

Arthur Benz
FernUniversität in Hagen/Carleton University Ottawa

Comparing Democratic Legitimacy in Types of Multilevel Governance

Paper for presentation at the Annual Conference of the Canadian Political Science Association, June 4-6, 2008, University of British Columbia, Vancouver

Draft!

Abstract

The paper intends to contribute to a more differentiated comparative analysis of the democratic problem in multilevel governance. Usually, the debate in this field is focussed on policy-making in negotiations. As to this, we should distinguish between multilateral negotiations among central and lower-level governments (joint decision-making) and governance in a series of bilateral negotiations. What has so far been ignored in the debates on democracy and multilevel governance are modes of governance by competition. Again, at least two types should be distinguished: One is the standard model of fiscal federalism, which assumes that coordination is achieved through competition among governments for mobile tax payers. According to the other model, lower-level governments compete for best policies in a framework of standards or criteria for evaluation defined by central institutions or intergovernmental agreements.

These types of multilevel governance are compared as to how they meet normative criteria of democratic legitimacy. Particular emphasis is put on the interplay between multilevel governance and intragovernmental patterns of democratic government. Empirical evidence is drawn from research on Germany, Canada and the EU, although the paper does not present a systematic comparative study. The aim is to broaden the perspective on multilevel governance by considering variations in modes of democracy and governance. The paper points out an analytical framework for further comparative research.

1. Introduction

Multilevel governance and democracy seem to be incompatible. Many contributions to the debate on democracy in the EU and to international politics have spelled out a dilemma between effective coordination and democratic legitimacy (Dahl 1994; DeBardeleben and Hurrelmann, 2007; Scharpf 1999). In federal states, the emergence of intergovernmental relations has raised complaints about the predominance of executives, which can avoid being held accountable by parliaments and citizens. Richard Simeon and David Cameron declared democratic intergovernmental relations as “an oxymoron if there ever was one” (Simeon and Cameron 2002). As democratic politics is organised in a territorial framework, it seems to lose ground, whenever policy-making cuts across levels of governments.

To solve this problem, a watertight separation of powers has often been suggested. Both in federal states and in the EU, constitutional reforms have been designed accordingly. In the Convention on the Future of the European Union, which elaborated a draft of a constitutional treaty, the clarification of competences was an important issue. The same holds true for recent constitutional reforms in Germany, Switzerland and Austria, where “cooperative federalism” came under attack. These reforms follow the reinvention of dual federalism in the US during the 1980s.

However, theoretical reasoning and empirical research prove that a constitutional separation of powers causes not less, but often more need to coordinate policies across levels. In modern societies with their functionally differentiated structures, public policies regularly concern issues that have no clear territorial boundaries. Many decisions of local and regional governments produce external effects, if not impacts on the national or global level. As a consequence, a constitution designed to separate powers between levels would need to

centralise the relevant competences. However, centralised decisions have more often than not different consequences on regions or localities, which are not adequately considered by national or supranational institutions. Hence any allocation of competences has to differentiate between local, regional, national and supranational aspects of a policy. But however responsibilities are distributed between levels of governments, they concern tasks which cut across levels of governments and have to be coordinated in multilevel governance. Centralisation and decentralisation are usually no alternatives of constitutional policy, but structural dimensions that vary between different functions or tasks.

For this reason, modern political systems are inevitably confronted with incongruence between democratic government, organised at a territorial basis, and multilevel governance following functional requirements. If there is no way to avoid multilevel policy-making, the challenge is to search for modes of democracy and governance that reduce the problems caused by this incongruence. As I will show in the next sections, a number of various combinations can be considered. Given the limited space of this paper, my analysis has to be selective. I focus on comparing modes of multilevel governance and try to find out to what extent they may be compatible with the requirements of democratic legitimacy.

Before I compare governance modes, I have to explain what is meant by these requirements. The point of departure has to be a concept of democracy that is realistic under conditions of structural complexity of a political system.

2. The concept of democratic legitimacy

Debates on democracy have to a considerable extent to do with disagreements on the concept. There is hardly any dispute about the basic preconditions that have to be fulfilled in a democratic polity: Each citizen should have the right to freely express his or her opinions in a peaceful way and each has to be granted equal and effective rights to participate in politics. Beyond that, a number of theories of democracy suggest different ways how individual interests can be turned into legitimated collective decisions. Most of these theories require the existence of an organised community of citizens and apply only to territorially defined governments. In research on multilevel governance, more and more scholars favour the input-output-model, which can be traced back to David Easton (1971) and was elaborated by Fritz W. Scharpf. Scharpf formulated this concept in a debate among German scholars on complexity and democracy (Scharpf 1975) in the late 1960s; he revived it in his studies on EU multilevel governance (Scharpf 1999). On a very abstract level, i.e. irrespective of particular institutional settings or social conditions, the concept stipulates, that political decisions are legitimate, if they take into account the preferences of citizens and if they effectively solve problems that are on the agenda. In order to count as democratic, a decision or a political system must meet both criteria, those concerning the input- and the output-side.

Stated in this way, these criteria of democratic legitimacy have found broad approval. There is, however, a lot of dispute about the mechanisms that make politics work in accordance with input- and output-legitimacy. On the input side, it has to be clarified how individual interests of citizens are transferred into a “public interest” as the basis for political decisions. Concerning output-legitimacy, the problem is to find a mechanism that drives responsible rulers to make effective policies conforming to the public interest

The answer to the first question varies depending on which normative concept of democracy is applied. Some argue for discourses about conflicting interests and good policies among all affected citizens or their representatives, while others emphasise the aggregation of votes and decisions by a majority. In reality, both types of participatory democracy are problematic under condition of complexity, the first due to inevitable deficits of deliberation and the second due to paradoxical effects of voting (Riker 1982). In real politics, it is not a policy, which results from participation. On the contrary, participation requires the existence

of a policy to which citizens react by expressing their agreement or by issuing a veto. Democracy then is a process of making and approving or rejecting of policies. It has to reiterate continuously and in regular proceedings, so that both citizens and suppliers of policy proposals are induced to reconsider and mutually adjust their opinions and actions. Thus, the “public interest” has to be considered as the result of collective learning (Riker 1982).

The second question relates to the issue of accountability. In order to make effective proposals or decisions, many policy-makers have to coordinate their actions. This is usually not possible if they only execute orders issued by their constituency. The institutional differentiation between citizens and policy-makers, which is essential to make a virtual public interest a real one in collective learning, implies autonomy of both sides. That policy-makers nevertheless conform, as best as possible, to the will of the people for which they act, is guaranteed by their accountability. They have to explain their decisions, subject them to the evaluation of a “forum” and if they do not meet expectations, they have to face sanctions (Bovens 2007). The existence of a “forum” is essential to turn the structural relations between policy-makers and citizens into a process of public debate instead of a relation of dependency. Accountability implies that any divergence between policies and expectations initiates disputes and discussions which should end in voluntary adjustment of preferences by either side or both sides, with sanctions remaining in the shadow. This is the way outputs are linked to the input and the other way around. Again we are led to regard democracy as a process of collective learning.

Following these considerations, the concept of democratic learning can be specified by the following criteria: First, we should determine whether all affected citizens are involved in learning processes or to what extent these processes are selective. Second, as learning requires change, if a policy is on the agenda, we should distinguish between the degrees of stagnation and change in policy-making. Third, we can distinguish between one-sided or mutual learning. One-sided learning can appear as ‘populism’, with policy-makers unreflectively following the opinions of masses, or as an “elitist” type of politics by uncontrolled leadership. Finally, we can evaluate structural conditions of accountability between policy-makers and those affected by policies. They have to enable effective exchange of information and communication on policies.

In multilevel political systems, policy proposals result from intergovernmental relations. Depending on the type of governance, they are formulated in negotiated agreements among representatives of different levels (usually from the executive) or they surface in mutual adjustment of competing governments. These policies have to respond to public interests defined in the different jurisdictions, in which they also have to find the approval of parliaments and citizens. Thus, in principle multilevel governance and democracy are compatible if they are linked in an appropriate way. Linkages should, according to the criteria of democratic legitimacy, allow for inclusive processes, policy innovation, mutual adjustment of inter- and intragovernmental decisions and transparent, communicative relations.

3. Types of multilevel governance

Studies on multilevel governance so far have focused on particular political systems at the national or international level. Comparative research is rare (Benz/Papadopoulos 2006), and does not relate to different types of democracy and multilevel governance in a systematic way. One of the reasons for this state of research is that multilevel governance more often than not is identified with governance by network, negotiation or cooperation. Thus important variations of governance are neglected. In particular non-cooperative modes are usually not considered by political scientists.

As this paper cannot cover all possible types of multilevel governance, which we can construct when taking patterns of governance and democracy into account, I will focus on

comparing cooperative and competitive modes. I leave aside hierarchy and networks although they may provide additional mechanisms of coordination in case negotiation or competition fails. In general, cooperative and competitive modes of governance emerge where unilateral governance in hierarchy is inappropriate to cope with complex tasks. Networks develop where governments informally cooperate to counteract hierarchical governance or competition or to form coalitions in iterated negotiations. Therefore I do not treat them as main modes of multilevel governance.

In the literature on federalism we find different types of cooperative multilevel governance (e.g. Bakvis and Skogstad 2008; Painter 1991). Following Fritz Scharpf (1997), I distinguish between joint-decision making and voluntary negotiation. The first implies shared competence according to constitutional rules. Policy-making requires representatives of all governments from different levels to come to an agreement in multilateral negotiations. In case of disagreement, neither of the governments is able to unilaterally decide on its own policies. Voluntary negotiations exist, if competences are divided, and governments coordinate their policies for functional reasons. Negotiations are possible in bilateral or multilateral settings, and in case of failure, each government has the power to make its policy.

Competition leads to coordinated policies not by agreement, but by mutual adjustment among actors following the same goal either by similar or by different means. For long, this mode of multilevel governance was portrayed as institutional competition among governments on the lower levels, which are induced to search for the best policy in order to attract mobile tax payers (Oates, 1972; Tiebout, 1956). By threatening with exit or promising to enter into a jurisdiction, tax payers can drive governments to implement policies with an optimal relation of costs (in terms of tax burdens) and benefits. As a consequence, all governments should work efficiently, but implement different levels of taxation and public goods, provided that external effects for other jurisdictions are limited (Wilson 1999). In view of ubiquitous externalities and high mobility costs, which make this mode unrealistic or only relevant for corporations, a second type of “yardstick competition” has attracted the interest of researchers (Besley and Case, 1995; Breton, 1996: 229-235; Salmon 1987, 2003). In this case, governments are motivated to achieve standards of policy-making by parliaments or voters, if they are ranked in a comparative evaluation and if this information influences the voting behaviour in parliaments or of citizens. As a rule, yardstick competition is organised by central governments, often in cooperation with lower-level governments, which define standards and provide for comparative “benchmarking” or ratings. Therefore, in contrast to institutional competition, it is based on at least partially shared competences.

Table 1: Types of multilevel governance

	Joint decision-making	Voluntary negotiation	Institutional competition	Yardstick competition
<i>Competences</i>	shared	divided	divided	partially shared
<i>Participation</i>	compulsory	voluntary	compulsory	voluntary
<i>Mechanism of coordination</i>	negotiation	negotiation	mutual adjustment	mutual adjustment
<i>Result in case of success</i>	joint action	(partial) joint action	convergence	policy learning

The variety of multilevel governance becomes even more complex if we include patterns of democratic politics existing in the governments constituting a multilevel system. To reduce the level of complexity for the following analysis, I distinguish between competitive and consensus democracies. The first is mainly defined by party competition in a majoritarian

parliamentary system; the second implies that decisions are negotiated among different parties with or without the participation of organised interests.

4. Linking multilevel governance and democratic governments

Generally speaking, democratic deficits in multilevel governance mainly are said to surface because intergovernmental policy-making undermines the functioning of democratic institutions and processes at the different levels. Usually, it is assumed, that intergovernmental policy predominates intragovernmental politics, because the former strengthens executives which can pool competence and resources against their parliament and interest groups. From this follows that multilevel policies allow for effectively managing interdependence but support elitist structures and reduce accountability. However, if we consider different modes of multilevel governance, this reasoning requires differentiation. For this purpose, we have to understand how different patterns of multilevel governance interact with democratic governments in general and how they work under the condition of different patterns of democratic government.

4.1 Impact of patterns of multilevel governance on democratic politics

While many would agree to the argument just outlined, economics would make a case for intergovernmental competition as a device to strengthen democratic government. In fact if governments have to negotiate on a policy they need room for manoeuvre to come to compromises or package deals, they often find no innovative solutions as they are stuck to the lowest common denominator of their interests and they can shift the blame for decisions as it is difficult to control how they came to an agreement. On the other hand, competition seems to lead to innovative results and makes processes and responsibilities transparent.

However, this general reasoning does not apply under all conditions and has to be qualified for the different modes of multilevel negotiation and competitive governance. Regarding the impact on democratic processes in governments, joint-decision-making is much more problematic than voluntary negotiations, but so is institutional competition compared to yardstick competition. Internal mechanisms of these modes of governance and the commitments for actors in external relations (weak or strong ties) explain this qualification, as shown in the following paragraphs.

The mechanism and the consequences of *joint decision-making* have been extensively studied by Fritz W. Scharpf (Scharpf, Reissert and Schnabel 1976; Scharpf 1988, 1997). He has shown that multilateral negotiations can only succeed if governments avoid decisions with redistributive consequences. In principle processes include all relevant interests represented by governments and multilevel politics resembles an inclusive grand-coalition government (Schmidt 1996). But this has its price. As package deals are difficult in multi-actor constellations and no government can threaten with unilateral action, negotiations usually end with at best incremental change. They limit capacities of a multilevel political system to come to innovative solutions and foster reactive learning. Moreover, in order to achieve approval of parliaments and citizens, governments present their intergovernmental agreements as inherently necessary ruling out other decisions. Compulsory negotiations imply that governments are strictly tied to multilevel policy-making. As they have to come to an agreement to make policies, they have all reasons to reduce the influence of external veto-players like parliaments. In public, decisions can be justified with the simple argument that an agreement is always better than no decision.

The problems of decision-making in multilateral intergovernmental negotiations are often reduced by particular structural arrangements. One is a departmentalisation of governance. This is required by the complexity of public policies in modern states, which since their early days organised governments by function-specific division of powers. Multilevel negotiations reinforce this division by tying departments to intergovernmental coordination. Moreover,

effective negotiations depend on the support by bureaucracy. In federal systems like Canada, Germany or the EU, joint decision-making works fairly well because negotiations of governments are prepared by experts in the bureaucracy who often intensely co-operate and have close contact in networks. But intergovernmental bureaucracies increase the selectivity of policy-making and add to weakening accountability relations of governments to parliaments and citizens. As in particular governance in the EU process reveals, multilevel governance can become rather innovative under these conditions, but learning is then an affair of elites.

Voluntary negotiations reduce the pressure for compromise, since governments can act unilaterally, can coordinate policies across levels in bilateral agreements and can allow dissenting governments to opt out from multilateral agreements. These options all cause selective representation of interests, depending on the negotiation setting. Unilateral action leads de facto to institutional competition, bilateralisation increases the power of the central government, and opt-out excludes one or more jurisdictions. But this flexibility increases the likelihood of agreements on innovative policies. As studies on Canadian intergovernmental relations have told us, the right of individual provinces to opt out from intergovernmental agreements and the opportunity of the federal government to make bilateral deals with provincial governments makes decisions possible even in deeply divided multinational federations. Both alternatives reduce the risk that intergovernmental negotiations end in the joint-decision trap (Painter 1991). Ongoing communication and unwritten rules of pragmatic bargaining contribute to the effectiveness (Simeon 2006, 228-255).

The commitment of actors in voluntary negotiations is lower compared to joint decision-making. This has two consequences. On the one hand, accountability relations to parliaments are more intense. The notorious complaints about executive federalism in Canada seem to contradict this argument. However, in a comparative perspective, things look different, in particular under the condition of a decentralised party system. If governments have alternative options to make policies aside from making joint decisions, they remain responsible for their individual decisions, even if these result from intergovernmental agreements. As a consequence, when parliaments tie the hands of their government, they do not risk a stalemate in case there is no agreement among all governments. On the other hand, the flexibility in intergovernmental negotiations gives individual governments the opportunity to profit from populist policies. They can raise the stake in negotiations for their community without being blamed for blocking policy-making. In case of being isolated, they can opt out and present themselves as defenders of their own citizens. This tactic of populist blame shifting is supported in voluntary negotiations due to the low commitments, whereas it is more difficult in joint decision-making (Papillon and Simeon 2004: 128).

In *institutional competition*, governments have no commitments to other governments. Nevertheless this mode of governance strictly links their decisions to multilevel coordination. In order to increase their tax resources, governments have to adjust their policies to the expectation of mobile tax payers. The special interests of these groups not only determine the goals but often also the means of public policies, like, e.g. the regulation of particular activities or the kind and rates of taxation. The constraints on governments' discretionary power have the consequence, that the influence of parliaments and citizens in general is reduced accordingly. Under the pressure of competition, changes in policies may be stimulated. But sooner or later mutual adjustment among competing governments tends towards uniformity, as economic interests prevail. If there is innovation, it does not result from mutual learning, but from adjustments to the interests of tax payers able to relocate their taxable resources or activities, which usually includes primarily private corporations or holders of finance capital. As regards democratic legitimacy, the problem of this type of competition is not whether it leads to a "race to the bottom" or a "race to the top". Whatever

the outcome of governance, it generates collective learning in the political system which is highly selective and elitist.

While the effects of institutional competition for democracy are usually the subject of theoretical reasoning in economics, empirical studies mostly deal with effectiveness of regulatory or tax policies. Although the findings do not allow us to draw clear conclusions, they support the assumption that the relevance of governance by institutional competition is often overestimated (Harrison 2006; Holzinger, Jörgens and Knill 2007). One reason for this is that decisions of private citizens or corporations to move from one jurisdiction to another rarely are determined by public policies alone. Moreover, governments are often confronted by powerful veto-players which impede decisions to adjust policies to competitive pressure. Hence although institutional competition is problematic due to the selectivity and elite driven policy it generates, in most contexts the effects of this mechanism of inter-jurisdictional coordination are limited.

Yardstick competition is often characterized as a soft mode of governance. In fact participation is usually voluntary and comparative evaluations of policies according to standards often end with recommendations for change without implying negative or positive sanctions. However, one should not underestimate the impact of benchmarking or “blaming and shaming”. The motivation of governments to meet standards and to change policies accordingly derives from internal politics rather than from external support. When succeeding in competition for positive ratings or benchmarks, they can gain approval for their policy by their parliaments and citizens. „Each government has an incentive to do better than governments in other jurisdictions in terms of levels and quantities of services, of levels of taxes or of more general economic and social indicators. The strength of the incentives depends on the possibility and willingness of citizens to make assessments of comparative performance. ... If 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).

Like in institutional competition, policies are produced by autonomous governments at lower levels. The proposals or outputs then are evaluated in a process, in which best practices are identified or policies are ranked according to criteria defined by central institutions or in intergovernmental negotiations. In case of a divergence between policies and normative criteria, parliaments or voters can react to the results of comparative evaluation and induce governments to change the policy concerned. If a government does not respond to comparative reviews, this can induce parliaments or citizens to vote the government out of office. Yardstick competition does not require that standards set by central institutions or in intergovernmental negotiations should be uncritically accepted at lower-levels. This would turn multilevel governance into a kind of authoritarian control. Rather competition should render governments’ policy-making more transparent, and should trigger public debates on the performance and outcomes and the reasons for failure or success. This way, multilevel governance could contribute to democratic accountability and mutual learning of governments, parliaments and citizens.

With the rise of New Public Management, yardstick competition has gained in importance in multilevel systems. In the EU, the Open Method of Coordination (OMC) comes close to this mode. It has been introduced by the Commission and the Council in order to implement performance standards by national or sub-national governments not by regulation but by motivation and processes of collective learning. In reality, the OMC still has a tendency towards a top-down and technocratic mode of governance (Kerber and Eckart 2007). The strong influence of experts and bureaucrats can cause a selective and biased definition of aims and standards in a way, which infringes democratic norms. However, according to the

theoretical concept of yardstick competition, this mode of multilevel governance should induce collective learning and accountability (Benz 2007).

In studies on the OMC, most scholars characterise this “new” mode as network governance or discursive policy-making and evaluate its democratic quality according to the inclusion of stakeholders in networks or the participation of parliaments in deliberation. Thus they underestimate the potential effects of comparative reviews and of intergovernmental competition for better practices. From this perspective, the OMC turns out as a kind of competitive governance conforming to the model of evolutionary federalism (Kerber and Eckart 2007). In fact, the real application of the method deviates from the theoretical model of yardstick competition and this has in fact to do mainly with a prevailing influence of bureaucrats and experts. But it is also due to governments’ unwillingness to subject their policy to external evaluation if this can undermine its position in intragovernmental party competition, as I will discuss in the following sections

Table 2: Impact of multilevel governance on democratic government

	Joint decision-making	Voluntary negotiation	Institutional competition	Yardstick competition
<i>Selectivity</i>	low	relative low	high	?
<i>Learning; preference adjustment</i>	elitist	(populist)	elitist	mutual
<i>Change</i>	low	middle	low/middle	high
<i>Accountability (transparency, communication)</i>	weak	strong	weak	strong

4.2 Impact of patterns of democratic government on multilevel governance

So far, we can conclude that different modes of multilevel governance have different consequences regarding the relations between executives, parliaments and citizens. Modes like joint decision-making and institutional competition apparently cause serious democratic deficits, whereas voluntary negotiation performs better as to policy change and yardstick competition may support mutual learning and accountability. However, inter- and intragovernmental structures and patterns of policy-making mutually interfere, the latter setting the conditions under which the effects just summarized really occur. How a particular mode of multilevel governance works depends not only on internal mechanisms but also on external factors, the most important concerning intragovernmental patterns of democracy and, linked to these patterns, the political organisation of society in parties and associations. These factors influence how actors behave in intergovernmental relations and whether results of multilevel coordination are accepted and implemented or not. I will discuss favourable and unfavourable conditions of the four modes of multilevel governance in turn, mainly by referring to empirical experience in Canada, Germany and the EU.

Regarding the conditions of *joint decision-making*, discussions on the effectiveness and legitimacy in studies on German federalism are revealing. Scholars came to different evaluations. This can be explained by the interference of particular patterns of parliamentary democracy, which have ambivalent consequences (Lehmbruch 2000). On the one hand, the strong role of political parties and the dualist competitions between governments led either by the conservative Christian Democratic Party or the Social Democratic Party have turned intergovernmental negotiations into a bargaining game which Fritz Scharpf (1997:) tellingly described as “antagonistic cooperation”. In those periods of the Federal Republic, when one of the competing parties governed at the federal level and the other had a majority at the *Länder* level and, as a consequence, controlled the majority of the votes in the second legislative chamber, the *Bundesrat*, political reforms have been nearly impossible. And if compromises have been achieved in informal bargaining or in the private meetings of the Conciliation Committee, decision-making has been criticized as elitist policy-making. Therefore, many argue that changes are only possible if the federal government is formed by a Grand Coalition of the big parties. On the other hand, political parties in Germany have integrated federal and *Länder* politics (like the former Canadian “brokerage parties”). When intergovernmental decisions have to be negotiated, territorial conflicts are transformed into party conflicts and the other way around, depending on the issue at stake. As a consequence, instead of a plurality of actors, two well established coalitions meet at the bargaining table. Such a structure of intergovernmental relations reduces transaction costs in negotiations and creates transparency about the positions and responsibilities of the governments.

Meanwhile, during the last about two decades after Germany unification, the party system has been subject to an incremental but significant change. With now five parties in the federal parliament, the dualist party competition has dissolved and new options for coalitions have emerged. The same development can be observed at the *Länder* level. As a consequence, intergovernmental conflicts become more pluralistic. At the same time, the vertical integration of parties has become weaker, since economic disparities and vertical fiscal imbalance caused increasing divergence of interests between the federal and the *Länder* governments and among the *Länder* governments. These developments have augmented transaction costs in intergovernmental relations and have made processes and responsibilities in joint decision-making less transparent. By decentralising competences, the recent reform of the federal system has contributed to this trend. However, structures of joint decision-making in legislation have hardly been changed. Future will tell us how German federalism will work under these changing conditions.

In the European Union, joint-decision-making in the Council of Ministers works with a regionalized and incoherent party system (Thorlakson 2006). In principle, this makes decision-making more difficult than in the German federal system. However, in contrast to Germany, the EU institutions have created a particular type of a consensus democracy and party competition is only relevant regarding the participation of national parliaments. In such a multilevel system, actors can form varying coalitions in negotiations. Moreover, consensus democracy is also more open to organised interests which can influence agenda-setting in multilevel policy-making. Both conditions increase the probability of policy learning as actors are less dependent on the support of a political party. Multilevel governance and consensus democracy combine to what can be called a loosely coupled system. It explains the dynamics of European integration despite the need for joint-decisions. On the other hand, the flexibility of actor constellations in consensus democracy and multilevel governance causes problems of accountability due to the complexity of processes (Benz 2003, 2006).

Canadian federalism is revealing as to the impact of majority democracy with a regionalised party system on different modes of cooperative governance. Here, *voluntary intergovernmental negotiations* intensified when the provinces gained power in processes of

constitutional change and when the party system went through a process of regionalisation. Still parliamentary democracy and the first-past-the-post electoral system foster intense party competition at the federal level and in the provinces, which is required for effective and accountable governance. But regional fragmentation of the party system and the overlap of party political and interprovincial cleavages in elections have made one-party majorities less likely than in the traditional Westminster system. This plurality and volatility of party cleavages increases transaction costs in intergovernmental negotiations. It is therefore not astonishing that joint decisions regularly end with compromises which rarely find acceptance, as it is proved by the attempts to constitutional reforms since the 1960s. Many intergovernmental agreements have been made possible by opting out of individual provinces. Moreover, attempts to institutionalise intergovernmental negotiations have turned out as not very successful because of the contradiction between competitive democracy and cooperative federalism (Papillon and Simeon 2004). On the other hand, the regionalist party system allows for stronger links between a government and the majority in parliament than in a vertically integrated party system where parties often have to accommodate territorial and party interests. Depending on its capacities, a majority in parliament can take the government into account when intergovernmental agreements are made. Leaders of governments are well aware of their party's interests and take them into account (Carty and Wolnietz 2004). Majorities resulting from party competition reduce the problems of defining positions of a government compared that are relevant in a consensus democracy. In so far minority governments with governments depending on the support of an opposition party may not necessarily improve multilevel governance in Canada.

How structures of intragovernmental democracy influence *competitive modes* of governance is difficult to say since hardly any empirical research results are available. We know that effects of competition can be reduced if strong veto-players in jurisdictions impede adjustments of policies. Majority democracy with intense party competition makes policy change more likely than consensus democracy, but decisions are mainly influenced by party politics and less by intergovernmental competition. It is possible that party competition overlaps with institutional competition, but in this case, negative effects of policy-making compelled by mobile tax-payers can induce a change of majorities in parliaments. This explains why states with consensus democracies appeared to be better capable to adjust to challenges of the global market than states with majority democracies (Katzenstein 1985).

In particular yardstick competition is unlikely to work under the condition of party competition. In Canada, the Social Union Framework Agreement stipulates that governments monitor and measure outcomes of their social programs, share information and best practices and work on comparable indicators to measure progress related to shared objectives. However, the prevailing conflict between the regionalized party governments has counteracted attempts to govern by standards and competitive benchmarking. In Germany, the *Länder* so far have successfully shielded policy-making against comparative evaluations. Some years ago, the "PISA-study" of the OECD on the performance of education systems caused debates among governments and parties, and this explains why an amendment of the constitution in September 2006 introduced the possibility of yardstick competition in education, if all *Länder* governments agree. However, it is still an open question whether this procedure will be effective in a political system where governments are still linked by party political affiliations. In the EU, the OMC has turned into a kind of cooperative mode of governance since governments and parliaments have rejected attempts to subject national policies to comparative benchmarking and ranking. Not only the executive but also majority parties in national parliaments tend to avoid the risk of yardstick competition, as long as they cannot predict the outcome. Executives have no interest in being made responsible for failed

policies, and the majority party regularly defends the government against any evaluation which can be exploited by the opposition.

Interestingly, federal ministries in Germany successfully used yardstick competition in regional policy to stimulate innovative developments. In this case, not *Länder* governments but regional associations of local governments or regional networks including public and private actors have been the addressees of governance. Thus when decentralized policies are elaborated on a consensual basis, competition apparently can mobilize new actors, change network patterns and stimulate policy innovation (Benz 2007a). This example reveals that similar to institutional competition, yardstick competition is more compatible with consensus democracy than with party competition.

Table 3: Impact of democratic government on multilevel governance

	Joint decision-making	Voluntary negotiation	Institutional competition	Yardstick competition
<i>Favourable intragovernmental conditions</i>	<i>integrated party system consensus democracy</i>	<i>party competition regionalist party system</i>	<i>consensus democracy</i>	<i>consensus democracy</i>
<i>unfavourable intragovernmental conditions</i>	<i>regionalist party system party competition</i>	<i>integrated party system consensus democracy</i>	<i>Party competition integrated party system</i>	<i>party competition integrated party system</i>

5. Democratising multilevel governance

In terms of democratic legitimacy, some modes of multilevel governance perform better than others. If we take into consideration, that they have to be linked to different patterns of democratic governments, the picture becomes more nuanced. Joint decision-making is not very effective if governments represent competing parties, but in an integrated party system incrementalism in policy-making can be compensated by transparent responsibilities for decisions. Voluntary negotiations are less likely to work in multilevel polities with an integrated party system, and accountability is rendered more problematic in consensus democracy. Institutional competition has no or rather negative effects in parliamentary democracies with intense party competition. The positive impact of yardstick competition on policy-learning and transparency is unlikely under these conditions. In order to bring about these effects, this mode of governance requires consensus democracy within the competing governments.

As patterns of democracy depend on constitutional rules, social cleavages and emergent practices of politics, they cannot be modified in short term, if they may be changed at all by institutional reform. From this follows, that modes of intergovernmental coordination have to be adjusted to conditions established by intragovernmental structures. However, there are limits to this, as well. The particular modes of multilevel governance cannot be applied to every policy problem. If all jurisdictions are affected, voluntary negotiations de facto turn into joint-decision-making, at least in the “shadow of hierarchy”, provided that the central government is able to decide in case of failed negotiations. Yardstick competition requires not only governments willing to provide data for comparative evaluation, but also agreement on or approval of aims, standards, indicators and procedures for evaluation by all participating governments. Particular policies like taxation or economic regulation can hardly be exempt from being influenced by the flow of mobile capital or investments in the market, which induce institutional competition, as long as the relevant decisions are not coordinated by joint-decision making.

However, in contrast to democratic governments, modes of multilevel governance can vary from policy to policy. In every federal system, we usually observe such sectoral variations, although to a different degree. Where constitutions define the rules of intergovernmental relations rather precisely, the level of differentiation is lower. Moreover, where competences are shared, joint-decision-making is much more likely than in federal systems where competences are divided. Nevertheless, constitutions never exclude adjustments of multilevel governance. Joint decisions can be reduced to setting a framework for institutional or yardstick competition. Opting out of individual governments can be the result of an agreement among all governments, if otherwise no decision is possible. Moreover, as we can observe in the German case, the impact of party politics varies. In regional policy and in research policy, experts define norms of distributive justice, which set the frame of reference for federal-*Länder* negotiations on the allocation of resources and reduce the influence of parties.

From this follows that democratisation of multilevel governance should not be expected to result from institutional or constitutional design. There is no combination of intergovernmental and intragovernmental patterns of politics which does not give rise to tradeoffs between effectiveness and accountability. These dilemmas are better dealt with by continuously adjusting governance to specific conditions. However, institutions have to allow for the flexibility necessary for strategic adjustment and the normative framework guiding actors' strategies.

6. Conclusion

It goes without saying that political science cannot provide solutions for problems of democracy caused by multilevel governance. So far we can explain dilemmas but we cannot propose institutional designs appropriate to avoid them. As a matter of fact there is not one best model of multilevel governance. But this calls for identifying different modes of multilevel governance and to compare how they perform under different conditions. This can lead us to reveal the relative advantages and disadvantages of particular modes.

The analysis outlined in this paper is meant as a step towards comparative research on multilevel governance. Neither is the proposed differentiation of modes of governance and patterns of democracy comprehensive nor are the evaluations of cooperative and competitive modes of governance based on systematic comparative research. My intention was to outline an analytical framework for further research. Therefore, general conclusion should be made with greatest care.

With this caveat, one message can be learned. If my analysis is correct, we should expect a general trend to emerge in multilevel polities. Given the increasing pluralisation of societies and of political cleavages, joint-decision-making may turn out as both ineffective and undemocratic. Under these conditions, voluntary negotiation and yardstick competition provide better modes of governance. In so far, discussions which either ignore the need for multilevel coordination or focus on either joint decision-making or institutional competition fail to meet the real challenges for democracy.

References

- Bakvis, Herman and Grace Skogstad (eds.), 2008: *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Oxford, Don Mills/Ontario: Oxford University Press
- Benz, Arthur, 2003: *Compounded Representation in EU Multi-Level Governance*, in: Beate Kohler-Koch (ed.), *Linking EU and National Governance*, Oxford: Oxford University Press, 82-110.
- Benz, Arthur, 2007: *Accountable Multilevel Governance by the Open Method of Coordination?*, in: *European Law Journal* 13 (4), 505-522.

- Benz, Arthur, 2007a: Inter-Regional Competition in Co-operative Federalism. New Modes of Multi-level Governance in Germany, in: *Regional and Federal Studies* 17 (4), 421-436.
- Benz, Arthur and Yannis Papadopoulos (eds.), 2006: *Governance and Democracy – Comparing National, European and Transnational Experiences*, London: Routledge.
- Besley, Timothy and Anne Case, 1995: Incumbent Behavior. Vote-Seeking, Tax-Setting, and Yardstick Competition, in: *American Economic Review* 85, 25-45.
- Bovens, Marc, 2007: Analysing and Assessing Accountability. A Conceptual Framework, in: *European Law Journal* 13 (4), 447-468.
- Breton, Albert, 1996: *Competitive Governments. An Economic Theory of Politics and Finance*, Cambridge: Cambridge University Press.
- Carty, R. Kenneth and Steven B. Wolnietz, 2004: Political Parties and the Canadian Federation Politics, in: J. Peter Meekison et al (eds.), *Canada: The State of the Federation 2002*, Montreal/Kingston: McGill-Queen's University Press, 57-76.
- DeBardeleben, Joan and Achim Hurrelmann, 2007: Introduction, in: Joan DeBardeleben and Achim Hurrelmann (eds.), *Democratic Dilemmas of Multilevel Governance. Legitimacy, Representation and Accountability in the European Union*, Basingstoke: Palgrave Macmillan, 1-14.
- Dahl, Robert A., 1994: A Democratic Dilemma: System Effectiveness versus Citizen Participation, in: *Political Science Quarterly* 109, 23-34.
- Easton, David, 1971: *The Political System*, Chicago: University of Chicago Press (2nd ed.).
- Kerber, Wolfgang and Martina Eckardt, 2007: Policy Learning in Europe: The "Open Method of Coordination" and Laboratory Federalism, in: *Journal of European Public Policy*, 14 (2), 227-247.
- Harrison, Kathryn (ed.), 2006: *Racing to the Bottom? Provincial Interdependence in the Canadian Federation*, Vancouver: UBC Press.
- Holzinger, Katharina, Helge Jörgens and Christoph Knill (eds.), 2007: *Transfer, Diffusion und Konvergenz von Politiken (Politische Vierteljahresschrift special issue 38)*, Wiesbaden: VS Verlag für Sozialwissenschaften.
- Katzenstein, Peter J., 1985: *Small States in the World Markets*, Ithaca NY: Cornell University Press.
- Lehmbruch, Gerhard, 2000: *Parteienwettbewerb im Bundesstaat. Regelsysteme und Spannungslagen im Institutionengefüge der Bundesrepublik Deutschland*. Wiesbaden: Westdeutscher Verlag (3rd ed.).
- Oates, Wallace E., 1972: *Fiscal Federalism*, New York: Harcourt Brace Jovanovich.
- Painter, Martin, 1991: Intergovernmental Relations in Canada: An Institutional Analysis, in: *Canadian Journal of Political Science* 24, 269-288.
- Papillon, Martin and Richard Simeon, 2004: The Weakest Link? First Minister Conferences in Canadian Intergovernmental Relations, in: J. Peter Meekison et al (eds.), *Canada: The State of the Federation 2002*, Montreal/Kingston: McGill-Queen's University Press, 113-140.
- Riker, William, 1982: *Liberalism against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice*, San Francisco: W.H. Freeman.
- Salmon, Pierre, 1987: Decentralisation as an Incentive Scheme, in: *Oxford Review of Economic Policy*, 3 (2), 24-43.
- Scharpf, Fritz W., 1975: *Demokratietheorie zwischen Utopie und Anpassung*, Konstanz: Konstanzer Universitäts Verlag.
- Scharpf, Fritz W., 1988: The Joint Decision Trap. Lessons from German Federalism and European Integration, in: *Public Administration*, 66 (3), 239-278.
- Scharpf, Fritz W., 1997: *Games Real Actors Play. Actor-Centered Institutionalism in Policy Research*, Boulder, Col.: Westview Press.
- Scharpf, Fritz W., 1999: *Governing Europe, Effective and Democratic?* Oxford: Oxford University Press.
- Scharpf, Fritz W., Bernd Reissert and Fritz Schnabel, 1976: *Politikverflechtung. Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik*, Kronberg: Scriptor.
- Schmidt, Manfred G., 1996: Germany: The Grand Coalition State, in: Joseph M. Colomar (ed.), *Political Institutions in Europe*, London: Routledge, 62-98.
- Simeon, Richard: 2006, *Federal-Provincial Diplomacy. The Making of Recent Policy in Canada*, Toronto: University of Toronto Press (3rd ed.).
- Simeon, Richard and David Cameron, 2002: Intergovernmental Relations and Democracy: An Oxymoron If There Ever Was One, in: Herman Bakvis and Grace Skogstad (eds.), *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Oxford, Don Mills/Ontario: Oxford University Press, 278-295.
- Thorlakson, Lori, 2005: Federalism and the European Party System, in: *Journal of European Public Policy* 12 (3), 468-487.
- Tiebout, Charles M., 1956: A Pure Theory of Local Expenditures, in: *Journal of Political Economy* 64, 416 – 424.
- Wilson, John Douglas, 1999: Theories of Tax Competition, in: *National Tax Journal* 52 (2), 269-304.