

Multilevel Governance and the State

Arjan H. Schakel
Maastricht University

Liesbet Hooghe
UNC Chapel Hill and VU University Amsterdam

Gary Marks
UNC Chapel Hill and VU University Amsterdam

Final Draft July 2013

Chapter for inclusion in “The Oxford Handbook of Transformations of the State,” editors Stephan Leibfried, Evelyn Huber and John Stephens. Oxford: Oxford University Press. We would like to thank John Hall, Michael Zürn, Stephan Leibfried, and John Stephens for comments. Research reported here is funded by an ERC grant, “Causes and Consequences of Multilevel Governance # 249543.

WORDS (text + notes + references) = 6,798

+ 3 tables/figures

The authority of subnational governments and international institutions has grown considerably over the past 65 years. Cross-sectional variation has not diminished, but where change has taken place it has been preponderantly in the direction of multilevel governance. Europe has been the epicentre of this development, hence this chapter focuses primarily on Europe and the OECD world but developments elsewhere will be briefly discussed as well.

Europe's experiment with its political structure is rooted in the disaster of the Second World War. Not one of the six founding states of the European Economic Community had escaped military defeat and foreign occupation. Institutions that were considered utopian before the war now seemed worth trying. The outcome, half a century later, is an unstable and contested reallocation of authority to the European level. The process has been two sided. Authority—the competence to make binding decisions that are regarded as legitimate—has been diffused to subnational authorities even in countries that do not harbor national minorities (Goldsmith and Page 2010; Hooghe et al. 2010).

The simultaneous centralization of authority in a continental polity and decentralization to subnational regions reveals that the standard toolkit of political science cannot fully grasp what is going on. The European Union appears to break the mould of the state, but is not a state itself. Rather, in Stephan Leibfried's metaphor, it is akin to a ship with a single hull but masted with national flags. Hull up, it appears to be supranational, but viewed from the opposite direction, from the masts down, it is an intergovernmental confederation of states (Leibfried et al. 2009). The EU is 'less than a state, but more than an international organization' (Sbragia 1992), a 'composite' polity (Tarrow 2001), a 'condominio' or 'consortio' (Schmitter 1996), a 'regulatory state' (Majone 1996), a 'post-modern state' (Caporaso 1996), or a 'compound polity' (Fabbrini 2007). Decentralization in countries such as France, Italy, Spain, or the UK is a clear departure from a unitary national state, but is less than federal. The outcome is described as quasi-unitary, quasi-federal, or federalizing, terms that take one into the grey area between unitary and divided sovereignty.

The literatures on Europeanization and decentralization meet around the idea that authority has become multi-layered, but beyond this lies disagreement. What is the logic of decision making in this new (dis)order? Who is driving the process? And what are the effects for state sovereignty?

In the next section we draw on theories of European integration to position ourselves on these questions before examining how authority has shifted in Europe. We then engage the principal explanations. Finally, we survey subnational decentralization beyond Europe. We conclude by exploring the implications for the state and for national sovereignty.

Theories of European Integration

The fundamental reason for international governance is that interaction among national communities creates problems that demand collective decision making. The diversity of such problems reflects the depth and scope of interaction. According to this functional line of thinking, international governance in general, and European integration in particular, reduce the costs of providing international public goods.

However, governance is also an expression of community. Citizens care—passionately—about who exercises authority over them. The functional need for coordination rarely coincides with the territorial scope of community. Communities demand self rule, and a preference for self rule is inconsistent with the functional demand for supranationalism. This tension has shaped European integration and the fate of the national state.

The founders of the European Union were pragmatic. This reflected facts on the ground. While several influential political leaders, including Jean Monnet and Walter Hallstein, had supranational ambitions, they realized that they were in a minority and could not appeal to an emergent European identity. Their strategy, and the strategy of integrationists who followed them, was to mobilize support for concrete projects such as the customs union, common agricultural policy, and the social fund. Their efforts were phenomenally successful. What can account for the speed and breadth of regional integration in Europe in the 1950s and 1960s. How could rapid jurisdictional reform take place among embedded national states?

Functionalism conceives a mismatch between the international scale of human problems and the national scale of states as a force for supranational integration, but says little about how this mismatch is resolved. Neofunctionalists argue that transnational interest groups demand international governance to reap (mainly economic) benefits. Once set in motion, the process is self-reinforcing. As integration deepens and supranational institutions gain power, so more transnational interests are created. Supranational actors themselves demand more authority. Progress in one policy area spills over and gives rise to pressures for integration in other areas.

After the debacle of Charles de Gaulle's opposition to supranationalism and the empty chair crisis of 1965-66, neofunctionalist predictions appeared too rosy. The most influential alternative approach—intergovernmentalism—describes a family of theories that conceive regional integration as an outcome of bargaining among national states. The puzzle was not the speed or breadth of regional integration, but the decision of national states to create an international regime in the first place. Given their power and resources, why should states pool authority? Hoffmann argued that states would not swim far in supranational waters. They might be prepared to integrate on matters of low politics if the gains were evident, but on many issues, including those that engage national sovereignty, 'Ambiguity may arouse and stiffen national consciousness into nationalism' (Hoffmann 1966, 882; see also Rosamond 2000, 78).

The main intergovernmental line was to bring regional integration back into the realm of 'normal' international relations theory. The authority exercised by European institutions is pooled or delegated by the member states to make commitments. Intergovernmentalists link national preference formation to strategic bargaining between states in a two-level game. National interests are framed in domestic political conflict and, once formulated, are bargained in intergovernmental fora.

The debate between neo-functionalism and liberal intergovernmentalism was interlaced with a discussion about the nature of the beast and, by implication, about the appropriate categories of analysis. Is European integration best conceived as a means for coping with international interdependence or is more to be gained from analyzing the European Union as a federal polity? Should one use the language of international relations or the language of comparative politics?

In the late 1990s, the debate on Europe's jurisdictional architecture converged on the view that European integration had transformed a network of sovereign national states into a system of multilevel governance (Jachtenfuchs 2001; Kohler-Koch and Eising 1999). Literature on multilevel governance extends the notion of reallocation of authority to decision making within, as well as among, national states (Bache and Flinders 2004; Enderlein et al. 2010; Piattoni 2010). There are (almost) as many definitions of multilevel governance as there are users of the term, but common to all is the idea that authority on a broad swathe of issues has come to be shared across global institutions, regional organizations, such as the EU, national governments, and subnational governments.

Multilevel Authority

Figure 1 reveals how formal rules concerning national/EU decision making across 18 policy areas have evolved from the 1955 Rome Treaty to the 2005 Constitutional Treaty, as charted by Tanja Börzel (2005). Breadth of integration refers to the range of policies or tasks for which the EU plays a role; depth of integration refers to the supranational or intergovernmental character of the decision rules. There is wide variation across policy areas, as suggested in the size of the box plots representing the 5 to 95 per cent range for breadth and depth. As one would expect, policies that redistribute income among individuals are handled almost exclusively within national states, whereas policies having to do with trade and market integration are handled almost exclusively at the European level. A startling fact about the pattern in Figure 1 is that there is not one case where a policy has been shifted from the European to the national level, nor is there a case where a policy that was supranational has become intergovernmental. At least up to this point in time, the development of European governance has been unidirectional.

[Figure 1 about here]

Figure 2 charts the evolution of regional authority in older and newer EU members from 1950 to 2007. Of 27 EU countries in 2007 21 had become more regionalized. Twenty additional levels of regional government had been established, and not one disestablished. The number of elected regional assemblies had increased from eight to twenty. While regional authority in the EU-East is considerably lower than in the EU-West, decentralization has increased sharply since the collapse of communism.

Variation across regions shows no signs of declining over time. Some countries have no regional level. Others have authoritative regional governments that play a decisive role not only in their respective regions but also in the country as a whole. Of the 27 EU member states, six had no regional tier¹, ten had a single tier, ten had two regional tiers, and one, Germany, had three in 2007. There has been no convergence in regional government but, rather, continuing and wide divergence.

[Figure 2 about here]

Yet this has been an era of subnational empowerment. The scale of change becomes apparent only when one escapes 'methodological nationalism' (Jeffery and Wincott 2010), which boils regional government down to the categories of the unitary

¹Defined as a general purpose tier with an average population $\geq 150,000$.

state, confederalism, and federalism. Few countries jumped from one category to another, but many have engineered basic reform.

So regionalization is similar to Europeanization in that it is a coherent process of change –not a series of independent bargains. Figures 1 and 2 give credence to the claim that the jurisdictional architecture of Europe has become multilevel. But what are its causes, and what does this mean for the state in Europe? Over the past two decades research on Europe has engaged each of these questions.

Explaining Multilevel Governance

Two literatures help one understand the transformation of authoritative decision making over the past half century. Public goods theory conceives government as a means to provide public goods that would not be produced by the market or by rational citizens acting independently. The structure of government will then reflect the efficient production of public goods given their economies of scale and externalities. Pressure for reform arises in the tension between actual and efficient government structure. Second, government is an expression of community and the demand for self-rule on the part of normatively distinct, territorially based groups. The structure of government will then reflect the pattern of community; pressure for reform will arise when they diverge.²

Public Goods

The first approach builds on the theory of public good provision in which efficient governance a) internalizes inter-jurisdictional externalities, b) exploits scale economies, and c) tailors policy to the heterogeneous preferences of those living in different communities (Hooghe and Marks 2009a). Where the externalities and scale economies that arise from a problem such as providing clean air, minimizing monetary transaction costs, or reducing trade barriers, are transnational in scope, the most efficient level of decision making is also transnational. Where the externalities and scale economies are local or regional, as for garbage collection or land-use planning, the most efficient level is subnational.

Multilevel governance should be very common since the externalities and scale effects of most policies provided by government – e.g. health, education, economic development, spatial planning, environment and welfare services – are diverse. So one would expect some policies to be decentralized and others to be centrally provided.

During and immediately after World War II, authority was packaged in highly centralized states by the overriding need to mobilize resources for war and to survive scarcity. In the post-Second World War era, functional pressure for regionalization resulted from a double shift in policy portfolios, away from national war making and towards new policies related to economic growth, trade, and welfare; policies with widely varying externalities and economies of scale which are best conducted at diverse territorial scales. The change was not immediately evident because, in the

² A comprehensive analysis would include the effects of regime type and distributional politics.

years following the war, central states were called upon to distribute scarcity and to mobilize resources, human and financial, to rebuild battered economies. Moreover, jurisdictional arrangements are sticky –one must expect a serious lag between change in the environment and change in the structure of government.

Most policy areas that have been shifted to the European level follow a functional logic rooted in the territorial scope of their externalities and scale economies (see table 3). This applies to policies concerned with trade, transport, energy, and competition, in which the initial steps toward integration were taken in 1957. In the early decades of the EEC, integration in social and industrial policy were spillovers arising from economic integration. In addition, the European Commission played a significant role in international trade negotiations, where the benefits of scale are transparent. This is a field in which the European Union can be considered a great power.

[Table 3 about here]

Subsequent European integration in environment, research, and immigration also has a functional logic. However a functional explanation gets one only so far. Some policy shifts involve political side-payments. These include regional and cohesion policy and agricultural subsidies. The European Commission defends regional policy on efficiency grounds, but a survey of Commission officials finds that a majority favor re-nationalization of the European Union’s agricultural policy and regional policy is low on the wish list for further centralization (Kassim et al. 2012).

Moreover, Europeanization does not encompass all policy areas for which there are collective functional benefits, such as defence procurement. Most of the exceptions can be explained by the distributional consequences of Europeanization and the capacity of potential losers, be they national governments or domestic interests, to block reform. While neo-functionalist accounts emphasize spillovers, intergovernmentalists highlight the distributional impediments to international cooperation. But neither predicts the constraining impact of mass publics – a development which has exerted a serious drag on integration.

Multilevel governance conceives European integration as part of a broader process of authority dispersion, which stretches beneath as well as above the central state. The existence of an overarching European market eliminates the fear that regional autonomy would result in small, inefficient economic units that might be denied access to former markets (Jolly 2007; Piattoni 2010). This has emboldened demands for independence on the part of minority nations. Why not gain the benefit of flexibility and responsiveness in a small jurisdiction without losing access to a continental-sized market?³ Moreover, the European Union domesticates international relations in a rule-bound polity, and gives small states greater leverage than they would have in a classic Westphalian system.

The effects are indirect because the European Union has no authority over subnational relations in its member states. Strong regional governments, such as the

³ A recent report on Welsh independence claims that per capita income would be as much as 39 percent higher in Wales had the country achieved independence in 1990. The argument is that small EU countries have grown more than larger ones in the last two decades because they reap the advantages of flexibility with “the EU's flotilla-like structure” (Price 2011).

German *Länder* and Spanish *comunidades autónomas*, are well placed to gain influence in European decision making, but they also have the most to lose when authority is reallocated to Europe. The European Commission has kick-started regional government in some formerly centralized states through its cohesion policy, which funds economic development in poor EU regions. Greece, Hungary, Ireland, Poland, and Slovakia have regionalized in part to gain access to EU funding. However, subnational actors merely implement EU policy in centralized countries. In federations and countries with a strong regional tier, EU integration has generally led to more co-operation, rather than competition, between regions and central government (Tatham 2011). The Committee of the Regions, a consultative assembly of subnational leaders across the EU, has issued a *Charter for Multilevel Governance* which sets out principles and methods for involving regions in national and European decision making. The goal is ‘Europe *with* the regions’ not ‘Europe *of* the regions’.

Multivariate analysis suggests that the effect of European integration on subnational authority is muted (Schakel 2009a). Regionalization appears to be more powerfully influenced by the logic of policy making in advanced capitalist society. Regional authority was almost frozen in the years immediately following the Second World War, but from the 1970s there was a torrent of reform strengthening regional government (Figure 2). This process of regionalization parallels the growth of government responsibility for welfare, microeconomic, environmental, educational, health, and transport policy. These policies extend the reach of the central state, but, unlike war, they do not compress policy making to the national level. On the contrary, each of these policies has diverse externalities and economies of scale and, as a result, are most efficiently delivered at the local and regional levels as well as by central government (Schakel 2010; Ter-Minassian 1997).

Community

Government is palpably shaped by demands on the part of communities to rule themselves. Communities – bounded groups of densely interacting humans sharing distinctive cultural norms – may wish to exercise self-rule so that laws are not imposed from the outside. Friction between national law and minority norms can generate potent demands for jurisdictional reform. Lipset and Rokkan summarize this as a centre–periphery cleavage, a durable and sometimes violent clash between peripheral communities and state-builders.

Functionalists and neo-functionalists stressed the constraining effects of national identity on integration. ‘We are favored by the need and the habit of material cooperation; we are hampered by the general clinging to political segregation. How to reconcile these two trends, both of them natural and both of them active, is the main problem for political invention at this juncture of history’ (Mitrany 1948 [1966], 151). But they believed that national identity would ultimately give way to a more encompassing loyalty. In an early analysis of public opinion on European integration, Ronald Inglehart predicted that a shift of loyalties was a matter of generational replacement. Younger cohorts, he argued, were being socialized in societies where nationalism was discredited and where supranational institutions were providing an expanding range of collective goods. Recent research arrives at a different verdict: identity remains a supremely powerful constraint on preferences concerning the level of European integration (Carey 2002; McLaren 2002; Risse 2009). This is true both for political parties and for the general public.

The presence of ethnic or territorial minorities and their effect on jurisdictional design within the state is widely acknowledged in the literature. Many minority communities have been assimilated into nations, yet most nations co-exist with minority communities that retain distinct norms rooted in language, religion, or ethnicity (Keating 1998; Brancati 2008). Demands for self-rule have intensified with the decline in the share of the vote going to major parties and the growth of regional parties. The average regional vote share for regionalist parties in national elections in 11 countries surveyed by Massetti and Schakel (2013) has increased from 4.9 percent in the 1970s to 8.9 percent in the 2000s (see also Brancati 2008; De Winter et al. 2006).

Multilevel Governance beyond Europe

Europe has been the prime laboratory for multilevel governance, but the dispersion of authority has occurred beyond. Figure 2 illustrates that non-OECD countries have become more decentralized as well. The largest changes have taken place in non-federal countries. Of 21 Latin American countries, fourteen have decentralized while only two (Cuba and Ecuador) centralized over the 1950-2006 period. In South-East Asia, our measure tracks regional authority in Indonesia, Malaysia, the Philippines, and Thailand, and finds significant increases in all but Malaysia.

Decentralization has been recommended by international institutions—the OECD, the Worldbank, the IMF, the Inter-American Development Bank, the Asian Development Bank—as a means to increase government efficiency and effectiveness. However, this does not explain variation in the timing and extent of decentralization across the globe. Democratization and the presence of minority communities provide a better grip on when and how countries decentralize.

As in Central- and Eastern Europe, regionalization in Latin America and South-East Asia closely tracks democracy. The dip in the 1970s and 1980s in Latin America corresponds to the authoritarian turn in all but a handful of countries; of 21 countries only Costa Rica did not experience authoritarian rule in the past sixty years. The onset of democratization came later in South-East Asia, and this is reflected in the fact that regionalization began in earnest only in the early 1990s. Here ethnic diversity has intensified pressure for regionalization (Shair-Rosenfield et al. forthcoming). All four countries have introduced or strengthened special autonomy statutes for ethnic or religious minorities. Territorially concentrated ethnic minorities are much less common in Latin America, though in recent years several governments (Bolivia, Colombia, Ecuador, Nicaragua, Panama, Venezuela) have conceded limited self-rule to indigenous communities.

Multilevel governance has also deepened above the state. Problems generated by reciprocal interdependence are deliberated in global forums, but implementation usually requires coordination among international, national, and subnational governments. Climate change policy is a case in point. Global agreements set parameters, but the work is done by cities, regions, and localities (Biermann and Pattberg 2012). International institutions are the topmost levels in an interconnected system in which no level or organization operates unilaterally. As Michael Zürn observes in the introduction, the international system has been transformed into a system of multi-level governance in which tasks are differentiated by sector rather than segmented across tiers.

International governance has become more supranational as well as multilevel (Cooper et al. 2008; Kahler and Lake 2009). Forty-one of the 72 most authoritative international organizations, including the World Trade Organization, the International Monetary Fund, the World Health Organization, and the United Nations Educational, Scientific and Cultural Organization, make important policy decisions by super-majority (Hooghe and Marks 2012b). General secretariats have gained authority in several leading trade organizations, including the South African Development Community and the European Union, and international courts have seen increasing rates of litigation (Alter 2012). The upshot is a ‘dense network of international and transnational institutions of unprecedented quality and quantity . . . that are far more intrusive than conventional international institutions. They can circumvent the resistance of most governments via majoritarian decision making, or by dispute settlement procedures through the interaction of monitoring agencies with transnational society, and by dominating the process of knowledge interpretation’ (Zürn 2012, 734).

Whereas governance within the state is chiefly general-purpose, designed around particular communities, international governance is biased towards task-specific government, designed around particular problems (Hooghe and Marks 2009b). General-purpose government above the state is limited to regional subsets of states and populations that have some normative commonality, shared values, and minimal levels of trust, and it has been growing in number over the past few decades. Just 16 of the 72 most authoritative international organizations are general purpose organizations⁴, and all cater for regionally specific groups of countries. The United Nations is the one global organization that comes closest to general purpose government, but it is authoritatively weak outside its core area of international security.

⁴ Defined as an organization having competencies in 15 or more of 25 possible policy fields. An IO is coded as having competence in a policy area if it meets two or more of the following criteria: a) the policy is mentioned in the constitution/founding documents; b) the IO has a distinct organizational component for the policy (agency, department, office, unit); c) the IO collects or spends money on policy (budget category, taxes, fees, fines, penalties); d) there is a consistent policy pattern (laws, decisions, regulations, conventions, protocols, rulings); e) the policy is in the mission self-description on the IGO website. Policy scope was assessed by two independent coders for each of 72 IGOs from a list of 25 policies. Krippendorff’s alpha is 0.70, which indicates reasonably high intercoder reliability.

Powers and Goertz (2011) identify 35 ‘regional economic institutions’ in existence in 2011, of which 14 have been established since 1985. Newcomers include the East African Community, Mercosur, and the Community of Independent States. While trade is usually at the core, they ‘are often the go-to place when new problems arise’ (Powers & Goertz 2011: 2396). However, they are markedly less supranational than task-specific organizations. The default decision rule in a regional IO is consensus. In this respect, the European Union is an outlier (Hooghe and Marks 2012b).

The weakness of authoritative general-purpose governance beyond the state—*pace* the European Union—has stark consequences. Task-specific government is oriented toward Pareto optimality; it works best where distributional conflict is not especially intense. General purpose government, by contrast, is appropriate for decisions that redistribute values and where trade-offs across policies can facilitate agreement. Since general-purpose government is weak at the global level, public goods with distributional consequences are underprovided.

Whereas general purpose governance is tuned to the linkages across policies, task-specific governance is tuned to linkages across levels. The challenge for general purpose governance is coordination across levels. The challenge for task-specific governance is coordination across policies. A consequence is that coordination among task-specific organizations in the international arena is generally poor, and so negative externalities created, for example, by the WTO for public health, the environment, or labor rights may not be sufficiently taken into account.

There is a paradox here. National states facilitate international organization because they aggregate preferences and make authoritative decisions for millions of individuals, yet they constrain international government on grounds of national sovereignty and the demand to be able to veto decisions. The result is an ongoing tension between efforts to reap the benefits of scale while adapting to the demand for self rule of national, regional, and local communities.

Good-bye to national sovereignty?

The evidence presented in this chapter reveals that the jurisdictional architecture of the EU-polity has become multilevel and that the structure of government reflects a tension between functional pressures and identity (Hooghe and Marks 2009a; Schakel 2009b). But one could equally assert that national states remain the ultimate arbiters of authority and therefore retain sovereignty. States that retain a final say on the allocation of decision rights can deepen multilevel governance, so the claim that we live in a world of sovereign states does not tell us much about who exerts authority over most decisions. Multilevel governance does not negate national sovereignty, but it does reduce its descriptive power (see the Introduction to this section).

A sovereign state is, first of all, the ultimate authority within its borders. This has never applied to federal states where the constituent units can veto constitutional change. Watts (2008, 169) observes that the fundamental principle of federalism would be undermined “if a regional government acting alone had the unilateral right to leave the federation, or the federation had the unilateral right to expel a regional unit.”

Today there are barely more federal regimes than there were in 1950. However, the federal-unity state dichotomy does not capture the significant decentralization of authority to regional governments that has actually taken place (Hooghe and Marks 2012a). In the United Kingdom, the Government of Wales Act (1999) and Scotland Act (1999) assert that no recommendation shall be made to parliament to revoke or vary the act ‘unless such a draft has also been laid before, and approved by a resolution of, the Assembly’ (or Parliament in Scotland). The Åland Islands have a similar guarantee within Finland, the Farøer Islands within Denmark, and Sarawak and Sabah within Malaysia. Ultimate authority can be complicated in ways that escape the unitary/federal dichotomy. Moreover, a constitutional analysis, no matter how detailed, does not provide a balanced account of the reallocation of authority over the past half century. The constitutional powers of regional governments have not changed in the Czech Republic, Denmark, Finland, France, Greece, Ireland, Italy, Poland, Romania, or Slovakia, but in each country the authority of regional governments to shape policy has significantly increased.

External sovereignty, the notion that the state is the commander of last resort in relations with external actors, has also been resistant to change. This is the view of realists who regard international organizations as contracts among national states and legal scholars who regard sovereignty as indivisible. The argument that the national state has not lost external sovereignty focuses on the political limit situation. Sovereignty, in this view, is not the sum of authoritative competences, but ‘the quality of a power that has no superior.’ In the last analysis, a member state of the European Union is a member at its own discretion. If it wished, it could exit. In this view, European law bites because the member states voluntarily wish it to do so. Michael Troper, a French constitutional scholar, writes that ‘The binding force of European law is not explained as an expression of the will of European authorities. It comes from the French constitution alone and is, therefore, an expression of the will of the French people’ (Troper 2011, 150).

Several national constitutions appear to open the door to fragmented sovereignty. The 1946 Preamble of the French constitution, which remains in force today, maintains that ‘Subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organization and preservation of peace.’ The Italian constitution agrees in principle to ‘limitations of sovereignty where they are necessary to allow for a legal system of peace and justice among nations’. These statements can be regarded as self-limitations amendable by (national) constitutional processes. This is the line taken by the German Constitutional Court in its 2004 ruling that European law cannot have primacy over the Basic Law if there is a conflict. In a 2006 ruling, the French Constitutional Council ruled that ‘the transposition of a directive may not run counter to a rule or principle inherent in the constitutional identity of France, except when the constituting power consents thereto’ (quoted in Troper 2010, 146).

But as Neil MacCormick (2010) notes, exit from the European Union requires negotiation. Who is the ‘commander of last resort’ in the dark and untrodden zone of disentangling a state from the Union?⁵ Which body is the ultimate arbiter of disputes that might arise in allocating the collective costs of exit? We seem to be confronted

⁵ Greenland, a special autonomous region of Denmark, exited the European Union in 1985, but this has little to say about member state exit.

with overlapping legal-constitutional orders. According to national law, states are bound by EU law because they confer this right by their own constitutional rules. According to the European Court of Justice (1963), the 'Community constitutes a new legal order . . . for the benefit of which the States have limited their sovereign rights, albeit within limited fields.'⁶

The European Union avoids clashes with its member states by seeking consensus even under majoritarian rules, by allowing derogations to treaty commitments, by legislating by directive that binds in goals but not means, by using soft law, in short, by a 'flexible combination of cooperation, competition and control' (Benz 2010, 220).

National states remain the most important arenas for the exercise of authority and they show no signs of disappearing. But they have shed authority to governments within and without. A member state always has the option of leaving the EU, but the immense cost of this reduces its weight in decision making, including decision making about whether to regard EU law as supreme. There is, in other words, an observational tension between national sovereignty, which can be said to be unaltered, and central state authority, which has changed a lot.

This tension is prefigured in the contract theory of the state and the notion that while the state is authoritative, it is the result of the free choice of its members. Hobbes argued that even though individuals are subject to rules laid down in a compact, they remain in ultimate control of their fate: '[A]ll actions which men do in Commonwealths, for fear of the law, are actions which the doers had liberty to omit' (Hobbes 1960 [1651], ch.21). Hobbes claims that an individual is un-free only if he is physically forced. '[W]hen a man throweth his goods into the sea for fear the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will; it is therefore the action of one that was free: so a man sometimes pays his debt, only for fear of imprisonment, which, because no body hindered him from detaining, was the action of a man at liberty'. The implication is that if a state is not coercively forced to remain part of the Union, it is sovereign. The point is an important one, though sovereignty in this conception is a poor guide to the choices that states (or individuals) actually make.

The building of modern states in Europe took several centuries. Many regions in federal countries such as Germany, Austria and heavily regionalized countries such as Italy and Spain were once independent, sovereign units. By contrast, the period from the foundation of the European Coal and Steel Community to the present is around sixty years, a fact that throws into sharp relief both the extraordinary pace of change in recent decades and the necessarily tentative nature of our attempts to draw definitive conclusions about the process.

⁶ Van Gend and Loos, February 5, 1963.

References

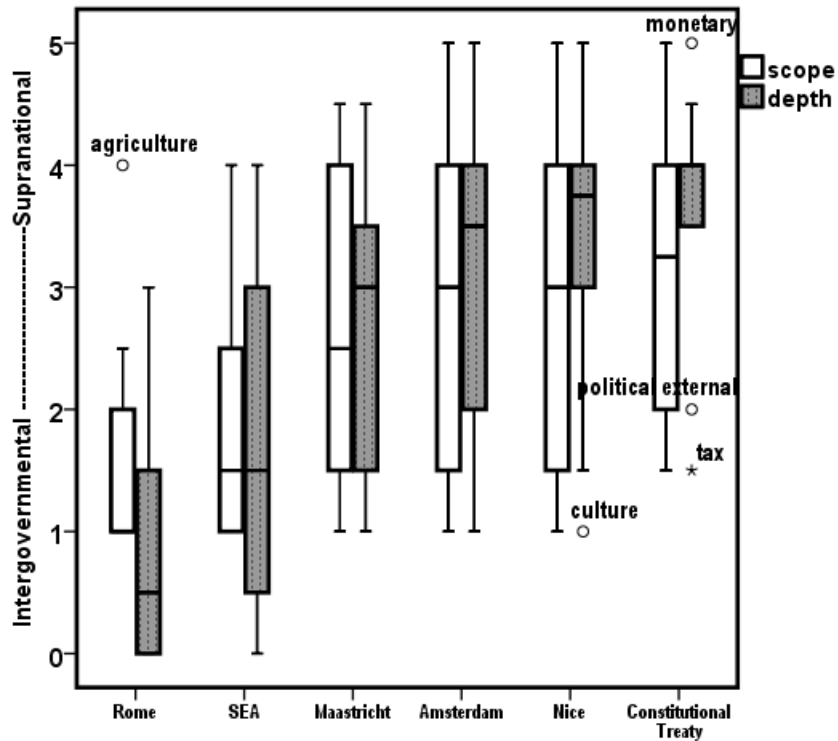
- BACHE, IAN, and FLINDERS, MATTHEW, eds. 2004. *Multilevel Governance*. Oxford: Oxford University Press.
- BENZ, ARTHUR, 2010. The European Union as a loosely coupled multi-level system, in *Handbook on Multilevel Governance*, ed. Henrik Enderlein, Sonja Wälti, and Michael Zürn, Cheltenham: Edward Elgar, 214-27.
- BIERMANN, FRANK, AND PATTBERG, PHILIPP, 2012. *Global Environmental Governance Reconsidered. New Actors, Mechanisms, and Interlinkages*. Cambridge, MA: MIT Press.
- BÖRZEL, TANJA A., 2005. Mind the gap! European integration between level and scope, *Journal of European Public Policy*, 12 (2): 217-36.
- BRANCATI, DAWN, 2008. The origins and strengths of regional parties, *British Journal of Political Science*, 38(1): 135-59.
- CAPORASO, JAMES A, 1996. The European Union and forms of state: Westphalian, regulatory or post-modern? *Journal of Common Market Studies*, 34 (1): 29-52.
- CAPORASO, JAMES, A. and TARROW, SIDNEY, 2009. Polanyi in Brussels: supranational institutions and the transnational embedding of markets, *International Organization*, 63 (4): 593-620.
- CAREY, SEAN, 2002. Undivided loyalties: is national identity an obstacle to European integration? *European Union Politics*, 3 (4): 387-413.
- DE WINTER, LIEVEN, GÓMEZ-REINO, MARGARITA, and LYNCH, PETER, eds., 2006. *Autonomist Parties in Europe: Identity Politics and the Revival of the Territorial Cleavage. Volumes I and II*. Barcelona: Institut de Ciénces Polítiquesi Socials.
- ENDERLEIN, HENDRIK, WÄLTI, SONJA, ZÜRN, MICHAEL (eds.) 2010. *Handbook on multi-level governance*. Cheltenham: Edward Elgar.
- FABBRINI, SERGIO, 2007. *Compound democracies. Why the United States and Europe are becoming similar*. Oxford: Oxford University Press.
- FALKNER, GERDA, 1998. *EU social policy in the 1990s: towards a corporatist policy community*, London: Routledge.
- GOLDSMITH, MICHAEL and PAGE, EDWARD C., eds., 2010. *Changing patterns of central-local relations in Europe: from localism to intergovernmentalism*. London: Sage/ ECPR.
- HOBBS, THOMAS, 1651 [1651]. *Leviathan, or the matter, forme and power of a commonwealth ecclesiasticall and civil*. Oxford: Basil Blackwell.
- HOFFMANN, STANLEY, 1966. Obstinate or obsolete? The fate of the nation state and the case of western Europe. *Daedalus*, 95 (3): 862-915.
- HOOGHE, LIESBET and MARKS, GARY, 2001. *Multi-level Governance and European Integration*. Rowman & Littlefield: Boulder, Colorado.
- HOOGHE, LIESBET and MARKS, GARY, 2009a. A postfunctionalist theory of European integration: from permissive consensus to constraining dissensus. *British Journal of Political Science*, 39 (1): 1-23.
- HOOGHE, LIESBET and MARKS, GARY, 2009b. Does efficiency shape the territorial structure of government? *Annual Review of Political Science*, 12: 225-41.
- HOOGHE, LIESBET and MARKS, GARY, 2012a. Beyond federalism: estimating and explaining the territorial structure of government. *Publius*. (online doi: 10.1093/publius/pjs029).

- HOOGHE, LIESBET and MARKS, GARY. 2012b. The authority of international organizations, unpublished paper.
- HOOGHE, LIESBET, MARKS, GARY, and SCHAKEL, ARJAN H., 2010. *The rise of regional authority: a comparative study of 42 democracies (1950-2006)*. London: Routledge.
- HOOGHE, LIESBET, MARKS, GARY, SCHAKEL, ARJAN H., CHAPMAN SANDRA, NIEDZWIECKI, SARA, AND SHAIR-ROSENFELD, SARAH, forthcoming. *Multilevel Governance, Volume 1: Regional Authority in 80 countries, 1950-2010*. Oxford: Oxford University Press.
- JACHTENFUCHS, MARKUS, 2001. The governance approach to European integration. *Journal of Common Market Studies*, 39 (2): 245-64.
- JOLLY, SETH K., 2007. The europhile fringe? Regionalist party support for European integration. *European Union Politics*, 8 (1): 109-130.
- KAHLER, MILES, LAKE, DAVID A. 2009. Economic integration and global governance: Why so little supranationalism? In *The Politics of Global Regulation*, eds. Walter Mattli and Ngaire Woods (eds.) Princeton, NJ: Princeton University Press, 242-275.
- KASSIM, HUSSEIN, PETERSON, JOHN, HOOGHE, LIESBET, BAUER, MICHAEL, CONNOLLY, SARA, DEHOUSSE, RENAUD, and THOMPSON, ANDREW, 2012. *The European Commission of the 21st Century*. Oxford: Oxford University Press.
- KOHLER-KOCH, BEATE, and EISING, RAINER, eds., 1999. *The transformation of governance in the European Union*. London: Routledge.
- JEFFERY, CHARLIE, and WINCOTT, DANIEL (2010) The challenge of territorial politics: beyond methodological nationalism. In: COLIN HAY, ed., *New Directions in Political Science*. Basingstoke: Palgrave Macmillan, 167-88.
- KEATING, MICHAEL, 1998. *The new regionalism in Western Europe. Territorial restructuring and political change*. Aldershot: Edward Elgar.
- LEIBFRIED, STEPHAN, GAINES, SUSAN M., and FRISINA, LORRAINE, 2009. Through the funhouse looking glass: Europe's ship of states. *German Law Journal*, 10 (4): 311-34.
- LINDBERG and SCHEINGOLD, 1970. *Europe's Would-Be Polity. Patterns of Change in the European Community*. Englewood Cliffs: Prentice-Hall.
- LIPSET, SEYMOUR MARTIN, and ROKKAN, STEIN, 1967. Cleavage structure, party systems, and voter alignments: an introduction, in *Party Systems and Voter Alignments*, ed. Seymour Martin Lipset and Stein Rokkan, New York: The Free Press, 1-67.
- LOUGHLIN, JOHN with the collaboration of ELISEO AJA, UDO BULLMAN, FRANK HENDRIKS, ANDERS LIDSTRÖM and DANIEL-L. SEILER, 2001. *Subnational democracy in the European Union. Challenges and opportunities*. Oxford: Oxford University Press.
- MACCORMICK, NEIL, 2010. Sovereignty and After, in *Sovereignty in fragments*, eds., H. Kalmo and Quentin Skinner, Cambridge: Cambridge University Press, 151-68
- MAJONE, GIANDOMENICO, 1996. *Regulating Europe*. London: Routledge.
- MASSETTI, EMANUELE and SCHAKEL, ARJAN H., 2013. Why decentralization has a differentiated effect on regionalist parties' fortunes in Western Democracies, *European Journal of Political Research*, first published online, February 27, 2013.

- MCLAREN, LAUREN, 2002. Public support for the European Union: Cost/benefit analysis or perceived cultural threat? *Journal of Politics*, 64: 551-66.
- MITRANY, DAVID, 1948. The functional approach to world organization. *International Affairs*, 24 (3): 350-63.
- PIATTONI, SIMONA, 2010. *The theory of multi-level governance: conceptual, empirical, and normative challenges*. Oxford: Oxford University Press.
- POWERS, KATHY, GOERTZ, GARY. 2011. The economic-institutional construction of regions: conceptualization and operationalization. *Review of International Studies*, 37: 2387-416.
- PRICE, ADAM with BEN LEVINGER, 2011. The flotilla effect: Europe's small economies through the eye of the storm: Accessed August 12, 2011. [http://www.english.plaidcymru.org/uploads/downloads/Flotilla Effect - Adam Price and Ben Levinger.pdf](http://www.english.plaidcymru.org/uploads/downloads/Flotilla_Effect_-_Adam_Price_and_Ben_Levinger.pdf)
- RISSE, THOMAS, 2009. *A community of Europeans? Transnational identities and public spheres*. Ithaca: Cornell University Press.
- ROSAMOND, BEN, 2000. *Theories of European integration*. London: Palgrave Macmillan.
- SBRAGIA, ALBERTA M., 1992. *Europolitics. Institutions and policymaking the 'new' European Community*. Washington DC: The Brookings Institute.
- SCHAKEL, ARJAN H, 2009a. *A postfunctionalist theory of regional government. An inquiry into regional authority and regional policy provision*. PhD-dissertation, Free University Amsterdam.
- SCHAKEL, ARJAN H, 2009b. Explaining policy allocation over governmental tiers by identity and functionality. *Acta Politica*, 44 (4): 385-409.
- SCHAKEL, ARJAN H, 2010. Explaining regional and local government: an empirical test of the decentralization theorem. *Governance: An International Journal of Policy, Administration, and Institutions*, 23 (2): 331-55.
- SCHARPF, FRITZ W., 1999. *Governing in Europe: effective and democratic?* Oxford: Oxford University Press.
- SCHMITTER., PHILIPPE C, 1996. Examining the present Euro-polity with the help of past theories, in *Governance in the European Union*, ed. Gary Marks, Fritz Scharpf, Philippe Schmitter and Wolfgang Streeck, London and Thousand Oaks, CA: Sage, pp. 121-50.
- SHAIR-ROSENFELD, SARAH, MARKS, GARY, HOOGHE, LIESBET, forthcoming. A Comparative Measure of Decentralization for Southeast Asia. *Journal of East Asian Studies*.
- SWENDEN, WILFRIED, 2006. *Federalism and regionalism in Western Europe. A comparative and thematic analysis*. Houndmills, UK: Palgrave MacMillan.
- TARROW, SIDNEY, 2001. Contentious politics in a composite polity," in *Contentious Europeans: Protest and Politics, in An Emerging Polity*, ed., Doug Imig and Sidney Tarrow, New York: Rowman and Littlefield, 233-252.
- TATHAM, MICHAEL, 2011. Devolution and EU policy-shaping: Bridging the gap between multi-level governance and liberal intergovernmentalism. *European Political Science Review*, 3 (1): 53-81.
- TER-MINASSIAN, TERESA, 1997. Intergovernmental fiscal relations in a macroeconomic perspective: An overview, in *Fiscal Federalism in Theory and Practice*, ed. Teresa Ter-Minassian, Washington: International Monetary Fund, 3-24.

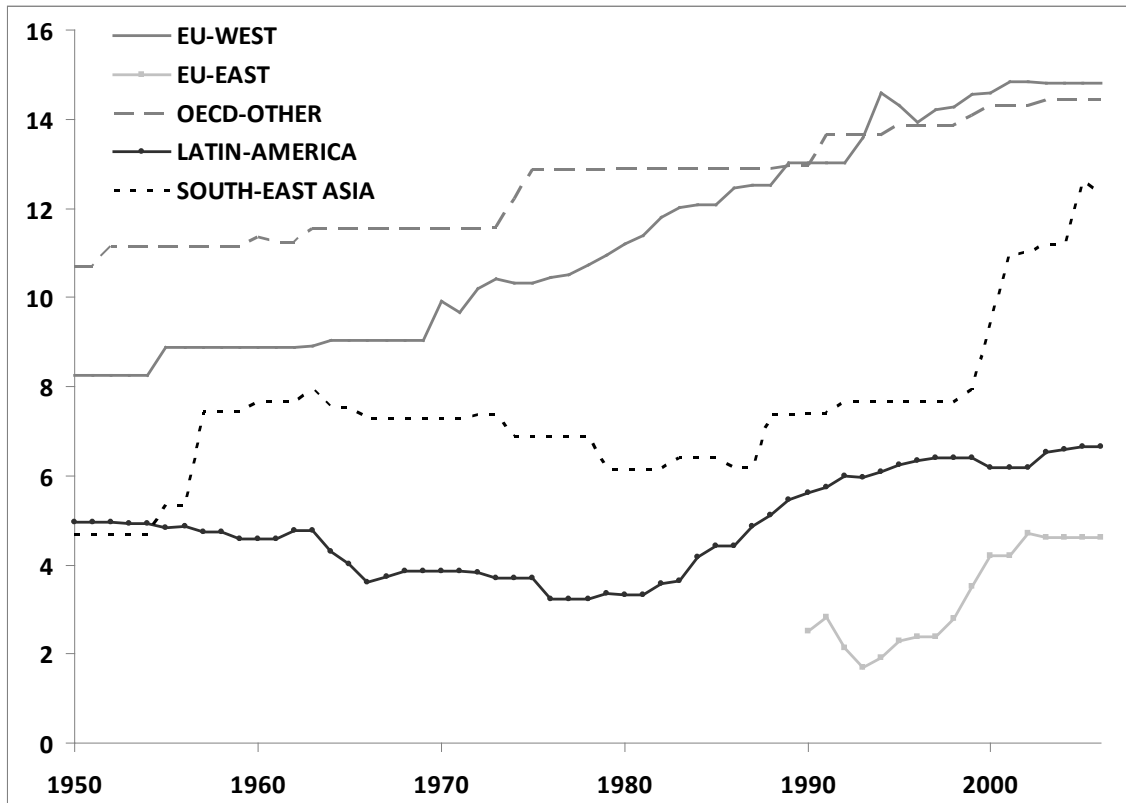
- TROPER, MICHEL, 2010. The survival of sovereignty in *Sovereignty in fragments*, eds., H. Kalmo and Quentin Skinner, Cambridge: Cambridge University Press, 132-50.
- VAN APELDOORN, BASTIAAN, 2008. The contradictions of ‘embedded neoliberalism’ and Europe’s multilevel legitimacy crisis: The European project and its limits,” in *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon*, eds., Bastiaan van Apeldoorn, Jan Drahoukoupil, and Laura Horn, London: Palgrave, 21- 43.
- WATTS, RONALD L. 2008. *Comparing federal systems. Third edition*. Montreal: McGill-Queen’s University Press.
- ZÜRN, MICHAEL. 2012. Global governance as multi-level governance, in *The Oxford Handbook of Governance*, ed. David Levi-Faur, Oxford: Oxford University Press, 731-744.

**Figure 1: Evolution of EU authority
(policy scope and depth)
(1957-2005)**



Note: *Scope* (1-5) estimates the extent to which the EU plays a role in a policy (1-5); *Depth* (1-5) estimates the supranational or intergovernmental character of the decision rules. The boxes encompass the interquartile range for 18 policies, the horizontal line is the median, and the whiskers indicate the fifth and ninety-fifth percentiles. Circles (stars) are cases with values that deviate from the interquartile range by 1.5 (3.0) times the interquartile range.
Source: Börzel (2005, 221-3).

Figure 2: Regional Authority Over A Long Half-Century (1950–2007)



Note: EU-West=14 countries; EU-East=10 countries; OECD-other=9 countries; Latin-America=21 countries; South-East Asia=4 countries. *Sources:* Hooghe, Marks, Schakel (2010), Hooghe et al. (2012) and Shair-Rosenfield et al. (forthcoming) for South-East Asia. This figure estimates regional authority for intermediate governments with an average population of at least 150,000. Regional authority is estimated along eight dimensions in two domains: self rule (the authority exercised by a regional government over those who live in the region) and shared rule (The authority exercised by a regional government or its representatives in the country as a whole).

Self rule consists of

- Institutional depth=extent to which a regional government is autonomous rather than deconcentrated;
- Policy scope=range of policies for which a regional government is responsible;
- Fiscal autonomy=extent to which a regional government can independently tax its population;
- Representation=extent to which a region is endowed with an independent legislature and executive.

Shared rule consists of

- Law making=extent to which regional representatives co-determine national legislation;
- Executive control=extent to which a regional government co-determines national policy in intergovernmental meetings;
- Fiscal control=extent to which regional representatives co-determine the distribution of national tax revenues;
- Constitutional reform=extent to which regional representatives co-determine constitutional change.

Table 3: Evolution of EU vs. National Competence in Policy Fields

	1950	1957	1968	1992	2000	2010*
ECONOMIC POLICY						
Goods/services	1	2	3	4	4	4
Agriculture	1	1	4	4	4	4
Capital flows	1	1	1	4	4	4
Persons/workers	1	1	2	3	4	4
Transportation	1	2	2	2	3	3
Energy	1	2	1	2	2	3
Communications	1	1	1	2	3	3
Environment	1	2	2	3	3	4
Regional policy	1	1	1	3	3	3
Competition	1	2	3	3	3	3
Industry	1	2	2	2	3	3
Money/credit	1	1	2	2	5	5
Foreign exchange	1	1	2	2	4	5
Revenue/taxes	1	1	2	2	2	3
Macroeconomic	1	1	2	2	3	4
SOCIAL/INDUSTRIAL POLICY						
Work conditions	1	1	2	2	3	3
Health	1	1	1	2	2	2
Social welfare	1	2	2	2	2	2
Education & research	1	1	2	2	2	3
Labor relations	1	1	1	1	2	2
LEGAL-CONSTITUTIONAL POLICY						
Justice	1	1	1	3	3	3
Citizenship	1	1	1	2	3	3
Participation	1	1	1	2	2	2
Police & order	1	1	1	1	2	2
INTERNATIONAL RELATIONS/ SECURITY						
Trade negotiations	1	1	3	5	5	5
Economic-military aid	1	1	1	2	2	3
Diplomacy	1	1	1	2	3	3
Defense & war	1	1	1	2	2	2

* 2010 are own estimates

Key: 1=all policy decisions at national level; 2=only some policy decisions at EU level; 3=policy decisions at both national and EU level; 4=mostly policy decisions at EU level; 5=all policy decisions at EU level. Sources: Estimates for 1950-1968 are Lindberg and Scheingold (1970) complemented by Schmitter (1996); estimates for 1992 is Schmitter(1996) (informed by five experts' judgments in March 1992); estimates for 2000 are based on Schmitter's projections and post-hoc evaluations by Hooghe and Marks in 2001; estimates for 2010 are from Hooghe and Marks based on existing treaty obligations and obligations undertaken subsequently. For greater detail on Lindberg & Scheingold vs. Schmitter assessment, see Hooghe & Marks (2001).