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Multi-Level Governance and European Integration

Liesbet Hooghe and Gary Marks

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ENA	<i>Ecole nationale d'administration</i> (training school for French civil servants)
EP	European Parliament
EPP	European People's party (confederation of Christian Democratic and some conservative parties)
ERT	European Round Table (lobbying group for multinational corporations in Europe)
EU	European Union (°1993)
FF	<i>Fianna Fail</i> (Irish national-conservative party)
FPÖ	<i>Freiheitliche Partei Österreichs</i> (Austrian Freedom party)
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
JHA	Justice and Home Affairs (also called Pillar III)
MERCOSUR	<i>Mercado Comun del Sur</i> , established in 1991 to create a common market among Brazil, Bolivia, Chile, Argentina, Paraguay, and Uruguay
NAFTA	North American Free Trade Agreement, established in 1994
NATO	North Atlantic Treaty Organization
OECD	Organization for Economic Cooperation and Development
PASOK	Greek socialist party
QMV	Qualified Majority Voting
RETI	Association of European Regions of Industrial Technology
RPR	<i>Rassemblement pour la République</i> (French Gaullist party)
SEA	Single European Act (1986)
TEU	Treaty of European Union (initially the formal name for the Maastricht Treaty of 1993, and updated with the Amsterdam Treaty of 1999)
UNICE	Union of Industrial and Employers' Confederations of Europe
WTO	World Trade Organization

Multi-Level Governance in the European Union

Developments in the European Union (EU) over the last two decades have revived debate about the consequences of European integration for the autonomy and authority of the state in Europe.¹ The scope and depth of policy making at the EU level have increased immensely. The European Union completed the internal market on schedule in 1993, and eleven of the fifteen member states formed an economic and monetary union (EMU) in 1999, with a European central bank and a single currency, the euro. These policy-making reforms have been accompanied by basic changes in European decision making. The Single European Act (1986), which reduced nontariff barriers, also established qualified majority voting in the Council of Ministers and significantly increased the power of the European Parliament. The Maastricht Treaty (1993) increased the scope of qualified majority voting in the Council and introduced a codecision procedure giving the European Parliament a veto on certain types of legislation. The Treaty of Amsterdam (1999) extended codecision to most areas of policy making in the European Community, except for EMU.

Our aim in this chapter is to take stock of these developments. What do they mean for the political architecture of Europe? Do these developments consolidate national states or do they weaken them? If they weaken them, what kind of political order is emerging? These are large and complex questions, and we do not imagine that we can settle them once and for all. Our strategy is to pose two basic alternative conceptions—state-centric governance and multi-level governance—as distinctly as possible and then evaluate their validity by examining the European policy process.

The core presumption of state-centric governance is that European integration does not challenge the autonomy of national states. State-centrists contend that state sovereignty is preserved or even strengthened through EU membership. They argue that European integration is driven by bargains among national governments. No government has to integrate more than it wishes because bargains

rest on the lowest common denominator of the participating member states. In this model, supranational actors exist to aid member states, to facilitate agreements by providing information that would not otherwise be so readily available. Policy outcomes reflect the interests and relative power of national governments. Supranational actors exercise little independent effect.

An alternative view is that European integration is a polity-creating process in which authority and policy-making influence are shared across multiple levels of government—subnational, national, and supranational. While national governments are formidable participants in EU policy making, control has slipped away from them to supranational institutions. States have lost some of their former authoritative control over individuals in their respective territories. In short, the locus of political control has changed. Individual state sovereignty is diluted in the EU by collective decision making among national governments and by the autonomous role of the European Parliament, the European Commission, the European Court of Justice, and the European Central Bank.

We make this argument in this chapter along two tracks. First, we analyze the variety of conditions under which national governments will voluntarily or involuntarily lose their grip on power. Second, we examine policy making in the EU across its different stages, evaluating the validity of contending state-centric and multi-level models of European governance.

TWO MODELS OF THE EUROPEAN UNION

The models that we outline below are drawn from a large and diverse body of work on the European Union, though they are elaborated in different ways by different authors. Our aim here is not to replicate the ideas of any particular writer, but to set out the basic elements that underlie contending views of the EU so that we may evaluate their validity.

The core ideas of the *state-centric model* are put forward by several authors, most of whom call themselves intergovernmentalists (Hoffmann 1966, 1982; Taylor 1991, 1997; Moravcsik 1991, 1993, 1998; Garrett 1992, 1995; Milward 1992; for an intellectual history, see Caporaso and Keeler 1995; Caporaso 1998).² This model poses states (or, more precisely, national governments) as ultimate decision makers, devolving limited authority to supranational institutions to achieve specific policy goals. Decision making in the EU is determined by bargaining among national governments. To the extent that supranational institutions arise, they serve the ultimate goals of national governments. The state-centric model does not maintain that policy making is determined by national governments in every detail, only that the overall direction of policy making is consistent with state control. States may be well served by creating a judiciary, for example, that allows them to enforce collective agreements, or a bureaucracy that implements those agreements, but such institutions are not autonomous supranational agents.

Rather, they have limited powers to achieve state-oriented collective goods (Keohane 1984; Keohane and Hoffmann 1991).

EU decisions, according to the state-centric model, reflect the lowest common denominator among national government positions. Although national governments decide jointly, they are not compelled to swallow policies they find unacceptable because decision making on important issues operates on the basis of unanimity. This allows states to maintain individual as well as collective control over outcomes. While some governments are not able to integrate as much as they would wish, none is forced into deeper collaboration than it really wants.

State decision making in this model does not exist in a political vacuum. In this respect, the state-centric model takes issue with realist conceptions of international relations, which focus on relations among unitary state actors. National governments are located in the domestic political arena, and their negotiating positions are influenced by domestic political interests. But—and this is an important assumption—those arenas are discrete. That is to say, national decision makers respond to political pressures that are *nested* within each state. The fifteen national governments bargaining in the European arena are complemented by fifteen separate national arenas that provide the sole channel for domestic political interests at the European level. The core claim of the state-centric model is that policy making in the EU is determined primarily by national governments constrained by political interests nested within autonomous national arenas.³

One can envision several alternative models to this one. The one we present here, which we describe as *multi-level governance*, is drawn from several sources (Scharpf 1988, 1994, 1999; Marks 1992, 1993; Schmitter 1992, 1996a; Tarrow 2000; Sbragia 1992, 1993a; Hooghe 1995b, 1996c; Jachtenfuchs and Kohler-Koch 1995; Leibfried and Pierson 1995; Pierson 1996; Risse-Kappen 1996b; Börzel 1998; Tarrow 2000; see also Caporaso and Keeler 1995, or Caporaso 1996a for an overview). Once again, our aim is not to reiterate any one scholar's perspective, but to elaborate essential elements of a model drawn from several strands of writing, which makes the case that European integration has weakened the state.

The multi-level governance model does not reject the view that national governments and national arenas are important, or that these remain the most important pieces of the European puzzle. However, when one asserts that the state no longer monopolizes European-level policy making or the aggregation of domestic interests, a very different polity comes into focus. First, according to the multi-level governance model, decision-making competencies are shared by actors at different levels rather than monopolized by national governments. That is to say, supranational institutions—above all, the European Parliament, the European Commission, and the European Court—have independent influence in policy making that cannot be derived from their role as agents of national executives. National governments play an important role but, according to the multi-level governance model, one must analyze the independent role of European-level actors to explain European policy making.

Second, collective decision making among states involves a significant loss of control for individual national governments. Lowest common denominator outcomes are available only on a subset of EU decisions, mainly those concerning the scope of integration. Decisions concerning rules to be enforced across the EU (e.g., harmonizing regulation of product standards, labor conditions, etc.) have a zero-sum character and necessarily involve gains or losses for individual states.

Third, political arenas are interconnected rather than nested. While national arenas remain important arenas for the formation of national government preferences, the multi-level governance model rejects the view that subnational actors are nested exclusively within them. Instead, subnational actors operate in both national and supranational arenas, creating transnational associations in the process. National governments do not monopolize links between domestic and European actors. In this perspective, complex interrelationships in domestic politics do not stop at the national state but extend to the European level. The separation between domestic and international politics, which lies at the heart of the state-centric model, is rejected by the multi-level governance model. National governments are an integral and powerful part of the EU, but they no longer provide the sole interface between supranational and subnational arenas, and they share, rather than monopolize, control over many activities that take place in their respective territories.

FROM STATE-CENTRIC TO MULTI-LEVEL GOVERNANCE

Has national government control over EU decision making has been compromised by European integration? In this section we argue that state sovereignty has been diminished by restrictions on the ability of individual governments to veto EU decisions and by the erosion of collective government control through the Council of Ministers.

Limits on Individual National Government Control

The most obvious constraint on the capacity of a national government to determine outcomes in the EU is the decision rule of qualified majority voting in the Council of Ministers for a range of issues from the internal market to trade, research policy, and the environment. In this respect, the European Union is clearly different from international regimes, such as the UN or World Trade Organization, in which majoritarian principles of decision making are confined to symbolic issues.

State-centrists have sought to blunt the theoretical implications of collective decision making in the Council of Ministers by making two arguments.

The first is that while national governments sacrifice some independent control by participating in collective decision making, they more than compensate for this by their increased ability to achieve the policy outcomes they want. Andrew

Moravcsik has argued that collective decision making actually enhances state control because national governments will only agree to participate insofar as "policy coordination increases their control over domestic policy outcomes, permitting them to achieve goals that would not otherwise be possible" (1993, 485). By participating in the European Union, national governments are able to provide policy outcomes, such as a cleaner environment, higher levels of economic growth, and so forth, that they could not provide on their own. But two entirely different conceptions of power are involved here, and it would be well to keep them separate.

On the one hand, power or political control may be conceptualized as control over persons. *A* has power over *B* to the extent that she can get *B* to do something he would not otherwise do (Dahl 1961). This is a zero-sum conception: if one actor gains power, another loses it. By contrast, power conceived as the ability to achieve desired outcomes entails power over nature in the broadest sense. According to this conception, I have power to the extent that I can do what I wish to do. A government that can achieve its goal of low inflation and high economic growth is, from this standpoint, more "powerful" than one that cannot.⁴

The latter way of conceiving power is not "wrong," for concepts can be used in any way one wishes to use them. But it does confuse two things that are sensibly regarded as separate: who controls whom, and the ability of actors to achieve their goals. We argue in chapter 4 that one reason why government leaders shift authority away from the central state is precisely because this may enable them to achieve substantive policy goals.

A second line of argument adopted by state-centrists is that majoritarianism in the Council of Ministers camouflages, rather than undermines, state sovereignty. They argue that treaty revisions and new policy initiatives remain subject to unanimity, and that the Luxembourg compromise gives national governments the power to veto any policy that contravenes their vital national interests. Ultimately, they emphasize, a national government could pull out of the EU if it so wished.

However, the Luxembourg veto is available to national governments only under limited conditions, and even then, it is a relatively blunt weapon. As we detail below, the Luxembourg veto is restricted by the willingness of other national governments to tolerate its use.

From the standpoint of physical force, member states retain ultimate sovereignty by virtue of their continuing monopoly of the means of legitimate coercion within their respective territories. If a national government breaks its treaty commitments and pulls out of the EU, the EU itself has no armed forces with which to contest that decision.⁵ In this respect, the contrast between the European Union and a federal system, such as the United States, seems perfectly clear. In the last analysis, national states retain ultimate coercive control over their populations.

But monopoly of legitimate coercion tells us less and less about the realities of political, legal, and normative control in contemporary capitalist societies.

A Weberian approach, focusing on the extent to which states are able to monopolize legitimate coercion, appears more useful for conceptualizing the emergence and consolidation of states from the twelfth century than for understanding changes in state sovereignty from the second half of the twentieth century (see chapter 2 for a comparison between state building and European integration). Although the EU does not possess supranational armed forces, a member state is constrained by the economic and political sanctions—and consequent political/economic dislocation—that it would almost certainly face if it revoked its treaty commitments and pulled out of the European Union.

Limits on Collective National Government Control

We have argued that national governments do not exert *individual* control over decision making in the Council of Ministers. State-centrists may counter that states still retain *collective* control over EU decision making through the Council of Ministers and the treaties.

In this section, we argue that neither the Council of Ministers nor the treaties give national governments full control over EU decision making. The Council is the most powerful institution in EU decision making, but it exists alongside a directly elected European Parliament (EP) that has a veto on legislation relating to a third of all treaty provisions. The power of the EP in the European political process has grown by leaps and bounds over the past twenty years, and collective national control of decision making has declined as a result.

The treaties are the main expression of national authority in the process of European integration. Because representatives of national governments are the only legally recognized signatories of the treaties, one may argue that state authority is enhanced in the process of treaty making. If a domestic group wishes to influence a clause of a formal EU treaty, it must adopt a state-centric strategy and focus its pressure on its national government.

To evaluate treaties as a vehicle for national government control, one needs to ask two questions: first, to what extent do national governments control the process of treaty negotiation and ratification; and second, to what extent do treaties determine European policy making.

National governments are the key actors in negotiating treaties, but since the tumultuous reception of the Maastricht Treaty in 1993, they have had to contend with the participation of many kinds of domestic actors. In Britain, opposition and back-bench Members of Parliament almost derailed the Treaty in the House of Commons. Just at a time when some observers were claiming that treaty making was strengthening national governments at the expense of parliaments, events in the United Kingdom were proving exactly the opposite. A Conservative government was held ransom by back-benchers, and a split developed within the party on the issue of European integration that fatally weakened the government during the remainder of its term and in the subsequent general election of 1997.

In Germany, ratification of the Maastricht Treaty mobilized German regional governments who tried to block the Treaty in the constitutional court. In France, ratification was fought out in a popular referendum in September 1992, and the result was a hair's-breadth win for the government (51 percent in favor; 49 percent opposed). In each of these countries, and across the EU, public opinion was mobilized in ways that placed national governments on the defensive.

Tensions, and sometime outright splits, have arisen within major parties. The British Conservative party is deeply divided on the question of European monetary integration, as revealed in public squabbles and in a survey of MPs (Baker, Gamble, Ludlam, and Seawright 1997). In France, the Gaullist party split into two independent factions in the European election of 1999. In Germany, fissures are evident within the Christian Democratic party, and between the Christian Democrats and their Bavarian sister party, the Christian Social Union. These tensions are not random, but can be explained systematically in reference to party ideologies, as we set out to do in chapter 10.

So while it is true that national governments have a formal monopoly in making treaties, it is not at all clear that treaty making, or the process of European integration in general, has strengthened national governments against parliaments, regional governments, or public pressures.

To what extent do treaties allow national governments to determine institution building? The treaties are the ultimate legal documents of the European Union, so it may seem strange to pose the question. But a moment's thought suggests that the question is worth asking after all. To what extent are American, French, or German political institutions determined by their respective constitutions? Treaties, like constitutions, are frameworks that constrain, but do not determine, institutional outcomes. We would regard a study of American politics that focused exclusively on the development of the U.S. Constitution as strangely skewed. Treaties, like constitutions, are sensibly regarded as points of departure, not final destinations, in understanding the workings of a regime because they do not capture the way in which actors adapt to—and exploit—formal rules.

EU treaties have been reformed more frequently than most constitutions, and they lie closer to the ground of policy making. However, national government control is, to some extent, handcuffed by unanimity. Treaties have to surmount the highest conceivable decisional barrier: unanimous agreement among the principals. This not only makes innovation difficult but also makes it difficult for national governments to rein in institutions, as we discuss below.

The extent to which treaties constrain EU institutions is diminished because the treaties themselves tend to be vaguely written. The treaty-making process is heavily biased towards diffuse agreements that avoid contentious issues and allow politicians from all countries and of all ideological stripes to claim success at the bargaining table. The principals in treaty negotiations are not simply representatives of national preferences but are flesh and blood politicians who have private preferences that include a desire to perform well at the next general election

(a line of analysis we develop in chapter 4). In this respect, the principals sitting around the European bargaining table, no matter how zero-sum their preferences, have a collective desire to agree to *something* so that the negotiation itself is not perceived as a failure. Ambiguity can serve rational political purposes. When individual or collective national control bumps up against electoral considerations, we expect that electoral considerations will usually emerge the winner.

These considerations suggest that the control of national governments over EU policies and institutions is highly imperfect. National governments no longer monopolize EU decision making, partly because the European Parliament has become a co-legislator over much EU policy; increased public scrutiny of EU decision making increases the weight of public opinion on government policy; and national governments have limited control over supranational agents, such as the European Commission and the European Court of Justice. We examine these in turn.

European Parliament

The empowerment of an autonomous and directly elected Parliament over the past two decades presents a fundamental problem for accounts that conceive authority as delegated or pooled by member states. It seems forced to conceive the Parliament as an agent designed by national governments to realize their preferences. The EP increases, rather than reduces, transaction costs of decision making in the EU. The development of the EP cannot be explained as a functional response on the part of national governments to problems of intergovernmental bargaining. On the contrary, the EP is better explained in terms of the response of national governments to domestic pressures for greater democratic accountability in the European Union.

The EP does not fit well into an intergovernmental account of European integration. One line of response is that while Parliament has been strengthened, this has not been at the expense of other institutions. Andrew Moravcsik writes that the cooperation procedure "increased the participation of the Parliament without infringing on the formal powers of either the Commission or the Council" (1998, 366). As we have noted above, the notion that power can be supplied as a normal good, so some people can have a bit more without anyone having less, confuses political power with ability. The rules comprising the basic governing institutions of the EU are interwoven, as we explain in the following section, so that a reform of one involves change for all. In the case of the cooperation procedure adopted in 1986, the increase in the formal power of the European Parliament came mainly at the expense of the Council of Ministers. The EP could offer amendments to certain legislation that could only be rejected by the Council if it did so unanimously. Formal theorists of EU rules agree with almost all participants and observers that this was an important increase in the EP's authority (Crombez 1996; Steunenberg 1994; Tsebelis 1994). While there has been

disagreement about the relative consequences of cooperation and codecision (adopted in 1993), it is plain that the combined effect of these reforms has been to significantly strengthen the Parliament (for a discussion of this debate, see Hix 1999b, 88–94).

It is true that the European Parliament is elected nationally and can be conceived as a forum "in which national representatives, generally organized in political parties, can influence the legislative process" (Moravcsik 1998, 67–68). Members of the European Parliament, like those in the United States and most other democracies, represent those living in particular territories, but they do not represent the governments of those territories. Most members have interests and ideologies that may or may not lead them to preserve the authority of central governments, and these preferences are usually consistent with the political party to which they owe their election. Party membership is often a more powerful influence on parliamentarians' behavior and attitudes than country of origin (Hix 1999a; Thomassen, Noury, and Voeten 2000; Thomassen and Schmitt 1999; Schmitt and Thomassen 1999; Raunio 1998; Scully forthcoming).⁶

The emergence of the European Parliament as a powerful European player has altered the institutional balance in the European Union, as we argue in detail below.⁷ The authoritative competencies of the European Parliament are more narrowly circumscribed than those of the Council, but the Parliament is nonetheless a weighty player. As a result, national governments cannot impose their collective will in many areas of policy making.⁸

Public scrutiny

EU decision making has come under greater public scrutiny. Prior to the Single European Act, European integration was essentially a technocratic process in which national governments coordinated around limited policy goals. European integration was pragmatically oriented, rather than politicized, and national governments dominated decision making to the virtual exclusion of other domestic actors. On the occasions when conflict did flare up—usually in the form of collective protest by farmers, coal miners, or steelworkers—national governments sought to buy off opposition through sectorial deals. EU bargaining was largely insulated from public pressures.

This changed with the introduction of the single market in the mid-1980s (see chapter 8). As the reach of European policy making broadened, and as the stakes in most issue areas grew, so domestic groups were drawn directly into the European arena (Greenwood, Grote, and Ronit 1992; Fligstein and McNichol 1998). Such mobilization has created new linkages between supranational institutions and subnational groups, and it has induced citizens with similar interests or ideological convictions to organize transnationally. EU decision making is no longer insulated from the kind of political competition that has characterized democratic politics in the member states.

In the pre-Maastricht era, treaty ratification was dominated by national governments through party control of their national legislatures. Not only did they determine the content of treaties but they could be reasonably confident that those treaties would be accepted in their respective domestic arenas.⁹ The Maastricht Treaty changed all that. The rejection of the Maastricht Treaty in June 1992 by Danish citizens sent a shock wave through European elites, and their anxiety was enhanced by a near-replay in the French referendum of September 1992. Moreover, public opinion polls indicated that German and British voters too might have rejected the Treaty if they had been given the opportunity (Nugent 1999). The fact that the Danes reversed their decision a year later did not put to rest fears that the process was out of control. Public scrutiny has changed the rules of the game of treaty negotiation. The action has shifted from national governments and technocrats in semi-isolation to domestic politics in the broad and usual sense: party programs, electoral competition, parliamentary debates and votes, public opinion polls, and public referenda.¹⁰

Principal-agent dynamics

Even if national governments operated in a world without a European Parliament and without public pressures, it is likely that EU decisions would only imperfectly reflect the preferences of national governments. As governments have agreed to collaborate on more and more issues in the EU arena, so they have turned to supranational agents, particularly the European Commission and the European Court of Justice, to make collaboration work, and by so doing they risk diluting their control over decision making.

Principal-agent theory builds on the insight that principals—national governments, in this case—are not able to plan for all possible future ambiguities and sources of contention, and so they create agents—such as the European Commission and the European Court of Justice—to ensure compliance to interstate agreements and adapt them to changing circumstances (Keohane and Hoffmann 1991; Majone 1996; Pierson 1996; Pollack 1997). According to this line of theorizing, principals exert control over agents by creating the necessary incentives (Williamson 1985). If a principal discovers that an agent is not acting in the desired way, the principal can fire the agent or change the incentives.

Scholars who have applied principal-agent theory to American political institutions have found that the incentives available to principals are often ineffective (Moe 1990). There are grounds for believing that limits on principal control in the EU are particularly severe.

Multiple principals. In the European Union there are as many principals as there are member states. Each has a veto over basic institutional change. This vastly complicates principal control. The more hands there are on the steering wheel, the less control any driver will have. The consequences of this in the EU are particularly severe because national governments have had widely different preferences concerning supranational agents.

As noted earlier, one consequence of multiple contending principals in the EU is that the treaties provide ample room for interpretation. The treaties are hammered out in interstate negotiations, in which there is a powerful incentive to allow ambiguity on points of contention so that each government can claim success in representing national interests.

The basic treaties of the EU have legitimated Commission initiatives in several policy areas, yet they are vague enough to give the Commission wide latitude in designing institutions. This has been described as a “treaty base game” in which the Commission legitimates its preferences by referring to a prior treaty commitment (Rhodes 1995). This was the case in structural (or cohesion) policy, which, in the wake of the Single European Act, was transformed by the Commission from a straightforward side payment transferring money from richer to poorer countries to an interventionist instrument of regional policy (Hooghe 1996c).

The European Court of Justice (ECJ) does not merely act as an agent in adapting member state agreements to new contingencies. Through its rulings, it has engineered institutional changes that escape, and transcend, treaty norms. Supranational authority in the ECJ deepened from the 1960s, with the establishment of principles of supremacy and direct effect, as a result of Court rulings, not because of treaty language. The constitutionalization of EU treaties is the product of Court activism, not of national government preferences (Alter 1998; Burley-Slaughter and Mattli 1993; Volcansek 1992; Weiler 1991; Stone Sweet and Brunell 1998).

Hurdles to change: Unanimity is a double-edged sword for supranational institutions in the EU. It raises the bar for any kind of major institutional change in the EU, whether it empowers supranational institutions or reins them in. A supranational actor need only dent a united front of national governments in order to block change. For example, the Commission sidestepped an attempt by a powerful coalition of national governments, including the U.K., Germany, and France, to renationalize cohesion policy in 1993 because it managed to gain the support of just three small member states: Ireland, Portugal, and Belgium.

Informational asymmetries. Principal control may be weakened if an agent has access to information or skills that are not available to the principal (Majone 1994, 1996; Eichener 1992). As a small and thinly staffed organization, the Commission has only a fraction of the financial and human resources available to national governments, but its position at the center of a wide-ranging network including national governments, subnational governments, and interest groups gives it a unique informational base for independent influence on policy making.

Mutual distrust. It is the collective interest of a national governments to enact certain common regulations, but each may be better off if others adhere to them while it defects. One response is to establish a court that can contain defection. Another is to have very detailed legislation. The reverse side of ambiguity in the treaties has been a willingness on the part of national governments to allow the Commission to formulate precise regulations on specific policies so as to

straitjacket principals and reduce their scope for evasion (Majone 1996). The Commission likes to legitimate its role in technocratic terms, as the hub of numerous specialized policy networks of technical experts designing detailed regulations (Peterson and Bomberg 1999; Richardson 1996, 1998).

POLICY MAKING IN THE EUROPEAN UNION

Who are the key actors in European Union policy making? If the state-centric model is valid, one would expect to find that national governments dominate. This entails three conditions. First, each state should maintain its sovereignty in the process of collective decision making. Second, national governments, by virtue of the European Council and the Council of Ministers, should be able to impose their preferences collectively on other European institutions, i.e., the European Parliament, the European Commission, and the European Court of Justice. Third, national governments should control the access of subnational groups in the European arena. If, however, the multi-level governance model is valid, we should find that state sovereignty is compromised in collective national decision making, that collective national decision making does not determine policy outcomes, and that subnational interests mobilize beyond the reach of national governments directly in the European arena.

To make headway with this issue, it makes sense to disaggregate policy making. We divide the policy-making process into four sequential phases: policy initiation, decision making, implementation, and adjudication. We lean on analyses of formal rules where they bear on these phases, but we also pay attention to informal practices that shape the way actors interpret and exploit formal rules.

Policy Initiation: Commission as Conditional Agenda Setter

In political systems that involve many actors, complex procedures, and multiple veto points, the power to set the agenda is extremely important. The European Commission alone has the formal power to initiate and draft legislation, which includes the right to amend or withdraw its proposal at any stage in the process, and it is the think tank for new policies (Article 221 TEC, ex-155). In this capacity, it annually produces two to three hundred reports, white papers, green papers, and other studies and communications (Ludlow 1991). Some are highly technical studies about, say, the administration of milk surpluses. Others are influential policy programs, such as the 1985 white paper on the internal market; the 1990 reform proposals for the common agricultural policy, which laid the basis for the European position in the GATT negotiations; the 1993 white paper *Growth, Competitiveness, and Employment*, which argued for labor market flexibility; or the 1997 *Agenda 2000*, which shaped the debate on enlargement to Central and Eastern Europe.

To be able to play its policy-initiation role, the Commission needs access to information. It has superior in-house knowledge concerning agriculture, where one-fifth of its staff is concentrated, and it has formidable expertise in external trade and competition, the two other areas where Commission competence is firmly established. In other fields, the Commission relies upon member state submissions, its extensive advisory system of public and private actors, and paid consultants (Laffan 1996c; Nugent 1999; Peterson 1997).

Does the European Commission make a real difference? Does it exert significant autonomous influence over the agenda, as a multi-level governance perspective would suggest? Or is it largely a decorative institution that draws up legislation primarily to meet the demands of national governments, as a state-centrist might suggest?

In recent years, the Commission itself has understandably stressed its *lack* of autonomy from more democratically accountable institutions. In an internal accounting exercise in 1998, the Commission estimated that only 5 to 10 percent of legislative proposals arose spontaneously within the Commission itself.¹¹ The rest were a response to international obligations (35 percent), amendments to or codification of existing law (25 to 30 percent), requests from other EU institutions, national governments, or interest groups (20 percent), or required by prior treaty (10 percent) (Peterson 1999, 59; Peterson and Bomberg 1999, 38).

The proportions are revealing, but not quite in the way the Commission intended. Within each of these categories, except perhaps for treaties, the Commission has a measure of influence. With respect to international obligations, the Commission itself negotiates on behalf of the EU on trade and, since the 1990s, the environment. So, for example, the Commission represents the EU in the World Trade Organization, and while it must be in close contact with national governments on sensitive trade issues, it plays a central role in negotiations. The Commission also takes the lead in negotiating with countries that wish to join the EU and with countries seeking economic or cultural cooperation with the EU. The second and third categories listed here—amendments and codification of existing law, and Commission response to other actors—encompass widely varying situations. In some, the Commission merely codifies agreements worked out among national governments, as is the norm in transport, energy, and fisheries policies. In others, such as the annual renegotiation of agricultural production quotas and prices or the renegotiation of cohesion funding every five to seven years, the Commission has significant agenda-setting power (on the latter, see chapters 6 and 7). Finally, Commission proposals reflect treaty commitments, but even here the Commission is by no means passive, for reasons noted above. To the extent that treaty commitments are vague, the Commission has leeway in pressing them into institutional form. The great reform of EU cohesion policy was, for example, mandated by treaty in 1986 but was hammered into innovative institutional form by the Commission (Marks 1992; Hooghe 1996a). According to the Commission, which has no reason to belittle national governments, treaties generate only one-tenth of its legislative proposals.

The picture that emerges is one where the Commission holds the pen but is subject to pressures from many actors. Policy initiation in the European Union is a multi-actor activity. It includes, in addition to the Commission, the European Council, the European Parliament, the Council of Ministers, and interest groups alongside individual member states.

European Council

A potentially powerful principal with respect to the Commission is the European Council, the summit of the political leaders of the member states (plus the president of the Commission), which is held three or four times a year. The European Council has immense prestige and legitimacy and a quasi-legal status as the body that defines "general political guidelines" (Title I, Article 4 TEU, ex-D). However, its control of the European agenda is limited because it meets rarely and it provides the Commission with general policy mandates rather than specific policy proposals. European Council mandates have proven to be a flexible basis for the Commission to build legislative programs.

A striking example of this is the European Energy Charter, a formal agreement between Russia and Western European states guaranteeing Russian energy supply after the collapse of the Soviet Union (Måtlary 1993, 1997). Energy policy became an EU policy because the Commission preempted an alternative inter-governmental approach preferred by the Dutch, German, and British governments. Acting on a vague mandate of the European Council in June 1990, the Commission negotiated a preliminary agreement with the Russian government in 1991. National governments, presented with a *fait accompli*, accepted the European Union as the appropriate forum for the Charter and gave the Commission a toehold in international energy policy (Måtlary 1993), a noteworthy incursion in a policy area that had formerly been determined by national governments.

European Parliament and Council of Ministers

More direct constraints on the Commission originate from the European Parliament and the Council of Ministers. Indeed, the power of initiative has increasingly become a shared competence, permanently subject to contestation, among the three institutions. The European Parliament (Article 192 TEC, ex-138b) and the Council (Article 208 TEC, ex-152) can request the Commission to produce proposals, although they cannot draft proposals themselves. So far, the European Parliament has made relatively little use of its recently gained competence in Article 192, which enables it, by an absolute majority of its members, to request the Commission to act. By 1999 only a handful of such requests had been made (Nugent 1999).

The Council of Ministers, and particularly the presidency of the Council, began to exploit this window in the legal texts from the mid-1980s (Nugent 1999). Gov-

ernments often bring detailed proposals with them to Brussels when they take over the Council presidency. The Council can also circumvent the Commission's formal monopoly of legislative proposal by making soft law, i.e., by ratifying common opinions, resolutions, agreements, and recommendations (Nugent 1999; Peterson and Bomberg 1999; Snyder 1994). More often, though, national representatives and Commission officials work hand in hand to push a new issue up (or down) the agenda. Most initiatives germinate in the machinery of advisory committees and working groups that the Commission has set up for consultation and pre-negotiation. Many committees are made up of national government nominees (usually civil servants), but others consist of interest group representatives or experts (Page 1997; Wessels 1997). As it is the Commission that organizes and pays for these committees, it is well placed to shape their agenda. National representatives wishing to raise an issue need to cultivate the Commission officials in charge, for they must be persuaded that an initiative is important enough to go on the agenda.

Interest groups

Diffusion of control over the EU's agenda does not stop here. Interest groups have mobilized intensively in the European arena and, while their power is difficult to pinpoint, it is clear that the Commission takes their input seriously. The passage of the Single European Act precipitated a sharp increase in interest group representation in Europe (Marks and McAdam 1996; Fligstein and McNichol 1998). National and regional organizations of every kind have mobilized in Brussels, and these are flanked by a large and growing number of European peak organizations and individual companies from across Europe (Greenwood 1997; Greenwood and Aspinwall 1998). According to a Commission report, some 3,000 interest groups and lobbies employing about 10,000 people were based in Brussels in 1992. Among these are 500 "Euro-groups," which aggregate interests at the European level (McLaughlin and Greenwood 1995) and some 150 offices in Brussels representing regional and local authorities (Bomberg and Peterson 1998; Hooghe and Marks 1996b; Hooghe 1995b; Marks, Salk, Ray, and Nielsen 1996; chapter 5). Most groups target their lobbying activity at the European Commission and the European Parliament, for these are perceived to be more accessible than the secretive Council (Mazey and Richardson 1993b, 1999).

The Commission's ability to create new advisory committees has helped it reach out to new constituencies, and these include many subnational groups. An example of this strategy was the creation of the Advisory Council for Local and Regional Authorities in 1988 to advise the Commission on initiatives in cohesion policy. The Commission hoped to mobilize support from below for a "partnership" approach to structural programming in which the Commission, national, and subnational governments would jointly design, finance, and implement economic development programs. One of the Commission's longer-term goals was

to institutionalize regional participation, and a step was taken in this direction with the establishment of a Committee of the Regions in 1993. While the Commission alone was not responsible for this outcome—pressure by the German *Länder* and the Belgian regions on their respective governments was pivotal—the Advisory Council laid the groundwork. The purview of the Committee of the Regions was extended in the Amsterdam Treaty of 1999 (see chapter 5).

European institutions compete for control over agenda setting. Interest groups and subnational governments vie to influence the process. One consequence is that it is difficult to assign responsibility for particular initiatives. This is true for the most intensively studied initiative of all—the internal market program—which was pressed forward by business interests, the Commission, and the European Parliament, alongside national governments (Cameron 1992; Cowles 1995; Dehousse 1992; Garrett and Weingast 1993; Majone 1994; Moravcsik 1998). Because the Commission plays a subtle initiating role, one cannot capture its influence by examining which institution formally announces a new policy. For example, the European Council mandated the white paper *Growth, Competitiveness, and Employment* in June 1993, but it did so in response to detailed guidelines for economic renewal tabled by the Commission president. Another example is *Agenda 2000: For a Stronger and Wider Union*, which the Commission produced in July 1997 in response to a formal request by the Madrid European Council of December 1995. The product was a 1,300-page white paper outlining Commission opinions on the ten applicants for European Union membership, reform proposals for common agricultural policy and the structural funds, and proposals about how to finance enlargement. The Commission used the opportunity to set the agenda for the 1999 negotiations on the multi-annual budget, including reforms in common agricultural policy (CAP) and cohesion policy. As one observer noted, “much of the policy drive on the enlargement of the EU to the Central and Eastern European countries has been provided by the Commission working within a framework authorized by the European Council” (Nugent 1999, 119).

Policy initiation engages a wide range of participants, but the Commission is the critical actor in this phase, whether one looks at formal rules or political practice. The Commission’s leverage on setting the agenda depends on its ability to anticipate and mediate demands, and its capacity to employ expertise derived from its role as the think tank of the European Union. While the Commission uses its formal powers of initiative from time to time to shape the agenda autonomously, it is usually responsive to the wishes of the European Council, the Council of Ministers, the European Parliament, or interest groups. It is inaccurate to claim that the Commission’s role is merely an agent of national governments. A balanced reading of the evidence suggests instead that the Commission operates in a system of multi-level governance involving competition and interdependence among it and the European Council, Council of Ministers, and European Parliament. These institutions share authority in the intricate game of policy initiation.

Decision Making: State Sovereignty in Retreat

The thrust of the state-centric argument is to give great weight to the legislative powers of national governments in the decision-making stage. In this view, national governments adjust policies to their collective preferences, define the limits of European collaboration, and determine the role of the European Commission and the ECJ and, if need be, curtail their activities. If previous decisions have unintended consequences, the Council can correct them. National governments may then be said to be in complete control.

According to the EU treaties, the main legislative body is the Council of Ministers, composed of national governments. Before the Single European Act of 1986, the chief legislative weapon of the Parliament was to slow down legislation by withholding its opinion. Such actions were rare, and the Council was effectively the sole legislative authority. This is no longer the case, however. In the first place, individual governments have operated under serious constraints since the Single European Act. Second, even collectively, national governments exert, at most, conditional control. National government control has been eroded by the legislative power of the European Parliament, the role of the European Commission in overcoming transaction problems, and the efforts of interest groups to influence outcomes in the European arena.

Limits on individual control

The most transparent blow to individual sovereignty has come from the progressive extension of qualified majority voting in the Council. Table 1.1 disaggregates Council voting rules as described in the treaties into two categories: provisions that lay down unanimity, and those that prescribe some form of majority voting (simple majority, qualified majority, or other special majority). Two broad observations can be made. First, treaty negotiators never intended unanimity to be the default rule for the Council of Ministers. From the start, there were at least as many treaty provisions with majority rule as with unanimity. And second, the proportion of rules stipulating unanimity in the Council has steadily declined from 49 percent under the Treaty of Rome (1958–1987), to less than 45 percent under the Single European Act (1987–1993), to 35 percent under the Maastricht Treaty (1993–1999), with a slight increase to almost 37 percent under the Amsterdam Treaty (from 1999). Qualified majority voting is now the rule for decisions under the first pillar for Community policies, such as the single market, competition policy, economic and monetary union, regional policy, trade, environment, research and development, transport, employment, immigration and visa policy, social policy, and education. Qualified majority voting also applies to some provisions under the second pillar for Common Foreign and Security Policy (CFSP pillar), namely to “proposed actions related to agreed strategies,” and to a handful of

Table 1.1 Decision Rule in the Council of Ministers According to the Treaties

	Percentage of treaty provisions where the Council decision rule is:	
	Unanimity	Simple, Qualified, or Special Majority
Treaty of Rome (1958–1987)	49.0	51.0
Single European Act (1987–1993)	44.5	55.5
Maastricht Treaty (1993–1999)	35.1	64.9
Amsterdam Treaty (1999+)	36.7	63.3

Sources: Wessels, Mauer, and Mittag 1999, 10. The figures for the Amsterdam Treaty are our own calculations based on a categorization of treaty provisions by Simon Hix (1999, appendix).

decisions under the third pillar for Justice and Home Affairs (JHA pillar). The decision rules are complex, but the bottom line is clear: over broad areas of EU competencies, individual governments may be outvoted.

One might point out that these formal rules do not necessarily determine behavior. Under the informal Luxembourg compromise of 1966, a national government can veto a decision subject to majority voting if it claims that its “vital national interests” are at stake. This gentlemen’s agreement, one may argue, is proof of the ultimate sovereignty of member states. However, the Luxembourg compromise has always featured more strongly in academic debates than in the practice of European politics. It was invoked less than a dozen times between 1966 and 1981, and it has been used only a handful of times since.

The real impact of the compromise was to reinforce a veto culture, which inhibited majority voting if a national government expressed serious objections. During the 1970s, this paralyzed hundreds of Commission proposals, but the very existence of this veto culture was its undoing. It eroded during the 1980s as the European Parliament and many national leaders became intolerant of deadlock (Teasdale 1993). A turning point was the inability of the British government in 1982 to veto a decision on agricultural prices to extract a larger British budgetary rebate. Prime Minister Margaret Thatcher’s veto was ruled inadmissible, and a qualified majority vote was taken in the Council of Ministers over British objections. Thereafter, national governments became more reluctant to invoke the compromise or tolerate its use by others. The last successful use of the Luxembourg veto was in June 1985 (Teasdale 1993). As Neill Nugent has observed, the Luxembourg compromise “is in the deepest of sleeps and is subject only to occasional and largely ineffective awakenings” (1999, 169).

It has become much more difficult for national governments to justify the veto so that others will accept its use on a particular issue normally determined by qualified majority. Every government will find itself in a minority from time to time. Why should a particular government be able to escape the consequences of

this? Unless that government forces its will on other others by threatening to shut down decision making—a strategy as rare as it is risky—it must gain acquiescence within the Council for its veto. In practice, the conditions are restrictive: the issue must be clearly linked to vital national interests, and the government concerned must convincingly claim that it risks severe domestic political damage (e.g., mass demonstrations or a cabinet crisis). An individual government can sustain a veto only if other governments approve. This is a far cry from the original intention of the Luxembourg compromise, which legitimized unconditional defense of national sovereignty—French President Charles de Gaulle vetoed the EU budgetary reform of 1965 on the grounds that it was too supranational. The notion of vital national interest has evolved to justify defense of substantive interests, not defense of national sovereignty itself.

The Luxembourg veto is, in any case, a dull weapon. It cannot block alternative courses of action, as the German federal government learned in 1985 after it had vetoed a Council regulation on lower prices for cereal and colza. The Commission responded by invoking its emergency powers and achieving virtually the same result unilaterally (Swinbank 1989; Teasdale 1993). Six months later, the Council, with German acquiescence, abandoned the status quo on cereal and colza prices (Teasdale 1993).

There are other ways for national governments to defend individual interests, but they depend on the consent of the other governments. For example, special safeguards can be built into the treaties, a practice that has proliferated since the Maastricht Treaty. Particular states have been granted derogations, that is, special exemptions. The United Kingdom and Denmark each have derogation from European monetary union. Several derogations have been granted in the areas of state aid, environmental policy, and energy policy. Sometimes they are written into special protocols, such as those attached to the Amsterdam Treaty that meet concerns of Denmark, Ireland, and the U.K. on border controls and EU immigration and visa policy. The Amsterdam Treaty also inserted a new decision rule—constructive abstention—that allows a member state to abstain from voting on an issue and to formally declare that it will not implement a decision that nonetheless commits other EU member states. Constructive abstention is, however, restricted to certain issues under the CFSP pillar (Stubbs 1999). In addition, the treaties preserve unanimity for the most sensitive and contested policy areas, particularly major foreign policy decisions, nearly all decisions on justice and home affairs, and much of fiscal policy. And finally, there is the norm within the Council of Ministers that it should operate consensually on delicate political issues. The norm appears to be weakening, however. A recent count found that the Council overrules one or more national governments on around one-quarter of all decisions (Hayes-Renshaw and Wallace 1997). The weekly *European Voice* estimated that between January 1995 and January 1998, Germany was most often outvoted in the Council, followed by Britain and, at some distance, Italy (15–21 October 1998, 4).

Derogations, constructive abstention, Council norms, and the continued vitality of unanimity soften the blow of European integration for national sovereignty. But qualified majority voting has been extended, the Luxembourg veto has retreated, and decision making in the Council has become more contentious. There is evidence that larger, as well as smaller, countries find themselves outvoted. Authority over broad areas of policy has shifted from individual national states to collective decision making in the Council of Ministers (Wessels 1992; Scharpf 1994; Mény, Muller, and Quermonne 1994).

Collective national control

The Council of Ministers shares decision-making authority with other European institutions. Over the last three decades, the European Parliament has been transformed from a decorative institution to a directly elected co-legislator (Jacobs and Corbett 1990; Westlake 1994). Direct election of representatives to the Parliament was mandated in 1976 (followed by the first EU-wide elections in 1979); parliamentary consultation was strengthened in the early 1980s; a cooperation procedure, giving the Parliament significant agenda-setting powers, and an assent procedure were part of the Single European Act of 1986; and codecision, giving the Parliament a veto over many areas of legislation, was introduced under the Maastricht Treaty of 1993 and extended under the Amsterdam Treaty of 1999. Through the assent procedure, the EP has a veto over enlargement of the EU and over most association agreements and treaties between the European Union and third parties. According to some observers, these changes constitute “a major step towards a bicameral legislative model (with two strong players) at the EC level” (Falkner and Nentwich 1999, 26).

Institutional analysis demonstrates that the Parliament must be taken seriously in explaining legislative outcomes (Crombez 1996; Steunenberg 1994; Scully 1997; Tsebelis 1994, 1995; Tsebelis and Garrett 1999). Table 1.2 provides an overview of the European Parliament’s formal role in decision making. The Parliament was almost powerless under the Treaty of Rome. It played no role in 73 percent of the provisions and was consulted on the remaining 27 percent. By 1999 and the Amsterdam Treaty, the EP had emerged as a force to be reckoned with. Roughly equal proportions of provisions mandated codecision, consultation, and exclusion. The Council of Ministers is stronger, of course. It votes under all treaty provisions, but the trend seems perfectly clear, as are the implications for the collective capacity of national governments to determine policy making. In place of the original Council-dominated process, Council, Parliament, and Commission now interact in making policy.

The cooperation procedure allowed the Commission to set the agenda (Tsebelis 1994, 1995; Garrett and Weingast 1993; Weiler 1991; compare with skeptical early prognoses: Bieber, Pantalís, and Schoo 1986). It could decide to take up or drop amendments from either the Council or Parliament, a power that made it a

Table 1.2 Role of the European Parliament in EU Legislation According to the Treaties

	Percentage of treaty provisions where the European Parliament's role in EU legislation is:		
	Decisional (cooperation, codecision, assent)	Consultative	None
Treaty of Rome (1958–1987)	0.0	27.1	72.9
Single European Act (1987–1993)	18.2	27.3	54.5
Maastricht Treaty (1993–1999)	22.9	37.0	40.1
Amsterdam Treaty (1999+)	33.1	34.5	32.4

Sources: Wessels, Mauer, and Mittag 1999, 10. The figures for the Amsterdam Treaty are our own calculations based on a categorization of treaty provisions by Simon Hix (1999, appendix).

broker—a consensus crafter—between the two institutions. The Council could not decide legislation without the support of either the Commission or the European Parliament unless it was unanimous.

Under the codecision procedure the European Parliament can veto Council legislative proposals. A conciliation committee, consisting of representatives from both institutions with a representative of the Commission as broker, tries to hammer out a compromise if Parliament and Council are deadlocked. To become law, a compromise proposal needs to be approved by a majority in the Parliament and a qualified majority in the Council. The codecision procedure comes close to putting the European Parliament “on an essentially equal footing with the Council” (Falkner and Nentwich 1999, 26). The Commission retains important agenda-setting powers, though its broker role is weaker than under the cooperation procedure (Tsebelis and Garrett 2000). Under both procedures the Council is locked in a complex relationship of cooperation and contestation with the two other institutions. This is multi-level governance in action and is distinctly different from what one would expect in a state-centric system.

One reason why the collective control of national governments has eroded is because the Council often lacks information, expertise, and the coordination to act quickly and effectively. The Council is an egalitarian institution, and this can complicate coordination, particularly now that there are fifteen member states (Garrett and Weingast 1993; Pollack 1997; Scharpf 1988; Majone 1994). The Commission is more coherent because it is more hierarchical. It is far from a unitary organization (see chapter 9), and there are often rivalries between its departments, but it is usually more able than the Council to present a united front on a particular proposal. Formal decision rules in the Council of Ministers often help the Commission focus discussion or broker compromise. While national representatives preside at Council meetings, the Commission sits in to clarify, redraft, and finalize the proposal; in short, it holds the pen.

European defense policy illustrates the Commission's capacity to frame decision making. The regulation of defense industry in Europe is debated between those who regard it as a normal industry that does not require special treatment and those who emphasize its special security role. The former favor deregulation in order to exploit economies of scale; the latter wish to preserve national firms or at least organize them on a European-only basis. In the European Commission, the directorate-generals for industry and the internal market favor deregulation and liberalization, while the directorate-general for external relations conceives the issue as one of security in the context of Common Foreign and Security Policy. This tug-of-war made it impossible for the Commission to weigh in on EU decision making until November 1997, when the two protagonists, external relations and industry, found a way to combine their views in a report emphasizing the dual character of the industry. The report, entitled *Implementing European Union Strategy on Defense-Related Industries*, laid out two complementary plans—a European defense equipment policy in the framework of the CFSP and an industrial action plan for defense-related industries in the framework of the EC pillar (Mörth 2000). By linking Community policies to CFSP measures, the Commission catapulted itself into the heart of decision making on European defense industry, and it provided the Council of Ministers with a focal point in its search for a feasible policy.

The frustrations of intergovernmental cooperation may lead national governments to voluntarily cede authority to supranational agents, as immigration policy illustrates (Stetter 2000; Falkner and Nentwich 1999; den Boer and Wallace 2000). When in the late 1980s the Commission made a case for an EU-wide immigration policy to give backbone to the free movement of people in the single market, national governments rejected a supranational solution. Cooperation on immigration and border control under Schengen (1985) and on asylum (the 1990 Dublin Convention) were attempts by national governments to overcome regulatory problems among themselves. Intergovernmental problem solving reached its zenith in the Maastricht Treaty, where national governments institutionalized cooperation in immigration policy, visa policy, border control, and police cooperation in the third pillar of Justice and Home Affairs. This arrangement excluded the Commission, the ECJ, and the European Parliament from decision making, but frustrations quickly piled up. The Schengen agreement did not enter into force until 1995, and even then Britain, Ireland, and Denmark decided to stay outside. The Dublin Convention was ratified only in 1997.

In the run-up to the Amsterdam conference, national governments openly conceded that the third pillar did not function properly. The intergovernmental reflection group that prepared the Amsterdam Treaty observed that the voluntary legal framework of Justice and Home Affairs created “uncertainty in legal protection” for citizens because it was not based on transparent principles, and “enforcement problems” because it was difficult for national governments to make binding commitments. The reflection group noted further that unanimity voting

exacerbated these problems and recommended that immigration policy be incorporated into the first (EC) pillar of the European Union.¹² In the Amsterdam Treaty, national governments transferred the bulk of immigration policy to the EC pillar, which means that—after a transition period of five years—the Commission will have the sole right of initiative, the European Parliament will codecide, the Council of Ministers will vote on most issues by qualified majority, and the ECJ will adjudicate.¹³ “What used to be defined as areas of ‘common interest’ between member states has now become an objective of the EU” (Stetter 2000, 94).

The Commission's unique resources sometimes enable it to step beyond its role of umpire to become a negotiator. Cohesion policy offers an example. In establishing the framework for structural funds for 1994 to 1999 during the summer of 1993, Commission officials negotiated bilaterally with officials from the relevant states. The Belgian presidency served as umpire. In essence, the Commission became a thirteenth participant around the bargaining table (Hooghe 1996a). Something similar has taken place from time to time even in the most intergovernmental forum—treaty bargaining—as revealed in the Maastricht negotiations. When the British government refused the watered-down social provisions at Maastricht, Jacques Delors put his original, more radical, social policy program of 1989 on the table and proposed to attach it as a special protocol to the Treaty, leaving Britain out. Faced with the prospect that the whole negotiation might break down, the other eleven national governments hastily signed up to a more substantial document than they had originally anticipated (Pierson 1996; Lange 1993).

In sum, the Council is the senior actor in the decision-making stage, but the European Parliament and the Commission are indispensable partners. The Commission's power is predominantly soft in that it is exercised by influence rather than sanction. Except for agriculture, external trade, and competition policy, where it has substantial executive autonomy, it can gain little by confrontation. The Commission's influence depends on its ability—and indispensability—in crafting consensus among institutions and among national governments. Extensive reliance on qualified majority voting should in principle enable the Commission to be bolder, as it does not have to court every national government. Nevertheless, ideological convergence in the Council since 1997 and ineffective leadership of the Commission have weakened the Commission's pivotal role at the start of the twenty-first century (Peterson 1999). It remains to be seen whether the Commission's relative decline will outlive these conjunctural factors.

The European Parliament's position is based more on formal rules. Its track record under cooperation and codecision shows that it does not shy away from confrontation. In return for parliamentary assent to enlargement and the GATT, the Council agreed to allow parliamentary observers in the preparatory negotiations for the intergovernmental conference of 1996–1997, and the Parliament emerged as the main institutional winner in the Amsterdam Treaty (Falkner and Nentwich 1999). It is intent on making the most of its power, even if it treads on the toes of its long-standing ally, the European Commission. Since the Amsterdam

Treaty, the European Parliament's assent is needed for the appointment of the Commission president, as well as for the whole team. "The result of these reforms is a quasi-parliamentary system (i.e., the classic 'indirect' mechanism) for selecting this branch of the EU executive, whereby the Commission president is nominated by the member states and ratified by the European Parliament immediately following the EP elections" (Hix 1999c, 97). In spring 1999, a Parliamentary inquiry into fraud, mismanagement, and nepotism in the Commission forced the Santer Commission to resign *en masse* under a cloud of accusations.

Authoritative competencies in Europe are exercised across multiple levels of government. At the European level, national governments and supranational actors share authority, and the institutions in which they operate have intermeshing competencies.

Implementation: Breaking the State Mold

Multi-level governance is prominent in the implementation stage. The formal division of authority between the Commission, which had sole executive power, and member states, which monopolized policy implementation, no longer holds. National governments have come to monitor the executive powers of the Commission, and the Commission has become involved in day-to-day implementation in a number of policy areas, and this brings it into close contact with subnational governments and interest groups. As for agenda setting and decision making, the mutual intrusion of institutions into the other's terrain is contested.

The Commission's formal mandate gives it discretion to interpret legislation and issue administrative regulations or decisions for specific cases. It used to announce at least 4,000 administrative regulations annually, and an equal number of decisions, but in the late 1990s this number more than halved (Nugent 1999; Ludlow 1991). Still, the Commission remains formally responsible for the bulk of EU rules (Dogan 1997).

From the 1980s the Council of Ministers and individual governments became intimately involved in the executive powers of the Commission. The term for this is *comitology*, which refers to the practice of having a committee of national representatives assist the Commission in its executive work. Many regulations have their own committee attached to them. Rules of operation vary from committee to committee, and they are a source of friction among the Commission, the Parliament, and the Council (Neyer 1999; Christiansen and Kirchner forthcoming). Some committees are only advisory; others can prevent the Commission from carrying out a certain action by qualified majority vote; a third category must approve Commission actions by qualified majority. In each case the Commission presides.

At first sight, comitology may seem to give national governments control over the Commission's actions in principal-agent fashion, but this impression is misleading. Comitology is weakest in precisely those areas where the Commission

has extensive executive powers, e.g., in competition policy, state aids, agriculture, commercial policy, and the internal market. Here, the Commission has significant space for autonomous action (McGowan and Wilks 1995; Nugent 1999; see also Tsebelis and Garrett 2000). Comitology does not alter the basic fact that national governments have lost their monopoly of authority in many policy areas: for example, they no longer control competition within their borders, they cannot aid national firms as they deem fit, and they cannot autonomously conduct trade negotiations.

National governments often select people outside the central executive to represent them in comitology. Most participants in comitology are not national civil servants but are subnational officials, interest group representatives (particularly from farming, union, and employer organizations), technical experts, scientists, or academics (Buitendijk and van Schendelen 1995; Page 1997; van Schendelen 1996). Subnational participation in comitology is most common for federal or semi-federal states, though in recent years, more centralized states have followed suit (Goetz 1995; Hooghe 1995b; McLeod 1999; see also chapter 5).

Though subnational officials, technical experts, interest group representatives, and private actors are selected by their national government to participate in comitology, they have particular territorial or group interests, as well as the national interest, to defend. Comitology was designed to allow national governments to monitor the Commission, but it has had the additional, and unintended, consequence of deepening subnational and group participation in the European political process.

Commission officials now play a role in day-to-day policy implementation. The Commission was never expected to perform ground-level implementation, except in unusual circumstances (such as competition policy, fraud, etc.). Yet in some areas this has changed. The most prominent example is cohesion policy, which absorbs about one-third of the EU budget. The bulk of the money goes to multi-annual regional development programs in the less developed regions of the EU. As we detail in chapters 5, 6, and 7, the structural funds reform of 1988, followed by revisions in 1993 and 1999, involves regional and local governments as well as social actors in all stages of the policy process—the selection of priorities, choice of programs, allocation of funding, monitoring of operations, and evaluation and adjustment of programs. Each region or country receiving funding is required to set up monitoring committees with a general committee on top and a cascade of subcommittees focused on particular programs. Commission officials can and do participate at each level of this tree-like structure. Partnership is implemented unevenly across the EU (Bache 1998; Heinelt and Smith 1996; Hooghe and Keating 1994; Hooghe 1996c; Marks 1996b), but just about everywhere it institutionalizes some form of direct contact between the Commission and subnational governments. Such links break open the mold of the state, so that multi-level governance encompasses actors beneath, as well as above, central states.

Adjudication: An Activist Court in a Supranational Legal Order

State-centrists have argued that a European legal order and effective European Court of Justice are essential to state cooperation (Garrett and Weingast 1993; Garrett 1995; Moravcsik 1993). Unilateral defection is difficult to detect, and thus it is in the interest of states to delegate authority to a European court to monitor compliance. The ECJ also mitigates problems of incomplete contracting by applying current agreements to future contingencies. From this point of view, the ECJ is an agent of the member states. However, a number of scholars have convincingly argued that the Court has become more than an agent of member states (Alter 1998; Burley-Slaughter and Mattli 1993; Dehousse 1998; Mattli and Slaughter 1995, 1998; Stone Sweet and Brunell 1998; Weiler 1991). With the help of the Commission, and in collaboration with national courts, the ECJ has transformed the European legal order in a supranational direction.

The ECJ has laid the foundation for an integrated European polity. The Court has built an impressive body of case law establishing the Treaty of Rome as a document creating legal obligations directly binding on national governments and individual citizens alike. These obligations have legal priority over laws made by member states. Directly binding legal authority and supremacy are core attributes of sovereignty, and their application by the ECJ suggests that the EU is becoming a constitutional regime.

The Court was originally expected to act as an impartial monitor "to ensure that in the interpretation and application of the treaties the law is observed" (Article 220 TEC, ex-164; Article 136 Euratom; Article 31 ECSC), but from the beginning the Court viewed these interstate treaties as more than narrow international agreements (Alter 1998). The Court's expansive role is founded on the failure of the treaties to specify the competencies of major EU institutions. Instead, the treaties set out "tasks" or "purposes" for European cooperation, such as the custom union (Treaty of Rome), the completion of the internal market (Single European Act), or economic and monetary union (Maastricht Treaty). The Court has constitutionalized European law and European authority in other policy areas by stating that these were necessary to achieve these functional goals (Weiler 1991).

Court rulings have been pivotal in shaping European integration. However, the ECJ depends on other actors to force issues on the European political agenda and condone its interpretations. Legislators (the European Council, Council of Ministers, Commission, and Parliament) may reverse the course set by the Court by changing the law or altering the EU treaties. The ECJ is no different from the Council, Commission, or European Parliament in that it is locked in mutual dependency with other actors.

One outcome of this interlocking is the principle of "mutual recognition," which became the core principle of the internal market program. In the landmark case of *Cassis de Dijon* (1979), the Court stated that a product lawfully produced

in one member state must be accepted in another. But it was the Commission that projected the principle of mutual recognition onto a wider agenda, the single market initiative, and it did this as early as July 1980 when it announced to the European Parliament and the Council that the *Cassis* case was the foundation for a new approach to market harmonization (Alter and Meunier-Aitsahalia 1994).

National courts have proved willing to apply the doctrine of direct effect by invoking Article 234 (ex-177) of the Treaty of Rome, which stipulates that national courts may seek "authoritative guidance" from the ECJ in cases involving Community law. In such instances, the ECJ provides a preliminary ruling, specifying the proper application of Community law to the issue at hand. While this preliminary ruling does not formally decide the case, in practice the court renders a judgment of the "constitutionality" of a particular statute or administrative action in light of its interpretation of Community law. The court that made the referral cannot be forced to accept the ECJ's interpretation, but if it does, other national courts will usually accept the decision as a precedent. Preliminary rulings expand ECJ influence, and judges at the lowest level gain a de facto power of judicial review, which had been reserved for the highest court in the state (Burley-Slaughter and Mattli 1993). Article 234 gives lower national courts strong incentives to circumvent their own national judicial hierarchy. With their support, much of the business of interpreting Community law has been transferred from national high courts to the ECJ and the lower courts.

ECJ decisions have become an accepted part of the legal order in the member states, shifting expectations about decision-making authority from a purely national-based system to one that is multi-level. The doctrines of direct effect and supremacy were constructed over the strong objections of several national governments. Yet, the influence of the ECJ has as much to do with creating opportunities for other actors, including the Commission and lower national courts, to influence European rule making as it does with its enlarged scope for unilateral action.

CONCLUSION

Multi-level governance does not confront the sovereignty of states directly. Instead of being explicitly challenged, states in the European Union are being melded into a multi-level polity by their leaders and the actions of numerous sub-national and supranational actors. State-centric theorists are right when they argue that national states are extremely powerful institutions that are capable of crushing direct threats to their existence. The institutional form of the state emerged because it proved a particularly effective means of systematically wielding violence, and it is difficult to imagine any generalized challenge along these lines. But this is not the only, or even the most important, issue facing the state. One does not have to argue that states are on the verge of political extinction to believe that their control of those living in their territories has significantly weakened.

It is not necessary to look far beyond the state itself to find reasons that might explain such an outcome. When we disaggregate the state into the people and organizations that shape its diverse institutions, it is clear that key decision makers, above all those directing the national government, may have goals that do not coincide with projecting national sovereignty into the future. The state is a means to a variety of ends, which are structured by party competition and interest group politics in a liberal democratic setting.

Even if national governments want to maintain national sovereignty, they are often not able to do so. A government can be outvoted because most decisions in the Council are now taken by qualified majority. Moreover, the national veto, the ultimate instrument of sovereignty, is constrained by the willingness of other national governments to tolerate its use. But the limits on sovereignty run deeper. Even collectively, national governments do not determine the European agenda because they are unable to control the supranational institutions they have created. The growing diversity of issues on the Council's agenda, the sheer number of national principals, the mistrust that exists among them, and the increased specialization of policy making have made the Council of Ministers reliant upon the Commission to set the agenda, forge compromises, and supervise compliance.

The most obvious blow to Council predominance has been dealt by the European Parliament, which has gained significant legislative power since the Single European Act. Indeed, the Parliament has become a principal in its own right. The Council, Commission, and Parliament interact within a legal order, which has been transformed into a supranational one through the innovative jurisprudence of the European Court of Justice.

Since the 1980s, these changes in EU decision making have crystallized into a multi-level polity. With its dispersed competencies, contending but interlocked institutions, and shifting agendas, multi-level governance opens multiple points of access for interests. In this process of mobilization and counter-mobilization, national governments no longer serve as the exclusive nexus between domestic politics and international relations. Direct connections are being forged among political actors in diverse political arenas.

Multi-level governance may not be a stable equilibrium. There is no explicit constitutional framework. There is little consensus on the goals of integration. As a result, the allocation of competencies between national and supranational actors is contested. It is worth noting that the European polity has made two U-turns in its short history. Overt supranationalist features of the original structure were overshadowed by the imposition of intergovernmental institutions in the 1960s and 1970s (Weiler 1991). From the 1980s, a system of multi-level governance arose, in which national governmental control became diluted by the activities of supranational and subnational actors. The surreptitious development of a multi-level polity has engendered strong reactions. The EU-wide debates unleashed by the Maastricht Accord have forced the issue of national sovereignty onto the public agenda. Where governing parties themselves have shied away from the issue,

opposition parties, particularly those of the extreme right, have raised it. States and state sovereignty have become objects of popular contention—the outcome of which is as yet uncertain.

NOTES

1. This chapter is based on an earlier version coauthored with Kermit Blank (Marks, Hooghe, and Blank 1996). We would like to thank Simon Bulmer, Jim Caporaso, Stephen George, John Keeler, Peter Lange, Andrea Lenschow, Christian Lequesne, Mark Pollack, Michael Shackleton, and Helen Wallace for their useful comments on earlier drafts of this chapter. We are indebted to Ivan Llamazares and Leonard Ray for research assistance.

2. While the roots of the state-centric model lie in neorealism, there are a variety of state-centric approaches to European integration that take issue with certain neorealist assumptions and attempt to encompass domestic politics as an influence on the formation of state preferences. The most interesting of these is "liberal institutionalism," which, despite its nuanced view of interstate cooperation and state preference formation, is firmly in the state-centric mold.

Liberal institutionalism focuses on how international institutions foster gains from cooperation where they otherwise might not arise. International institutions diminish anarchy, but the state-centric perspective remains intact: states are unitary and state preferences are determined exogenously or by domestic politics (Caporaso 1996a). "The basic claim . . . is that the EC can be analysed as a successful intergovernmental regime designed to manage economic interdependence through negotiated policy coordination. . . . An understanding of the preferences and power of its member states is a logical starting point for analysis" (Moravcsik 1993, 474).

This approach allows that European institutions are strong: "Strong supranational institutions are often seen as the antithesis of intergovernmentalism. Wrongly so" (Moravcsik 1993, 507). But they are at the service of member states, not independent: "The unique institutional structure of the EC is acceptable to national governments only insofar as it strengthens, rather than weakens, their control over domestic affairs, permitting them to attain goals otherwise unachievable" (Moravcsik 1993, 507). Alan Milward claims that "the political machinery of the Community resembles the court of a minor eighteenth-century German state. There is a numerous and deferential attendance around the president of the Commission. A hierarchical bureaucracy attends to the myriad facets of relationships with the surrounding greater powers, for every decision has to be finely attuned to the wishes of the real powers to which the Community's continued existence is useful. The struggles to appoint to its offices are like those within the Imperial Diet" (Milward 1992, 446).

European institutions are not essentially different from other international institutions. All serve a precise function: "Like other international regimes, EC institutions increase the efficiency of bargaining by providing a set of passive, transaction-cost reducing rules" (Moravcsik 1993, 518). Consequently, supranational actors cannot achieve political autonomy. In this respect, the EU looks strikingly similar to a consociational regime: "Consociational theory sees the state apparatus as being an umpire rather than a promoter of any specific ideology. . . . [P]ressures to enlarge the role of the Commission as umpire are increased rather than diminished as integration proceeds" (Taylor 1991, 118–119).

The state-centric model claims that member states have EU institutions firmly under control. "The EC regime . . . fixes interstate bargains until the major European powers choose to negotiate changes" (Moravcsik 1993, 31). In effect, "the most fundamental task facing a theoretical account of European integration is to explain these bargains" (Moravcsik 1993, 473). To do so, one should refer back to the preferences of participating states: "EC institutions appear to be explicable as the result of conscious calculations by member states" (Moravcsik 1993, 507). And when states choose to transfer sovereignty to supranational institutions "their principal national interest will be not only to define and limit that transfer of sovereignty very carefully but also meticulously to structure the central institutions so as to preserve a balance of power within the integrationist framework in favor of the nation-states themselves" (Milward and Sørensen 1993, 19).

In the most general sense, European integration has served to rescue the nation state. "The European Community has been its buttress, an indispensable part of the nation state's post-war construction. Without it, the nation state could not have offered to its citizens the same measure of security and prosperity which it has provided and which has justified its survival" (Milward 1992, 3). "[S]tates will make further surrenders of prosperity if, but only if, they have to in the attempt to survive" (Milward 1992, 446). Stanley Hoffmann arrived at the same conclusion along somewhat different lines: "In areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance, to the uncontrolled uncertainty of the untested blender. . . . The logic of diversity implies that, on a vital issue, losses are not compensated by gains on other (and especially not on other less vital) issues: nobody wants to be fooled. . . . The logic of integration deems the uncertainties of the supranational function process creative; the logic of diversity sees them as destructive past a certain threshold: Russian roulette is fine only as long as the gun is filled with blanks" (Hoffmann 1966, 882).

Despite these gloomy predictions, by the early 1990s, the annual regulatory output of the European Community was greater than that of most individual states and 75 to 80 percent of national legislation was subject to prior consultation with the European Commission (Majone 1994). How do state-centrists account for this expansion? Some argue that state competencies have merely shifted: "The European nation state has lost some economic functions to the EC and some defense functions altogether, while gaining functions in what had previously been more private and local spheres. Overall, the bars of the [national] cage may not have changed very much. Citizens still need to deploy much of their vigilance at the national level" (Mann 1993, 130). For others, state sovereignty is still intact: "policymaking in the Community has not in itself detracted from national sovereignty: what is changed is the wish of national legislatures and governments to do certain things rather than their legal or constitutional right or capacity to do them" (Taylor 1991, 123). Still others worry less about the scope as long as member states control the depth of European intrusion. And here voluntarism and the individual veto—"fundamental decisions in the EC can be viewed as taking place in a non-coercive unanimity voting system" (Moravcsik 1993, 498)—combine to make outcomes converge at the lowest common denominator. "The need to compromise with the least forthcoming government imposes a binding constraint on the possibilities for greater cooperation, driving EC agreements toward the lowest common denominator. A lowest common denominator outcome does not mean that final agreements perfectly reflect the preferences of the least forthcoming government—since it is generally in its interest to compromise somewhat rather than veto an agreement—but only that the range of possible agreements is decisively constrained by its

preferences" (Moravcsik 1993, 501). However, many outcomes cannot be characterized as lowest common denominator (see our argument below), a point that some state-centrists are now conceding (Moravcsik 1995, n. 3).

Community institutions that try to challenge member states do not get very far: "As for the common organs set up by the national governments, when they try to act like a European executive and parliament, they are both condemned to operate in the fog maintained around them by the governments and slapped down if they try to dispel the fog and reach the people themselves" (Hoffmann 1966, 910).

One contribution of liberal institutionalism, and of Andrew Moravcsik's work in particular, lies in the attempt to specify the conditions under which "international cooperation . . . tends on balance to *strengthen* the domestic power of executives vis-à-vis opposition groups" (Moravcsik 1994, 7, his emphasis). However, even though the billiard ball model of the nation state is cracked open to understand state preferences, state-centrists resort to unitary actor assumptions to analyze interstate bargaining: "Groups articulate preferences; governments aggregate them" (Moravcsik 1993, 483).

3. States or state leaders are conceived as monopolizing the interface between the neatly separated arenas of European and domestic politics. European decision making is seen as "a process that takes place in two successive stages: governments first define a set of interests, then bargain among themselves in an effort to realize those interests" (Moravcsik 1993, 481). State-centrists make short shrift of interest group representation in Brussels: "Even when societal interests are transnational, the principal form of their political expression remains national" (Moravcsik 1991, 26). European and national politics belong to two different worlds because there is no need for direct interplay: "If parties have organized themselves only in a superficial way in the European Parliament, that is because no more has been needed. . . . [It] is within the nation that political parties have to fulfill their task of organizing a democratic consensus" (Milward 1992, 446). Other state-centrists argue that domestic and EU arenas are nested rather than interconnected because it is in the interest of national governments to keep them that way: "The EC does not diffuse the domestic influence of the executive; it centralizes it. Rather than *domesticating* the international system, the EC *internationalizes* domestic politics. While cooperation may limit the external flexibility of executive, it simultaneously confers great domestic influence. . . . In this sense, the EC strengthens the state" (Moravcsik 1994, 3, his emphasis).

4. In his book *The Choice for Europe*, Andrew Moravcsik has dropped this concept of power. Instead, he relies on the notion of "credible commitments" to explain under what conditions national governments agree to "pool" or "delegate" sovereignty (Moravcsik 1998, 73–77).

5. The Amsterdam Treaty (1999) strengthens majority voting in the European Union's common foreign and security policy (CFSP), creates a High Representative for the CFSP, and sets up a supranational unit for foreign policy analysis—the Policy Planning and Early Warning Unit. The latter unit pools expertise from the Commission, the Council secretariat, the member states, and the Western European Union (Peterson and Bomberg 1999). However, these steps fall well short of a profound transfer of authority in foreign and defense policy to the European Union.

6. This has strong implications for how one can explain preference formation in national governments as well as in the European Parliament, and we examine some of these in chapter 4.

7. As the authority of the Parliament has grown, so its internal operation has become more important. The norms that govern the EP's parliamentary procedures, its committee structure, the selection of candidates on party lists, and the development of transnational European party federations all lie outside the treaties.

8. These policy areas are summarized in table A1.1 in appendix 1.

9. The only exception was the European Defense Community, which was voted down in the French *Assemblée* in 1954. After that debacle, plans for the European Political Community were quietly dropped.

10. For Britain, the latter are a constitutional innovation with immense knock-on effects.

11. This refers to "EC pillar" issues, which encompass the bulk of EU initiatives. EC pillar, or pillar I, issues refer to economic integration, including economic and monetary union, and all policies areas; pillar II refers to common foreign and defense policy (CFSP); pillar III to cooperation on justice and home affairs (JHA).

12. The strongest proponents for a transfer of immigration and border control to pillar I were the Dutch, Belgian, Luxembourgian, German, Italian, Portuguese, and Austrian governments, while the French and Spanish governments were in favor of a partial transfer (den Boer and Wallace 2000).

13. During the transition period, the Commission shares its right of initiative with the member states, the EP is only consulted, and the Council of Ministers votes by unanimity.

2

A Historical Perspective

The creation of a European polity over the past half century has been an experiment in interstate coordination and supranational institution building. While the European Union is a new kind of polity, scholars have sought to gauge its particularities and understand its dynamics by comparison. This chapter lies squarely in that tradition, one that goes back to the earliest attempts to analyze European integration.

Comparison, but with what? Given the exceptional character of European integration, the question has no single answer. European integration does not fit neatly into any class of political phenomena, though it shares interesting commonalities with several.

Two lenses have been used to gain comparative insight. The first treats the European Union as an international regime. Like the United Nations, the General Agreement on Tariffs and Trade, or the North American Free Trade Association, the EU can be conceived as an organization created, sustained, and dominated by national governments. Conceptualizing the EU as an international regime focuses attention on intergovernmental bargaining and allows scholars to inquire into the factors that lead to coordination among national governments (Moravcsik 1991, 1994; for a critique, see Sandholtz 1996). Why do national governments create international regimes, and what functions does the European Union fulfill?

A second lens treats European integration as the development of a federal constitutional order—a *domestic* regime. From this standpoint, the European Union has been compared to a variety of existing federal regimes, including those in Switzerland, Canada, Germany, and the United States (Sbragia 1992; Cappelletti, Seccombe, and Weiler 1986; Scharpf 1992).¹ Here the focus has been on institutional arrangements that link constituent governments to the center. What is the role of constituent territorial units in central decision making, and how are they constrained by the center? How are constituent territorial units represented in EU institutions?