

New Governance and the Transformation of European Law

The development of non-binding new governance methods has challenged the traditional ideals of EU law by suggesting that soft norms and executive networks may provide a viable alternative. Rather than see law and new governance as oppositional projects, Mark Dawson argues that new governance can be seen as an example of legal ‘transformation’, in which soft norms and hard law institutions begin to cohabit and interact. He charts this transformation by analysing the Open Method of Coordination for Social Protection and Inclusion (OMC SPSI). While this process illustrates some of the concrete advantages for EU social policy which new governance has brought, it also illustrates their extensive legitimacy challenges. Methods like the OMC have both excluded traditional institutions, such as courts and parliaments, and altered the boundaries of domestic constitutional frameworks. The book concludes with some practical suggestions for how a political ‘constitutionalisation’ of new governance could look.

Mark Dawson is an assistant professor of European Law at Maastricht University. He is a member of the editorial board of the *Maastricht Journal of European & Comparative Law*, and the co-director of Maastricht University’s English language LLM programmes in International Laws, Globalisation & Law and European Law School. He is also a scholar within the Maastricht Centre for European Law.

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Series editors' preface

Amongst the burgeoning literature on governance in the EU, work which addresses the phenomenon of 'new governance' has begun to diversify in character. No longer does such work simply chart the emergence of new governance styles, noting in particular their utility for steering policy in areas where the member states are reluctant to cede sovereignty and to opt for the more traditional 'Community method', such as areas of social policy or even economic policy coordination. Studies are thus no longer always confined to particular sectors, or to descriptive analysis. New work now problematises the concept of 'new' governance, questioning what is 'new' about it, articulating how governance does or does not differ from the long-established term 'government' (always problematic in the EU context), and defining the parameters of an emergent legal theory of new governance. This is the central question of Mark Dawson's elegantly written new volume, where he brings the concepts of law and governance into synergy and into conversation, rather than viewing them as oppositional concepts or regulative techniques. In that sense, new governance can be studied as an integrated dimension of the composite EU legal order, in a manner which takes into account the polyvalent and multilevel character of that order, with inputs not only from the EU institutions as lawmakers, but also from the member states' constitutional frameworks and implementation apparatuses. Thus rather than being a study of a system of new governance as such, although along the way Dawson focuses on the so-called Open Method of Coordination as it is used in areas of social policy in relation to the so-called Lisbon strategy for promoting the competitiveness and openness of the European economy, Dawson's work represents a confrontation with a variety of theories which seek to explain the character, scope and nature of the European legal

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order, which focus in particular on the reflexive and procedural character of law.

While conceptually rich, Dawson's work also has an interest for a wider audience, in a work that is fully aware of the practical implications of the EU and the member states adopting different approaches to major societal tasks, such as ensuring the sustainability of the welfare state, whilst protecting its key features such as universal coverage, as they have emerged in post second world war Europe. (Social) Law, therefore, needs to be intensely political, without losing all of its essentially normative character. Dawson's work carefully retreads that well-worn path between law and politics, and between facts and norms.

Jo Shaw
Laurence Gormley

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MD

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