



## ***The European Union, New Institutionalism and Types of Multi-Level Governance***

Anil Awesti  
University of Warwick

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*Multi-Level Governance (MLG) fundamentally challenges a state-centric, intergovernmentalist conceptualisation of EU policy-making, emphasising the non-hierarchical, interconnected and multi-actor nature of contemporary governance. As such, MLG encapsulates the reconfiguration of policy-making space in the EU, rejecting a conception of governing as existing at either the domestic or international level, but rather as a single entity characterised by a complex web of interaction among a variety of interested actors. The EU's institutions are critical to the reordering of policy-making space in the EU in that they provide arenas of interaction. The institutions undertake the role of 'honey pot sites', attracting actors and therefore facilitating the processes of interaction that characterise MLG. By applying the analytical tools of new institutionalism, this paper proposes a framework for understanding MLG as existing in three distinct types, varying in accordance to its rational choice, historical and sociological institutionalist guises.*

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## **Introduction**

The European integration process has radically altered the system and nature of governing in Europe. Particularly since the 'relaunch' of the European project with the Single European Act, the governing structures of the European Union (EU) have been subject to fundamental change. The changing nature of governing in Europe has been accompanied by a paradigm shift in theorising within EU studies. Rather than theorising the EU as a process of integration, the EU came to be viewed as an existing political system in its own right requiring theoretical analysis as a functioning polity. Accompanying this 'turn to governance' were debates concerning the continuing capacity and effectiveness of the state in an era of globalisation, the impact of internal territorial decentralisation and administrative reform, and the overall nature of the political project pursued by the state (Peters and Pierre, 2001: 132). Out of these debates emerged Multi-Level Governance (MLG) as an attempt to encapsulate the characteristics of multi-actor interaction and shared authority within contemporary governing.

The purpose of this paper is to critically examine MLG as a theoretical framework through which to analyse the process of governing within the EU<sup>1</sup>. The first section provides a detailed definition of MLG, emphasising its non-hierarchical, interconnected and multi-actor nature. Section two highlights the ability of MLG to encapsulate the reconfiguration of policy making space as the key strength of MLG in its application to the EU. This paper argues that MLG captures the institution-dependent nature of polycentric governing in the EU and as such is itself underpinned by an institutional focus. In developing this argument, the paper moves on to apply the analytical tools of new institutionalism to MLG.

In adopting this approach, the paper attempts to respond to the claim that the MLG literature has paid insufficient attention to the role of institutions. Peters and Pierre for example argue that most interpretations of MLG provide a misleading view of governing in which institutions are largely irrelevant, having

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<sup>1</sup> The focus of the paper concerns the policy making process in the 'first' European Community pillar of the EU's three-pillar structure. However in accordance with the MLG literature, the paper will refer to the organisation as the EU.

been replaced by a focus on context, processes and bargaining (Peters and Pierre, 2004: 75-76). Moreover, Checkel states that the institutional analysis that does exist is based firmly on rational choice assumptions – that is, institutions as constraints on action (Checkel, 2001: 23). By taking a new institutionalist approach to MLG this paper places institutions at the centre of any analysis of the dispersal of authority. In doing so, the paper conceptualises MLG through three distinctive types, in accordance with the rational choice, historical and sociological institutionalist perspectives.

### **What is Multi-Level Governance?**

MLG can be seen as a response to the state-centric, intergovernmentalist theory of the EU which dominated studies throughout the so-called period of ‘eurosclerosis’ from the late 1960s. MLG challenges the view of the state as being the singularly most important and necessarily dominant actor within the EU policy making process. Thus to a large extent, MLG essentially challenges our understanding of the changing nature and role of the state.<sup>2</sup>

At the heart of the MLG framework is the claim that in an increasing number of policy areas no single actor has complete competence. Marks *et al* state that ‘the point of departure for the multi-level governance approach is the existence of overlapping competencies among multiple levels of government’ (Marks et al, 1998: 41). Decision making competencies are therefore viewed as being shared amongst a variety of actors located at different territorial levels, rather than monopolised by national governments (Hooghe and Marks, 2001: 3). In particular, MLG emphasises the mobilisation of sub-national authorities (SNAs) and their increasing significance within the EU policy making process (see Marks, 1993; Hooghe, 1996). Furthermore, MLG stresses the involvement of private actors, as well as public authorities (often in public-private networks), within governance mechanisms. This is not to say that states are no longer authoritative actors, rather that states no longer monopolise the European policy process. As Marks *et al* continue, ‘member

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<sup>2</sup> This is explicitly acknowledged in the article by Marks et al (1996) entitled, ‘European Integration from the 1980s: State-Centric v. Multi-Level Governance’.

state executives, while powerful, are only one set among a variety of actors in the European polity' (Marks et al, 1998: 41).

Within this multi-actor framework, MLG rejects the notion that political arenas are nested. Even though 'national arenas remain important arenas for the formation of national government preferences' (Hooghe and Marks, 2001: 4), SNAs are seen as being able to pursue their interests within the European and global sphere. Thus the state is not viewed as the exclusive channel through which domestic political actors channel their interests (Marks et al, 1998: 41). Rather, arenas are interconnected with direct and indirect networks existing between sub-national and supranational levels which bypass the state. MLG is non-hierarchical to the extent that the traditional hierarchical command and control role of the state has been relaxed. This has been accompanied by a shift in the nature of exchange away from instruction towards dialogue, negotiation and bargaining (Peter and Pierre, 2001: 133). Peters and Pierre view these transformations as evidence of institutional mutual dependency (Peters and Pierre, 2004: 83) and a change in the zero-sum nature of intergovernmental relations (Peters and Pierre, 2001: 133). Rather than seeing a gain for one institution as a loss for another, the emphasis of MLG on shared, non-hierarchical competencies allows for recognition of the positive-sum, problem-solving capacity of contemporary governance.

The complexity that MLG attempts to depict (Rosamond, 2000: 111) has a concern for the mechanisms of process (Peters and Pierre, 2004: 84). In particular, MLG stresses the importance of analysing the 'day-to-day' political processes which occur in the 'interstitial cracks of the EU', in Commission and Parliamentary committees, advisory groups, functional councils of ministers and so on (Jordan, 2001: 200). In this way, MLG attempts to shift analytical focus away from the grand, history-making events that so preoccupy intergovernmentalist theory towards the sub-systemic level (Peterson, 1995: 69-93) of political activity. Simultaneously, uniformity as an overriding feature of governing is rejected in favour of an emphasis on the heterogeneity of actor involvement according to the nature of the policy problem. Diversity in actor

engagement ensures that 'the structure of political control is variable, not constant, across policy areas' (Marks et al, 1998: 41). The importance of different political actors varies in accordance with the features of the particular policy problem and the resources each actor possesses. Bache and Flinders view the distinction between 'high' and 'low' political issues, political processes at the implementation and post-decisional stage, and unintended consequences arising from MLG, as being of particular significance in determining the nature of institutional control (Bache and Flinders, 2004a: 199-200).

### **Multi-Level Governance and the European Union**

MLG emerged as part of a wider revisionist approach the study of the EU. Theories of governance attempted to replace the traditional 'supranational versus state' debate concerning the European integration process with an approach which accepted the EU as an existing political system whose constituent parts required examination. As Jordan notes, 'the new Europeanists....arrived armed with the tools to investigate the various *parts* rather than the whole of the EU' (Jordan, 2001: 196). However, making a distinction between analysing the EU either as a process of integration, or as a political system, does not appear as simple as first assumed. In order to fully understand the integration process, analysts must appreciate the variety of mechanisms and procedures at play in the policy making process which itself guides, promotes and hinders European integration. At the same time, the integration process creates the conditions within which policy making structures are established and patterns of decision making formed.

The strength of MLG lies in its ability to 'widen the conceptual lens' (Kohler-Koch and Rittberger, 2006: 38) within political science away from an approach based at either the domestic or international level towards one which is able to encapsulate the interaction and importance of all governmental levels within contemporary forms of governance. MLG is said to stimulate 'a reappraisal of the traditional dichotomy between 'domestic' and 'international' policy' (Bache and Flinders, 2004c: 94). An 'intermestic' (Bache and Flinders, 2004c: 94) or 'Euromestic' framework allows for an appreciation of complex

institutional interdependence within the EU, in which problem-solving at the EU level not only depends on domestically located actors for implementation but also significantly impacts upon relative institutional roles and capacities within the domestic sphere. Simultaneously, the EU policy process is itself influenced by the involvement of domestic actors and their interaction with the supranational institutions.

Above all what emerges from MLG is a concern for the reconfiguration of policy making space. Rather than the traditional process of interests and preferences being agreed within nested political arenas and then uploaded to the 'next level' where the process is then repeated, MLG throws light on a single policy-making space in an increasing number of policy areas (see Scharpf, 1997) in which direct channels of communication and influence exist between all actors within a complex web of interaction. Thus the assumed institutional trade-off within a 'zero-sum' political game is replaced by an emphasis on the necessity of shared capacities in order to ensure effective problem solving. This is not to say that the state no longer attempts to continue its role as gatekeeper for domestic interests and has renounced taking advantage of its long held relative power position, rather that it does so in a radically transformed political environment in which it no longer has monopolistic control over the levers of power.

Within this rearranged policy making space, MLG is particularly useful in incorporating the variety of political actors involved in the EU policy process within its theoretical framework. In contrast to the 'two-level game' scenario proposed by intergovernmentalism, or the narrow neofunctionalist focus on supranational institutions, MLG recognises the significant role played by domestic and international interest groups, business associations, trade unions, social movements and SNAs within the EU's polycentric structure.

The increasingly important role played by regional governments in the EU decision making process is at the forefront of the understanding of European multi-level governance. Sub-national mobilisation through the establishment of regional offices, inter-regional associations, the Committee of the Regions,

and the use of Article 146 of the Treaty on European Union (allowing sub-national ministerial access to the Council of Ministers) have been exploited to ensure that the interests of regional governments are articulated around the policy table. Consequently SNAs have become engaged in policy networks, acting alongside institutions at all levels within the EU's governance structure. The state has been forced to accept regional authorities as actors in their own right with specific policy interests and goals. This process has to an extent been fostered at the supranational level by the Commission's reliance on the regional level for specialist information, which establishes a relationship of resource interdependency between supranational and sub-national actors.

One of the defining characteristics of this reconfiguration of policy making space is the institution-dependent nature of policy making within the EU. Institutions are integral to understanding MLG in that it is institutions that define and coordinate interaction between different levels of government (Peters and Pierre, 2004: 79). MLG does not simply relate to the involvement of different levels of government in policy-making, but instead emphasises the continuous, non-hierarchical and interconnected relationships between these levels of government. It is only institutions that can provide a system for these relationships to exist (Peters and Pierre, 2004: 80). The institutions of the EU act as 'honey pot sites' around which the variety of interested actors cluster. In doing so the institutions provide an arena of interaction in which non-hierarchical and interconnected relationships can form. However, they do not simply act as neutral, mediating forces but as political players in their own right with their own interests and goals.

Within this framework of multi-actor interaction, institutions act as stabilising forces. Whilst the involvement of actors in the process of governing in the EU is not uniform, the EU remains a formal decision making system in which there exists a legally enshrined institutional path through which policy making progresses. Policy making does not occur on an ad hoc basis but is constrained by the established institutional route. Institutions therefore structure policy making and provide stability in a complex political environment. In this way, the EU's institutions can be seen as underlying

Marks and Hooghe's conception of the EU as an example of 'Type 1' MLG (Marks and Hooghe, 2004: 15-30). Institutions counteract the potential for MLG in the EU to be structured along the lines of ad hoc, functionally-specific, flexible jurisdictions as in 'Type 2' MLG. Instead the centrality of the institutional path to policy making in the EU ensures a durable, general purpose jurisdictional typology of MLG.

In essence, the institutions of the EU facilitate the development of informal inter-actor policy relationships, which are the primary focus of MLG. The processes which characterise MLG occur within the fissures of formal institutions, with the nature of informal policy networks being determined by the access points offered by formal institutions (Pollack, 1996: 453). In this way, MLG can be seen as an attempt to manage the multitude of policy making arrangements necessary to confront complex social, political and economic issues through the means of institutionalisation.

The argument presented above that institutions are central to policy making within a system of MLG does leave various questions unanswered, not least of which is what is meant by 'institutions', and through what processes and mechanisms do institutions come to determine MLG? A response to these questions is guided by the literature on new institutionalism and it is to this that the paper now turns in order to develop the argument of MLG as institution-dependent.

### **New Institutionalism and Multi-level Governance**

New institutionalism suggests above all else that 'institutions matter' because they shape political strategies and exert an independent or intervening influence on political outcomes (Thelen and Steinmo, 1992: 7). Institutions are viewed as the critical variable in any analysis of policy making in that they structure the input of social, economic and political forces, and thus influence policy results (Bulmer, 1998: 369). New institutionalism focuses attention on the mediating role of the institutional context in which political processes occur (Hay, 2002: 11). In this sense, new institutionalism brings the 'political' character of politics back into the frame, as opposed to an analysis that simply



highlights interaction amongst rational actors (Kerremans, 1996: 218). From the outset, an institution-focused approach can be seen to complement MLG by presenting a scenario of restricted actor influence in policy making. New institutionalism's view of political actors as being constrained by the institutional framework within which they operate immediately correlates with an understanding of MLG as essentially a challenge to the notion of EU policy making as being a process controlled by the member states.<sup>3</sup>

However, new institutionalism should not be seen as a coherent, unified theoretical perspective but rather as consisting of differing variants. Whilst agreeing that institutions are important, divergent strands of new institutionalism contain different views over the processes and mechanisms through which institutions impact upon political outcomes. In line with the classification of Hall and Taylor, this section will utilise three new institutionalisms: rational choice institutionalism, historical institutionalism, and sociological institutionalism (Hall and Taylor, 1996: 936-957). The paper will analyse each variant of new institutionalism in turn, providing an overview of their main theoretical claims, before applying them to MLG.

### ***Rational Choice Institutionalism***

Rational choice institutionalism (RCI) approaches the study of political outcomes with a certain set of assumptions concerning actor behaviour and preference formation. Actors are presumed to be endowed with a fixed and consistent set of preferences that are exogenous to the political system (March and Olsen, 1996: 250). In order to achieve these given preferences, actors behave in an entirely instrumental and strategic manner (Hall and Taylor, 1996: 944-945). Institutions are established (and survive) because they ensure the desired gains from cooperation that the rationally acting designers and participating actors value (Hall and Taylor, 1996: 945). Hence RCI employs a functionalist logic to institutional choice in which institutional creation and design is a consequence of rationally anticipated effects (Pollack, 1996: 433).

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<sup>3</sup> In particular, see Pierson (1996: 123-163) which explicitly challenges the intergovernmentalist analysis of the EU.

The definition of what constitutes an institution goes beyond 'hard' formal organisations to also include the broad range of informal rules and procedures that define interests and structure conduct (Thelen and Steinmo, 1992: 2). Hall and Taylor define institutions as being 'the formal and informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy', be it a 'constitutional order or the standard operating procedures of a bureaucracy [or] the conventions governing trade union behaviour or bank-firm relations' (Hall and Taylor, 1996: 938).

Within the RCI framework the role of institutions is confined to structuring the strategic interactions of rational actors. Institutions provide a strategic context in which political exchange takes place, influencing outcomes by limiting the range of policy choices available and reducing uncertainty in actor behaviour (Thelen and Steinmo, 1992: 7; Hall and Taylor, 1996: 945). Institutions are therefore viewed as arenas in which self-interested actors are constrained and encouraged to embrace new approaches in order to realise their goals. As Checkel summarises, 'in this thin conception, institutions are a structure that actors run into, go 'ouch' and then recalculate how, in the presence of the structure, to achieve their interests; they are an intervening variable' (Checkel, 2001: 20).

At first glance, the RCI approach seems to be a natural bedfellow to an intergovernmental account of institutional creation within the EU. Intergovernmentalism views the creation of institutions in terms of the functional benefits they provide to member states in overcoming collective action problems. As Moravcsik states, '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' (Moravcsik, 1993: 507). Institutional creation is seen as an explicit and purposeful choice by rational, self-interest maximising actors.

However this does not necessarily contradict MLG, for Marks also takes a member state actor-centred approach to the emergence of MLG in the EU (Marks, 2001: 20-38; Hooghe and Marks, 2001: 69-80). Hooghe and Marks accept the significant role of government leaders in national states in the emergence of MLG as they remain decisive actors in determining how authority is organised in Europe (Hooghe and Marks, 2001: 77). In explaining the reasons for the development of MLG, Marks begins with the question of ‘why would *those in positions of authority within nation states* agree to shift decision making from central institutions to sub-national or supranational institutions?’ (Marks, 2001: 23 [italics added]). There is thus an overlap between the two theoretical approaches in that they agree national governments are the initial driving force behind the establishment of new policy making forms. At one point Marks explicitly states that his ‘point of departure here is to allow for the possibility that those in government actually wish to shift competencies away from central states’ (Marks, 2001: 36, footnote 4).

At its core, liberal democracy is able to maintain authoritative leadership without necessarily demanding the centralisation of authority. Political leaders may be willing to shift authority away from the central state in order to increase their bargaining power in international or domestic negotiations, and to relieve themselves of the burden of responsibility for unpopular policy decisions (Hooghe and Marks, 2001: 71-74). Viewing MLG through the conceptual lens of RCI suggests that polycentric governance may emerge as a result of explicit choices made by national leaders.

An RCI account also necessitates attention is paid to notion of MLG as a functionally beneficial form of policy making. Marks (2001: 28) hypothesises that competencies may be shifted by member states if the reallocation of authority is viewed as having ‘politically salient pareto beneficial consequences’ such as ‘reduc[ing] transaction costs or increas[ing] the efficiency of policy provision’. Marks and Hooghe (2000: 796) see MLG as a normatively superior system of policy making to a state-based approach in that it ‘is the optimal way of allocating competencies in response to the trade-

off between the benefits of scale and the costs of heterogeneity'. Similarly, in an analysis of EU governance, Kohler-Koch highlights a number of these forces in the progressive uploading of policy areas to the Community.

“This was not just because of the persuasive capacity of the Commission...or the pro-integration rulings of the European Court of Justice. Instead, it was the member states themselves that considered joint problem-solving to be more attractive than preserving their national autonomy. As a consequence, governments may accept a further transfer of authority to the Community to increase, at least indirectly, their problem-solving capacity. Shifting policy problems from the national to the European agenda may as well have been motivated by avoiding public pressure or giving in to rent-seeking strategies of private actors” (Kohler-Koch, 1996: 362-363).

MLG can therefore be seen as emerging not only as a result of the explicit choices of national leaders but as a consequence of rational choices which explicitly had the creation of a joint problem-solving form of policy-making in mind. MLG is purposely established in response to the need to incorporate supranational and sub-national actors in the process of effectively solving complex socio-economic issues.

Much of the early work surrounding RCI concerned the impact of institutional procedures within the US Congress on ruling certain policy alternatives 'in' and others 'out'. Congressional committees were viewed as being able to influence policy outcomes via use of their agenda-setting power (Pollack, 1996: 430-431). This analysis is equally applicable to the emphasis that MLG places on the importance of supranational institutions, particularly the Commission. The Commission formally enjoys the right of initiative within EC 'pillar 1' legislation and is therefore able to shape the Community agenda. Beyond this the Commission also enjoys substantial informal agenda-setting power through its ability to identify policy problems, sell policy proposals, and broker compromises amongst the member states (Pollack, 1996: 449). In this way the procedures of Community policy making can be seen to provide the Commission with a 'non-decision making' power (Bachrach and Baratz, 1963: 634) to the extent that it is able to utilise its privileged position in order to

ensure consideration of only those issues which do not undermine its interests.

### **Historical Institutionalism**

Historical institutionalism (HI) shares a number of features characteristic of RCI. Both agree for example on the broad definition of formal and informal institutions as being significant (Thelen and Steinmo, 1992: 28-29), and the view that institutions constitute arenas in which strategies are defined and interests pursued (Ibid: 7). However HI diverges significantly on the question of preference formation. Contrary to the assumption that institutions simply modify the strategies adopted by actors to secure rationally pre-formed preferences, HI suggests that institutions influence the very formation of goals.

By shaping not just actors' strategies (as in rational choice), but their goals as well, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own imprint on political outcomes (Thelen and Steinmo, 1992: 9).

This conception of preference formation builds on Lindblom's understanding of the malleability of political preferences whereby goals are moulded by participation in a policy making process. Lindblom's 'disjointed incrementalism' viewed involvement in a policy system as an educating force in which actors learn how to formulate policy positions, learn what policy positions are feasible, and learn how to tailor policy positions in order to increase their chances of success (Lindblom, 1968: 102). In this sense preferences are endogenous to the political system, formed through processes of interaction with other actors and formal and informal institutions. The perception of rational action results from a subjective evaluation of policy alternatives and consequences within a given institutional context (March and Olsen, 1996: 250). Thus inherent within the HI account is a focus on the reciprocal relationship between the policy making system and actor preferences, in which the system affects the very preferences to which it also responds (Lindblom, 1968: 101).

HI also questions the rational choice functional understanding of institutional creation, arguing that it is incapable of explaining the existence of inefficient institutions (Pollack, 1996: 434). What emerges from this critique is an emphasis on unintended consequences and path dependence as fundamental features of institutional analysis. HI assumes that there is a 'thickening' of institutions over time. For Pierson (1996: 129-136) institutions are originally established according to RCI principles – as a result of the presumed gains they will contribute to actors' desired goal. However gaps in agent control occur over time, leading to unanticipated consequences as a result of short-termism and the complexities of poorly understood social processes. Thus political outcomes are 'path dependent' to the extent that institutions take on a dynamic of their own, constraining policy choices by locking in certain policy paths which do not necessarily coincide with actors' preferences. In this way institutions can become difficult to reform. Rather than shifting in accordance with changing preferences, institutions are 'sticky', reflecting past choices as opposed to current social and economic conditions (Pollack, 1996: 438). HI therefore problematises the controlling power of actors over institutions and the very rationality of institutions assumed by RCI, preferring to emphasise the independent influence that institutions exert over time stemming from earlier institutional choices.

The third dominant feature of HI concerns the role of power, particularly relative power, both in terms of institutional creation and distribution. Whilst RCI can be criticised for ignoring relative power relations by painting a picture of voluntary quasi-contractual agreement (Hall and Taylor, 1996: 952), HI understands institutions as not only structuring power relations between actors but, more importantly, distributing power unevenly between those actors. The institutional organisation of policy making is seen as providing certain actors with disproportionate access to decision making, leading to the creation of winners and losers in policy outcomes (Hall and Taylor, 1996: 941). According to Thelen and Steinmo, this mobilisation of bias is well-understood by political actors, which creates the accompanying necessity to analyse the role of relative power in institutional creation (Thelen and Steinmo, 1992: 9-10).

The application of a HI analytical framework to MLG would suggest that's it emerges over time as a result of the EU's structural organisation, procedures and norms. Initial member state choices concerning institutional design and policies lead to a dispersal of authority to supranational and sub-national arenas not initially envisaged. MLG emerges through a process of path dependency in which initial policy choices structure and restrict subsequent developments. As Hooghe and Marks (2001: 75) state, 'multi-level governance, like state building, is largely a by-product. It is the outcome of political pressures that, in most cases, do not have multi-level governance as their objective'.

Autonomous supranational institutional action is a case in point. Member states appear to be caught in a 'catch 22' situation when it comes to the creation of supranational agents. Principal-agent literature guides our understanding of this dilemma. In order to ensure the desired gains from cooperation are fulfilled, principals (the member states) create new institutions (such as the Commission) to carry out certain functions. However, the necessity for effective decision making and enforcement requires that the supranational agents be endowed with sufficient resources and authority to undertake its tasks. Thus the agent is provided with the ability to pursue its own preferences, which may not coincide with those of the principals (Pierson, 1996: 132). As Moe argues, this is a well-observed process:

"A new public agency is literally a new actor on the political scene. It has its own interests, which may diverge from those of its creators, and it typically has resources – expertise, delegated authority – to strike out on its own should the opportunity arise" (Moe, 1990: 121).

Marks and Hooghe (2001: 75-77) allude to this process of agent activism by asserting that one reason why MLG may arise is through government leaders losing control of the activities of the supranational and sub-national organisations they have established.

The Commission's privileged position as a centre of information, its budgetary and intellectual resources, and its formal agenda-setting power are significant

here as it is through these mechanisms that the Commission is able to pursue its interests. A similar process of agent activism can be identified with respect to the European Court of Justice (ECJ). Through its legal rulings, particularly those establishing the principle of supremacy, direct effect and mutual recognition, the ECJ has laid the legal foundations for an integrated European economy and polity (Burley and Mattli, 1993: 42). The extent of judicial activism has been such that it has led some to label the ECJ 'the principal motor for the integration of Europe' (Volcansek, 1992: 109).

A second consequence of initial choices is the materialisation of unintended consequences which encourage the emergence of MLG. Pierson (1996: 135-139) emphasises the long-run, unanticipated implications of decisions that are taken by political leaders for short-term, usually electoral, gains. He claims that even if policy makers focus on long-run effects, unanticipated consequences remain likely due to the complexities of social processes. This can be seen to be particularly the case with respect to the EU due to the presence of high issue density, which in turn generates problems of overload and spillover.

Hooghe and Marks (2001: 77-78) see these unanticipated consequences in practice through the mobilisation of sub-national actors as a response to the uploading of policy competence from the national to the European level. European integration encourages sub-national actors to shift their focus to the EU level in order to exert influence in the new policy making arena. This occurs through developments such as the establishment of sub-national offices in Brussels, direct communication with the Commission, the creation of pan-EU trans-regional associations, and campaigning for direct representation in the Council of Ministers. The deepening of integration may therefore trigger a 'domino effect' of unforeseen activity as a result of the transformation of the political environment in which actors operate, culminating in the emergence of MLG.

Analysing MLG with the analytical toolkit of HI also sheds light on the difficulties of modifying institutional forms and procedures that constitute MLG.



The EU contains clear institutional barriers to reform, such as the 'joint-decision trap' (Scharpf, 1988: 239-278). The obstacle presented by the requirement for unanimity or a qualified majority in order to overturn previous decisions means that MLG effectively becomes 'locked-in' as a feature of EU policy making.

The constraints posed by institutional arrangements from above are compounded by the 'sunk costs' resulting from societal level adaptation to MLG. Pierson highlights a second example of 'lock-in':

"When actors adapt to the new rules of the game by making extensive commitments based on the expectation that these rules will continue, previous decisions may lock in member states to policy options that they would not now choose to initiate. Put another way, social adaptation to EC institutions and policies drastically increases the cost of exit from existing arrangements for member states" (Pierson, 1996: 144-145).

Societal actors gain a vested interest in MLG and the costs associated with disrupting the situation act as a further barrier to change.<sup>4</sup> Consequently MLG becomes 'sticky', reflecting past choices as opposed to the current preferences of political leaders.

### **Sociological Institutionalism**

At the centre of sociological institutionalist (SI) approach is a concern for the socio-cultural structures in which political action occurs. SI broadens the definition of institutions further than RCI and HI to include symbol systems, cognitive scripts and moral templates that provide meaning to action (Hall and Taylor, 1996: 947). By doing so, institutions are viewed as constituting actors and their interests in the sense that they provide actors with identities, conceptions of reality, standards of assessment, and behavioural rules (March and Olsen, 1996: 249). Institutions are seen as constructing a reality in which choices are made. As Hall and Taylor (1996: 948) argue, 'institutions influence behaviour not simply by specifying what one should do but also by

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<sup>4</sup> Marks recognises institutional lock-in and sunk costs in his actor-centred approach as constraints on the ability of government leaders to reverse the dispersal of authority (Marks 2001: 32-34).

specifying what one can imagine oneself doing in a given context'. In this sense SI essentially questions the rationality of the RCI approach, claiming that what actors view as rational action is itself constructed according to the socio-cultural context in which actors exist.

What follows from this perspective is an interpretation of organisational forms and practices as being culturally embedded, reflecting culturally specific practices rather than functional efficiency (Hall and Talyor, 1996: 946). Institutional design and actor behaviour are said to follow a 'logic of appropriateness' whereby choices are made according to what is viewed as socially valuable or suitable rather than a rational 'logic of consequence' (March and Olsen, 1996: 252; Hall and Taylor, 1996: 949).

The application of SI to MLG suggests a process in which participating in EU policy making provides actors with conceptions of their own identities and of how to act. MLG can be seen to emerge as a result of actor behaviour that is 'learnt' from being identified as a particular actor within the EU. Bulmer (1998: 368) is correct in asserting that the institutions of the EU are not value free, but contain embedded values and norms which impact on how their functions are operationalised. However, it is the identification of an institution as being supranational (via the provision of particular competencies) that provides it with a certain ethos and behaviour. Thus the behaviour of the Commission and ECJ is influenced by their self-perceived roles as supranational institutions which encourages them to support further integration and an expansionary interpretation of the treaties (Bulmer, 1994: 363). This enthusiasm comes precisely from a norm of integration which is embedded within the culture of these institutions. It is plausible that a similar process relates to sub-national actors, whereby their self-perception as distinct actors with their own interests encourages demands for greater devolution of policy competencies and involvement in EU decision making.

Actors can therefore be seen to behave in a manner they perceive as being socially appropriate in accordance with their roles, leading to the dispersal of authority away from the central state. In this way MLG does not only emerge,

but also becomes self-reinforcing as actors learn to function according to the behavioural rules of MLG. If it is assumed that social learning is more likely where there is a high density of interaction between actors (Checkel, 2001: 26), MLG itself becomes embedded as a form of policy making.

## **Conclusion**

This paper has presented MLG as a fundamental challenge to a state-based understanding of policy making within the EU. MLG captures the multi-located nature of contemporary governing in the EU. It rejects the conception of governing processes as existing at either the domestic or international level, emphasising an overlapping, interconnected, non-hierarchical and multi-actor framework of interdependence. As such the strength of MLG lies in its ability to encapsulate the reconfiguration of policy making space away from interaction between nested political arenas towards a singular entity characterised by a complex web of interaction amongst a variety of actors involved in EU governance. Underpinning the reordering of policy making space is the key role played by the EU institutions in the process of EU policy making. Institutions are central to MLG in that they provide arenas in which interested actors gather, therefore facilitating the processes that characterise MLG.

In order to develop the idea of MLG as institution-dependent, the paper examined MLG using the analytical tools provided by new institutionalism. What emerges is a conception of MLG as developing and existing in different types, as opposed to the single interpretation of MLG as traditionally conceived. In a sense this is a continuation of the 'types of multi-level governance' approach as put forward by Hooghe and Marks (2003: 233-243), albeit in a radically different form. Rather than distinguishing types of MLG on the basis of jurisdictional features, this paper presents three types of MLG emerging from differing institutional processes. The three conceptual lenses of new institutionalism offer differing accounts of MLG.

Rational choice institutionalism suggests that MLG emerges as a consequence of explicit choices by national political leaders in the pursuit of

strategic objectives, be it the acquisition of bargaining advantages, the divesting of responsibility, or as a means of ensuring effective problem-solving. On the other hand, historical institutionalism views MLG as resulting from a path dependent process of initial choices, which produces autonomous supranational institutional action and unanticipated consequences that disperses authority away from the central state. MLG then becomes 'locked-in' by the procedural difficulties of reforming past decisions and the costs of societal adaptation. Finally, a sociological institutionalist approach emphasises MLG as a 'learnt' process whereby actors behave in accordance with their socially perceived roles.

Each of these types of MLG are equally plausible and this paper makes no judgement regarding their relative credibility or utility. Further empirical research of actor motivation and behaviour in the process of the dispersal of authority away from the state is clearly necessary in order to do so. However by adopting a new institutionalist approach to MLG, this paper does provide a framework to guide future research on the future development of the MLG research agenda.

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