Part II

The political system and institutions of the European Union
Multilevel governance in Europe

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Introduction

In EU Studies, the term ‘multilevel governance’ signifies a move away from classical International Relations (IR) understandings of European integration. Gary Marks (1993) coined the term in his analysis of the European Community’s structural funds policy in the early 1990s, and it has since become a buzzword. It is no coincidence that the concept first gained prominence within the multilayered EU institutional context, as the EU is often considered to be ‘the most active and innovative producer of new types of decision-making arrangements’ worldwide (Bartolini 2011: 5). The concept is also tied into wider developments in the social sciences that drew attention to the increasing complexity of national and international governance arrangements. It is now common practice to characterize the EU as a multilevel system; however, the multilevel governance concept, which encompasses broad understandings of two universal elements in politics (i.e. territorial relations and the ways in which collective courses of action are taken), has also gained currency in a great variety of other contexts. Zürn, Wälti and Enderlein (2010: 5) claim that multilevel governance research has prompted ‘innovation in at least three main subfields of political science: European integration, comparative federalism and international relations’. Renate Mayntz (2008: 46) locates it within a general shift from an actor-based ‘steering theory’ to the institutional analysis of ‘global governance’. More generally, it forms part of the contemporary scholarly effort to move from ‘simple systems’ towards ‘more complex frameworks, theories, and models to understand the diversity of puzzles and problems facing humans interacting in contemporary societies’ (Ostrom 2010: 408).

This chapter analyses the usage of the multilevel governance theory as it has evolved in EU Studies. First, it elaborates the concept of multilevel governance, situating it among competing perspectives on European Union politics such as liberal intergovernmentalism and neighbouring concepts such as federalism, poly-centric governance, network governance and new modes of governance. Following the reasoning of Hooghe and Marks (2003), two types of multilevel governance will be discussed: one focusing on monopolistic general-purpose jurisdictions, the other on overlapping functional jurisdictions. The second part concentrates on efforts to conceptualize the politics of multilevel governance. It outlines basic models of multilevel decision-making, beginning with Fritz W. Scharpf’s joint-decision trap (Scharpf 1988) and potential escape
The concept of multilevel governance

The concept of multilevel governance emerged from the empirical study of structural policymaking (Marks 1993). In order to elaborate the elements of multilevel governance, Gary Marks, Liesbet Hooghe and Kermit Blank (1996) juxtaposed this concept to the liberal-intergovernmental understanding of EU politics (Moravcsik 1991, 1998), which they labelled ‘state-centric’. In their view, the core claim of this earlier model was that ‘policy-making in the EU is determined primarily by state executives constrained by political interests within autonomous state arenas that connect subnational groups to European affairs’ (Marks et al. 1996: 345). The scholars took issue with the idea that member state executives control the European integration process and act as gatekeepers between the national arenas and the EU institutions, emphasizing instead the multilayered nature of EU politics. Rejecting a view of the world that reified the Westphalian state system and separated the sphere of European/international politics from that of national politics, they developed multilevel governance as a model based on the assumption that the state as an aggregate concept must be disaggregated into different sets of actors (ibid.: 347–8). The authors put forward three propositions. First, ‘decision-making competences are shared by actors at different levels rather than monopolized by state executives’ (ibid.: 346), emphasizing the autonomous political role of EU-level institutions such as the European Commission, the Court of Justice and the European Parliament. Second, collective decision-making in the EU ‘involves a significant loss of control for individual state executives’ (ibid.: 346), implying losses or gains for individual member states. Third, it would seem that ‘political arenas are interconnected rather than nested’ (ibid.: 346), including the variety of direct interactions between sub-national and private actors and EU institutions, as well as the formation of transnational associations at the EU level by national groups (ibid.: 346–7). On the basis of these propositions, and drawing on insights from the study of political delegation and historical institutionalism, the authors highlighted the loss of both individual and collective member state control of EU agenda-setting, decision-making and policy implementation. EU decision-making was depicted as characterized by ‘multiple, intermeshing competences, complementary policy functions, and variable lines of authority’ among levels of government and political institutions (ibid.: 366). ‘[C]ontending, but interlocked institutions’ and shifting policy agendas (ibid.: 372) were seen as conducive to the emergence of direct interactions between the European Commission and sub-national actors, interest groups and national experts that could ‘bypass member states and challenge their traditional role as sole intermediary between subnational and supranational levels of government’ (Marks 1993: 402). In short, the initial research interest was the transformation of statehood in Europe through European integration and the loss of member state sovereignty. Multilevel governance as a concept was intended to repudiate the neat distinction between external relations and national politics that prevails in liberal intergovernmentalism, highlighting the manifold transnational relations that have developed between sub-national actors and the EU institutions. It should also be noted that multilevel governance was in part directed against neofunctional expectations that a European political
centre would evolve ‘whose institutions possess or demand jurisdiction over the pre-existing national states’ (Haas 2004 [1958]: 16), even though Ernst Haas (1975) had long ago given up on this idea.

The concept found immediate resonance beyond the field of EU Studies because it addressed not only research lacunae in EU Studies but also broader developments in the social sciences. In EU Studies, the reinvigoration of European integration in the 1980s and the growing scholarly awareness of the role of the European Court of Justice in legal integration had made it clear that the EC/EU was becoming increasingly responsible for the authoritative allocation of values in Western Europe. Prominent commentators came to regard it as a ‘new’ kind of institution (Keohane and Hoffmann 1991; Sbragia 1992), observing that the architecture of territorial rule in Western Europe had substantially changed (Grande 1994). At the same time, there was widespread agreement that the EU did not qualify as a state, as it does not enjoy a monopoly on the legitimate use of force or significant taxation rights. Nor could it be reduced to an international organization or confederation, since its rules take precedence over domestic laws and it operates in far more than a single policy area (see Jachtenfuchs 2010). However, the panoply of terms used to describe the EU in the field of EU Studies clearly demonstrated that there was much less agreement on what the EU actually was. In the context of this conceptual ambiguity, characterizing the EU as a multilevel governance system offered more than just another terminological distinction. The theory provided conceptual leverage, shifting EU Studies away from the *sui generis* notion inherent in many EU analyses and connecting EU Studies to wider social science developments. Similar to Marks’ claims about the EU, Rosenau had argued with respect to international politics:

> activity in the global community today is the result not only of nation-states striving for goals, but also of a number of varied transnational collectivities – from multinational corporations to professional societies to international organizations to terrorists, and so on . . . – engaging in pursuits that are not confined by national boundaries. . . . Increasingly, it is clear that the breakdown of the old inter-state system is necessitating reformulation of how domestic and international processes sustain each other.

(Rosenau 1993: 5)

Although Marks, Hooghe and Blank (1996) did not specify exactly what they understood as ‘governance’ in multilevel governance, beyond the emergence of multilayered interactions and the complex intertwining of competences across different levels, their analysis is related to the ‘governance turn’ in Policy Studies and Comparative Politics (CP). Multilevel governance thus became part of a converging research agenda in International Relations and Comparative Politics. In the latter field, the governance concept represented a response to the growing segmentation of both society and state resulting from socio-economic dynamics and institutional evolution. The increasing complexity of actor constellations gave rise to a broad literature on the policy networks, sub-governments and negotiation systems that have supposedly deprived the state of its authoritative position (Rhodes 1997). Despite their different roots and emphases, both the IR and the CP literatures emphasize above all the absence of a central authority and the emergence of new processes and means of governing (see Eising and Kohler-Koch 1999a: 4). In that respect, the initial wording of the multilevel governance concept primarily highlighted the emergence of direct interactions among EU political authorities and sub-national entities, as well as the political mobilization of these entities, positing centrifugal tendencies ‘in which decisionmaking is spun away from member states in two directions: up to supranational institutions, and down to diverse units of subnational government’ (Marks 1993: 402).
Subsequent work on the multilevel governance concept was more overtly connected to the general social science debate on governance and the study of federalism: Hooghe and Marks (2003) juxtaposed two ideal types of governance, maintaining their emphasis on the territorial dimension that many other governance studies exclude. Drawing on empirical economics research on the optimal allocation of jurisdictions in competitive federalism, the authors sought to conceptualize ‘logically coherent types that capture alternative jurisdictional arrangements’ (ibid.: 236). Although competences and resources are distributed and shared across territorial units in both types, these two systems represent different ways of organizing political authority. Type I governance features a system-wide architecture and is based on territorial federalism and its methods of allocating political authority. Its institutions are durable and sticky. Political authority is distributed across general-purpose jurisdictions that exist at a limited number of levels, from the local to the global. Each jurisdiction is responsible for an extensive bundle of tasks, and there ‘is one and only one relevant jurisdiction at any particular level’ (ibid.: 236). Membership tends to be territorial; the ‘membership boundaries’ of these jurisdictions ‘do not intersect’ (ibid.: 236). As Hooghe and Marks (2003: 236) describe it, ‘every citizen is located in a Russian Doll set of nested jurisdictions’. Democratic Type I jurisdictions usually consist of an elected legislature, an executive and a court system. These general-purpose jurisdictions tend to foster common identities and voice strategies of their members (ibid.: 240), as they form stable and comprehensive governance arrangements with clearly drawn boundaries. In contrast, Type II governance consists of a set of special-purpose jurisdictions that carry out specific tasks, such as regulating telecommunications or setting toy safety standards. There are potentially a vast number of such jurisdictions, and these can operate at various territorial scales across a large number of levels. They are more flexible than Type I governance arrangements, in that they last as long there is demand for their services (Hooghe and Marks 2003: 236) and as long as they are able to compete with alternative providers of their governance functions. Because they are established to remedy specific policy problems, their membership depends on utilitarian considerations, such that these jurisdictions prompt exit strategies of their members rather than voice strategies in which members express their dissatisfaction with these jurisdictions. Frey and Eichenberger (1996) have labelled such Type II governance units ‘FOCJ’ – functional, overlapping, competing jurisdictions – and view them as operating within a system of competitive, functional federalism. Real-life examples include the numerous Swiss Zweckverbände, US special districts and, in International Relations, international regimes and treaties. According to Hooghe and Marks (2003: 238), Type I governance is the predominant government type, while Type II arrangements are ‘generally embedded in Type I governance’. Their flexible scope can help exploit economies of scale as well as take into account local preferences for public goods; however, an excessive number of these arrangements may also trigger substantial inter-jurisdictional coordination costs. Although the combination of general-purpose and special-purpose jurisdictions is said to balance centralization and decentralization costs (see Benz 2009a: 29), there are no universal rules regarding where to draw boundaries between the special jurisdictions and how to adjudicate among them (Piattoni 2009: 171). Principles that are intended to guide the allocation of competences to different jurisdictions (such as subsidiarity or proportionality) usually fail to provide clear operating standards from which the allocation can be unequivocally derived. Nonetheless, advocates of competitive federalism and Type II arrangements suggest that the coordination costs are offset because these units are designed in ways that ‘minimize interjurisdictional spillovers’ (Frey and Eichenberger 1996: 319).

In the more comprehensive Type I governance (within which Type II arrangements are embedded), multilevel governance has a statist and institutional core (see Eising 2004: 215). Public actors from at least two levels of government share political authority in formal
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institutional arrangements. Public actors at the upper level are to some extent autonomous, but lower-level units ‘are not subordinate’ (Mayntz 1999: 101). The EU is usually considered to be a general-purpose jurisdiction, not just a special-purpose jurisdiction (see Jachtenfuchs 2010: 204–5). Notwithstanding its lack of statehood, the EU has a much broader institutional remit than international regimes, and it exerts governing functions within a clearly delineated territory, namely within the borders of its 28 member states. In the EU, several institutions with autonomous powers have been established at the upper (supranational) level: the European Commission, the European Parliament and the European Court of Justice. Its constituent lower-level units, the EU member states, have very strong participatory and decision-making rights, notably through their representation in the Council of the EU and the European Council, and election rights with respect to the College of Commissioners and the judges of the European Court of Justice. The EU Council shares executive functions with the Commission and legislative functions with the European Parliament. In general, a qualified majority (if not all of the member states) must agree to legislative decisions taken at the EU level. In comparison to most national federal systems, EU multilevel governance is very dynamic and has undergone continuous evolution. After 60 years of European integration, it now covers an enormous range of policy areas, largely relying on regulatory policies to create, police and correct the common market. In several of these issue areas, the member states can no longer take autonomous decisions, either on legal or factual grounds. Hence, there is a pronounced need for cooperation and coordination among the EU institutions and national institutions in the EU multilevel system.

However, the EU also incorporates important elements of Type II governance. At the most general level, the EU’s authority varies significantly across and also within policy areas, as well as along the policy-making cycle. Although the EU has significant policy-making capacities, it depends to a large extent on the implementation capacities of its member states. More specifically, the EU displays some elements of flexible integration. Some member states have opted out of specific EU policies (see Jachtenfuchs 2010). For example, a subgroup of member states in the Eurozone has adopted a common currency and common institutions (such as the European Central Bank), whereas other member states have kept their own currencies and regimes of monetary policy. In a similar vein, the Schengen system unites those 21 EU member states that have abolished border controls among themselves as well as Switzerland, Norway, Iceland and Liechtenstein; however, the United Kingdom and Ireland have decided not to participate in this system. With the Amsterdam Treaty, the EU introduced provisions to enforce the cooperation of EU member states, although they have been infrequently invoked. These provisions, which presuppose the failure of EU member states to reach unanimous agreement on legislation beforehand, were first used in 2010 when 14 EU member states supported the adoption of a Council Regulation in the area of law applicable to divorce and legal separation. In 2012, this method was used to establish a unitary patent protection system. In February 2013, the Commission suggested the implementation of a financial transactions tax to reduce speculative trading and force the financial sector to contribute to the cost of the financial crisis. This proposal was supported by a group of 11 countries. As these examples illustrate, European governance consists mostly of Type I governance, but includes important elements of Type II governance.

Initially employed to study territorial political dynamics in the European Union, the multilevel governance concept has been extended to the general analysis of the territorial structuring of polities. Its understanding of levels is predominantly territorial but also encompasses functional jurisdictions with varying territorial scales. The study of Type I arrangements focuses scholarly attention on the vertical interactions among levels, whereas the analysis of Type II arrangements necessitates the study of horizontal interactions among different jurisdictions. The typology is abstract and versatile enough to allow not only the study of national federal orders,
global governance arrangements and European governance, but also that of sub-national entities and their territorial and functional structures. However, the former are clearly a minority among national modes of governance – Watts (2008: Table 2) identifies 25 functioning federations – and the latter are not the focus of attention in the multilevel governance literature. As a concept, multilevel governance is primarily a response to the increasing internationalization of political competences and the ever more complex combinations of (national) territorial and (international) functional jurisdictions. In this sense, the concept represents a response to the paradigmatic limitations of the predominantly single-level models of politics within both IR and CP (Scharpf 2010). Over time, the explanatory focus has shifted from the study of power struggles between institutional actors in the EU multilevel system to a more or less functional account of governance structures: ‘Multi-level governance allows jurisdictions to be custom-designed in response to externalities, economies of scale, ecological niches and preferences’ (Hooghe and Marks 2010: 29). In this perspective, multilevel governance is a response to the exigencies of functional problem-solving.

The typology of general-purpose and functional jurisdictions highlights the structural ensemble of public institutions and actors involved in governance arrangements as the core of the multilevel governance concept, an aspect that sets it apart from neighbouring concepts and allows it to occupy an important niche in the study of contemporary governance. Its emphasis on the territorial dimension of governance arrangements distinguishes it from understandings of ‘poly-centric governance’ that describe how several formally independent centres of decision-making can perform important governance functions in the same area (e.g. Ostrom 2010). The focus on public actors operating in a multilayered state apparatus differentiates it from notions of ‘network governance’ (see Kohler-Koch 1999; Kohler-Koch and Eising 1999) that stress the role of private actors and the interactions among private and public actors in these arrangements. The attention devoted to the roles and the interactions of different jurisdictional units separates it from the study of ‘new modes of governance’ that investigate the political shift away from the ‘parliament–executive nexus’ and the growing recourse to non-hierarchical policy instruments such as self-regulation, benchmarking and private dispute resolution (Héritier and Lehmkuhl 2011: 51). Hence, in a broad understanding, it may well be that multilevel governance can imply the study of ‘political mobilization, policy-making, and state-restructuring’, as Simona Piattoni (2009: 175; my emphasis) suggests; however, its more specific connotation differentiates it from other theories and concepts in the study of governance.

**Theorizing multilevel governance (in the EU)**

Marks and Hooghe’s typology focuses on governance structures, outlining the structural characteristics of multilevel governance, but devotes less attention to the dominant interaction mechanisms and governance patterns within multilevel systems. The authors’ work has been criticized on the grounds that ‘it provides a “thick” though compelling, description of contemporary changes in European governance but, in contrast, to standard theories, lacks a causal motor of integration or a set of testable hypotheses’ (Jordan 2001: 201). This section discusses some efforts to theorize multilevel governance, focusing on German contributions. Fritz W. Scharpf was one of the first scholars to develop theoretical propositions regarding why and how multilevel governance works and under what conditions it fails (see also Benz 2010: 215). Building on his earlier work on intergovernmental relations in German federalism, he identified a structural resemblance to the EU multilevel system (Scharpf 1988) – *inter alia*, with comparisons to the representation of Länder governments in the German Federal Council and its high decision-making hurdles – and has analysed the ‘institutional capacity and the institutional...
legitimacy’ of the EU multilevel system in several subsequent contributions (Scharpf 2010: 66). In the following analysis, I will consider only aspects of institutional capacity.

Beginning with his seminal work on intergovernmental negotiations and the joint-decision trap in EC agricultural policy (Scharpf 1988), Scharpf has persistently emphasized the status of national governments within the EU multilevel system, arguing that the EC/EU systematically generates suboptimal policy outcomes. One important background condition of his joint-decision trap (JDT) model is that competences are shared between EU institutions and the member states in such a way that a unilateral change in the status quo is not available to the member states. Hence, these actors must participate in a ‘compulsory negotiation system’ in order to resolve the problems they face. Furthermore, it is significant that member states’ self-interests enter negotiations in the EU Council basically unfiltered (because the national governments are directly represented in these negotiations). Third, decisions in the EU Council must be taken unanimously or almost unanimously. According to Scharpf, not only does this constellation preclude unilateral action by the member states and impede policy innovation at the EU level, it is also not amenable to institutional change, since this would involve major distributive conflicts to the detriment of the self-interests of many member states. Even though fully fledged policy blockades are rare, the expectation is that the JDT will systematically generate suboptimal policy outcomes.

Connecting these initial ideas on EU decision-making with his analysis of governance modes in policy-making (Scharpf 1997), Scharpf (2001: 4) came to analyse the ‘vertical interactions’ of EU member state governments in terms of four major interaction modes: mutual adjustment, intergovernmental negotiations, hierarchical direction and joint decision-making. Mutual adjustment means that national governments make their own policy choices but take into account the policies that other governments have adopted or are likely to adopt. Policies and international order then emerge from the sequence of moves and counter-moves that governments make without direct communication. These actors enter into intergovernmental negotiations when they feel the need to coordinate or centralize their policies in order to control border-crossing effects but still want to maintain veto rights for themselves and exclude other actors from decision-making. Hierarchical direction centralizes competences under the control of supranational institutions – notably the European Court of Justice and the European Commission – without any further involvement of the member states. Finally, joint decision-making implies the sharing of decision-making powers by supranational institutions and national governments.

According to Scharpf (2010: 69–75), a specific combination of these modes prevails in the EU: mutual adjustment is the default mode, but in order to control border-crossing effects and mitigate the cost of regulatory competition, the member states also enter into intergovernmental negotiations that grant them full control over the collective decision-making process. This mode was important during the integration crisis following the Empty Chair Crisis and also prevailed in the area of freedom, security and justice during the three-pillar regime after the Maastricht Treaty; currently, it is still predominant in EU foreign and security policy. According to Scharpf, hierarchical direction is most important in EU market-making (so-called negative integration), which forms the backbone of the European integration project. It is here that member states fully delegate decision-making powers to EU institutions and subject themselves to the hierarchical decisions taken by the European Central Bank (in monetary policy), the European Court of Justice (in legal integration) and the European Commission (in competition policy). This enables the Commission and the Court to unilaterally advance European integration and eliminate national barriers to the free mobility of goods, services, capital and people, as well as other distortions of free competition. In contrast, when market-correcting (positive integration) measures are needed, member states must take joint decisions in enacting EU legislation.
When the collective of member states opposes Commission proposals or when national interests diverge widely and are highly salient, reaching agreement in the EU’s joint-decision mode can be difficult, even where qualified majority voting applies in the EU Council. The governance hurdles in positive integration are thus significantly higher than those in negative integration (which is more firmly supported by the EU’s primary law). As a consequence, the EU’s multilevel system suffers from substantial governance asymmetries: ‘the market-making policies on which Europe can agree (or which can be imposed through hierarchical direction) will damage the capacity of national governments to adopt those “market-correcting” policies on which the Union cannot agree’ (Scharpf 2010: 75). According to Scharpf, this problem-solving gap tends to arise exactly in those policy areas ‘where national governing functions are most vulnerable to systems competition’ (ibid.), increasing the existing problems in these areas. Nonetheless, the joint decision-making mode is crucial because ‘its potential to create effective European solutions and binding rules is significantly greater than that of stand-alone intergovernmental negotiations, let alone of mutual adjustment’ (Scharpf 2011: 220). Moreover, it seems more susceptible to democratic self-determination than the other modes.

Scharpf’s analysis specifies the predominant interaction patterns within the EU’s multilevel systems and connects them to distinct pathologies of EU multilevel governance. Among the most pertinent problems are those resulting from joint decision-making: suboptimal policy solutions and non-decisions (although these are rare, especially in comparison to the legislative process in the United States), the lock-in of prior decisions and the impossibility of policy reversals for elected politicians (Falkner 2011b: 10). In short, joint decision-making makes major policy innovations unlikely. At the same time, it renders major institutional reforms changing the conditions of the compulsory negotiation system almost impossible, as such reforms would involve the substantial redistribution of competences and resources among the member states.

Subsequent studies have taken issue with this assessment of decision-making pathologies in EU governance. Several contributions in a systematic analysis of joint decision-making in different EU policy areas (Falkner 2011a) have identified important exit and consensus-building mechanisms that are employed to facilitate policy agreement in the EU (Falkner 2011c): the selection of treaty bases that require a less demanding decision rule than unanimity, the shifting of policy arenas to introduce different actors that may counteract the politicization of an issue (experts, bureaucrats), as well as the selective inclusion or exclusion of private actors to promote, support or hamper opposition, the strategic use of information, the pressurization of national governments via strategic partners or public discourse, the unsettling of the member states through the reinterpretation of the legal status quo, and the ‘hardening’ of soft law. Among the consensus-building mechanisms allowing an escape from the JDT are the redefinition of issues in terms of their scope (downsizing) or quality (downgrading), issue linkages and side payments, exemptions from EU requirements on a temporary or permanent basis, socialization effects on the basis of long-term cooperation and anticipation effects of future cooperation in a policy area. Although these mechanisms are well known to students of EU decision-making (e.g. see Peters 1997; Héritier 1999; Eising 2002), systematically connecting them to the practices and pitfalls of multilevel governance as they are conceived in the JDT model contributes to theory formation in multilevel governance. To this end, Scharpf has suggested that the original JDT model should be extended to include the impact of judgments by the European Court of Justice on the policy status quo and member states’ preferences, as well as the strategic role played by the European Commission in EU policy-making (Scharpf 2011: 232). Accordingly, the evolution of governance modes in the EU is now viewed as the outcome of the interactions and the preference constellations of both supranational institutions and member states.
Scharpf’s joint-decision trap accounts particularly well for the stagnation of European integration from the Empty Chair Crisis in the mid-1960s until the late 1970s. However, it was published at a time when the EC was entering a phase of major institutional innovations that reformed EU decision-making – the treaty reforms (beginning with the Single European Act and continuing through the Lisbon Treaty) that moved more and more policy areas from unanimity decisions to qualified majority voting in the Council and enhanced the decision-making rights of the European Parliament, changing the very conditions of the JDT and indicating the limits of the argument. Nonetheless, Scharpf’s coherent theory systematically connects multilevel structures to decision-making practices, policy outcomes and normative evaluations, highlighting the fact that actors adapt their strategies and interaction modes to the institutional conditions of multilevel governance.

Building on this insight, Arthur Benz (2009a) has developed a theoretical understanding of the EU’s multilevel governance system that devotes considerable attention to the strategies the actors employ to prevent policy impasse in the EU. In this perspective, the types of linkages that exist between the institutions and processes at each level (intra-governmental arena) as well as between these levels (intergovernmental arena) influence the strategies that actors employ in multilevel systems. In this respect, Benz differentiates between loosely coupled multilevel systems and tightly coupled systems. He claims that tightly coupled systems (such as German federalism) tend to reduce reform capacities, whereas loosely coupled systems (such as the European Union) allow more effective governance in comparison to the former, since they grant veto players greater leeway to cope with the conflicting demands they are exposed to at each level (Benz 2009a: 82–5). Drawing on Putnam’s (1988: 434) notion of two-level games in international politics, Benz suggests that national governments need to take into account will-formation in national parliaments, parties and constituencies, while also bearing in mind the interests of the other member state governments in EU Council negotiations. Policy solutions that might be agreed upon at the EU level may not find domestic support and, vice versa, policy solutions that might be acceptable within a member state may not be supported by other member states. Likewise, the representatives of interest groups in EU-level associations or EU-level expert committees may agree to positions formulated in these bodies but face resistance from their members. The overarching idea is that multilevel systems are prone to such dilemmas, and actors search for ways to escape them when addressing policy problems.

Benz discusses several institutional conditions facilitating the loose coupling of the EU and the national arenas (Benz 2009a: 140–2). First, there are the agenda-setting rights of the European Commission, which relies heavily on policy experts when developing its proposals, separating the search for innovative policy solutions from member state bargaining. Second, there is the mediating role of the Council presidency in EU Council negotiations. Third, the institutional differentiation of the EU Council’s machinery, ranging from its expert groups to the Committee of Permanent Representatives (COREPER) of the member states at ambassador level to the level of ministers, allows for level-shifting in the search for policy solutions. Fourth, there is the mutual adjustment of the EU Council and the European Parliament in EU legislation, particularly during the so-called trilogue with the European Commission. And finally, there is the decoupling of EU politics from the vagaries of national party politics and party competition. Important strategies employed in multilevel interactions include issue linkages, side payments, budget increases, reliance on fairness criteria and level-and arena-shifting (Benz 2009a: 143–4; Eising 2002). Moreover, in the member states parliamentary or semi-presidential democracies, parliaments usually refrain from exerting their veto rights vis-à-vis their national governments, instead granting them a flexible negotiation mandate or restricting themselves to the ex-post control of their government’s negotiation
behaviour, allowing them to hold the respective minister in charge of negotiations accountable (Benz 2009a: 145–7).

The work of Scharpf and Benz constitutes important theoretical contributions to the study of multilevel politics in the European Union. Rather than developing holistic theories or concepts of EU multilevel governance, they draw on established theoretical frameworks (such as neoinstitutionalism, rational choice, systems and negotiation theories), integrate interaction mechanisms and mid-range theorems into these theories (hierarchy, joint decision-making, loose and tight coupling of levels, etc.) and link them to the institutional configuration of multilevel settings. These theories of multilevel governance identify specific coordination problems inherent in multilevel decision-making systems as well as ways to escape these problems. Throughout, emphasis is placed on the interactions between institutional structures, interaction strategies and policy outcomes.

Varieties of EU governance

Further work on multilevel governance in the EU reflects the variety of governance modes now present in the European Union. These studies vary in terms of how the governance modes are defined and what actors are involved. For instance, while Scharpf limits his analysis to the interaction modes of national governments (and the supranational EU institutions), other studies have examined various EU governance structures or governance instruments across the divide of public and private actors. Several researchers have found that governance modes differ not just across market-making and market-correcting policies, but also in different policy areas within each of these fields (see Wallace 2005). It has frequently been observed that the number of governance modes and the mix of these modes within individual policy areas have increased over time in the EU system, although specific governance modes may continue to dominate in some policy areas, such as voluntary forms of cooperation in education policy and the Bologna process (Tömmel and Verdun 2009: 295).

In short, the predominant constellation of EU governance modes is unclear. In the subsequent analysis, I will focus on three governance modes that are frequently referred to in EU governance (and elsewhere): hierarchy, competition and networks. Tanja Börzel (2007) suggests that EU governance modes generally operate under the shadow of hierarchy. Her assessment is based on a very broad understanding of hierarchy that subsumes even majority voting in the EU Council’s joint decision-making under the term (Börzel 2007: 70). Nonetheless, several authors agree that hierarchy, even when more narrowly defined as unilateral direction, is not limited to the EU’s market-making policies; rather, it extends into a far greater array of EU policy areas. Gerda Falkner (2011c: 254) argues that ‘a policy’s quality of specification on the level of EU primary law . . . is crucial’ when accounting for hierarchical decisions by the Commission or Court: ‘Often, that happens to go hand in hand with market making, but not always and not exclusively’ (ibid.). Moreover, policy implementation in the EU multilevel system relies heavily on hierarchical governance instruments: directives, regulations and decisions (Eising and Lenschow 2008: 263). An examination of the use of these governance instruments between 1975 and 2012 demonstrates that the EU now employs regulations less than in the mid-1980s and early 1990s (when it implemented the bulk of the Single Market Programme) but continues to produce a steady flow of directives; its use of decisions increased in the mid-1990s (see Figure 9.1).

Héritier and Rhodes (2011: 163) point out that ‘the shadow of hierarchy . . . looms large’ over the new modes of governance. The ‘credible threat of legislation . . . usually prompts their emergence as alternatives to traditional forms of decision-making’ as well as securing their
effectiveness. However, a caveat is in order: Ingeborg Tömmel (2009: 16) argues that, in comparison to national states, the mode of hierarchy is important but is not as widely used and its influence is also weakened in the EU system, the reason being ‘the multilevel and multi-actor structure of the Union. The EU has not only to establish common rules but also to accommodate diversity among the member states.’ Thus, the implementation of EU directives allows some degree of discretion on the part of the member states, and competition policy decisions are frequently compromises formed with the addressees of these decisions rather than top-down rules.

The competition mode is more important in the EU than it is in the member states. Not only is it the primary instrument used to govern the common market and foster competitive relations between economic actors, but it is also increasingly employed to foster policy competition and ‘policy convergence among member states’ (Tömmel 2009: 15). However, competition is not the only means to establish the common market; until the mid-1970s, the European Union relied on hierarchical standard-setting to establish the common market. When it became evident that this mode was not suited to the task of harmonizing standards throughout Europe, the European Union resorted to two alternative mechanisms to advance the common market project. First, the integration of the common market and the interdependence of member states’ economies have been accelerated by the provisions for mutual recognition that were introduced by the Single Market programme in the mid-1980s, obliging member states to accept one another’s regulatory standards as equivalent. Mutual recognition avoids the negotiation and implementation costs of new regulations (Schmidt 2009: 124) and is a substitute for harmonization. It has the potential to trigger regulatory competition among the member states that may, in principle, result in lower or higher regulatory standards. To avoid a ‘race to the bottom’, mutual recognition is embedded within a regime of minimum harmonization at the EU level and allows for exceptions, should member states have good reasons to stipulate mandatory requirements of domestic specifications that foreign goods must comply with and that conform to the proportionality principle. Whenever a minimum harmonization of technical standards is deemed necessary under the so-called New Approach to standard-setting, member states only
formulate essential requirements; the task of translating these into specific standards is delegated to private standard-setting bodies that are umbrella organizations for national private or para-public standards organizations (see Egan 2009). Moreover, in order to assess the equivalence of national standards under mutual recognition, extensive patterns of transgovernmental cooperation have emerged for both goods and services. In contrast, policy competition is intended to foster both mutual learning through communication and benchmarking in order to increase the member states’ policy performance and trigger a race towards best policy practices. The most important example here is the Open Method of Coordination (OMC), which has been introduced in a variety of policy areas concerning public welfare and services (Benz 2009b: 36) as part of the Lisbon strategy to develop Europe ‘into the most competitive and dynamic knowledge-based economy in the world’ (European Council 2000: 2). In the EU multilevel system, the OMC systematically connects non-binding European guidelines and benchmarks with national action plans and policy reforms (Eising and Lenschow 2008: 268). For the member states, this allows policy problems to be addressed without the surrender of formal competences to the EU (Héritier and Lehmkuhl 2011: 56). The Commission settles for this second-best solution of EU governance from its viewpoint because it anticipates the resistance of the member states to joint decision-making and because it lacks hierarchical governance instruments. Several contributions have emphasized the importance of the mechanisms for negotiations among multiple private and public actors (beyond purely intergovernmental negotiations or the joint decision-making of the EU institutions).

Some early studies of European governance stressed the significance of network governance in the EU (Kohler-Koch and Eising 1999), highlighting the fact that governance in the European Union relies on uniting the relevant state and societal actors and building issue-specific constituencies. Accordingly, in network governance, state actors and a variety of interest organizations, institutions and experts discuss and negotiate the allocation of specific values. Given that the EU develops policies for 28 member states, the territorial and functional representatives of national interests come from widely differing political, social and economic systems. Network governance asserts that the functional segmentation of specialized Councils and the Commission’s directorates, regulatory agencies and advisory committees gives rise to specialized sub-structures within Type I governance that develop their own rationality criteria and operating procedures (see Eising and Kohler-Koch 1999b: 269). The actors involved are autonomous and inter-dependent. This concept underscores the fact that the Commission proposes EU legislation and that the Council and the Parliament take joint decisions only after discussion and negotiation with a multitude of private or regional actors: in August 2013, the EU transparency register listed 5,872 interest organizations that seek to influence EU policies; in comparison, the German Bundestag currently registers 2,034 interest organizations that seek to influence German legislation. These actors are consulted and provide information in online consultations; they are also heard in informal meetings and are represented in expert committees. A few of them, notably the social partners, are accorded rights to participate in the formulation and implementation of EU policies. Depending on their representativeness and their influence over their members, they may generate support among the target population for the policy measures in question. They can further contribute to EU governance when the EU institutions delegate powers of self-regulation to them (as in the case of the voluntary agreements of the European paper and PVC industries in environmental policy), when they are authorized to fill in the details of framework directives or standards (as seen in health and safety regulations) or when they act as co-regulators with public institutions (such as the EU’s standard-setting bodies) (Héritier and Lehmkuhl 2011: 60). Some of these actors are also involved in the working groups administering the implementation of EU law. The density of these networks and the amount of trust they
generate among the actors involved may be lower than in national politics (because the EU is more active in policy formulation than in policy implementation), but in some cases they can stabilize interaction patterns and contribute to solving EU policy problems. However, it goes without saying that policy networks can also stand in the way of policy changes. Hence, network governance may not be the predominant mode of EU governance (although it is embedded within the EU’s institutional setting), but it is important in the preparation of joint decisions by the EU institutions and also in the implementation of these joint decisions and the resolution of coordination problems during the implementation of EU policies. It purportedly has the potential to strengthen democratic control ‘by involving stakeholders in policy-making and by mobilizing their commitment to specific policies, thereby increasing output legitimacy’ (Héritier and Rhodes 2011: 164).

Private actors and multilevel governance

Many studies of the European Union emphasize the fact that multilevel governance is also multi-actor governance. Private actors are assigned an important role in the governance of the European Union; in fact, the move from hierarchical direction towards more horizontal relationships among state and private actors is often considered to be the defining characteristic of the shift from government to governance. The concept of network governance reflects this development, and the patterns of private-actor participation in EU politics underscore their relevance to EU governance. Given the significance attached to private actors in modern governance, this section more closely examines the impact of multilevel governance systems on interest mediation.

In this respect, a major puzzle involves how interest organizations adjust to the opportunities and constraints imposed by multilevel political systems (see Beyers et al. 2008). Adjustment can refer to the ability to adapt the organizational format, the adoption of specific political strategies, the search for new allies or the modification of the policy agenda. Importantly, an organization’s embeddedness within institutional contexts or its privileged consultation by a national or international institution can ease or stimulate adjustment. Some groups find it easier to take advantage of multilevel politics than others (Eising 2004).

Multilevel systems have important consequences for interest groups. The fundamental institutional characteristic of Type I governance arrangements is the distribution and sharing of power between the upper level and its constituent units. I limit my discussion to these arrangements because they apply to the EU and because many characteristics of network governance correspond to interest representation in Type II governance. While the specific form and distribution of authority across and within levels varies significantly across multilevel systems (see Watts 2008: 83 on territorial federations), in general, Type I multilevel settings tend to offer interest groups a variety of points of access and options for ‘venue shopping’. In multilevel governance, ‘interest groups at any territorial level are free to lobby government at any number of levels’ (Constantelos 1996: 30). Political representation is no longer confined to a single jurisdiction. Therefore, David Coen (2007: 339) suggests that ‘it is logical and responsible’ for interest organizations ‘to develop a mix of political channels to influence policy’ in the EU multilevel system. However, interest representation at different levels is costly. Even if interest representation is the raison d’être that forces them to respond to changes in the political environment, many interest organizations are tied to their members and constituencies, as well as to the national or regional contexts in which they emerged. They are embedded in social relationships (see Granovetter 1992) and are dependent on routine exchanges with established partners (see Wilson 1973). Their specific location in the EU multilevel system shapes their political activities as well as their access to the political institutions. An important response to
the formation of political multilevel systems is organizational isomorphism, in the sense that interest group systems are also structured in several layers, with the territorial scope of each interest group layer corresponding to the boundaries of the political units at that level. Accordingly, in the EU’s multilevel system a large number of EU-level interest organizations are federations of national interest organizations whose organizational costs can be shared by their members. The presumption, then, is that in European Union governance national associations concentrate their activities on domestic institutions, whereas EU associations focus their political activities on EU institutions. Similarly, in German federalism it is mostly nationwide interest organizations that enter into political exchanges with federal institutions, whereas their Länder organizations are in charge of relations with Länder governments and parliaments. However, there are various reasons why national groups may not limit themselves to representing interests through their EU-level federations, instead becoming active themselves vis-à-vis the EU institutions: when EU regulation has a major impact on these groups or on their members, when the division of labour among them and the EU associations that are supposed to represent them vis-à-vis EU institutions are unsatisfactory, or when the terms of EU policy implementation must be worked out at the EU level, it is likely that these groups will extend their activities to the EU level.

It is generally accepted that interest organizations require substantial governance capacities to represent their interests at different levels in the EU multilevel setting. The abilities to recognize the needs of state actors in decision-making processes, to mediate between the competing demands of state institutions and their own members, and to contribute to compliance with and implementation of public policies (by means of interest group self-regulation or co-regulation) are crucial (see Schmitter and Streeck 1981). In part, these abilities hinge on an organization’s type. Empirical studies indicate that, in line with Mancur Olson’s logic of collective action, specific interest organizations are more heavily involved in EU policy-making than diffuse interests, even though various channels are open to diffuse interest organizations. Diffuse interest groups ‘lack a well-delineated and concentrated constituency’; they defend ‘interests that are linked to broad and general segments of society’ that are not necessarily identical to the self-interests of their members (Hassel 2010: 161). In contrast, specific interest organizations have a well-delineated and concentrated constituency. They defend the material interests of their members, which tend to have clear-cut commercial or professional concerns. Moreover, in part, the governance capacities of groups are shaped by the ways in which they are incorporated in public policy-making and implementation. The study of national interest group systems differentiates between two major types of interest group systems featuring groups with rather different governance capacities: pluralism and corporatism. In pluralist settings, a multitude of interest organizations compete in the same domains and strive for political influence, without any public authority for self-regulation or co-regulation. In corporatist settings, a limited number of centralized interest organizations that are highly representative of their domains also compete for influence, but are authorized to formulate public policies and/or implement these measures. In exchange, state institutions expect them to moderate their demands on public policies (Hassel 2010). In sum, interest organizations in corporatist settings are likely to have broader governance capacities than those rooted in pluralistic settings.

What type of interest-group system and what governance capacities of interest groups can we expect in multilevel systems? Studies on the relationship between federal systems and interest-group systems suggest three reasons why multilevel systems should be more conducive to the formation of interest groups than unitary systems (see Armingeon 2001: 214). First, multilevel systems allow greater disparities across regions in interest-group organization than unitary states. Second, cultural, social and economic differences are more pronounced in multilevel systems.
than in unitary states, giving rise to a greater variety of interest organizations. Finally, the dispersion of political authority in multilevel systems results in greater differentiation within the associational landscape than the centralization of political authority in centralized political systems does.

The expectation for Type I multilevel systems is thus that the greater dispersion of political authority across different levels will result in greater interest-group pluralism. Figure 9.2 displays the bivariate association between the extent of federalism and interest-group pluralism in 36 established democracies. Data are taken from Arendt Lijphart’s (2012) revised and updated study on patterns of democracy in 36 countries for the period from 1945 to 2010. The graph includes two regression lines. The negative association between federalism and interest-group pluralism is based on the analysis of all 36 democracies, including those that cannot be regarded as multilevel systems in the strict sense, as they display only a very limited dispersion of political authority across the different levels. These highly centralized countries exhibit great variation in terms of interest-group systems, ranging from strong corporatism in Luxembourg to pronounced pluralism in Greece. Evidently, in highly centralized countries the structure of the interest-group systems strongly depends, *inter alia*, on the ways in which groups are incorporated into public policy-making and implementation. Although this is also true in multilevel systems, of course, the greater dispersion of political authority and the larger number of access points in these countries should nonetheless give rise to greater interest-group pluralism than is the case in unitary states.

When we exclude unitary countries from the analysis and focus only on those countries that display at least some competence dispersion and sharing across different levels (i.e. countries with a value greater than 1.5 on the federalism index), the relationship between state structures and interest-group systems changes: the more political authority is dispersed (and shared) across different layers of government, the more pluralistic the national systems of interest representation.

**Figure 9.2 Multilevel governance and interest-group pluralism in 36 democracies (1945–2010)**

*Source: Author’s calculation, data based on Lijphart (2012).*

*Note: Regression 1 Intercept 2.337 – 0.151 index of federalism (SE 0.92, F 2.215 on 1 and 34 df, p 0.146, adj. $r^2$ 0.034).
Regression 2 Intercept 0.009 + 0.400 index of federalism (SE 0.81, F 6.435 on 1 and 15 df, p 0.023, adj. $r^2$ 0.254).*
turn out to be. Germany, Austria and Switzerland represent important exceptions to this pattern. Not much research has been done on this question, but one underlying reason might be that particularly the former two represent an ‘extreme form’ of cooperative or interlocking federalism, ‘reducing the opportunities for flexibility and variety of policy through autonomous decision-making by different governments’ (Watts 2008: 84). Hence, tight coupling in multilevel systems with policy-making authority allocated to the upper level and policy-implementation authority to the constituent units may promote greater interest group centralization. In itself, this is insufficient to account for the emergence of interest-group corporatism. From Streeck and Schmitter’s (1991) seminal study of interest representation in the European Union, further requirements can be inferred: upper-level control of (financial) policy instruments, the channelling of access to the central institutions, a power balance between the different interest groups involved in corporatist arrangements, high salience of the policy area in which corporatist arrangements are formulated and a manageable divergence of interests based on more or less homogeneous policy contexts in the constituent units.

Conclusions

The concept of multilevel governance is a response to the internationalization of politics and the increasing interactions of territorial and functional jurisdictions. It highlights the structural ensemble of the public institutions and actors involved in the governance arrangements at the core of the multilevel governance concept. This focus sets it apart from neighbouring concepts and allows it to occupy an important niche in the study of contemporary governance. Multilevel governance must not be equated with a specific mode of governance. The governance literature has identified a variety of governance modes – e.g. hierarchy, networks, competition, negotiations – that are now combined in the EU multilevel system. Theories of multilevel governance draw on well-established theoretical frameworks, integrating causal mechanisms into them that stress the operating logic and institutional configuration of multilevel settings. As such, they are far more general than sui generis theories of European integration. Emphasis is placed on the interactions between institutional structures, interaction strategies and policy outcomes. Finally, multilevel governance tends to promote interest-group pluralism and works to the advantage of groups with substantial governance capacities.

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Bibliography


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