

Governing Diversity: Alternatives to Differentiation in the EU and in Federal States

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Abstract

Governing diversity is the *raison d'être* of multilevel polities, and differentiation (*accommodating diversity*) its most extreme form. Ordered by increasing shared rule, alternatives to differentiation include horizontal collaboration among constituent units (*circumventing diversity*); policies to encourage convergence over time (*reducing diversity*); and authoritative joint decision-making (*controlling diversity*). In comparison to the EU, federal states such as Canada, Switzerland and the United States rely on more procedural and less constitutional means of diversity governance. They evade differentiation in redistributive policies, focussing instead on fields of regulatory and distributive community-building. I devise a supply and demand model to explain these differing patterns of diversity governance across multilevel polities. I argue that while the demand for differentiation is determined by the politicisation of constituent units' ethno-linguistic distinctness, supply depends on three factors. First, shared-rule proponents expect differentiation to pose a systemic threat to the polity and hence favour softer forms of diversity governance. Second, their preference is even more pronounced in redistributive fields which require solidarity among constituent units. Third, it depends on shared-rule proponents' capacity to control legislative and constitutional reform whether they can realise their preferences. I illustrate my conjectures in brief analyses of the four abovementioned multilevel polities.

Introduction

Both in the academic debate and in the wider public, differentiated Integration (DI) is occasionally portrayed as the magic bullet that allows the European Union (EU) to overcome its existential woes. To give an example, in a special report on the 60th anniversary of the Rome Treaties, *The Economist* (2017, p. 13) claimed the EU “must embrace greater differentiation or face potential disintegration.” There is an obvious appeal to such considerations. Differentiation allows a multilevel polity to cope with its underlying heterogeneity. In recent decades, the heterogeneity of member state preferences and capacities has increased through the integration of “core state powers” (CSPs; Genschel and Jachtenfuchs 2013) and successive rounds of enlargement. In a rigid institutional environment, this produced deadlock at various critical junctures of the integration process. In such situations, DI repeatedly proved “the most effective means of maintaining efficient EU policymaking” (Moravcsik 1998, p. 48). In reconciling CSP integration and enlargement, DI allowed the EU to prove that “the alleged dilemma between deepening vs widening does not exist” (Schimmelfennig et al. 2015, p. 769).

What is often missed, however, is the strain that differentiation can put on a polity's problem-solving capacity, democratic legitimacy and general stability over time (Kölliker 2006, p. 21). In other words, what is a beneficial strategy in the short term could prove more detrimental in the long run. A priori, actors committed to effective and democratic shared rule on the EU-level should hence be sceptical of differentiation. In modelling these effects of differentiation over time, I claim it is instructive to broaden our view beyond the EU case and incorporate further "systems of multilevel government" (Benz 2016) in the analysis. In contrast to the EU, many federal states such as Canada, Switzerland and the United States have a longer history of experimenting with various shades of differentiation. "Governing diversity", i.e., managing their societies' economic, cultural and linguistic heterogeneity, is not just the EU's but any multilevel polity's very *raison d'être*. As a consequence, the EU is also not the only "system of differentiated integration" (Leuffen *et al.* 2013, p. 10). What is usually referred to as "horizontal differentiation" ("the [differing] territorial extension of [a] jurisdiction in each policy area"; Leuffen *et al.* 2013, p. 12) in the EU context has its conceptual counterpart in the literature on "asymmetrical federalism" (Agranoff 1999a; Palermo *et al.* 2007; Zuber 2011). As Hooghe and Marks (2016) demonstrate in their extensive mapping of regional governance around the globe, horizontal differentiation is increasingly present in multilevel polities beyond the EU.

In comparison to the EU¹, differentiation in federal states generally occurs in a different fashion and in different fields of policy. In the EU, differentiation is a relatively recent phenomenon of the post-Maastricht era. Owing to the burgeoning research of recent years, we now dispose of a good grasp of the driving factors behind DI in the EU. Permanent or "constitutional" DI arises mostly in CSPs, for instance in the context of the Schengen free-travel area and the Euro currency. In turn, transitional or "instrumental" DI occurs primarily in enlargement, affecting internal market rules and EU expenditure policies (Schimmelfennig and Winzen 2014, p. 368). As I will demonstrate in more detail below, federal states rely more on procedural and less on constitutional means than the EU in their governance of diversity. In terms of policies, federal states tend to evade differentiation in the redistributive realm of resource-heavy CSPs, focusing on identity-sensitive fields of regulatory and distributive community-building through language, culture and education policy. How and why do federal states govern diversity differently than the EU?

My core argument in this paper goes as follows: While the demand for differentiation is determined by the depth and politicisation of heterogeneity, its supply depends on (i) the *expected consequences* of differentiation, (ii) the *type of policy* concerned, (iii) the availability of alternatives to permanent horizontal differentiation and the *ability of shared-rule proponents* to push for these alternatives.

¹ "Individualizing" comparisons to federal states, the purpose of which is "to understand the unique traits in the development of the EU" (Fossum 2006, p. 99), have become somewhat of a growth industry in recent years (see for instance Bednar 2008; Bolleyer 2009; Fabbrini 2007; Fossum and Jachtenfuchs 2017; Freudlsperger 2018; Hueglin and Fenna 2015; Kelemen 2004; Menon and Schain 2006; Nicolaidis and Howse 2001; Scharpf 1988; Trechsel 2006). This paper, too, subscribes to an individualizing strategy of comparison, aiming to unearth the peculiarities of the EU's system of governance by differentiating it from fully-fledged federal states.

- (i) Shared-rule proponents, usually central-level actors and constituent units (CUs) disadvantaged by differentiation, expect horizontal differentiation to pose a challenge to the problem-solving capacity, democratic quality and overall stability of a multilevel system. Hence, they hold an *a priori* preference against “*accommodating diversity*” (Agranoff 1999a) through individual policy opt-outs as the most extreme, permanently differentiating form of governing diversity.
- (ii) Differentiation is generally more problematic in fields with redistributive implications (welfare, monetary and fiscal policy, but also migration and defence; Lowi 1964, 1972) than in regulatory (language policy, for instance) and distributive (e.g. culture and education policy) policies. In redistributive policies, a joint commitment to temporally unlimited solidarity among CUs is essential. If wealthy and relatively capable CUs are able to obtain opt-outs from a redistributive policy either *ex ante* or once their solidarity is required, a political system’s ability to solve difficult collective action problems is undermined (Kölliker 2010, p. 51). Shared-rule proponents should hence hold a particularly intense preference against differentiation in redistributive policies.
- (iii) Instead, they seek to divert CUs’ calls for enhanced self-rule by climbing down the “ladder of differentiation” towards available alternative types of diversity governance. These include *circumventing diversity*, i.e., horizontal collaboration outside central-level institutions among regional groupings of CUs. *Reducing diversity* seeks to restore uniformity over the long run by encouraging convergence among CUs via redistribution, rigid or flexible regulation. *Controlling diversity* ensures uniformity through authoritative joint decision-making or procedures of vertical intergovernmental relations (IGR). It depends on shared-rule proponents’ capacity to control legislative and constitutional reform whether they can realise their preferences.

I will illustrate these theoretically-deduced conjectures by empirical references to the “diverse cases” (Gerring 2007, p. 89) of Canada, the United States (US) and Switzerland. The federations’ experience with diversity governance broadly supports my argument. The politicisation of heterogeneity and the strength of central actors vary, as does the intensity of differentiation. Permanent differentiation in redistributive policies, moreover, tends to be avoided by federal states. For the EU case, where deep heterogeneity meets weak supranational institutions, the analysis demonstrates that there was indeed little alternative to differentiation in the integration of CSPs – apart from refraining from integration and being content with regulatory market-making (Majone 2014). Despite differentiation, the EU was solely capable of integrating CSPs by masking them as regulatory issues (Börzel and Risse 2018) and keeping the build-up of redistributive capacities at a bare minimum (Genschel and Jachtenfuchs 2016). After the Euro and Schengen crises exposed the instability of this regulatory mode of integration, the EU now faces the consequences of differentiation in redistributive fields of policy. In doing so, it confronts a fundamental dilemma between sectoral capacity-building through further differentiation and the general problem-solving capacity of its multilevel system.

In my analysis, I proceed as follows. After sketching out the different strategies of multilevel systems for diversity governance, I map patterns of differentiation in federal states and the EU. In the second section, I introduce my theoretical argument which I subsequently illustrate on the cases of the US, Switzerland, Canada and the EU. I conclude by drawing tentative conclusions on the EU case.

Governance of diversity: Concepts and mapping

DI has become one of the focal points of European integration research. After Maastricht, Stubb (1996, p. 283) was the first to engage in a systematic semantic investigation of the phenomenon. His definition of DI as “the general mode of integration strategies which try to reconcile heterogeneity within the European Union” still provides a good starting point for analysis. The relative open-endedness is one of its advantages as it encapsulates various modes of differentiation. In addition, Stubb’s definition also encompasses “integration strategies” which react to heterogeneity among but do not differentiate between member states, majority voting or logrolling for instance. Nonetheless, more recent contributions propose narrower definitions of DI, with the bulk of scholars focusing increasingly on the horizontal type of differentiation. While Kölliker (2001, p. 127) takes a CU perspective and defines DI as “the possibility of member states to have different rights and obligations with respect to certain common policy areas”, Schimmelfennig and Winzen (2014, p. 356) provide a structurally similar definition from the point of view of EU law (“the differential validity of formal EU rules across countries”). In federalism research, these recent definitions of horizontal DI are largely congruent with the concept of “asymmetry”. Agranoff (1999b, p. 11) defines the latter as “the differentiation of status and rights sanctioned between component units within the undiminished system”. Appreciating the evident similarities between both strands of literature, my focus, too, lies on horizontal differentiation. In doing so, I am nonetheless mindful of potential dynamic links between vertical centralisation and horizontal asymmetry (CUs opt out due to policy integration), and between horizontal asymmetry and vertical decentralisation (policy disintegrates due to CU opt-outs). These links are essential in my view as they shape actors’ *a priori* expectations and strategies on differentiation. At the same time, I regard permanent horizontal differentiation as solely one ideal-typical strategy which multilevel polities can employ in their effort to “govern diversity”, i.e., in their management of internal economic, linguistic and cultural difference. Borrowing generously from Stubb (1996), I hence define my *explanandum* as “the variety of integration strategies which try to reconcile heterogeneity within multilevel polities”.

I suggest that heterogeneous multilevel polities can employ four such strategies in their attempt to govern diversity. Taken together, these types form an ordinaly-scaled “ladder of differentiation”, the conceptual space of which ranges from permanent sectoral self-rule for individual constituent units (*accommodating diversity*), over flexible accommodation (*circumventing diversity*) and the encouragement of convergence (*reducing diversity*), to maximum shared rule through central-level legislation and systematic vertical deliberation (*controlling diversity*). This four-part conceptualisation builds on and refines a sextartite “toolbox” of DI put forth by Philippart and Sie Dhian Ho (2000).²

² In comparison to Philippart and Sie Dhian Ho (2000), I try to engage in a theoretically more thorough derivation of the four types of diversity governance, informed by the recent literature on federal dynamics (Benz 2016; Benz and Broschek 2013a) and intergovernmental relations (Bolleyer 2006; Bolleyer 2009; Parker 2015). The biggest difference is the merging of the three categories of “suppressing diversity” (majority voting), “controlling diversity” (sanctions) and “trading-off diversity” (issue linkages and side payments) into one common category. In my view, the three strategies pursue congruent objectives (enhancing shared rule by ensuring uniformity) by procedural means.

The four types of governing diversity vary on two distinct dimensions (see Table 1 below): First, in the face of deep heterogeneity, a multilevel polity can follow two trajectories. A strategy adopted can set a polity either on a path towards enhanced *shared rule*, aiming to ensure uniformity among constituent units. Or, it leans towards individual constituent units' *self-rule* through the toleration of differences in obligations. Second, a strategy can implicate different dimensions of a political system. Either, it relies on the *policy* dimension of a multilevel system, that is, its legislative and constitutional framework. Or, it employs procedural devices to dynamically adapt to diversity, that is, the *politics* of vertical and horizontal intergovernmental relations (IGR).

Governing diversity		Polity trajectory	
		<i>Shared rule / uniformity</i>	<i>Self-rule / differentiation</i>
Polity dimension	<i>Policy / structure</i>	Reducing diversity	Accommodating diversity
	<i>Politics / process</i>	Controlling diversity	Circumventing diversity

Table 1: Four ideal types of governing diversity in multilevel polities

Controlling diversity

This first approach employs procedural means to control diversity and to forge, or perhaps restore, uniformity in a multilevel polity. Procedural means can be employed in the run-up to or after polity-wide decisions. Widespread strategies of the former type include the use of majority voting or constructive abstentions, of issue linkages (“package deals”) or side payments. The objective of these strategies is to alleviate decision-making under preference heterogeneity.

Strategies of controlling diversity are employed differently depending on the type of multilevel system at hand. In *dual federations* (Elazar 1962; Schütze 2009; Wheare 1946), for instance in the US and Canada, the scope of federal control depends on the range of competencies that a given constitution assigns to the different orders of government and on the difficulty of constitutional reform. Usually, the federal constitution assigns CSPs such as borders, defence and monetary policy exclusively to the federal order. In Canada, Section 91 of the constitution entrusts parliament with defence, foreign policy, trade and taxation, among others. In the US constitution (Article I, Section 8), the central competences exclusively assigned to the federal level comprise foreign and security policy, trade, monetary policy, the collection of direct taxes and the naturalisation of foreigners. In realms of exclusive competence, federal control of sub-federal diversity works through central-level decision-making processes in which the CUs participate only indirectly, if at all. In the US federation, Senators have been directly elected along party lines since 1913, representing the interests of their

constituency rather than the preferences of CU executives. This constrains the formalisation of vertical IGR as it provides a legitimate alternative avenue for territorial representation. The Canadian federation, in contrast, has developed a systematic practice of vertical IGR. This is frequently ascribed to the appointed, non-representative nature of its second chamber. Vertical IGR, or “executive federalism”, via First Ministers’ Conferences (FMCs) is nonetheless characterised by a lack of formalization, affording an individual veto to each participating party (Bolloyer 2009). Owing to their politicised nature and propensity to gridlock, the importance of FMCs has significantly decreased in recent years. Subsequent to the failure of constitutional reform after the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992, vertical IGR in fields of shared competence became less political and more pragmatic (Simeon, Robinson, and Wallner 2014, p. 81). In *cooperative multilevel polities*, examples of which include Germany, Switzerland and the EU, federal control of sub-federal diversity can work through two avenues. Either, a council-type second chamber allows for CUs’ direct participation in polity-wide policy-making. In Germany, *Länder* executives are represented in the *Bundesrat* which in the German federal system serves as the functional equivalent to the EU’s Council of Ministers. Or, the procedural control of diversity works through vertical IGR between the federal tier and the sub-federal order. In general, IGR tend to be more formalised in cooperative systems. In Switzerland, for instance, vertical IGR encompass both a specialist and a generalist level, through the currently fifteen Conferences of Cantonal Directors (*Direktorenkonferenzen*) and the Conference of Cantonal Executives (*Konferenz der Kantonsregierungen*), respectively.

When constitutional amendment is concerned, majority-voting is common in both types of multilevel systems (Benz 2016). This allows evading the “joint-decision trap” (Scharpf 1988; Scharpf 2006) and often facilitates a gradual centralization of competences. In Switzerland, a “double majority” of citizens and cantons is needed for referenda on constitutional amendments to pass (Articles 142 and 192 of the Swiss constitution). In the dual federation of Canada, constitutional reform requires the consent of two thirds of provincial legislatures representing at least 50 percent of the total population (Section 38 of the Canadian constitution). Article 5 of the US Constitution prescribes two avenues for constitutional amendment, only one of which has hitherto been used. Under this procedure, the ratification of three fourths of state legislatures is required for an amendment to take effect. EU treaty revisions, in contrast, require the unanimous consent of all member states. Nevertheless, the treaties have proved more flexibly adaptable in the past than most constitutions of federal states.

Reducing diversity

The harnessing of legislative means to encourage convergence among CUs is a second approach that multilevel polities pursue in the face of heterogeneity. The aim is to reduce economic, cultural and linguistic diversity in order to ensure uniformity in the long run, i.e., to curb individual CUs’ desire for differentiation and enhanced self-rule. This strategy can be employed through regulatory, distributive or redistributive means. Regulatory policies can be rigid, for instance via a polity-wide harmonisation of school curricula and the prohibition of barriers to trade between CUs. Alternatively, they can allow

for more flexibility without however engaging in horizontal differentiation between individual CUs. Framework legislation, the setting of polity-wide minimum standards, the usage of soft law and experimental governance all work toward this end. To reduce diversity, multilevel polities can also engage in redistributive policies of horizontal or distributive policies of vertical fiscal federalism, for instance through an equalisation scheme among CUs or grants from the federal government.

Rigid regulation is the norm, in unitary as in multilevel polities. However, multilevel systems have also developed ways of introducing flexibility into their regulatory activities while still pursuing the goal of long-term convergence. The widespread practice of framework legislation in the cooperative or administrative multilevel polities of Germany, Switzerland and the EU, for instance, sets polity-wide policy targets but affords sizable leeway to the implementation efforts of CUs. EU directives (as opposed to regulations), for instance, allow for some (usually tightly limited) variation in national transposition. Experimental governance (Sabel and Zeitlin 2008, 2012) and convergence through soft law (Falkner *et al.* 2005) are equally part of the EU's toolbox of flexibility in regulation. The US federal system, too, endows states with leeway in policy implementation. In some fields of concurrent competencies such as environmental policy, states are able to set higher regulatory standards than the federal government prescribes – even where these may hinder the free movement of goods and services within the federation (the 'California effect', Vogel 1995; see also Genschel and Plümper 1997). In addition, Congress incorporates provisions for flexible implementation in most of its acts. These enable the federal government to grant individual “waivers” to state, county and municipal governments, exempting them fully or partially from a given act. Particularly in health policy, waivers allowed for more sub-federal flexibility in policy implementation (Hueglin and Fenna 2015, p. 250).

Most multilevel polities engage in forms of vertical distribution. CUs often depend on these schemes to a considerable extent. In 2016, for instance, Canadian provinces and territories generated 18.6% of their overall revenues through grants from the federal government. The figures for the Swiss cantons (25.6%) and US states (21.3%) were even higher (International Monetary Fund 2019). The EU, too, engages in a sizable programme of regional redistribution (Mertens and Thiemann 2019) through its structural funds and the European Fund for Strategic Investments. Usually, federal grants come with tight strings attached. Sub-federal dependence on grant money endows the central level with significant leverage in the pursuit of national policy objectives. In the US, this has led scholars to describe the workings of the federal system as “coercive federalism” (Kincaid 2008), founded on the federal government's usage of “categorical grants-in-aid” for political ends. “Block grants”, in turn, provide states with more leeway as their use is specified in solely general terms. The largest “block grants” are currently the “Temporary Assistance for Needy Families”, the “Child Care and Development Block Grant” and the “Community Development Block Grant” (Dilger and Boyd 2014).

Circumventing diversity

The third approach requires a prior acknowledgment that the depth of internal heterogeneity renders polity-wide agreement on a specific policy impossible and some degree of differentiation inevitable.

To circumvent diversity, sub-groups of CUs hence engage in more or less formalised procedures of horizontal IGR outside the central-level institutions and without an involvement of the federal order. Resulting intergovernmental agreements (IGAs) among regional groupings allow the realisation of economies of scale in interdependent fields of policy whilst maximising CUs' individual influence and allowing for flexible opt-ins. From shared-rule proponents' point of view, this strategy amounts to damage control. It is a softer form of differentiation that avoids constitutional opt-outs from polity-wide policies. A subsequent federalisation of regional IGAs remains an option.

In the EU, *circumventing diversity* works either through the formalised procedure of “enhanced cooperation” (Article 20 TEU) or through informal intergovernmental contracting outside the treaties. While the former has been used for regulatory purposes (e.g. the establishment of a unitary patent and the facilitation of transnational divorces) and can also alleviate capacity-building (EU public prosecutor's office), the latter is a longstanding tool of CSP integration without immediate treaty incorporation (e.g. Schengen, the European Stability Mechanism, the Fiscal Compact, the Single Resolution Mechanism and the Prüm Convention). In other multilevel polities, too, horizontal IGR has become increasingly widespread (Bolleyer 2009; Cameron and Simeon 2002; Parker 2015; Poirier and Saunders 2015; Watts 2008). Again, the Canadian case is instructive in this regard. Sub-groups of Canadian provinces have begun to conclude a wide variety of agreements, among others on trade. To this day, more than twenty interprovincial trade agreements have entered into force. Examples include the 2006 Trade, Investment and Labour Mobility Agreement (TILMA) between Alberta and British Columbia (BC); the 2010 New West Partnership (NWP) between Alberta, BC and Saskatchewan; and the 2009 Trade and Cooperation Agreement (TCA) between Québec and Ontario (Berdahl 2013, p. 285). In other federations, too, CUs conclude horizontal IGAs. The 26 Swiss cantons cooperate closely through the Conferences of Cantonal Directors. Hitherto, they have concluded more than 700 concordats of varying membership, largely in the fields of education, culture and language policy, but also in internal security (Bochsler 2009, p. 349; Bochsler and Sciarini 2006). The governors of the 50 US states also form regional groupings such as the Midwestern Governors Association, the Coalition of Northeastern Governors and the Western Governors Association. Their states have agreed on roughly 150 interstate compacts, mostly on environmental and education policy as well as on justice, border and crime control (Bolleyer 2009, pp. 124-126). In comparison to the Swiss cantons, the US states thus show more restraint in horizontal cooperation.

Accommodating diversity

This fourth category represents the most differentiated type of diversity governance. It builds on an explicit acknowledgment, as per usual enshrined in the constitution, of lasting difference between a distinct CU and the other members of a multi-level polity. It hence allows for a long-term, as per usual permanent, differentiation in the obligations of a given CU. As Agranoff (1999b, p. 12) argues, “[a]symmetry may arise in response to the need to preserve a particular union”, that is, to contain the “secession-potential” (Tarlton 1965, p. 870) of a distinct CU.

The EU is probably the most differentiated existing multilevel polity. Before Maastricht, integration had been largely uniform. The exception were the European Monetary System after 1979 and transitional arrangements for acceding member states. Around and after Maastricht then, the EU went about both widening and deepening the integration process. In this context, horizontal differentiation was “the facilitator – or the price – of dynamic growth in both vertical and horizontal integration” (Schimmelfennig *et al.* 2015, p. 769). As a consequence, since the mid-1990s, more than half of the policy fields in which the EU is active have witnessed some form of differentiation. A share of currently 43 per cent of EU treaty articles is differentiated in one way or another (Schimmelfennig and Winzen 2014, p. 358)., It is mostly yet not solely CSPs that are differentiated. Most DI indeed stems from the Schengen regime, the common currency and tax policy. However, also the four market freedoms and competition policy are subject to DI (Duttle *et al.* 2017). Differentiation in these fields is usually temporary and largely stems from the accession of new member states.

Permanent primary-law differentiation, allowing individual CUs to opt out of a given policy regime, is much rarer in federal states. The US has been described as “a canonical example of a symmetric federation” (Bednar 2008, p. 271), and similar arguments have been put forth with respect to Switzerland (Biaggini 2007). An exception to the rule is Canada. Already the constitution of 1867, the British North America (BNA) Act, went to great lengths to accommodate grievances among the four founding provinces (Ontario, Québec, Nova Scotia, New Brunswick), establishing asymmetrical arrangements between them (Watts 1999). With respect to Québec, for instance, the constitution stipulated that the province could maintain its civil law system and that its provincial property and civil rights could not be harmonised. In addition, Québec was given specific rights pertaining to the use of the French language and minority education. Upon its accession to the federation in 1870, the latter linguistic and educational rights were extended to the province of Manitoba as well. Transitional arrangements were routinely enshrined in the constitution when provinces joined the union. Until 1930, for instance, resource-rich Manitoba, Alberta (1905) and Saskatchewan (1905) were stripped off the power to control their public lands. Further differential treatments were applied upon the accession of British Columbia (1871), Prince Edward Island (1873) and Newfoundland (1949). Also at later instances, the Canadian federation harnessed means of constitutional asymmetry to cope with particularly Québec’s reservations vis-à-vis instances of centralisation. When, in the 1960s, the “quiet revolution” in Québec coincided with the federal government’s attempt to build a Canadian welfare state, the province was conceded an opt-out from the national pension plan in favour of its own regime (the ‘Québec Pension Plan’). In 1982, when the BNA Act was ‘patriated’ and supplemented by a Charter of Rights and Freedoms, Québec opposed the latter, refraining from acceding to the Charter and ratifying the Constitution Act (Benz 2016, p. 55). In 1991 then, the intergovernmental Canada-Québec Accord breathed life into the BNA Act’s denomination of migration policy as a concurrent competence. The agreement allows Québec significant discretion in steering inward migration from outside the union (Hooghe *et al.* 2016). In subsequent years, other provinces demanded equivalent leeway, prompting a broader decentralisation of migration policy.

Reducing diversity	Accommodating diversity
<ul style="list-style-type: none"> • <i>Canada</i>: Extensive vertical distribution through conditional federal grants to provinces • <i>EU</i>: Rigid harmonization alongside flexible framework legislation, soft law and experimentation; sizable regional redistribution • <i>Switzerland</i>: Flexibility and experimentation in cantonal implementation of federal legislation; sizable vertical redistribution scheme • <i>US</i>: Flexibility through setting of minimum standards and practice of waivers; “coercive federalism” by means of conditional federal grants, but also looser “block grants” 	<ul style="list-style-type: none"> • <i>Canada</i>: Opt-outs for Québec from common law, federal pension system and Charter of Rights and Freedoms, also special scheme in migration; transitional arrangements for acceding provinces • <i>EU</i>: Varying groups of member states opting out of Schengen border regime, Euro currency, justice and home affairs; transitional arrangements for accession countries • <i>Switzerland</i>: --- • <i>US</i>: ---
Controlling diversity	Circumventing diversity
<ul style="list-style-type: none"> • <i>Canada</i>: Non-representative Senate; increased efficacy of vertical IGR via sectoral committees; provincial majority for constitutional reform • <i>EU</i>: CUs directly represented in council governance; expansion of majority voting in most policies; unanimity for treaty revisions • <i>Switzerland</i>: Formalised vertical relations outside the second chamber; double majority of cantons and citizens necessary for constitutional reform • <i>US</i>: Ill-formalised vertical IGR due to directly-elected Senate’s dominance in territorial representation; majority of state legislatures required for constitutional reform 	<ul style="list-style-type: none"> • <i>Canada</i>: Increasing formalisation of horizontal IGR in CoF; interprovincial trade agreements • <i>EU</i>: Horizontal IGR as dominant operating principle of the EU; “enhanced cooperation”; particularly pronounced in CSPs • <i>Switzerland</i>: Formalised horizontal IGR; extensive use of concordats in education, culture, language • <i>US</i>: Weak formalisation of horizontal ties in national and regional governors’ associations; IGAs among states comparatively rare

Table 2: The occurrence of different types of diversity governance in different multilevel polities

To sum up, differentiation in federal states and in the EU generally occurs in a different fashion and in different fields of policy. In the EU, permanent or “constitutional” DI (*accommodating diversity*) arises mostly in CSPs. At the same time, the EU also relies on other means of diversity governance. Horizontal intergovernmentalism is ubiquitous in EU governance, and even in fields in which it seeks to *reduce* the diversity among its member states, it allows for a comparatively large degree of flexibility. Solely in the realm of its “supranational constitution” (Fabbrini 2015), i.e., under the auspices of the “Community method”, the EU is able to genuinely *control* the diversity of its CUs. In comparison, federal states rely more on procedural means of differentiation in their attempt to govern diversity. Horizontal IGR has become a widespread practice in multilevel polities as different

as Canada and Switzerland. These intergovernmental linkages serve as a breeding ground for an increasing reliance on regional cooperation. Ensuing IGAs put an emphasis on identity-sensitive fields of regulatory and distributive community-building through language, culture and education policy, but also police and justice cooperation. Generally, however, federations tend to avoid differentiation in the redistributive realm of resource-heavy CSPs, the notable exception being Canada. Why do federal states govern diversity differently than the EU?

Explaining the multilevel governance of diversity

The most elementary conjecture of the literature on DI in the EU goes as follows: If self-rule prone CUs voice a demand for differentiation which meets a supply of differentiation, differentiation is likely to occur (Leuffen *et al.* 2013, pp. 34-36). This much is self-explanatory. The interesting question is what the forces behind the demand for and the supply of differentiation are, and the variegated ways in which they meet to produce certain policy outcomes. In the following, I construct such a demand and supply model of diversity governance. I argue that while the demand for differentiation is determined by the depth of societal heterogeneity, its supply depends on the expected consequences of differentiation, the type of policy concerned, the availability of alternatives to horizontal differentiation and the ability of shared-rule proponents to push them through.

Demand side: Politicisation of heterogeneity

Demand for differentiation arises from deep heterogeneity within a multilevel system. As Tarlton (1965) puts it in his classic statement on the topic, “an asymmetrical federal government is one in which political institutions correspond to the real social ‘federalism’ beneath them.” In the view of “sociological federalism”, asymmetry is to achieve “congruence” (Livingston 1952) between a federation’s institutional make-up and the structural characteristics of its society, shaping the “federal balance” (Benz 2016; Sbragia 1993) between “self-rule and shared rule” (Elazar 1987) accordingly. The literatures on federalism and postfunctionalism demonstrate that individual CUs’ distinct “ethno-linguistic social structure” (Erk 2007, p. 4; see also Agranoff 1999, p. 17; Elazar 1987, p. 112; Rodden 2004, p. 493) acts as the main driver of demands for enhanced self-rule. Constituent units in which territorial and ethno-linguistic boundaries coincide (Stepan 1999, pp. 265-266; Lijphart 2002, p. 51) and in which exclusive identities are widespread among the population (Winzen 2016, p. 104) prefer self-rule in fields which they deem crucial for their communal self-determination. The ethno-linguistic distinctness of a constituent unit, however, provides a mere potential for differentiation, in need for political activation. Politicisation by discursive entrepreneurs and challenger parties can work as such an activation device (de Wilde and Zürn 2012; Hutter *et al.* 2016). In multilevel government, politicisation usually emphasises the ethno-linguistic distinctness of a given constituent unit and enlists exclusive identities in the fight against joint policies or membership in a union in general. In extreme cases, politicisation can encourage CUs to disregard interdependence-based functional arguments altogether and to seek secession from a polity. An example of such

politicisation is Québec where the “Quiet Revolution” of the 1960s rendered Québécois’ sense of belonging to the Canadian union increasingly precarious. The literature on DI in the EU additionally stresses the heterogeneity of economic interests and capacities as a driver (Holzinger and Schimmelfennig 2012, p. 299; Schimmelfennig and Winzen 2014, p. 360; Winzen 2016, pp. 101-102). Larger, more populous and richer constituent units are less dependent on others to engage in specialisation and realise economies of scale, holding a preference for the liberty of self-rule over the solidarity of shared rule. I expect economic factors to be secondary to identity considerations. If wealthier CUs’ citizens feel a genuine attachment to a union, redistributive solidarity should be less of a problem. If, however, an ethno-linguistically distinct CU is also wealthier than its peers, a union might be in trouble. An example of such a troublesome constellation is the Belgian region of Flanders.

Supply factor I: Expected consequences of differentiation

Ethno-linguistically distinct CUs regard differentiation as a sensible, democratic and efficient way of increasing their self-rule whilst preserving their membership in a given union (Kymlicka 1995; Kymlicka 2001). The proponents of shared rule, however, – usually central-level actors and other CUs which fear to be asymmetrically disadvantaged – expect permanent horizontal differentiation to pose a threat to (i) the problem-solving capacity, (ii) the democratic quality and (iii) the overall stability of a given multilevel system (for an overview of the various criticisms levelled against differentiation see Adler-Nissen 2014; Heinemann-Grüder 2007; Keating 1998; Lord 2015). As a consequence, shared-rule proponents hold an *a priori* preference against *accommodating diversity*. Instead, they seek to divert individual CUs’ desire for enhanced self-rule by climbing down the “ladder of differentiation” towards available softer types of diversity governance. As established above, below the level of *accommodating diversity*, said types include strategies of *circumventing diversity*, *reducing diversity* and *controlling diversity* (ordered by an increasing degree of shared rule).

- (i) Differentiation is seen as undermining the problem-solving capacity of multilevel systems by crowding out other techniques of overcoming collective action problems, such as majority-voting, logrolling or side payments (*controlling diversity*). Furthermore, opt-outs threaten the solidarity among CUs upon which multilevel systems thrive. If member states can credibly threaten to defect and enjoy a free ride in policies whose benefits are not excludable (Kölliker 2001, 2006), take tax harmonisation (Genschel 2002), cooperation is unlikely in the first place. A similar logic applies to redistributive policies which involve central-level capacity-building if net contributors can credibly threaten net beneficiaries with defection (see supply factor II below).
- (ii) Horizontal differentiation is argued to weaken the democratic legitimacy of a multilevel system. Asymmetry, in this view, aggravates accountability problems by hindering citizens from tracing the responsibilities of different jurisdictions. This produces uncertainty among citizens regarding their legal rights and the avenues of democratic expression at their disposal. Asymmetry also calls into question the representativeness of legislative bodies (Fossum 2015) which would theoretically have to be composed differently according to the territorial extension of any given

field of policy. In the EU case, for instance, one could argue that DI further complicates its already byzantine system of governance, undermines the legitimacy of the European Parliament, and exacerbates the problem of the Union's detachment from citizens.

(iii) Lastly, differentiation is argued to undercut the long-term stability of multilevel polities. Granting special rights to one CU invites emulation by others. In such cases, the demand for an asymmetrical opt-out on part of one CU can lead to an "opt-out cascade" (Hvidsten and Hovi 2015; Zuber 2011), causing the wholesale disintegration of a central-level policy, secession, or even the dissolution of a polity. In Canada, for instance, Québec's demands for asymmetrical accommodation have repeatedly prompted symmetrical decentralisation as other provinces rejected 'special treatment' for Québec and demanded equivalent concessions (Watts 1999).

Supply factor II: Policy type

In an application of public goods theory to DI in the EU, Kölliker (2001, 2006, 2010) argues that the nature of a policy, that is, the type of public good it produces, determines its susceptibility for differentiation.³ Building on this insight, I expect shared rule proponents to perceive differentiation as particularly problematic in fields which involve the build-up of redistributive capacities on the central level of a multilevel polity, even more so than in regulatory and distributive policies (Loui 1964, 1972). In the nomenclature of public goods theory, redistributive policies constitute "private goods" as their benefits are usually excludable while their consumption tends to be characterised by rivalry. In fields such as welfare, defence, borders or monetary policy, an allocation of extensive capacities (of monetary and/or administrative nature) is essential to enable and alleviate horizontal redistribution in order to quell challenges which affect individual CUs unequally. As the consumption of redistributive capacities is rival, a joint commitment to temporally unlimited solidarity among both contributing and receiving CUs is essential to allow for capacity-building in the first place. If wealthy and capable CUs can credibly threaten or actually obtain opt-outs from a redistributive policy either *ex ante* or once their solidarity is required, or if CUs requesting solidarity can be credibly threatened with expulsion, a political system's ability to solve difficult collective action problems via horizontal redistribution is greatly reduced (Bartolini 2005). "Where solidarity is the very essence of a policy, as in redistributive policies, differentiation would make the whole policy pointless. Redistributive policies tend therefore to be established within non-differentiated arrangements – or not at all." (Kölliker 2010, p. 51) I conclude from this that the proponents of shared rule should hold a particularly strong preference against differentiation in redistributive policies.

³ In his work, Kölliker focuses mostly on whether the benefits derived from the production of a good are excludable from others or not, and whether their consumption is rival or complimentary. Kölliker convincingly argues that differentiation is most likely for excludable goods whose consumption is complimentary ("network goods").

Supply factor III: Ability of shared-rule actors to push for alternatives

It is beyond the scope of this article to construct a comprehensive model of the bargaining game between CUs desiring self-rule and the proponents of shared rule. A variety of societal, institutional, ideational and relational factors play a role in such processes (Benz and Broschek 2013b, p. 8) that cannot be sufficiently taken into account here. However, I expect two factors to be decisive in answering the question whether shared-rule minded actors can realise their preference for softer forms of diversity governance. First, the bargaining power of CUs desiring enhanced self-rule depends on the credibility of their “secession-potential” (Tarlton 1965). If a given CU is able to convince shared-rule proponents that this most extreme form of differentiation (Jachtenfuchs and Kasack 2017) is a feasible option, it can expect to be heard. If, in addition, a CU’s potential secession acts as an effective deterrent to the other members of a union, for instance because the CU in question is comparatively large, wealthy or capable, shared-rule actors will seriously consider *accommodation*. Second, the outcome of the bargaining game depends on shared-rule proponents’ capacity to *control* institutional and constitutional reform. In given fields of policy, if vertical IGR are highly formalised and hence provide an environment conducive to the solution of collective action problems (Bolleyer 2006, 2009), or if central-level institutions dominate institutional and constitutional reform, the latter will try and accommodate demands for enhanced self-rule by drawing on strategies of *reducing diversity* via regulatory flexibility and vertical distribution. If, in turn, vertical IGR are weak or central-level actors dependent on CUs for institutional or constitutional reform, individual opt-outs are likely. The latter result either in wholesale policy failure, or in permanent asymmetry by *accommodation*. *Circumventing diversity* via horizontal IGR and agreements among regional groupings of CUs is likely to occur in realms of subcentral competence, that is, low central-level control.

Diversity governance in four multilevel polities

In the following section, I will illustrate these theoretically-deduced conjectures by brief empirical vignettes of the “diverse cases” (Gerring 2007, p. 89) of Canada, the EU, the US and Switzerland. These four multilevel polities vary with respect to the depth of societal heterogeneity (demand) and the strength of central actors (supply). Canada and the EU are characterized by deep heterogeneity and weak central institutions (extremely weak even in the EU case); the opposite constellation applies to the US case; Switzerland is marked by a medium level of heterogeneity while its central institutions are relatively weak⁴. The experience of these four multilevel polities with differentiation broadly supports my argument. Across federal states, the depth of heterogeneity and the strength of central actors vary, as does consequently their recourse to different strategies of diversity governance.

⁴ To cover the full range of variance on the independent variable, it would be necessary to also include a multilevel polity which combines high heterogeneity with strong central institutions. The Indian federal system, which demonstrates few asymmetries despite extreme societal heterogeneity (Tillin 2007), could provide such a case for future analyses.

United States

In the US federation, heterogeneity across CUs is relatively low. There are currently no states in which territorial and ethno-linguistic boundaries coincide and in which a considerable part of the population holds exclusive identities that are irreconcilable with a dominant attachment to the union. It is hence unsurprising that no significant secession movements have erupted since the end of the Civil War, decreasing the necessity of permanent asymmetric *accommodation*. In economic terms, there are nonetheless significant differences between states. According to data for 2018 assembled by the Bureau of Economic Analysis, GDP per capita in the wealthiest state (New York) is 2.3 times as high as in the poorest state (Mississippi). One can assume that these economic differences translate into sizable differences in state capacity which, in turn, should spur calls for asymmetrical distribution of federal funds and flexibility in the implementation of federal policies.

The US federal system is comparatively centralised. CSPs such as defence, border (as a corollary of immigration), monetary and tax policy all rank among the competencies reserved to the federal order. Even the establishment of redistributive welfare schemes such as Medicaid and Medicare in the 1960s was covered by the constitution's ambit of federal power. Constituent unit executives play a subordinate role in central-level institutional and constitutional reform. The directly-elected Senate holds a de facto monopoly on the legitimate representation of territorial interests and works along party lines. Vertical IGR have only developed in the shadow of supreme congressional *control* and largely serve the purpose of attracting and allocating federal monies ('coercive cooperation', according to Sbragia [2006], p. 31) instead of collaborative power-sharing and joint policy-making. As a consequence, states rely on lobbying efforts outside the constitutionally-erected institutional order in their attempts to influence the central government (Sbragia 2008, p. 32). These vertical relations are characterised by a low degree of formalisation. In practice, the federal government is able to fend off the lobbying efforts of states that demand more self-rule by means of *reducing diversity*, that is, through a combined recourse to its fiscal reserves, the setting of minimum standards in certain fields, and waivers for policy implementation. Ultimately, dominant practices of *controlling* and *reducing diversity* have set the US federal system on a long-term path towards enhanced uniformity. Interestingly, presumably due to their fiscal dependence on the federal order, it is rare for states to try and *circumvent diversity* by cooperating horizontally. Accordingly, the level of formalisation of often highly politicised regional associations of governors and state legislatures has remained low.

Switzerland

Switzerland's society is highly diverse. Four languages are spoken to varying degrees throughout the federation, with Swiss German spoken by the majority (roughly 75 percent), trailed by the French-speaking (20 percent), Italian-speaking (4 percent) and Romansh-speaking minorities (1 percent). At the same time, heterogeneity in the understanding put forth here is moderate. The ethno-linguistic and religious cleavages permeating the country do not coincide with cantonal politico-administrative borders (Erk 2008). Accordingly, since the *Sonderbund* war of 1847, the secession-potential among

cantons has been generally low (except for Jura's 1979 secession from Berne). Nonetheless, chiefly through the expansion of monolingual mass media, citizens' attachment to their respective language community became more pronounced in the course of the 20th century, increasingly providing the main basis of individual identities (Kriesi 1999). In addition, differences in economic – and hence also administrative – capacities between the cantons are pronounced. According to data by the Federal Statistics Office for 2016, GDP per capita in Basel-Stadt was 3.3 times higher than in Uri.

The Swiss federation is comparatively decentralised. Only in defence and international relations, the federal level exclusively regulates both policy formulation and implementation, capable of fully *controlling* federal diversity. The cantons, in turn, dominate in the decentralised fields of justice and police, education and health (Kriesi and Trechsel 2008, p. 41). Due to sizable differences in administrative capacities, the federal government aims to *reduce diversity* by engaging in vertical subsidisation and by customarily allowing flexibility and experimentation in the implementation of federal law. At the same time, the cantonal level has increasingly come to regard the directly-elected second chamber, the Council of States, as a deficient device of territorial representation (Bolleyer 2009). As a consequence, they intensified their horizontal cooperation via the sectoral Conferences of Cantonal Directors and the generalist Conference of Cantonal Executives. Due to functional linkages, differences in capacity and the rising importance of the language communities, *circumventing diversity* via horizontal conferences became an important vehicle of regional cooperation. In this context, the legal instrument of intercantonal concordats has witnessed a steep ascent. Despite its markedly regionalized make-up and the requirement of a double majority of citizens and cantons for constitutional amendments, the Swiss federation has witnessed a creeping centralization of competencies in fields such as infrastructure, environmental policy, consumer or data protection. In these centralization processes, shared-rule proponents were capable of avoiding the *accommodation* of cantonal diversity through horizontal opt-outs. In many fields, this however came at the price of cumbersome integration processes drawn out over extended periods of time – and relatively low degrees of eventual centralization. One example is the establishment of the federation-wide redistributive welfare state whose formation, due to repeated challenges in national referendums, extended over decades and which remains highly devolved even nowadays.

Canada

The Canadian federation is characterised by a high degree of diversity. In the course of the 20th century, the ethno-linguistic differences between the English-speaking majority (roughly 60 percent of the populace) and the French-speaking (roughly 20 percent) as well as indigenous minorities (the “first nations”, roughly 4 percent) became increasingly politicized. Particularly in the case of French-speaking Québec, where ethno-linguistic and territorial boundaries (largely) coincide, this translated into a realistic path towards sovereign nationhood outside the Canadian union. In 1980 and 1995, referendums on independence were held which both resulted in defeat for the sovereigntists – in 1995 by only a razor-thin majority of 50.58 percent. Even so, the distinctness of Québec remains a

constant bone of contention in the Canadian federation, not the least through the establishment of (more or less) sovereigntist regional parties such as the *Union Nationale* from the 1930s to the 1960s, the *Parti Québécois* since the late 1960s and the *Coalition Avenir Québec* since the 2010s. While the economic heterogeneity among Canadian provinces is less pronounced than in other federal systems, with Alberta's GDP per capita 1.8 times as high as Prince Edward Island's, there are vast differences in population size and density among provinces and territories, and hence differing capacity levels.

Despite the centralising intentions of the BNA Act's drafters, Canada is now usually described as a "highly decentralized" (Hinarejos 2012, p. 544) multilevel system. Although section 91 of the constitution equips the federal order with exclusive powers in 28 fields such as taxation, defence, foreign and trade policy, its empowering effect is counteracted by section 92 that enumerates exclusive provincial powers. 16 matters are exclusively ascribed to the provinces, among them health, social welfare, education and the control of lands and natural resources. Against this backdrop, the federal level has struggled with *controlling diversity* in fields shared with the provinces or outside Parliament's jurisdiction. It hence engages systematically in vertical IGR, both through generalist (and highly politicised) FMCs and sectoral (and more functional) ministerial councils (Cameron and Simeon 2002). Because of Canada's dual federal system, *reducing diversity* mainly works through federal grants which proved particularly instrumental in the creation of a redistributive welfare system since the mid-1950s. "Cooperative federalism" (Smiley 1971, p. 332) in the field relied largely on the issuing of conditional grants in exchange for the provinces implementing nation-wide social security programs (Hueglin and Fenna 2015, p. 251). In fields falling under their jurisdiction, the provinces also established a formalised system of horizontal IGR via the CoF and regional equivalents. The latter facilitate *circumventing diversity* in cases in which polity-wide consensus is unattainable, for instance through regional trade agreements. The main peculiarity of Canada vis-à-vis the federal states analysed here is, however, its practice of *accommodating diversity* by means of permanent horizontal differentiation. To be sure, differentiation has always provided a measure of last resort. When and where possible, shared-rule actors avoided asymmetry. Either, they preferred delaying the centralisation of a given policy to wait for a permissive preference constellation allowing to integrate Québec. One example is Prime Minister Mackenzie King's decision to delay the introduction of a federal unemployment benefit scheme until 1940, when Québec was no longer ruled by the *Union Nationale* (Hooghe *et al.* 2016, p. 128). Or, the residual provinces rejected special treatment for Québec and pushed for a wholesale decentralization of policies instead of asymmetrical accommodation. Québec's heightened competencies in controlling inward migration, for instance, have now been extended to most other provinces, too. Similarly, after the failed independence referendum in 1995, all provinces were granted a symmetrical decentralisation of labour market training (Watts 1999). Where opt-outs proved eventually unavoidable, they largely affected regulatory and distributive policies (language and education; the constitutional and legal system) or symbolic gestures such as Parliament's 2006 recognition of Québec as a "nation" within Canada. In the federal pension system, however, asymmetry also extends to an instrument of horizontal redistribution. Nevertheless, since their 1960s inception, the pension plans for Québec and Canada

have become ever more alike. Contributions and benefits are now largely identical; sharing agreements enable beneficiaries to combine both plans; and pensions from both plans can be drawn anywhere in Canada (Béland and Kent Weaver 2019).

European Union

In the EU, deep heterogeneity is ubiquitous. The Union is a “coming-together” (Stepan 1999) polity consisting of currently 28 (restrictedly) sovereign nation states in which a panoply of languages is spoken and a variety of creeds is practised. Economic differences between EU member states are extreme. In 2004 and 2007, two rounds of Eastern enlargement further exacerbated the Union’s internal diversity. According to IMF data for 2017, GDP per capita in Luxembourg is 13.1 times higher than in Bulgaria. While these economic differences have traditionally left a mark on the politics of European integration, the rise of Eurosceptic challenger parties and right-wing populism since the Treaty of Maastricht indicates that ethno-linguistic dividing lines have re-emerged as a source of fervent politicization (Hooghe and Marks 2009). Not least the United Kingdom’s departure demonstrates the brittle legitimacy base of supranational shared rule in the EU, and the significance of the secession-potential among self-rule minded CUs.

In comparison with decentralised federations such as Canada and Switzerland, the supranational political institutions of the EU are relatively weak. In the realm of the “Community method”, mainly in internal and external market policies, the EU constitutes a “regulatory state” (Majone 1994). In these fields, the Union is capable of effectively *controlling* the *diversity* among its member states. In doing so, the EU acknowledges the need to *reduce diversity* through various instruments such as framework legislation, soft law and experimental governance, and by cushioning the adverse effects of an open market through agricultural subsidies and regional redistribution. At the same time, in fields judged sensitive in terms of member state sovereignty, among them foreign and security policy, welfare and employment as well as fiscal and tax policy, a dominant intergovernmental decision-making logic constrains the influence of supranational actors. In such fields, the EU has repeatedly been unable to thwart different degrees of horizontal differentiation. To this end, it has developed two primary means. First, it allows groups of CUs to *circumvent diversity*, either through “enhanced cooperation” or informal intergovernmental contracting outside EU institutions. Second, the relative weakness of supranational actors is most pronounced when a reform of the EU’s “material constitution” (Fabbrini 2015, pp. 66-69), i.e. its treaties, is concerned. In treaty reforms, the member states remain the originators of the treaties, disposing of an individual veto. In the various treaty reforms since Maastricht, the EU was repeatedly confronted with member states preferring self-rule over shared rule and a politicisation of European integration via national referendums. As a reaction, it sought to *accommodate diversity* by allowing member states to receive permanent opt-outs from or opt-ins into broad policy areas. These measures affect almost exclusively the realm of CSPs, with the Schengen free-travel area, the area of freedom, security, and justice, the common currency, and security and defence policy comprising differing groups of member (and even non-member) states.

Findings and conclusion

I began this analysis claiming that the governance of diversity constitutes the very *raison d'être* of multilevel systems of government. In reference to the literatures on differentiation in the EU and asymmetry in federations, I argued that diversity governance can take four forms, ranging from an optimization of communal shared rule to a maximum of individual self-rule: *Controlling diversity* employs procedural means to forge uniformity in a multilevel polity; *reducing diversity* relies on policies that encourage convergence among CUs; *circumventing diversity* sees sub-groups of CUs engage in procedures of horizontal collaboration outside and without participation of central-level institutions; lastly, *accommodating diversity* describes a differentiation in the constitutional and legal obligations of a self-rule minded CU. Which of these types of diversity governance a given multilevel polity engages in, and whether the extreme form of *accommodating diversity* has to be relied upon, I expected to depend on the demand for and the supply of self-rule. Demand I saw as determined by the depth and politicisation of ethno-linguistic and, as a secondary factor, economic heterogeneity across CUs. Supply depends on the expected consequences of differentiation, the type of policy concerned, and the ability of shared-rule proponents to push for softer alternatives to differentiation.

In a tentative analysis of the diverse cases of Canada, the EU, Switzerland and the US, I subsequently traced the effects of the presence or absence of said demand and supply factors on four multilevel polities' patterns of diversity governance. In comparison, four preliminary findings stand out.

First, when confronted with a CU desiring enhanced self-rule, central-level actors and residual CUs generally hold a preference for uniformity over asymmetry. Their expectation that differentiation undermines the problem-solving capacity, democratic legitimacy and overall stability of a polity leads them to avoid horizontal accommodation. In cases in which a policy is already integrated, moreover, central-level actors fear to lose their authoritative grip on the system. In all four analysed polities, shared-rule proponents regard the granting of individual opt-outs as a measure of last resort in the face of latent secession-potential. Where differentiation is avoidable, they hold a preference for climbing down the ladder of differentiation and seeking alternative, softer types of diversity governance. Even in the EU, the most differentiated multilevel polity analysed here, DI has not become the default rather than a repeatedly harnessed fall-back option of integrationist actors (for two notable exceptions see Macron 2017; Schäuble and Lamers 1994).

Second and unsurprisingly, ethno-linguistically homogeneous multilevel polities with strong central institutions engage in softer forms of diversity governance and less horizontal differentiation. In the US federation, for instance, cross-CU heterogeneity is low while the federal system is centralised. In practice, the federal government is thus able to fend off demands for more self-rule by means of *controlling* and *reducing diversity*, that is, by authoritative decision-making and a combined recourse to central-level fiscal reserves, the setting of minimum standards in certain fields, and waivers for policy implementation. Ultimately, its effective avoidance of *circumventing* and *accommodating diversity* has set the US federal system on a long-term path towards enhanced uniformity. In the EU, in contrast, extreme heterogeneity and weak supranational institutions increase the likelihood of DI.

Third, even heterogeneous federal systems are able to avoid asymmetries if they can contain a politicization of sub-federal distinctness and formalise means of *controlling* and *circumventing diversity*. The Swiss federal system, for instance, is able to effectively cushion cantonal demands for self-rule through a system of formalised vertical and horizontal IGR. In Canada, the precariousness of Québec's relationship to the union rendered asymmetrical accommodation a pressing demand at various instances. Nonetheless, shared-rule proponents employed asymmetry only as a measure of last resort, holding a preference for delaying centralisation or symmetrical decentralisation. In this view, the ubiquity of DI in the EU can be seen as a symptom of the unwillingness, or inability, of shared-rule proponents to delay integration or to consider the option of decentralising given policies.

Fourth, federal states tend to engage in differentiation in identity-sensitive regulatory and distributive fields such as language, education and culture policy. In turn, they are particularly mindful to avoid or contain differentiation in policies with horizontally redistributive implications such as welfare, monetary and fiscal policy, but also in migration and defence. These fields require central-level capacity-building to realise redistributive solidarity among CUs. Solidarity, however, is fundamentally undermined by the very possibility of differentiation. In federal states, redistributive CSPs are thus either assigned uniformly to the federal level by the federal constitution, or they are only centralised once all CUs consent. The protracted establishment of the – still highly devolved – Swiss welfare state provides a case in point. In Canada, some differentiation in the establishment of the national pensions system and in the control of inward migration could not be avoided. The adverse effects of asymmetry, however, were contained through long-term regulatory realignment and symmetric decentralisation. For the EU, this means that, once delaying or cancelling the integration of CSPs was ruled out, climbing down the ladder of differentiation was no longer an option as softer instruments of diversity governance were already exhausted. In fact, despite differentiation's ability to overcome the joint-decision trap, the EU was solely capable of entering into the symbolically important realm of CSPs by masking them as regulatory issues (Börzel and Risse 2018) and keeping the build-up of redistributive capacities at a bare minimum (Genschel and Jachtenfuchs 2016). After the Euro and Schengen crises exposed the instability of this regulatory mode of CSP integration, the EU now has to live with the consequences of differentiation in redistributive fields. In doing so, it faces a fundamental dilemma. If it decides to pursue little to no additional capacity-building, it is left with various regulatory half-way houses poised for difficulties in weathering the storms of future crises. If, however, it differentiates further in order to establish redistributive capacities in CSPs, it undermines its own ability to share risks (see Schelkle 2017) and to solve collective action problems through softer, uniformity-minded forms of diversity governance.

Ultimately, this paper poses the question of how much shared rule is possible and how much self-rule necessary in a polity as heterogeneous as the EU. This question is particularly virulent in the solidarity-sensitive realm of redistributive CSPs. In his classic piece on the pitfalls of asymmetry in federal systems, Tarlton (1965, p. 873, emphasis added) argues in favour of countering pronounced societal heterogeneity with a more uniform federal system: "When diversity predominates, the 'secession-potential' of the system is high and unity would require *controls* to overcome disruptive,

centrifugal tendencies and forces.” If he were right, and if the EU was to remain actively involved in CSPs, this would speak in favour of overcoming the Union’s currently fuzzy sectoral boundaries and increasing its institutions’ ability to *control* and *reduce* diversity in these fields. Boundary-formation (Bartolini 2005; Rokkan *et al.* 1999) would allow for the building of supranational capacities to stem future asymmetrical shocks. It works on either the sectoral policy or the systemic polity level. The latter is, of course, preferable as it would increase the problem-solving capacity of the EU’s system through alternative forms of diversity governance (e.g. through cross-sectoral logrolling), its democratic quality and presumably its overall stability. However, even the consolidation of policy-level boundaries should be more effective than fluid membership. The case of Greece in the Euro and Schengen crises is instructive. It suggests that the costs of solidarity within a sectoral community can be outweighed by the risks of expulsion. As a consequence, sectoral boundaries of differentiation could become more solid over time, allowing for a limited degree of capacity-building in the long run while partitioning the EU into a variety of policy-specific communities of solidarity.

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