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## Why Legislatures Organise: Inter-Parliamentary Activism in Federal Systems and its Consequences

NICOLE BOLLEYER

*Intensifying intergovernmental cooperation creates problems for legislatures. They are rarely involved in the policy-formulation process and are often confronted with 'take it or leave it decisions'. This paper assesses the conditions under which sub-national parliaments in federal systems try to counteract the growing executive dominance in intergovernmental relations (IGR) through collective, inter-parliamentary activism and evaluates its effects. Inter-parliamentary activism is triggered by institutionally separated branches not bridged by party ties emphasising parliaments' institutional interests, interests otherwise easily muted by the divide between parliamentary majority supporting the government and its opposition. Accordingly, in the presidential US, state legislatures pursue their interests separately from their executives. In the Swiss cantons, where executives and parliaments are institutionally separate but differences are moderated through party ties, we also observe inter-parliamentary activism but in a less forceful manner. In the parliamentary Canadian provinces inter-parliamentary activism is unheard of. In all three cases, sub-national parliaments face trade-offs between moderating executive dominance by parliamentary involvement, assuring the efficiency of intergovernmental cooperation and fighting federal intrusion in areas of state competence. Ironically, the independent representation of state legislatures in American IGR weakens the states as a level of government since no intergovernmental body can effectively act on their behalf to counter centralisation.*

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Keywords: *inter-parliamentary relations; intergovernmental relations; executive dominance; legitimacy deficit; federal reform.*

### Sub-national Parliaments and the Challenge of Intergovernmental Relations

Intergovernmental treaties negotiated by executives pose a problem for national and sub-national parliaments alike.<sup>1</sup> They are rarely involved in the policy-formulation process which usually evolves behind closed doors and in the end are confronted with a 'take it or leave it decision'. This problem has gained considerable prominence in recent decades since intergovernmental cooperation within and across national boundaries has intensified considerably. As one side-effect, these processes intensify executive dominance – a disposition already

inherent in parliamentary government more generally – and thereby complicate the life of parliaments. Clearly, the degree to which legislatures play an active role in policy-making varies across countries and it would lead to exaggerations of the problem using a hypothetical ‘golden age’ of parliamentary government as a yardstick to assess the current role of modern parliaments (Benz 2004, Auel 2005, Auel and Benz 2005). Still, the pressure on parliaments simply to rubber-stamp pre-cooked decisions for reasons of efficiency has intensified. We are increasingly confronted with a democratic deficit flowing from a process of ‘de-parliamentarisation’ whose normative implications have been widely discussed in EU studies and international relations (IR). This debate identified a dilemma. The efficiency of intergovernmental processes is likely to decrease with a stronger parliamentary involvement, which is crucial to maintain the democratic legitimacy of intergovernmental decision-making (Auel and Benz 2005, Slaughter 2005).

So far, the study of the de-parliamentarisation within federal systems has hardly received any attention in comparative research. This is striking since sub-national parliaments face this efficiency-legitimacy dilemma to an even greater extent than national parliaments since the risk of centralisation of competences is much more pronounced. Even more, they face a *trilemma* between moderating executive dominance by parliamentary involvement, maintaining the efficiency of intergovernmental cooperation and protecting the autonomy of sub-national governments from federal intrusion. Sub-national governments tend to engage in horizontal intergovernmental cooperation – voluntary policy coordination across sub-national borders – not only to increase their problem-solving capacity. They try to prevent national regulations which are easier to justify the less sub-national governments are able to solve boundary-crossing problems by themselves, thus through formal or informal intergovernmental agreements. The centralising tendencies observed in most federal systems underline the reality of this threat.

While we find similar pressure to move competences upwards in the EU, for instance, there is a crucial difference considering the strategic position of national parliaments in the EU as compared to sub-national ones in federal systems. The Europeanisation of competences as a means to facilitate collective problem-solving intensifies any de-parliamentarisation which might have existed nationally since parliamentary participation in EU decision-making is still insufficient. Within federal systems, in contrast, upward shifts solve the legitimacy problem resulting from intense intergovernmental relations (IGR) since national decision-making is subject to the ‘usual control’ by a fully legitimised national parliament. Usually national parliaments are resource-wise and procedurally even better equipped to check on their executives than sub-national parliaments. Since in a federal system we find a normatively equivalent (or even superior) decision-making structure on the upper level, sub-national parliaments lack a strong normative argument why competences should remain with them (especially if their collective problem-solving capacity is low).<sup>2</sup> Even more, a forceful insistence in a stronger parliamentary involvement in intergovernmental

negotiations to maintain democratic legitimacy might backfire: such procedures are likely to slow down horizontal coordination processes considerably and thereby strengthen the position of those pushing for national intervention. To find the right balance between protecting their own influence on intergovernmental decision-making, while protecting the power of their government as a whole from central intrusion, constitutes a major strategic dilemma.

Complicating the situation further, while international treaties are legally binding, they are usually not enforceable.<sup>3</sup> If individual government priorities change, non-compliance cannot be formally sanctioned. Intergovernmental negotiations between sub-national governments in many federal states can also lead to formal treaties, while in contrast to the international realm, these treaties are usually legally enforceable. In Switzerland, for instance, cantonal law is overruled by conflicting, inter-cantonal law. Formal intergovernmental cooperation is – in judicial terms – much more consequential for sub-national parliaments than international cooperation usually is for national parliaments. Under such conditions, sub-national governments tend to prefer informal agreements which create political commitment without being formally binding. This does not only imply that intergovernmental coordination is less effective when mostly relying on informal, non-binding agreements; it also means that since formally legislative competences remain untouched, parliamentary involvement in the formulation stage tends to be reduced to a minimum since parliamentary ratification is not required. If governments *de facto* comply with these non-binding agreements by introducing corresponding legislation at home later on, while intergovernmental negotiations are not transparent and not subject to parliamentary scrutiny, the capacity of parliaments to hold executives accountable is heavily reduced, while the problem of ‘take it or leave it’ decisions is reproduced. Whatever internal legitimacy deficit might exist due to executive dominance and insufficient legislative oversight in the normal law-making process is accelerated if policy formulation is transferred into secretive intergovernmental arenas.

In sum, in federal systems the presence of (democratically legitimate) national decision-making as a fallback option in case of failing horizontal policy coordination between sub-national governments and the problematic role of informal intergovernmental agreements complicate and intensify the efficiency-legitimacy dilemma identified in the Europeanisation literature. Sub-national parliaments are confronted with a *trilemma* which presents itself as a trade-off between insisting on one’s institutional influence on their executives’ activities (and thereby assuring legitimacy) which is likely to weaken collective problem-solving capacities. Coordination failure between sub-national governments itself facilitates the upwards movement of competences which risks reducing the influence of sub-national governments – including their parliaments – altogether.

There is not one effective answer to these tensions as visible in the variety of reactions of sub-national parliaments when confronted with executive-dominated IGR. In some federal systems, parliaments have set up their own intergovernmental body pushing for their interests as in the United States. In other systems such

as Canada, these attempts are unheard of. The conditions under which sub-national parliaments try to counter the executive collectively and become politically active – what is defined here as *inter-parliamentary activism* (in contrast to inter-parliamentary exchanges or cooperation more generally) – have not been specified. Nor have the latter's implications for the protection of parliamentary or, more generally, sub-national interests within federal systems been systematically discussed. This neglect is surprising since overall legislators have become increasingly discontented with this passive role and seek ways to exercise power more directly and enhance their voice through collaborative efforts (Slaughter 2005, pp. 107–108). Inter-parliamentary activism – within or beyond national boundaries – as an alternative or supplement to the reform of parliamentary control mechanisms within individual governments – has gained importance.

The following analysis deliberately focuses on cross-national differences. The literature widely agrees that the need for cross-jurisdictional cooperation in federal systems has intensified over recent decades (among others Simeon 2001, pp. 145–147; see also Börzel 2002, Hooghe and Marks 2003, Benz 2004, Benz and Papadopoulos 2006) putting parliaments under pressure to respond. Instead of tracing this over-time development, the paper addresses the puzzle why parliaments in different systems respond so differently.

Methodologically, the comparative study of inter-parliamentary exchanges on the sub-national level has crucial advantages over its study on an international level. Cooperation initiatives of national parliaments are difficult to compare since each participating parliament operates in an extremely distinct context. Their members are highly diverse and subject to very different internal constraints. For instance, the Parliamentary Assembly of the Francophonie (APF) includes about 50 parliaments partially embedded in stable Western democracies, partially in authoritarian regimes and semi-democracies. While sub-national governments within one federal system are by no means completely homogeneous, an issue we will return to later, core variables such as the patterns of executive–legislative relations or the professionalisation of legislatures tend to be reasonably similar. This allows us to distil the conditions under which parliaments engage in particular forms of collective activities in federal contexts more reliably.

This paper attempts to account for sub-national parliaments' efforts to act collectively as a response to intensifying intergovernmental cooperation and to assess their implications for intergovernmental dynamics and the power relations in federal systems. Based on the above-mentioned trilemma, the question can be posed in the following way: under which conditions do sub-national parliaments prioritise their genuine, institutional interests over the interests of their governments, a choice which has repercussions for the working of a federal system as a whole?

It is argued that in order to understand inter-parliamentary activism as a collective political activity counterbalancing executive dominance, the *willingness of sub-national parliaments to defend an institutionally defined interest* is more important than *parliaments' institutional capacities* (for example, linked

to the professionalisation of parliaments or the relative costs of inter-parliamentary interaction in a system). This willingness is rooted in the relative divide between the executive and legislatures within sub-national governments. This hypothesis is examined studying inter-parliamentary activism in Canada, Switzerland and the United States, three systems with very different executive–legislative relations. Depending on the relative separation of the branches, sub-national parliaments in each system handle the identified tensions between democratic legitimacy, the efficiency of intergovernmental problem-solving and the protection of sub-national autonomy differently.

### Defining and Measuring Inter-Parliamentary Activism

Inter-parliamentary exchanges can serve a wide range of sometimes purely service-oriented, sometimes political functions. *Inter-parliamentary activism* as a concept captures those types of exchanges that are of a political nature. It embraces all collective activities of parliaments that attempt to counterbalance executive-dominated IGR. It can find expression in the collective promotion of a stronger parliamentary involvement in intergovernmental negotiations – be it in the form of inter-parliamentary commissions or internal reforms (for example, reforms expanding parliamentary oversight in external relations). It can also show in the collective lobbying of federal legislation to strengthen the weight of genuinely legislative (as opposed to executive) perspectives and interests or in collectively issued public positions on current debates relating to federalism and IGR (for example, reform processes).

Inter-parliamentary exchanges can be bilateral, regional, national and international. To assess inter-parliamentary activism more particularly, activities of regional and national scope tend to be most crucial. The inter-parliamentary arrangements in charge on these levels usually parallel inter-executive fora, thus, tend to be directed towards the central inter-executive bodies in the system to establish a counterweight (Kraft-Kasack 2008, p. 544). We might observe parliaments' intense involvement in international bodies which publish pamphlets about the status of legislatures within its members' home countries. Yet as long as no particular national context is targeted, recommendations are unlikely to have any political impact in the respective national arenas. Their interest profile is likely to be too broad especially when federal and sub-national parliaments are members, which in their home arenas – as their executives – compete for influence. That the evaluation of the impact of transnational inter-parliamentary cooperation is very mixed (see for comparative studies Kuper and Jun 1997, Marschall 2005, Kraft-Kasack 2008) substantiates this view.

Moving on to questions of operationalisation, the core indicator to pin down inter-parliamentary activism is the *issuing of positions and strategies which serve political functions*, formulated and approved according to *decision-making procedures collectively embraced by the participating parliaments*.<sup>4</sup> Accordingly, it is unlikely that inter-parliamentary activism is completely *ad hoc*. Nonetheless,

inter-parliamentary bodies can be highly institutionalised (thus highly developed in structure and resources, see indicators in the final section of this paper) *without* engaging in any political activities described above. Once inter-parliamentary activism in the form of collective, political (not simply service-oriented) activities can be identified, however, the institutionalisation of the respective inter-parliamentary arrangements in charge can indicate its strength.

The comparative analysis of the structure and activities of inter-parliamentary arrangements is based on primary documents published by the existing arrangements, government publications and an email survey exploring sub-national parliaments' activities.<sup>5</sup> Further, it draws on over 80 interviews with intergovernmental officials (executive and legislative), the staff of intergovernmental bodies and experts mainly conducted between 2005 and 2006 in the context of a broader study of federal dynamics in Canada, Switzerland and the US (Bolleyer 2009).<sup>6</sup> These semi-structured interviews aimed at reconstructing the dynamics of IGR from different viewpoints in each system. They especially aimed at specifying core factors driving IGR and main lines of conflict (for example, partisan vs. institutional divides) that shape interaction patterns between sub-units and their branches but also structural choices regarding collective (executive and legislative) infrastructures. A combination of documents and interview material allows us to triangulate data and to assess the relative relevance of core variables underlying inter-parliamentary activism by exploring the interests and motivations of core actors.

### *Explaining Inter-Parliamentary Activism in Federal Systems*

Inter-parliamentary activism is a matter of political will of sub-national parliaments to get organised independently from their executives. Such political will is rooted in the degree to which parliaments perceive themselves as holders of interests separate from their executives' interests. Drawing on the neo-institutionalist debate around the relevance of the parliamentarism–presidentialism distinction (see for an overview Peters 1999), it is plausible to expect that a separation of power structure not only leads to a more powerful role of legislatures in the ordinary law-making process but also favours independent political activities of parliaments in IGR.

Decoupling executive survival from legislative support broadens the leeway for independent parliamentary activities irrespective of executive priorities. It invites MPs to define themselves in terms of their parliamentary role and to identify strongly with institutional functions rather than associating themselves with the parliamentary majority in charge of supporting the executive or, alternatively, with its opposition. Accordingly, the *regime type* present in sub-national governments is expected to affect inter-parliamentary activism. At the same time, the comparative literature on presidentialism implies that sufficiently strong *political parties* can bridge the divide between institutionally separate branches organisationally (Mainwaring and Shugart 1997). While the institutional divide should still generate an effect, parties dominant in both branches are likely



to moderate the differences between executive and legislative interests. Note that this argument differs from Tsebelis' approach (1995), which would expect institutional veto players to be neutralised by partisan congruence. Instead, it is the interplay of these two factors (which mutually reinforce or weaken each other's effect) that is expected to motivate parliaments to act upon their interests against their governments and shape their *institutional willingness* to engage in inter-parliamentary activism, without one dominating the other.<sup>7</sup>

While one might counter that *institutional willingness* could be motivated by alternative factors, as detailed below, the literature on parliamentary performance further points to another set of factors shaping parliamentary activities, namely the *institutional capacity* of parliaments (as generated by their professionalisation, for instance). Fortunately, the degree to which institutional interests dominate IGR and the institutional capacity of parliaments to engage in collective activities do not correspond, which allows their effects to be disentangled. Nor do inter-parliamentary activism and the degree to which inter-parliamentary bodies are institutionalised. Accordingly, the analysis below will show that parliaments' *institutional capacity* supports a wider scope and higher level of the *institutionalisation of inter-parliamentary exchanges*. Yet it is parliaments' *institutional willingness* which explains whether these exchanges serve *inter-parliamentary activism*.

### Case Selection

The cases analysed cover a system with highly disciplined parties operating in parliamentary governments in which executives and parliamentary majorities form one unit of action (Canada), a system with institutionally separate branches and weak parties (US) and, in the middle, a system with separate branches which are linked by party ties (Switzerland). Thus they show maximal variance of the two factors expected to motivate inter-parliamentary activism. Table 1 shows their relative strength in each system.<sup>8</sup>

The assignment of numerical values to the parameters of each variable (3 = strong, 2 = medium, 1 = weak) highlights the interplay between the two

**Table 1: Expected Patterns of Interest Definition and their Hypothesised Impacts**

	Canada	United States	Switzerland
Institutional Separation of Branches	Weak (1)	Strong (3)	Strong (3)
Party Organisational Strength	Strong (3)	Weak (1)	Medium (2)
Interest Definition in Parliaments	Defined by government/parliamentary majority vs. opposition-divide	Institutionally defined	Institutionally defined but moderated by party ties
→ Inter-parliamentary Activism	→ Weak (1 - 3 = -2)	→ Strong (3 - 1 = 2)	→ Moderate (3 - 2 = 1)

*Note:* 'Party organisational strength' based on Carty *et al.* (1992), Katz and Kolodny (1994), Vatter (2002), Thorlakson (2009).

core variables (that is, strong party linkages weaken the institutional interest definition of parliaments)<sup>9</sup> as well as the ranking of cases in terms of the relative inter-parliamentary activism expected to flow from it (note that the rankings are ordinal and do not reflect quantifiable differences between cases): inter-parliamentary activism should be weakest in Canada (-2), strongest in the US (2) with Switzerland in the middle (1).

The reasoning is as follows: both the US and Switzerland are composed of presidential sub-national governments.<sup>10</sup> In the United States the governors are elected separately from their legislatures as is a wide range of other executive office-holders. Agency heads are often directly elected, or alternatively appointed by independent boards. Thereby departments gain considerable independence and governors must share power with other elected officials as well as with numerous semi-autonomous boards and commissions. Although in the United States the governor as the head of the executive receives considerable public attention, this does not imply that the governor can push through his/her agenda – be it against the legislature or competitors in the executive or judicial branch (Esman 1984, p. 29). Also in the Swiss cantons, executives are directly elected and separate from their legislatures. More particularly, the different ministers are elected one by one which leads to a high degree of intra-executive fragmentation, often labelled as ‘departmentalism’, granting the individual ministers considerable room for manoeuvre. Both systems invite a high level of intra-governmental fragmentation and lack a clear locus of power (as opposed to the premiers in the Canadian provinces). This institutional separation of the branches should favour inter-parliamentary activism in both. At the same time, these activities should be less pronounced where parties are able to bridge inter-branch divides. Swiss parties control candidate selection (Vatter 2002), a core source of parties’ organisational power which American parties lack since the introduction of primaries in the early twentieth century (Katz 1994). Even more so than Swiss parties, Canadian parties are clearly stronger and internally more cohesive than their American pendants (see Carty *et al.* 1992, Thorlakson 2009). Further, Canada is composed of parliamentary governments with extensive prime ministerial power institutionally favouring a fusion of executive and legislative majority. Institutional incentives and disciplined parliamentary parties should undermine the willingness of provincial parliaments as institutions to engage in legislative activism opposing executive-dominated IGR. In sum, while the government–opposition divide plays some role in any system, in Switzerland its impact is weakened compared to Canada, since governments are mostly oversized and divided government situations are rare (Vatter 2002). Divided government is more frequent in the American states. After 1980 an average of only 43% of governments were unified.<sup>11</sup> However, studies could show that this constellation is hardly capable of muting inter-branch divides given the organisational weakness of parties (Bolleyer 2009) substantiating the characterisation in Table 1.

Beyond maximising the variance across the cases in the way sub-national executives and legislatures relate, this set of cases is also methodologically

advantageous due to the constellation of the strength of institutional interests as a potential explanatory dimension in relation to the parameters of possible alternative explanations (that is, the institutional capacity of parliaments). In an ideal research design, the latter could be kept constant, out-ruling any alternative impacts on the dependent variable. As in most small-N comparisons this is, however, not feasible. Yet while both dimensions vary across the three cases, they vary in an advantageous way. As the following section will detail, the factors shaping institutional capacity lead to predictions about inter-parliamentary activism (the dependent variable) opposite to those derived from the framework specifying the strength of institutional interests as the main explanatory factor. The particular set of cases therefore allows us to test one explanation against the other without facing the multicollinearity problems usually resulting from a limited control of alternative explanations.

### *Rivalling Accounts*

Obviously, the *institutional willingness of parliaments* to get organised could be generated by factors other than the degree to which parliamentary interests are institutionally defined. Formally binding intergovernmental agreements able to rule out individual sub-national legislation might be perceived as a bigger threat to legislative autonomy than informal agreements which, formally speaking, leave legislative competences untouched. Both the US and Switzerland know formal inter-state treaties. We do not find them in Canada. Accordingly, the expectations of parliamentary activism (high in the US and Switzerland, low in Canada) are similar to those derived on the basis of the strength of institutional interests (high in the US, medium in Switzerland and low in Canada, see Table 1). Digging a bit deeper, however, the existence of such treaties is unlikely to be so threatening, if they are rarely used. In fact, inter-cantonal treaties are more frequently used than inter-state compacts in the US.<sup>12</sup> American legislatures block their use more frequently than cantonal parliaments, which itself is generated by inter-branch divides unmediated by party ties as compared to Switzerland. To refer to the available instruments for intergovernmental cooperation to explain inter-parliamentary activism would turn things upside down. The argument further overlooks that formally binding agreements at least assure a parliamentary veto, which is not the case for informal agreements.

Moving on the factors shaping institutional capacity as an alternative perspective to explain inter-parliamentary activism, Table 2 indicates which level of inter-parliamentary activism one would theoretically expect in the three countries relative to each other if these factors were the essential driving forces. It further contrasts these expectations with the patterns derived from the approach focusing on institutional willingness.

Thinking about the *institutional capacity of parliaments*, in a first step we need to deal with the relative costs of inter-parliamentary activities in a system: transaction costs. They can be expected to increase with the number of interacting legislatures and with the size of the country. Both factors increase the complexity

**Table 2: Factors Expected to Shape Institutional Willingness and Institutional Capacity**

	Institutional Willingness	Institutional Capacity				
		Transaction Costs				
		Interest Definition in Parliaments	Number of Sub-national Governments	Country Size	Term Limits	Professionalisation
Canada	Defined by majority-opposition divide	Low* (13)	High**	No***	High	High
United States	Activism: Weak	Activism: Strong (3)	Activism: Weak (1)	Activism: Strong (3)	Activism: Strong (3)	Activism: Strong (2.5)
	Institutionally defined	High (50)	High	Yes	Medium	Low
Switzerland	Activism: Strong	Activism: Weak (1)	Activism: Weak (1)	Activism: Weak (1)	Activism: Moderate (2)	Activism: Weak (1.25)
	Institutionally defined but moderated by party ties	Medium (26)	Low	Yes	Low	Moderate
	Activism: Moderate	Activism: Moderate (2)	Activism: Strong (3)	Activism: Weak (1)	Activism: Weak (1)	Activism: Moderate (1.75)

\*'Low' refers to 'number of sub-national governments' (not transaction costs); \*\*'High' refers to 'country size' (not transaction costs); \*\*\*'No term limits' increase institutional capacity because it implies the stability of legislative actors involved in inter-parliamentary processes.

to arrange and maintain direct exchange across institutions as far as direct face-to-face contact is concerned. Most strikingly, referring to the number of sub-units and to size, the US is the least likely case for inter-parliamentary activism – directly contradicting the approach referring to institutional willingness.

Similarly, the continuity of parliamentary composition can be expected to shape parliaments' capacity to maintain steady inter-parliamentary exchanges and thus a viable infrastructure for inter-parliamentary exchanges. We find formal term limits in Switzerland and the US, not in Canada (Moncrief 1998, Bochsler *et al.* 2004), again indicating favourable conditions for activism in Canada.

The capacity to carry transaction costs is higher in systems with highly professionalised, full-time legislatures. Professionalisation is usually measured based on the length of parliamentary sessions, salaries and legislative staff. Case studies indicate that both in Canada and the US sub-national parliaments have undergone a similar trend towards professionalised full-time legislatures. It is, however, noteworthy that the foundation of the major inter-parliamentary bodies – the National Conference of State Legislatures (NCSL) and of the Commonwealth Parliamentary Association (CPA) (and with it its Canadian regional branch) – preceded major reforms towards more professionalisation.<sup>13</sup> The Canadian provincial parliaments tend to show less variance in their levels of professionalisation and, on average, range better across its components such as MPs' salaries and length of sessions than American state legislatures (see Squire 1992, Moncrief 1994). Despite the considerable variance in the professionalisation across state legislatures, regional conferences of state legislatures set up across the country are structurally very similar, which again questions the linkage between professionalisation and inter-parliamentary activities.

Returning to the cross-national comparison, in both Canada and the US sub-national parliaments are clearly more developed than in Switzerland. Cantonal parliaments still operate mostly on a part-time basis. Parliamentarians are amateurs who, next to their main job, tend to occupy a range of other political offices on various levels of government (Bochsler *et al.* 2004, Trippolini 2007) which can be expected to reduce their capacity to engage in inter-parliamentary exchanges.<sup>14</sup> If professionalisation is a major drive of inter-parliamentary activism, Switzerland is the least likely case, while Canada the most likely one.

Again, to clarify the relative level of inter-parliamentary activism in each country that is theoretically expected to flow from parliaments' overall institutional capacity (directly comparable to a country ranking derived from the relative strength of institutionally defined, parliamentary interests), numerical values are assigned to the expected level of activism (weak = 1, moderate = 2, strong = 3)<sup>15</sup> for each variable shaping institutional capacity which are then averaged. Assuming that the higher the mean, the more likely is inter-parliamentary activism, Canada (2.5) ends up as the most favourable, the US (1.25) as the least favourable context. This is directly opposed to the expectations derived from parliaments' institutional willingness. Accordingly, if the empirical results confirm

the pattern of inter-parliamentary activism derived from the latter, the alternative explanations just discussed are unlikely to be convincing. Also starting out from particular combinations of factors contributing to parliaments' institutional capacity does not change the overall picture.

### **Inter-Parliamentary Activism in Canada, Switzerland and the US**

Table 3 gives an overview of the empirical results with a focus on the main inter-parliamentary arrangements in each of the three systems.<sup>16</sup> It shows that the degree to which each arrangement counteracts executive dominance in IGR (ie. engages in inter-parliamentary activism) matches the degree to which parliamentary activities are driven by institutionally defined interests – the relative institutionally driven willingness of parliaments – in the respective system. The overall institutional capacity of parliaments, in contrast, does not tell us a lot. It is not unimportant for inter-parliamentary exchanges more generally though. Especially when we look at one component, the professionalisation of parliaments, we see that it supports the institutionalisation of inter-parliamentary arrangements.

How does institutionalisation of an inter-parliamentary arrangement show? Even if the interaction density between parliaments is quite high at times or meetings between representatives are regularised, institutionalisation is considered weak if it is organised directly by the individual parliamentary offices. Medium institutionalisation shows in a process of external differentiation of inter-parliamentary relations, leading to institutional boundaries in terms of clearly assigned functions as well as material resources, in concrete, some form of secretariat which actively supports inter-parliamentary exchanges (for example, by providing expertise or trying to moderate conflict). Once an inter-parliamentary body resting on an agreement between the member parliaments has been created, institutionalisation increases through a process of functional differentiation (Judge 2003, pp. 500–501). A core feature of a strong institutionalisation is the internal differentiation of such a collective body into offices or sub-units that have their own formally assigned tasks which are likely to increase the efficiency of whatever task parliaments assign to the respective arrangements.

Institutionalisation strengthens inter-parliamentary arrangements' capacity to deliver services to parliamentary representatives and staff and also helps us to understand why we find a broader variety of highly institutionalised structures in both the US and Canada than in Switzerland as detailed in the case studies (note again that Table 3 focuses only on core arrangements).

#### *Inter-Parliamentary Exchanges and Executive Dominance in Canada*

In Canada, we find an elaborate infrastructure facilitating inter-parliamentary exchanges from bilateral up to an international scope. Cooperation between only 13 parliaments is comparatively easy and provincial parliaments are well-equipped professionally. We do not find any political endeavours to create a collective voice to counteract the dominance of executives in IGR nor do these

Table 3: The Nature of Inter-parliamentary Arrangements in Three Countries

	Canada		United States			Switzerland
<i>Institutional Capacity of Parliaments (overall)</i>	<i>High</i>		<i>Low</i>			<i>Moderate</i>
Core Inter-Parliamentary Arrangements	Commonwealth Parliamentary Association (CPA)	CPA – Canadian Region	National Conference of State Legislatures (NCSL)	Regional Conferences of State Legislatures	Interest Group Cantonal Parliaments (cross-regional*)	Concordat des Concordats** (regional)
<i>Professionalisation</i>	<i>High</i>		<i>Medium</i>			<i>Low</i>
Institutionalisation	Strong	Strong	Strong	Strong	Medium	Medium
Service Provision/ Information Exchange	Strong	Strong	Strong	Strong	Weak	–
<i>Institutional Willingness of Parliaments</i>	<i>Low</i>		<i>High</i>			<i>Moderate</i>
Inter-Parliamentary Activism (Political Activities Targeting National IGR)	–	–	<ul style="list-style-type: none"> <li>• Lobbying for legislative interests (target: national policy)</li> <li>• Publication of model laws</li> </ul>	<ul style="list-style-type: none"> <li>• Lobbying for legislative interests (target: national policy)</li> <li>• Publication of model laws</li> </ul>	<ul style="list-style-type: none"> <li>• Lobbying for parliamentary reform</li> <li>• Monitoring IGR</li> <li>• Set-up of nationwide inter-parliamentary political forum</li> </ul>	<ul style="list-style-type: none"> <li>• Inter-parliamentary commission to be involved in formulation of formal agreements</li> </ul>

Notes: Italic indicates country-specific findings on explanatory factors.

\*While originally ten cantons favoured the foundation of the Interessensgemeinschaft Kantonsparlamente, it has currently 17 members cross-cutting regional and linguistic lines. <http://www.kantonsparlamente.ch/pages/17>; \*\*Concordats are formally binding inter-cantonal agreements.

bodies monitor the activities of the First Ministers Conferences and the Council of the Federation, the two major nationwide inter-executive arrangements, or the activities of their regional pendants such as the Western Premiers Conference and the Conference of Atlantic Premiers.

The institution identified by interviewees as the central body for inter-parliamentary cooperation is the Commonwealth Parliamentary Association which embraces all national and sub-national parliaments of the Commonwealth countries ranging from the UK, over South Africa to Australia and New Zealand. This highly institutionalised arrangement, which was founded in 1911, organises regular meetings between members of parliaments and on the staff level, runs a secretariat in London and has several regional secretariats, including one covering the Canadian region.<sup>17</sup> Similar to Canadian IGR, decision-making follows an 'informal consensus style'. Yet despite its considerable institutional strength, the arrangement has no political profile. Other than the National Governors Association in the US, leading CPA staff argued that 'the CPA is an opinion-forming not a decision-making body which works to promote the advancement of parliamentary democracy and the professional development of parliaments' members and staff'.<sup>18</sup>

While the CPA passes resolutions, they do not target specific problems that particular member parliaments struggle with in their home arenas.<sup>19</sup> This pattern is reproduced on lower levels, the *CPA Canadian Region* embraces the federal and all the 13 sub-national parliaments and is highly institutionalised.<sup>20</sup> Despite its national scope and its considerable resources, it is a vehicle for parliamentarians from both governmental levels to exchange views. Neither on the international nor on the national level does the CPA act as a political body or engage in lobbying for parliamentary interests. While the interest profile of the member parliaments in the Canadian region is much more homogeneous than in the overall CPA, all meetings involve federal and sub-national representatives – a major line of conflict in Canadian federalism. There are no separate meetings or a communication system involving only the provincial-territorial level. Thus, the many executive meetings on the political and working level are not paralleled by a regular consultation between provincial parliaments.

While inter-parliamentary structures tend to be highly institutionalised, which facilitates inter-parliamentary exchanges, inter-parliamentary activism remains absent. Canada is composed of one-party governments usually holding a parliamentary majority. The divide between opposition and governing majority is as deep as the bond between the executive and its legislative majority belonging to the same party. The 'institutional interests' of parliaments are defended, if at all, by the opposition party and usually only as long as it remains in opposition. There is no substantive and continuous identification with institutionally defined roles by parliamentarians able to compete with the dominant party-political roles dividing parliament in two opposing camps. While inter-parliamentary cooperation flourishes, executive–legislative dynamics mute any forms of inter-parliamentary activism.



One might object that since we do not find any mechanism to engage in formally binding inter-provincial agreements, parliamentary sovereignty of each government unit is formally maintained and IGR remains normatively inconsequential. As one CPA staff pointed out, provincial governments are responsible to their parliaments in internal and external matters and this explains why collective political activities of parliaments are absent.<sup>21</sup> Does this mean that the theoretical trilemma identified above, the tensions between assuring legitimacy, the efficiency of intergovernmental coordination and the protection of sub-national autonomy, does not exist in the Canadian setting or, at least, is not recognised as such?

If inter-parliamentary activism was simply unnecessary, we should neither find executive dominance and its implications for democratic legitimacy problematised, nor discussions about reforming IGR to assure more efficient inter-provincial coordination. Both aspects, however, have been discussed for years by the media, scholars and politicians, leading to reform proposals of parliamentary government on the national and provincial level; most prominently, former Prime Minister Martin launched a proposal for parliamentary reform to remedy the democratic deficit (Aucoin and Turnbull 2003; see also Segal 2003, Graham 2006).<sup>22</sup> The argument also implies that parliamentary oversight and control can be taken for granted both in ordinary law-making and, as a consequence, also in IGR. Yet again, parliamentary control has been frequently evaluated as insufficient and executive dominance as problematic, which reflects an increasing alienation of citizens from politics perceived as not transparent and undemocratic (Hartley 2000, Pond 2007, 2008).

Parliamentary oversight – as we know from other Westminster democracies – is only weakly developed. Clearly we find differences across provinces and territories. The parliament of Ontario, for instance, is – after several reforms in the 1970s and 1980s – considered as developed as the federal parliament in terms of professionalisation, staffing and the structure of its committees. Yet even these most developed parliaments simply lack the will to control executive activities. As reform proposals indicate, the high levels of party discipline are considered as a major reason why private members cannot effectively engage in parliamentary activities (for example, committee work) bringing us back to executive–legislative dynamics. Similarly, the dominant career paths are directed towards executive office for which parliamentary work is little valued (Atkinson 1980, Pond 2007, 2008). The tight fusion of parliamentary majority and government prevents the effective use of the already limited control mechanisms. This is the case in the normal law-making process but even more so with regard to inter-governmental negotiations which are usually secretive and only accessible for core members of the executives. It is no surprise that the state of Canadian IGR is used to emphasise the urgent need for parliamentary reform (Bakvis and Baier 2005).

Considerations of legitimacy and efficiency are closely intertwined yet difficult to reconcile. The way this conflict is addressed by parliaments in Canada can

be best understood when considering the fusion of executives and parliamentary majority unified by the endeavour to protect their autonomy against federal intrusion which, as one side-effect, decreases both efficiency and legitimacy. Intergovernmental coordination capacities are limited since informal agreements are unreliable yet politically the only feasible option due to the proclaimed need to protect parliamentary sovereignty. Paradoxically, parliamentary control and oversight are weak compared to parliaments in other systems, especially when it comes to intergovernmental negotiations, which has problematic repercussions for legitimacy.

Also the limitations of IGR to solve cross-jurisdictional problems are a recurrent feature in debates on Canadian federalism (Kennett 1998, Skogstad 2000). While a stronger involvement of parliaments in the intergovernmental process is an issue brought up in the scholarly debate, critics fear a further decrease of efficiency in intergovernmental negotiations. This, in turn, they fear, could further reinforce citizen dissatisfaction (Bakvis and Baier 2005). The reason why the rather weak horizontal coordination between the provinces does not weaken the provinces' position within the Canadian system as a whole is simple: while there is little agreement on policy, inter-provincial cooperation tends to be comparatively effective when opposing federal intrusion.<sup>23</sup>

In short, provincial governments (meaning the executives and their parliamentary majorities) have solved the trilemma between legitimacy, efficiency and autonomy protection in favour of the latter. Claiming to protect 'parliamentary sovereignty', the legitimacy problem (or deficit) is thereby taken out of the intergovernmental arena, while being reinforced within the individual governments through the intensification of executive dominance over parliamentary majorities. Parliaments exert hardly any *independent* influence in IGR. This, however, does not mean that legislative interests are irrelevant. Paradoxically, the fusion of executive and legislative interests makes the protection of legislative autonomy a government priority in IGR. Thus, taking a purely power-oriented or efficiency-oriented point of view, inter-parliamentary activism seems undesirable: attempts of provincial legislatures to counterbalance their executives would rather weaken the provincial level of government in maintaining its position in the given multilevel structure, while simultaneously further complicating the already difficult inter-provincial coordination of policies.

### *The US: Inter-Parliamentary Activism and the Dilemma of Competing Autonomies*

The American intergovernmental landscape is strikingly different from the Canadian picture. It is strongly shaped by inter-branch divisions. We find three major state associations: the National Governors' Association (NGA), the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG), which all have several regional pendants. These associations are strongly focused on influencing federal policy by lobbying for their members' interests, which leads to an ambivalent relation between them characterised by

information-sharing and competition. The CSG was founded in 1937 and is the mother institution of the NGA and NCSL which split from it in order to lobby for their particular institutional interests (Arnold and Plant 1994). Later on, the same splits into legislative and executive intergovernmental bodies also occurred in regional branches of the CSG.

As with their executive counterpart, the NGA, the NCSL is highly institutionalised and most regional conferences of state legislatures are similarly developed. The NCSL meets regularly, is run by an executive committee supported by a permanent secretariat and is internally divided into a range of policy committees specialising in core policy areas. While it provides extensive services to its members as professionals, it also engages in parliamentary activism. The NCSL issues policy positions on federal legislations which need a three-quarters majority to be approved and its staff and members give testimonies in Congressional hearings on behalf of the state legislatures.

Ironically, the fact that legislatures push for their own political agenda weakens the protection of legislative interests by weakening the state governments in favour of the federal government. In contrast to the Canadian situation, the executives and legislatures prioritise their institutional interests as is visible in the activities of NCSL and NGA. Actors are aware that their limited willingness to cooperate decreases the overall impact of the states in IGR yet emphasise the practical difficulties to agree on a common line. One major conflict is rooted in the distinct understanding of state autonomy. The NCSL strongly resists federal mandates, while the NGA has a much more pragmatic approach towards federal intrusion. The governors tend to favour nationwide regulations over individual state solutions if those strengthen their state economies, while the NCSL prioritises the protection of legislative state autonomy over economic interests. Accordingly, a coherent mobilisation of the 'states' against central encroachment is usually unsuccessful.

Distinct interest profiles also explain why legislatures cannot simply support their executives to strengthen their state's position in the system since they cannot rely on executives (as provincial parliaments in Canada can) to fight against federal intrusion in state jurisdictions. While legislatures and executives claim to protect 'autonomy', they refer to different things. Legislative actors attempt to protect their law-making competencies. Executive actors are interested in as much leeway as possible in the implementation phase in order 'to get things done'. As long as the centre gives funding with sufficiently loose strings attached, the intrusion into spheres of state authority is not of overriding importance from an executive point of view. Consequently, no intergovernmental body in American IGR represents the interest of the states as a level of government coherently.

A similar problem occurs when it comes to the coordination of policies across the states – the horizontal dimension of US federalism. As Table 2 indicated, states can enter formal interstate compacts to solve boundary-crossing problems. Yet compacts do not function as feasible alternatives to national legislation (Zimmerman 2002).<sup>24</sup> Usually drafted by administrators, they often do not

enjoy the support of legislatures which jealously guard their powers. Similarly, within intergovernmental commissions set up on the basis of interstate compacts, internal divisions occur along functional lines, not along state boundaries.

Both the competition between NCSL and NGA for federal influence and the weakness of horizontal coordination originate in the separation of the branches which unintentionally weakens the position of state governments in the federal system. Given the disparate nature of the states as political units, the defence of legislative autonomy is not coherently pursued. Since executives lack a (constitutionally or organisationally generated) linkage to their legislatures, they are more interested in the capacity to deliver services to citizens than in protecting the state's right to decide. Legislatures respond with separate lobbying activities and a considerable resistance against the use of formal inter-state compacts.

From a cross-national point of view it is an irony that the strongly developed inter-parliamentary activism in the US undermines legislative autonomy protection. This again mirrors our initial trilemma: both strong inter-parliamentary activism and pronounced legislative control within state boundaries reduce the capacity of state governments to fight off federal intrusion and the capacity to solve problems horizontally without support of the centre, which gives the latter only additional justification to interfere in state jurisdictions. In the US legitimacy is defended at the price of slowly diminishing those spheres of state autonomy, in which legitimate decision-making was considered to be at stake in the first place.

#### *Institutional Divisions, Party Linkages and Inter-Parliamentary Activism in Switzerland*

As with the American states, the Swiss cantons are characterised by a separation of power structure. Yet to avoid the constant blockade through a facultative referendum, the political elites decided to form oversized coalitions to give all core parties a say in executive decision-making (the so-called *Parteienproporz*) (Neidhart 1970). Consequently, divided government constellations are rare and cantonal executives tend to have a comfortable partisan majority (Vatter 2002). Since cantonal parties are organisationally stronger than their American counterparts, party linkages moderate the constitutional executive–legislative divide which leads to a more executive-dominated pattern of IGR than one would expect considering constitutional structures only. At the same time, party ties do not mute the impact of the given constitutional separation on the self-perception of parliamentarians completely. Thus, while we find inter-parliamentary activism, it is less forceful than in the US: cantonal parliamentarians are more sensitive towards the trade-off between maintaining democratic legitimacy in IGR and assuring the efficiency of IGR (different from Canadian parliaments), while executives (different from US state legislatures) are sensitive to the erosion of cantonal autonomy.

Given that inter-executive cooperation is most intense on a regional level, it comes as no surprise that the most far-fetching inter-parliamentary activities to

remedy the problem of an insufficient parliamentary involvement in IGR were set up on a regional level. In 2001, the six cantons in Western Switzerland agreed on the *concordat des concordats*.<sup>25</sup> The latter requires the involvement of an inter-parliamentary commission at the drafting stage of each new formal inter-cantonal agreement. By now, the mechanism had been applied a couple of times when shared, inter-cantonal institutions were set up<sup>26</sup> but proved extremely cumbersome. Leaving criticism of non-members aside, there are doubts on the side of the member cantons themselves whether it operates efficiently both in its current form or when being extended to further cantons as originally planned. While cantonal parliaments generally problematise their limited role in IGR, many are sceptical towards inter-parliamentary solutions for reasons of efficiency and prefer less demanding reforms of internal parliamentary control mechanisms (for example, the creation of a parliamentary committee for external relations). An intergovernmental official from the canton Jura which participates in the initiative pointed to contradictory pressures:

There is a trend to go faster, not to involve parliaments . . . It is a dilemma, whether we want to go faster . . . or include each parliament. This is impossible. It is a dilemma between efficiency and a democratic deficit.<sup>27</sup>

While the need for stronger parliamentary involvement in IGR has been an issue for many years, the recent federalism reform (*Neuer Finanzausgleich*, NFA) ratified in 2004 functioned as an important trigger for nationwide inter-parliamentary activism since it intensified the role of formal inter-cantonal cooperation shifting power further towards cantonal executives (Sciarini 2005).<sup>28</sup> Most severely from a parliamentary perspective, the reform established 'new instruments of cantonal cooperation' applicable in nine areas of cantonal jurisdiction<sup>29</sup> which, in essence, allow the imposition of an inter-cantonal agreement favoured by a super-majority of cantons on an opposing cantonal minority.<sup>30</sup>

While earlier efforts to engage and structurally strengthen inter-parliamentary activism had failed on the national level (Moeckli 2005, 2006), in 2004 activities gained a particular momentum when a group of parliamentary presidents started to discuss the possibility of creating a nationwide intergovernmental conference as a counterweight to the Conference of Cantonal Executives (KdK). The KdK, after its foundation in 1993, has become an increasingly powerful player in IGR and has been heavily involved in representing the interests of cantonal executives in the reform process. The annual meetings of parliamentary presidents have a long tradition but before 2005 these meetings had no political character. In September 2005, various models of parliamentary involvement were discussed. The presidents of the cantons of St. Gallen and Berne proposed a conference for inter-parliamentary coordination (*Parlamentarische Koordinationskonferenz*) composed of three delegates of permanent parliamentary committees per canton and the parliamentary presidents. The delegates should remain active in this conference for four years – possibly beyond the period of their parliamentary mandates to counteract the effects of term limits: parliamentary presidents change each year which

complicates the maintenance of stable inter-parliamentary relations. This conference should be run by an executive composed of five cantons and organised by each of the cantons for two to three years supported by a permanent secretariat either provided by this canton or located within the 'House of Cantons' (an office in Berne where the Conference of Cantonal Executives as well as the staff of several ministerial intergovernmental conferences are located). The conference should be financed by cantonal contributions (Moeckli 2005).

After the next annual meeting in September 2006, the proposal was officially sent to each canton for a vote and was rejected. Reflecting the decision-making rule applied in most executive conferences, a two-thirds majority of parliaments was considered the minimum level of support necessary to go ahead with the initiative. While a simple majority of 14 was reached (which cross-cuts regional divides), 11 cantons had reservations. Some pointed to the limited benefits of such a conference (pointing to sufficient internal control mechanisms or regional cooperation) and the potential problem of limited efficiency and of complicating IGR excessively. Some pointed to the difficult implementation of the *concordat des concordats*.<sup>31</sup>

Despite this failure, the initiative was by no means inconsequential. At present, 17 cantons are members of the Interest Group of Cantonal Parliaments (*Interessengemeinschaft Kantonparlamente*) which was created after the rejection of the nationwide conference (Dähler 2007). The group hopes to build up support for a national inter-parliamentary conference in the long run and is financed by contributions of the member parliaments. The monitoring of existing and planned inter-cantonal treaties and mechanisms for parliamentary control is their core project to overcome the information asymmetry between the branches. As a long-term goal, the group aspires to set up a forum of member parliamentarians as their political arm in IGR.<sup>32</sup>

As the majority support for the creation of a national conference and existing regional structures indicate, the institutional divide between parliament and executive is not completely silenced by party linkages yet it is moderated: Different from the US, parliamentary groups regularly meet with their party colleagues holding executive office. In these party-political fora, ministers present and defend executive proposals which, drafted within oversized coalitions, are necessarily compromises which deviate from each individual party's programme. Nonetheless, parliamentarians can usually be convinced by executive proposals. While a stronger involvement of parliaments in IGR is considered desirable in the face of the strong information asymmetry in IGR in favour of the executives, intra-party channels are one means through which executive-legislative conflict can be moderated and parliamentary vetoes can be avoided.

These ties between the branches also mean that executives themselves try to avoid formal treaties which severely delimit cantonal autonomy if informal recommendations are considered a feasible alternative. Party linkages assure that the orientation towards protecting legislative cantonal autonomy is shared by both branches, which reduces the need from a parliamentary perspective to organise



separately. Accordingly, the establishment of a strong 'parallel structure' of inter-parliamentary representation next to the existing executive arrangements as in the US did not materialise. Similarly, cantonal parliaments (in contrast to US legislatures) hardly block concordats once they have been negotiated by their executives because they are aware of the efforts their governments put into them beforehand. Sharing an orientation towards protecting cantonal authority, parliaments and executives agree that effective inter-cantonal cooperation is one means to protect cantonal competences from central intrusion and see that a stronger parliamentary involvement easily conflicts with this. The justifications provided by the 11 cantons opposing an inter-parliamentary conference pointed to practicability issues as well as to the limited need for such a conference given sufficient intra-cantonal channels.<sup>33</sup>

Finally, while cantonal parliaments share a basic disposition to defend parliamentary interests in IGR, can we account for which parliaments opposed and which ones supported the conference? Reinforcing a political rather than a functional perspective on IGR as introduced in the theoretical section, opposing parliaments did not necessarily have stronger internal procedures to assure parliamentary control.<sup>34</sup> Inter-parliamentary activism did not function as a compensation for lacking internal control – in line with the Canadian findings, where weak internal control did not nourish inter-parliamentary activism either. About half of the opponents are small parliaments with short legislative sessions and few staff (for detailed figures on each canton see Bochsler *et al.* 2004), a situation which discourages parliaments to invest in costly inter-parliamentary structures, yet the pattern is rather weak. The clearest pattern shows when looking at the type of parties which dominated the respective cantons in the long run. In terms of seat strength, conservative parties are clearly weaker in the supporter group (Vatter 2000, p. 75, Bochsler 2005), which makes sense assuming that these parties assign less relevance to democratic principles as compared to efficiency considerations than more leftist parties do. This ideological explanation can only hold since MPs define their interest in institutional terms to a basic extent in the first place – as rooted in the patterns of cantonal executive–legislative relations. Looking at Canada, we regularly find parties of different ideological orientation in office – without any of them having triggered initiatives to counteract executive dominance. Vice versa, in the US, where executive–legislative divides characterise state politics *per se* and parties are weak, the need for separate legislative interest representation in IGR is questioned by neither Republicans nor Democrats.

Overall, the institutional interests of parliaments are not muted nor do they dominate the interests of cantonal governments. In terms of the broader question of reconciling demands for efficiency, legitimacy and cantonal autonomy protection, both cantonal parliaments and executives have a more balanced approach than their Canadian or American counterparts. The parliaments are slightly biased towards legitimacy, the executives towards efficiency but both are willing to compromise when it comes to the shared goal of autonomy protection.

Parliaments see the need for inter-cantonal cooperation to avoid competence transfers to the centre, while executives shy away from formal inter-cantonal treaties leaving no leeway for independent legislative action if less constraining solutions are feasible. Despite this fairly balanced approach, confronted with growing coordination pressures, legitimacy is likely to be the weakest element in the longer term. The rationale is simple: it is better for cantonal parliaments to have less of a say about those competences that are formally still their own, than altogether losing them to the centre.

### **Inter-Parliamentary Activism: Balancing Legitimacy, Efficiency and Autonomy**

The increasing relevance of IGR in the international and national sphere puts parliaments under pressure. While the efficiency of intergovernmental processes is likely to decrease when enforcing a stronger parliamentary involvement, the legitimacy of decision-making processes depends on it. This dilemma of 'de-parliamentarisation' has attracted much attention in EU studies but hardly any in federal studies even though the problem is more difficult to handle for sub-national than national parliaments. In fact, sub-national parliaments face a 'trilemma'. The presence of a (democratically equivalent) level of national decision-making as a fallback option to which decisions can be transferred in case of coordination failure between sub-national governments poses a threat which national parliaments do not have to cope with. In addition to the well-known dilemma between efficiency and legitimacy, sub-national parliaments face a conflict between insisting in their influence on executive activities (to assure legitimacy), while potentially facilitating competence shifts in favour of the central government which reduces the influence of sub-national governments – including their parliaments – within the federal system altogether.

In each of the three systems analysed, sub-national parliaments face the tensions between insisting on parliamentary involvement (legitimacy), maintaining efficient IGR and protecting their governments from central intrusion. Depending on the dominant patterns of executive–legislative relations, they responded very differently. Factors shaping the institutional capacity of parliaments, such as professionalisation and term limits, while in principle supporting or complicating inter-parliamentary activities respectively, could not account for inter-parliamentary activism directed towards counteracting executive dominance in IGR. This becomes clearest in the Swiss case. Despite unfavourable structural conditions, in the Swiss cantons where executives and legislatures are institutionally separate, we observe attempts towards inter-parliamentary activism. In contrast to the US, however, party linkages provide channels for communication and reconciliation between the branches. Parliamentarians carefully consider the gains of inter-parliamentary activism and its potential costs for their canton in terms of efficiency and autonomy protection, a balancing act the executives are equally aware of. In the US, state legislatures, separated from their executives, prioritise



**Table 4: Institutional Interest, Institutional Capacity and Inter-Parliamentary Activism of Sub-national Parliaments**

	Strength of Institutionally Defined Interest of Parliaments	Relative Institutional Capacity of Parliaments	Level of Inter-Parliamentary Activism
Canada	-2	2	1
Switzerland	1	1.75	2
United States	2	1.25	3

the defence of legislative interests. The executives want to implement policies and care little about state autonomy *per se*. There is neither a coherent interest of the individual state, nor a collective voice to defend the autonomy of the state level of government against federal intrusion. Finally, in the parliamentary Canadian provinces, where executive and legislative interests combine, autonomy protection is a core priority, while inter-parliamentary activism is unheard of.

Inter-parliamentary activism is not a functional response motivated by the lack of internal oversight. Nor is it a function of parliamentary resources. It is a matter of political will, an expression of how parliaments define themselves in federal systems and this self-definition is rooted in the interplay of the executive and legislative branches. If parliaments perceived their interest as sufficiently distinct from their executives' interests, more say was demanded at home and in IGR and this was done in face of scarce resources. Drawing on Tables 1 and 2, Table 4 sums up the essence of the empirical analysis and shows how sub-national parliaments in each system rank in terms of the strength of their institutionally defined interests, their institutional capacity and their inter-parliamentary activism.<sup>35</sup> It highlights that, while the strength of institutional interests in each country is in line with the level of inter-parliamentary activism, institutional capacity is not – an insight substantiated by the three case studies.

Accordingly, processes of intergovernmental institution-building as well as parliamentary and federal reform should be conceptualised as strategic manoeuvring between institutions and actors defending particular interests rather than as neutral responses to functional needs or mere expressions of institutional capacities. These interests are essential for how actors handle conflicting priorities since there is no neutral way to resolve the tensions between legitimacy, efficiency and autonomy protection. Once we understand how interest profiles are formed, we can understand better why in one federal system autonomy protection is prioritised at the cost of parliamentary control, while in another system this price is paid less willingly.

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## Notes

1. While 'legislature' and 'parliament' are used interchangeably, following conventions within country-specific literatures, I will refer to cantonal and provincial/territorial parliaments and American state legislatures. Also, while *intergovernmental* relations (IGR) – indicating the usual executive dominance in IGR – tend to refer to the interaction between executives, when I talk of sub-national governments I refer to the government unit as a whole including both legislative and executive branch.
2. An additional difference is that – as some scholars such as Moravcsik (1998) have argued – in European or international cooperation the executives (here the national ones) remain largely in charge and, might even gain in power vis-à-vis other domestic actors. Thus, they might profit from the centralisation of national competences which is usually not the case for sub-national executives in federal systems when competences move up to the federal level.
3. EU policies falling under the First Pillar are an exception.
4. Even if it is collectively approved, the publication of information material does not qualify as political activity.
5. This survey conducted in early 2008 targeted the Canadian provinces in particular. Since a regional or national inter-parliamentary arrangement engaging in political activities could not be identified, this survey served as a check that no less institutionalised activities have been overlooked.
6. These types of actors were selected since they fulfil different functions and hold different interests in the intergovernmental process allowing for the triangulation of data. Furthermore, since not all sub-national units could be covered in the three systems, interviewees have been chosen from 'most different' units in terms of region, size and economic strength to avoid biases in the overall perspective.
7. This is in line with the findings in the Europeanisation literature about the greater control activities of parliaments in systems ruled by minority governments (Bergman 2000). Given such constellations, the 'majority opposition' (not in charge of keeping the government in office, a constellation similar to the legislative branch to be institutionally separate) use parliamentary control mechanisms to scrutinise the government. Since we do not find cases among the stable, long-lived federal systems which are composed of parliamentary units dominated by minority governments and characterised by disciplined parties, we cannot include this constellation in the empirical analysis, however.
8. We do not find a long-lived federal system composed of parliamentary governments characterised by weak parties comparable to the American ones. The literature on parliamentary government implies that a parliamentary system presupposed a certain level of party discipline (thus party organisational strength) to be stable (see Lijphart 1992, Linz 1994).
9. In presidential systems with strong parties and regular divided government situations one would expect a mutual reinforcement of institutional and partisan interests. Whether such a system could be stable and would not lead to regular deadlock is still an unresolved issue in the parliamentarism-presidentialism debate (Lijphart 1992, Linz 1994, Mainwaring and Shugart 1997).
10. Note that this is not the case for the Swiss federal government.
11. Unified government indicates a situation in which the same party dominates the executives and both houses of parliament.
12. In 1998 we find 175 compacts in force (Bowman 2004, p. 539), the most recent database counts 733 concordats (Bochsler *et al.* 2004).
13. The NCSL split from the Council of State Governments in 1975 to be better able to represent genuine legislative interests, the CPA was founded in 1911.
14. See for details on different dimensions of professionalisation in the three countries Moncrief 1994, Bochsler 2005; *Parlament, Parlement, Parlamento, Schwerpunkt: Die Arbeit in Parlamenten* 2004, No. 2, Issue 7.
15. Unlike Table 1, no values are assigned to the parameters of the explanatory variables since different components of institutional capacity shape the expected inter-parliamentary activism in opposite directions which would be confusing (for example, the higher the level of professionalisation, the higher inter-parliamentary activism, yet the lower the number of sub-national governments, the higher the inter-parliamentary activism).

16. Those have been identified as most important vehicles for inter-parliamentary activities by interviewees and experts.
17. Further, it is functionally differentiated along issues (for example, it runs working groups such as one specialising in the parliamentary representation of women).
18. CPA staff I, 21 February 2008.
19. The 'Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence' published in 1998 nicely illustrate the limitations of the CPA. While the guidelines show that executive-legislative relations have been an issue of discussion in the CPA, since 'it is impossible to draft a document which would meet the unconditional endorsement of all stakeholders' as stated in the document, the latter remains very vague. This highlights the problem of a very heterogeneous membership in transnational associations. No member parliament is politically committed to its content comparable to executives committing themselves to intergovernmental communiqués. That is the case although – after five years of revisions – the Commonwealth Heads of Government also embraced the guidelines. As a precondition for this, the guidelines did not include any concrete implication for how to reform parliamentary government, for years a highly salient issue in Canada and other Westminster democracies. Mirroring the self-characterisation of CPA officials, political activities are indeed avoided.
20. It has its own regular meetings (both for parliamentarians and staff) and runs a specific secretariat.
21. CPA staff I, 21 February 2008.
22. See also: Forum on Parliamentary Reform. Available from: [http://www.parlcent.ca/publications/pdf/summary\\_report.pdf](http://www.parlcent.ca/publications/pdf/summary_report.pdf); Pilot Project on Parliamentary Oversight by the Canada Russia-Parliamentary Program (CRPP). Available from: <http://www.parlcent.ca/easterneurope/docs/Pilot%20Project.pdf>
23. Note, however, that the federal government has regularly been able to divide the provincial front and force them into unsatisfying deals using its superior spending power. Alternatively, it can resort to bilateral deals, in particular with financially weaker provinces, to assure federal influence on their activities.
24. In 2005 the drafting of a compact needed between 18 and 45 months.
25. Vereinbarung vom 9. März 2001 über die Aushandlung, Ratifikation, Ausführung und Änderung der interkantonalen Verträge und der Vereinbarungen der Kantone mit dem Ausland. The agreement was followed by the parliamentary ratification in the individual cantons.
26. One example is shared *Fachhochschulen*, schools for professional training.
27. COfficial XII, 19 October 2005.
28. The inter-cantonal framework agreement (*Interkantonale Rahmenvereinbarung* 2005) which formed part of the *NFA* includes an article demanding more parliamentary involvement of the cantonal parliaments in the course of the reform's implementation. How the involvement called for by the IRK is implemented is decided by the individual cantons. While its impact cannot be fully evaluated yet, some cantons have already responded by establishing parliamentary commissions to monitor intergovernmental negotiations, the option also preferred by executive office-holders and officials which emphasise the necessity to avoid increasing the complexity of an already cumbersome intergovernmental process.
29. Among them competences regarding cantonal universities, hospitals, cultural facilities of cross-regional relevance and crime control. Available from: <http://www.nfa.ch/de/dokumente/faktenblaetter/fb11.pdf>
30. More concretely, a supermajority of cantons can ask the national parliament – who plays the role of a neutral arbiter – to make an agreement obligatory for the deviating minority.
31. Stellungnahmen der Kantone zur Konferenz der Kantonsparlamente/Prises de position des cantons concernant la Conférence des parlements cantonaux, November/December 2006.
32. Interessengemeinschaft Kantonsparlamente, Stand des Projektes am 26 September 2006.
33. Stellungnahmen der Kantone zur Konferenz der Kantonsparlamente/Prises de position des cantons concernant la Conférence des parlements cantonaux, November/December 2006.
34. This is shown by a survey mapping procedures of parliamentary participation in IGR in each of the cantons conducted in 2006. Quite a few of the opposing cantons lack any formalised parliamentary procedures in external relations. If at all, those parliaments in favour tend to be structurally stronger in this regard (see Konferenz der Kantonsregierungen 2006).
35. A higher value indicates a stronger expression of the respective factor. Yet note again that the rankings represent ordinal scales.

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