The changing function of intergovernmental relations in federal political systems – non-centralization and horizontal interdependence in the European Union and Canada compared

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Abstract

(...)

The changing function of intergovernmental relations in federal political systems

Intergovernmental relations have recently gained renewed attention in both academic (see Puetter, 2012, 2014; Bickerton et al., 2014, 2015; Schimmelfennig, 2015) and political discourses¹ on the European Union (EU). The centrality of the topic is partly due to the latest economic and financial crisis, and is often attributed to an ‘integration paradox’ (Puetter, 2012, 2014) where despite the reluctance of member states to transfer formal competences to traditional supranational institutions (such as the European Commission), the appetite for further integration did not diminish. This eventually led to an increased, horizontal intergovernmental activity characterized by a preference for consensus-building institutions and processes as opposed to national vetoes and threats of exit (see Bickerton et al., 2014: 3) and technocratic and problem-oriented decisions in the post-Maastricht period. This shift within the

¹ See for instance: Leo Tindemans, statesman, 1922-2014 in Financial Times, 28 December 2014, http://www.ft.com/cms/s/2/828f1c9e-8db0-11e4-86a3-00144feabdc0.html#axzz3bijdq5nY. The article talks about Tindemans’ dismay of “the EU’s fateful lurch back to intergovernmentalism”. See also Reform of Europe will not lead to supra-nationality, Sarkozy says, https://euobserver.com/political/114479; OR Schäuble sees need for separate Eurozone parliament, https://euobserver.com/institutional/122884.
intergovernmental sphere has been characterized as “integration without supranationalism” (Bickerton et al., 2014: 1) where the function of intergovernmental relations is increasingly to substitute supranational decision-making as framed by the Community method (Bickerton et al., 2014: 4). This development is thought to constitute a phase of ‘new intergovernmentalism’ (see also Bickerton et al., 2015 forthcoming).

Nevertheless, such intergovernmental dynamics are present not only in complex multi-level governance structures, such as the EU, but can also be traced in fully-fledged federal political systems such as Canada where increased horizontal (inter-provincial) relations are becoming more prominent. Cameron and Simeon (2002) labelled this new intergovernmental development as ‘collaborative federalism’ which referred to a process by which national goals were not unilaterally decided by the federal government any more but rather were co-determined by the individual provinces in a number of different policy areas (e.g. internal trade, social policy, environmental policy). This co-determination generally results in intergovernmental agreements (e.g. Agreement on Internal Trade) which are not legally binding documents and they do not involve any legislative decision at the federal level (as was the case with the Canada Pension Plan).

Struck by the different contexts which nevertheless allow for strikingly similar developments, the main question addressed in this article is under which conditions and how does the main function of intergovernmental relations shift from facilitating centralized legislative decisions to coordinating policy measures across the different orders of government? Despite the fact that the ‘integration paradox’ seems to resonate with the major dilemma of federalism, namely the principle of combining “self-rule and shared rule” (see Elazar, 1979: 2) or ‘unity and diversity’ (e.g. Jachtenfuchs and Kraft-Kasack, 2013), EU federalism scholarship always seemed to shy away from incorporating intergovernmental relations within its framework (see Burgess, 2009)². Furthermore, despite the similar dynamics in the EU and Canada, it is surprising how little attention has been given to a systematic analysis of the changing character (and thus function) of intergovernmental relations within the comparative federalist literature. Consequently, the aim of this article is twofold: first, it shall assess the latest intergovernmental developments of the EU from a federalist perspective, and secondly, it shall test – through a comparative case study – a theoretical framework aimed at understanding the changing character and function of intergovernmental relations in federal political systems.

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² This is also due to the intergovernmental-supranational dichotomy within EU integration studies (Rosamund, 2000; Chryssochoou, 2001; Wiener and Diez, 2009; for a critique, see also Bickerton, 2012).
To this end, the article will first review the comparative federalist and EU integration studies literature on intergovernmental relations. The aim is not only to highlight existing gaps with regards to our puzzle but also to identify potential connecting points between the two strands of scholarly work; a possible theoretical added-value of the paper. This will be used to draw up a theoretical framework which proposes a closer look at the notion of ‘shared rule’, and uses the centralization-decentralization and interdependence-autonomy axes to be able to grasp the changing character and function of intergovernmental relations. Two dynamics will be differentiated: one concerning a move from decentralization to non-centralization where the locus of power leaves the constituent units yet it does not ‘arrive’ at the federal level, but rather gets ‘absorbed’ in the intergovernmental arena. The second dynamic involves incentives for greater horizontal interdependence yet preference remains strong for autonomy as far as vertical relations are concerned. It will be argued that policy challenges that cut deep into the sovereignty of constituent units (and thus involve a high level of politicization) and which require technocratic expertise are likely to trigger the above-mentioned dynamics. The theory will be tested in a comparative case study between the EU and Canada. It will be demonstrated how the issue of inter-provincial trade barriers in Canada and economic governance in the EU impacted on the function of intergovernmental relations and how it contributed to a reallocation of competences despite the lack of formal transfers of decision-making powers.

‘Executive federalism’ and ‘intergovernmentalism’ – comparative federalism meets EU integration studies

As intergovernmental relations are supposed to be “an inherent part of a genuine federal vision” (Nicolaidis, 2001: 454), they have been analyzed from a number of different angles. Even though there is an abundance of scholarly work which focuses on intergovernmental relations from Australia (e.g. Chapman 1990; Painter, 1996), through Switzerland (e.g. Vatter, 2004; Bolleyer, 2006; Mader, 2013) to the United States (Stephens and Wikstrom, 2007; Ongaro et al. (eds.), 2010), the Canadian literature is one of the most elaborate on the topic.

Federalist scholars traditionally considered the formal, constitutional settings “the starting point for any discussion of intergovernmental relations in Canada” (Hodgetts, 1974: 171). In his seminal work from 1973, Richard Simeon described intergovernmental relations and policy making as an inter-play among three sets of separate yet interrelated factors: (1) social and cultural characteristics, (2) institutional

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3 In this context culture simply refers to such elements as diversity of language, (national or ethnic) identity, religion, rules, etc.
and constitutional elements, and (3) particular norms, attitudes, goals and perspectives. He argued that intergovernmental relations became important inasmuch as federal legislation could not act as an arena “for the expression and accommodation of local and regional interests” (Simeon, 1973: 8). Consequently, his empirical studies did not cover cases where intergovernmental procedures and institutions came to substitute centralized, collective legislative decision-making. To the contrary, in his analysis intergovernmental relations were used as an informal tool to facilitate law-making and constitutional revision (e.g. Canada Pension Plan)⁴. There was no theoretical and empirical specification whether ‘federal-provincial diplomacy’, or ‘executive federalism’ as it was labeled by Smiley (1974, 1987), Verney (1989), and later by Watts (1991) and Bakvis et al. (2009)⁵, was used for legislative or more informal coordinating mechanisms. The framework simply emphasized the role of the executive over the legislative branch (see e.g. Bakvis et al., 2009: 71) in working out legislative decisions outside the parliamentary system. In fact, paradoxically enough, executive federalism is a concept very much connected to centralized, legislative decision-making, which was indicated by Verney (1989) who considered executive federalism as half-federalism, or a transitional stage on the road to full-blown legislative federalism⁶ which he described as a federal system where regional interests are represented and accommodated in a federal legislative body (i.e. an elected Senate) that would counterbalance the principle of representation by population. In sum, intergovernmental relations are still considered as ‘add-ons’ to the parliamentary system (Papillon and Simeon, 2004).

Even though it was acknowledged before that the results of ‘executive federalism’ may “vary from agreements on fiscal mechanisms and transfers from the federal government to the provincial government, to the harmonization of policies and administration within the provinces (...) to the constitutional amendments” (Brock, 2003: 69)⁷, no explanation was given to account for variations between legislative (or even constitutional) and rather political outcomes. Furthermore, the changing character of intergovernmental relations was not assessed within specific policy areas that would

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⁴ See Constitution Act, 1964 which extended federal jurisdiction over pensions while allowing provinces to run their own systems.

⁵ There was an alternative understanding of the concept ‘executive federalism’ advanced by Dawson (1987) which argued that the federal cabinet represented regional interests as opposed to the Senate in ‘legislative federalism’ or separate external mechanisms such as First Ministers’ Meetings (Smiley’s understanding of executive federalism).

⁶ A notion relabeled as ‘intergovernmental Canada and parliamentary Canada’ by Simeon and Nugent (2012).

⁷ See also Poirier (2001) on the different functions of intergovernmental concordats (not relations in general). She argues that intergovernmental agreements can play the following role in a federal system: (1) substantive policy coordination, (2) procedural cooperation, (3) para-constitutional engineering, (4) regulation by contract, (5) quasi-legislation. Although this framework is interesting, it does now specify the circumstances under which such different functions of intergovernmental agreements may develop.
analyze systematic causes behind such phenomenon. One possible exception was Cameron and Simeon’s (2002) work on ‘collaborative federalism’ which aimed to describe the pattern of intergovernmental relations that started to emerge from the early 1990s in Canada. ‘Collaborative federalism’ referred to the “co-determination of broad national policies” (Cameron and Simeon, 2002: 49) by the different orders of government. However, the authors argued that it was the failed attempts to amend the constitution and the politics of fiscal deficits⁸ that led to a change in intergovernmental relations, which was to a great extent a repetition of Simeon’s legalistic perspective from the 1970s with minor modifications (see Cameron and Simeon, 2002: 55). In other words, they tried to understand the turn away from legislative decisions to more informal intergovernmental arrangements, yet they explained this turn based on the same formal, constitutional elements (or rather their rigidity) that Simeon used to explain ‘federal-provincial diplomacy’ facilitating federal legislation outside the parliamentary framework. Furthermore, even though collaborative federalism, as advanced by Cameron and Simeon, described the changing character of intergovernmental relations, even if in a rather limited way, it lacked a comprehensive theoretical approach that would provide a systematic explanation for such dynamics. One important change it signaled, nevertheless, was the turn of emphasis from intergovernmental (i.e. vertical relations between the provinces and the federal government) to inter-provincial (i.e. horizontal relation between individual provinces) relations⁹.

In sum, it could be argued that comparative federalist studies generally consider intergovernmental relations as their dependent variables. They claim that either federal constitutional arrangements, such as the nature of the division of powers, representation formulas, levels of fiscal autonomy, etc. (see e.g. Hueglin and Fenna, 2006) or ‘micro-structural’ elements, such as the existence and type of power-sharing mechanisms at the constituent unit level (Bolleyer 2009; Bolleyer and Börzel 2010) influence the nature (i.e. the institutions and processes) of intergovernmental relations. These studies consider intergovernmental relations rather static: they explain how and why different intergovernmental structures and functions may develop, yet they lack an understanding of the changes in the character and function of intergovernmental relations in specific areas of public policy over time especially in cases where the independent variables (that is either macro- or micro-structural factors) remain essentially intact.

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⁸ Although it is not clear how fiscal capacities influenced the issue of inter-provincial trade barriers.
⁹ Such a turn makes a comparison with the European Union both more feasible and prominent. This notion was also repeated by Bolleyer (2009) and highlighted the possible link between vertical and horizontal relations.
As for European integration studies, intergovernmental relations were first studied within the framework of ‘liberal intergovernmentalism’ (Moravcsik 1993, 1998; Moravcsik and Schimmelfennig, 2009). According to this comprehensive framework, the essential character of intergovernmentalism does not change over time: states remain the major actors in the context of anarchy. The approach comes short of understanding delegated or pooled sovereignty and decision-making among the individual actors. It “neither describes nor explains the context within which intergovernmental bargaining takes place” (Sbragia, 1993: 26). Furthermore, the framework can be best applied in cases where national preferences are pre-existing and easily grasped. However, as more and more sensitive areas (e.g. fiscal, energy, social, and employment policies) require coordination among constituent units, the complexity of policy challenges is more likely to limit their preference-building capacity (see also Wincott, 1995). Building upon the deliberative turn (Neyer, 2006) and the ‘new governance’ approaches the analytical concept of deliberative intergovernmentalism (DI) was advanced by Puettter (2012) which featured policy deliberation as essential for policy coordination and something to be expected to “spread to the highest levels of decision-making” (Puettter, 2012: 166), while transforming the institutions and procedures of intergovernmentalism accordingly. Cross-jurisdictional or even constituent unit areas of competence were the focus of deliberative intergovernmentalism, and it described how intergovernmental relations become dependent upon deliberative processes of policy formation and under which conditions policy deliberation should flourish in the intergovernmental context (Puettter, 2012: 163). The management of the financial crisis gave ample evidence that “the community method of decision-making processes (...) is becoming increasingly eroded (...) [And] the intergovernmental method (...) prevails on the European community mechanisms”¹⁰. This was also reflected in the passing of the Fiscal Compact, an essentially intergovernmental agreement. Consequently, Bickerton et al. (2014, 2015) argue that the integration process entered a phase of ‘new intergovernmentalism’ where integration is reached without giving more emphasis to supranational institutions and formal legislative measures while also highlighting that certain behavioral norms, such as deliberation and consensus-seeking, becomes operative norms of intergovernmental relations. Criticizing liberal intergovernmentalism, it is also argued that domestic politics (meaning member state politics) “matters not only in the form of sectoral interests around which national governments bargain within EU intergovernamental settings” (Bickerton et al., 2014: 13), but concerns about legitimacy and representation (core issues of federalism) also influence institutional developments. In fact, much of

¹⁰ Are we heading for a ‘half-Europe’?, http://euobserver.com/opinion/116815
what is described as ‘new intergovernmentalism’ resonates with the notion of ‘executive federalism’ which is not unknown within the EU integration literature. Dann (2003) characterizes the concept with interwoven competencies, the Council as the central institution of this federal system, and consensual decision-making. However, Dann’s approach focuses on legislative decisions and fails to account for decision-making that actually substitutes the Community method. Crum (2013) uses the term to describe a tendency which involves the reinforcement of central policy-coordination in a way that still allows for a certain level of diversity and remains essentially under the control of the national governments.

It is argued here that both the ‘integration paradox’ and the notion of ‘new intergovernmentalism’ reflect essential principles and procedures of federalism in general (e.g. focus on a balance between unity and diversity, self-rule and shared rule, non-centralization, interdependence, legitimacy and representation, etc.) and executive federalism in particular (e.g. the emphasized role of the executive over the legislative branch of government, cross-jurisdictional coordination among the different orders of government, consensus-seeking mechanisms, etc.). In fact, it is surprising why despite the impact on the overall process of integration, this phase of ‘new intergovernmentalism’ was not analyzed from a federalist perspective. This article aims to fill this gap by bringing the two theoretical frameworks closer together in order to be able to understand the changing character and function of intergovernmental relations in federal political systems in a more systematic way. What executive federalism could take from the EU studies literature is a closer focus on policy challenges and new areas of activity and their impact on intergovernmental / inter-provincial relations as opposed to simply considering the constitutional and institutional constraints. Furthermore, a ‘deliberative turn’ injected into federalist scholarship could also widen our understanding of the function of intergovernmental relations within federal political systems as discursive modes other than ‘hard bargaining’ could easily imply the adoption of key federal values and principles (see Burgess, 2013). On the other hand, EU integration studies can also benefit from a federalist approach. It would turn the perspective on intergovernmental relations back from particular governance techniques (see Puetter, 2012) to a more general understanding of the integration process per se (an aim also supported by Bickerton, 2012) which would include questions of competence allocation.

**Explaining the changing character of intergovernmental relations – non-centralization and horizontal interdependence in a comparative research**
Federalism is often used to mean the combination of ‘self-rule and shared rule’ (Elazar, 1979), and implies the existence of not only institutions but also processes, which makes it a dynamic concept\(^\text{11}\). Mueller (2014) rightly argues that the notion of ‘shared rule’, an essential feature to theorize on intergovernmental relations\(^\text{12}\), has been surprisingly understudied. In fact, shared rule generally implies a legislative action: either it refers to the different orders of government working together passing federal legislative decisions (whether it be framework or general legislation) or it is connected to an administrative division of labor where federal legislation is implemented by the lower levels of government in a coordinated manner. A federal system based on such sharing is often referred to as ‘cooperative federalism’\(^\text{13}\), which nevertheless “covers a wide range of activities, not all of which have the effect of co-ordinating territorial interests with federal interests in a federal legislative arena” (Thorlakson, 2003: 17)\(^\text{14}\). In fact, such a categorization hides important variations of shared rule which may involve extra-legislative processes (see Sbragia, 2004; Mueller, 2014). As ‘cooperative federalism’ seems to have lost its analytical explanatory force when it comes to the different functions of intergovernmental relations, there is a need for re-conceptualization\(^\text{15}\).

Bolleyer and Thorlakson (2012) argue that both decentralization and interdependence are important variables in comparative federalism research. The centralization-decentralization axis refers to the location of power, and it is usually operationalized through fiscal (i.e. taxing and spending resources) and political (i.e. jurisdictional and administrative resources over policy-making) means. However, there are two problems with the decentralization aspect which are closely related: (1) the term implies a trade-off (the reduction in the power of one order of government means an increase for the other), (2) conceptually federalism is neither about centralization nor decentralization but rather about non-centralization (Elazar, 1979; see also Nicolaidis, 2001). The latter actually allows for scenarios where a

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\(^{11}\) Simply put, the right allocation of competences may change over time which needs to be handled flexibly by federal systems. This feature is in fact one of their most important characteristics (see Bakvis et al., 2009) and provides intergovernmental relations a prominent role in the process be it a formal redistribution of competences or a more informal reorganization through coordinating previously separate jurisdictions.

\(^{12}\) As areas of self-rule where autonomy of the different orders of government prevail do not presume much intergovernmental activity whereas shared rule implies an interaction between the different orders of government (see also Bolleyer and Thorlakson, 2012: 567).

\(^{13}\) As opposed to ‘dual federalism’ where separate jurisdictions are supposed to watch over separate areas, and thus it is dominated by ‘self-rule’ instead of shared rule.

\(^{14}\) Emphasis added by the author.

\(^{15}\) This need is a reflection of the shift of emphasis from the locus of power to processes of change in the actual exercise of power as foreseen by Nicolaidis (2001, 2006).
trade-off does not materialize, where a decrease in constituent unit powers does not automatically mean an increase at the federal level.

The second axis refers to the autonomy-interdependence continuum which is supposed to capture the ways different governmental levels relate to one another and is conceptualized as “a two-way process characterized by the extent to which government units located on different levels are invited or pressed to operate in a mutually coordinated manner” (Bolleyer and Thorlakson, 2012: 569)\(^{16}\). To increase interdependence, legislative and administrative competences and fiscal powers are used as formal incentives to invite coordination across the different orders of government. However, this approach is limited in one important aspect: it only focuses on interdependence across the different levels of government, yet does not consider the horizontal aspect. Differentiating between horizontal and vertical aspects allows for cases where incentives for horizontal interdependence may go hand-in-hand with a stimulus for autonomy in vertical relations (e.g. emergence of intergovernmental institutions and processes which limit the role of both the federal level and individual provinces at the same time).

This paper argues that the character and function of intergovernmental relations changes along the lines of two major dynamics both increasing the horizontal aspects of intergovernmental relations. First, there is a move away from decentralization to non-centralization which refers to a negative change in the resources (be it fiscal, jurisdictional or administrative) at the constituent unit level to act alone, but does not mean an increase in the same capacity at the federal level. The paper hypothesizes that sensitive, complex policy challenges which involve both politicization and technocratic management are likely to play a major role in such a dynamic. Where efficiency is rather a second-order, yet important priority to the maintenance of constituent unit level capacities (Annett, 2010), centralization is substituted with non-centralization, and the major function of intergovernmental relations is not to assist a formal transfer of competences from one jurisdiction to another but rather to substitute it with more informal coordinating mechanisms. In such a scenario, intergovernmental relations do not alter because of the lack of sufficient representation of sub-national preferences at the federal level, rather they change because there is an explicit, deliberate aim not to handle the policy challenge at the federal level, and thus policy coordination needs to be channeled through intergovernmental relations. Consequently, a closer look at the character of policy challenges may prove to be crucial in

\(^{16}\) Emphasis added by the author.
understanding the changing function of intergovernmental relations as opposed to micro- and macro-structural elements.

Once a non-centralization drive is established, it is related to the second dynamic creates incentives for horizontal interdependence while preserving a preference for autonomy in vertical relations. In order to ensure such ambivalence the features of intergovernmental relations adapt accordingly. This may involve changing already existing settings or the creation of new ones. As a reflection of the non-centralized character of decision-making (compare with Bickerton et al., 2014: 10), greater emphasis will be given to deliberations and consensus-building institutions and processes which shall affect each level from the more administrative to the political one and shall create a sense of ownership among constituent units. Under such circumstances, informal (often in-camera) settings are expected to develop. Greater politicization (due to autonomy concerns vertically and the sensitivity of the policy challenge) makes the highest political level more involved despite a special role given to technocratic networks as well. On the other hand, institutional development is likely to create incentives that would attempt to minimize vertical interdependence. This would include an adjustment in the role of the federal level: instead of driving the events, their main purpose will be to administer and facilitate intergovernmental exchanges.

In sum, it is argued here that intergovernmental relations may develop in two, essentially different ways. Depending on whether there is a policy challenge drive in contested jurisdictions which points towards either centralization or non-centralization, intergovernmental relations could serve the function of assisting federal legislation (centralization) or facilitating horizontal policy coordination (non-centralization). Non-centralization then affects the character of intergovernmental relations which are supposed create incentives for facilitating horizontal interdependence but ensure constituent units’ preference for autonomy in vertical relations.

The next two part will introduce a comparative case study between Canada and the European Union. Such a comparison is called for on many accounts. First and foremost, a comparison is used here not simply as a method but also as a strategy to assist theory-building. Secondly, as the introduction highlighted it, both contexts seem to face similar developments despite the different constitutional settings they may possess. In fact, it is argued here that even though Canada and the EU may not be compared through their formal, constitutional structures, the analogous challenges they face, and the similar patterns of intergovernmental interactions they have developed allows for a comparison which may prove to have an added-value for both contexts. At a more practical level, it could even be asserted
that “Canada and the EU can better manage mutual challenges by learning from each other” (DeBardeeben and Leblond, 2010: 2). Thirdly, even though most widely used comparison in relation to the EU is the US (e.g. Nicolaidis and Howse, 2001; Menon and Schain, 2006), yet, as it will be shown, Canada has a lot more in common with the European polity. In fact, “Europeans might usefully set up Canada as a mirror of themselves, as Canada is the state that comes closest to the EU in several critical aspects” (Fossum, 2009: 498). First and foremost, even though Canada is generally characterized as a federal state, its character is considered to be as contested as the EU (see Bakvis et al., 2009), and neither has reached its finalité politique. Both entities cover noticeable regional, geographic, economic, cultural and even historical diversities. In terms of the institutional settlement, due to an essentially parliamentary form of government both in Canada and the EU, the executive seems to dominate the system, despite the difference in the level of formality. The relation among the heads of governments is described as diplomatic in both the EU (Fossum, 2004) and Canada (Simeon, 1973). Regional representation in central legislative decisions is ensured through the Council of the European Union (i.e. ordinary legislative procedures) and the Senate respectively, neither of them ensuring equal number of votes to the individual constituent units.

Inter-provincial trade barriers in Canada

According to Section 91(2) of the Canadian constitution, Parliament has the authority to regulate trade and commerce, both international and inter-provincial. However, the federal government did not use this section to establish general rules and a regime, and there was quite an uncertainty about whether it could do this without the consent of its provincial counterparts. What followed was a number of Supreme Court decisions trying to address different aspects of this broad constitutional power and fine-tune the rather vague description concerning jurisdiction over internal trade. Yet, the issue remains contested to this day. Beyond the trade and commerce power, Section 121 of the Constitution Act

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17 It is important to note here that Jean Monnet, one of the most prominent figures around the establishment of the European Union (Community back then) has spent some of his most formative years in Canada, and his ideas about European integration have been greatly influenced by his experience overseas (see Ugland, 2011).
18 The most relevant decisions: the Citizens’ Insurance Company of Canada and The Queen Insurance Company v. Parsons case (1881); the Fish Canners (1928); the Aeronautics References (1931); the R. v. Crown Zellerbach Canada Ltd case (1988); the Reference Re Farm Products Marketing Act (1957); the Carnation Co. Ltd. v. Quebec Agricultural Marketing Board case (1968); the Manitoba Egg Reference (1971); the General Motors of Canada Ltd. v. City National Leasing case (1989).
19 Even nowadays important decisions are taken concerning the trade and commerce power of the constitution. See Reference Re Securities Act (2011).
(1982) establishes that the free movement of goods (“articles of the growth, produce or manufacture”) shall be guaranteed among the provinces. Yet, jurisprudence on this section shows similar ambiguity as with regards to Section 91(2).

Up until the early 1980’s the issue of inter-provincial trade was rather decentralized. Provinces possessed jurisdictional and administrative resources which was reflected in the vast number of trade barriers they erected among one another. As one of the former internal trade representatives argued “there was an uneasy truce between the provinces and the federal government (...) there has never been a Supreme Court reference that clearly laid out where the federal government’s powers end and provincial powers”. Consequently, autonomy, understood as the independence of decision-making authority, was more dominant in both horizontal and vertical relations.

Anecdotes and analyses on the presumed costs of inter-provincial trade barriers challenged policy-makers. Once the Royal Commission on the Economic Union and Development Prospects for Canada (MacDonald Commission) delivered its report in 1985, there was considerably more openness from each order of government to address the topic of inter-provincial trade. As a response, the 1986 Annual Premiers’ Conference agreed to a set of steps that should help reduce inter-provincial barriers through a permanent mechanism and guiding principles. It “represented a strong statement from the premiers about internal trade, and (...) it was this political impetus that truly started the internal-trade ball rolling” (Doern and MacDonald, 1999: 42). It is important to note that the issue was not dominated by either order of government. As one retired official put it, “everyone thought of it at the same time...cross-fertilization was all over the place”.

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20 The most relevant decisions: the Gold Seal Ltd. v. Alberta (Attorney-General) case (1921); the Lawson v. Interior Tree Fruit and Vegetables Committee of Direction (1931); the Murphy v. C. P. R. case (1958).

21 The Rowell-Sirois Royal Commission on Dominion-Provincial Relations (1938-1940) summarized the different provincial protectionism techniques and identified it as a potentially serious issue. In 1978, the Pepin-Robarts Report practically repeated the main concerns. By the 1980’s, national news media was flooded with articles describing inter-provincial trade barriers. See e.g. Divide and damage, in The Globe and Mail, 10 December, 1983.

22 Anonymous interview conducted in Toronto, 29 January, 2013. (PROV_LD02)

23 Anecdotes about the constrained options of purchasing a particular kind of beer, and analyses such as the one carried out by the Canada West Foundation, see Provinces’ trade rules cause grief, in Calgary Herald, 2 June, 1994.

24 Also signaled in a 1985 intergovernmental paper entitled ‘On the Principles and Framework for Regional Economic Development’ which suggested that “governments should explore opportunities for increasing interregional trade and eliminating barriers between provinces” (13).

25 Anonymous interview conducted in Toronto, 9 January, 2013. (FED_LD01)
In the mid 1980’s discussions about a constitutional reform also made it to the political agenda. The Meech Lake Accord (1987) included a reference to a Conference on the Economy\textsuperscript{26} which was to be convened by the Prime Minister every year and all other First Ministers should have participated “to discuss the state of the Canadian economy” (proposed Section 148). This reform attempt indicated two things: first, it showed that there was an explicit aim to keep consultations as informal as possible through maintaining an intergovernmental format. Secondly, it highlighted the need for the involvement of the highest political level as Premiers and the Prime Minister were expected to discuss issues concerning the economy once a year. The proposal indicated a slow non-centralization dynamic which was further buttressed in 1987, when Premiers established the Committee of Ministers on Internal Trade (CMIT). Its main responsibility was to identify existing and potential barriers to trade and reduce and remove them through consultations. Its importance lied in the fact that for the first time “a dedicated intergovernmental ministerial committee, armed with a clear mandate and resources for its accomplishment, was working in the internal-trade policy field” (Doern and MacDonald, 1999: 43). The creation of the CMIT and the greater involvement of the Premiers in the topic implied both politicization and technocratic management of inter-provincial trade barriers, which strengthened non-centralization further.

In 1991, a new document entitled \textit{Shaping Canada’s Future Together}\textsuperscript{27} came out that addressed the topic of inter-provincial trade barriers in an indirect yet very explicit manner. The proposal made by the federal government called for a revision of Section 121 of the constitution so as to “enhance the mobility of persons, capital, services and goods within Canada by prohibiting any laws, programs or practices of the federal or provincial governments that constitute barriers or restrictions to such mobility” (Part 3.1. under Enhancing Trade and Mobility in Canada). In terms of the economic union, the accord aimed to establish a shared responsibility where responses to challenges come from “intergovernmental collaboration and consultation” (Part 3.1. under Strengthening the Economic Union). These proposals were expected to serve as the basis to the Charlottetown Accord that was negotiated in 1992. However, provinces proved unwilling to alter the constitutional framework. As Jim Horsman, the Minister of Federal and Intergovernmental Affairs in Alberta argued in the provincial legislative assembly at the time: “from our perspective at this stage, while we have endorsed in principle and have supported enthusiastically the real removal of inter-provincial trade barriers we are not

\begin{itemize}
\item \textsuperscript{26} Or Annual Meeting of First Ministers on the Economy, in First Ministers’ Conference on the Constitution, 3 June, 1987 (p. 19) \url{http://originaldocuments.ca/api/pdf/1stMinConfVerbTr1987Jun3.pdf}.
\item \textsuperscript{27} \url{http://www.solon.org/Constitutions/Canada/English/Proposals/Proposal.english.txt}
\end{itemize}
prepared to accept handing over to the federal government the enormous club they are asking for in section 121 expansion”\textsuperscript{28}. Therefore, instead of arguing that the failed attempts to revise the constitutional distribution of powers have led to an alternative in the form of intergovernmental agreement, it should be argued that provincial governments deliberately turned towards informal policy coordination mechanisms that would not include any formal transfer of decision-making authority to the federal level. As one federal official highlighted it: “There was a general understanding that a political instead of a constitutional agreement was to be negotiated”\textsuperscript{29}. This has been supported by another public servant who argued that: “One of the most important norms throughout the negotiations was to deal with the practical problems created by the federation without disturbing it (...) You simply did not want to constitutionalize...rather we were aiming at a mutually acceptable undertaking that was definitely not legal in nature”\textsuperscript{30}. This non-centralization drive has been further buttressed by the fact that even though both the Meech Lake and the Charlottetown Accords failed to gain support from the provinces, intergovernmental deliberations on inter-provincial trade barriers continued.

After the defeat of the Charlottetown Accord, during a meeting in Montréal in March, 1993, the CMIT announced that it would start comprehensive negotiations by 1 July, 1993 which were concluded with the signing of the Agreement on Internal Trade (AIT) in 1994. Despite the political nature of the document (the AIT is not legally binding) not only did it formalize inter-provincial and intergovernmental institutions (Chapter 16), but it did “remove or lessen the capacities of governments, especially provincial governments, to act in ways that had been possible in the previous three decades” (Doern and MacDonald, 1999: 154). The discretionary power of individual provinces have been constrained through the narrowing range of available policy options in inter-provincial trade. This became manifest through the establishment of a dispute resolution mechanism (Chapter 17) which was supposed to substitute for the lack of the jurisdiction of the Supreme Court (see Article 1707.4)\textsuperscript{31}, through the monetary penalties (up to CAD 5 million), the suspension of certain rights (e.g. right to dispute resolution), and other retaliatory actions.

Once non-centralization was established as a principle, incentives were to be created within inter-provincial institutions and processes to invite mutual coordination between the provinces. Ensuring

\textsuperscript{28} Alberta Hansard, 26 June, 1992. p. 1675.
\textsuperscript{29} Anonymous interview conducted in Toronto, 9 January, 2013. (FED_LD01)
\textsuperscript{30} Anonymous over-the-phone interview conducted in Brussels, 6 April, 2012. (PROV_IGR02)
\textsuperscript{31} Even though it is provisioned that each party shall take measures necessary to ensure that the decisions on monetary penalties may be enforced "in the same manner as an order against the Crown in that Party's superior courts" (article 1701.4 (b) i).
consensus-building capacity through deliberations was a priority. The role of the Annual Premiers’ Conference (APC) was often crucial in pushing negotiations forward. The issue of internal trade continues to be a dominant agenda item in the workings of the Council of the Federation (CoF), the more formalized successor of the APC. The CMIT was the ideal place for policy deliberation: talks were generally conducted “in a black hole of secrecy”\(^{32}\), ‘small wins’, such as the agreements on procurement and beer marketing created a positive atmosphere and increased trust among provinces. As one of the formal trade representatives argued, “Ministers first met every two months, then monthly, and at the end of the negotiation process, every two weeks (...) while the chief negotiator came from the trade ministry, the alternate chief negotiator resided in the Premier’s office, which indicates that there was a lot of political involvement”\(^{33}\). In general, the internal trade process was “supported by a new set of institutions designed specifically to deal with policy making through negotiation between jurisdictions” (Doern and MacDonald, 1999: 45). A neutral Chair was introduced during the negotiations which was replaced by a rotating Chair which increased a sense of ownership among provinces. Additionally, there was a Secretariat which reported to the Chair and whose main responsibility was to provide analytical resources to establish common levels of understanding.

In sum, a non-centralization challenge in a previously decentralized area of public policy caused the Canadian federation to develop intergovernmental institutions and processes that invite mutual coordination across the different provinces. The development of the inter-provincial trade file demonstrates how intergovernmental (meaning inter-provincial) relations can come to substitute formal transfers of decision-making authority to the federal level. In fact, the workings of the CoF indicate a strengthening of such dynamics. As one provincial official pointed out, “the Council of the Federation has turned into a horizontal policy coordination body where Premiers lead on issues important for Canada...the nature of the CoF is different to that of its predecessor the Annual Premiers’ Conference”\(^{34}\).

Even though the constitutional distribution of legislative decision-making power remains intact, intergovernmental policy coordination does alter the actual allocation of powers by constraining the exercise of power at the provincial level.

**Economic governance in the EU**

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\(^{32}\) Let our people trade (1), in *The Globe and Mail*, 5 April, 1994.

\(^{33}\) Anonymous interview conducted in Toronto, 24 October, 2012. (PROV_LD01)

\(^{34}\) Anonymous interview conducted in Toronto, 10 January 2013. (PROV_LD06)
Economic governance was once described as an “equivalent of fiscal federalism based on a much stronger surveillance of budgetary and competitiveness policies”\(^{35}\). The earlier treaties of the European Union used a rather vague language when it came to the integration of economic policies. Coordination was emphasized (e.g. Articles 2, 6, and 105[1] of the Treaty of Rome), but its content remained essentially undefined, which indicated the decentralized nature of field as jurisdictional and administrative resources had not left the level of member states. Under such constitutional ambiguity, and a constant drive for monetary integration after the 1970’s (see Werner Plan)\(^{36}\) a long push for non-centralization commenced which was characterized with “the [gradual] loss of autonomy [over economic policy] at the national level [which] has not been compensated by the inauguration of Community policies” (Werner Plan, 7). The Delors Report\(^{37}\) in 1989, proposed a transfer of decision-making powers in the area of monetary policy to the Community level while stressing that “in the economic field a wide range of decisions would remain the preserve of national and regional authorities” (Delors Report, 14)\(^{38}\) that would not require new institutions (Delors Report, 21). On the one hand, the report stressed that there was no transfer of responsibility in economic and monetary policy from member states to the Community (Delors Report, 37), a claim to uphold the decentralized nature of the field. On the other hand, a reference was made explicitly on the interdependent relationship between monetary and fiscal policies which involved the potential for a non-centralization dynamic.

The Delors Report contributed to the debate leading to the Maastricht Treaty which, besides repeating articles from former treaties, put the Council in charge of ensuring coordination through ‘broad economic guidelines’ and the monitoring of excessive deficit problems (see Article 104(c)). Maastricht signaled a constitutional peak, as neither subsequent treaty reform provisioned transfers of formal decision-making competences\(^{39}\) (see Puetter, 2012: 167). The only addition to the economic policy framework was ensured by the Stability and Growth Pact (SGP) in 1997 according to which “member states remain[ed] responsible for their national budgetary policies” (point II), yet they were expected to


\(^{36}\) Officially known as the Report to the Council and the Commission on the realization by stages of the economic and monetary union in the Community. Source: http://aei.pitt.edu/1002/1/monetary_werner_final.pdf


\(^{38}\) Apart from the system of binding rules governing the size and financing of national budget deficits all other aspects of policy-making would remain in the hands of member states (Delors Report, 19).

\(^{39}\) The Lisbon Treaty simply reflected on the establishment of the Eurozone (Article 3(4) of the TEU, and Article 136 of the TFEU), and established the Euro Group (Article 137).
commit themselves to the objective of a balanced or positive budget\textsuperscript{40} in normal times and to take corrective actions if necessary to ensure that objective (point 1 under Member States). Despite the different Council regulations\textsuperscript{41} which aimed at strengthening surveillance mechanisms and coordination, “there was clearly no sufficient power given to the center to apply the rules in a consistent way (...) the political will has not moved with the rules”\textsuperscript{42}. This was reflected in the 2003-04 ‘deficit crisis’ where France and Germany did not comply with the deficit rules set out in the Maastricht Treaty, yet the sanctions based on the SGP were voted down, effectively destroying the pact in the process and attesting that member states still possessed the resources in fiscal policy-making; a proof of the decentralized nature of the field. Member states simply proved unwilling to transfer main prerogatives to supranational institutions\textsuperscript{43}. The ‘deficit crisis’ ended with a revision of the SGP framework\textsuperscript{44}, which nevertheless reiterated that national interests prevailed.

The fragile framework where “national politics weren’t ready for a full transfer of sovereignty, and European politics wasn’t ready for more EU”\textsuperscript{45} was soon exposed during the latest financial crisis. Saving the euro posed a policy challenge that was both highly technical (e.g. financial stability mechanisms, banking, etc.) and involved a great level of politicization (e.g. financial solidarity). Shortly, it became clear that member states’ jurisdictional and administrative resources to deal with the crisis became constrained. However, right from the beginning it was clear that “there were member states which were clearly skeptical about legal resolutions...they wanted to avoid legal action and rather pushed towards political decisions”\textsuperscript{46}, which avoided the centralization of decision-making capacities and rather pushed towards non-centralization. Once it was accepted as a major principle, incentives had to be created within the intergovernmental sphere that would invite horizontal, mutual coordination. Consensus-building, and deliberation became key characteristics of intergovernmental relations that signaled an

\textsuperscript{40} In fact, “apart from providing a deficit rule, the Treaty d[id] not give further policy prescriptions” (Puetter, 2012: 168).
\textsuperscript{41} See Regulation No. 1466/97, 1467/97
\textsuperscript{42} Anonymous interview conducted in Brussels, 28 March, 2013. (MS_EFC02)
\textsuperscript{43} In fact, there was a court ruling on the SGP in July 2004 which underlined the sovereignty of member states in economic policy giving the Council the responsibility for making member states observe budgetary discipline.
\textsuperscript{44} See Regulations (EC) 1055/2005 and 1075/2005.
\textsuperscript{45} Anonymous interview conducted in Brussels, 24 March, 2013. (MS_EFC01) This is a repetition of the assessment given by the Werner Plan which called the attention to one of the most relevant internal tensions of integration, namely that “the loss of autonomy [over economic policy] at the national level has not been compensated by the inauguration of Community policies” (p. 7). Source: http://aei.pitt.edu/1002/1/monetary_werner_final.pdf
\textsuperscript{46} Anonymous interview conducted in Brussels, 28 March, 2013. (MS_EFC02)
‘Europeanization of national politics’ as opposed to a ‘renationalization of European politics’ that former increased intergovernmental activity would have suggested.

This Europeanization, or federalization of intergovernmental relations led to different institutional and procedural engineering. The European Council became the center of political activity (see Puetter, 2014) which led to a ‘reversed Community method’ where the European Council invited the European Commission to make proposals. The Commission actually tried to reserve the right of initiative by coming up with a package of proposals (Six Pack) before the Van Rompuy Task Force finished its report. However, the Six Pack did not change any of the conditions already imposed by the SGP. It simply aimed to enforce greater budgetary discipline by stipulating that sanctions would come into force earlier and more consistently than before, which was essentially a copy of proposals previously drafted by the European Council. In 2011, the President of the European Council showed leadership again by putting forward the proposal of the Euro Plus Pact, a clearly intergovernmental agreement that aimed to further coordinate economic policies among member states without creating a central, collective decision-making scheme. In November, 2011, the Commission proposed two further regulations known as the Two Pack which introduced further surveillance and monitoring procedures for euro area member states. Its biggest achievement was the establishment of European assessment of budgetary plans for Euro area member states while also improving national budgetary frameworks by requiring them to set up independent monitoring bodies overlooking fiscal rules. The Two Pack was in many ways a result of the coordination initiated by the Euro Plus Pact. Last, but not least, the Treaty on Stability, Coordination and Governance (TSCG) is an intergovernmental agreement which does not change the formal distribution of competences between the EU and its member-states. The TSCG was a clear indication that “member states had to start coordinating in areas where the Union had no explicit competence, but there wasn’t much possibility for going beyond the existing competence allocation.”

In fact, even though the TSCG does not change the formal distribution of powers among the member states and the European level, it does lessen the capacities of individual governments to act unilaterally in terms of fiscal policy decisions.

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47 Beyond the institutions: Why Europe today?, a speech delivered by Herman Van Rompuy, President of the European Council at the Europe Conference in Copenhagen, 11 May, 2012.
50 The idea of the European Semester was first introduced during the March, 2010 European Council.
51 Anonymous interview conducted in Brussels, 31 May, 2013 (MS_EFC05).
Not only was the main function of the European Council to provide strategic leadership complemented with day-to-day policy management, and did the Council’s main focus shift from legislative decisions to policy deliberation (see Puettter, 2014), a number of new intergovernmental forums (see also Bickerton et al., 2014, 2015) emerged to further assist horizontal interdependence (e.g. the framework around the European Stability Mechanism). One such forum was the Euro Summit which was established by the TSCG and it provided euro area heads of states and government with a separate opportunity for deliberations. This body shall elect its own president from among its members for a term equal to that of the President of the Council and its work is supported by the Eurogroup. The function of the Eurogroup itself changed considerably. As one European official from the Commission noted, “during the crisis, the Euro Group was acting like a firefighters’ meeting, […] it has become a better functioning institution with a Secretariat and a permanent chair”52 both of which contributed to mutual coordination efforts.

In sum, a non-centralization challenge in the previously decentralized area of fiscal policy led the EU to adopt intergovernmental institutions and processes that facilitated mutual coordination across the different provinces to avoid formal transfers of decision-making authority to the European level. Even though the ‘constitutional’ distribution of legislative decision-making power remains intact, intergovernmental policy coordination does alter the actual allocation of powers by constraining the exercise of power at the provincial level which has been repeatedly demonstrated through the negotiations of the rescue of the euro.

Conclusion

The main objective of this article was to understand how and under which conditions intergovernmental procedures lead to a federalization of a public policy field without formal transfers of constitutional jurisdictions from the lower to the higher levels of government. A comparative federalist approach to the changing function of intergovernmental relations is a response to the call made by Burgess (2009: 33) which claimed that “the role of EU member states as propulsive forces in helping to build a federal Europe has actually been underestimated by federalists themselves and should be much more effectively integrated into federalist theory”. By a reconceptualization of federalism, intergovernmental relations were introduced through the axes of centralization-decentralization and autonomy-interdependence. Through a comparative study it was demonstrated that complex policy challenges

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52 Anonymous interview conducted in Brussels, 25 July, 2013. (CAB_REHN01)
often create a push towards non-centralization in previously decentralized fields of public policy. This non-centralization dynamic then creates incentives for intergovernmental processes and institutions to facilitate mutual coordination.

Two important remarks have to be made. First, a non-centralization dynamic does not exclude possible future centralization. In other words, a formal transfer of decision-making authority remains open even after the intergovernmental developments addressed in this article become manifest. Future empirical cases and studies could analyze such scenarios. Secondly, as complex policy challenges requiring technocratic management and involving politicization may arise in other policy areas (e.g. energy policy, social policy), such developments can be expected to expand in the future.

Even though the paper does not aim to make any normative judgement, important theoretical and practical questions do arise. What is the impact of such a development on democratic policy-making? Do such phenomena indicate a stage of disequilibrium (see Bickerton et al., 2014) or quite the contrary? Such and other questions, nevertheless, should constitute the topic of another research.

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