state agreements and furthermore they can only "tinker" at the margins of the big projects of European integration.

Another contribution of the institutionalist and neo-institutionalist approach consists in showing the simplicity of this thesis without denying the considerable resources still possessed by governments and the Council. This demonstration was carried out with the help of in-depth studies of the more subtle resources available

to the Commission and the Court of Justice. As summarized by M. Pollack, this thesis promoted the understanding that the European institutions "oblige the governments of the member states to take into account the actions of supranational agents that the governments control only imperfectly"[19].

The European Commission sometimes acts as a "process manager" managing its "assets", particularly on the question of when to propose potentially controversial legislation to the Council.[20] As for the European Court of Justice, A. Stone Sweet and J. Caporaso have exposed how the jurisprudence of this body frequently generates a self-sustaining dynamic. This leads, on the one hand, to a gradual deepening of European integration in a specific sector and, on the other hand, to the effects of "contagion" on other areas of public intervention.[21] More precisely, these authors have closely studied the "constitutionalisation" of the Court since the 1960s through the aggregation and consolidation of its decisions and case studies.

This approach allowed Stone Sweet and Caporaso to identify a "causal link" between the preferences of economic and political agents (firms, employers' federations, ministries *etc.*) and a form of *de-regulation* (*de-normativization*) consisting, *exempli gratia*, in barriers reduction to trade within, henceforth, a new comprehensive European economy.

The institutional construction of Europe and the originality of its institutions, mainly due to their transnational nature, led to the enrichment of the issues raised by the activity of the member-states parliaments. The establishment of a Common Assembly in 1952, and of the Parliament in 1979, revealed an institution fully capable to coexist with its national counterparts. For many authors, the European Parliament, by reducing the involvement of national parliaments in Community affairs, does not constitute the ideal legislative space for citizens. If the studies on the Parliament find their justification by being compared to those of the American Congress, the so-called "legislative studies", this is certainly due to the seniority of the latter compared to the European Assembly. But another important reason is that the European Parliament is aligned with the general theoretical institutional frameworks, especially in relation to the Commission. In Europe, parliaments, within the typologies of the European political

regimes, have long been studied by jurists. Their research, vastly influenced by political science, approached parliaments in a more concrete aspect: between the parliaments of the same regime (*e.g.* parliamentary regime, presidential regime, semi-presidential regime), the differences in functioning are important, calling into question the specific qualifications and differences of the respective assemblies. Parliamentarian typologies become less legal-oriented: the analysis of parliaments focuses on the internal structure, such as the informal relations with the executive, for example. The European Union represents an "original" model: a regime that is qualified as *semi-parliamentary* or even *post-parliamentary*[22] because of the role of other modes of regulation and legitimization than parliamentary life: the European political system has sometimes been characterized as being regulator and normative.[23] Legislative power is exercised under the first pillar by the Council of Ministers and the Parliament, elected for 5 years, most often under the *co-decision procedure*. Decisions of the 2nd and 3rd pillars, of intergovernmental nature, are the sole responsibility of the Council. The Commission alone retains the right of initiative for the first pillar, which it shares with the Member States for the 2nd and 3rd pillars. The functioning of the European Parliament has long been studied according to four main theories of European integration. The federalists define it as a national classical parliament. The functionalist current considers that within the European Parliament a unique parliamentary culture would be developed, without specifying in detail the exact character of its nature. Intergovernmental theory gives the Assembly a secondary position in rapport to the executive; Andrew Moravcsik shows that the powers of the parliamentary institution are granted by governments either for ideological reasons or due to the underestimation of possible consequences.[24] Lastly, historical institutionalism synthesizes intergovernmental and neo-functionalist currents by recognizing governments as a major player in institutional decisions, but also admitting that institutions escape them. One of our objectives was to define the nature and measure, as well as, the importance of parliamentarism within the framework of the European Union. The contribution of the European Parliament to the functioning of the Union, following a detailed examination of

its internal organizations, proves to be of utmost importance to the European institutional construct.

In particular, the evolution of the European Parliament towards a federal assembly might be sought, by comparison to the analysis of the American case. Some authors have even analyzed the text of the European Constitutional Treaty in the light of the Philadelphia Convention suggesting the importance of the American model on the institutional construction of Europe[25].

All in all, these contributions of institutionalism applied to European integration and institutional construction show that "membership matters": the European institutions are much more than participants at the negotiation table; state-actors cannot simply walk away from community compromises that they do not like.[26] Community integration and the Union's architecture generate *institutional constraints* that force actors to change their behavior and preferences. While institutionalism and neo-institutionalism has certainly revitalized the theoretical debate on European integration, there are still shortcomings.

The first empirical problem of the institutionalism approach constitutes the fact that it can lead to an oversizing of the role played by European Union rules and norms by minimizing their degree of elasticity, a noteworthy characteristic feature of their action. The obligation to consult social partners, which constitutes part of the regulations of the European Structural Funds and of many other EU policies, represents a significant example in this direction. Since European legislation does not define either a social partner or the substance of the verb "to consult", it is hardly surprising that the implementation of the consultation norms led, on the one hand, to politico-administrative practices very different from one country to another and, on the other hand, to the fact that the Commission's agencies are largely powerless to involve the actors they consider to be more credible.

In short, the institutionalist analysis of the effects on the European Union norms and regulations remains incomplete, without taking into account the relative capacity of the Commission to impose sanctions on the actors who interpret the rules unilaterally.[27]

Indeed, paradoxically, the institutional approach studies institutions essentially by isolating them for the sole purpose of better understanding the EU decision-making process. The configuration of relations between institutions revealed by such studies, and especially the problems they pose for the social legitimacy of the European Union, are rarely discussed. Indeed, the institutionalist analysis stops at the same question as their intergovernmental opponents, "which institutions matter?"[28]: "Behind their favorite theories lies a rationalist foundation that takes these researchers, like inter-governmentalists, to conceptualize institutions into superficial terms ("thin")[29]. Therefore, "if the institutionalists are less interested on the impact of institutions on national interests, they are still interested in the strategies adopted by the Member States to pursue the interests that they are attributed." [30] Worse, by losing interest in the depth of the European institutions, the institutionalist and neo-institutionalist analysis overlooks the double question of legitimacy and domination, thereby condemning itself to pursue a purely academic modeling of European integration which is structurally limited and limiting. As acknowledged, "The literature on European integration is always more comfortable explaining and describing the processes of governance than the root causes of European integration (...) After more than four decades from her debut, we still have a better picture of how the top spins than we do of the forces that drive it across the table"[31].

Rather than reflect on the overall shape of institutions from a theoretical point of view, most researchers working in this field either prefer to engage in speculative exercises[32] or to dwell on the emergence of "supranational" institutions (*n.n.* the rhetorical stratagem maintained by neo-institutionalists). Therefore, political science studies with paucity the European integration process that raises legitimacy issues because it re-commissions not only the models and norms of public action, but also the balance of institutional order and the action models that are their counterparts. As researchers point-out, *inter-institutional transaction* models last only when they fit into "patterned disorders"[33] considered as politically and socially legitimate. In order to tackle this problematic issues, which is not only complex, but fraught with methodological difficulties, let us ask a question that, while simple, is imbued with analytical consequences: what is the dichotomous relationship government-society in a space as multicultural as the European Union?

In order to answer this question, it would be useful to *borrow* the distinction between *consensus* and *legitimate regime*.[34]

Taking into account the mainstream opinions, one has to conceive that the "legitimization as a set of processes that make the existence of a specialized coercive power tolerable if not desirable, that is to say to perceive it as a social necessity or even a blessing"[35]. This definition leads to a distinction between legitimacy and consensus which is enlightening in the case of the European Union. According to these standpoints, *consensus* comes from a utilitarian evaluation of the political system benefits and actions. Legitimacy, on the other hand, "implies a belief in the social value of institutions"[36]. In the case of European integration and of the EU's institutional construction, the problem of legitimacy engenders two strong hypotheses.

The first stems from the idea that, insofar, the dominant social representation of Union integration and of the EU's institutional construct constitutes that of a *consensus regime* as its efficiency in international security and economic competitiveness has been emphasized. If, for example, the Commission lacks legitimacy, it is not simply because member states may challenge its ability to regulate the crucial problems their respective societies face. This happens because, beyond this functional obstacle, there is also a profound reluctance to recognize and identify the entirety of the Union's system norms and values and to regard them as socially desirable.

The second hypothesis emanates from the issue identified by researchers that take into consideration the concerns regarding political representation on a European scale. As highlighted by the literature on public policy analysis, integration has undoubtedly been accompanied by important changes in the practice of politicians, especially in the nature of their interactions, which was modified, an aspect that is easily observable in negotiation forms, consultation requirements, evaluation constraints etc. With rare exceptions, the basic political space remains the nation state and/or the sub-national constituencies. Thusly, the deficit of legitimacy of the European Union must also be filtered through the difficulties experienced by its political representatives – Commissioners and European parliamentarians and by national deputies and local elected representatives. Moreover, these difficulties are not limited to the challenge of interpreting the European integration and the EU institutional architecture; they also refer to the thorny nature of its staging. By generating these hypotheses, a link *via* political theory is created emphasizing that the study of the transactions institutionalization proposed by the institutionalist and neo-institutionalist authors, remains incomplete if it does not consider the social reception of this process and that of European Union's integration as a whole.[37]

At the heart of all research on the European institutions lies a, more or less explicit, question, on the degree of political change caused by forms of *community intervention,* especially al local level. In our opinion, however, this questioning stops too often at the level of public action rather than analyzing the effects of the displacement of ideas and practices on the character and balance of institutional orders as a whole. The theoretical reasoning developed above allows us to conclude on the reasons why the standards and resources disseminated by the European Union change the particular configuration of practices and expectations that composes each institutional order. Accordingly problematized, political science research becomes capable of overcoming the commonplace findings of a convergence of public policies in the EU and to question the effects of community action on the legitimacy of the European Union and of politics in general.

Another important issue constitutes the intervention in the Union's policies of transversal *actors* such as the Presidents of Regional and General Councils, prefects, national and European parliamentarians. To use a distinction developed in this sense[38], it is necessary to analyze their intervention both in terms of *position* and *role*. "Approached in terms of rank in the institution"[39], the position of a *transversal actor* can be studied through a leveling of resources and constraints. On the other hand*, the concept of role* represents "the set of behaviors that are linked to the position one occupies and which makes it possible to make this position exist, to consolidate it and, above all, to make it sensitive to others"[40].

By questioning the impact of European policies, within an analytical framework that is rooted in researching how they affect the relationship

between *position* and *role*, we have a powerful instrument to address this specific issue, on the one hand, taking into account the concrete effects of European integration and institutional architecture on the symbolic dimension of institutional order and, on the other hand, the difficult emergence of an institutional order at the Union's level.[41]

Peter A. Hall[42], at a seminar of European Union experts, prefaced a paper with an ironic statement according to which "we're all institutionalists and neo-institutionalists now!" At first glance he is certainly not wrong: an increasing number of researchers share the assumptions we presented.

The challenge for the future constitutes the development of these approaches to institutions in order to better understand the diverse trajectories of the institutionalization of the European Union as well as the coherence and contradictions it does not fail to raise. Another important challenge is represented by the demystification of the methodological problems while also demystifying European policies. If a good method can never do without a well problematized object, it is equally clear that it is not only in Brussels and Strasbourg that Europe takes on a palpable form. On the other hand, we have seen that another fundamental challenge for political science consists in arranging so-called public policy and political sociology approaches, thus, addressing the study of European institutionalism in the light of the fundamental theoretical controversies of political science and *vice versa*.

Conclusions

A comprehensive analysis of institutionalism cannot be realized in the confines of this article. This represents just the premise of a judicious start.

The strength as well as the weakness of the institutional analysis lies in the fact that it constitutes both the object and the means of the study. By viewing the institution through the clarifying lenses of the law, we sized the appropriate tool of research: the institutional analysis.

To believe that the institutional analysis will allow a researcher to understand everything would be proof of an unforgivable naïveté. On the other hand, it is equally undeniable that this analysis makes it possible to develop another point of view on the law, which reveals things that conventional analysis does not grasp.

This research does not result only from the complex political strategies and compromises in favor of the promotion of the European institutionalism or the development of new institutional policies, it results more from the realization or the materialization of the important European bodies and institutions, battling between two models of *universalism* in competition: one linked to the definition of a state and general interest embodied in its sovereign powers, independent of markets and member states and basing their competence on building an Europe based on the norms of law, expertise and control over the institutional pillars; the other, being rather in reference to the harmonization with the new international elites and not particularly embodying the *common European values* and, even less, the concept of state (*n.n.* sovereignty).

The relationships established or not among the European institutions, because that is where the weak link of the institutional analysis lies, constitutes the passage from the static analysis of an institution to the dynamics of the process of institutionalization and institutionalism. It is here that the dialectics of the analysis appears and the fact that each individual is not seized by one institution, but by several (family, state, enterprise, Union, *etc.*), an aspect which can give rise to contradictions. However, these very contradictions tend to have a major role in the reconstruction and reshaping of the legal status of European institutions and relations.

NOTES:

1 Maurice Hauriou, *A French jurist and sociologist whose writings shaped French administrative law in the late 19th and early 20th century, taught public law at the University of Toulouse since 1888, and constitutional law since 1920. He was the creator of the institution theory.*

2 European Union hereinafter "EU".

3 J. March and J. Olsen, "*Rediscovering Institutions: the organizational basis of politics*", New York, The Free Press, 1989; S. Steinmo, K. Thelen, K. Longstreth, (*eds.*), *Structuring politics. Historical institutionalism in comparative analysis,* Cambridge, Cambridge University Press, 1992.

4 March and Olsen, *op. cit.,* 1989, p. 1 & p. 17.

5 European Court of Justice hereinafter "ECJ".

6 M. Hauriou, *La science sociale traditionnelle*, Paris, Larose, 1896, p. 98; (*n.n.* the translation is realized by the author of the article).

7 *See* J., Chevallier & D. Loschak, *Science administrative*,

Paris, Librairie générale de droit et de jurisprudence, 1978.

8 Jan-Erick Lane, Lane Ersson Staff, Svante O. Ersson, The New Institutional Politics: Performance & Outcomes, Taylor & Francis Group, Routledge, London & New York, 2000, pp. 26-28.

9 *Ibidem.*

10 *Ibidem.*

11 *See* Hans Kelsen, *Théorie générale des normes*, French translation by O. Beaud, F. Malkani, Paris, P.U.F., Léviathan Collection, 1996.

12 *Ibidem.*

13 I. Muller, *"La normativité corporative reconnue"*, in M. Hecquard-Théron, *Le groupement et le droit: corporatisme, néo-corporatisme*, Toulouse, Presses de l'Université des sciences sociales de Toulouse, 1996, p. 32; (*n.n.* the translation is realized by the author of the article).

14 M. Hauriou, *Principes de droit public*, 2nd ed., Paris, Sirey, 1916, pp. vii-xx.

15 *Ibid.*, p. 78.

16 P. Lokiec, *Contract and Power. Essay on the transformations of Private Law and Contractual Relations*, A. Lyon-Caen, Paris, L.G.D.J., Private Law Library collection, 2004, p. 408.

17 *See* S. Bulmer, *"Institutions and policy change in the European Communities: the case of merger control"*, Public Administration, vol. 72, 1994.

18 The notion of *appropriateness* is at the heart of the institutionalist and neo-institutionalist approach: "The central notion is that life is organized around sets of meanings and shared practices which become self-evident ideas." March J. Ülsen, J. Democracy & Governance, Macmillan, 1995, p. 30; (*n.n.* the translation is realized by the author of the article).

19 M. Pollack, *"The new institutionalism and EC Governance: the promise and limits of institutional analysis"*, Governance, vol. 9 (4), 1996, p. 445; (*n.n.* the translation is realized by the author of the article).

20 *Ibid.*, p. 133.

21 *See* A. Stone Sweet, J. Caporaso, *"La Cour de Justice et l'intégration européenne"*, Revue française de science politique, Vol. 48 (2), April 1998.

22 *See* Svein S. Andersen and Tom R. Burns, *"The European Union and the Erosion of Parliamentary Democracy: a study of Post-parliamentary Governance"*, in The European Union: How Democratic is It? London, Sage, 1996.

23 *See* Giandomenico Majone, *Regulating Europe*, London, Routledge, 1996.

24 Andrew Moravcsik, *"In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union"*, Journal of Common Market Studies, vol. 40, no. 4, 2002, pp. 603-624.

25 *See* Florence Deloche-Gaudez, *"Bruxelles-Philadelphie, D'une Convention à l'autre"*, Critique internationale, no. 21, Presses de Sciences Politique, 2003.

26 *Ibid.*, p. 407 and p. 411.

27 *See* A. Smith, *"The European Commission and the Structural Funds: towards a new model of action?"*, French Review of Political Science, 46 (3), June 1996.

28 J. Checkel, "Social construction, institutional analysis and the study of European integration", Communication at the European Consortium for Political Research Congress, Warwick, March 1998, pp. 4-5; (*n.n.* the translation is realized by the author of the article).

29 *Ibidem;* (*n.n.* the translation is realized by the author of the article).

30 *Ibidem;* (*n.n.* the translation is realized by the author of the article).

31 M. Pollack, *op. cit.*, p 454.

32 The view is embraced, for example, by Ph. Schmitter in *"Some alternatives for the future European political system and their implications for European public policies"*, in Meny, Y., Muller, P. and Quermonne, J.-L., *Les Politiques publiques en Europe,* Paris, L'Harmattan, 1995.

33 The expression is used by K. Orren and S. Skowronek, two so-called "historical institutionalists" who do not exactly study European integration but arrive at a salutary conclusion for this field of research: "Layers rather than systems; dissonance rather than sounding; conjunctures rather than regularities: these are the entry points for a genuinely new institutionalism.", *in* the paper *"Order and time in institutional study", in* Farr, J., Dryzek, J., Leonard, S. (eds.), "Political science in history", Research programs and political Traditions, Cambridge, Cambridge University Press, 1993, p. 317; (*n.n.* the translation is realized by the author of the article).

34 J. Lagroye, *"Legitimation", in* M. Grawitz & J. Leca, (eds.), Political Science Treaty, pp. 399-402.

35 *Ibid.*, p. 402 (*n.n.* the translation is realized by the author of the article).

36 *Ibid.,* pp. 399-400; (*n.n.* the translation is realized by the author of the article).

37 Yannis Papadopoulos pointed out that "the purely self-referential legitimacy of the (public action) systems is not enough. Their justification speeches are also addressed to external audiences, having to conform to what each system thinks their expectations are", *in* "Social Complexity and Public Policy", Paris, Montchrétien, 1995, p. 49; (*n.n.* the translation is realized by the author of the article).

38 J. Lagroye, *"On ne subit pas son role",* Politix, no. 38, 1997, p. 8.

39 *Ibidem* (*n.n.* the translation is realized by the author of the article).

40 *Ibidem* (*n.n.* the translation is realized by the author of the article).

41 As some specialists have noted, the definition of the *role* used by the institutionalist and neo-institutionalist authors is particularly weak. A. Stone Sweet and W. Sandholtz, for example, use the term *role* simply to describe who are the "actors". *See* A. Stone Sweet and W. Sandholtz, *"European integration and supranational governance"*, European Journal of Public Policy, vol. 4 (3), 1997, p. 310; *see also* A., Smith, *"Elites without territory, the European Commissioners"*, South Pole, No. 7, 1997.

42 Peter Hall is Professor at the Krupp Foundation of European Studies, in the Government Studies Department at Harvard University and resident faculty at the Minda de Gunzburg Center for European Studies; (*n.n.* the translation is realized by the author of the article).

BIBLIOGRAPHY

Andersen Svein S., Burns Tom R., *"The European Union and the Erosion of Parliamentary Democracy: a study of Post-parliamentary Governance"*, in *The European Union: How Democratic is It?*, London, Sage, 1996.

Bulmer S., "Institutions and policy change in the European Communities: the case of merger control", *Public Administration,* vol. 72, 1994.

Checkel, J., "Social construction, institutional analysis and the study of European integration", Communication at the European Consortium for Political Research Congress, Warwick, March 1998.

Chevallier J. & Loschak D, *Science administrative*, Paris, Librairie générale de droit et de jurisprudence, 1978.

Deloche-Gaudez Florence, *"Bruxelles-Philadelphie, D'une Convention à l'autre",* Critique internationale, no. 21, Presses de Sciences Politique, 2003.

Hauriou M., *La science sociale traditionnelle*, Paris, Larose, 1896.

Hauriou M., *Principes de droit public*, 2nd ed., Paris, Sirey, 1916.

Kelsen Hans, *Théorie générale des normes*, French translation by O. Beaud, F. Malkani, Paris, P.U.F., Léviathan Collection, 1996.

Lagroye J., *"Legitimation", in* Grawitz M., Leca J., (eds.), Political Science Treaty.

Lagroye J., *"On ne subit pas son role",* Politix, no. 38, 1997.

Lane Jan-Erick, Ersson Staff, Lane Ersson, Svante O., *The New Institutional Politics: Performance & Outcomes*, Taylor & Francis Group, Routledge, London & New York, 2000.

Lokiec P., *Contract and Power. Essay on the transformations of Private Law and Contractual Relations*, A. Lyon-Caen, Paris, L.G.D.J., Private Law Library collection, 2004.

Majone Giandomenico, *"Regulating Europe"*, London, Routledge, 1996

March J., Olsen J., *Rediscovering Institutions: the organisational basis of politics,* New York, The Free Press, 1989; Steinmo S., Thelen K., Longstreth K. (*eds.*), *Structuring politics. Historical institutionalism in comparative analysis,* Cambridge, Cambridge University Press, 1992.

March J., Ülsen J., *Democracy & Governance*, Macmillan, 1995.

Moravcsik Andrew, *"In Defence of the Democratic Deficit: Reassessing Legitimacy in the European Union",* Journal of Common Market Studies, vol. 40, no. 4, 2002.

Muller I.,*"La normativité corporative reconnue"*, in M. Hecquard-Théron, *Le groupement et le droit: corporatisme, néo-corporatisme*, Toulouse, Presses de l'Université des sciences sociales de Toulouse, 1996, p. 32.

Orren K. and Skowronek S., *"Order and time in institutional study"*, in Farr J., Dryzek J., Leonard S. (eds.), *"Political science in history",* Research programs and political Traditions, Cambridge, Cambride University Press, 1993.

Papadopoulos Yannis, "Social Complexity and Public Policy", Paris, Montchrétien, 1995.

Pollack M*., "The new institutionalism and EC Governance: the promise and limits of institutional analysis",* Governance*,* vol. 9 (4), September 1996.

Schmitter Ph.,*"Some alternatives for the future European political system and their implications for European public policies"*, *in* Meny Y., Muller P. and Quermonne, J.-L., *Les Politiques publiques en Europe,* Paris, L'Harmattan, 1995.

Smith A., *"Elites without territory, the European Commissioners",* South Pole, No. 7, 1997.

Smith A., *"The European Commission and the Structural Funds: towards a new model of action?"*, French Review of Political Science, 46 (3), June 1996.

Stone Sweet A. and Sandholtz W., *"European integration and supranational governance",* European Journal of Public Poliey, vol. 4 (3), 1997.

Stone Sweet A., Caporaso J., *"La Cour de Justice et l'intégration européenne",* Revue française de science politique, vol. 48 (2), April 1998.