



# Handbook on Multi-level Governance

Edited by **Henrik Enderlein,**  
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## 26 Social policy and multi-level governance

*Alexander Graser and Stein Kuhnle*

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'Social policy' and 'multi-level governance' – there is some unease in combining these two concepts, although the multi-level provision of social policy has for long been a reality. But as a traditionally – and maybe genuinely – local matter, social policy might still not lend itself as easily to centralization, transnationalization or even globalization as might be the case for other policy fields. In the following, we will first circumscribe what is commonly understood as 'social policy.' In a second step, we will sketch and critically discuss the dominant paradigm regarding the role of social policy in multi-level systems. In our last section, we will turn to some real cases in order to identify trends and to illustrate the variety of multi-level arrangements in social policy.

### 26.1 SOCIAL POLICY – AN AMORPHOUS CONCEPT

Social policy is difficult to define. What is 'social'? The definition can be based upon the concerned areas of public policy, the aims of the respective policies or the instruments chosen.

#### 26.1.1 Areas of Public Policy

The easiest way to start is to define social policy by the areas of public policy normally subsumed under the title of 'social policy' in academic studies of social policies, schools of social policy – the first dating back to the Department of Social Science and Administration at the London School of Economics and Political Science in 1912 – or textbooks on the subject.<sup>1</sup> If we do, we will find that income maintenance schemes (or social insurance against certain risks), social services (for example, care for elderly, children) and health services are core fields. To a large, but varying extent employment services and regulations, housing (for example, direct housing allowances or indirect subsidies through tax policies; public housing) and education are covered under the umbrella term 'social policy.' All of these fields obviously have explicit social aims, and are, in modern, developed nation-states, greatly interlinked.

A broad definition makes more sense than a narrow one – policies in any of the fields mentioned cover various dimensions of social well-being, security, opportunity and equality. In fact, it is hard to think of any public policy that in one way or other does not have a social dimension. All policies concerned with the distribution of resources and opportunities are essentially 'social.' Defense policy, industrial policy, regional policy, environmental policy, trade policy, macro and micro economic policies in general, all in various ways affect social conditions and well-being and contribute to the distribution of public and individual welfare. Theoretically and empirically speaking, policies not



subsumed under 'social policy' may even offer a greater contribution to welfare than social policies *sensu stricto*.

### 26.1.2 Aims

For pragmatic reasons, however, we shall in this context understand 'social policy' to be more directly concerned with aims to alleviate poverty, provide basic income security, protect against social risks such as occupational injuries and diseases, sickness, unemployment and old age, and aims to promote equality of opportunity and outcome.

Aims can of course be specified in different ways, and history and contemporary observations provide ample examples of variations between nation-states and governments across time and space. Not only can similar aims be pursued by different policies and policy instruments, apparently identical aims can also be formulated on the basis of different motives, for example, humanitarian and altruistic motives, motives of social integration and harmony, motives of investment in human capital, motives of social order and control or motives of buying off social protest. Some see social policy as a 'contradiction of capitalism,' and the term 'welfare capitalism' is not generally understood as a concept with positive connotations. Both at a high level of theoretical abstraction and at the level of parliamentary practical politics, social policy has been regarded both as a means to save capitalism and to undermine it. Views on the role and contents of social policy within and across European political parties have changed over time ever since national social insurance legislation was set on a firm discursive footing through Bismarck's policies of the 1880s, marking, as some see it, the birth of the modern welfare state, although not conceived or conceptualized as such at the time.

### 26.1.3 Instruments

The aims, however operationalized across time and space, have been and are pursued by different policies and instruments. Policies and instruments chosen can be based on specific values and interests; on specific contextual constellations of social, economic and political forces and institutional frameworks, as well as on theoretical assumptions and/or empirical knowledge or perceptions about how policies and instruments are supposed to work or actually work. Various combinations of these factors can be conducive to opting for one or the other instrument. Instruments first chosen can be quite decisive for possible future paths of institutional or policy development. A policy or instrument, which at a later stage can be looked upon as politically desirable, can in practice meet insurmountable political or legal obstacles given early political choices. Effects can be intended or non-intended, and nations and governments learn from own experience or the experiences of other nations. Policy learning takes place within and across nations. Social policy ideas have always crossed politically constructed borders. 'Social policy' is a field where a number of scientific disciplines are at work and have, or demand to have, a say: law, economics, sociology, philosophy, political science, history, psychology and medicine. The strength of disciplines varies across time and space, producing different 'knowledge input' to social policy-making in varying social, cultural and political contexts. For all of these reasons social policies vary across nations. An academic industry of creating typologies of welfare states or 'welfare regimes' based on certain institutional



characteristics has grown. One way to distinguish different welfare regimes is to claim that they rely on different composite 'packages' of policy instruments.

Social policies can involve the transfer of cash or provision of benefits- or services-in-kind; social policies can be universal or 'targeted,' that is, cover all citizens or residents of a nation-state, or cover everybody within a social category (for example, all people below or above a certain age, all families with children, all gainfully employed) or be restricted to beneficiaries based on a means-, income- or other kind of test of eligibility. Social security can be more or less tax-financed and/or more or less based on contributions by employees and employers. Cash benefits, for example, sickness and unemployment benefits and pensions, can be more or less 'equal' or more or less linked to what is paid in; health services, medicine and personal social services can be 'free' at the point of access and provision or more or less based on co-payment. Governments use tax policies in different ways to give incentives to promote individual or family welfare, for example, tax subsidies for individuals or companies investing in health or pension insurance, or for individuals investing in the construction or refurbishment of their own house. Social policies can cover labor market relations that in various ways regulate employment and dismissal conditions, labor disputes, wage settlements, gender equality; and anti-discrimination at the work place. Social policies can differ as to organization and administration, for example, as to the division of labor or responsibility between administrative levels or sectors, or as to the degree of cooperation or coordination with non-governmental welfare and labor organizations, and private, commercial or non-profit companies.

## 26.2 SOCIAL POLICY IN A MULTI-LEVEL SETTING: THEORETICAL CONSIDERATIONS

Among the many theoretical approaches dealing with our topic,<sup>2</sup> there is one particularly widespread and maybe dominant paradigm that portrays social policy as a competitive disadvantage for the sub-units of a multi-level system.<sup>3</sup> In the following, we will first sketch the content of this paradigm and then critically discuss it with regard to both its limits and its policy implications.

### 26.2.1 Content

The paradigm can be conceptualized as a 'magic triangle,' that is a conflict of three collective aims.<sup>4</sup> The first is to pursue social policies, the second is to allow for regional autonomy in devising such social policies, and the third is to maintain or increase the permeability of the borders within a multi-level system. Any two of these aims would seem to be reconcilable only if the third is compromised. More specifically, social policy would be shielded against any downward pressures resulting from regional competition if either it were pursued only on the most central level or if the different jurisdictions within the multi-level system were separated by absolutely impermeable borders. Conversely, any step towards decentralization of social policies within a multi-level system or of deborderization between its different jurisdictions would increase the competitive pressure on the pursuit of social policies and potentially lead to a 'race to the bottom.'<sup>5</sup>



There are various mechanisms which might convey such pressure. They relate to different dimensions of the permeability of borders. One is the mobility of persons who might move across borders in order to either maximize the social benefits they receive, or to minimize the taxes and contributions they have to pay within the respective system. The latter rationale applies not only to persons but also to employers. So, a second relevant dimension of permeability is that for firms or investment more generally. But even if all firms and employees were bound to stay within their respective jurisdictions, the competitive pressure could be generated by the mere transfer of goods and services across borders. For again, the taxes and contributions paid by their providers into the welfare or social security system might raise the respective costs and result in a relative disadvantage compared to their competitors from other jurisdictions.

### 26.2.2 Limits

All these dimensions of permeability are governed and can potentially be restricted by regulation. But of course the law determines only the upper limits to these different kinds of transborder mobility. There can be other obstacles to such mobility as well. This is true most notably for personal mobility, which will typically depend on many other factors beyond the optimization of the individual tax-benefit ratio. Cultural and especially language barriers may play a role; people may lack sufficient information or have personal ties that prevent them from moving.

Such restrictions of mobility, both legal and factual, may reduce or even prevent any competitive pressure from arising. They can thus put limits on the predictive value of the 'magic triangle' paradigm, in many cases eroding its plausibility altogether. It is not surprising, therefore, that in the literature critical statements abound regarding this paradigm, acknowledging at the same time, however, the fact that it has become and so far remained 'almost a commonplace.'<sup>6</sup>

In fact, the spread of the paradigm may itself contribute to its predictive quality. For it may indeed occur that there is a discernible downward pressure on decentralized social policy despite the absence of any corresponding mobility.<sup>7</sup> This observation suggests that the mere anticipation (or fear or even threat) of such mobility may be sufficient for the triangle to operate. Under such circumstances, the paradigm may be an inadequate description of social reality in the first place, but can become a self-fulfilling prophecy nevertheless. It is all the more important therefore to keep sight of the limits to its applicability.

In any event, not all kinds of social policy are equally liable to the competitive pressure as predicted by the 'magic triangle.' First, even from the perspective of regional competition, social policy need not always be a disadvantage but may indeed yield 'good returns' with regard to a region's overall economic attractiveness. This would primarily apply to measures such as basic poverty prevention, educational benefits and so on, but it could also be said about other kinds of social policies which in a more general sense strengthen social cohesion or which advance the formation of a region's 'human capital.' Second, a policy's susceptibility to such competitive pressures is likely to increase with the degree to which it contains redistributive elements and thus departs from the operational mode of the market economy. Along these lines, tax-financed welfare schemes



would be affected more strongly than those in the realm of social insurance where contributions and benefits are more closely linked through market-like reciprocity. Third, the distinction between cash and in-kind benefits may play an important role because the former tend to be more portable which may in turn strengthen the mechanisms that convey the competitive pressure. Child allowances, for example, may therefore be more susceptible to a downward spiral than would be the case for the provision of childcare facilities that can only be enjoyed locally. Finally, as the paradigm presupposes informed individuals, government benefits and levies are more likely to be affected than are other kinds of regulation whose effects are less transparent. A case in point may be protective employment regulation such as unfair dismissal, anti-discrimination or the provisions of collective labor law.

The competitive pressure is, moreover, dependent also upon the socio-economic environment within which the social policies are applied. First, due to its dependence on the above factors, the competitive pressure is likely to affect some parts of the economy more severely than others – and, by the same token, it may affect different (types of) national economies in a different fashion.<sup>8</sup> Second, the intensity of the pressure is likely to vary depending on the overall economic situation. Severe poverty can be expected to enhance mobility, even across relatively impermeable national borders. The large numbers of migrants claiming benefits in South Africa may be viewed as indicative of this.<sup>9</sup> Moreover, one may assume that it is not only the absolute wealth of a region that matters but also the size of the gap between the benefit levels of adjacent regions. For example, it was for this reason that the 2004 European Union (EU) enlargement gave rise to serious concerns<sup>10</sup> on the part of the ‘old’ member states who feared that they would become ‘welfare magnets.’ These concerns ultimately led to (transitional) restrictions of the permeability of the EU’s former eastern border.

### **26.2.3 Policy Implications**

Speaking of such restrictive measures, one may ask more generally about the policy responses which this paradigm would call for. First of all, the above indicates that there is a wide array of conceivable regulatory tools. Some of the concrete examples highlighted in Section 26.3 below will give an idea of this variety.<sup>11</sup> In theory, there are innumerable ways of how to fine-tune both the (im)permeability of territorial borders as well as the extent of (de)centralization within a multi-level system. However, not all of these instruments will be available in any given setting as there are likely to be legal constraints, most notably the constitutional (or quasi-constitutional) division of competences and guarantees of fundamental rights (or economic freedoms). Moreover, the background of institutional arrangements influences the interplay of the involved actors and thus impacts indirectly on the political viability of any of the policy tools.

Second, it is not only the permissibility and viability of such policy measures that is highly contextual. The same is true for the actual need for any such measures, and for their concrete choice and design. All of this depends, as has been illustrated above, on the kind of social policy at hand, on the regulatory environment and on the socio-economic conditions. Also, the appropriate tools need not be regulatory in nature. For example, the above suggests that in some cases the competitive pressure is not conveyed by actual mobility but just by its anticipation. Here, information policies might be sufficient to



alleviate the pressure. Similarly, it may often suffice to resort to voluntary modes of coordination<sup>12</sup> among regional jurisdictions instead of using compulsory instruments on the central level.

Finally, it may for many reasons not be regarded as desirable in the first place to even try to alleviate the competitive pressure. One basis for this may be the argument that such pressure, whether real or not, in fact does not lead to a curtailment, but rather to a counter reaction, that is, to an advancement or at least entrenchment of social policies.<sup>13</sup> To the extent that such effects – paradoxical ones if viewed from the perspective of the ‘magic triangle’ – can be established, pressure alleviation would not be necessary. Another argument against such alleviation is that the pressure might help enhance the efficiency of the provision of social benefits. Or, more categorically, the pressure may even be hailed as a much-needed tool to cut back on welfare state structures that in this view have sprawled anyway beyond any reasonable measure.

### 26.3 SOCIAL POLICY IN A MULTI-LEVEL SETTING – REAL OBSERVATIONS

In this last section, we take a brief look at four cases, starting at the local and moving up to the global level. This account will, of course, be far from comprehensive. But it might be illustrative of the issues raised in the preceding sections.

#### 26.3.1 The Local Roots: Early Social Policies in Western Europe

Before the emergence of industrial capitalist economies and developing nation-states in Western Europe during the eighteenth century, social policy was mainly about poverty, begging and vagrancy, and a matter for concern for local authorities and the Church. With the growing political importance of national states and economies, national governments, for various reasons (law and order, repression, control of mobility, ‘welfare’), took an interest in regulating the treatment of the poor. Typically, the execution of laws on poor relief was left to local authorities.<sup>14</sup>

The American and French revolutions introduced new conceptions of rights of the individual, and combined with the simultaneously developing industrialization and the growth of wage labor, new economic, social and political forces were set in motion. These directly or indirectly put pressure on national governments in Western Europe to take a more active and independent role in the field of social policy. Although small-scale social insurance schemes had been introduced in various European countries from the 1840s, the comprehensive program for national social insurance introduced by Bismarck in Imperial Germany in the 1880s can be said to signify a social innovation, which came to have a path-breaking importance in elevating social protection as a core concern of national governments.

Local authorities in most countries – unitary as well as federal states – have, however, retained an important role in the pursuit of social policies. They have continuously maintained and developed their responsibility for last-resort cash poor or social assistance benefits and for new social care functions for the population at large. But they are not the only players anymore. Instead, they have become an integral part of much more



complicated systems of co-financing with 'higher' levels of government and co-existence with other subnational or national schemes of social security.

### **26.3.2 Partial Centralization: 'Cooperative Federalism' in US Social Policy**

Given its overall size and the relative strength of its sub-units, the federal system of the USA is a particularly illustrative case for the interplay of the federal and the state actors.<sup>15</sup> As a matter of constitutional law, interstate borders are highly permeable in the USA. This has been contested at times, especially with regard to the access of interstate migrants to state welfare schemes. But the Supreme Court has repeatedly enforced what it considers a constitutional right to such personal mobility.<sup>16</sup> In real terms, mobility indeed seems to be high in the USA. There is little evidence, however, for any welfare-induced migration.<sup>17</sup>

Furthermore, the constitutional division of competences is relatively flexible in the field of social policy. As a general rule, federal law prevails in case of conflict with state law, and there are not any substantive restrictions for the federal level in this particular policy field. But the states can act as well, and for long, they indeed used to be the main actors. It was only in the 1930s that the first major legislation in the field of social policy was enacted on the federal level: the Social Security Act, which was part of Roosevelt's New Deal reforms and has since been considered the backbone of the US system of social security. But the states have always retained an important role, not only with regard to social insurance, but also to welfare schemes.<sup>18</sup>

The overall level of social expenditure in the USA is generally considered to be comparatively low.<sup>19</sup> Without suggesting any causal inferences here,<sup>20</sup> this observation corresponds to what the 'magic triangle' would predict for a multi-level system within which the internal borders' permeability is high. Moreover, with this permeability being highly entrenched, one would expect that whenever it is sought to alleviate any perceived competitive pressure on decentralized social policy, the only option is to (partly) centralize it.

And indeed the variety of policy tools to that extent is a most remarkable feature of social policy in the USA.<sup>21</sup> Some branches of social policy have been completely centralized, as is the case most notably for the public pension scheme and health insurance for the elderly. In other areas, federal and state benefits co-exist. This is true, for example, in the field of basic welfare schemes where the provision of food stamps as a nationwide program may be complemented by additional benefits on state level. Moreover, many benefits are provided by both federal and state governments in a cooperative mode, and such cooperation may take various forms. At times, the federal level finances a sector which the states may or must supplement, whereas in other cases, the federal government would provide matching grants, thus setting incentives for the states to raise the overall benefit level. Often, the federal funds would, moreover, be linked to substantive requirements regarding the respective schemes. Finally, there are branches of social policy in which the involvement of the federal level is hardly visible but may still be important. In the field of unemployment insurance, for example, it is mainly through tax incentives that the federal level influences state policies. And at times, even the mere 'threat' of introducing a federal statute may have been an effective tool of pressure alleviation. This may have been the case with regard to the schemes of workmen's compensation in the USA.



### 26.3.3 Coordination and Regulation: The 'Social Dimension' of the EU

The multi-level system of the EU differs significantly from that of the USA. More recent in its origins and supranational 'by nature,' it is far more heterogeneous and less integrated, with the central level being much weaker with regard to its institutional setup, legal competences and spending power. These differences are particularly important in the realm of social policy.

Europe's advanced welfare states predate European integration, which in its early days was largely about economic integration – or, using the above vocabulary, about gradually increasing the permeability of national borders. Accordingly, there were hardly any competences in the field of social policy allocated to the supranational level. In fact, its first major activities in the social realm were intended to remove the obstacles that the incompatibility of national systems of social security posed to labor mobility across borders.<sup>22</sup> Without such 'coordination,' workers would run the risk of losing their various social entitlements (such as pension rights, health or unemployment benefits) when seeking employment in another country. A uniform scheme of coordination was developed on the supranational level, replacing what had hitherto been addressed largely through bi- and multilateral agreements.

With economic integration progressing, however, the perceived lack of a 'social dimension' of the supranational community became increasingly topical. To be sure, there had for long been a considerable body of social regulation in a wider sense, addressing, *inter alia*, aspects of consumer protection, work place safety, gender equality and also other kinds of discrimination. These kinds of regulation have gradually been expanded so that in many of its member states, the EU can nowadays be viewed as the major driving force in these fields of regulation.

In other, more traditional areas of social policy though, and especially in those requiring a 'purse,' supranational activities have remained residual. Although the respective competences have incrementally been widened,<sup>23</sup> there is little prospect at present that the EU would replace the member states as main actors in these fields. Instead, its most recent focus is on a new mode, the so-called 'open method of coordination'.<sup>24</sup> In a number of policy fields, the supranational level has thus adopted the role of an initiator and facilitator of a continuous discourse between the major actors and stakeholders of the respective national systems. These institutionalized exchanges are meant to allow for mutual policy learning and the common identification of best practices and benchmarks. Current assessments of this soft and deliberative policy tool vary, and it may indeed be too early still for a prognosis of its impact.

While social policy thus continues to be a mainly national affair, the permeability of the internal borders remains a highly contested issue within the EU. This is true not only when it comes to the accession of new members states (see above), but applies also to the old ones. As long as centralization is not a viable option, a balance has to be struck between shielding decentralized social policy and promoting supranational integration. Recent issues have, for example, been the reach of national health insurance coverage with regard to transborder services,<sup>25</sup> or the access of private insurance companies to other member states' 'markets' for social insurance,<sup>26</sup> or the extendibility of decentralized minimum wage policies to service providers from another member state.<sup>27</sup> And, quite remarkably, such fine-tuning is regularly left to the judicial branch.<sup>28</sup>



#### **26.3.4 Emergent Global Discourses and Actors**

Social policy as a field of academic study has traditionally been concerned with the national level. And yet, social policies cross national borders, either through active policy learning among nation-states or, more and more, through development of common ideas, perspectives and recommendations in various international fora. Globalization of core social security policies (at the national level) has taken place since the early (European) attempts at national social insurance towards the end of the nineteenth century. Nations have learnt, 'positively' or 'negatively,' from each other.

Also, a number of international governmental organizations (IGOs) which have developed over the last 100 years, in particular since World War II, have come to play important roles as collectors of statistics and providers of overviews on social legislation, monitors of national developments and analysts of effects of policies. Increasingly, these actors also discuss and recommend policies in various fields (labor market, social insurance, pensions and so on.) and coordinate policies of different nations. This might not be a sufficient basis to claim that global social policies exist. But through different IGOs, with varying memberships, nation-states take part in 'global' social policy discourses. The International Labour Organization, the World Health Organization, other United Nations organizations, the World Bank and the Organization for Economic Cooperation and Development are examples of IGOs which – with different purposes and mandates – play a role in the global social policy arena. More and more, national and transnational NGOs, social movements, trade unions and professional organizations also take part in the global social policy discourse and are, variously, actively engaged in the politics of social (policy) development in many countries.

In summary, there seems to be a tendency towards a globalization of social policies, promoted by both the transnationalization of the social policy discourse as well as the emergence of the new and increasing institutionalization of existing social policy actors in the transnational realm. As a result, the dividing line between social policy and development cooperation is blurred. Arguably, this is most visible in the fields of poverty alleviation and health policy.

#### **26.4 OUTLOOK: GLOBALIZATION OF SOCIAL POLICIES**

The trend towards a globalization of social policy is likely to continue. To be sure, the existence of well-developed welfare states at the national level reduces the objective need for transnational social policies. But, on the other hand, continued and strengthened economic globalization (freer flow of capital, labor, people in general, ideas, goods and services) will likely maintain the countervailing tendency towards increased activities on political levels beyond the nation-state. The persistent poverty in some regions of the world, and its increased perception as a global rather than national problem, point in the same direction. Furthermore, political globalization will likely encourage more attention to global social policy issues – issues of social inequality, redistribution, regulation and provision. In an increasingly interdependent world, the heightened vulnerability to economic and social risks of both nations and people may stimulate more political interest in 'global public goods' such as international financial stability, health and



global distributive justice. Actors at the national level will likely be more concerned both with the impact of global developmental trends and of IGOs on national politics, and for these reasons also more likely to see a need to be more active in such international organizations so as to influence the development of policies and regulation in the realms of social protection, human rights, labor and trade.

## NOTES

1. See, for example, Michael Hill (1980), *Understanding Social Policy*, Oxford: Basil Blackwell; and Martin Bulmer, Jane Lewis and David Piachaud (eds) (1989), *The Goals of Social Policy*, London: Routledge.
2. There are at least two pertinent discourses: one is about the effects of globalization on the welfare state, the other relates more specifically to the interaction of different political levels with regard to social policy, but is most often confined to specific, mostly federal systems. A good insight into the latter is provided by Herbert Obinger, Stephan Leibfried and Francis G. Castles (2005), *Federalism and the Welfare State*, Cambridge: Cambridge University Press; see especially their 'Introduction' pp. 29ff. For an overview on the former discourse, see Philipp Genschel (2004), 'Globalisation and the welfare state – a retrospective', *Journal of European Public Policy*, 11 (4), 613ff.; and Geoffrey Garrett (1998), 'Global markets and national politics: collision course or virtuous circle?', *International Organization*, 52 (4), Autumn, 787ff.
3. For a prominent version of this argument, see Ramesh Mishra (1999), *Globalization and the Welfare State*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.
4. On this conceptualization as 'magic triangle,' see, Alexander Graser (2001), 'Dezentrale Wohlfahrtsstaatlichkeit im föderalen Binnenmarkt', Berlin; for a shorter version in English, see Alexander Graser (2001), 'Towards a multi-level system of social security in Europe?', in D. Pieters (ed.), *Confidence and Changes: Managing Social Protection in the New Millennium*, The Hague: Kluwer Law International, pp. 215ff.
5. For an empirical corroboration of this argument from the US context, see Paul E. Peterson and Mark C. Rom (1990), *Welfare Magnets*, Washington DC: The Brookings Institution; and Paul E. Peterson (1995), *The Price of Federalism*, Washington, DC: The Brookings Institution.
6. For the quote, see Mark Kleinman (2002), *A European Welfare State?*, New York: Palgrave Macmillan, p. 60. Similar views – combining a critical assessment of the paradigm with the diagnosis of its prevalence – are ubiquitous; for a succinct version, see Elmar Rieger and Stephen Leibfried (1998), 'Welfare state limits to globalization', *Politics and Society*, 26 (3), September, 364; 'the general notion of an inexorable globalization pressure to shrink welfare states is untenable'; see also Bruno Palier and Rob Sykes (2001), 'Challenges and change: issues and perspectives in the analysis of globalization and the European welfare states', in Bruno Palier, Robert Sykes and Pauline M. Prior (eds), *Globalization and European Welfare States*, Houndmills, Basingstoke and New York: Palgrave Macmillan, pp. 1ff.; and Duane Swank (2002), *Global Capital, Political Institutions and Policy Change in Developed Welfare States*, Cambridge: Cambridge University Press.
7. This seems to have been the case with regard to the US income support schemes for incomplete families (called 'AFDC' and later 'TANF'): the state benefit levels display the effects of some downward pressure, and yet the mobility of the respective recipients is negligibly low. For a more detailed account of this example, see Alexander Graser (2008), 'Approaching the social union?', in Erik Oddvar Eriksen, Christian Joerges and Florian Rödl (eds), *Law, Democracy, and Solidarity in a Post-National Union*, Abingdon, Oxon: Routledge, pp. 140ff.
8. For a broad comparative study of the different 'vulnerabilities,' see Fritz W. Scharpf and Vivian Schmidt (eds) (2000), *Welfare and Work in the Open Economy*, Oxford: Oxford University Press.
9. For a detailed discussion of this phenomenon and an impressingly generous treatment of the ensuing problems of inclusion, see the decisions of the *Constitutional Court of South Africa in Khosa et al. v Minister of Social Development et al.* (CCT12/03) *Mahlaule et al. v Minister of Social Development et al.* (CCT13/03).
10. For a particularly pessimistic estimate, see Hans-Werner, Sinn Gebhardt Haig, Martin Werding et al. (2001), 'EU-Erweiterung und Arbeitskräftemigration', Munich, pp. 5–23. For a more moderate prognosis, see Heinz Fassmann and Roniner Münz (2002), 'Die Osterweiterung der EU und ihre Konsequenzen für die Ost-West-Wanderung', in Berg Bade and Roniner Münz (eds), *Migrationsreport 2002*, Frankfurt am Main: Campus Verlag, pp. 61ff.
11. While the case of US federalism (Subsection 26.3.2) will mainly serve to illustrate the devices of partial



centralization, the case of the EU (Subsection 26.3.3) is relevant primarily with regard to the issue of border permeability.

12. See subsection 26.3.3 below for an institutionalized example of such voluntary coordination, the so-called 'open method of coordination.'
13. See, for example, Rieger and Leibfried, 'Welfare states limit to globalization', p. 365, note 6. A short rendition of some more far-reaching approaches is given by Torben Iversen and Thomas R. Cusack (2000), 'The causes of welfare state expansion', *World Politics*, 52, April 313ff.
14. Gaston V. Rimlinger (1971), *Welfare Policy and Industrialization in Europe, America, and Russia*, New York: Wiley.
15. For a recent analysis of the US system see David Finegold (2005), 'The United States Federalism and its counter-factuals', in H. Obinger, S. Leibfried and F.G. Castles (eds), *Federalism and the Welfare State*, Cambridge: Cambridge University Press, pp. 138ff.
16. The two core decisions are *Shapiro v Thompson*, 394 U.S. 618 (1969) and *Saenz v Doe and Roe*, 526 U.S. 489 (1999). Both decisions granted interstate migrants unlimited access to tax-financed basic income support for families which the defendant states had tried to restrict. For other kinds of state benefits or services, exceptions to the general rule of unrestricted interstate migration may apply. For details, see Alexander Graser (2000), 'Do hard cases make bad law? Zur Entscheidung des US Supreme Court in Sachen Saenz v. Roe', *Heidelberg Journal of International Law*, 60, 367ff.
17. See Finegold, 'The United States and its counter-factuals', at pp. 140 ff., note 15 and the evidence cited there. Also, the findings in Saenz (see Graser, 'Do hard cases make bad law?') are symptomatic in that respect. Extending full benefits to all newly arrived migrants would in that case have had minuscule budgetary effects.
18. Their regulatory autonomy seems to have grown again, especially since the welfare reforms of the 1990s when the trend towards devolution reached the realm of social policy. And even their relative share in government expenditure on social policy has experienced a slight growth throughout the past decades; see Finegold, 'The United States and its counter-factuals', especially pp. 152, 171ff., note 15.
19. For detailed comparative data, see Obinger et al. (eds), 'Introduction', p. 28, note 2.
20. But see David B. Robertson (1989), 'The bias of American federalism: the limits of welfare-state development in the progressive era', *Journal of Policy History*, 1, 269 ff., who uses this paradigm to explain the relative delay of the development of social policies in the USA.
21. For a table displaying the varying extent of federal and state involvement in different social programs, see Finegold, 'The United States and its counter-factuals', p. 155, note 15. For a detailed account of the policy instruments, see Graser, 'Do hard cases make bad law', note 4.
22. See Regulations 3/58 and 4/58 (European Economic Community) (EEC), which were indeed among the very first legal instruments issued by the EEC. Their successors were Regulations 1408/71 and 574/72 (EEC), and, more recently, Regulation 883/2004 (EC). For a condensed account of the evolution of this regulatory field, see Bernd Schulte (2007), 'Die Geschichte der Reform der Verordnung (EWG) 1408/71', in Deutsche Rentenversicherung Bund (ed.), *Die Reform des Europäischen Sozialrechts*, Berlin: Die Reform des Europäischen Sozialrechts, p. 9ff. An early example of a regional/transnational agreement on social insurance for workers mobile across national borders is the mutual convention between Denmark, Norway and Sweden on workers' accident insurance in 1919, in the 1920s joined by Finland and Iceland; see Klaus Petersen (2006), 'Constructing Nordic Welfare Nordic Social Political Cooperation 1919–1955', in Niels Finn Christiansen, Klaus Petersen, Nils Edling and Per Haave (eds), *The Nordic Model of Welfare: A Historical Reappraisal*, Copenhagen: Museum Tusulanum Press, University of Copenhagen, p. 82.
23. For the current stage, see in particular Article 136 TEC. For an account of its development, see Bernd Schulte (2008), 'Internationales, supranationales und zwischenstaatliches Recht', in Baron Bernd von Maydell, Franz Ruland and Ulrich (eds) Becker, *Sozialrechtshandbuch*, 4th edn, Baden-Baden: Nomos, Section 33, no. 8, pp. 13ff.
24. For an early wave of assessments of the first experiences with this device in the realm of social policy, see Marcus Göbel (2002), *Von der Konvergenzstrategie zur offenen Methode der Koordinierung*, Baden-Baden: Nomos; B. Cantillon and J. Vandamme (eds) (2004), *The Open Method of Coordination and Minimum Income Protection in Europe*, Leuven: ACC; Association of German Person Insurers (2003), *Open Method of Coordination in the Field of pensions – quo vadis?*, Series DRV-Schriften 50, international conference 26–27 March, Berlin. and, focusing on health care, Jorens (ed.) (2003), *Open Method of Coordination*, Baden-Baden: Nomos.
25. The first – and at the time quite unsettling – decisions of the European Court of Justice (ECJ) in this field were related to the transborder purchase of glasses and dental care; see C-120/95 – Decker and C-158/96 – Kohll.
26. This issue is salient, for example, for the corporatist structures in German workmen's compensation and work place safety. For a systematic account, see Richard Giesen (2003), *Wettbewerb*



- und Berufsgenossenschaften, edited by Stiftung Marktwirtschaft, Berlin: Berufsgenossenschaften und Wettbewerb.
27. See the recent decision (3 April 2008) of the ECJ in Ruffert, C-346/06.
28. For a critical assessment of such extensive judicial power and its exercise by the ECJ, see Scharpf (2007), 'Reflections on multi-level legitimacy', MPIfG Working Papers 07/3, available at <http://www.mpiifg.de/pu/workpap/wp07.3.pdf>. For a more extensive presentations of his argument, see also his earlier contribution 'Politische Optionen im vollendeten Binnenmarkt' (2003), in Jachtenfuchs and Kohler-Koch (eds), *Europäische Integration*, 2nd edn, Opladen, pp. 219ff.