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Harmonisation through Neglect

The Federal Nature of European Employment

Policy

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Abstract

This paper proposes using the methodological perspective of critical federalism, constructed by merging the theoretical framework of critical political economy with the analytical approach of co-operative federalism, to understand the harmonisation and operation of employment policy within the EU. By choosing to not actively integrate employment policy, the ad hoc approach pursued by the member-states has led to a sharing of competency between the member-states and the EU that mimics the relationship found between central and regional governments in a federal system. In the first section, this paper outlines how the emphasis on national competence has shaped the integration of national employment policies into a nascent federal system. In the second section, this paper constructs the methodological perspective of critical federalism and in the final section, this paper concludes by identifying the federal characteristics of the current operation of European employment policy.

The European Commission has classified the issue of structural unemployment as the “most serious economic and social problem” currently facing the European Union [EU] (European Commission, 2000, 8). Over the last thirty-five years, unemployment rates among the current member-states have increased nearly five times, from an average of 2-3% in the late 1960s to an average of 10% throughout the 1990s (Cameron 2001, 7). Furthermore, of those individuals unemployed, over one-half of them have been without jobs for over one year, and over one-third have been unemployed for over two years (Cameron 2001, 26-7). However, even though the EU has continued to be plagued by increasing levels of structural unemployment, there has been very minimal policy development specifically directed at job creation within the project of integration. Reflecting a desire on the part of the member-states to enshrine employment policy within the exclusive realm of national competence, movement in this area has not been actively pursued. Instead, integration has mainly been driven by efforts to integrate complementary policy areas, such as monetary integration, and rulings of the European Court of Justice surrounding issues of labour mobility. Nevertheless, despite the fact that harmonisation has not been performed in a co-ordinated manner, the scope of autonomy that member-states have over the development of employment policy has been eroded over the last ten years by the twin pressures of globalisation and European integration. As a result, the member-states are now forced to combat ‘the most serious economic and social problem’ with a very limited range of policy options.

In this paper, I propose that the theoretical framework of critical federalism is a new and important methodology for understanding the harmonisation and operation of employment policy within the EU. Toward this end, this paper is divided into three

sections to demonstrate how the ad hoc manner through which employment policy has been integrated within the European Union has served to institutionalise an order based upon the principles of neoliberalism. In the first section, I will identify the key points in the development of a regional employment strategy, outlining how the emphasis upon the principle of national competence throughout its formation has led to a nascent federal order at the regional level. Following this discussion, I will construct the approach of critical federalism by merging the theoretical framework of critical political economy with the analytical approach of co-operative federalism. Finally, I will conclude by identifying the federal characteristics of the current operation of European employment policy.

The Ad Hoc Regional Harmonisation of Employment Policy

The integration of employment policies has had a long history within the EU. Beginning with the Treaty of Rome, the member-states have sought to improve the working conditions for their citizens without the development of enforcement mechanisms. Moreover, in attempting to strike this balance between standards and enforcement, the EU concentrated on merely harmonising a minimum level of labour standards. While the EU did mandate pay equality for both genders and harmonised paid holiday schemes when they formed the ECSC in 1950, little more integration occurred over the following fifteen years. However, in the wake of the first wave of expansion in 1971, and the economic downturn in the early 1970s caused by the first oil shock, the member-states acted to expand labour standards in the Community. Initiating the first of a series of four-year Social Action Programmes [SAP], the EEC attempted to develop a

plan of action to further deepen the scope of harmonisation. Focusing on three areas, the SAP sought to broaden gender equality, achieve full employment, and improve working and living conditions throughout the Community (Padoan 2001, 208). While these directives were once again limited to merely establishing the minimum standards for the Community, the SAP also led to a more permanent change by establishing the European Social Fund [ESF]. Focused on counteracting structural unemployment and creating jobs and training schemes for young people, the ESF is still a significant component of employment strategies within the EU, and accounts for about 7 percent of the EU budget (McCormick 1996, 269).

In 1989, eleven of the twelve member-states adopted the Community Charter of the Fundamental Social Rights of the Worker, or Social Charter, which brought together all of the social policy goals previously articulated by the Community. While the goal of the Social Charter was to further augment the existing policy framework, the refusal of the United Kingdom to sign on meant that only minimal progress was made, and the Charter became relegated to merely broad-based goals and objectives (McCormick 1996, 269-71). The European Community attempted to rectify this limitation with the Maastricht Treaty, by including a social charter in the negotiations. However, once again, the UK vetoed this provision. In response, the member-states agreed to append an Agreement on Social Policy to the Maastricht Treaty, which exempted the UK from social issues. The primary contribution of the Agreement was to extend qualified majority voting to a range of labour issues, including gender equality, working conditions, and labour rights (Padoan 2001, 208). Still, without the agreement of the UK, the integration of social issues only within this ad hoc 'Social Community' weakened the

extent to which the provisions could be legitimately applied. Nevertheless, the UK finally signed the Social Agreement when the Labour Party was elected in 1997, allowing it to be included in the Treaty of Amsterdam as Title XI. In addition to the provisions of the Agreement, the Social Chapter also led to the adoption of four directives: the European works council directive; the parental leave directive; the directive on equal treatment for part-time employees; and the directive concerning sex discrimination at the workplace (Padoan 2001, 209). Finally, while the Amsterdam amendments did lead to the development of an Employment Committee, charged with promoting “co-ordination between Member States on employment and labour market policies” (TEC, Art. 130), the Committee is only able to act in an advisory role. With no explicit provisions for enforcement, or any punishments outlined for non-compliance, there is a great concern that effective co-ordination on employment policy between member-states will not be achieved.

As the preceding discussion suggests, the harmonisation of labour market strategies and employment policy in the European Union is based upon the principle of national competence. Through the use of directives, the EU has merely set standards for these policy areas and left the implementation of the policies up to the individual member-states. Moreover, in most cases, the actual content of the directives are less sweeping than most existing national policies, and, even in those cases where European Union law extends beyond national levels, the way in which the implementation is ultimately performed is up to the member-government (Padoan 2001, 209). However, even though harmonisation was not produced in an active, co-ordinated manner, the resulting policy arrangement does reflect a coherent ideological position. The project of

European integration has largely been driven by the need to build an economic environment structured around ensuring investor confidence through expanding property rights and investor freedoms, while imposing “market discipline” on the actions of the state and on labour (Gill 2001, 47). As a result, by subordinating employment policy behind the goal of perfecting the common market, the EU has pushed their labour market towards one governed by the principles of neo-liberalism.

Theoretical Approach of Critical Federalism

As a field of study, political economy seeks to encompass the academic disciplines of politics and economics by assuming that accurate analysis must include an understanding of the interrelated nature of these two aspects of social reality. In contrast to reductionist explanations found within the separate disciplines, political economy is concerned with demonstrating how political activity influences the economy and how the economy similarly influences political behaviour. Nevertheless, within the field there is considerable debate over the relationship between economics and politics. While accepting the interrelated nature of the two arenas, most mainstream approaches suggest that one area tends to hold causal priority over the other (Pistor 2005, 108-9). In other words, these theorists tend to conceptualise the power relationship between states and the market as a zero-sum game, whereby an increase of importance, authority, or power by one component necessitates a reduction in power by the other. Alternatively, critical perspectives to political economy contend that the two areas are inherently and systematically intertwined, and that the assumed separation within contemporary discourse emerged through a historically contested process (Gill and Law 1988, xviii).

Toward this end, the distinction between problem-solving and critical theories provided by Robert Cox is particularly helpful, and it is worth quoting him at length. For Cox, a problem-solving theory, such as orthodox approaches to both political economy and European integration,

takes the world as it finds it, with the prevailing social and power relations and the institutions into which they are organized, as the given framework for action. The general aim of problem solving is to make these relationships and institutions work smoothly by dealing effect with particular sources of trouble (Cox 1996, 88).

While problem-solving theories, due to their parsimonious nature, are extremely useful in the examination of particular problems, their ahistorical nature leads them to be very conservative and primarily focused on the maintenance and support of a given regime. In contrast, critical theory

stands apart from the prevailing order of the world and asks how that order came about. Critical theory ... does not take institutions and social power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing. It is directed toward an appraisal of the very framework for action, or problematic, which problem-solving theory accepts as its parameters (Cox 1996, 88-9).

While the use of critical political economy to analyse European integration has not been performed in an uniform manner, reflecting the preference for theoretical pluralism found within these perspectives (see Morton 2001), the variant adopted in this study follows the York school of global political economy, and builds off of the critical realist framework developed by Robert Cox in the early 1980s. Drawing upon the work of the Italian Marxist Antonio Gramsci, Cox sought to explain both the operation of hegemony at the international level and the manner in which world order is transformed (Bieler and Morton 2001, 5). Focusing their analysis upon societal institutions, forces, and ideas, theorists ascribing to this approach suggest that these elements generate

hegemony, which serves to structure the global political and economic environment into an order that is coherent with the aims of the dominant actors (Caporaso 1993, 473).

Identifying the contemporary epoch as a neo-liberal order, these theorists look to the influence of such forces as multinational corporations and private financial institutions in promoting the ideology of neo-liberalism and in creating the material conditions of an extensive reward and punishment system that sustains its hegemony through ensuring compliance (Helleiner 1994, 16).

The principle theorist applying this school of thought to the examination of European integration is Stephen Gill, who argues that the resurgence of the integration in the 1980s must be viewed within “the context of global patterns of power and production, as aspects of the political economy of globalisation” (Gill, 2001, 49). In this manner, European integration is understood as a manifestation of the global trend toward the institutionalisation of the ideology of disciplinary neo-liberalism through the “quasi-legal restructuring of state and international political forms” that Gill labels new constitutionalism (Gill 2003, 131). As part of a global trend, this movement towards institutionalisation is being performed within Europe as different social forces seek to promote their particular image and reinforce their relative power. In identifying the emerging hegemonic order as disciplinary neo-liberalism, this approach seeks to demonstrate how the process involves the merger of the socio-economic ideology of neo-liberalism with both the structural power of capital and the behavioural power of an enforced discipline that Gill identifies as panopticism. For Gill, panopticism refers to a form of social engineering whereby behaviour is modified into obedience and acquiescence of a dominant social order through the application of observation and

normalisation of discipline (Gill 2003, 130-5). One of the key examples of this process is the institutional framework of the EMU, which seeks to discipline governments into adopting new patterns of economic governance based upon strict fiscal discipline and focusing monetary policy on preventing inflation (Gill 2001, 49-51). Moreover, with its emphasises on establishing labour-market strategies through the establishment of benchmarking and the recognition of best practices, as well as the increased role of surveillance, transparency, and reporting through the requirement of National Action Plans, the European Employment Strategy acts to further reinforce the hegemonic order of disciplinary neo-liberalism.

The European Employment Strategy as a form of Nascent Federalism

Within the realm of social policy, insights drawn from federalist approaches such as co-operative federalism, and its focus on how central and sub-central governments interact in a federal arrangement, can greatly aid in understanding how interaction occurs both between and within the member-states and the EU. If one begins with the premise that the current institutional arrangement of the European Union reflects a form of nascent federalism,¹ the conceptual definition of co-operative federalism is quite

¹ A distinction must be made between federalism and a federation. It is not suggested that the EU is destined to be a supranational entity that will eventually compel the member-states to slowly wither away. However, the process of integration does act to continually redefine the relationship between the member-states and the EU, and the (re) designation of competencies that has accompanied deeper integration has acted to develop an institutional relationship that is both new and familiar at the same time. Within some policy areas, such as Common Security and Foreign Policy, the EU remains clearly intergovernmental. However, on other issues, such as employment policy, the act of sharing competency between member-

applicable to European (Union) governance, a point that may be elucidated by expanding upon the three key assumptions of this approach. First, while the various levels of government are understood to exist within a strict segregation of responsibilities and jurisdictions, this perspective emphasises the ability of the different levels to act in a manner that harmonises policies and encourages collaborative action (Smith 1999, 71). Currently, the institutional arrangement governing employment policies in the EU conforms to this approach; while employment policy is still placed within the realm of national competence, the inclusion of the Employment Chapter in the treaty framework declares it a matter of joint concern for the EU and compels the member-states to co-ordinate and harmonise their behaviour (Scharpf 1999, 158-9). Second, the concept of co-operative federalism implies that the entity under study is ultimately a mixed regime, where “different policy styles and decision-making philosophies” are held by different actors within the system, yet they are able to interact in a collaborative manner to develop mutually beneficial outcomes (O’Neill 1996, 108). Third, this approach accepts that the decisions made by any actor within the system cannot be decided in isolation, but are informed and redefined by the interests and actions of the opposing actors (O’Neill 1996, 109-111). Echoing the notion of the penetrated state proposed by Charles Pentland (1973), co-operative federalism also includes an understanding of how the interests of all of the actors within the European Union are redefined through their social interactions with each other. As such, this framework assists in elucidating how competing social forces act to redefine structural power through the process of integration, and how that

states and the EU has transformed the relationship in this area into one that mimics those found between central and regional governments in a federal system.

redefinition serves to further reorient the social forces themselves. In addition, through conceiving of the EU as a form of nascent federalism, we are able to observe how these social forces are interacting on a transnational level.

When examined through the lens of critical political economy, the conceptual framework of co-operative federalism allows for a more nuanced understanding of the unequal levels of power found within a federal arrangement. As the central government maintains the ability to develop policy initiatives, as well as the authority over the distribution of financial resources, it is able to define the realm through which interaction proceeds by exerting a hegemonic influence over the federal relationship. Moreover, rather than simply examining relations between two levels of government, this approach seeks to locate this interaction within the wider context of the predominant state/ society complex and the existing historical structure. Adopting the tri-partite conception of hegemony suggested by Robert Cox, this manner of analysing federal relations involves the identification and examination of three categories of forces which interact to define the structure of the federal relationship: institutions, ideas, and material capabilities.

Certain developments have emerged to institutionalise the federal nature of employment policy within the EU. First, when the Employment Chapter was included in the Treaty framework as Title VIII, and the objectives of the EU were redefined to include “a high level of employment and of social protection” (TEC Art. 2), employment policies became defined as a joint concern for the EU and the member-states. Also, by establishing the Employment Committee, charged with promoting “co-ordination between Member States on employment and labour market policies” (TEC, Art. 130), the EU institutionalised the process of co-ordination. Finally, through the use of directives,

the EU further reinforced the pseudo-federal relationship that defines the harmonisation of employment policies. Setting the goals and objectives at the EU-level, yet leaving the implementation of those policies up to the individual member-states, further strengthens the vertical division of power.

The second force that acts to sustain the federal order is the promotion of a specific belief system that reinforces the principles upon which the order is based, and serves to convince individuals within the system that it is both natural and morally correct. Within the EU, negotiations over employment policy are primarily defined by principles informed by the ideology of neo-liberalism. Contending that the deregulation of the labour market is the most efficient way in which to lower the level of unemployment, the discourse of competitiveness prescribes the limitation of government in the creation of effective employment strategies (McGiffen 2001, 92). Stressing that the modern economic environment requires labour market flexibility, neo-liberalism argues that state regulation reduces the ability of companies to react to changing labour needs by enacting overly rigid rules and policies (Esping-Andersen 2000, 122). Drawing a comparison between the unemployment rates in the US and in the EU, this explanation argues that high levels of taxation and unemployment benefits actually perpetuate an environment of long-term structural unemployment (Hetemäki 2000, 91-2). By both lowering corporate taxes and labour standards, the solution provided by this perspective seeks to lower the employment rate by attracting private investment (Hetemäki 2000, 104-6). In other words, the neo-liberal approach to job creation is based upon the principle of liberalising the labour market. With this discourse acting to define the realm of potential solutions for dominant policy-makers involved in the development of

employment strategies for the EU, the harmonisation of EU employment strategy has acted to further reinforce the neo-liberal perspective.

Thirdly, a federal order is also supported by a set of material capabilities that act as an enforcement mechanism and punish those members of the system who do not comply with its organising principles. Within a traditional federal arrangement, central governments typically have authority over budget allocation and act to punish defiant or disobedient actors by withdrawing financial support. However, while the EU does not have the same authority over the distribution of financial resources that a central government would have within a traditional federal system, it does possess a series of material capabilities that allows for the enforcement of a particular type of employment regime. Within the realm of employment policy, there are two primary enforcement mechanisms. First, the restrictions enshrined within the Growth and Stability Pact serve to limit the range of policies that member-states may utilise to affect their labour market by effectively removing fiscal options. While the November 2003 agreement reached by the eurozone finance ministers to suspend the application of the enforcement mechanisms suggests that provisions in the Growth and Stability Pact are not absolute, by reaching a compromise that superseded the Treaty framework, the member-states have merely suggested that a more flexible interpretation and application is required. The second mechanism rests within the manner in which the European Employment Strategy has evolved. Each year the EU issues a set of Employment Guidelines grouped around the four thematic pillars – employability, entrepreneurship, adaptability and equal opportunity – which reflect the priorities faced by the EU as a whole. In response to these priorities, each member-state must develop annual National Employment Action

Plans, which demonstrate the progress it has made in implementing the objectives. In 1999, the Commission took an increased role in the implementation of the EES by gaining the authority to assess and recommend alternative policy directions for member-states to best facilitate the execution of the EES. Moreover, performance is judged on the basis of 100 indicators that are set by the Commission and only endorsed by the member-states through the Employment Committee. In this manner, the EU both sets the objectives for EES and defines what types of performance may be classified as successful.² As a result, even though the member-states are responsible for the implementation of the EES within their own domestic setting, the end result is to shift the labour market strategies towards a closer convergence with each other. While this increased convergence is not leading to policy homogenisation between the member-states, by forcing all of the various labour market strategies to lead to the same ends, the EU has acted to further reinforce the hegemonic position of neo-liberalism within the process of European integration.

Conclusion

By constructing critical federalism as a merger of the analytical approach of cooperative federalism and the theoretical framework of neo-Gramscian thought, this perspective is specifically targeted toward explaining and understanding EU-level public

² After the five-year review of the EES in 2003, the Commission substantially revised the mechanisms surrounding the strategy, including the Employment Guidelines and the Indicators. Among other implications, these changes have further expanded the role of Commission in monitoring and evaluating employment policies within member-states.

policy. In essence, this approach is an exercise in meszo-theorising and seeks to use contextual analysis to examine and account for specific developments (Rosamond 2000, 173-4). Rather than attempting to explain European integration in its entirety, the value of critical federalism lies in its focus on individual policy areas. By drawing on the insights of neo-Gramscian thought and critical political economy, a more complex and nuanced understanding of both the social construction of the integration project and the unequal distribution of power between the various actors involved can be achieved. Finally, by including the concept of co-operative federalism, this new approach is firmly centred on the examination of how public policy is developed within a federal system. Premised on the belief that this negotiation is inherently contested – yet allows for an end result of collaborative action – this perspective considerable insight into the evolving process of European integration.

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