Patterns of Multilevel Parliamentary Relations in the EU in Comparative Perspective

Arthur Benz
Technische Universität Darmstadt, Germany

Abstract

Multilevel parliamentary relations have drawn attention in European studies, but scholars rarely have studied them in comparative perspective. This article outlines a framework for such an extended research, determined to better comprehend the emergence, structures and operation of representative democracy on multilevel systems. Based on this framework, the article illustrates various patterns of multilevel parliamentary democracy by comparing Canada, Germany and the EU.

As will be explained, multilevel structures provide opportunities for strategic action for executives, but also for parliaments aiming at extending or maintaining their power. Accordingly, rather than a stable constellation we should expect an ever changing constellation. In this context, inter-parliamentary relations can contribute to preserve a balance of power, to make parliamentary control of multilevel governance more effective, and to improve accountability of the executive. Moreover, dynamics of multilevel parliamentary relations have to be taken into account when we qualify democratic representation in federations.

This comparative approach can enlighten debates on representation and democracy in the EU. It can also contribute to better understand the impact of increasing economic divides on the stability or instability of multilevel democracy in Europe.
1. Introduction

Since a long time, scholars have studied intergovernmental relations in federal states linking politics and policy-making at two or more levels of government. According to a widely shared assumption, executives dominate these relations, which often include interest groups and experts. As indicated by the common notion of “executive federalism”, multilevel patterns of policy-making seem to weaken parliaments of the different jurisdictions.

Recent research on the EU conveys a slightly different picture of a multilevel polity. Scholars not only have observed the rise of the European Parliament and a stronger role of national parliaments, they also became aware of extending interparliamentary relations between levels and member states. So far, studies on the dynamic "Multilevel Parliamentary Field” (Crum and Fossum 2009) have focused on the EU or international politics (Crum and Fossum 2013), with only a few recent publications extending this approach to other federations (Benz 2011; Bolleuer 2010). Corresponding comparative research is still in its infancy regarding both theory and empirical evidence (Eppler 2011).

The reason for this state of research seems to be obvious: At a glance, these interparliamentary relations do not exist in federal states in an intensity comparable to what we find in the EU. If parliaments cooperate, their joint activities hardly seem to matter in politics or policy-making, but rather serve to exchange experiences on institutional or procedural matters. However, a closer inspection reveals that parliaments may interact in channels existing outside the formal institutions. In some federations, party linkages in integrated party systems provide the most effective channels of communication. Moreover, the role of parliaments varies over time, depending on the policies predominating the political agenda. Therefore, while federalism and intergovernmental relations regularly strengthen the executive, they never fully exclude parliaments from decision-making. They struggle for power with the executive, even under the complicated conditions of federal systems. Interaction between parliaments across jurisdictions plays an important role in this power game.

In the following sections, the concept and relevance of multilevel parliamentary relations in federations will be explained in greater detail. Based on an analytical framework outlined in section 3, I continue elaborating on varieties and dynamics of these relations. By comparing the EU with Germany and Canada, section 4 provides evidence that both the concept of executive federalism and an optimistic expectation of multilevel parliamentary democracy underestimate the volatility of structures. However, so do studies explaining the power of parliaments as determined by structures or societal conditions of federalism. Hence comparative research identifying patterns, dynamics and conditions for balance or imbalance not only sheds new light on representative democracy in federations, but also emphasises the particular features of democracy in the EU.
2. Why parliaments engage in multilevel relations

Debates about the role of parliaments in federalism started when scholars observed the rise of intergovernmental relations. Being the domain of the executive, cooperation cutting across jurisdictions has been said to undermine parliamentary scrutiny and, consequently, accountability and democratic legitimacy. For a long time, intergovernmental policy-making and parliamentary government appeared as incompatible dimensions of government (e.g. Lehmburch 1976; Simeon and Cameron 2002).

Yet, parliaments are institutions and collective actors. As institutions, they are legitimised to fulfil functions and enjoy specific rights against the executive, in particular the right to finally decide on legal acts and to control the executive. As collective actors, parliaments try to maintain or extend their powers and hence are involved in ongoing struggle for asserting their rights. Therefore, if parliaments become aware of losing power during the evolution of multilevel governance, we have to expect them to "fight back" (Raunio and Hix 2000). It is unlikely that they simply surrender, even though a multilevel structure allows them to avoid the blame for policy failures or redistributive decisions at the expense of significant groups of voters. In general, they are able to mobilise countervailing forces against executive federalism and are motivated to react accordingly. Parliaments' efforts to maintain a balance of power with the executive constitutes a fundamental mechanism in the operation of representative democracy, which is particular relevant in federal systems.

From this point of view, communicative or coordinative relations between parliaments reveal their strategic actions responding to intergovernmental policy-making of the executive. The multidimensional institutional structure of democratic federations provides opportunities for these strategies. Like the distribution of power between levels of government, the balance of power between parliaments and the executive is notoriously unstable in federal systems. Like executives of member states of a federation pool their powers in horizontal intergovernmental relations when being confronted by centralist trends (Bolleyer 2009: 4), parliaments can try to maintain their power against co-operating executives through concerted action. And like an integrated party system contributes to prevent political actors from entering in a competition for power between levels of a federation (Riker 1964: 136; Filippov et al. 2004), relations between parliaments at the different levels can maintain the balance of power both between levels and between the core institutions of a democratic government.

Moreover, parliaments establish multilevel relations due to a dilemma they are confronted with when controlling executives in multilevel governance. Regardless of the particular pattern of governance, they hold the power of the last resort, either by ratifying policy proposals of the executive, by deciding on the budgetary resources appropriate for particular policies, or by holding the executive accountable for decisions. The logic of executive-parliament interaction varies between parliamentary systems where powers are concentrated in a majority government and systems where powers are divided (e.g. presidential system). As a rule, the executive can rely on parliamentary support in the first type of government, while it has to negotiate agreements with members of parliament in the second type. In both cases, legitimacy of decisions depends on the assent of a majority in parliament. When they apply this principle to multilevel governance, the majority parties and the opposition groups in
parliament find themselves in a double-bind situation (Benz 2004). Majority parties, which can rely on the executive in domestic politics, are expected to see to it that intergovernmental policies meet the interests of their constituencies. But if they tie the hands of the executive, the latter lacks discretion to negotiate agreements or coordinate policies with their counterparts in other jurisdictions. The opposition parties may be blamed for undermining their government’s standing in intergovernmental negotiations if they expose the executive’s position to public debates, while they cannot convince the electorate to vote for a political change if they avoid challenging the incumbent government’s policy.

This dilemma arises since behaviour of actors in government becomes uncertain in multilevel policy-making, in contrast to the domestic arena where institutions and clearly defined roles guide collective action. While executives profit from access to information and from controlling agendas and negotiations, parliaments are in a different position. In order to reduce information asymmetry and uncertainty, they can get into contact with other parliaments (Wagner 2013: 200). This way they gain insight into the different negotiation positions and the scope of potential agreements (“win-set”), thus being able to obligate the executive to feasible policy proposals and prevent unintended outcomes or deadlocks of intergovernmental negotiations. Members of parliaments are well aware of the problems caused by tight controls of intergovernmental negotiations. As “strategic veto players” (Benz 2004), they try to escape the traps of multilevel governance by improving information and evaluating policy options available in multilevel governance.

Notwithstanding parliaments are motivated to extend their power by pooling resources with other parliaments and to reduce uncertainty of multilevel governance, we should not expect multilevel parliamentary relations to emerge under all circumstances. On the one hand, benefits from multilevel relations may not always trump restrictive conditions or opposing motives. Members of parliaments act under institutional constraints or limited capacities. Moreover, parties in parliament may claim autonomy of their government and reject multilevel governance. Their joint interest to preserve democracy is often undermined by competition for power between the central government and regions or member states (Bolleyer 2010). On the other hand, the relative power of parliaments depends not only on their own strategies, but also on probably countervailing strategic action of executives. For these reasons, multilevel parliamentary relations can vary to a considerable extent.

3. Types of multilevel parliamentary relations - a conceptual framework

In EU studies, the concept of the "Multilevel Parliamentary Field", introduced by Ben Crum and John-Erik Fossum (Crum and Fossum 2009), has attracted wide attention. The notion of a field emphasises the dynamics of formal and informal, vertical and horizontal relations between parliaments. Apart from the involvement of parliaments at the different levels, these relations constitute a characteristic feature of representative democracy in the EU. For comparative research, I suggest extending this analytical concept by including multilevel relations among executives and executive-parliamentary relations. Thus we can define patterns of multilevel parliamentary relations according to the specific modes of
intergovernmental relations among executives, the power of central and lower level parliaments to control the executive in intergovernmental policy-making, and the intensity of interparliamentary relations. Variations along these dimensions can be operationalised as follows:

- Intergovernmental relations can be institutionalised or informal. In the first case, executives share powers and are compelled to find an agreement in order to change policies. Moreover, the need to settle accords makes commitments of executives to their partners in negotiations stronger than in informal relations, which can fluctuate between competitive and cooperative modes.

- The effective power of parliaments to control the executive depends on formal rights and informal procedures. Most powerful parliaments benefit from the right to confer binding mandates to the executive or to scrutinise intergovernmental policy-making. Less effective is the right to ratify intergovernmental accords (veto power). Comparatively weak parliaments can only express public critique based on ex post evaluation of intergovernmental negotiations, and even weaker are those limited to a symbolic participation or not at all competent to participate in multilevel policy-making.

- The intensity of interparliamentary relations can vary along two kinds of linkage. First, parliaments can interact as institutions, with regular meetings (interparliamentary committees) being the strongest form. Recurrent exchange of information on policies or consultation on general problems of parliaments, usually taking place in meetings of speakers of parliaments, establish weaker links. Second, members of parliaments can interact inside their parties. Strong linkages exist in an integrated party system, while a weakly integrated or separated (e.g. regionalised) party system provides limited opportunities for communication or coordination of opinions or obstructs these relations. Both types of linkages can co-exist, but they are not fully compatible. In federations with a vertically divided party system, interaction between parliaments as institutions is unlikely to emerge. The same holds true in a highly integrated party system, where strong linkages only tend to evolve between parliaments controlled by the same parties.

By combining these features, we can distinguish constellations of multilevel parliamentary relations. The following list (based on Benz 2013: 131-132) takes into account those types which seem to be relevant in real federations. It does not rule out that other types exist and may be discovered through comparative endeavours.
Table 1: Types of Multilevel Parliamentary Relations

<table>
<thead>
<tr>
<th>Types</th>
<th>Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>intergovernmental relations</td>
</tr>
<tr>
<td>Multilevel Parliamentary Democracy</td>
<td>institutionalised</td>
</tr>
<tr>
<td>Compound Democracy</td>
<td>informal</td>
</tr>
<tr>
<td>Joint Decision-Making</td>
<td>institutionalised</td>
</tr>
<tr>
<td>Divided Government</td>
<td>institutionalised or informal</td>
</tr>
<tr>
<td>Executive Politics</td>
<td>institutionalised or informal</td>
</tr>
</tbody>
</table>

1. The concept of ‘Multilevel Parliamentary Democracy’ characterises a constellation of executives cooperating in institutionalised intergovernmental policy-making and subject to effective scrutiny of parliaments, which have the right to determine binding mandates or exert veto power. At the same time, parliaments at the different levels intensely interact across boundaries of their jurisdictions. Ideally, we find a balanced structure in relations between executives and parliaments in all jurisdictions, but asymmetric structures of multilevel parliamentary politics may also exist. Parliaments at the different levels of the federation decide on intergovernmental agreements, hold executives accountable and define their policy positions in meaningful parliamentary discourses open to the public. Communication among parliaments may be organised in regular meetings or by special organisations. It may also be supported by party organisations cutting across levels of government.

2. If parliaments have meaningful powers against the executive at each level, but interparliamentary relations are weak both between levels and between jurisdictions, the structure of multilevel relations comes close to what has been labelled ‘Compound Democracy’ (Fabbrini 2008). Powers between levels are divided and policies are coordinated in informal executive relations, if not inter-jurisdictional competition prevails. Parliaments scrutinise executive politics, but as a rule, informal intergovernmental agreements do not require the explicit support of a majority faction or coalition in parliament. In presidential governments, executives often include members of special parliamentary committees in intergovernmental negotiations; in parliamentary systems, they can rely on the general support of parties constituting a
majority. Division of power does not rule out interparliamentary relations, yet they tend to be weak and lack support by institutions or an integrated party system.

3. If powers are shared between governments and executives have to coordinate policies in institutionalised intergovernmental relations, the constellation conforms to the ‘Joint Decision-Making’ model, elaborated by Fritz W. Scharpf (Scharpf 1988; 2011). Implicitly, this model assumes strong parliaments shaping institutional and policy interests of executives. Executives of member states are bound to the will of a party coalition in parliament, which determines their negotiation behaviour and positions. Formalised interparliamentary relations do not exist or are rather weak. In contrast to the first two models, this type of multilevel parliamentary relations causes the widely discussed dilemma of effective versus democratic governance. Parliaments, often controlled by parties from competing political camps, tie the hands of executives, which are compelled to find compromises in bargaining and often agree at the lowest common denominator of their preferences. At the same time, responsible executives and majority parties tend to shift the blame for ineffective outcomes thus damaging transparency of policy-making and accountability of executives.

4. Strong interparliamentary relations may contribute to solve this dilemma. However, if they emerge among weak parliaments trying to pool their limited powers, they cause a divide between parliaments and their executive. If relations among parliaments undermine the fusion of power between majority parties and the executive, this constellation fosters a tendency, which in a different research context has been described as ‘presidentialisation’ of parliamentary democracies (Poguntke and Webb 2005). In presidential governments, they reinforce the separation of powers between legislatives and executives. In both types of democracy, a kind of ‘Divided Government’ is likely to emerge.

5. Finally, if parliaments are weak in all dimensions, we can speak of ‘Executive Politics’. Scholars assumed this constellation typical for federations with parliamentary systems (Watts 1989). Actually, it constitutes one out of various possible constellations, if we consider executives and parliaments as strategic actors in a power game. Although intergovernmental relations in federations often tend towards executive politics in particular when they prove effective to implement regulative policies or to allocate federal grants, the lack of accountability to parliaments always motivates the latter to respond.

These five constellations of power and interaction exemplify "models" of multilevel parliamentary relations. Based on the literature on comparative federalism, I assume that they cover those patterns appearing in democratic federations. Furthermore, basic constitutional features and policy-specific conditions affect their variations and dynamics.

Considering the constitutional allocation of power, Multilevel Parliamentary Democracy and Joint Decision-Making are presumably favoured by shared rule in federations. Moreover, interparliamentary relations are apparently more likely in integrated federations, whereas they hardly work in federations divided by deep political conflicts on the recognition of distinctiveness and autonomy of nations. Yet since interactions among executives and
parliaments cutting across territorial jurisdictions combine formal and informal processes and are less institutionalised compared to democratic governments within the constituent units, no federation is bound to one model, and patterns may change depending on the policy at stake.

Policies provide different opportunity structures for parliaments. In view of their motivations to engage in strategic interaction, Multilevel Parliamentary Democracy or Divided Government presumably emerge in constitutional policy, when powers of parliaments are affected. In policies causing redistributive or party political conflicts dividing lower level governments, Compound Democracy or Joint Decision-Making seem to be more likely, depending on the intensity of party politics, which is stronger in the second model. Executive Politics regularly appears in regulative policies requiring expertise and causing less politised conflicts, but also in crises, when governments are expected to respond with fast and bold decisions.

4. Varieties and dynamics of multilevel parliamentary relations – Evidence from three federations

In order to advance this theoretical reasoning and provide some empirical evidence, the following section describes dynamics of multilevel parliamentary relations in three different cases: Germany, Canada and the EU. These federations reveal contrasting patterns of democratic government and multilevel executive or parliamentary relations. Canada introduced the Westminster type of parliamentary democracy. In the EU, a consensus democracy has evolved at the central level, while parliamentary systems exist in most member states. This pattern resembles the German democratic government although the chamber representing the executives of member states (Länder), the "Bundesrat", is not as powerful as the Council of the EU, and politics at the centre is shaped by party competition and parliamentary accountability of the executive. Regarding intergovernmental relations, the EU and Germany stand for federations with extensive power sharing and institutionalised multilevel policy-making. In Canada, powers are divided and intergovernmental relations evolve mainly by informal meetings of executives. In contrast to Canada and the EU, Germany has an integrated party system linking parliamentary politics at the different levels, while in the EU institutionalised interparliamentary relations play a stronger role, which hardly exist in Canada. Despite these distinct characteristics of the federal systems, we can observe variations in multilevel parliamentary relations between policies and dynamics over time.

a) Germany

After a long history as a confederation, the German federation was created by a unification of established states with a fully developed administration. The 1871 constitution transferred legislative powers to the federal government, but the Länder governments maintained executive powers including rights to implement federal laws. When federalism was revived after World War II, the constitution restored this functional division of power. Accordingly, many policies require co-decision of the federal parliament and the upper house, the Bundesrat, and this implies the need to negotiate policies between federal and Länder governments. Executives involved in joint policy-making are accountable to parliaments although the constitution does
not subject delegates of Länder governments in the Bundesrat to binding mandates from their parliaments. Until the 1980s, the party system reflected the "frozen" cleavage structures of the industrialisation, with a dominating left-right divide. The representation of regional interests at the federal level via Länder governments' participation in the Bundesrat was thus shaped by crosscutting party politics, and confrontation between parties overshadowed federal-Länder negotiation in legislation. Consequently, intergovernmental relations turned into an "antagonistic cooperation" (Scharpf 1989: 132). This pattern continues to influence policy-making in German federalism despite a recent pluralisation of the party system.

Following from this history, Joint Decision-Making turned out as a characteristic pattern of German politics. Given the confrontation of party representatives in intergovernmental negotiations, threatening deadlocks in policy-making had to be avoided by compromises settled in informal negotiations (Scharpf et al. 1976). For this reason, cooperative federalism in Germany has been criticised for lacking transparency and causing ineffective governance. In fact, the quality of intergovernmental policy-making varies, and the linkage between parliaments is an important factor explaining different outcomes. One condition favouring effectiveness is the integrated party system, which provides venues for meetings of members of federal and Länder parliaments. Unlike what Gerhard Lehbruch called a structural incongruence between cooperative federalism and parliamentary democracy (Lehbruch 1976) -- an interpretation he later revised (Lehbruch 2000: 27-30) --, intergovernmental policy-making and party competition in the parliamentary system may have caused antagonisms only in highly politicised issues, like in tax or education policy. However, they have interacted as crosscutting cleavages in many other policies (Renzsch 1999). Communication between members of parliaments facilitated by vertically linked party organisations and congruent party constellations at the different levels has moderated confrontation in intergovernmental negotiation. Moreover, the party affiliation of executives has allowed voters to recognise the positions of incumbent governments when they engage in Joint Decision-Making.

The German constitution does not establish rules for interparliamentary relations. Nonetheless, Länder parliaments cooperate as institutions in order to defend their powers in the federal system (Kropp 2009: 199-201). Meetings between the speakers of parliaments or heads of party groups as well as joint meetings of committees have condensed into a kind of network of parliaments. For a long time nearly invisible, it became relevant after the turn of the century, when Länder parliaments organised a “convention” designed to promote a reform of German federalism and to elaborate guidelines for such a reform. They pushed the federal and Länder governments to establish a Joint Commission of the Bundestag and the Bundesrat responsible for preparing proposals for a constitutional amendment bill. This commission, and a second one set up in 2006, included representatives of Länder parliaments with a right to speak but not to vote. Therefore, a moderate form of interparliamentary dialogue surfaced in constitutional policy, following similar practices in earlier reform processes. During the current negotiations on a revision of fiscal federalism, several members of parliaments have communicated within party groups and issued proposals. These tendencies towards Multilevel Parliamentary Democracy in constitutional policy conform to the assumptions outlined in the previous section.

In other policy fields, German federalism reveals a trend towards Executive Federalism. These dynamics often result from sequential procedures. Proposals are prepared by specialists of
federal and Länder administrations cooperating with experts from associations or the academic sector, before being discussed in the official intergovernmental and the legislative arena. The reform of the labour market and the pension system under Chancellor Schröder were cases in point (Trampusch 2005). In the Joint Tasks established by the German constitution, similar patterns of executive federalism supported by expertise emerged. In research and education policy, a council of scientists influences decisions on the allocation of federal-Länder funds. Budget policy is coordinated by a Stability Council, based on a benchmarking of individual budgets of federal and Länder governments (Benz et al. 2016). In unusual situations like German unification (Lehmbruch 1990) or the Euro crisis, Joint Decision-Making was temporarily suspended by governance from the centre when the Chancellor took the lead in intergovernmental relations. These patterns of Executive Federalism remain in the shadow of parliamentary scrutiny. Since individual parliaments more than interparliamentary relations limit executive dominance, Joint Decision-Making remains the normal pattern of multilevel governance in Germany.

b) Canada

Accountability of the executive to parliament and party competition is even more relevant in the Westminster system, which Canadians adopted during the 19th century from Great Britain. Yet, they implemented this competitive democracy in a federal system, which from the beginning was burdened by a divide between anglophone provinces and the francophone province of Quebec. The original distribution of powers and resources in Canadian federalism did not conform to the needs of an industrialised state. Hence, dual federalism turned into intergovernmental policy-making, initiated and led by the federal government. When Quebec nationalism emerged, it clashed with the Canada-wide patterns of governance. Therefore, intergovernmental relations not only remained under the provision of parliamentary sovereignty, they also never turned into institutionalised cooperation like in German federalism (Simeon 2006).

Due to these conditions, the multilevel system of Canada tended towards a Compound Democracy. Since the doctrine of parliamentary sovereignty implies that each individual parliament can revoke accords between the federal and provincial governments, institutionalised intergovernmental relations would not work in practice. Even in policies requiring coordination between levels to fulfil tasks, the constitution does not stipulate obligatory cooperation. As a rule, intergovernmental agreements allow individual provinces to opt out, if accords are not concluded bilaterally between the federal government and individual provinces (Bakvis et al. 2009; Painter 1991). Compared to Joint Decision-Making, actors’ commitment in Canadian intergovernmental negotiations is significantly lower.

Given the state of research, we have no indications that Canadian parliaments have taken major steps towards establishing interparliamentary relations. Communication among them seems to be limited (Bolleyer 2010: 422-426). The federal parliament’s participation in a number of multilateral and bilateral interparliamentary associations or groups mainly serves to exchange information and ideas and to foster mutual understanding among nations. Amongst the parliaments of the provinces, only the 'Assemblée Nationale' of Quebec reports to maintain
extensive relations with other parliaments or interparliamentary organisations, but most of these relations concern institutions outside of Canada (Beaudet 1989). Federal and provincial parliaments participate in the Commonwealth Parliamentary Association (CAP), an organisation including parliaments from the UK, South Africa, Australia and New Zealand. Representatives of Canadian parliaments meet in a regional subdivision of this organisation, mainly to support the staff of parliaments. None of these interparliamentary activities relate to particular policies dealt with in multilevel governance. Since the vertically integrated party system has dissolved due to political regionalisation in Quebec and the Prairie provinces, intra-party communication hardly compensates for the weakness of institutional interparliamentary activities.

In contrast to the U.S. presidential system, federal and provincial executives in Canada are more likely to follow the will of their parliament than to sign an intergovernmental agreement contradicting parliamentary preferences. Since federal and provincial governments have, in principle, the power to make policies on their own, executives cannot abdicate their responsibility for intergovernmental decisions by shifting the blame to other governments (Hueglin 2013). On the other hand, when parliaments tie the hands of their government, they do not risk a deadlock in policy-making in case there is no agreement among all governments. Therefore, “first ministers are able to speak with one voice for their constituents and to make commitments that they will be able to enforce” (Simeon and Nugent 2008: 92). Furthermore, a majority in parliament can hold the executive accountable for intergovernmental agreements, and the latter has to anticipate the will of majority parties in negotiations (Carty and Wolnietz 2004). In consequence, Canadian parliaments have less reason to establish channels designed for communicating opinions on topical issues of multilevel governance than parliaments in other federal systems.

While these structures of Canadian federalism are conducive to Compound Democracy, this pattern is particularly relevant in policies concerning fundamental issues or having redistributive effects among federal or provincial governments. In day-to-day multilevel policy-making, parliaments are hardly engaged. In general, while the House of Commons in Ottawa and provincial parliaments extended their capacities to control the executive by developing committee structures in times of increasing legislative powers (Docherty 2005; Levy and White 1989), their insight into informal negotiations among executives has remained limited. Only a few provincial parliaments have established committees explicitly responsible for intergovernmental affairs. Intergovernmental negotiations regularly take place in private meetings of ministers or bureaucrats. They allow only ex-post scrutiny of decisions by parliaments. As Jennifer Smith observed: “The closed process of executive federalism can have the effect of immunizing controversies between the two levels of government from public debate, because the legislatures are excluded from these processes” (Smith 2003: 106). In practice, parliaments have not tried to counteract the closure of executive cooperation. “So far neither the federal parliament nor provincial legislatures have taken an active role in tackling federal-provincial issues” (Bakvis and Baier 2005: 4). For this reason, the pattern of Executive Federalism prevails in sector-specific and regulative policy.

1 See also the annual Activity Reports of the National Assembly (http://www.assnat.qc.ca/en/publications/fiche-rapport-activite.html, accessed 08/24/2015).
Yet, when important decisions are at stake, the reverse may be true, and parliaments turn into important players in intergovernmental policy-making: “Paradoxically the very practice that normally closes out the public occasionally lets them in. When there is sharp, deep conflict between the governments the public gets to see through the cracks” (Smith 2003: 107). In the past, these opportunities regularly opened in processes of constitutional amendment. Here federal and provincial parliaments not only provided arenas of public discussion, they also demonstrated that their veto power can be relevant in reaching intergovernmental agreements (Russell 2004: 118-119, 146-148). Under these conditions, First Ministers tended to fight for the interests of their jurisdiction, and intergovernmental negotiations turned into a highly politicised bargaining game. Therefore, the Joint Decision-Making model adequately characterises multilevel parliamentary relations in constitutional policy.

Thus, the pattern of a Compound Democracy established in Canadian federalism shifts towards Joint Decision-Making in constitutional policy, when the distribution of power between the federal and provincial governments is on the agenda, while regular intergovernmental relations tend towards Executive Federalism, which remains in the shadow of parliamentary veto. Constitutional policy in Canada is no less threatened by joint decision traps than in German federalism. Yet competition between levels and parties drives dynamics of multilevel governance in normal policies (Bakvis and Skogstad 2008; Bakvis et al. 2009; Broschek 2009), which also affect the balance of power between executive and parliaments. Parliaments are never excluded for good and can raise their voice, and executives can always find ways out of a deadlocked situation in federal-provincial policy-making.

c) European Union

When Fritz W. Scharpf published his seminal article on the joint decision trap in 1988 (Scharpf 1988), he correctly compared the European Community with German federalism. In both federations, powers are shared between levels of government in important policy fields. Meanwhile, parliaments have gained ground in the evolving European Union and a Multilevel Parliamentary Field (Crum and Fossum 2009) emerged. However, recent developments raise doubts whether this evolution will continue.

The rise of these relations among parliaments was supported by institutional change (Kiiver 2006; Maurer 2002). At the supranational level, the European legislature now exists as a ‘two-chamber’-system expressing the nature of the Union as a federation. At the national level, parliaments took efforts to get access to European policy-making and to scrutinise and control their national representatives in the Council or in intergovernmental negotiations. All of them established special committees for European Affairs, determined to cope with the rising tide of issues and documents. Quite a number of them explicitly confirmed their power to control the executive in European legislation and put in place specific procedures to supervise negotiations. Some parliaments achieved the right to bind the national representative in the Council to a mandate. Others systematically scrutinise European documents and the behaviour of their national representative in the Council. In general, executives of member states have to provide comprehensive information on European policies as early as possible.
The effective impact of national parliaments on European policies may vary between member states (O’Brennan and Raunio 2007), but executives are aware of their voice when negotiating at the European level. On the other hand, members of national parliaments have realised that they cannot tie the hands of their representatives in European negotiations. They learned to intervene in a strategic way based on information regarding different negotiation positions of other member state governments (Benz 2004). To gain the relevant information, national parliaments extended their engagement in interparliamentary relations (Bengtson 2007; Fasone 2011). Informal linkages between the EP and national parliaments emerged since the 1990s (Neunreither 2006), when a kind of parliamentary diplomacy surfaced. Through more or less regular visits to Brussels, national delegations of parliaments have met with members of the EP. Meanwhile, national parliaments set up bureaus in Brussels in order to have access to European actors. Moreover, meetings with members of the EP take place on a regular basis. Some parliaments of member states invite MEPs representing the respective country to participate in European Affairs Committees. Since its creation in 1989, the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) gained in importance for an exchange of opinions. Following a recommendation, issued by the speakers of EU parliaments in their 2000 meeting, the EU established the ‘Interparliamentary EU Information Exchange’ (IPEX), an electronic platform used for disseminating information. All these interparliamentary activities contribute to integrate the different parliaments into a structure of Multilevel Parliamentary Democracy.

The Treaty on the European Union endorses interparliamentary relations by making them part of the Union’s institutional framework (article 12, section f TEU). It endorses vertical relations by stating that national parliaments, together with the EP, control and evaluate measures of the EU taken in the areas of security and law. The same applies in case the ordinary procedure for Treaty amendments is used and members of the EP and national parliaments participate in a Convention. The Treaty particularly contributes to the evolution of interparliamentary relations by the subsidiarity control mechanism (Cooper 2012; Maurer 2009). National parliaments now check whether an initiative for legislation conforms to the principle of subsidiarity and issue their opinion to the Commission in case of dispute. To make its statement effective, a parliament has to obtain support from other parliaments. The more this cooperation intensifies, the more likely are Divided Government constellations due to a confrontation between national representatives in the Council and national parliaments.

In a considerable number of cases, chambers of national legislatures have issued a ‘reasoned opinion’ on subsidiarity, but they have not found appropriate procedures in order to exchange their views or to come to an agreement. Therefore, to suggest that they might constitute a "virtual third chamber" (Cooper 2012) seems premature. Although national parliaments cooperate in a variety of ways, their relations are still fragmented and unstable. Fragmentation has significantly increased during the Euro crisis since multilevel parliamentary relations turned back towards Joint Decision-Making. Moreover, they became asymmetric in two dimensions (Benz 2013).

First, the intergovernmental mode of policy-making reduced the role of the European Parliament. While the President of the EP tried to exploit the crisis to make the voice of the Parliament heard, MEPs saw themselves challenged by a rising Euro-scepticism in member
states. Negotiating majorities in the Parliament became difficult due to redistributive conflicts. Against the leading role of heads of government and the strong position of the Commission and European Central Bank, the EP lost influence in crisis management and in fiscal policy in general, although it is still engaged in the policy field, e.g. in reforms of financial market regulation (Quaglia 2014).

Second, the impact of the crisis on national parliaments differed between member states. When the heads of government combined short-term crisis management with a reform of the Treaties, this afforded an opportunity for parliaments to discuss and decide on issues, as they hold veto power in fiscal policy. Yet, actually the gap between strong and weak parliaments demonstrated in earlier research (Raunio 2005) has widened during the Euro crisis (Auel and Höing 2015; Fossum 2014; Maatsch 2015; Rittberger and Winzen 2015). Notably those in states under pressure of the financial markets like Greece, Italy and Spain felt compelled to implement European decisions without further ado, with Spain taking the lead in amending its constitution to introduce the new debt rule and the Greek parliament being the first to have ratified the Fiscal Stability Treaty. In Greece, Italy, Spain and Portugal, Joint Decision-Making has turned into Executive Politics. In contrast, the German Bundestag emerged as a significant player. While Chancellor Angela Merkel was ascribed a leading role in negotiations, she was constrained by the majority coalition in parliament. Unlike the French president, another major player in the crisis management, Merkel was clearly constrained by national politics (Crespy and Schmidt 2014). In a similar vein, the Finnish and Austrian national parliaments tried to tie the hands of their respective governments and carefully scrutinised the evolution of crisis management and the consequences for their countries. For these countries, crisis management appeared as redistributive policy, and Multilevel Parliamentary Democracy turned into Joint Decision-Making.

The divide between strong and weak national parliaments also affected interparliamentary relations. Although parliaments attempted to reinforce their dialogue in response to intergovernmental crisis management, effective relations moved in a different direction. In October 2011, the German Bundestag and the French Assemblée Nationale established a working group to discuss the Treaty changes proposed by the heads of their governments. It was due to the intervention of this working group that a proposal for continuous meetings of budget committees of national parliaments was not written down in the Fiscal Stability Treaty and a weaker conference format was established: such bilateral politics clearly deviates from the model of Multilevel Parliamentary Democracy since it reflects exclusive communication and an imbalance of power. The conference according to article 13 of the Fiscal Compact has hardly countervailed the fragmentation of interparliamentary relations so far (Cooper 2016).

These findings confirm the dynamic nature of the Multilevel Parliamentary Field of the EU. It evolved in the wake of major Treaty reforms, but also changed under the impact of particular policies. Beyond Joint Decision-Making, we find patterns of Executive Politics, not least in policy fields where the Commission has used new modes of governance like the Open Method of Coordination. Indicating an increasing divide in the European federation, divergent scrutiny procedures and disparity of power among national parliaments have been observed not only in

fiscal policy (Huff 2015). Nonetheless, multilevel parliamentary relations are still notably dense compared to federal states. To understand the operation of democratic representation in the EU, scholars should be aware of the evolution, variation and instability of these relations.

5. Conclusion: Democratic Representation in Federations

In order to understand how democracy works in federations, we need to consider the dynamics of power between executive and parliaments including multilevel relations in the parliamentary arena. As illustrated by the case studies, comparative research brings to light different patterns, depending on constitutional frameworks and societal conditions. Regarding constitutions, power sharing between levels is probably more important for explaining multilevel parliamentary relations than assumed by Nicole Bolleyer (2010), who correctly emphasised the type of democracy to have an impact. In addition, distinctive patterns exist in divided societies, since regional nationalism finds expression in assertive parliaments fighting for autonomy. The EU Multilevel Parliamentary Democracy appears to constitute a unique case of intense interparliamentary relations, but also highly dynamic patterns. Here, institutional conditions rather than nationalist policies seem to constitute driving forces. Yet rising divides between member states seem to reinforce asymmetric multilevel parliamentary relations. In particular policy fields, Executive Politics, Joint Decision-Making and partly Divided Government also can emerge.

These variations and dynamics indicate that the multidimensional balance of power between the executive and parliament, between levels of government, and between parliaments of the constituent governments never amount to a single model in a federation. In line with theoretical reasoning, all three federations reveal a trend towards Multilevel Parliamentary Democracy or Joint Decision-Making in constitutional policy, although interparliamentary communication may not always be decisive to explain outcomes. In contrast, fiscal or redistributive policies seem to be coordinated mostly in Joint Decision-Making, whereas Executive Federalism seems to arise in regulative policies and in decisions on the allocation of grants to territorial units. Against these dynamics, driving forces grounded in institutions shift to the background but never utterly vanish.

These variations and dynamics affect the quality of democratic representation in federations. Multilevel governance does not rule out accountability of executives to parliaments, it only changes the conditions maintaining the balance of power between them. Dynamics of multilevel parliamentary relations in federal democracies indicate that parliaments use opportunities to respond to intergovernmental policy-making and to adjust their capacities or procedures to these conditions. Thus, the framework outlined above for empirical research implies a normative and a critical perspective. From a normative point of view, parliaments constitute arenas of public deliberation and forums of accountability, and interparliamentary relations extend these necessary dimensions of democratic representation to multilevel governance. Moreover, parliaments constitute a location of power countervailing executive dominance. A critical
perspective sheds light on the reality of democratic representation in federations and takes Executive Politics as the most problematic constellation.

Yet rather than an inevitable fate of multilevel governance, this is one possible outcome of an ongoing struggle for power among executives and parliaments at the different levels of a federation. On the other hand, Multilevel Parliamentary Democracy is difficult to achieve or to maintain, and not to be expected in every federal system. In order to find out how federalism can become more democratic, comparative research needs to discover which model of multilevel parliamentary relations matches which conditions.

References


