

SUMMARY

1. Introduction

“The juridical nature of the contemporary (...) state structure can hardly be described, as it mixes up elements of a confederation, a federation and a united state.”

The above evaluation could be taken from a random manual of the European Union. Actually, it comes from Heinrich von Treitschke’s commentary on the political system of the North German Federation in 1867. He records the core of a controversial discussion on the legal nature of the North German Federation which was continued in favour of the German Reich after 1871. The two legal constructs did not fit into a common national political regulatory model and could not be clearly classified as a contractual or constitutional, international law or public law solution. Due to the fact that the Constitution had carried out the division of powers between the Reich and the federal states differently from policy area to policy area, it was even more difficult to classify the political system of the Kaiserreich. Sometimes there was a tendency towards a confederation, then again, a tendency towards a federal state.

Clear similarities with the European Union are already recognizable at first sight: Firstly, the European Union has not been able to be analyzed within the common political model since its beginning in the 1950s. The elements of a traditional nation state are rather disappearing. Secondly, the social and economic circumstances are subject to the same processes of deterritorialization of policy, economics and law, as well as the compression and increasing legalisation of the internal relationships. These developments hardly occur at the same time within different policy areas. Both cases examined share a phase of transformation after their establishment in which the political decision-making and structural competences were totally re-regulated.

2. Aim

Starting from the observation that with the German Reich and the European Economic Community, two comparable political systems were created, I will examine why the resolution of a common transport policy failed in both cases. What were the different causes? Were the causes of a structural or processing kind or did they regard content? Are the difficulties of the policy formulation due to comparable or different causes?

If there were to be an emphasis on one policy area, namely the transport sector in this analysis, it would not be very surprising. The economy represented a

key factor concerning integration in both cases. Both political systems built clearly defined political structures and intensive activities particularly early.

I will contribute to three fields of research: The political science comparative EU research, the political science integration research and the historical research concerning the Bismarck Reich. A unique feature about this work is that it deals with failed political integration rather than – as so often – successful stories about it. This is not uninteresting concerning the generalization of the results because this work offers the possibility to counteract the danger of only examining successful cases.

3. Research design and delineation

Temporal delineation: For the German Reich (1871-1879) and the European Economic Community (1955-1972), we have clearly distinguishable periods of examination. Both cases deal with closed transport policy epochs which include a period containing the beginning of the negotiations, the establishment of the common political structures until the stating of the failure of the efforts to start a common transport policy.

Geographic delineation: We have to choose some federal and member states as examples because the political decisions cannot be viewed from everyone's perspective. Selection criteria are the difference of the activities concerning the legislative processes, as well as the dichotomy of the transport policy conceptions.

The kingdoms of Prussia and Bavaria are taken as examples for the German Reich. In addition, reference will be made to the kingdoms of Württemberg and Sachsen. Due to its political importance and the tight interconnection of Prussian bodies with the ones of the German Reich, Prussia cannot be left out. Bavaria obtained a special status due to its "Reservatsrechte" concerning rail transport. Moreover, the kingdom of Bavaria was one of the determining middle powers when it came to rail transport questions. It had various relations with each of the other federal states, especially with the middle powers.

Germany and the Netherlands are chosen as the key countries for the European Economic Community. Firstly, regarding the EEC members, the German and the Dutch transport systems in the 1950s and 1960s were most different, particularly when it came to the meaning of the individual means of transport for the overall traffic load. Secondly, there were clear interdependences between the two transport markets. On the one hand, the Dutch had the most popular seaports at the mouths of the Rhine, especially Rotterdam, at their disposal. On the other hand, the German transport market was very attractive for the Dutch transport sector.

Delineation of content: I will concentrate on the regulatory policy area as it is impossible to cover all aspects of transport policy. The content issues of the regulatory policy show minor differences in the epochal comparison. Generally, regulatory policy can be classified into three areas:

- Capacity policy (e.g. access rules to the market for providers of transport services);
- Price policy (e.g. state interventions concerning pricing at the transport markets); and
- Coordination policy (e.g. interventions in cooperation and concentration processes).

I have chosen as case studies for regulatory policy in the German Reich the following:

- Price policy: “Reichsgütertarifgesetz” (law on transport tariffs for goods); and
- Coordination and capacity policy: “Reichseisenbahngesetz” (general railway law with a focus on the supervisory and control rights, wage structures and transport law questions, as well as designation affairs).

I have chosen for the European Economic Community:

- Price policy: Regulation on forked tariffs for the transport of goods in inland navigation; and
- Coordination and capacity policy: Regulation of the competition rules for inland navigation.

Regarding the details of content in transport policy in the German Reich and the European Economic Community, the differences were quite huge. To that extent, it can only be asked how far both cases share contents of the same kind that influenced the failure and difficulties of the transport policy. Because contents of policy, nonetheless, strongly influenced the decision-making processes, there should be a comparison between transport policy areas with similar contents here.

Methodological delineation: From a methodological point of view, the historical comparison is put at the core of this study. Historical comparative works, more than other works, are confronted with the problem of quantitative restrictions. Due to labour-intensity, comparative works need to have a greater restriction than non-comparative ones. Therefore, there is a fine line between an appropriate representation of complex historical developments and the reduction of development lines and analysis criteria that can still be reasonably compared. For reasons of a better contextualization, I will start with a presentation of the developments of transport policy in a macro-historical overview. Then, case studies with similar contents are analyzed within a micro-historical perspective. Here, the individual case studies will be presented in great detail because important factors, such as interaction models of protagonists or their individual thoughts, become tangible.

In general, if it comes to the comparative analysis of the failure of transport policy, I will argue along the lines of policy, polity and politics:

- Policy: How far did the contents of policy lead to the failure of the legislation processes.
- Polity: How far did the formal structure of policy (institutions, methods and norms) lead to the failure of the legislation processes.

- Politics: How far did the process of mediation and implementation of interests by protagonists lead to the failure of the legislation processes.

In order to draw a differentiated picture of the process of decision-making, I will make use of a simple model of the policy-cycle. This subdivides the decision-making process into three different phases:

- Phase of initiative: The phase of initiative contains the conception phase of legislation drafts until they are officially passed on to the other bodies for further treatment.
- Phase of negotiation: The negotiation phase is considered to start with the official presentation and lasts to the exact moment at which a draft is definitely voted on.
- Phase of decision: The decision phase covers the period from the beginning of the actual voting session to the final decision on the acceptance or rejection of a legislation draft.

4. Structure and content of work

This study is divided into four parts to answer the research question.

(1) The political structures of the German Reich and the European Economic Community are compared in the first section. This is possible by initially comparing the general features of the political system and then the particular structures for transport policy.

Political system: Firstly, the general observation that the German Reich and the European Economic Community are similar political systems is reinforced. The political science concept of multilevel governance offers the theoretical access to this comparison. This has the big advantage in enabling a comparison of the political structures of the German Reich and the European Economic Community without simplifying their specific complexity. The comparison is carried out by making use of an indicator model developed by Edgar Grande. This offers useful indicators to check the comparability of both political systems.

- A non-hierarchical order of the levels: The non-hierarchical indicator of the levels shows that the EEC and the German Reich can each be called a non-hierarchical interrelated multilevel system. The different levels were strongly interrelated in a horizontal and a vertical way. In both cases, there is a distribution of sovereignty observable: The member states did not lose their complete sovereignty, meanwhile their public authority partially lost its power because essential right was transferred to the common institutions. Bodies and committees of different levels restrict themselves in their competences.
- The character of a negotiation system: The decision-making processes in both political systems are characterized by intensive negotiations and a strong interaction between different levels with their own functions, interests and operational resources. Next to the community institutions, political decisions are negotiated in an interaction process with a number of com-

mittees and informal bodies on a transnational and federal level basis. Subsequently, more and more interest groups and expert groups were integrated into the decision-making processes.

- The feature of a dynamic system: In the European Union and the German Reich, the tasks and competences are not clearly distributed between the different levels, which results in an outstanding dynamism. These structural characteristics result in a lot of competition for responsibilities, resources and power between and on the different levels. Additionally, a negative competition in the sense of a shift of problems or responsibility for unpopular decisions is recognizable. The cooperation effort between the levels, institutions, policy areas, and protagonists is, therefore, very high compared to other political systems.

In general, it becomes clear that with the establishment of the German Reich and the European Economic Community, there are two systems which had similar basic characteristics at their beginning or gradually developed these with political practice.

Institutional structures in the policy field of transport: In a second step, the institutional structures in the policy field of transport are compared with each other. I differentiate between a comparison of tasks and competences, and a comparison of the decision-making structures regarding the common legislation. Special emphasis is put on functional equivalents between the institutions of the German Reich and the EEC concerning the legislation processes.

In both cases, there is a strong interrelation between levels and bodies. During the whole decision-making process, the community level and the member-state level(s) were closely interwoven so that the successful end of the legislation process was only possible when the interests between the bodies of all levels were coordinated. A consistent voting of all participants was necessary for a general decision. Due to the double decision-making of the Bundesrat and the Reichstag, this was especially evident in the German Reich, whereas in the EEC, it was made by the contrast between the monopoly of the EEC Commission and the unanimous decision monopoly of the Council of Ministers. In both cases, it was not possible to rule against a body.

All in all, the decision-making structures of the EEC were more formalized and gave stricter standards than those of the German Reich. The German Reich was characterized more by informal structures for decision-making. Furthermore, it had a higher institutional dynamism. In the German Reich, the protagonists involved tried to establish new organizational elements with the help of informal negotiations or semi-formal special committees. In the EEC, on the contrary, the expansion of the permanent representatives' committee and its transport division could be seen as a dynamic development, the foundation of which had already been laid in the EEC treaty.

(2) In the second part, I will contextualize the transport policy. First of all, the existing forms of the cooperation in the fields of rail and transport are introduced which had already existed before the foundation of the German Reich and the European Economic Community. In addition, I will deal with the transport policy and the decision-making structures of the selected federal and member states.

Cross-border cooperation: If one compares the cross-border cooperation of the policy areas, rail and transport at the beginning of the individual examination period with regard to the cooperation contents, structures and protagonists, the results are quite different. (a) Concerning the contents of the transport policy, the priority of technical, operating and legal questions is obvious. Similarly, parallels between the failure and gap of the cooperation emerge. In both cases, it was not possible to decide on a uniform price system or to adapt price structures. Neither were common routes planned, nor transport policies adopted. (b) Clear differences are obvious when it comes to the structures of the relationships. In Europe, these were rather complex also due to the greater number of means of transport. In the German Reich, they were rather homogenous and manageable. The “*Ver- ein deutscher Eisenbahnverwaltungen*” dominated the cross-border cooperation in the German Reich, while concerning the cross-border transport in Europe, a number of highly specialized international organizations with totally different task areas had developed since 1880. Non-governmental, governmental and supranational forms of cooperation existed next to each other in Europe. Of great importance was the European Conference of Ministers of Transport, which tried to align the transport systems of the 16 West-European countries. By doing so, it competed with the EEC. (c) Distinctive similarities exist among the actors. In both cases, the cooperation was restricted to a limited number of experts who tended to build epistemic communities. These communities disassociated from non-experts in the European cooperation in the 20th century, whereas this phenomenon was unknown in the German Reich.

Decision-making structures of the selected federal and member states: Different complexities shaped the decision-making structures in the federal states. The member states of the EEC built up multilevel decision-making structures in which a number of actors were integrated on all political levels (government, ministerial and administration). The member states of the EEC held differentiated and specialized transport ministries. In contrast, a co-ordination between the different ministries only took place on the government level in the federal states of the German Reich. Even more, only a few actors of the Ministry of Commerce and the Foreign Ministry were in charge of the decision-making power. In both cases, the structures for the participation in the common policy formulation were designed like foreign political structures.

(3) In the third part, I will present the developments in the transport policies of the German Reich and the EEC. In a first step, a shortened overview of the development of the common rail policy in the German Reich (1871-1879), as well as the common transport policy in the European Economic Community (1958-1972), is given. This should help to contextualise the case studies within the overall developments of the transport policies. In a second step, the negotiation and establishment of the basic contracts and structures are discussed. In the third step, the case studies on price policy and coordination/capacity policy are presented in detail.

(4) In the last part, the causes for the failure of the legislation initiatives concerning their structural, procedural and substantive policy dimensions are compiled

and compared. Due to the different interdependences and effect interrelations, the specific aspects are not always sharply separated.

5. Results

In both political systems, central elements of the political structures led to the failure of legislation initiatives. Here, primarily five causes should be mentioned:

Veto right: The right of veto of the federal and member states in the Bundesrat and Council of Ministers is regarded as one the main causes for the failure of transport policy. However, this right of veto has a significant qualitative difference concerning the two cases under examination. In the Council of Ministers, every member state had an individual veto right, while the members of the Bundesrat only possessed a veto right if they voted collectively, which means with a minimum number of votes. A consistent stable coalition between the middle powers in the Bundesrat, which spoke and voted with one voice, led to a comparable veto power. In the German Reich, as well as in the EEC, the right of veto directly influenced all the phases of the legislation process. The threat of a veto during the conception of drafts had already resulted in significant substantive modifications. The ambiguous provisions and assignments of responsibilities in the Reich Constitution and the EEC treaty made the veto right more effective.

Separation of initiative and decision-making bodies: The separation of initiative and decision-making bodies was a key factor for the failure in two respects: Firstly, the restriction of the community institutions to the initiative responsibility resulted in an excessive weighting of the common interests in the legislation drafts. Furthermore, due to their limited influence on the negotiations and the final decisions, the community institutions interpreted their initiative right as a right to define the content of draft legislations. In order to enforce their understanding of the right, they developed strategies to be able to creatively intervene in later phases of the decision-making process. Secondly, the final decision was exclusively made by representatives of the federal and member states in the Bundesrat and Council of Ministers. The members' individual calculations and interests, which tended to be neglected during the conception of drafts, were the focus of the final evaluation. Individual evaluation-standards were adapted to a common consensus. This increased the susceptibility to failure of legislation processes during the decision-making phase.

Isolation of the policy areas: Both political systems were characterized by a distinctive division according to different policy areas. The individual policy areas were often isolated from one another. Through this, the actors were deficiently forced to link different acts of legislation, even though this would have increased the chance of package deals. Needs from the outside were seldom brought to the transport bodies and compromises were rarely searched for outside the limited scope of transport policy.

Vague Constitution and contract specifications: The vague specifications of the Reich Constitution and the EEC contract were essential factors which led to failure. The situation was further aggravated by the fact that the imprecision had structural components as well as those regarding content. Firstly, the individual articles formed the basis for unclear voting and decision-making structures. Secondly, the vague specifications made the discussion on content more difficult. Especially in the EEC, different concepts of transport policy could be read in the articles of the EEC contract. Attempts to accomplish the political objectives via a juridical interpretation of individual articles turned out to be a further element in the failure.

Interlinkage of the levels: The interlinkage of the different levels (in the multilevel governance structures) turned out to be an obstacle for successful legislation in the German Reich, as well as in the EEC. Many opinions of different actors had to be harmonized with each other, which was difficult to realise concerning the diversity of interests. Contents of legislation drafts were to adapt to the diverse political claims and wishes. This increased the susceptibility of criticism and thus the risk of failure.

Although the five causes mentioned presented important factors for the failure of transport policy, the reverse must not be seen as a guarantor of success. On the contrary, during the discussion about the application of the EEC competition rules to the transport sector, it was not recognizable that interdependences between the policy areas could lead to failure as well. An intensive interrelation could turn out to be positive in the same way. The competition between the Reichstag and the Bundesrat supported the successful legislation well.

Remarkably, the elements which actually should support the legitimacy of political decisions in federal systems, distinctively contributed to the failure. This was also due to the fact that in both cases, the systems were young federal ones whose internal structures and functionalities still had to develop further. In both cases, the strict division of initiative bodies and decision-making bodies in the legislative process led to a particular interpretation of the right of initiative by the initiative bodies. According to this interpretation, they themselves were allowed to intervene in later phases of the decision-making process. The relatively vague formulations of the Reich Constitution and the EEC contract permanently caused juridical difficulties in interpretation in both cases, although all participants had to be aware of the fact that only political solutions could lead to a decision. The two political systems were new, so, as usual in political practice, it would have been inevitable to continuously carry out a flexible adjustment of the political systems to new conditions. In both cases, the individual actors and bodies rejected that. They were not prepared to redistribute the formally fixed rights afterwards, or to go without competences when it came to the formation of new elements in the governance structures. Simultaneously, the member states meticulously minded that a change of the power symmetry did not happen to their disadvantage. Rail and transport policy in both cases turned out to be a power policy. The established actors and bodies tried to defend themselves against a change of the status quo, whereas the new actors and bodies were keen to achieve an expansion of their power. A superior authority which had power over the competence-competence was missing. Distinctive similarities revealed them-

selves when it came to procedural causes. In both cases, the actors missed the chance to prepare package deals and to appropriately assess what is politically achievable. In the end, the actors hardly even detached themselves from established and conventionalized patterns of action.

Despite all the similarities between the two cases under examination, there are distinctive differences with regard to the causes and array of causes. The different relevance regarding the contents of policy for the failure surely stands out. Concerning the distinctive influence of the contents for the failure of the EEC transport policy, there are no equivalents in the German Reich recognizable. Ideas about the realization of economies of scale, theoretical conceptual suggestions with underdeveloped practical application and competing regulatory visions effectively impeded the enacting of a common transport policy. Regulatory opposites inexpiably collided permanently in the diverse discussions. There were hardly any compromises between the ideal ideas about transport as an economy area to be liberalized, and an economic special area which needed a specific regulatory framework. "Efficiency and public service obligations" were key words which could hardly be combined. The same counted for "competitive structures and administrative control". In contrast, political content in the German Reich caused a failure only in a limited number of cases. Next to the contents, the competition with other organizations, such as the European Conference of Transport Ministers, only played a role in the EEC.

Plain differences appear concerning the changes of the causes in the course of time. While the operating functions of political decision-making processes in the German Reich nearly remained stable, they changed extensively in the EEC. In the EEC, learning and adaptation processes can be summed up by saying that the actors constantly adapted their behaviour to the circumstances made by the EEC. In the German Reich, such adaptation processes could be seen only rudimentarily. Nevertheless, the changes in the EEC were primarily related to causes of secondary meaning.

The result shows that the causes for the failure of transport policy in the EEC were varied and they dispersed over the three policy dimensions in a more balanced way. The number of individual causes in the EEC was also considerably higher. With regard to the thesis of the comparability of the political systems, it is noteworthy that the number of negative effective causes in both cases exceeded the number of factors being only effective in one case.

6. Future prospects

As a result of this study, I suggest that a comparison between the EEC/EC/EU and the German Reich would be worthwhile in other policy areas as well. It is possible to give general statements about the long-term dynamics, the construction mechanisms and interdependencies in political systems such as the European Union. This study's research design has opened the way for different follow-ups which could either have a broad focus, like this study, or pick up individual factors for success and failure of legislation processes. A more theory-governed analysis would be possible here. Starting from current (theoretical) debates on

the European Union, such future studies might use the German Reich as a reference. Therefore, I understand this study as a kind of introduction to a totally new examination field: Historical comparative integration research.

A comparison between the German Reich and the EEC/EU is only reasonable if the features of the individual policy areas allow this comparison as well. On the one hand, this applies because, due to the highly sectoral resolution of both systems, a comparison only makes sense if this comparability of political structures is given in the individual policy area. On the other hand, the specific features have to be considered because, in comparison to the 20th century, in the 19th century, political contents were different in many respects. The question at what time of their genesis could both systems be compared with each other has to be newly posed and answered every time.