
The EU's competences: The 'vertical' perspective on the multilevel system

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Accepted on 5 April 2010

Published on 25 May 2010

(Revised on 24 August 2012)

Abstract

From the outset, European integration was about the transfer of powers from the national to the European level, which evolved as explicit bargaining among governments or as an incremental drift. This process was reframed with the competence issue entering the agenda of constitutional policy. It now concerns the shape of the European multilevel polity as a whole, in particular the way in which powers are allocated, delimited and linked between the different levels. This Living Review article summarises research on the relations between the EU and the national and sub-national levels of the member states, in particular on the evolution and division of competences in a multilevel political system. It reviews normative reasons justifying an appropriate allocation of competences, empirical theories explaining effective structures of powers and empirical research.

The article is structured as follows: First, normative theories of a European federation are discussed. Section 2 deals with legal and political concepts of federalism and presents approaches of the economic theory of federalism in the context of the European polity. These normative considerations conclude with a discussion of the subsidiarity principle and the constitutional allocation of competences in the European Treaties. Section 3 covers the empirical issue of how to explain the actual allocation of competences (scope and type) between levels. Integration theories are presented here in so far as they explain the transfer of competence from the national to the European level or the limits of this centralistic dynamics. Moreover, we include empirical studies on the effective vertical allocation of powers in the EU.

Normative and empirical theories reveal that most powers are sharing rather than separated between levels. Therefore, article therefore concludes that politics and policy-making in the EU have to be regarded as multilevel governance. In Section 4, we summarise the main theoretical approaches and findings from empirical research on European multilevel governance. In the conclusion, we sketch some suggestions for further discussion and research in the field (Section 5).

Keywords: federalism, fiscal federalism, integration theory, multilevel governance, subsidiarity, competences

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Because a *Living Reviews* article can evolve over time, we recommend to cite the article as follows:

Arthur Benz and Christina Zimmer,
“The EU’s competences: The ‘vertical’ perspective on the multilevel system”,
Living Reviews in European Governance, Vol. 5, (2010), No. 1:
<http://www.livingreviews.org/lreg-2010-1>
(cited [<date>]).

The date given as <date> then uniquely identifies the version of the article you are referring to.

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24 August 2012: Revised some sections (primarily, [3.3](#), [3.5](#), [4](#), [5](#)) and added 19 new references.

Page 14: Added paragraph on gradual change below.

Page 17: Added recent references.

Page 17: Added concluding paragraph below.

Page 18: Revised section and added recent references.

Page 21: Added recent references to overview works.

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1 Introduction

The division of competences (i.e., legally defined powers) between the EU and its member states has been one of the most important issues in the discussion on the institutional reform and in the processes of Treaty amendment. From the outset, European integration was about the transfer of powers from the national to the European level, which evolved as explicit bargaining among governments or as an incremental drift. With the competence issue entering the agenda of constitutional policy set out with the Convention process, this process was reframed. While power refers to the capability of a government, an institution or an actor to make policies or to pursue interests, the notion of competence refers to the reasons and the limits to apply powers. Thus the discussion is shifted to the normative, if not constitutional aspect. It concerns the shape of the European multilevel polity, in particular the way in which powers are allocated, delimited and linked between the different levels. Without going into the details of particular policies, we focus on principles, rules, and processes of competence allocation and briefly discuss the consequences of the particular multilevel polity emerging in the EU.

The normative discussion on competences cannot and should not be isolated from the empirical questions of why and which competences are allocated in reality. First of all, the actual structure of the EU did not result from a deliberate constitutional design but from an ongoing integration process. Second, the competence issue arose in the wake of increasing tensions caused by the dynamics of European integration (Majone 2005). In order to avoid an abstract normative analysis, we have to understand the driving forces of this process. Third, in processes of institutional reform or constitutional policy, normative arguing is enmeshed with bargaining over power (Elster 1998), and the outcome of these processes is influenced by reasons and interests. Therefore, research on the "vertical" dimension of the multilevel system should cover both aspects.

From these two perspectives, the following review article summarises research on the relations between the EU and the national and sub-national level. Section 2 covers contributions to normative theories of a European federation. The focus is on significant works by political scientists, but we also refer to publications by lawyers and economists, which are relevant in this context. Section 3 deals with the empirical issue of how to explain the actual allocation of power between levels. Here, our intention is not to give a comprehensive survey of integration theory (Pollack 2005; Rosamond 2000; Wiener and Diez 2009). We will present publications in this field in a selective way, i.e., only in so far as they explain the transfer of competence from the national to the European level or the limits of this centrifugal dynamic.

The final part discusses the consequences of the vertical allocation of powers for European governance (Section 4). As both normative and empirical theories contradict the assumption of a separation of power, politics and policy-making in the EU have to be regarded as multilevel governance. We will summarise the main approaches and findings from empirical research before we end with conclusions and recommendations for further research (Section 5).

2 Normative theories: Criteria for competence allocation between member states and the EU

The allocation of competences between the member states and the EU is a decisive aspect determining the character of the emerging European polity. For this reason, the debate on the competence issue is narrowly linked with the controversies on the *finalité* of European integration. Right from the beginning, this process and the debates on its aims have been influenced by the idea of an “ever closer Union”, i.e., a European federation (Burgess 2000). Although it soon turned out to be unrealistic to create a supranational federal state given the interests of member state governments to maintain their powers, federalism remained an important normative concept in political discussions and research (Bogdandy 1999; Nicolaidis and Howse 2001). Recently, scholars have proposed using it as a descriptive concept as well, in order to carve out the features of the EU polity in comparison with existing federations, in particular with the U.S. and Switzerland (Börzel and Hosli 2003; Cappelletti, Seccombe, and Weiler 1986; Fabbrini 2005; McKay 2001; Menon and Schain 2006; Sbragia 1992; Schütze 2009; Trechsel 2005), but sometimes also with other federal states (e.g., Heinemann-Grüder 2002; Kelemen 2004).

2.1 Concepts of federalism

The concept of a federation has implications for the allocation of powers between the European and the national level, depending on whether it points to a federal or confederal polity. Scholars supporting the idea of a federal Europe or regarding it as a legal reality conclude that the EU needs a constitution defining the division of powers (Auer 2005). How powers should be actually allocated to the different levels is left open, but the notion of a federal Europe implies a limitation of the EU’s competences as well as representative institutions empowered to make decisions by qualified majority rule, i.e., a structure that allows for further integration (Trechsel 2005). From a normative point of view, federalists usually tend to plea for a European government with all powers to fulfil regulative, distributive and redistributive functions.

In fact, this idea – which was supported by leading European politicians during the 1950s and 1960s – has shifted to the background. Although it gained new momentum during the discussion on the Constitutional Treaty, scholars widely acknowledged that the EU combines federal and confederal elements (Burgess 2000: 260–265; Elazar 2001: 36–37) and they only disagree on the relative weight of these elements. Majone (2005) explained this mixed structure – which, in his view, leads the EU into serious dilemmas – as the result of an integration dynamic fostered mainly by executives. Following Scharpf (1999), he strongly makes the case for a confederal Europe with powers limited to regulatory policies of “negative integration”, while under the condition of social heterogeneity, redistributive policies should be left to the member states. Hence, competences of the EU should be restricted to those required for a market-preserving federalism (Weingast 1995): “Aside from foreign and security policy, the public agenda would mostly include efficiency-enhancing, market-preserving policies – a combination of liberalization and negative integration measures to remove obstacles to the free movement of people, services, goods, and capital within the territory of the federation. [...] In contrast, redistributive policies can only be legitimated by majority decisions and hence place too heavy a burden on the fragile normative foundations of a transnational policy” (Majone 2005: 191). Reflecting on the plurality of the European “demoi” and the social inequalities between member states, others plea for a polycentric polity resulting from flexible integration (Wind 2003). With this concept the allocation of competence would not only depend on constitutional rules but also on member states’ decisions on “enhanced cooperation” or “opting-out”.

The problem with both the federal and the confederal model is that they cannot determine in detail which competences should be allocated to the EU and which should remain at the national

or sub-national level. “Federalists” make the decision a matter of constitutional policy-making, but they cannot provide a convincing normative theory of centralisation and decentralisation, not to speak of proposals for coping with interdependent tasks cutting across levels. In the same manner, “confederalists” ignore that negative and positive integration, efficiency-enhancing regulation and redistributive policies cannot be clearly distinguished. Independent of the issues at stake, most policies have redistributive implications which are obvious if we consider the effects of a free flow of goods, services and capital in the market on the territorial distribution of wealth. Efficiency-enhancement is a positive-sum game, but in the end some may profit more than others, considering the fact that in many cases external effects occur. All this makes it impossible to clearly delimit the EU's competences according to the proposed categories. Apparently, it is more appropriate to characterise the EU as a “compound” polity in which power is diffused and shared between different institutions at different levels (Fabbrini 2007; Kincaid 1999).

Nonetheless, regardless of its nature, a multilevel polity requires rules for some kind of allocation of powers between levels and political mechanisms designed to enforce these rules. Therefore, the normative debate on the kind of the European constitution necessarily raised the competence issue. Political scientists mainly contributed to discussions on the second question of how to enforce competence rules. The first question has been dealt with by lawyers and economists. While lawyers have proposed principles and categories of rules (e.g., exclusive, concurrent, shared competence), including rules for coping with rule conflicts, economic theory of federalism claims to provide substantial criteria for determining how specific competences should be allocated between levels.

2.2 Economic theory of federalism

Economic theory of federalism (Oates 1999, 2005) states that, in principle, powers of governments should be allocated to the lowest possible level. This principle of decentralisation (which conforms to the principle of subsidiarity) is supported by at least three arguments: First, decentralisation increases the chance that policy-making follows the preferences of citizens and that powers can effectively be controlled by citizens. Therefore, the more a society in a federal system reveals territorial cleavages, i.e., the more citizens with similar preferences are concentrated in regions, the more policies are to be decentralised. Second, if citizens are mobile, a decentralised polity gives them the opportunity to choose between jurisdictions in which governments offer different units in which governments offer different sets of public policies. Third, competition between decentralised governments induced by mobile tax-payers increases the efficiency of public policies, as governments have to provide for an optimal ratio of services and tax burden. On the other hand, for many policies, decentralised units are too small for effective governance and intergovernmental coordination causes considerable costs. Hence, centralisation of competences is justified if common goods reach beyond the scope of lower level governments, if they produce external effects, or if they cannot exploit economies of scale. Moreover, negative dynamics of competition require central regulation and so do economic disparities in public revenues which violate social norms of distributive justice (summarised in Blankart 2007; Oates 2005; Persson, Gérard, and Tabellini 1997).

These arguments played an important role in discussions on the Stability and Growth Pact and the size of the EU's budget. According to traditional reasoning on economic federalism, macroeconomic policy requires a central government to coordinate fiscal policies of lower level governments. Otherwise competing member states tend to exploit the common good of economic stability and growth in the common market. Redistributive policies at the European level determined to support regions in need are defended in order to countervail territorial disparities of economic development. However, both pleas for competence transfers to the EU have been contested. Economists and political scientists have criticised the ineffectiveness or instability of the current allocation of powers

between the EU and its member states in these policy fields or they have pointed out the political costs of centralisation (summarised in: [Alves 2007](#); [Hallerberg 2006](#); [McKay 2005](#)).

According to this theory of federalism, inter-jurisdictional competition is a decisive reason for determining the allocation of competences. While, until the 1990s, the predominating model assumed that jurisdictions compete for mobile tax-payers and regarded this process as driven by the market mechanism (competing decentralised governments provide public goods demanded by private actors with the tax constituting a kind of price that has to be paid for public goods), some literature now has introduced a different model of competition which has different implications for the vertical allocation of competences. According to this concept of a “laboratory federalism” ([Oates 1999](#): 1132–1134), horizontal intergovernmental competition in a decentralised political system should lead to experimentation with new policies and the diffusion of innovation ([Salmon 1987](#); [Breton 1996](#); [Kerber 2005](#); [Kerber and Eckardt 2007](#); [Oates 1999](#)). Again, theory tells us that decentralisation should be preferred to centralisation as it promises the selection of best policies. But this result cannot be expected to come to the fore under all conditions, the most important being adequate incentives for governments to innovate and to mutually learn from each other. If decentralised governments search for mobile resources, they are strongly induced to improve policies in terms of efficiency, but this can lead them to a “race-to-the-bottom” in terms of quality of public goods or to ignoring external effects. Therefore, scholars like Breton and Salmon maintained that incentives can be set by the intra-jurisdictional democratic process. In that case, they depend “on the possibility and willingness of citizens to make assessments of comparative performance”. Only “[i]f these conditions are fulfilled, comparisons will serve as a basis for rewarding politicians in power (re-electing them) or sanctioning them (voting for their competitors)” ([Salmon 1987](#): 32). Leaving aside the question of whether citizens are able or willing to comparatively evaluate the performance of their government, incentive problems can occur if governments make policies without considering the will of their citizens and if accountability mechanisms are deficient ([Kerber and Eckardt 2007](#): 237). These reasons imply that decentralisation may come to its limits with the consequence that interjurisdictional competition fails without central regulation. Therefore, mechanisms like budget constraints, rating or performance standards are recommended.

It is interesting to note that with this focus on the interplay of intergovernmental and intragovernmental politics, the economic theory of federalism approaches political theories of multilevel governance ([Blankart 2007](#); [Persson, Gérard, and Tabellini 1997](#)). However, this makes the evaluation of costs and benefits of an allocation of competences to the EU much more difficult than in the basic model. In fact, one can argue that deficits in democratic politics at the EU level speak for decentralisation. However, in the same way the argument can be turned against decentralisation if one puts the emphasis on incentive deficits. On balance, political economy tends to recommend more decentralisation of competences, but also more effective decision-making at the European level by applying majority rule in order to enable the EU to fulfil coordinative and regulative functions (e.g., [Blankart 2007](#); [Salmon 2003](#): 128–129). As a rule, the recommendations for the allocation of competences between nation states and the EU remain rather abstract and rarely refer to particular policies.

In political debates, the economic reasoning on federalism has often been used to support pleas for a separation of powers. In fact, the economic model of a competitive federalism presupposes “fiscal equivalence” ([Olson Jr 1969](#)). It requires a government to take account of all costs and benefits of a public policy. But arguments for and against decentralisation or centralisation may vary regarding regulative, administrative and fiscal functions of a policy. Moreover, the optimal degree of decentralisation or centralisation depends on the size of a jurisdiction with the consequence that the smallest unit of a multilevel system may decide on the vertical structure. As a consequence, sharing of powers often turns out to be inevitable.

In view of this problem, [Frey and Eichenberger \(1999\)](#) proposed a model of functionally overlapping competing jurisdictions (FOCJ). The authors assumed that public services and demand

for services by consumers “extend very differently over space and have different degrees of scale economies (or diseconomies)” (Frey and Eichenberger 1999: 5). Therefore, the traditional organisation of the public sector, where a government provides different services in multi-purpose jurisdictions, should be substituted by governance in functionally specialised jurisdictions. As a consequence, a multilevel polity would constitute overlapping jurisdictions competing for the support of citizens as claimed by the economic theory of federalism. Frey and Eichenberger suggested that at least regional policy in Europe can be organised according to their model. Beyond that the FOCJ-model should provide a promising guideline for European integration under the condition of high diversity of national economies and cultures. According to the authors, ideals like “variable geometry” or European integration by different speeds (“Europe à la carte”) come close to this theory of federalism (1999: 79).

Frey and Eichenberger (1999) constructed a theoretical framework for the allocation of competences in a territorially differentiated polity. Their proposition that jurisdictions should be constituted by referenda goes beyond what appears to be practicable in real politics. Nevertheless, this particular model of a federation is not utterly idealistic and it caught the attention of scholars interested in comparative research. Aiming at an analytical concept for EU multilevel governance, Hooghe and Marks (2003) suggested that, in contrast to territorial federalism, functional federalism should be considered as particularly relevant in governance beyond the nation state.

However, these models of federalism, to which more could be added, leave us with the unresolved problem of how to allocate competences between the constituent units, be they territorial or functional jurisdictions. This sceptical conclusion has found support by Treisman (2007). Wrapping up a comprehensive review of the relevant literature he states that normative theories give no reasons for or against a particular allocation of powers. “In short, it is hard to reach any general conclusion whether political – or administrative, or fiscal – decentralization will improve or impair the quality of government or economic performance. They will have different effects driving in different directions on different dimensions. These effects depend on numerous conditions, many of which are difficult to disentangle in theory or to identify in practice” (Treisman 2007: 274). Beyond this, it is interesting to note that normative theories inspired by the economic reasoning on federalism increasingly tend to deviate from the original premise of a clear separation of powers and now react to the multidimensional and multilevel character of tasks governments have to fulfil. This leads them either to accept an allocation of competences differing between legislation, administration and financing or to reflect on a functionally differentiated organisation of jurisdictions. In either case, coordination of interdependent decisions made by institutions at different levels is essential. Aside from managing coordination and accountability, an interlocked multilevel system is challenged by instability due to opportunistic application of powers and need to adjust competences to changing need (Bednar 2009).

2.3 Subsidiarity principle and constitutional delimitation of powers

Attempts to clearly sort out competences increase the risk of “authority migration” (Gerber and Kollman 2004) beyond the scope that is accepted by citizens or necessary for an efficient policy. This has led scholars to inquire into safeguards against this trend (Bednar 2004; Nicolaïdis 2001). On the one hand, they proposed rules for a delimitation of competences in the Treaties; on the other hand, the discussion concerned procedures designed to prevent uncontrolled shifts of powers and to solve conflicts on their application.

One aspect of this discussion concerned the legal statement of competences in the Treaties. In an influential article, de Witte and de Búrca (2002) argued against an extensive catalogue of competences. Instead, they proposed to define categories of EU powers and to distinguish exclusive, shared and complementary competences in order to bring more clarity into the existing system. Moreover, they pleaded for more precise definitions of legal measures the EU can take.

The authors warned against too strict regulations which may reduce the flexibility and adaptability of the EU. Their work has apparently influenced the relevant articles of the failed Constitutional Treaty and the Lisbon Treaty. With the amended Treaty on the European Union, exclusive and shared competences are defined, whereas the third category including coordinating, supportive and supplementary competences still lacks the clarity required by constitutional lawyers.

Still, as Schütze (2009) has revealed in a comparative study on American and European federal principles, the vertical order of the EU conforms to a cooperative type of federalism rather than to a dual type. From this follows the relevance of rules determining how shared competences are used. Schütze convincingly shows that the constitutionalisation of shared powers necessarily entails the entrenchment of the principle of subsidiarity. Following the development of European law after Maastricht, this principle has acquired a prominent role in research. While lawyers tried to define the substance of these principles – despite the divergent normative theories justifying it (Føllesdal 1998) – and to assess the potential consequences of their application in cases of dispute, political scientists have engaged in comparative research in order to evaluate the prospects and limits of such a constitutional rule.

This research has been guided by the premise that it is not the content or the formulation of a subsidiarity clause in the Treaty which constrains powers of the EU. This clause necessarily remains ambiguous, like “incomplete contracts” (Soriano 2007). Rather it is the procedures of enforcing these principles that allow for controlling a drift of competences to the EU. In view of empirical evidence on relevant jurisprudence in federal states (Berman 1994; Thorlakson 2006) and considering decisions of the European Court of Justice, which still drives integration rather than reinforces subsidiarity (de Búrca 1998; Estella de Noriega 2002; Höpner 2008; Höreth 2008), political scientists rely more on political mechanisms, on participation of lower level institutions, either of national governments in the Council (Scharpf 2009: 198–200; sceptical Höreth 2008: 320–366) or of national parliaments. Therefore, the procedure of subsidiarity control by national parliaments, invented during the elaboration of the Constitutional Treaty and now established in the Treaty, is mostly supported although scholars are well aware of the limits of this device (Cooper 2006; Raunio 2005).

Based on an elaborated theory and comparative research, Filippov, Ordeshook, and Shvetsova (2004) raised doubts on the stabilizing effects of constitutional rules and constitutional courts. Instead, they suggest creating an integrated party system linking actors from all levels. In such a political structure, where all parties have the opportunity to gain power at each level, incentives to concentrate competences at one level are reduced. Whether the evolution of such a party system is a realistic option in the EU is debatable. Some scholars provided evidence for the emergence or the existence of a European party system. But so far its vertical integration is rather weak, even if some institutional factors like the extended powers of the EP and the structures of joint decision-making might work in this direction (Thorlakson 2005). It is more convincing to expect a “robust” federal order by a combination of existing or evolving political and juridical safeguards as suggested by Bednar (2009).

To sum up: In view of the integration dynamics after the Single European Act, the issue of how to delimit powers of the EU became an important subject of research. It has been stimulated by the Convention working on a constitution for Europe which was triggered by the debate on the democratic deficit, but also by the decline of the “permissive consensus” on European integration. So far, normative theories on federalism have shown that the problem can hardly be solved by constitutional rules defining competences for each level. Regardless of the need of general guidelines for the allocation of competences, the real challenge is to find mechanisms for stabilising the endogenous dynamics of competence migration between levels. The procedure of subsidiarity control by national parliaments makes sense from this point of view. However, beyond dealing with procedures that are established in the Treaty and appending protocols, scholars should analyse why power shifts in the EU multilevel system. In this regard, all theories of federalism have their limits (Benson and Jordan 2008).

3 Empirical research: Explaining the transfer of competences from member states to the EU

In principle, a shift of power from the nation states to the emerging European polity has always been the central subject of European studies. The oft-cited early approaches and theories of international and European integration were initially meant to explain the enhancing intergovernmental cooperation as well as to issue expectations about the direction and end-state, or rather limits, of the observed processes. Meanwhile, scholars look at European integration from a broader and historical perspective on political structuring, center formation, system building and state society relations (Bartolini 2005; Piattoni 2009). We do not include this strand of literature which goes beyond our focus on the “vertical”, territorial dimension. In contrast, we review those works on integration theory which, implicitly or explicitly, have given theoretical accounts of why certain competences and parts of national sovereignty would be transferred to a supranational polity.

3.1 Functionalist theories

The early functionalist approach, closely connected with its key representative David Mitrany, promotes the delegation of administrative government tasks to functionally differentiated international agencies set up for efficient problem-solving and the provision of welfare, in an economic as well as in a social and cultural sense (Taylor 1968: 406). Cooperation along functional lines seemed at that time most beneficial in domains such as railway, shipping, aviation and broadcasting, whereas the coordination of production, trade and distribution would prove more difficult (Mitrany 1943: 33). According to functionalists, international agencies would initially have to deal only with mere technocratic matters, whereas political decisions, implying redistributive consequences for citizens and social groups, would be achieved intergovernmentally (Mitrany 1943: 37). Yet, governments might decide to delegate specific functional decision-making powers to autonomous experts at a supranational level (Mitrany 1943: 52–53), which could make national governments eventually superfluous in those fields (Taylor 1968: 404). It is worth noting, however, that functionalists did not support limiting cooperation to artificially constructed regional boundaries (Mitrany 1943: 32; see also Mitrany 1975, for an appraisal of ECSC and Euratom).

In their attempt to theorise the new phenomenon of European regional integration, neo-functionalists picked up these arguments in the 1950s. In his extensive case study of the ECSC, first published in 1958, Haas (1968) acknowledged that member states expected economic benefits from delegating tasks of supervision and implementation to a supranational High Authority (later called Commission), but placed greater emphasis on automatic processes of spill-over to other economic and political spheres, firstly to atomic energy (Euratom), tariffs and trade (Haas 1968: 301), then subsequently into the fields of wage and social security systems, currency and credit, tax systems, investment planning etc. (1968: 103 and 311). According to Haas (1968: 525), substantial agenda-setting powers had been transferred to the High Authority because it provided a necessary “federal arena for action” to the ministers of the member states in the Council.

After the integration process had slowed down, the assumption of a linear growth of European competences had to be reconsidered, and with it the supremacy of functional needs over political interests. Therefore, neo-functionalists adjusted their theoretical framework and put more and more emphasis on influences exerted by non-state actors, especially industry and other pressure groups, and on interests of the member state governments themselves (Lindberg 1963; Lindberg and Scheingold 1970; Schmitter 1971). Lindberg and Scheingold (1970) traced a pattern of fluctuation in the integration process and developed a framework covering different types of outcomes. Their theory allowed for the possibility of *spill-back* in policy areas where “[t]he scope of Community action and its institutional capacities decrease” and community “[r]ules are no longer regularly enforced or obeyed” by member state governments (1970: 137). *Spill-back* occurs when govern-

ments decide to renationalise decisive tasks or prefer to deal with them in an intergovernmental manner, although the respective competences might have been explicitly assigned to community institutions before. In the opposed case of *forward linkage*, a coalition of supporters at the national level and political leadership by the Commission and heads of member states increases the scope of action or capacities of supranational institutions in an incremental way. The most comprehensive model of *systems transformation* refers to a substantial and far reaching extension of community boundaries in geographical or functional terms, meaning that competences of community institutions are augmented considerably, often on the basis of a new treaty. In their book, the authors presented case studies portraying *spill-back* in the coal sector and *forward linkage* in agricultural policy. The development of the EEC treaty was considered as an example of successful *systems transformation*.

Later on, several scholars revisited functionalist ideas, seeking to evolve and refine the concepts in the light of new empirical developments. Corbey (1995), e.g., adopted the notion of dialectical functionalism to explain a cyclical pattern of progress and stagnation in European integration. Phases of extension of Community competences are followed by protectionist responses of member states and interest groups in adjacent policy areas. When national regulation becomes too costly again, a further competence transfer is induced. Likewise, Niemann (2006) describes European integration as a non-deterministic and dialectical process. These modified theoretical frameworks are attempts to overcome the static character of neo-functionalism by emphasising the mutual interactions of agents and structure at the national and supranational levels, thereby providing an explanation for the overall “stop-and-go pattern” of the integration process.

Along the same lines, Stone Sweet and Sandholtz (1997) and Sandholtz and Stone Sweet (1998) have framed a “supranationalist” approach to account for variations in competence allocation and EC rule-making. According to them, community competences in a policy sector are determined by the level of transnational transactions (i.e., trade, establishment of European interest groups etc.) and the resulting societal demand for EC rules and regulations. As a result, more and more common market competences have been centralised, the most notable examples being European regulation in the telecommunications sector and the European airline industry.

Thus, neo-functional theories explain a sectorally and temporally differentiated evolution of European integration, but provide no precise criteria for determining which policies tend to be affected by positive or negative spill-overs.

3.2 Intergovernmentalist theories

The empty chair crisis and the Luxembourg compromise, which seemed to have stopped the integration process or even caused several steps backwards, meant hard times for neo-functional scholars even beyond the days of *Eurosclerosis* in the 1970s. At the same time, political events or rather non-events heralded the beginning of a long-lasting heyday of intergovernmentalist research on European integration. Intergovernmentalists took on a completely different perspective towards European integration, looking at state actors and the concept of national sovereignty in interstate relations. Stanley Hoffmann’s (1964; 1966) work marked the beginning of a neorealist reasoning in European integration research, focussing on governments, while later Andrew Moravcsik extended this approach towards a “liberal intergovernmentalism” by including the role of other actors in the member states.

Hoffmann (1964) did not completely reject the neo-functional notion of spill-over processes and the coordination of policies under shared institutions on a supranational level, but only accepted it in the realm of *low politics*, i.e., in industry and trade policy, and to some extent in agriculture, monetary and competition policy (1964: 89). According to his reasoning, a transfer of competences to supranational institutions prevents nation states from losing control in increasingly interdependent economic domains. In *high politics* (military and foreign policy), on the other hand, national

interests are conflicting (Hoffmann 1964: 90). As political integration does not have “sufficient potency to promise a permanent excess of gains over losses” (1964: 882), it would not lie in the rational self-interest of member states to pool sovereignty in this area.

Moravcsik (1993, 1998) used these assumptions as a starting point to develop his liberal inter-governmentalist approach of European integration by examining the grand bargains in EC history. In this view, the “delegation and pooling of *specific* and *precise* powers” is best explained by the eagerness of governments to credibly commit themselves vis-à-vis the other member states or domestic groups, whereas “patterns of support for more *general* institutional commitments” (Moravcsik 1998: 488, emphasis in original), such as the institutional form of the EC, including the gradual empowerment of the European Parliament, rather depend on the relative importance of federalist ideology in the member states. Moravcsik (1998) analysed in detail the successive instances of delegation of member state sovereignty – starting with the Treaties of Rome in areas of tariff and trade negotiations and culminating at Maastricht with the creation of a strong and autonomous central bank when member states with conflicting interests sought to settle a credible anti-inflationary mandate. But he always stressed the explicit limitations of scope and the simultaneous or subsequent adoption of control mechanisms by the member states.

3.3 Institutional theories

Taking a similar point of departure, Pollack (1997, 2003) elaborated a rational choice principal-agent model to explain delegation, discretion and member state control of supranational institutions in the EU. Pollack draws on an earlier analysis (Garrett 1992) of member states' long-term interests to accept ECJ jurisdiction even if it is unfavourable to them. He related actual competences of the Commission and the Court to their theoretical agency functions, i.e., monitoring compliance, solving problems of incomplete contracting, issuing secondary legislation, and formal agenda-setting. In addition, he explained the numerous constraints and control mechanisms set up by member state principals to limit the scope of agent's power and discretion, such as the comitology committee procedures or the threat of non-compliance with ECJ rulings (Pollack 2003). Based on this principal-agent framework, Tallberg (2002) develops a theory of dynamic linkages between stages of delegation. He argued that the experiences with existing institutional arrangements influence national governments' future decisions on delegation and their interaction with European actors, which can explain why a transfer of powers to the EU does not always take place and often develops gradually.

Franchino (2007) took up the arguments of principal-agent theory to elaborate a formal model of delegation. Based on this model he analysed delegation to national and supranational agents in the EU. Unlike Pollack and Tallberg, he did not concentrate on treaty delegation but scrutinised decisions to delegate executive powers via secondary legislation. Yet he – like Pollack – considered conflicting preferences between member states as well as decision rules as independent variables. Beyond that, Dehousse (2008) shed light on another facet of executive delegation in the EU when accounting for the relative weakness of European regulatory agencies. Dehousse pointed out that autonomy and powers of regulatory agencies are rather limited due to multiple principals (member states, Commission, EP) with diverging preferences which have a say in the delegation decisions and the institutional design of agencies. This “multiplicity of principals” (2008: 795) inhibits a broader transfer of powers from national authorities to European agencies.

Other researchers followed the trend of “rediscovering institutions” in political science theories, as had Tsebelis and Garrett (2001). With their rational choice institutionalist model, they accounted for the ability of the Commission and the Court of Justice to extend their discretion and move policy outcomes closer to their own preferences compared to the Council of Ministers. Tsebelis and Garrett held that discretion of supranational actors is dependent on the legislative procedures laid down in the treaties. These institutional rules determine how difficult it is for the

Council to pass new legislation and overrule the Commission or the Court. Therefore, the Commission and the ECJ managed to switch autonomy and competences to the supranational level by means of policy implementation, legislative agenda-setting and proactive court rulings.

Based on similar theoretical grounds, but in a less formal way, [Héritier \(2007\)](#) used several case studies to develop an institutionalist account of the long-term development of formal and informal rules in the EU's decision-making process. Regarding treaties as incomplete contracts, Héritier explained European integration as an interplay of formal Treaty changes and "interstitial" adjustment of rules, an interplay that can develop in different sequences. While focussing on decision rules in the EU, this approach was also used to understand changes in the allocation of power, as outlined by [Farrell and Héritier \(2007\)](#).

In the same realm, an extensive body of literature on legal integration, mostly in a neo-functional tradition, but emphasising the dynamic effects of institutions ([Burley and Mattli 1993](#); [Alter 1996](#); [Dehousse 1998](#); [Stone Sweet 2004](#)), highlighted the role of the ECJ. According to these authors, the Court, via expansive interpretation of treaty provisions and the setting of legal precedents, has considerably influenced competences by monitoring and interpreting community law. Moreover, by elaborating the doctrines of direct effect and supremacy, and particularly by exploiting the procedure of preliminary rulings (Art. 267 TFEU), it has acquired the substantive power to intervene into the legal systems of the member states. Once the Court had achieved these powers, it became increasingly difficult for politicians to overrule its decisions unless the member state governments decide to amend the treaties or pass new and potentially contested legislation in the Council of Ministers ([Alter 1996](#); [Höreth 2008](#)). Furthermore, ECJ rulings proved not to be confined to purely economic and deregulatory matters corresponding to the Court's function as a safeguard of the common market. Rather, they promoted a "re-embedding" of markets at the supranational level and fostered a transnational regime for the protection of citizens' rights ([Caporaso and Tarrow 2009](#)), which gradually extended to areas such as health and safety at work, social welfare benefits, mutual recognition of educational and professional qualifications and political participation rights ([Burley and Mattli 1993](#): 66; see also the case studies on sex equality and environmental protection in [Stone Sweet 2004](#)).

By applying a historical institutionalist approach, [Pierson \(1996\)](#) proposed a similar but more general reasoning (see also [Armstrong and Bulmer 1998](#)). Pierson aimed at explaining why gaps, i.e., "significant divergences between institutional and policy preferences of member states and the actual functioning of institutions and policies" ([1996](#): 131) emerge. The gaps reveal a loss of member state sovereignty to the European level which was not anticipated. Pierson's research focussed on the diverging time horizons of actors at the national and supranational levels due to member state politicians' preoccupation with short-term concerns, the instability of member state policy preferences over time, and unintended consequences. His case studies on European social policy amply demonstrated the ensuing processes of competence shifts to the European level.

Theories of historical institutionalism seem to have gained ground in studies on European integration. After two decades of major treaty amendments scholars now have discovered gradual change in the EU's vertical dimension. Following recent theories elaborated by [Streeck and Thelen \(2005\)](#) and [Mahoney and Thelen \(2010\)](#), the institutional evolution of the Eurozone has been described as a combination of "layering" and "drift", i.e. the introduction of additional new rules without abolishing the existing structures and the reinterpretation or neglect of old rules ([Salines et al. 2012](#)).

Gradual change should not be confused with self-transformation of a political system. As [Mahoney and Thelen \(2010](#): 22–31) emphasise, actors, power structures and collective action are relevant factors explaining processes and outcomes. In this vein, scholars have attempted to apply rational choice arguments to understand how member states deal with unintended consequences of European integration (e.g., [König 2008](#)). Nevertheless, institutionalist approaches still have difficulties to predict the outcome of path-dependent developments or to explain the deliberate

delegation, maintenance or reestablishment of national sovereignty in specific areas. This is the reason why policy- and actor centred approaches became relevant.

3.4 Policy- and actor-centred approaches

These approaches draw attention to conflicts, power relations and actor constellation. From a policy science perspective, [Majone \(1996\)](#) suggested to distinguish between regulatory and direct-expenditure (i.e., redistributive or distributive policies) programmes. In this analytical framework, the EU comes close to a “regulatory state”. Almost exclusively dealing with regulatory policies to compensate market failures, it has a much lesser stake in direct (re)distributive programmes. Even though in some areas regulatory policy-making and implementation are centralised at the European level, whereas in others patterns of co-ordinated partnership evolve, “both in economic and in social regulation, policy initiatives in the member states are increasingly likely to derive from an agenda established at the European rather than the domestic level” (1996: 265–266). Thus the actual regulatory competences are shifted to the European level even when formally executed by the member states, which considerably lowers the autonomous problem-solving capacity of national governments. As [Kelemen \(2003, 2004\)](#) has shown, this functional division of power conforms to the interests of the EU and the member states, and it can be observed in other federal systems, too. What varies according to Kelemen’s theory is the discretion granted to lower level governments in implementing laws. If power at the central level is fragmented, as is the case in the EU, central institutions are expected to pass detailed regulations in order to avoid bureaucratic drift, i.e., watering down in implementation, and political drift, i.e., a reversal of policies if a new coalition comes to power. In the same vein, Scharpf’s analysis of problem-solving capacities at the European and the national level was based on the distinction between *negative integration*, where the Commission and the ECJ dispose of broad competences and institutional strength for the “removal of tariffs, quantitative restrictions, and other barriers to trade or obstacles to free and undistorted competition” ([Scharpf 1999](#): 45), and *positive integration*, where “[t]he existence of ideological, economic, and institutional differences among member states will obviously make agreement on common European regulations extremely difficult, and in many cases impossible” (1999: 82).

These findings hold true as long as the dynamics of integration mainly depends on the power of national governments in relation to supranational actors. The more decisions on European integration are “politicised” in national societies and the more political parties or sub-national actors enter the arena of European politics, the more the vertical allocation of competence turns into a matter of political or social conflicts. The actor-centred explanation of European integration was introduced when empirical studies discovered the role of regional governments. While the Commission supported them in order to implement European programmes, they actively defended their powers ([Marks 1996](#); [Jeffery 1997](#)). More recently, political parties have been discovered as actors in the integration process. As a study by [Hooghe and Marks \(1997\)](#) and [Hooghe and Marks \(2001: 163–186\)](#) revealed, party politics in the European Union is shaped by traditional cleavage structures, with left parties favouring more EU competence to regulate social policies, whereas parties from the right support a neo-liberal policy at the European level. More recently, a second conflict dimension actually seems to gain in importance. In their “postfunctionalist” theory, [Hooghe and Marks \(2009\)](#) argued that a substantial mobilisation of the wider public is under way, tightly coupling European and national politics, and replacing the permissive consensus on integration by a “constraining dissensus”. It is thus domestic patterns of conflict over the autonomy of the nation state as well as identity questions, structured by a “pre-material” (2009: 18) dimension of party competition, which might determine the strategies of governments and party-leaders concerning major issues of European integration and the transfer or defence of power. However, so far the indications that European politics is influenced by party competition are

ambiguous (e.g., Marks and Steenbergen 2004).

By and large, recent studies in the field – whether relying on new institutionalism or on an actor-centred approach (Marks 1996) – explicitly advocate a more comprehensive theoretical framework that supplements the state-centric perspective by examining the role of ideas, interests and institutions in each single case (Christiansen, Falkner, and Jørgensen 2002; Rittberger and Schimmelfennig 2006). This approach is thoroughly used in the detailed case studies on constitutional choice and treaty reform in the EU by Falkner and her colleagues (Budden 2002, on the Single European Act; Falkner 2002, on Maastricht; Sverdrup 2002 on Amsterdam and Nice).

Similarly, Beach (2005) took a closer look on EU institutions, thereby going beyond the intergovernmentalism-supranationalism dichotomy. Beach traced constitutional politics of the EU from the Single European Act to the Constitutional Treaty, emphasising the leadership role of the Commission, the European Parliament, and in particular the Council Secretariat. He concluded that, although EU institutions obviously play a significant role even in the most intergovernmental bargaining forums, their impact and influence is heavily dependent on actors' leadership resources such as informational advantages, the context of negotiations, and the strategy applied (2005: 2–4).

In contrast to neo-functionalist and intergovernmentalist theories, institutionalist and policy- or actor-centred approaches to European integration focus on the modes of decision-making, in particular the relative power member state governments can exert in relation to supranational actors. In the terminology coined by Lindberg and Scheingold (1970: 67–71), they mark a shift in research interests from the “scope” to the “locus” of European policy. Thus they emphasise an important aspect in the vertical dimension of multilevel political systems which is ignored in most normative theories of federalism: The effective power of the EU or the member state governments depends not only on competences allocated to them but also on the rules which determine how the competences can be used in practice.

3.5 Results

More than fifty years of research into European integration have produced abundant theories and explanations for the delegation of national sovereignty to supranational institutions. Scholarly literature – taking basic assumptions of neo-functionalism and intergovernmentalism as a starting point – has constantly developed new perspectives and introduced theoretical ideas from other research fields to European integration theory. They explain the discontinuous, but nevertheless far-reaching shift of competence from the national to the European level, but they also reveal that this tendency varies between policies.

Different theoretical approaches have clearly shown the driving forces towards and the constraints limiting the competence transfer to the EU. Nonetheless, there is no general explanation covering all policies or competences. Particular theories of European integration have proved more valid for certain policy areas, institutional settings and at certain times, but still no single most convincing concept prevails. As a consequence, no coherent set of competence allocation has emerged from theoretical predictions or ex-post explanations. Moreover, with some exceptions, theories tend to focus on the explanation of why member state governments abandon powers to the profit of the EU. In contrast, the reasons why the allocation of competence to the European level fails are not analysed in detail. Moreover, the available literature provides comprehensive insights into the imbalances and asymmetries of competence allocation resulting from the dynamics of European integration. However, scholars rarely discuss the consequences of this development for effectiveness and legitimacy of European integration (but see Scharpf 1999).

A number of empirical studies have tried to take stock of the outcome of the integration process (e.g., Börzel 2005; Donahue and Pollack 2001; Hix 2005: 18–23; Schmidt 1999). The results converge in the overall picture but diverge in the details: The EU has acquired exclusive competences in market-creating policies and shares competences with its member states in market-

correcting policies. With some exceptions (territorial cohesion, regional policy and agricultural policy) the member states maintained their powers on redistributive issues. The increase of the EU's competences portrayed by these studies appears impressive. Nonetheless, it should not be ignored that the EU still lacks the basic powers to raise taxes and to implement its policies. Moreover, the distinction between market-creating, market-correcting and redistributive policies underrates the interdependencies between them which actually constrain the autonomy of the EU and the national institutions regardless of their formal competence. Comparative federalism comes to its limits, too, when European integration is to be explained. The evolution of the European Community and later the European Union seems to have gone through centralist trends similar to those we can observe in the history of federal states. However, whereas in national federations these trends are linked to the rise of the welfare state, in the case of European integration they concern policies determined to limit state power.

When it comes to evaluating the detailed shift of competence from the national to the European level, researchers are confronted with the problem of determining the meaning and the impact of a competence. Different methods of measuring have been used which all produce quite different results (Börzel 2005; Estella de Noriega 2002). Following studies in comparative federalism, one can refer to the formal competences enumerated in the treaties and distinguish between legislative, executive and fiscal powers, or rely on expert assessments. However, formal competences of EU institutions are all but clearly stated in legal terms. Moreover, their application depends on the ability of the Commission and the Council to make decisions. Hence, the probability of an effective change in competence allocation is influenced by different modes of legislation and policy-making. Obviously, budgetary figures hardly tell us anything about the relative powers of the EU and the national levels. Furthermore, competences may have a merely symbolic value or may be undermined by "shirking" of implementing authorities of the member states (Bednar 2004: 404), an issue dealt with in research on compliance. Finally, EU institutions are engaged in policies without having formal competences by using new modes of governance (Diedrichs *et al.* 2011; Héritier and Rhodes 2011), not the least the "Open Method of Coordination". Thus, one serious problem of the integration literature is that we still lack a common concept of the meaning and an agreement on the measurement of EU powers.

We also should be cautious with generalizing conclusions on the devolution or drift of powers between levels. Apparently, concepts like centralization or decentralisation or regionalisation cannot capture the complexity of developments in the vertical dimension of the EU. Recently, scholars have drawn attention to the differentiation of integration along territorial and functional lines (Dyson and Sepos 2010; Heinelt and Knodt 2011). In the light of these findings, both political concepts of variable integration and empirical typologies of territorial and functional federalism or multilevel governance appear as too abstract and need to be refined.

4 Consequences: Sharing of power and multilevel governance

Irrespective of the diverse results of research on the vertical allocation of competences and the evolution of power, neither normative nor empirical theories provide convincing reasons to regard the EU and the member states as separate jurisdictions. Empirical research on European integration did not reveal a clear drift of sovereignty from the national to the European level. Rather it depicts political processes of dividing and sharing of competences, their content and scope being determined in power struggles between national and European actors representing different public or private interests. Efforts to find a coherent normative theory or at least criteria to sort out competences between levels have failed or ended in more or less complicated schemes of overlapping competences. This conforms to the fact that most powers of the EU and national or sub-national governments are applied in patterns of multilevel governance. Scholars describe this reality with concepts like “condominio”, “consortio” (Schmitter 1996), the “fusion of levels” (Wessels 1997), “joint decision-making” (Scharpf 1988), “network governance” (Kohler-Koch and Eising 1999); or “interdependent European governance” (Kohler-Koch 2003).

In response to this development, scholars began to elaborate theories of multilevel governance. Not only have they suggested explaining European integration as the outcome of joint decisions of national and European actors, they also have revealed that decisions on the vertical allocation of competences usually result in an interlocking of European, national and sub-national levels. Consequently, the transfer of powers to the EU should no longer be considered as a zero-sum game, rather it is about finding ways to deal with interdependent tasks reaching beyond boundaries of national governments.

The multilevel governance approach got widespread acknowledgement through the work of Hooghe and Marks (2001), although it is disputed whether they formulated a new theory (Jordan 2001; for a review of the debate: Bache and Flinders 2004; Conzelmann and Smith 2008). They started from empirical research on European regional policy and on the mobilisation of sub-national actors in EU policy-making. The results of these studies, which were confirmed by new data (Hooghe, Marks, and Schakel 2010), revealed that regionalisation, i.e., shifting powers from the national to the sub-national level, parallels the increasing transfer of competences to the European level. The interplay of these two processes implies that European integration is neither a continuous process nor an established political structure but an always contested issue (Hooghe and Marks 2001: 28). What we observe is not just the establishment of another level of politics but instead the evolution of “a system of continuous negotiations among nested governments at several territorial tiers” (Marks 1993: 392). Instead of governments operating in their territorially demarcated jurisdiction, “variable combinations of governments on multiple layers of authority – European, national, and subnational – form policy networks for collaboration. The relations are characterised by mutual interdependence on each others’ resources, not by competition for scarce resources” (Hooghe 1996: 18).

Hooghe and Marks intended to explain European integration rather than policy-making cutting across levels. None the less, their approach on multilevel governance shed light on the particular conditions of policy-making as it disaggregates states into actors involved in European politics. Instead of looking at the interplay between national governments and the European Union, attention is focussed on multiple actors including regional governments, national governments and parliaments, the European Commission and the European Parliament, as well as on their patterns of interaction, which are described as networks and negotiations. It goes without saying that such an analytical perspective is better suited to comprehending the complexity of European politics than functionalist, intergovernmentalist or even institutionalist approaches. It emphasises dynamics of Europeanisation and regionalisation and flexibility of emerging structures, in which supranational actors participate more as political entrepreneurs than as holders of particular competences. In

any case, the concept of multilevel governance strongly challenges the assumption that any kind of vertical allocation of competences between levels can determine policy-making.

As fruitful as this approach may be, its conclusions remain limited to structural change. Although Hooghe and Marks rightly emphasised the dynamics and flexibility of the European political structure, they did not clearly carve out the mechanisms which can explain the dynamics of policy-making and the outcomes. What they cannot explain either is why and how such a complicated political system works fairly well. To put in in another way: their approach is focussed on understanding institutional dynamics and “polity structuring” (Piattoni 2010: 22), but less on explaining governance and policy-making under the conditions of a vertical allocation of powers. Their suggestion to link research on EU multilevel governance to comparative federalism (Hooghe and Marks 2003) highlights a way to extend the perspective.

The challenge to understand, how multilevel governance works, stimulated a second strand of theoretical reasoning and empirical research. It has been mainly nourished by contributions from German scholars. This line of research was established by Fritz W. Scharpf's thought-provoking theory of the joint-decision trap (Scharpf 1988). This theory was formulated to explain the blockade of European integration in the 1970s and early 1980s by comparing the institutional setting of European policy-making with Germany's cooperative federalism. Both constituted multilateral negotiation systems in which actors are compelled to find an agreement. If these actors have to decide on redistributive issues, policy-making would be likely doomed to fail. To make things even worse, the institutional structures of joint decision-making could be changed only under very specific circumstances. Governments compelled to cooperate in multilevel governance might be frustrated with political stalemate, but they would be hardly able to come to an agreement on an institutional reform which essentially entails a redistribution of power.

This negative portrait of European governance was not only questioned by the dynamics of integration after 1989 but also contested by empirical research and in theoretical discourses. Studies on regional policy (e.g., Bache 2007; Marks 1993) showed that EU multilevel governance differs in several respects from the structures and processes in German federalism. The greater number of actors at the national and sub-national level makes simultaneous negotiations impossible and leads to a sequential process of policy-making in multi- and bilateral relations. Moreover, the influence of party competition on negotiations among governments, which has a problematic impact on policy-making in German federalism, does not play a significant role in the European context. Finally, the Commission – as an independent agenda setter and administration – can moderate distributive conflicts. Therefore, in a comparative perspective, the EU has been labelled as a loosely coupled multilevel system (Benz 2000, 2010). Héritier (1999) showed in a series of case studies, actors in EU policy-making find ways to escape imminent situations of deadlock by changing patterns of interaction or by using flexibilities of complex institutional settings and inter-institutional processes. Based on case studies elaborated in a collaborative project, Falkner (2011a) provided a systematic account of “exit” from decision traps in multilevel governance and mechanisms designed to increase the probability of an agreement among veto players. Earlier, Grande (1996) pointed out that governments can gain autonomy against powerful interest groups if they pool their competences in multilevel governance. All these findings explain the rather high effectiveness of multilevel policy-making in the EU and the continuous change in patterns of interactions which allow avoiding stalemate in decision-making (Benz 2009a; Wallace 2001).

Scharpf himself refined his earlier theory based on a review of studies on European policy-making. He concluded that the leeway of actors in European politics varies from policy to policy (Scharpf 1997). Moreover, he acknowledged the role of the Commission as an agenda-setter in negotiations, the existence of hierarchical governance by the European Central Bank and the European Court of Justice as well as the option of flexible integration to evade veto-power (Scharpf 2006, 2011). As a consequence, the interplay between European, national and sub-national actors differs accordingly. This approach raises tremendously the complexity of the analysis. In an

article summarising his theoretical reasoning on EU multilevel governance, Scharpf (2001) proposed dealing with this complexity by avoiding a grand theory and by focussing theorizing on particular modes of governance and the conditions under which they arise and work. He extended his concepts of joint decision-making by including mutual adjustment, hierarchy and negotiations as modes of European governance.

With this analytical framework, it is possible to integrate different theoretical perspectives into the study of multilevel governance. *Mutual adjustment* means that governments coordinate their policy by strategic action and reaction without direct communication. In the common market and in the decentralised polity of the EU, this mode necessarily leads to competition between governments. In order to understand the mechanisms at work, we can refer to economic theory on institutional competition (e.g., Vanberg and Kerber 1994). However, in contrast to these theories, political science has to take into account the influence of internal veto players in competing governments, which might limit the scope of mutual adjustment. *Hierarchy* as a mode of multilevel governance should be understood as asymmetric interaction between principals and agents in a vertically differentiated structure, rather than as governing by command and control. Problems of coordination in hierarchies have at length been analysed in institutional economics, which, therefore, can be used as a basis for studying this mode of multilevel governance. In order to understand *intergovernmental negotiations*, a wide range of theories are available which suggest distinguishing between bargaining and arguing or between different structures of negotiations (bilateral or multilateral) or between different types of actors (representatives, agents, experts), to name just the most relevant categories. *Joint decision-making* combines aspects of multilateral intergovernmental negotiations and hierarchical agenda-setting, but governments negotiating at the European level have to consider decision-making in their parliaments and to interests of powerful pressure groups. Therefore, agreements on redistributive policies are unlikely in this setting and this explains why the member states maintained core functions of the welfare state (Scharpf 2001: 16).

Such a “modularisation” of the theory of multilevel governance points out a promising research strategy to cope with the complexity of the field (see Benz 2009b). However, real policy-making, in particular multilevel governance in the EU, results from a combination of these basic modes of governance. As indicated by Scharpf in his description of joint decision-making, they may combine mechanisms of negotiation, hierarchy and political competition, or they may include negotiations in networks working in the shadow of hierarchical control (Héritier and Rhodes 2011). Decisions on regulatory policies negotiated in the EU Council are influenced by the more or less intense competition among member states for mobile tax-payers or by party competition in the member states. Depending on the type of mechanism and the quality of coupling (strict or loose), these diverse mechanisms of governance can be positively or negatively linked, i.e., they can reinforce actors’ interests to coordinate their policies or they can cause conflicts and divergent incentives, as is revealed in the studies collected in the volume by Falkner (2011b). A theory of multilevel governance in the EU must take these interactive effects into account.

It should not be ignored that one way of coping with the wicked problems of multilevel governance is to change the allocation of powers. Dilemmas of collective action usually entrenched in complicated structures of decision-making can be avoided by shifting issues to institutional or constitutional policy. Consequently, in governance research the issue of “meta-governance” has attracted attention (Jessop 2004). In the same line, scholars working on comparative federalism emphasise the dynamic and fluid character of multilevel systems when competences concern interdependent tasks or powers are shared (Benz and Broschek 2013; Pagano and Leonardi 2007). At this point of reasoning, theories of multilevel governance meet theories of federalism with the latter keeping a focus on the allocation of powers and the former indicating mechanisms which cause dynamics and changes.

5 Prospects for further research

Given the tremendous amount of literature on European integration treating – in one way or another – the allocation of competence between member states and the EU, and given the growing number of contributions to research on multilevel governance, this Living Review could not cover all contributions and had to be selective. Nevertheless, our overview on normative concepts and empirical research has revealed a lot of different theoretical and analytical approaches, stimulating ongoing discussion and research in this field. Meanwhile, interested students and researchers can profit from works summarising the state of the art in this fields. Integration theories are summarized in a number of textbooks (e.g., Rosamond 2000; Wiener and Diez 2009). On research and debates on multilevel governance, Piattoni (2010) gives a useful, well-structured and comprehensive overview. The “Handbook on Multi-level Governance”, edited by Enderlein, Wälti, and Zürn (2010), shows the variety of approaches by collecting articles from leading scholars working on multilevel governance (in the EU and beyond). These books prove comparative research as particularly fruitful, despite the unique features of the European political system. Therefore, studies on comparative federalism can really sharpen our understanding of alternative options for the allocation of competences and of the driving forces and counter-forces of integration. Yet this research seems to be more fruitful if it clarifies the differences between the EU and existing federations than if it emphasises similarities, not the least in view of the varieties of federalism. On the other hand, theories of European integration and multilevel governance point out the complexity of structures and a plurality of factors influencing how powers are distributed between levels. Since this complexity is difficult to cope with in comparative research designs, there is no one best research strategy. Therefore, further research in this field should, in principle, continue to apply different approaches and designs.

Furthermore, this Living Review has identified some weaknesses of concepts used in the literature and also deficits in empirical research. Normative theories tend to overemphasise the possibility of separating powers. This perspective also appears as an implicit assumption in empirical theories which aim at explaining the shift or the delegation of powers from the national to the European level or consider the driving forces towards disintegration (Bideleux 1996) or decentralisation (Hooghe *et al.* 2010) of powers.

Normative theories of federalism, introduced to study the EU from a comparative perspective, have been developed for and discussed mainly with regard to federal states. As we have seen, they are only of limited value with regard to the EU polity, which is characterised by federal as well as confederal elements, and does not allow for a clear-cut allocation of competences via constitutional rules. Moreover, both abstract normative reasoning on an ideal allocation of competences as well as recommendations of devices to implement subsidiarity underestimate the “stickiness” of multilevel structures. Due to diverging interests of member states and path dependency of institutions already set in place, the political system of the EU cannot be deliberately shaped by “constitutional design”. How powers are shared in practice depends on the interplay between the EU institutions and member state governments, parliaments or interest groups, to name but the most important actors. Moreover, in the highly differentiated system of the EU, the effective powers of single actors, institutions, or jurisdictions are dependent on and defined by the rules of decision-making, on the issue at stake and the particular modes of multilevel governance.

Nonetheless, the EU's political system is driven by inherent dynamics of change. Empirical theories as well as normative reasoning suggesting a balanced and efficient allocation of competences between jurisdictions have to take into account that actors at different levels influence the effective allocation of competences. Thus they even may change the actual balance of power unilaterally (see Faber and Wessels 2006 for an analysis of potential strategies and perspectives of the European Council). If this is ignored, studies end up with idealistic recommendations, which are futile as regards reality.

Still, empirical theories often tend to focus on a two-tiered structure of the EU. However, since the early 1950s, the process of European integration has passed through cycles of increasing differentiation (Wessels 1997). As a result, today's EU is not a coherent political system in a given territory but is characterised by a highly diversified and fragmented structure. Empirical research on integration dynamics and the transfer of competences must consider this specific structure in order to generate a more precise picture of the actual processes and developments. In this respect, comparative research on federalism can disclose new perspectives concerning causes, patterns and consequences of intergovernmental relations in view of the different constitutional systems, types of democracies, party systems or societal conditions at the national and sub-national levels.

When studying competence allocation as well as different patterns of cooperation, one needs to distinguish between policy areas featuring varying degrees of institutionalisation, different decision-making procedures and actors involved in policy-making. Countless case studies of European policy-making emphasise the particular characteristics of each policy field. They preclude researchers to identify consistent and uniform patterns of competence allocation or rather unidirectional "integration" in the European multilevel polity (see Lindberg and Scheingold 1970). More recently, the varying territorial scope of policy programmes or fields of cooperation on the European level has been reconsidered, an idea that has been discussed in terms like "Europe at different pace", "*Kerneuropa*", or "*Europe à la carte*". It has gained new momentum in view of the successive enlargement rounds and the incorporation of the provisions on closer cooperation in Art. 20 TEU and Art. 326–334 TFEU. Future research will need to focus more on the causes and consequences of a territorially differentiated competence allocation. Whether this is correctly covered by the term functional federalism has to be discussed.

In particular with regard to the diversity of member states in the enlarged Europe, the opting-out and secession clauses of the Lisbon Treaty and the Euro-crisis, possible tendencies of disintegration should be taken into account more seriously. Growing economic, social and cultural inequalities between member states, increasing scepticism of the population and a firm commitment of national parliaments and governments to the principle of subsidiarity has dissolved the formerly prevailing commitment to the creation of "an ever closer union" (Art. 1 TEU). But again this will probably not lead to a simple up- and downward movement of competences between levels but to a simultaneous integration and disintegration in different policy areas, and probably in different territories, too. As a consequence, we have to expect a variety of shifts in power between interlocked levels of the EU.

For these reasons, empirical research on European integration in general can still gain a lot by adopting "a plurality of lower-level and simpler concepts" (Scharpf 2001: 4) in order to appropriately analyse the vertical dimension of the EU, instead of relying on rival theoretical concepts like intergovernmentalism and supranationalism, not to speak of new holistic approaches of constructivism or multilevel governance (see also Peterson 2001). We may regard the European Union as a political system *sui generis*. But when dealing with the vertical allocation of competence and the application of shared powers in multilevel governance, we should avoid overarching concepts or a grand theory. In view of the complexity of the field, they cannot provide a reasonable and useful basis for research.

Instead, in agreement with Scharpf, we suggest to combine inductive and deductive approaches of theory-building, to develop and test of a variety of concrete theories and models. Starting with concepts of a limited range, i.e., those related to particular patterns of governance, we will be better prepared to find out where dynamics of integration produce incompatible structures or where they create self-enforcing mechanisms towards either integration or disintegration. Hence, we would expect research on European governance to yield some interesting new insights when placing emphasis on specific patterns of multilevel governance instead of trying to cover the whole picture.

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