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## Controversies around the Brexit

### Discourse Analysis, Integration Theories and Ordoliberalism offer Insight and Orientation <sup>1</sup>

„Three major systems of exclusion hit the discourse: the forbidden word, the exclusion of madness, the will to truth.“ (Michel Foucault: Die Ordnung des Diskurses, 2.12.1970; dt. 2019: 16, Translation: S.R.).

**The reporting on the (post) Brexit negotiations 2019-2020 is a textbook example of how the media increasingly steer social discourses and influence political decision-making processes that actually belong in the hands of the sovereign, the citizens. Foucault's discourse analysis makes media techniques aware to recognise what has not been said, to question doctrines and to form one's own judgement. This makes it clear that the withdrawal of the United Kingdom (UK) means more to the European Union (EU) than the loss of a member. It is about the sovereignty to interpret "Europe" and about the direction European integration should take. The ambiguity of the European movement no longer has any place in this discourse and the narrative of a "natural" "spill-over" (neofunctionalism) of powers to Brussels thus becomes the only truth. The functionalist theory, which is based on cooperation between sovereign states, should no longer apply to European policy. Probably for this reason the national parliaments were denied the fact that Brussels had concluded other agreements with the UK in addition to the trade agreement, including on the peaceful use of nuclear energy. Finally, the ordoliberal approach can explain the dissent in the negotiations: the EU leaders place the sovereignty of the internal market above that of states.**

The final withdrawal of the United Kingdom (UK) from the European Union (EU) at the beginning of 2021 had once again triggered fierce controversy. But the uncertainty about whether both sides will agree on successor agreements by the end of the transition period was mainly due to the lack of transparency in the conduct of the negotiations. This was compounded by reporting which, in the absence of concrete information, appeared to be incomplete or even misrepresentative of contentious issues such as fishing rights, EU standards and the status of Northern Ireland. Therefore, credible analyses on this cannot be limited to an examination of the facts alone.

From a scientific perspective, Brexit and the negotiations on subsequent agreements are a lesson in how easy it is to generate opinions by passing on certain information. But if they are to

ensure that long-standing allies and trading partners do not become competitors but political opponents or enemies, Brexit could prove to be the harbinger of a whole series of intra-European conflicts. Instead of the desired integration, they will trigger further disintegration processes at regional, inner-state and supranational levels.

The following analysis aims to present various methods with which the latest developments on Brexit can be reviewed. This article does not claim to present a fully developed research design. However, it would like to provide various impulses for deeper and more detailed analyses in order to meet the demands of a pluralistic science. **Discourse analysis** can be used to check the information gaps already mentioned. It goes back to the French philosopher Michel Foucault and has been further developed by social scien-

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tists of different schools since the 1970s (Traue, Pfahl, Schürmann 2014: 566f.).

It is not without reason that the approaches are always mentioned in the plural (bpb.de 2020), as they are based on very different theories on the course and objectives of integration processes. The greatest disagreement lies in the assessment of whether integration processes lead to spill-over effects that trigger state-building. While **functionalism** (or intergovernmentalism) denies this, **neofunctionalism** is more normatively oriented. It assumes that the European Union, for example, will gradually transform itself into a supranational state. Brexit offers political scientists in particular a good opportunity to re-examine these approaches in terms of their explanatory content. These processes do not take place isolated in Europe, but in the context of global economic developments. From the author's point of view, one of many interesting models is the interdependence of orders. It is also known in the literature as **ordoliberalism** and is associated with the German economist Walter Eucken (eucken.de). He is considered a pioneer of the social market economy in Germany after the Second World War (kas.de, 2021). His model was initially superseded by ne-

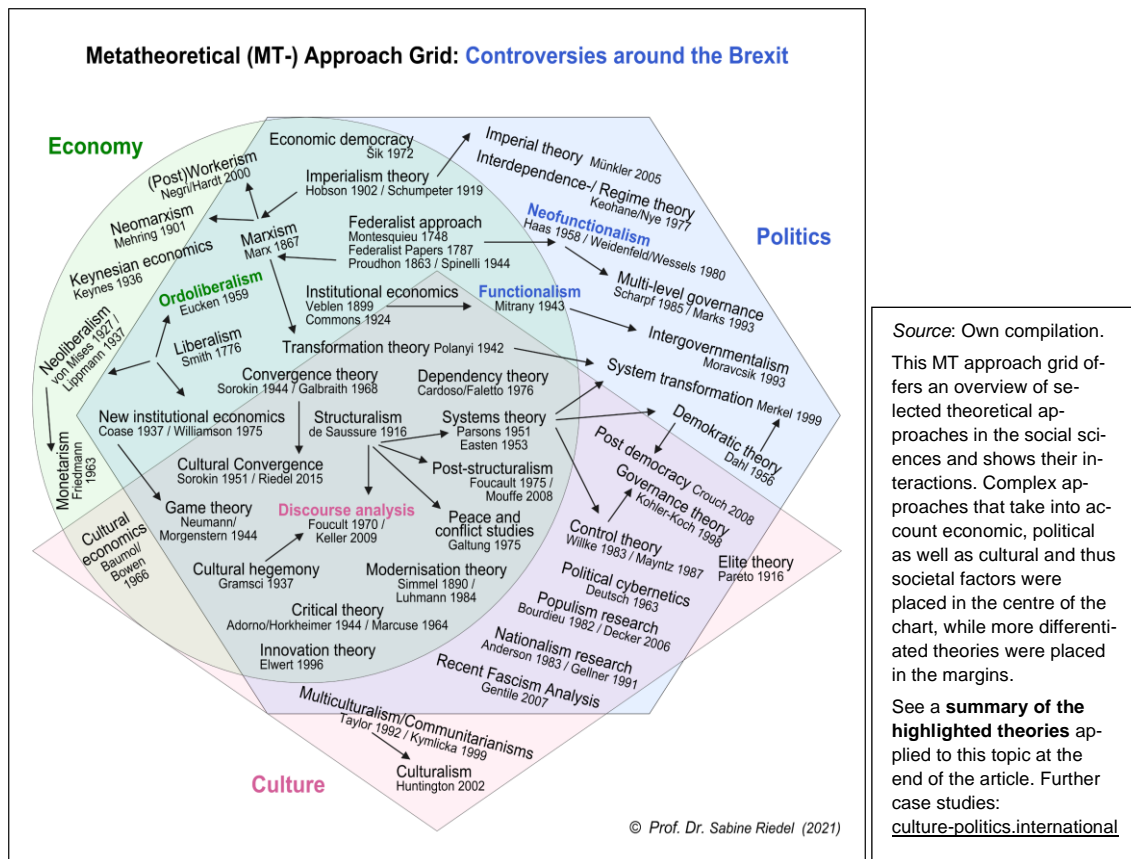
oliberal doctrines and then by monetarism, a theory according to which the control of the money supply has the decisive influence on economic life.

Figure 1 serves to orientate and classify theoretical offers from the social sciences. For this metatheoretical approach grid (MT approach grid) the best known were selected and placed according to the degree of complexity they provide to explain reality. It is noticeable that older theories from the 19th century do not consider economic, social-cultural and political phenomena separately. In contrast, the 20th century was a period of differentiation of new fields of knowledge and research, such as political science. Today, the trend is clearly going back to interdisciplinary thinking and acting, not only because this method promises deeper insights into social contexts, but also because companies cannot be innovative without it.

### 1. Discourse analysis examines rules of participation, control and governance

Since Foucault's discourse analysis has been received in Germany or in the German-speaking countries, social scientists have adapted and fur-

Figure 1



ther developed this theoretical approach to their respective sub-disciplines (Keller u.a. 2011). Although all the authors refer to Michel Foucault, quite a few have moved away from his original core points. Some regard discourse analysis today as a useful set of methods of empirical social research for analysing the content of debates (Diaz-Bone 2006). Others use it as a "political concept" to not only examine discourses critically, but to initiate them and influence their course themselves (Jäger/Jäger 2007: 37). In view of this variety of interpretations, it makes sense to return to the original and present the essential elements of Foucault's discourse analysis in this thematic framework.

As a structuralist, Foucault is interested in the "order of discourse", which is constituted by "procedures" (Foucault 1070: 11): In brief, the author distinguishes between the external control procedures that decide on the emergence of discourses, the internal procedures for controlling contents or their interpretations, and finally the procedures for regulating access to discourses and thus limiting the actors involved. All three classes of procedures are manifested in various forms, some of which are selected below and applied to the Brexit negotiations. This analysis is limited to discourses in the German-language media under the question of how the discourse on the withdrawal negotiations was conducted on the side of the EU and its member states.

Foucault's theoretical approach already proves to be very helpful with regard to the external control mechanisms in order to understand the progress of discourse in the years 2019-2020. Interesting in this context are two demarcations that are an important instrument of discourse control, namely the distinction between true and false and the "distinction between madness and reason" (Foucault 1970: 11 f.). In contrast to open banning or tabooing, these two instruments draw an invisible line to exclude unwelcome aspects from the discourse. They were used by leading German media against the new British Prime Minister Boris Johnson, apparently to bring the reasons for the failure of his predecessor Theresa May from the headlines. As a result, the German press hardly discussed the question of why she entered into a compromise with the EU in autumn 2018 against her former negotiating position, which in the end failed in the UK. (Riedel 7/2019: 4, Riedel 9/2020: 3).

Even as a change of government loomed on the horizon after May's third defeat in the British parliament (zeit.de, 18.3.2019), journalists from the news magazine Der Spiegel reported from the

British parliament: "There are signs of mental illness here". (Der Spiegel, 12.4.2019). It was said of the Tory campaigner Rupert Matthews: "He believes in aliens, ghosts and Brexit." (Der Spiegel, 17.5.2019) When Boris Johnson appeared as a possible successor to May, Der Spiegel published an entire issue under the title "Mad in England" shortly before his appointment as the new prime minister (24 July 2019), with his distorted portrait based on the title character of the satirical magazine "Mad" (Der Spiegel, 20.7.2019). In it, he was classified by the media as a "harlequin", a "figure of fun in British politics" and a "political illusionist" (see Figure 2). This image was obviously in-

Figure 2

#### House memo on the Spiegel cover "Mad in England" from 17.7.2019

When Jörg Schindler, UK correspondent, first dealt more intensively with Boris Johnson, he faced him in his pants. It was at the Fringe Festival in Edinburgh, 2017, where visitors to the "Brexit musical" were deliciously amused by this figure of fun in British politics, who seemed to be past his prime. Johnson, who was foreign minister at the time, was still good as a human bobble dog and toy doll for dogs. His Tory colleagues in parliament rolled their eyes when Schindler asked them about Johnson, and answered the question of who would become prime minister after Theresa May: "Anyone but Boris." Next week that same Boris will very likely move into 10 Downing Street. "The Conservatives are so desperate about Brexit that they are glorifying a harlequin as a saviour," says Schindler. A portrait of Johnson was alienated for the SPIEGEL cover, based on Alfred E. Neumann, the cover figure of the satirical magazine "Mad".

#### Deutschlandfunk, 22.7.2019: "Boris Johnson. Politician, Journalist, Storyteller".

[...] The face of Alfred E. Neumann, the title figure of the satirical magazine MAD, is a worldwide symbol of boundless stupidity. This week, the German news magazine "Der Spiegel" changed Boris Johnson into exactly this face. The probably future British prime minister must have smiled tiredly at this. Johnson is used to unflattering comparisons; he has already been called "Pinocchio", "Baron von Münchhausen" or "Serial Liar". [...]

Michael Stabenow of the FAZ also thinks that the line between "fairy tales and truth" has often been crossed. Some stories would have contained a "grain of truth", like the one about the EU wanting to standardise condom sizes across Europe. Others were "absolute inventions". With this kind of journalism, he was not a style-maker for the British press, but he had perfected the whole thing. "To me he felt like an autistic person thinking about himself and his stories." [...]

Sources: Der Spiegel, 19.7.2019 und 20.7.2020; Deutschlandfunk, 22.7.2019 [Highlighting blue: S.R.].

tended to be presented to a broad spectrum of readers, cf. other headlines such as: "Politician, Journalist, Storyteller" and "Autist". ([Deutschlandfunk, 22.7.2019](#), see Figure 2), "A madman or a genius?" ([Gala, 23.7.2019](#)), "Bully, lunatic, 'sex-tator' – or is it a genius?" ([rtl.de, 25.7.2019](#)), "That's how crazy the British Prime Minister is" ([news.at, 30.8.2019](#)) o "Megalomaniac lunatic or lunatic megalomaniac?" ([PamS, 8.9.2019](#))

Those media that have adapted more quickly to the new balance of power in the UK have since used a different narrative. They locate the "mentally ill profile neurotic" "somewhere between a pathology and a mugger mentality". ([eurojournalist.eu, 26.6.2019](#)). So for them, Boris Johnson is

Figure 3

**Die Tagesschau, 23.7.2019:  
"Boris Johnson. The cocky troublemaker"**

For a long time, many Tories did not trust Johnson with an important office. He never took the truth so seriously; he was considered light-footed and loud-mouthed and never left out a faux pas. Now he becomes Prime Minister. [...]

Lies and faux pas

Johnson has never really been one for telling the truth. As a young correspondent for The Times in Brussels, he regularly poured poison and bile on the EU bureaucracy. However, the newspaper then kicked him out because many of the quotes he used to spice up his articles were fictitious. Before the referendum, the label on the red bus Johnson was driving across the country promised that leaving the EU would save £ 350 million a week and invest in British hospitals instead. The number wasn't right." [...]

**Cicero, 26.7.2019:  
"Boris Johnson. Britain's Bluff Package"**

[...] You cannot simply wipe away the opinions and statements of the many critical voices against Boris Johnson. The facts Johnson loves to twist are clear: He is an rude swindler. So how could it be possible that this man was promoted again and again despite all his missteps and lies? How could he even become the most powerful man in Britain? Why is Johnson so loved by large parts of the British population? [...]

The Londoners loved him in his time as mayor because he always gave refreshing statements on radio and television. Or because of the "Boris Bikes", rental bicycles that you could borrow at every corner. They love him because he banter and gives witty answers on the car show Top Gear with cult presenter Jeremy Clarkson. His directness, his gruffness, his charm, his fuzzy hair, all these are the gifts for Boris Johnson. He hides his incompetence behind a veil of grand gestures and even grander words. When Boris Johnson speaks, he seems to shake a tree and the previously narcotised listener falls down. [...]

Sources: [tagesschau.de, 23.7.2019](#), [Cicero, 26.7.2019](#) [Highlighting blue: S.R.].

not so much a pitiful "madman" as "an uncouth swindler" who "was promoted again and again despite all his missteps and lies". ([Cicero, 26.7.2019](#)). According to Foucault's discourse analysis, an exclusionary procedure based on the "contrast between the true and the false" is used here (Foucault 1970: 13). In this sense, the ARD correspondent in London also knows how to report: "[...], he was considered light-footed and loudmouthed and never left out a faux pas. [...] Johnson has never really been one for telling the truth." ([tagesschau.de, 23.7.2019](#), see Figure 3) Der Spiegel stuck to its decidedly sharp tone and titled: "King of Gamers" ([Der Spiegel, 7.9.2019](#)) or "The Blackmailer" ([Der Spiegel, 2.10.2019](#)).

The image of a successful "gambler" indicated that Brussels feared Johnson's success in the re-negotiations. The discrediting of his person apparently served to explain a possible failure of the post-Brexit negotiations. The article speculated that his compromise offer "leaves the EU practically no other choice than to reject it. Some in London believe that this is exactly what Johnson is up to" ([opt. cit.](#)) The image of the "blackmailer" is imaginatively embellished like in a Hollywood script: Only shortly before the resumption of the bilateral talks at the beginning of October 2019, "Johnson's plans leaked and these apparently caught the EU negotiators coldly", so that a "two-week showdown" is imminent ([opt. cit.](#)).

The public service media tended to follow the facts and reported that alternatives to the controversial special status (backstop) for Northern Ireland were already on the table weeks before. The ARD informed: "A solution to the issue is now in sight. However, it is not new." ([tagesschau.de, 13.9.2019](#)) The core issue of the dispute is also described appropriately: The UK's exit from the EU's single market makes controls between Ireland and Northern Ireland necessary. From Brussels' point of view, the backstop would have avoided this and kept the peace in Northern Ireland, but from London's point of view it would have created a "new trade border between Northern Ireland and Great Britain" ([opt. cit.](#)). What even such factual reports omitted was the EU's share of responsibility for the failure of the first draft treaty. British Prime Minister Theresa May had contacted EU politicians at the beginning of 2019 to ask for a guarantee. These were intended to refute arguments that the [Withdrawal Agreement of 14.11.2018](#) could keep Northern Ireland in the EU single market for a longer period of time and in this way also politically detach it from the UK. ([Legal advice, 5.12.2018](#)). But there was no response from the EU ([Riedel 5/2019: 2](#)). If Brus-



sels had clarified the situation with a short statement, the treaty would very likely have passed through the British Parliament. As it was, the ranks of sceptics in the UK gradually closed, which was reflected in a historic election success for Boris Johnson after the [contract was signed on November 12, 2019](#). The EU had even lost political ground in the course of the renegotiations: The controversial backstop was cancelled.

## 2. Functionalism – neofunctionalism: Competing integration concepts for Europe since 1945

Before we discuss the benefits of integration-theoretic approaches using the example of Brexit, we will first continue to describe the developments in 2020 from the perspective of discourse analysis. Only then will an overall picture emerge that allows a useful comparison of the theoretical offers and a look at the future of Europe and the EU. The emotionally tense and complex topic should be put on a factual basis. Only this step will allow us to assess whether European integration can achieve its goals, however they are set, or whether it may have the opposite effect.

The control of public discourses on the Brexit negotiations continued with the UK's withdrawal on 31.1.2020. In the 11-month transition phase that followed, further control procedures were used - viewed from Foucault's approach. Probably the most important instrument for controlling discourse content is the "commentary" (Foucault 1970: 18). He can push himself to the fore and thus gain visibility, i.e. create the appearance of authenticity and reliability. Not only are other interpretations marginalized, but the original text may also be completely replaced.

An example of this is the reporting after the signing of the Brexit agreement on January 24, 2020. How did the German-speaking media explain to their readership the compromise reached, in particular the elimination of the controversial backstop rule? s a reminder: After that, for a transition period of at least 1.5 years a) Northern Ireland should remain in the EU single market while the rest of the UK leaves it, and b) the whole UK form a new customs union with the EU, while respecting the EU Standards ([Riedel 7/2019: 3](#)). From London's point of view, this would not have meant the restoration of its full sovereignty, because it would have prevented the possibility of treaties with other states.

Wirtschaftswoche, "Germany's leading business magazine", appropriately commented that a compromise solution was found on 17.10.2019:

"May's successor has achieved to remove the unloved backstop clause from the agreement." ([wiwo.de, 17.10.2019](#)). In the text of the treaty itself, i.e. in the Protocol on Ireland/Northern Ireland, this was explicitly reflected in two articles. Article 4 states: "Northern Ireland is part of the customs territory of the United Kingdom." The Additional Protocol also stated that "nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries [...]". ([Brexit-Vertrag 2019-I: 94](#)). Article 6 on the "Protection of the UK internal market" regards "to Northern Ireland's integral place in the United Kingdom's internal market [...]". ([cit. opt.: 96](#)). In return for this recognition of its full state sovereignty, the UK accepted EU standards in Northern Ireland for a transitional period. The open question of where and how to carry out the necessary checks was left out of the treaty and referred to the Northern Ireland Protocol Committee, one of a total of six specialist committees (see Article 165, [cit. opt.: 83](#); [Riedel 9/2020: 7, Meetings, EU-UK J&SC](#)).

Despite these clearly formulated text passages, some journalists stuck to the backstop rule in their comments. For example, an article in the Frankfurter Allgemeine Zeitung (FAZ) in late summer 2020, looked back: "In October [2019, S.R.], a new solution was found at Johnson's request: Northern Ireland will remain largely in the EU's internal market, but will also be part of the British customs territory." ([FAZ, 10.9.2020](#)). This news was not an isolated case, as a commentary by Deutschlandfunk shortly before the conclusion of the new trade agreement shows: "But after her [Theresa May's, S.R.] failure and overthrow, Boris Johnson took over the British leadership and signed a divorce agreement that left the British province of Northern Ireland in the European Single Market and Customs Union." ([Deutschlandfunk, 30.12.2020](#))

Not only press representatives, but also the EU negotiators were extremely creative with their comments on the Brexit agreement. They allowed for misinterpretations that complicated negotiations on successor agreements during the transition period between 1 February and 31 December 2020. While both sides agreed in their Political Declaration on "high standards of free and fair trade and workers' rights, consumer and environmental protection", ([Withdrawal Agreement 2019-II: 178, Point 2.](#)) the EU subsequently interpreted this normative framework in an opinionated manner. In the EU guidelines for the negotiations,

there was suddenly talk of standards having "[European, S.R.] Union standards as a reference point", namely "in the areas of state aid, competition, state-owned enterprises, social and employment standards, environmental standards, climate change, relevant tax matters and other regulatory measures and practices in these areas" ([Directives 25.2.2020](#)).

In the first half of 2020, the British government had to see those contentious issues put back on the agenda that Boris Johnson had "negotiated away", namely the backstop and EU standards. This did not happen in back rooms, but in statements prepared for the media. EU chief negotiator Michel Barnier confidently defended his position: "The British government has so far refused to accept the EU's social, environmental and consumer standards in return for largely unhindered access to the European internal market." ([zeit.de, 5.6.2020](#)) The British side tried to counteract this through the media. In an open letter, the UK's chief negotiator David Frost addressed his EU counterpart saying: "We do not seek to remain part of the Single Market or the Customs Union, as we do not believe this is in the UK's interest".

Figure 4

**David Mitrany:  
A World Peace System (1943)**

**The functional Alternative**

Can these vital objections be met, and the needs of peace and social advance be satisfied, through some other way of associating the nations for common action? [...] A question which might properly be asked at the outset in considering the fitness of that method for international purposes is this: **Could such functions be organized internationally without a comprehensive political framework? Let it be said, first, that the functional method as such is neither incompatible with a general constitutional framework nor precludes its coming into being.** [...] One of the misfortunes of the League experiment was 'that a new institution was devised on what have proved to be outworn premises. We might also recollect that of the constitutional changes introduced in Europe after the First World War, fine and wise though they may have been, none has survived even a generation. How much greater will that risk of futility be in Europe after the Second World War, when the split within and between nations will be much worse than in 1919? [...] Even if an action were to be to some extent handicapped without a formal political framework, **the fact is that no obvious sentiment exists, and none is likely to crystallize for some years, for a common constitutional bond.**

Source: David Mitrany, A World Peace System, 1943, Reprinted, Quadrangle Books, Chicago 1966, S. 93-113, insb. 99.

[Translation and highlighting blue: S.R.]

([gov.uk, 19.5.2020](#)). The letter, which is also available in German, goes on to say that, "we are looking for a suite of agreements with a Free Trade Agreement at its core." This information was completely ignored by the German press and excluded from the discourse.

Because the work in the Specialised Committee on the Protocol on Ireland/Northern Ireland came to a standstill and negotiations threatened to break down, London introduced an Single Market Act at the end of May 2020, which was intended to firmly integrate Northern Ireland into future trade within the UK. It gave the government the power to suspend some provisions of the Northern Ireland Protocol and to allow state aid to Northern Ireland companies if the talks failed ([Briefing Paper, 23.12.2020](#)). German-speaking media have already spoken of a breach of the law ([tagesschau.de, 21.9.2020](#)), but without addressing the EU's shared responsibility. On the contrary, they offered Michel Barnier a forum to justify a possible breakdown of the treaty negotiations: "Who wants to conclude a trade agreement with a country that does not implement international treaties?" ([zeit.de, 7.9.2020](#)) Thus, the staging of a "showdown" at the end of 2019 ([Der Spiegel, 2.10.2019](#)) was repeated in the following year ([sueddeutsche.de, 7.12.2020](#)). Therefore, the announcement of an accord on trade agreement on 24.12.2020 came as a complete surprise.

With the help of discourse analysis, it was possible to work out that the debates, especially during the post-Brexit negotiations, excluded important information, so that misperceptions and misjudgements had to occur. Integration theories furthermore explain the underlying interests and the crucial disagreement between the actors involved: it is about sovereign rights. While the UK insists on restoring its full national sovereignty, including its foreign trade, Brussels wanted to give back as little of it as possible. Differences of opinion, however, affect less the concept of sovereignty in general, such as the question of whether it is not outdated in a globalized world ([nzz.ch, 18.12.2020](#)). On the contrary, the dispute over exit modalities and successor agreements shows that the struggle for national sovereignty is coming to a head today. Because they stand for the control of the legal systems and enable entry into international diplomacy.

The stakes were particularly high for Brussels, which had to fear that during the Brexit it would lose its sovereignty over the interpretation of the character and goal of European integration. This is based on the neo-functional assumption that close state cooperation within the framework of

common institutions triggers a spill-over effect. There is automatically a "transfer" of sovereignty to the supranational level, a deepening of integration: "The basic assumption of the approach is that the process of integration develops its own dynamics, which were not originally intended by the member state governments, cannot be controlled and cannot be reversed". ([Holzinger 2013: 469](#)) The outcome of the Brexit referendum (June 23, 2016) surprised the supporters of this school all the more: Contrary to their theory, a member state of the EU is turning its back for the first time, also on the basis of democratic procedures. Reality has in fact refuted the academic thesis of the spill-over effect, which has been valid for more than 50 years and has already solidified into political doctrine. Thus, it is no coincidence that the established European studies have since been reflecting on disintegration processes. Alternative approaches that were ignored are now being taken up again and the scientific discourse is enriched with colourful terms such as "post-functionalism" ([Desintegration 2016: 207](#), [Schimmelpfennig 2018: 13](#)).

The main competitor of the neo-functional approach is still functionalism, which was developed by the British historian David Mitrany 15 years earlier during the Second World War. He intended to contribute scientifically to a rapid reconstruction of the economy, politics and society after the end of the war. Its functionalist concept should point the way to closer cooperation on an international level. However, his approach did not require any institutions at the supranational level that would curtail national sovereignty. Mitrany explained this with the argument that such a requirement would have been a hurdle that was far too high to win over states for cooperation that were still at war at the time (Mitrany 1943: 99, cf. Figure 4).

As the term neofunctionalism already suggests, it sees itself as a further development of the earlier, seemingly "outdated" functionalism. Over the years, this narrative has found its way into textbooks and internet platforms ([wikipedia, 27.4.2020](#)) and has caused the neofunctionalist approach – despite many other integration theories – to be considered perfected and almost uncontested to this day. As the founder of functionalism, Mitrany always defended himself against the appropriation of his theory by name and presented scientific arguments in this regard. He always emphasised the important difference between his theory and the neo-functional approach: interstate cooperation does not require the transfer of state sovereignty. His followers can

be found today in the school of (liberal) intergovernmentalism, according to which nation-states are the real actors in international politics and will remain so for the time being ([bpb.de, Integration](#)).

### 3. Ordoliberalism: The interdependence of state and economic order

The dominant position of the neofunctionalist approach in European studies means that political science appreciates the achievements of functionalist theory only in relation to international politics. Its significance for European integration is always disregarded or, if considered, then only in a historical context. The starting signal for the integration process in Western Europe was given by the Council of Europe, which adopted the European Convention on Human Rights as a basic document just one year after its constitution in 1949 ([EMRK, 4.11.1950](#)): The 10 founding members, including Great Britain, France, the Benelux countries and the Nordic states, thus first followed this functionalist approach before agreeing on economic cooperation in the form of the European Coal and Steel Community and EURATOM (see below) according to the reading of neo-functionalism. Therefore, European integration began at the political level through a commitment to democracy and the rule of law, without the creation of a supranational institution with rights to issue instructions. The only supervisory authority to date is the European Court of Human Rights (ECHR). This corresponds completely to the rule of law and the separation of powers anchored in democratic systems. Because the UK has left the EU but remains a member of the Council of Europe, it would be politically necessary to give this intergovernmental institution more attention again and to make the functionalist or intergovernmentalist approach fruitful for European studies.

It is worth considering the controversy between functionalism and neofunctionalism from another theoretical approach, namely from the perspective of ordoliberalism. This school goes back to the German economist Walter Eucken and is based on the assumption that the economy and politics are closely intertwined. The author has summed up his central thesis as follows: "Just as economic policy requires a state that is capable of action, a certain economic policy is required in order to make the state capable of action." (Eucken 1959: 188, cf. Figure 5) This "interdependence of orders" raises the question for Eucken on which principles an economic policy should be based "so that an independent state emerges which can itself become an ordering power?" (op. cit.). Briefly summarised, he men-

tions two principles: On the one hand, the task of economic policy is to prevent the emergence of economic power groups, i.e. private or state monopolies. On the other hand, it should shape “forms of order in the economy” and not direct the economic processes themselves (op. cit.: 189).

The ordoliberal approach to describing the relationship between politics and the economy allows a completely different view of the integration theories discussed above: Mitrany’s functionalism is compatible with Eucken’s principles of economic policy: The state is responsible for the economic order and must offer legal certainty to their actors. Consequently, it is the responsibility of foreign trade policy to create suitable framework conditions for the domestic economy through international treaties and agreements. The work of the Council of Europe and its Court of Human Rights as intergovernmental institutions also fits in with this. They guarantee European citizens a high level of political and social rights (cf. in more detail: [Riedel 10/2019: 7](#)).

Figure 5

**Walter Eucken:**  
**Principles of economic policy, 1959**

**a) Rule of law**

The policy of laissez-faire – as it turned out – did not lead to the emergence of economic orders that are adequate to the rule of law, and this is because uncontrolled monopolies or partial monopolies can form with this economic policy. Although it was largely possible in the 19th century to protect the individual against the arbitrariness of the state, it was not possible to prevent the interference of other private parties in the sphere of freedom of the individual. However, as soon as a policy of central management is pursued, the opposite situation is created, so to speak. [...]

*In this direction, the economic orders that arise from the policy of central management of the economic process threaten the rule of law from another side, as it were. One threat – from private individuals – may disappear; the other threat – from the state itself – is growing strongly. [...]*

Centrally directed orders of the economy and free orders of the state, of law, of education must come into conflict with each other. A "collision" of orders arises, a profound inner contradiction. [...] *An essential principle of economic policy emerges: the principles of economic order should be coordinated with the principles of other orders – e.g. the state – from the very beginning.* Or put differently: There should be no attempts to realise "conflicting" orders simultaneously. [...]

*Source:* Walter Eucken, Grundsätze der Wirtschaftspolitik, Tübingen 1959, weitere Ausgabe 1962, S. 91 [Emphasis in italics in the original, highlighting blue and translation: S.R.]

In contrast, neo-functionalism and the teachings derived from it are to be assessed differently. They answer the question of the role of the state within economy and society in a completely different way: While Mitrany and Eucken attribute great responsibility to it, Ernst B. Haas argues for a limitation of state sovereignty. This would be the consequence of the Second World War, in which a totalitarian regime had misused its unlimited power. Thus, the founder of neo-functional theory already claims in his much-cited book "The Uniting of Europe" that the post-1945 European movement, which was composed of different ideological currents, agreed on four points, including: „(4) national sovereignty must be restricted in so far as necessary to achieve the aims of social and economic betterment.“ ([Haas 1958: 27](#)). He names the [Congress of Europe in the Haag](#) of 1948 as a source, but this does not stand up to examination. This congress was certainly the initial spark for European integration, but the demand for the restriction of national sovereignty could not be implemented. In contrast, these same congress participants agreed on the foundation of the Council of Europe as an intergovernmental institution, which must be seen as a success of the functionalist approach.

Nevertheless, Ernst B. Haas' analysis of the beginnings of the European movement provides valuable information on the expectations of those circles who, despite their ideological opposites, were in favour of supranational bodies with decision-making powers. Their objective was "to establish a regulated large-scale industrial economy permitting the development of permanent worker influence over industry". ([Haas 1958: 291](#), cf. in more detail figure 6). Conservative, liberal and left-wing currents were apparently able to agree on this formula. Haas cited the founding of the ECSC [European Coal and Steel Community in 1951], the EEC and EURATOM [European Economic Community and European Atomic Energy Community in 1957] as examples of this. These supranational bodies partly directly or indirectly steered large state-owned enterprises, as was consistently the case in the socialist centralised economies of Eastern Europe at the time. Especially in the first decades, they protected the monopoly structures in the energy sector (Kleinwächter 2012: 100). To this day, the European Commission promises consumers fair conditions of competition, but at the same time admits that "transport, energy, postal services and telecommunications [...] used to be controlled by state-run monopolies". ([ec.europa.eu](#)). Another example is the EU agricultural economy, where monopoly



providers still set prices today ([br.de, 14.1.2021](#))

The approach of ordoliberalism can both contribute valuable insights into the history of European integration and explain the course of 2020: It was not only – as in all negotiations at international level – about the division of previously shared sovereignty rights between the EU members and the UK. The core of the dispute concerned Brussels' demand for the primacy of the EU's internal market over the UK's state sovereignty, which EU chief negotiator Michel Barnier summed up in the sentence: "Our internal market is our home market." ([Barnier, 29.5.2020](#)) Starting from the approach of the interdependence of orders, however, this prioritisation would endanger the independence of the state vis-à-vis economic interests in general and monopoly providers in particular. The state institutions on both sides would therefore no longer be able to unfold their "ordering power" (Eucken 1959: 188).

There was an argument in the German-language press that the withdrawal of full sovereignty was a "myth": "No state is fully autonomous." ([rnd.de, 10.12.2020](#)) This claim blurs the difference between economic dependencies and the political sovereignty of states within the framework of current international law. According to this, each government can decide for itself how to deal politically with the given dependencies. However, this also means that the states bear a high level of self-responsibility for their economic development. The primacy of the EU internal market postulated by the European Commission has therefore not only become a problem for the leaving member. Candidate countries such as the Balkans, Ukraine or Turkey, which hope to join the EU, are also faced with the dilemma of growing dependencies, which complicate their own future prosperity and considerably restrict their freedom of economic policy decision-making.

Not least behind the declared primacy of the EU's internal market is the European Commission's claim to power, which tends to go beyond its competences. In addition to the trade agreement, EU negotiator Michel Barnier has reached further agreements with the UK, including on co-operation in the peaceful uses of nuclear energy ([gov.uk, 24.12.2020](#)). This had become necessary because the UK terminated the EURATOM Treaty (1957) at the same time as it withdrew from the EU. According to Article 101, the Commission is entitled to conclude agreements with third countries, in this case a successor agreement with the UK (see [EURATOM 2010: 41](#)). But it did so behind the scenes, well aware that there

has been controversy for years about a reform of the EURATOM Treaty.

The criticism ranges from a lack of involvement of the European Parliament in legislative projects to the promotion of new nuclear power plants. Thus, the post-Brexit negotiations offered the Commission a window of opportunity to update the controversial EURATOM Treaty via a bilateral agreement of more than 30 years' duration. (Article 24, [eur-lex.europa.eu, 31.12.2020](#): 18). In this way, it directly influences the energy policy of the Member States, which it is not entitled to do according to Article 4 of the Treaty on the Functioning of the European Union ([AEUV; bfee-online.de](#)). In this, Brussels is sticking to a form of energy that, according to the current government's programme in Germany, should be put to bed ([taz.de, 3.8.2018](#)). According to Walter Eucken's ordoliberalism, it can be predicted that the monopoly providers together with their lobbyists will be among the winners ([Der Spiegel, 23.1.2020](#), [Euractiv, 20.12.2020](#)).

Figure 6

**Ernst B. Haas:  
The Uniting of Europe, 1958**

**The "spill-over" and political expectations**

Only the convinced "European" possessed long-run positive expectations with respect to ECSC in 1950, and among the elites directly concerned with coal and steel there were few such persons. The crucial evolution of such expectations among the bulk of ECSC labour leaders both Socialist and Christian is one of the clearest demonstrations of the role of a combined social welfare-economic democracy ideology, seeking realisation through the medium of new central institutions. *These groups as well as the Socialist and left-wing segments of Christian-Democratic Parties associated with them are now in the vanguard of more integration through ECSC as well as in the form of Euratom and the General Common Market because they see in supranational rules and organs the means to establish a regulated large-scale industrial economy permitting the development of permanent worker influence over industry. Thus a "spill-over" into new economic and political sectors certainly occurred in terms of expectations developing purely in the national contexts of the elites involved.* Yet these expectations were reinforced along supranational rules not only because action was demanded of the High Authority but because continuous joint lobbying with labour leaders from other countries became both necessary and possible. [...]

Source: [Ernst B. Haas, The Uniting of Europe](#). Political, Social, and Economic Forces 1950-1957, Notre Dame, Indiana, USA 1958, S. 291 [Highlighting blue: S.R.].

#### 4. Summary: The outputs of the theories regarding the Brexit negotiations

##### Discourse analysis by Foucault:

- ◆ According to Michel Foucault's *discourse analysis* (1970), the following techniques were used to exclude discourse content: The *exclusion of madness*, the *will to truth* and *commentary*.
- ◆ With the appointment of Boris Johnson as British prime minister, the discourse on the post-Brexit negotiations has taken a new direction. He was initially called a „mad“, „lunatic“ or „autist“, and later „storyteller“, „loudmouth“ or „swindler“. This discredited his role as a serious contractor.
- ◆ Using the *commentary*, the revised Brexit Treaty (12.11.2019) could be reinterpreted. Thus, EU demands from the first draft (14.11.2018) came back on the agenda, namely the backstop for Northern Ireland and EU standards. *Journalists considered the comments - no longer the treaty itself - to be authentic*.
- ◆ These techniques prevented the publication of *British proposals for successor agreements* beyond the trade treaty. The German public was deceived and could no longer assess the opportunities offered by the negotiations with the UK.
- ◆ Behind the scenes, other treaties have been concluded and hidden from the citizens of the Union. One of these is an *agreement on the peaceful use of nuclear energy*. As it is not only relevant for the German energy transition, but has an influence on all EU members, the European Commission has exceeded its competences.
- ◆ While the European Commission led the negotiations for all successor agreements with the UK, *France, Spain, Ireland* and *Cyprus* were represented in specialised committees where they could bring in their *national interests* (nuclear energy, Gibraltar, Northern Ireland).

##### Neofunctionalism:

- ◆ The *neofunctionalist approach* of Ernst B. Haas (1958) says that state cooperation automatically leads to a *spill-over*, i.e. a transfer of national sovereignty to supranational institutions. This effect is regarded as a *motor of European integration*.
- ◆ Supporters of this approach argue that it is a *further development of functionalism*, which explains its dominant position in European studies. It is just since the Brexit referendum (23.6.2016) that it considers a regression of integration processes possible. Neofunctionalism is gradually becoming "*postfunctionalism*".
- ◆ With the final Brexit on 1.1.2021, *the spill-over effect has been disproved*. There is no automatic transfer of sovereignty to the supra-national level. *The neo-functional theory thus loses its power of interpretation* and must once again be measured against other approaches.

- ◆ This is a *chance for European studies* to renew itself in the sense of a return to more *pluralism and competition between theories*. The neofunctionalist approach loses its normative-ideological character, which means that European studies could attract more attention in the international scientific community.

##### Functionalism:

- ◆ The *functionalism* of David Mitrany (1943) does not presuppose supranational structures for inter-governmental cooperation. *It does not predict an automatic spill-over effect* in the form of a transfer of sovereign rights to common institutions such as those in the EU.
- ◆ Its founder David Mitrany saw the *neofunctionalist approach* (Haas 1958 et al.) *not as a further development*, but as a competing theoretical approach, against which he critically argued throughout his life.
- ◆ David Mitrany's argument was that the *demand to waive sovereignty* in favour of supra-national organisations is a *major hurdle* and can therefore prevent intergovernmental cooperation.
- ◆ This conclusion is not only valid in the historical context after the Second World War but is more topical than ever. *The advantage of the neofunctionalist approach*, is that it regards *cooperation between (formerly) hostile states as possible* and even necessary in the interest of peace.

##### Ordoliberalism:

- ◆ This approach goes back to the German economist Walter Eucken (1959), the founder of the social market economy model. He starts from the thesis that there is a *permanent interdependence*, i.e. mutual dependence, between systems of order, mainly *between economy and politics*.
- ◆ Eucken defined two principles for an independent state economic policy: *it should prevent the emergence of economic power groups, of private-sector or state monopolies* and create a legally anchored framework instead of directing economic processes itself.
- ◆ This approach can explain an *important dissent in the post-Brexit negotiations*: Brussels has championed the *primacy of the EU's single market over the UK's national sovereignty*: "Our single market is our home market" (Michel Barnier, 29.5.2020).
- ◆ *One result* of the primacy of the internal market is not more competition, but the *strengthening of monopoly suppliers*. An example of this is the conclusion of a treaty between Brussels and London on *the peaceful use of nuclear energy*, which was quietly concluded for the benefit of large energy companies.

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*Note: All [links](#) were active until 11.2.2021.*

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