



# Constitutional state structure and scalar re-organization of natural resource governance: The transformation of polycentric water governance in Spain, Portugal and Germany



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## ABSTRACT

The scalar organization of water governance in Europe has recently been significantly transformed, triggered among other things by the European Water Framework Directive (WFD). This paper argues that the constitutional rules that set-up how decisions on changes in formal responsibilities for natural resource governance are taken are key for such processes, because they tend to formally determine the necessary conditions for the winning coalition. Further, such decisions need to be understood against the background of a set of contextual changes. Thus, a comparative case is presented, examining developments in (a) a symmetric federal state (Germany), (b) an asymmetric federal state (Spain), and (c) a unitary state (Portugal). Based on extensive qualitative fieldwork in these countries, I conclude that changes in the interrelated values of the resources and technologies of production and exclusion of water users there have shaped preferred outcomes of specific actors along with their mental models, complemented by changes in interrelated institutions and ideologies. However, these contextual changes are, I argue, neither necessary nor sufficient for scalar reorganization. Rather, the prevailing vision of water governance is that of those actors who control winning coalitions in constitutionally determined negotiations over formal water governance. Additionally, in unitary states, scalar organization of natural resource governance seems to be more easily restructured.

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## Introduction

Much research on water management in Europe addresses the way the European Union's Water Framework Directive (WFD) influences water management at the national, regional and local levels. Among other things, the directive suggests what might be the right scale at which to organize water governance (Commission of the European Community (CEC), 2000, 2007). Given its advocacy of river basin management, its requirement to undertake river basin planning, and other substantive requirements, the directive could be considered the principal driver of recent changes in the scalar organization of governance in the European Union.<sup>1</sup> However, as a variety of recent studies have found, the picture is much more

complex (Moss, 2012). Consequently, we can find a number of authors who have explored this complexity by, for example, linking discussions on the organization of its transposition to polycentric governance set-ups (McGinnis, 1999; Kerr, 2007; Mollinga et al., 2007; Lankford, 2010). The present paper seeks to explain the complexity of the dynamics leading to scalar reorganization of water governance. As a result of the way cases studied were selected it specifically investigates the role of constitutional rules (Ostrom, 1998, p. 75) in these processes.

Questions of scalar organization of natural resource governance have already been well studied in the area of water governance (cf. Swyngedouw, 1999; Moss, 2004; Blomquist, 2005; Lebel, 2006; Norman and Bakker, 2012). Debates on scale first emerged in critical geography, highlighting that the scale of governance was not ontologically given but socially constructed (Marston, 2000). This position was later adopted across all disciplines addressing scale of governance. Some authors explain the changes taking place regarding scale in terms of the politics of scale, referring to the outstanding role of state agency (Swyngedouw, 1997; Brenner, 2004; Acheson, 2006) in boundary re-drawing, re-shuffling of responsibilities and associated changes in accountability

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<sup>1</sup> In this text, I use scalar reorganization and rescaling synonymously in order to stress that the process has an organizationally and functionally as well as a politically related dimension which is usually being referred to when using the concept of "re-scaling".

mechanisms and overall governance regimes (Blomquist, 2005). A similar set of studies emphasize national contingent dynamics and path dependencies in the political and institutional domains (Börzel and Risse, 2003; Liefferink et al., 2011). In contrast, Hooghe and Marks (2003) foreground a functionalist perspective embedded within the path dependence of decisions and identity-related aspects of institutional change, offering an explanatory distinction about the emergence of type I (multi-purpose) and type II (purpose-specific) governance.<sup>2</sup> Further, path dependence as a result of costs of institutional change is seen as an explanation for emerging structures as well as decisional barriers and territorial identity, specifically in changing Type I governance. Huffmann (2009, p. 122) emphasises that an “explanation for the changing emphasis on river basins as an organizing concept for water governance are changing demands on the water resource and new technologies”. Similarly, Young discusses institutional configurations from a normative perspective as regards “fit” between social-ecological problem characteristics and the way(s) they are institutionally addressed (cf. Young, 2002). Thus, for Huffmann and for Young, the best suitable scale to govern natural resource comes closest to being ontologically given by the spatial characteristics of the management problems they address. In contrast, other authors emphasize the role of social learning and culture in transitions towards new management regimes (Pahl-Wostl et al., 2008, p. 493).

Based on five US case studies, Schlager and Blomquist (2008) conclude with a description of the kinds of dynamics that blend in shaping the organization of water governance – one that approximates the conclusions I reach here. While they view taking the politics of in – and exclusion into decision making processes on organization of formal governance as key, they also write that “[i]n each case institutional arrangements have been created and modified by people over time in response to changed awareness and understanding of problems, changes in the set of tools available for addressing them, and changing public attitudes and preferences” (Schlager and Blomquist, 2008, p. 187). This important similarity notwithstanding, the paper differs from Schlager and Blomquist’s perspective while supplementing it in two ways by: (a) specifically focusing on the coordination, and by implication on the provision function of governance (Ostrom et al., 1961; cf. Thiel, 2014) and (b) adding to the American federal state perspective that they explore by describing three cases set within the European context of water regulations that are now being implemented in the context of varying constitutional conditions.

In the following, the influence of constitutional rules structuring state decision making on scalar organization is addressed in the context of broader socio-economic changes and their implications for the appreciation of use patterns of water. These aspects are examined in three different contexts: the Southern Spanish Guadalquivir river, the German part of the Elbe river, and water management in Portugal. Because all cases are situated within the European Union, the paper similarly addresses the question of how different state structures and contextual domestic dynamics in member states respond to European policy prescriptions, in this case the WFD. With regard to the latter, some studies emphasize

nationally contingent dynamics and path dependencies in political and institutional domains (Börzel and Risse, 2003; Liefferink et al., 2011). Falkner et al. (2007), for example, categorize national policy styles in relation to the implementation of European legislation and theorize about their causal efficacy in shaping implementation.

The next section will provide further background regarding my understanding of scale and scalar reorganization and my theoretical starting point. Subsequently, research design, methods, and the three mentioned cases will be described, followed by a discussion of them and overall conclusions.

## Background

Here I understand the scale of natural resource governance as defining (a) the spatial extent of the area to which a specific institutional and actor configuration applies, (b) the administrative level with which its resource management is associated, and (c) its horizontal and vertical interrelation to other governance structures (cf. Howitt, 2003). Complementing the approaches sketched in the introduction, I argue that explanations of scalar reorganization of natural resource governance need to acknowledge changes in characteristics of social problems they address (functionalist perspective) as well as the politics involved. It does not consider scalar change of resource governance to be about either politics and political economy or (learning about) addressing natural resource governance in a cost-effective, functionalist way. Rather, it is about whose economic interests are able to control the processes by which rescaling is advocated and carried out and whose technically, economically, or politically oriented vision of water management prevails at a specific moment in time. The study presented shows that an important determinant of who controls these processes are constitutional rules in different countries.

An understanding of the role of constitutional rules and characteristics of social problems in shaping the ways (natural resource) governance and its scalar organization develop can be derived from the writings on polycentricity by Ostrom and Ostrom (1999a,b). In a schematic manner, Ostrom and colleagues have distinguished two types of constitutionally defined governance set-ups: monocentric governance, on the one hand, and polycentric governance, on the other. Monocentric governance concentrates powers of decision making within one central entity. According to Ostrom et al. (1961, p. 831): “Polycentric connotes many centres of decision-making which are formally independent of each other. [...] To the extent that they take each other into account in competitive relationships, [they...] enter into various contractual and cooperative undertakings or have recourse to central mechanisms to resolve conflicts”. Empirically, types that approximate these schematic forms of monocentric and polycentric governance have been referred to as unitary and federal states, respectively. Unitary states are governed by one single unit in which the central government is supreme and any administrative divisions (subnational units) exercise only powers that their central government chooses to delegate. A federal state is a political entity that is characterized by a union of partially self-governing states or regions under a central (federal) government. The self-governing status of the component states, as well as the division of power between them and the central government, are typically laid down in constitutional rules cf. Bednar (2009).

In the present paper I look at the constitutional rules that regulate decision making on formal governance, specifically examining the implications that the constitutedness of state decision making has for decision-making processes on formal governance and the transformation of its scalar organization. In particular, we compare the ways in which recent changes in the formal set up of water governance has developed in three member states of the European

<sup>2</sup> Hooghe and Marks (2003) describe multi-purpose jurisdictions in, for instance, federalism, as “power sharing among a limited number of governments operating at just a few levels”. In contrast, jurisdictions in what they call Type II governance are task-specific, territorially overlapping, and numerous. Many jurisdictional levels exist, and the overall system is flexible. Specifically, Type II governance appears in the niches, or at the edges, of Type I governance (the public/private frontier, the national/international frontier, densely populated frontier regions of bordering states). For them, co-existence of these two types is an efficient response to problems of inter-jurisdictional coordination. Type I governance limits costs of coordination, whereas Type II governance limits spillovers between jurisdictions by compartmentalizing.

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