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# **The Performance of the EU Public Procurement Market**

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## The Performance of the EU Public Procurement Market

### Abstract

The EU's Public Procurement market is a long standing, and valuable, element of economic integration. It has been revised periodically to achieve a perceived potential, most recently in 2014 with the issue of a new set of EU Procurement directives. This paper argues that a social constructivist position can offer a fresh perspective. Approaching the process of imposition of the market as a form of economic performativity (Callon 1998) highlights theoretical and practical limitations to the market creation process. The market failure should be seen as a failure to embed the discourse of a market paradigm. How procurement is understood, and performed, in this context has an impact on the validity of further European Economic Integration – a particularly important argument post-fiscal crisis.

### 1. Introduction

Public Procurement is “The process by which governments and regional and local public authorities or bodies governed by public law purchase products, services, and public works” (Commission, 2013a p55). The market for which is estimated to be worth between 17% to 20% of EU GDP (Commission, 2011a). The lion's share of this huge figure should be advertised widely across the Union, with, for example, French businesses able to bid for Italian civic council contracts. But the value actually adhering to the advertisement requirement (through the Official Journal of the European Union - OJEU) is a fraction of this, worth around 5% in 2013. There have been repeated attempts to redesign the procurement regime to address this shortfall. These have unfortunately had only marginal success. In light of a new revision in 2014, it is timely to ask why the regime appears to have failed.

This paper answers that conundrum from a position outside a purely economic model. A body of literature that depicts markets as social constructs is used to offer a new perspective on the failure of Public Procurement integration. When a market is seen as a social construct, rather than purely an economic mechanism, a greater range of analysis may be undertaken through the inclusion of discursive elements outside of the purely economic. The logic of increased liberalization of public procurement and a European wide procurement market is linked to the ideal of economic growth through further integration. This is not an exclusively post-fiscal crisis assessment, but has its roots throughout the European project. For example the cost of non-Europe assessments by Albert and Ball, (1984) and Cecchini (1988) that drove the Single European Market agenda. Throughout the European project there has been a political and social underpinning which exceeds the purely economic frame.

Using a constructivist approach derived from Callon, 1998a) this paper examines the *performativity of economics*, and its insights into the creation of a market as a social construction. These principles are then used as a lens through which to view the EU's Public Procurement market. I argue that Public Procurement is unique as it is the centre of the interchange between the State and Social spheres. The process of framing an exchange between two parties, and the agnostic nature of social outcomes usually found in commercial markets, is undermined in this model. The entanglement of the two parties (the state buyer and the social supplier) encompass a relationship that is impossible to separate and thus undermine the efficacy of the Procurement market.

This lack of social embeddedness of the market paradigm speaks more broadly to the process of European Integration. Government does not have the hegemony on the production of goods and services in order to meet its own policy goals. It is through procurement then, that the liberal democratic capitalist state is realized. And how procurement is understood, and performed, consequently has an impact on the state.

There have been a number of approaches to the study of public procurement. These include institutionalised policy generation (Armstrong and Bulmer, 1998), economic rationality (Branco, 1994), and legal imperatives (Arrowsmith, 2012; Gordon, et al., 1998). The objective of this paper is to bring a fresh insight into the understanding of the procurement market, answer why there has been stagnation, and offer important theoretical and practical contributions. There are implications for the use of markets as a policy tool (Self, 1993). Further the perspective used contributes to the understanding of economic integration in the union across a variety of policy areas.

## Approach

The theory of performativity is linked to social constructivism, that a construct has a social reality for the participants. Laclau's "social constructivism, which denies any societal reality that is determined outside the discursive" (cited in Wodak and Meyer, 2009 p20) allows for us to unpack the construct and begin to understand this reality.

In order to do this, I have employed elements from two discourse analysis approaches. Critical Discourse Analysis (CDA) and Political Discourse Analysis (PDA). Briefly, CDA treats language as not solely a "mental phenomenon, but as a social phenomenon" (Chilton, 2003 pX). This allows for the social contextualization of a discourse, an approach that "endeavours to make explicit power relationships which are frequently hidden, and thereby to derive results which are of practical relevance" (Wodak and Meyer, 2009 p15). Any approach which does not contextualise the discourse or action within a social context runs the risk of missing a key element of the analysis. Namely that an utterance is not neutral; in making an utterance there needs to be both an broadcaster, and a receiver that act in tandem to create the *utterance* and the *understanding*.

Therefore an intention of being understood, and of understanding is implicit on both parties.

Political Discourse Analysis (PDA) speaks to the nature of power and politics through 'argumentation'; "existing analysis has emphasized 'representation' rather than 'action and decision making'" (Fairclough and Fairclough, 2013 p17). This argumentation approach is "grounded in a view of politics where questions about decision and action are the fundamental questions, will see ways of representing reality as subordinated to the question about what to do, to action" (Chilton, 2003 p20). PDA then looks at debates in public, and how a policy agenda is argued in order to see the action intent. It is through these arguments that politics are realised. Habermas argued this point; that in order to be realised, a discourse must occur within the appropriate context to gain legitimacy (cited in Chilton, 2003 p47).

So what role do we see the discourse as having in this context? It is both representative of a particular logic of the framers of the market, and an action inducing performance role. Both aspects can be seen to be true. This is because the act of speech is not a passive one. The speaker, and the listener are both engaged in the construct at the point of utterance and the point of understanding. So the speech act (the discursive point) is reflective of an understanding. This is then uttered in a manner that is socially coherent for the receiver to then understand it. In performativity, there should then be a point at which this is internalized, and embedded in the social construct by the participants. These locutionary elements can be seen as the themes within a discourse of market construction, not just in specific performative utterances. So the study of thematic elements represents a conflagration of several uttered nodes. The CDA and PDA approaches can therefore be synthesised to create a framework that sees socially bounded discourse as action. Speech and non speech acts may both be seen as equivalent in this lexicon. It happens that in the political sphere however, this is realized primarily through speech, documentary texts, as representing action. In this case, documentary sources, interviews, and statistical information are all understood to be 'texts' that perform the market.

## 2. Market Creation and Performativity

### Markets as Social Constructions

The first step to take in this analysis is to outline markets as social constructions. Markets are popularly assumed to be objective and mechanistic in nature. Certainly Economists would have that as the popular conception. Where sociological elements are considered in market design, it is usually with the intention to remove personal cognizance for participants wherever possible. The application of the Merton-Black-Scholes Nobel prize winning algorithm in derivatives markets for example shows a dedication to this technocratic focus (MacKenzie and Millo, 2001). Oversight of markets is undertaken using institutionalised rules and legal frameworks. However, the behaviour of actors

within markets, and therefore market performance is conversely influenced by 'human nature' and interpersonal sociology. The imposition of market systems on socially embedded markets seeks to either codify agreed norms for mutual benefit, or impose rules for the sake of broader society in order to reduce the externalities associated with market failure. On both sides of this dichotomy the focus of markets is socially bound. The policy instruments that constitute them are complex, with a multiplicity of designs and emphases. Therefore "in the absence of other information, ideological principles may provide the only basis for discriminating among complex instruments" (Linder and Peters, 1989 p47). For example, the pattern of recruiting lawyers into the civil service in various northern European countries might tend to generate a greater reliance on legally-orientated instrument than might be otherwise expected" (ibid p53). In this sense, institutionalized social behaviours have a dominant effect on the act of policy choice and implementation. Ideological positions in this sense being understood as institutionalized choices as much as other constructive factors which are socially bound choices.

Fligstein suggests such an emphasis with "much of the market making project [being]... to find ways to stabilize and routinize competition" (Fligstein, 2002 p5). So while competition is crucial to the classical market paradigm, stability is also desirable for the perpetuation of the market (and it's positive outputs) rather than periodic dissolution due to the "heterogeneous and partly antagonistic motives and interests of the participants" (Beckert, 2009 p3). Beckert identifies ways in which markets may be said to be coordinated to resolve this issue. These relate as much to the market as being an 'arena of social interaction' (Beckert 2009 p6) as to other rule and transactional based factors. In a later paper, he then draws into this framework the role of institutions as stabilizing forces specifically as forces that reinforce or erode 'fields' within a construct (Beckert, 2010). In addition, the actions of subjects are coloured by the apparent actions of the other market participants around them (White, 1981 p518). The participant actions are determined more by the social context and actions they perceive others are undertaking, than the purely economic logic upon which the market construction is predicated.

With state support, and social factors included, then 'markets can be seen as politics'; a function of an institutionalized society (that has created a modern capitalist state), and a system of control within that society (Fligstein, 2002 p2). With this point in mind, the institutionalization of the economic as political constitutes the realization of the form of Capitalism in a State. Markets can therefore be analysed as both the behaviour of individuals, and forces within the construct. There need to be rules and established practices to support these constructs. What firms are capable of is determined by the State, which through law, "sets the rules that define what organizations can do and what the limits of legal behaviour are" (Fligstein, 1993 p5). Fligstein proposed an element of that stability was to be found within the firm (company structures and relationships); "social structures and the internal organization of firms are best viewed as attempts to mitigate the effects of competition with other firms" Fligstein, 2002 p2). Firms, as construct participants, are organized in a manner that promotes reliance and coordination with other economic actors. They are constrained by

their own "strategies, structures, technologies, and physical limits" (Fligstein, 1993 p5) alongside the constructed organizational fields that define the company's own competitors (ibid p6). In this sense, the market is forced towards a neoclassical imperfection through the coordinated efforts of participants to engender stability.

Ultimately the need for coordination of the economy issue is resolved through the mutual interest of all participants in there being a perpetuated market for the betterment of all. Effective information exchange to support the transparency of the operation of the market is required (Stigler, 1961) for this purpose, if only to provide for 'accurate pricing' (Stigler 1967, p214). Transparency also affords an adequate assessment of transaction costs, without which classical models fail due to the opacity of pricing (Williamson, 1979). Therefore of paramount importance is an effective mechanism for ensuring transparency in order to allow for comparison and effective market operation. We can see that in consumer markets this has occurred in some fields with the establishment of 'price comparison' websites.

Thus institutions are created to support the formal economy and play a "role institutions... in structuring interaction, reducing transaction costs and limiting the scope for opportunistic action." (Black, 2002 p56). Koslowski, 1999) approaches this argument through the use of Oluf, Hayek, and in turn Hume's theories. Firstly, institutions "need not have been constructed for the purposes they now serve" (Koslowski, 1999 p567) they may be instead be "the outcome of unintended as well as intended practices that have become routinized over time." (ibid). So while they are seen to be rational in their original inception, the role they play should they have been developed will not support that intention. Therefore the output of the institution should be judged to be coherent with the original intention. If this is the case, then the argument by Gorges, 2001) that there is an internal agreement to the institutionalization process, in creation of a new institution, there is a formation of a new social construction that is outside the logic of the construction that forbore it. The social construction can gain life outside of that which is originally intended by the originators. When approaching market creation with this in mind, one can see that the original intentions may be severely curtailed by the practical implementation of that market.

If we accept that markets then are a construct made of discursive understandings, and that state supported institutionalization of these discursive nodes constitute that construct, then fixing meanings within the construct is a process of attempted homogenization of stabilising processes. The fiction of a single 'Variety of Capitalism' has been debunked (Hall, et al., 2001; Hall and Thelen, 2009; Shonfield, 1965). In it's place, a recognition that there is more than one way to structure a capitalist democracy and, more than one form of market. The discursive elements in the European Sphere then are highly contestable as a multiplicity of capitalist understandings are present under the broad church of the European Social Model (Adnett and Hardy, 2005). As a result of this contestedness, the idea of a 'Market' and participant perception, matters in a real sense; particularly in a transnational context.

## Performativity

The power of discourse is well integrated into the analysis of the European Union (Diez, 1999 p600 and Hay and Rosamond, 2002) for it is through these acts that political language can be said to realize an agenda, or realize power relationships through the shaping of agendas and structures (Laffan, 2001 p716). Formal institutions support these acts and norms to shape behaviour across an organization or society (Robinson, 2009 p119).

Performativity was introduced by Austin as a form of speech act that was not purely descriptive of reality but can be in itself, a *performative* act. For example, "I name this ship the *Mary Rose*" is an act in itself of naming a vessel. It is present tense and creates something at the point of utterance. "The utterance is not setting out to describe a situation, an even, or an action: it *is* an event or an action" (Austin 1975 cited by Loxley, 2006 p8).

Michel Callon's 'The Laws of Markets' (Callon, 1998a) presented the use of performative language in the context of economic markets. Any utterance that described and defined an action could itself create that action. So expressing the manner in which a market functions through Economics, changes the behaviour of the actors within that market. Thus "economics, in the broadest term, performs, shapes and formats the economy rather than observing how it functions." (Callon, 1998a p2). This process is constituted by three principle elements; **framing**, **calculativeness**, and **entanglement**.

Firstly, '**framing**' is the process of identification of items for exchange, be these goods, merchandise, or services. (Callon, 1998a p17/18). In doing so, the item is externalized from the producer, and the parameters of it's existence apart from other production are defined. It is through this process of definition that actors are able to then able to exchange. Without 'framing' taking place, transaction would be impossible as:

"To construct a market transaction, that is to say, to transform something into a commodity, and two agents into a seller and a consumer, it is necessary to cut the ties between the thing and the other objects or human beings one by one. It must be decontextualized, dissociated and detached. If the thing remains entangled, the one who receives it is never quit and cannot escape from the web of relations. The framing is never over. The debt cannot be settled." (Callon, 1998a p19).

This practice of defining, externalizing, then passing the commodity from one to another is a precondition of market exchange. Any cultural artefact, like a *text* in a discourse, is relative to the position of the perceiver. The identity of any item or text is subject to the construction of that item culturally (Derrida, 1984). Just as any text within a construct cannot be seen in isolation:

"...the meaning of a text is not contained in the text itself. Sense is made by readers or hearers, who link their knowledge and expectations stored in long



and short term memory to the processing the language input." (Chilton, 2003 p154).

The context of a message needs to be factored in to any analysis as much as the content of a message. So the framing of an exchangeable good or service requires a *framer*, and an individual for whom the item is *framed*. Both are engaged in the act of creating the exchangeable good together. So decisions in the market are reciprocally dependent on the framing of other parties' and their perceptions. White argues this point. That rather than being neutral, actor's activities are defined not by what other actors do; "Markets are not defined by a set of buyers, as some of our habits of speech suggest, nor are the producers obsessed with speculations on amorphous demand. I insist that what a firm does in a market is to watch the competition in terms of observables" (White, 1981 p518). The determinant factor affecting the markets then is the observable action of others in a market. Without it, framing is not possible. The level of transparency and information available about that market and the participants determines the market's efficacy. From this perspective, the suggestion that supply and demand rule market behaviour is thrown aside in favour of "...tangible cliques of producers observing each other" (ibid p543) to determine their next move. In terms of public supply markets then, lack of transparency regarding contracts, or sharing of contract details across the buyer base, would lead to market failure. This is quite different to an open 'consumer market' where trades are done in a manner that allows for scrutiny by all market participants, for better or worse (see Trent, 2013 and Garcia-Parpet in MacKenzie, et al., 2007 p20-53). The logic herein is explicitly an 'bounded rationality' in that 'people wish to make rational choices but they cannot always do so" (Jones, 1999 p298) due to external constraints, perception issues and a 'willingness to cooperate' with other actors to achieve mutual positive sum gains.

**Calculativeness** is used to describe the degree of thought that is undertaken prior to an action. In the case of economically motivated rationality however, "calculativeness cannot exist without tools to calculate" (Weber paraphrased by Callon, 1998a p23). Therefore in order to be calculative in an economic sense, one must first have economics to calculate with. Thus the structure and presumptions of economics will impact on the process of calculation. In markets, once the economics that underpin the market has been established, these principles are used by the participants for their calculations. This is a 'structural' view of how economics defines the logic, and actions, of the participants. In the terminology used by Callon, he also makes a link between the calculativeness and the act of framing being impacted by the calculation. The parameters of the framing action, and the possibilities of what may be framed, are themselves set by the process of calculation and calculativeness. Finally, the relationship between economics and the 'real economy' is questioned by the use of calculation: "...if mathematical economics can be realistic under certain conditions, it is not because human behaviour is naturally 'mathemisable'; it is because the calculative agencies are there to introduce interrelated calculations in decision and in the formation of actions" (ibid p50). In this sense, economics does not reflect reality, but creates a version of reality which is then accepted by it's adherents. Callon is however quiet on the factors that may contribute to the

uptake of a particular economic paradigm. One factor in this vein included though is the suggestion that agents that "resist calculative rationality and hence the market... are embedded in the social or cultural frames which turn them away from it (DiMaggio 1994 in Callon, 1998a p5). This offers a suggestion that the depth of social framing may allow for a refutation of the market logic.

The third principle is that of **Entanglement**. Looking to Marx for inspiration, Callon sees his perspective on money as instructive. The creation of money led to an abstraction of the "...reality of relationships between the people that lay behind the relationships between things" (Callon, 1998ap33). It hid the consequences (externalities) between actions through the facilitation of the alienation of an actor from the commodity. In this sense, the framing of the principles for transaction abstracts the value of the relationships that construct the commodity to be exchanged. But in money there exists a "...trail, a wake, a visible, materialisable, traceable trajectory" (ibid p35) that ties the exchange ultimately back to the legal framework that supported the market for that exchange. In doing so, all exchanges are tied to the state at the heart of the economy. All exchanges are therefore entangled to a certain degree. This is very different to the 'classical' view of the market where the identities of the participants are irrelevant to the transaction (Williamson, 1979 p236). Money in that context is agnostic of ownership.

### 3. Procurement in the European Union

Public procurement is the act of state sourcing of supplies and resources from within civil society to achieve policy goals. These goals are necessarily the purview of national governments. So why would there be a procurement market at all? There are two sides to this story. Firstly, in its inception, the procurement directives were created to drive economic and political integration through the demand side. But a later shift in the emphasis of the EU towards leveraging economic growth from liberalisation, led to a different emphasis. This was based on perceived market failure. "In general any time government can reduce private transaction costs or its own costs of provision, it should do so regardless of whether or not an externality exists. It need not wait for the appearance of an externality to effect a justification" (McCurdy, 1999 p565). The externality perceived here however is not only an economic one (the 'cost of non-Europe') but a social and political one.

This section describes the key discursive elements within the Public Procurement Market. These elements constitute the range of factors that have been drawn into the market paradigm. As will be demonstrated, they are not exclusively economic in nature. Many are socially bounded features. Throughout them all there is the same imposition of a mechanistic logic that belies the nature of the act of procurement. The removal of the social, personal cognisance, and the imposition of a rationalistic model, demonstrates the failure of the three constitutive elements of the performativity of economics; framing, calculativeness, and entanglement.

## Failure of the Procurement Market

To begin with, I would like to outline the problem with the market further. There is a persistent tension between the perceived success of the Single Market being a successful enterprise with "a high level of economic integration in what is now the largest combined marketplace in the world" (Dunne, 2014 p10). And a critical perspective that sees much more scope for development (for example the latent 'non-Europe' perspective).

The scale of the market has undeniably grown since its inception in 1971. In 1991, around 2% of procurement contracts were let through the EU Procurement Market (Winter, 1991). This has grown to 5.1% in 2013 (Eurostat, 2013). This is a slow increase when compared with the overall estimated total that may be applicable if all bodies governed by the EU directives were to be included. This would equal a consistent 15 to 20% (Commission, 2011a). There is however a significant variation between the Commission's evaluation of the market size, and the member states' own statistics. This is not only to a series of technical issues regarding the quality of information, and the usefulness of the Tenders Electronic Daily website (TED) as a market instrument, but also points towards a contestation of what should be covered by the procurement regime. In total, the Commission's estimate places the procurement market at €127,240,000,000 higher for the 2012 (as a sample year) than the member states have reported (figures used are available in Commission, 2012; 2013). A senior Commission Official confided that they had been contacted by the member states directly looking for assistance in improving or normalizing their own estimations (Interviewee\_7, 2014). There are obvious difficulties in assessing the market empirically to the degree that from the summer 2014, Eurostat will no longer be publishing procurement performance indicators as part of their data set (Helpdesk, 2014). This constitutes an implicit acceptance of the unreliability of their data collection in itself. Much of analysis of this policy area then is based on the *perceived* scale of public procurement. This is in much the same vein as suggested by Linder and Peters, (1989) regarding the ideological basis of policy instruments.

What is less clear throughout the discussions regarding the market, is what *should be the level of inclusion*. Should there be a maximalist approach to the market where every element of public procurement is included, or should there be a ring fenced national level outside the remit of the integrated regime? Furthermore, the threshold setting, and exclusions from the directive's regime, lead into a framing of the market, and therefore a framing of the state. This includes not only framing that which is inside the market, but also that which is outside the market. Were the market not in existence then could these elements be framed in the same manner? In much the same sense that policy instruments are evaluated in terms of the ideological 'rightness', we are taking on faith that this market has failed or succeeded. Without a coherent output position, we are forever evaluating this market against the shadow of itself. But this is a political decision first and foremost. The act of procurement is one that realizes the state in a tangible fashion. The 'depth' to which an integrated procurement regime reaches into this practice is politically contentious. A maximalist interpretation

then would place all procurement under a single regime enforced by the EU directives. To link back to the performance of the market, the process of procurement *is the performance of the state*.

### The Construction of Government Procurement

Application of the constructivist perspective to the EU have been made previously. Applicable examples include Aalberts, 2004) and Hay and Rosamond, 2002). Both examined elements of the EU as a social construct that had the effect of perpetuating agendas consistent with the perception of the participants. "Whether the... thesis is true or not may matter far less than whether it is deemed to be true... by those employing it". Therefore, "policy makers acting on the basis of assumptions consistent with the ...thesis may well serve, in so doing, to bring about outcomes consistent with that thesis, irrespective of its veracity and indeed irrespective of its perceived veracity", (Hay and Rosamond, 2002 p148). This relative perspective on an issue is instructive in the context of this paper. The construction of the procurement market defines the act of procurement, but at the same time, the participants in the market define what this means for them. The meaning of the market paradigm, like that of many other principles fundamental to the European project, is "...a contested concept, the meaning of which is not yet fixed (Diez, 1999 p602). The way in which Europe, and the concept of the State, is understood varies from EU member state to state. Therefore the principle realization of the state through economic interchange (the act of procurement) will also be contested.

Leaving aside the fiscal scale of procurement and the state, in the act of procurement, there are processes of redistribution and economic interchange with a socially focused purpose. So in the act of buying from private businesses and using tax money for that purpose, the money is then reintegrated into society. This is as much about fiscal governance as emphasizing different pluralateral elements and groups within society. This form of procurement and the state is embodied in the writing on corruption (Anderson and Tverdova, 2003; Commission, 2013a; Kang, 2002) as much as it's purpose in driving a new social Europe agenda (Commission, 2011b.) Procurement in this context is therefore one of the most important acts of economic interchange with society outside of direct redistribution through the welfare state modes.

The implication is that the entanglement of the transactions that take place are greater than a purely 'commercial' market. Each procurement has at inception, a public policy aim. Therefore the act of transaction with a public sector body is directly entangled with all the policy, politics, and trappings of those ties. The practical implication of this is that when discussions of 'transparency' for public contract suppliers are made (Trent, 2013), this is an expression of that entanglement, and that a pure 'alienated' transaction of ownership between the public and private spheres may not be made. A 'classical' market fails to function in this context not because of any 'governance' or 'regulatory' oversight, but due to the essential failure of a market based paradigm which attempts to separate the state from the economy The state **is** the economy as a result of interacting,

supporting, and framing it. The State has a role as the final arbiter and securer for economic activity. Furthermore, the State is, from a Gramscian perspective, indivisible from the society that bore it (Bieler and Morton, 2001). This is in line with Stigler and Fligstein's arguments regarding the purpose of stable markets as having a social purpose outside of the participants that are of broader political import.

So this framework suggests the following, that the three principle elements in this analysis; the State, the economy, and society, are all reciprocally constituted and linked. Attempting to externalise a factor (framing) of any of these for transaction between them will fail (as in the case of the public procurement market) because of this reciprocal constitution.

While the State is traditionally defined geographically, this market, and procurement as an act regulated by this market, is defined under the directives as European. Taking into account the scale of public procurement, a significant proportion of government fiscal policy is shifted to a more porous environment. With it, a consequent proportion of the multiplier effect desired according to a Keynesian economic policy is diffused. They have a *potentially* a broader impact and spread across the whole European economy. This potential is countered by the failure of the integration of this market. Some explanations for this occurrence have claimed that 'home bias' is based on a multiplier effect (Brulhart and Trionfetti, 2004), psychological effects associated with risk perception (Preuss and Walker, 2011) or a mixture of functionalistic logics (Gelderman, et al., 2010).

The binding of the state to the geographical location makes a linkage to a particular society. But the integration of several states into the EU context will lend a different emphasis. The State becomes part of a matrix of cross-supporting, integrated economies. Implicit in this role is the need for each state to agree and support the joint structure to the same degree; or to move forward and create a new integrated society. With the intrinsic reciprocity embodied the state/society/economy then a linking of procurement outside of the nation state attempts to transfer that linkage to this new grander stage. Thus the boundaries of the nation state are eroded in favour of a new transnational construct. This is complicated further when the World Trade Organisation's Government Procurement Agreement is considered. The process of engagement with the GPA can be seen as being an example of 'uploading' of EU regulation to an international forum, an oft cited theme regarding multilevel governance and the shift to international governance systems (for example Jordan, 2001; Kohler-Koch, 2003). "The EU seeks to internationalise it's public procurement regime both through expanding membership in the GPA and increasing transparency of procurement practices" (Howarth and Sadeh, 2011 p28). In this instance, this is as a manner of resolving the deficits that may be caused from opening opportunities within the EU's direct sphere (Howarth and Sadeh, 2011 p 27-28). As multinational companies are increasingly important participants in the procurement market, further global expansion of the regime, and the reciprocity required by the procurement act, maybe resolved through this route. The net

result however, is the increased expansion of the constraints on the framing, and entanglement of procurement.

#### 4. Discourse of the EU Public Procurement Market

When analyzing the procurement market as a social construction, the discursive elements are of importance in representing its constitution. In this case reflecting the changing nature of the emphasis of the procurement market. To some degree this can be seen as confirming the 'scope creep' of an institutionalized policy. Throughout there has been an implicit intention that the thematic introductions would result in a performative outcome and an insistence on the framing of the discourse in an economic lexicon.

This market is based on the liberalization of demand, but rather than an emphasis on removing barriers to supply across borders through standardization (Wettig, 2002) which focuses on supply side measures, this seeks to create an open and porous demand side market. The fundamental approach was the "...elimination of all obstacles to intra-community trade in order to merge the national markets in to a single market bringing about conditions as close as possible for a genuine internal market" (Winter, 1991 p741). This forms the first perceivable thematic and discursive meme within the market: European Integration as an aim in itself. The procurement market being a good example of the 'positive integration' approach (Scharpf, 1996) with an emphasis on *enforcing* a liberalization through a market mechanism. The result is move deep into the sphere of influence held by member states. The act of procurement in this context was redefined through reference to the EEC's definition of the act and scope. The process of introduction of the Nomenclature of Industries in Europe is similar in that it contributes to the definition of the scope of not only the market, but as a result, public procurement itself (Commission., 2011). This could be seen as part of an effort to establish a common understanding within the community of key terms in order to reduce the contestedness of the concepts that are included in the market paradigm. The principles of public procurement had radically different bases in the member states prior to the establishment of the market. In some states, abuses of procurement practices were based in civil law; the United Kingdom and Ireland were examples of this. In other states, notably Italy, criminal law governs public procurement (OCED, 2007 p5). The Commission is presently seeking to normalize some of these diverse legal practices in conjunction with the member states (Interviewee\_7, 2014) that may go even further in establishing conceptual hegemony. This will unfortunately be pursued through a frame that is imposed, rather than socially derived.

Primary elements in the first directives related to the fundamental principles for a transnational market's operation with reference to the freedoms established in the Treaty; namely non-discrimination towards transnational suppliers in relation to national suppliers (including subcontractors). In addition,

transparency of opportunity, abolition of technical and specification barriers to entering the market, and publicly available, objective award criteria for appointment decisions (Bovis, 1996 p6). It was estimated that between 1991 and 2004 there was effectively a doubling of the 'transparency rate' of procurements in the union (based on numbers of advertisements in the OJEU) (Commission, 2004 p3 and 5). This focus on transparency directly relates to the precursors for the effective operation of any market; effective and open information (Callon, 1998b). Mandatory publication of contract opportunities and awards in the Official Journal Supplementary Series was a cornerstone of this approach. Later development of the market sought to create even greater transparency of opportunity through the establishment of the Tenders Electronic Daily (TED) website through which all demand advertisements, and contract awards are publicly advertised. The use of Internet based tools in the 1990s empowering actors in a manner that the hardcopy publication of the OJEU could never facilitate.

The process of formalizing the role and definition of public procurement has given all economic actors in the union a degree of power to challenge the decisions made by the Contracting Authorities. This applies to subnational as well as transnational companies This is an example of an area where the legal basis of public procurement in the member states has undergone significant change as all economic actors gain the same rights in principle (Bovis, 2008 p7 and Winter, 1991 p778). In doing so, the entanglement of the procurement act is reinforced, as a series of previously absent rights become available to aggrieved suppliers. This is irrespective of the previous legal system. This links to the principle of 'good governance' being enforced by civil society on the State. A further eroding of confidence and a tacit delinkaging of relations between spheres.

Later in the development of the market was the explicit intention to lever greater liberalization in the name of increased economic growth. This was based on the European Parliament's 'Towards European Economic Recovery in the 1980s' report (Albert and Ball, 1984). Concerning the establishment of a radical economic development programme, this report attempted to be politically agnostic. "Our proposals...the important factor in our view, is that they are practicable" (ibid p8) and appeal to the "economic intelligence of public opinion" rather than the "political will of governments... " (ibid p9). 'Non-Europe' as a concept was introduced at this point, described as being the areas of competency that may have been taken into the EEC's sphere of influence, but are "lacking popular legitimacy". These are aspects of integration that need further development to complete the process of updating the economy of the union. In doing so, they recognized that the embeddedness in society of the concepts of the market were important for their implementation, rather than just the facilitation of the structures to construct those markets alone. These principles were developed into the Commission paper on 'Completing the Internal Market' in 1985, which codified the shift from a purely integrationist emphasis in the discourse to one concerned with economic growth as an end in itself for the Union. A further expansion of these principles was used in the 'Cecchini Report' on the Costs of Non-Europe (Cecchini, 1988). This study further expanded the



relative gains that could be made through deeper economic integration. This would lead to a positive gain of 2.2% of GDP overall (p2). At each stage, further expansion of the Union into the competencies of the members is framed as an economic imperative. To not accept these principles was to deny the economic logic of their technocratic argument. This framing of policy imperatives as an opportunity to be lost is very powerful and used from that point onwards.

Efficiency as a theme was introduced as an aim for the market and an extension of the raw growth theme. The post fiscal crisis 'austerity' agendas in the EU have brought more focus on efficiency across the board. It is specifically mentioned as an aim in the Europe 2020 agenda (Commission, 2011b p3 and 35 to 45) and the increasing permeation of the Single Market into new areas (Commission, 2013b) of 'Non-Europe'. In the UK for example, great focus has been brought on procurement as a driver of increased governmental efficiency (for more information on this see Committee, 2014). The programme is to embed the principle of most effective use of the economic power of government in the process of procurement. Efficiency sees government (State) intervention as being negative in the context of effective governance. The neoliberal bent here see the need to capture the discretion given to professional procurement roles and ensure that it is focused on a particularly 'lean' mode of government (Kelman, 1990) which meets the devolved aims of regional government agencies. Bovis notes "the main reason for regulating public sector and utilities procurement is to bring their respective markets in parallel to the operation of private markets." (Bovis, 2012 p11). Thus offering tacit acceptance that private markets are *prima facie* superior in their constitution; more efficient in their organization due to competitive pressures. At this point, the neoliberal ideological position regarding the dominance of this mode of governance may be seen. The Fligstein / Beckert 'organisation' of markets thesis implicitly discounted.

In the 2014 revision of the Public Procurement Directives the Europe 2020 agenda was the at the fore. Included were three additional purposes for the Procurement Market: Direct Social aspects, Corporate and Social responsibility, and Environmental sustainability (Commission, 2011b p5). Elements of these themes were included in earlier iterations of the market, but Directive 2014/24/EU has explicitly integrated them as being key purposes for the market. The directives were lauded by the European Socialist Group as having made a major contribution to a progressive social agenda in the EU (Euractiv, 2014 and Interviewee\_4, 2014).

These inclusions are part of the effort to take a strategic approach to using Procurement for additional benefits. The longest standing of these is environmental sustainability. Significant effort has gone into encouraging the use of evaluation criteria that consider 'Green' factors. Whole Life Costing in particular is a recognised method of considering the totality of the economic and environmental impact (Kishk, et al., 2003).

Each of the Europe 2020 themes, while approximating an alternative social emphasis to the market construction, can also be seen as attempting to make



reparations for the failure of the market to encompass a socially bounded agenda. They also include restitution for negative economic externalities. Their contribution is to broaden the discursive base, but in effect, they rely on the commonly accepted economic growth paradigm and 'non-Europe'. Further inclusions in the 2014 revision have also integrated the 'Innovation union'. This is a shift in the economic emphasis of the first world grouping specifically seeking to lever international competitive advantage from intellectual property developments (Commission, 2010 p3), rather than reducing standards of living to increase competitiveness. This may link to a social welfare emphasis – of course assuming a degree of parity is achieved throughout the share of the economic growth.

## 6. Conclusions

Successive reviews of the procurement market point towards failure in what should otherwise be an ideal environment. The EU has provided a shell of external protection for the increasing integration of the public supply market, the fiscal crisis then leading to an increasing pressure for this approach to deliver returns for the participating member states. This paper has argued that it is exactly this neoliberal basis for the market that has undermined its efficacy.

The performativity thesis argues that once a market has been created, the market will create social interactions in its image. In the case of public procurement, I have discussed a failure of this thesis. This is due to two factors. Firstly, the nature of public procurement places theoretical limits on the capacity to externalise transactional factors due to an excessive social entanglement. The reciprocally constitutive nature of the State and Society preclude the necessary abstraction for 'normal' commercial market relationships.

Secondly, there have been attempts to recognise the failure of the discourse of the market which have resulted in a series of changes. This has moved the thematic constitution of the market from political integration to economic growth. More recent developments have explicitly encompassed social factors. This shift speaks to a temporal fragility of the construct. The market has been changed to gain a level of traction in the social sphere which otherwise has eluded it. That policy has changed over time is not a new observation, but the change in this case has been to the fundamental principles justifying the social construction. This is reflected not only in the discursive, but also the instrumental. The use of web-based tools to facilitate transparency of opportunity are a good example of a positive instrumental development. It could be questioned as to whether or not further changes in web technology will render the Tenders Electronic Daily irrelevant for instance. Would Twitter serve the same function?

I have argued that Procurement needs to be seen as a unique act in the definition of the state, but there are still conclusions to be drawn from this case that may be applied in other contexts. Where a construct is applied to a social context, the

construct's design must be conditional on that context's aims. Market instruments need to be grounded by society's aims rather than purely internal (economic) logic.

Should a particular instrument be chosen, it needs to be established in a manner that allows for greater communication and coherence of the founding principles. This may mean simplifying not the processes of the instrument, but instead the *message and meaning* to seek a commonly understood series of social memes. A consequence could be the need to shift away from transference and transposition by national governments that allows for a diffusion of the discourse in a national context.

What is heartening for supporters of the procurement market is that, while it appears to increased relatively little in size in the last 20 years, it has at least persisted. Further, while there are arguments both for and against market integration (protectionism versus neoliberal cost savings) throughout the fiscal crisis, use of the market has remained stable. However, the imposition of a market at a supranational level seeks to create more than a market for opportunity. It realigns the Socio-State boundaries to include the whole Union. When seen in this context, the failure of this market can be understood as emblematic of a lack of civic integration in the EU. This may in turn have implications for the study of 'europeanisation' in the EU in terms of the depth of acceptance of the principles under which the economic principles of the European project are founded.

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