1. Introduction

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BACKGROUND

This book is the final output of a series of workshops organized by GRALE¹ between 2006 and 2008 with major support from the Villa Vigoni programme² at the Villa Vigoni (Menaggio, Lake Como, Italy). The research has been extended beyond the limits of the Villa Vigoni programme triad (Italy, France and Germany) to include the UK and Norway as thematically particularly relevant.

IN FOCUS: SOCIAL SERVICES, PUBLIC SERVICES

This book offers an international comparison of local government responsibilities and functions in providing public services to the local population. It examines the provision of both social and economic services by local authorities, mainly city governments. Although these categories of service differ strongly, they have been subject to increased market pressure after a long period under the more or less exclusive responsibility of local government, and when local authorities decided to contract out services to private enterprises. This has determined the sample of services selected for cross-country comparison.

Social services are services for people and families. They include child care, long-term care for the elderly and frail, and health services; and they can include basic education, basic cultural amenities (e.g. public libraries) and sports facilities (e.g. swimming pools). Such services are usually financed by budgetary appropriations or social security contributions, and only to a limited extent by user contributions. This is also the case when service delivery is contracted out.

The terminology of economic public services differs from country to country. This may cause confusion but also reflects conceptual differences between countries.

‘Public utilities’ is a term commonly used in the UK and in the USA.
It focuses on the industrial dimension of the service and the idea of duties imposed on the public authority, whereas services are generally offered by enterprises on a market basis. This notion has been adopted by a number of European countries, notably Italy, where the English expression, translated as *servizi di pubblica utilità*, is, by Law 491/1995, which organizes the regulation of such services, preferred to the classical expression *servizi pubblici*. In France, similar services are called *services publics industriels et commerciaux*; this term relates such services to the broader notion of *service public*, which is central to French public law. In this conception, a *service public* is always a legal competence of a public body to satisfy basic needs. This means that the competent body (central or local government authority) is required to establish, organize, regulate and supervise the service, as when it takes the form of ‘public service obligations’ imposed on enterprises operating in the market. In Germany, the expression *Daseinsvorsorge* (which can be translated as ‘provision for existence’) was introduced by Ernst Forsthoff in the 1930s in a context that has limited the possible scope of this notion. Very close in essence to the French notion of *service public*, it has never attained the status of the French term because of the political context in which it appeared. But it has still been used in case law to determine the subject matter and the limits of local government competence. There is nevertheless an important difference: *Daseinsvorsorge* does not include social services, which now derive from the constitutional concept of the ‘social state’, whereas the French notion of *service public* covers both *services publics administratifs* (which include ‘social services’ in the above meaning) and *services publics industriels et commerciaux* (see Moderne and Marcou, 2001; on Germany specifically, see Marcou, 2001a). Whatever the conceptualization, economic public services include local public services such as water supply, sewage disposal, energy supply, public transport, and waste collection and treatment.

With the process of European integration, EC law has developed its own concepts in liberalization policy, aiming to establish the single market by removing all barriers to the market, including those in public service sectors still under state control. The concept of ‘services of general economic interest’ is laid down in Article 106 (2) Treaty on the Functioning of the EU (previously EC Treaty Art.86 (2)), which requires governments to remove all exclusive or special rights and prohibits the establishment of new rights except when the general economic interest makes it necessary to deviate from competition law. However, with the development of the single market and progressive liberalization, the EU (Commission, Court of Justice, member states) has had to face the need to ensure service provision under given conditions, and in the newly competitive framework being established. The directives on electronic communications (2002,
The broader notion of ‘services of general interest’ was later proposed by the European Commission for services not economic in nature that are not subject to competition law. The protocol of the Lisbon Treaty on ‘services of general interest’ confirms this orientation and supports the role of member states in this field, recognizing their ‘exclusive competence’ to establish, organize and fund such services. Although the borderline between economic and non-economic services is blurred, it is clear – especially after the Lisbon Treaty – that liberalized public services in the economic field cannot operate in a pure market regime and that member states should regain responsibility for public services of all kinds, albeit depending on the government structure and traditions of each country.

Beyond country differences and political assumptions by the EU, the comparison also reflects the universal nature of the notion of ‘public service’. This notion is not specific to French public law, although it has been conceptualized at a much deeper level in French public law than in that of any other country that has endorsed this notion. It has not become obsolete because of public policies that acknowledge the role of market mechanisms in the provision of public services. It reflects much more a basic feature of all modern governments. ‘Public service’ exists, and can be identified in one way or another, as soon as government acknowledges that it has to achieve a certain level of coverage of collective needs considered as essential, and that that level cannot be attained merely by matching supply and demand on a market. The government may be central, local or even European; the needs considered essential may vary from one country to another, and even more the level of coverage the government considers it has to guarantee, and all this can change over time, but these variations will not change the core; that is, what is in essence a public service. This explains why, even in countries where the legal system does not use the notion of ‘public service’, the legal regime of services guaranteed by government to citizens is always to some extent specific; that is, it includes some rules or institutions that deviate from the current legal relations between privates (Marcou, 2001b; Prosser, 2005, 2008). It is obvious that the means of providing public services is changing under the influence of liberalizing policies, which such services submit to the market, whereas in the past the public service regime always implied the exclusion of market mechanisms. Also, the coverage area of the public service has become smaller than in the past, but this shift does not invalidate the conceptual and heuristic value of the notion of public service. On the contrary, the new notions introduced by EC law, such as ‘public service obligations’
and ‘universal service’ reflect the core idea of the public service as summarized above, albeit in the context of a new economic policy based on the competitive legal order of the European ‘single market’. The thesis of the withering away of the service public is based on a confusion: the service public is considered as an instrument to impose public purposes on private subjects, whereas its meaning is to guarantee the coverage of collective needs based on the requirements of ‘social interdependency’ (Duguit); the fact that users are facing market behaviours and are induced by the new legal regime to adopt such behaviours will provide no answer to issues of social solidarity and sustainable development. It is therefore wrong to present as a basic change the ‘universal service’ of EC law as a guarantee for the users, instead of the service public as a guarantee for state interests (see Napolitano, 2005, p. 41). The shift to private-law mechanisms, which is not new, is also no argument for the obsolescence of the public service; it has been admitted for a long time that public service duties may be discharged under private-law regimes.

This book will show how local governments have become involved in the services covered here, and why and how they have been induced to give more space to market regulations in the provision of these services. Nevertheless, even in contracting-out procedures or public–private partnerships, they have to keep involved, since they bear the final responsibility for the provision of services, and they are accountable to citizens for that. This explains the reluctance of local governments in all countries reviewed to support privatization policies, since they imply a loss of control on the substance of the service, and why some trends to a return of local governments to the forefront can be observed in several countries.

For the purpose of this research, specific services were selected. Among social services, child care, long-term care and health care were chosen as services with varying local government involvement in health services and a general competence of local government in social care in all countries of the survey, albeit with different degrees of interaction with central or regional governments, and subject to important changes regarding service provision. Among economic services, three have been selected: water supply, waste management and electricity supply. The last is most subject to EU regulations enforcing competition, and also reflects very different starting points in the countries of the survey; the former two are not dependent on networks on a wide scale; they are part of the core responsibilities of municipalities in all countries, although withdrawn from local authorities in the UK several decades ago. Again, we can observe here very different starting points, with a strong municipal public sector in several countries, and on the contrary a traditional involvement of private industrialists in France.
COUNTRY SELECTION

Italy, France, and Germany were selected not only because they were the subject of the Villa Vigoni programme, but also because remarkably few comparative studies of the three countries have been undertaken. This book can therefore fill the gap. The UK/England was included as one of the ‘prototypes’ both of local government and of social and public service provision. Finally, Norway was included with regard to energy provision because it is a conspicuously ‘deviant’ case.

HISTORICAL APPROACH

From a historical point of view, the provision of social services and public utilities has been part and parcel of the development of the modern welfare state.

Since the nineteenth century and earlier, responsibility for providing such services was shared at the local level by local authorities and charitable organizations. The growing involvement of local government amounted to an incipient ‘local welfare state’, which conservatives branded ‘municipal socialism’.

With the advance of the modern welfare state, which, largely with a social democratic stamp, made considerable progress after 1945 and peaked during the 1960s and early 1970s, some services were nationalized in certain countries, shifting provision and ownership from local to central government (the most conspicuous cases being electricity, water and health care during the late 1940s in the UK under a Labour government). While other services remained in local government ownership and responsibility, they were increasingly regulated by national legislation and treated as the local level of the national welfare state. In some countries, again most markedly in the UK, social services were delivered almost entirely by local government personnel. Thus, in the advanced postwar welfare states, social services and public utilities were largely ‘public sector centred’, operated either directly by central government agencies and local authorities or by non-public actors closely related to, if not functionally integrated into, the public sector.

Since the 1980s, this concept and structure of the public sector-centred welfare state have been undermined by various interrelated forces. Neoliberal policies, developed and adopted in the UK after 1979, sought to cut back the expanded and expansive ‘social democratic’ welfare state; the aim was ‘lean government’ reduced to ‘core functions’. Second, ‘new public management’ (NPM) concepts, essentially drawn from private...
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sector principles, sought to revamp the traditional hierarchical (‘Weberian’) welfare state bureaucracy bound by legal rules on the basis of manageralist principles such as cost efficiency and internal flexibility. Third, the public sector focus of service provision was to be overtaken by competitive tendering and ‘marketization’. These changes were driven initially by political shifts in national government and the internationally increasingly dominant NPM discourse. From the 1990s they were promoted by drives for EU market liberalization. The ensuing shifts in the operation of social services and public utilities have shown that direct provision by the public sector has been shrinking in favour of competitive ‘outsourcing’, ‘marketization’, if not ‘asset privatization’, to non-public, not-for-profit and commercial organizations and companies.

It has been a sobering experience that ‘marketizing’ services can raise rather than lower consumer prices and reduce competition between providers rather than increase it by fostering oligopolistic market concentration. This has weakened the role of local authorities as defenders of the public interest against a multitude of providers intent on their own economic objectives. In response, a new conceptual, mental and practical development appears to be gaining momentum to bring the public sector back in by reinforcing its regulatory and instrumental influence and by ‘remunicipalizing’ service provision. The recent global financial and economic crisis to which national governments, not least the USA, have responded by state interventionism in unprecedented dimensions is likely to redefine and ‘bring back in’ the role of the public sector in the subnational and local domain as well.

It is this fascinating development of the provision of social services and public utilities paralleling the evolution of the welfare state that has imposed a historical approach on this comparative study, and the relevant shifts, forces and currents to be identified.

INSTITUTIONAL(-IST) APPROACH

In political-science-based ‘policy research’ it has become conventional wisdom to make a distinction between ‘policy, politics and polity’. In this linguistic triad, policy is the content (concepts, programmes, goals etc.) of policy-making. Politics denotes the conflicts and interactions between actors involved in policy-making. Finally, polity is the institutional setting in which politics is carried out and policies are determined and implemented – with a wide understanding of institutions and institutionalization that encompasses not only formal organization and legal regulation, but also informal institutions and actor networks.
In discussing the different sectors of services and public utilities, although chapters in this volume take a broad policy perspective of the subject matter, policy, politics and polity, they focus chiefly on the polity dimension, on the institutionalization of the services and utilities.

**ANALYTICAL FRAME**

The dependent variable to be identified and explained in examining the institutionalization of service sectors from the developmental perspective comprises institution-building and institutional choice.

In order to conceptualize the explanatory factors (independent variables) in respect of changes or the lack thereof, some help may be gained from the ‘neo-institutionalist’ debate that has recently attracted the attention of social scientists (see Peters, 1995; Schmidt, 2006 for overviews).

Three of the main factors assumed to influence institutional development are considered:

1. Institutional development is assumed to be influenced by historical institutional givens (traditions, legacies stressed by the ‘historical’ variant of institutionalism; see Thoenig, 2003) Historical, entrenched institutions and legacies may set the course for institutional development in what has been called ‘path-dependence’ (see Pierson, 2000).

2. ‘Actor-centred’ institutionalism (see Scharpf, 1997, 2000) directs the analytical spotlight on actors, actor constellations and coalitions. In analysing and explaining the occurrence or non-occurrence of institutional change, this variant of institutionalism primarily considers the constellation of political, economic and other actors, their interests, policy goals, ‘will and skills’ that drive their decisions on institution-building/formation/change. The institutional trajectory can be assumed to be strongly influenced, if not radically deflected from its path, if and when a shift (change of government or regime) occurs in the ruling actor constellation that goes hand in hand with a far-reaching change in policy (as in the UK in 1979). More recently, the EU and European Commission have positioned themselves by pushing for market liberalization by the single European market.

3. ‘Discursive’ institutionalism (see Schmidt, 2002) emphasizes the salience of ideas, or discourses, of the discursive processes and interactions that may mentally and conceptually prepare the ground for institutional change. Discursive institutionalism may serve as a vehicle for transporting dominant international debates (also through institutional isomorphism, see Di Maggio and Powell, 1983). A major
example in our context is the ‘new public management’ debate, which, by promoting the outsourcing and marketization of services since the 1980s, has had a major influence on national debates (see also Wollmann, 2002).

4. The national and international socioeconomic and budgetary context may weigh heavily on institutional change and development.

No one of these or other factors as identified by the different variants of institutionalism can explain the institutional developments under discussion: a somewhat ‘eclectic’ explication is needed (Katzenstein and Sil, 2005).³

COMPARATIVE APPROACH

The studies presented in this volume are comparative in at least three dimensions. First, in examining the historical development service delivery in the countries under review they take a longitudinal comparative perspective. Second, in examining the differences between national service sectors they adopt a cross-country standpoint. Last, in looking at how service sectors within a country differ, they engage in cross-policy comparison.

The analytical potential of this triple approach seems promising. But the three dimensions plus the multitude of possibly explanatory variables make for such analytical complexity that any rigorous, let alone quasi-experimental, design is out of the question.

Instead of aspiring to a methodologically conclusive comparative logic, a heuristic approach has been adopted in formulating hypotheses on six service sectors in four countries in discussion both within each sector study and in the entire group. Corroboration of findings and interpretations was then sought. The analytical and methodological approach was essentially what might be called ‘processual–genetic’ in analysing institutionalization processes; it also relates closely to ‘figurative analysis’ (Verba, 1967), the attempt to identify constellation of factors through ‘soft’ case studies that can plausibly explain institution-building.

COOPERATION AND CO-AUTHORING IN THE INTERNATIONAL GROUP OF RESEARCHERS

In order to make the best use of the analytical competence and empirical knowledge assembled in the group of researchers from four (respectively
five) countries, it was decided that, unlike most similar collective publication projects, which end as country-by-country accounts by individual national rapporteurs, the sector chapters should be prepared and written collectively by author groups composed of researchers from each of the countries.

CONVERGENCE OR DIVERGENCE?

One of the guiding questions of our research was whether the institutional development of the service sectors has shown convergence or divergence.

The convergence hypothesis is supported by the assumption that both national and local decision-making arenas have come under the influence of powerful forces and currents, among which those vaguely subsumed under the terms ‘globalization’ or ‘internationalization’ loom large. Such factors may drive national systems towards convergence at both the national and subnational level. As we have seen, this may also be the case with major international (neoliberal) policy shifts, internationally influential modernization discourses (NPM), and the EU moves towards market liberalization.

By contrast, the divergence hypothesis may be grounded particularly in country-specific institutional, cultural and other traditions that exercise a ‘path-dependent’ influence on institutional development by fostering institutional inertia, resistance to change or even adaptation on the basis of inherited structures and discourses.

The following chapters seek to provide empirically supported answers to this guiding question.

OVERVIEW

After the preceding introductory chapter by the editors, Chapter 2 (Wollmann, Balboni, Gaudin and Marcou) maps out the vertical, multi-level intergovernmental setting in Italy, France, Germany and the UK, setting the institutional stage for the coming chapters on policy and identifying the levels and actors to which functions and responsibilities are assigned in the policy and service fields under consideration. The key features of the regional/meso level are discussed in order to shed light on the vertical, intergovernmental dynamics. Second, the territorial and functional profile of local government is outlined, including variance in territorial reform (amalgamation/consolidation versus integrated intermunicipal cooperation/intercommunalité).
Chapter 3 (Kuhlmann and Fedele) addresses the modernization of municipal administration inspired by new public management, examining both internal and external reforms. In the internal dimension, the reorganization of administrative structures, the introduction of performance management and new steering, controlling and accounting instruments are considered. In the external dimension, the reorganization of local service provision is discussed in relation to private and non-profit actors and the resulting ‘fringing out’ of local government activities and ‘satellitization’ of local government structures. The chapter puts particular emphasis on the impacts and effects of these reforms in the three countries concerned.

Chapter 4 (Hill, Long, Marzanati and Bönker) deals with an area of policy that displays strong similarities across the four countries (e.g. similar approaches in child protection involving the courts and key roles for public agencies; a low level of child care provision in the early years with strong independent sectors; strong emphasis on pre-school education, with the main institutional provision linked with the regular education system, except in Germany).

In many respects, dissimilarities arise from differences in local government systems and/or the relationship between central and local government, such as relatively uniform systems in France and the UK (with different kinds of control and monitoring in the two countries, and stronger emphasis on this kind of service in France), variations between Länder in Germany, and greater autonomy at the regional and local levels as a source of diversity in Italy. The strong central policy drive towards pre-school education and child care to facilitate parental labour force participation is causing some convergence. In this respect, developments in Italy, the UK and Germany may be reducing differences between their systems and that of France (action against de facto diversity in Italy despite central legislation, increased central control of local authorities in the UK, federal government intervention in family policy in Germany).

Chapter 5 (Bönker, Hill and Marzanati) traces changes in the provision of long-term care in England, France, Germany and Italy since the early 1990s. While policy reforms have differed substantially, a common trend towards centralization and marketization/commercialization is apparent. The role of central government and/or social insurance funds in financing and regulating services has increased, as long-term care has become too important an issue for economic, social and political reasons to be left to local government. On the other hand, commercial service providers have gained ground, partly replacing public or non-profit providers or meeting the increasing demand for services from ageing populations.

Chapter 6 (Grunow, Longo and Long) discusses health services in Italy, France and Germany. After describing the rather similar starting
conditions in the three countries, the authors examine development paths towards the decentralized, tax-based public system in Italy; the centralized, insurance-based public system in France; and the insurance-based, mixed system of self-organization and public responsibility in Germany. Service production and delivery design are influenced by financing systems, the system of medical and paramedical professions, and service organization (outpatient, inpatient). Despite different path-dependencies, convergence is apparent in the variously exercised, increased central control over the system to curb health expenditure. In contrast, there is notable diversification of service delivery agencies and actors, and regional governments in Italy have broader responsibility. In all three countries these changes are propelled by the health systems’ ongoing financial problems.

Chapter 7 (Dreyfus, Ianello, Toeller and McEldowney) considers the institutional framework for waste management in four countries – France, Germany, Italy and the UK in a development that has been increasingly influenced by the EU. The main focus is on how local agencies and institutions are coping with new arrangements that have transformed their role through public contracts, private finance initiatives and other devices. These changes come at a time when public perceptions about waste have become more acute.

Waste management accordingly places local authorities at the apex of control in contributing to environmental protection and also influences the way in which local authorities deliver goods and services. The outcome of waste management strategies is to revitalize the role of local authorities as pivotal actors in making policy, enforcing good practice and managing resources.

Chapter 8 (Wollmann, Baldersheim, Citroni, Marcou and McEldowney) focuses on the role of local government in energy supply in France, Germany, Italy, the UK and Norway. The starting conditions for local energy supply differ strongly, ranging from monopolistic local authority ownership and operation of local power plants (the ‘deviant’ case of Norway included for this reason) to early outsourcing of local energy supply in France. Nevertheless, energy supply has commonly been regarded as a local service on a protected local market or even as a local monopoly. Since the 1990s, the local energy sector has experienced profound changes, largely driven by the EU market liberalization policy designed to open national energy markets, particularly by ensuring discrimination-free and competitive access to distribution and transmission networks for all providers. Local distribution areas have of course been affected. Despite remaining institutional differences, there has been a general trend towards universal access under a concept of electricity as a commodity, the quality and price of which is determined by national
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and international markets. The question is whether splitting up national energy monopolies to build up a market will give a new opportunity to local government, which has lost control over electricity in countries such as the UK and France. The problems caused by liberalization might offer government at all levels the opportunity for a ‘comeback’, as in Germany moves towards some ‘re-communalization’ of local energy provision (through a renewed expansion of the traditional municipality-owned multi-utility companies, Stadtwerke) seem to indicate. Whether such re-entry and ‘comeback’ of the public/municipal sector in energy provision is a marginal and passing phenomenon or a momentous and permanent change remains to be seen.

Chapter 9 (Citroni) discusses water management in Italy, France and Germany, describing the history, organizational structures and legal framework of the sector. For each country, specific issues defining the nature and evolution of water service politics are addressed, including public–public (intercommunal) partnerships, public–private partnerships, principal–agent relationships in concession contract management, corruption and environmental protection. On the whole, the pendulum in all three countries has swung from private management in the nineteenth century to municipalization in the twentieth century and back to privatization, combined, however, with persisting concern for water as a ‘special’ good (merit or common good) that should not be left to the market as such. Conspicuous differences between countries exist in the instruments and success with which local authorities control service management units.

Chapter 10 (Grossi, Marcou and Reichard) examines the different organizational forms of local government service delivery. One major focus is ‘corporatization’ in Germany and Italy; that is, corporations still fully or partly owned by municipalities but which enjoy organizational, legal and financial autonomy. The authors also discuss the consequences of corporatization for steering and controlling municipal holdings, and argue that the existing structures and mechanisms of public corporate governance are insufficient for effective control. However, this trend has little relevance for France, where the municipal public sector has always been smaller because of the widespread and ancient practice of contracting out major municipal economic services (water supply, gas and electricity supply, public transport, and even street lighting) to private companies, and the postwar establishment of national public enterprises. Nevertheless, French law recognizes two types of corporatization for municipal services within the public sector: the public corporation (régie personnalisée) and the ‘local mixed economy company’ (SEML), recently supplemented by companies in the full ownership of local authorities. Over and above the
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variety of solutions adopted, this demonstrates the attempt in all three countries to introduce industrial and entrepreneurial dynamics to the local public sector.

Chapter 11 (Wollmann and Marcou) offers the editors’ comparative conclusions. Taking up the volume’s guiding question as to whether the developments have been convergent of divergent from sector to sector and country to country, they argue that the chapters of the book invite ambivalent, if not contradictory conclusions. On the one hand, the (advanced welfare state-typical) public/municipal sector-centred model of public service delivery has been profoundly impacted by the combined onslaught of neo-liberal concepts (‘lean government’), NPM tenets (‘marketization’) and EU policy (‘market liberalization’). Hence, on the one hand, a (convergent) ‘mega-trend’ is apparent from public sector-based service to ‘privatized’ service provision, be it through ‘formal’ (‘organizational’), privatization (‘corporatization’), or wholesale (‘material’, asset) privatization. One the other hand, within and notwithstanding these general trends, there is a significant divergence between the countries under study in developments on the ‘micro’ scale due to country-specific historical, institutional and political factors and particularities.

Recently, reflecting the sobered assessment of effected privatization of public services, particularly by way of wholesale material/asset privatization, some rethinking of this strategy had set in among local authorities concerned, as is evidenced for instance, by German local authorities recently embarking upon the ‘remunicipalization’ of previously sold off public utilities.

Finally linking up with the ‘governance’ debate, the summary chapter discusses whether and how the role of (‘traditional’) local government has been effected by the pluralization and ‘satellitization’ of ‘governance-type’ institutions and actors in the wake of the formal of material privatization of service provision.

NOTES

1. GRALE (Groupement de Recherches sur l’Administration Locale en Europe) is a multi-disciplinary scientific network on local government and local public policies, backed by the French CNRS and a partnership of public institutions and enterprises, and located at the University Paris 1 Panthéon-Sorbonne, which is also a member of this partnership.

2. The Villa Vigoni programme is funded by the three ‘anchor’ countries: Italy, Germany (Deutsche Forschungsgemeinschaft, DFG) and France (Maison de Sciences d’Homme, MSH). Additional financial support for the conferences came from Groupement de Recherches sur l’Administration Locale en Europe (GRALE).

3. For the application of a similar analytic frame for an international comparative study of public sector reforms see Wollmann (2003, p. 231).
REFERENCES


