



**CANADA-EUROPE TRANSATLANTIC DIALOGUE:
SEEKING TRANSNATIONAL SOLUTIONS TO 21ST CENTURY PROBLEMS**

<http://www.carleton.ca/europecluster>

Policy Brief March 2010

**Resilience of Parliaments in Multilevel Governments:
What Canada can learn from the European Union**

Arthur Benz, Fern Universität in Hagen*

For a long time, multilevel (federal, confederal) governments have been said to suffer from a democratic deficit. Parliaments, in particular those at lower levels, are deemed to have lost ground to executives, either at the same or other levels of government. In Canada, scholars have characterized the evolution of intergovernmental relations between the federal and provincial governments as “executive federalism”.¹ On the other side of the Atlantic, Andrew Moravcsik’s conclusion that European integration strengthened the executives of nation states² found many supporters. Even as the powers of the European Parliament (EP) have been expanded to some degree, national parliaments have been considered losers during the integration process, similar to provincial parliaments in Canada, which have seen inroads into their capacities to act effectively as intergovernmental relations have evolved. Jennifer Smith observed: “The closed process of executive federalism can have the effect of immunizing controversies between the two levels of government from public debate, because the legislatures are excluded from these processes”.³

In contrast to Canada, where state building implemented a parliamentary system at the federal and provincial level, the nascent European federation still lacks the institutional and social conditions of a well established democracy at the central level.⁴ While the EP, directly elected since 1979, has received co-decision rights in most areas of legislation, it is still the Council -- the assembly of member state executives -- that holds primary legislative powers, and elections to the Parliament are still “second order elections”.⁵ More than in Canada, the “confederal” elements of multilevel policy prevail in the EU.

The important role of member states in policy-making is one of the reasons why lower level parliaments, i.e. national and (where they exist) sub-national, have always been accorded an important

* *Arthur Benz is professor of political science at the Fern Universität in Hagen (Germany). The views expressed are attributable only to the author in a personal capacity and not to any institution with which they are associated.*

place in asserting the democratic legitimacy of EU policy-making. However, these normative claims have been difficult to put into practice. It was not until the mid 1990s that national parliaments attracted attention in European politics. As the EP gained powers, national parliaments entered the game of multilevel politics in the EU and achieved rights stated in the Treaty of Lisbon. Indeed, as Hix and Raunio put it (2000), “parliaments fight back” and have responded to the encroachments of “executive federalism” à la Europe.⁶ Instead of fighting for veto power, they have developed a broader set of instruments in order to assure a role for themselves. Some of these mechanisms may be of interest for Canadian parliaments, but the differences between both federal systems should not be ignored.

1. Parliaments in the EU – boosted by the Lisbon Treaty

Both the EP and national parliaments have incrementally gained powers in EU politics. The former profited from Treaty amendments and inter-institutional agreements with the Commission and the Council. According to the Treaty of Lisbon, which, after a difficult process of ratification, came into effect on 1 December 2009, co-decision is the standard procedure for enacting legislation. As a consequence, the EP participates on an equal footing with the Council of Ministers in most policy fields. It successfully fought for supervision rights in comitology procedures and in the Open Method of Coordination, as well as for the right to participate in the selection of members of the Commission and to pass a vote of no-confidence against the incumbent Commission. Members of the EP are now included in discussions on Treaty changes, although Treaty ratification remains the responsibility of the member states.

At the same time, national parliaments searched for effective ways to control the executive in European affairs and to hold their own national representatives in the Council accountable. All member states introduced rules endorsing their right to obtain comprehensive information on European issues from their governments as early as possible. They installed special committees for European Affairs, determined to cope with the rising tide of issues and documents to be dealt with. Quite a number of national parliaments explicitly confirmed their veto power over their governments in European affairs and put in place controls on the national representative in the form of binding mandates. Others systematically scrutinize European documents and the behaviour of their national representative in the Council. Their effective influence may vary between member states,⁷ but no government can ignore the voice of its national parliament when negotiating at the European level.

Following these developments, the Treaty of Lisbon introduces additional rules relating to national parliaments. They are not only acknowledged as institutions contributing to democratic legitimacy, but they have also acquired rights to intervene in the application of powers by the Commission and the Council and to participate in amendments to the Treaties.

First, the Treaty on the European Union (TEU)⁸ stipulates that the Commission has to forward all initiatives for legislation directly to national parliaments. On this basis, parliaments can check whether an initiative conforms to the principle of subsidiarity.⁹ Otherwise, they can issue their opinion to the Commission. If parliaments with at least one third of their votes¹⁰ object to a legislative proposal, the Commission is obliged to reconsider the issue. If it pursues the proposal against a majority of parliamentary votes, it has to report to the Council and the EP, which can both reject the initiative by

majority decision. In addition, each national parliament can bring a legal act to the European Court of Justice by claiming an infringement of the subsidiarity principle.

Second, national parliaments, together with the EP, control and evaluate measures of the EU taken in the areas of security and law. These policies affect the core powers of nation states and concern the identity of national societies. For this reason, national parliaments are accorded particular influence.

Third, national parliaments have a say when it comes to the application of flexibility clauses. Provided that all member state governments agree, such clauses allow for the application of majority voting in the Council in cases where the Treaty foresees unanimity decisions. Under the same conditions, EU laws can be passed by using ordinary procedures for legislation (co-decision of the EP) in policy fields where the Treaty requires special procedures.

Finally, representatives of national parliaments participate in any Convention that is called for preparing Treaty amendments according to the ordinary procedure. Still the rule holds that Treaty amendments have to be ratified by all member states according to their constitutional provisions. This rule gives national parliaments a veto right.

2. Trends towards a multilevel parliamentary democracy

Article 12 (f) of the TEU lays down that national parliaments should contribute to good governance of the Union by cooperating with the EP and with parliaments of other member states. Moreover, the procedure of subsidiarity control compels parliaments to coordinate their opinions. While the number of votes required for committing the Commission or the Council and the EP to reconsider an initiative for legislation can be achieved by unilateral actions, national parliaments can only expect to influence consideration of European institutions if their opinions and reasons on subsidiarity are not contradictory. As a consequence, the new Treaty has induced efforts to improve inter-parliamentary cooperation in the EU, which so far had been practiced informally.¹¹

Even before the Lisbon Treaty was ratified, national parliaments established contacts with other parliaments, mostly with those from neighbouring member states. They set up bureaus in Brussels in order to have access to European actors, and they met, on a more or less regular basis, with members of the EP. At the same time, the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC, according to the French acronym) has become an important institution. Established as a forum for information sharing, the Conference evolved into a kind of service institution for national parliaments. Its current activities focus on developing coordination procedures designed to make subsidiarity control effective. Responding to the Lisbon Treaty, the EP has started similar efforts to bring parliaments together. It proposed the launch of a “legislative dialogue” with national parliaments, which should stimulate discussions on European policies in parallel with formal procedures.

So far it is difficult to evaluate the effects of these patterns of “multilevel parliamentarism”.¹² At the end of the day, these coordinating mechanisms may fulfil only symbolic functions. However, by establishing networks of communication, national parliaments may improve their effectiveness:

- Inter-parliamentary relations can constitute platforms for coordinating decisions on matters of subsidiarity.

- In addition, they can provide information on the negotiating position of member states, allowing national parliaments to use their power against their representative in the Council in a strategic way, to escape looming dilemmas of multilevel policy-making,¹³ to adjust mandates in a pragmatic manner and to focus control on decisive issues;
- Finally, they can contribute to the generation of a European public space for discussing salient issues and link these discussions to national public debates.

After a period of internal adjustment (“Europeanisation of parliaments”),¹⁴ this evolution of multilevel parliamentary relations can be considered a second step in a process leading to a revival of parliaments in the EU. To be sure, executives of member states and bureaucrats in the Commission still have more power compared to parliaments. Nonetheless, there is no unidirectional trend towards executive federalism. Rather we observe a “tug of war” between executives and parliaments in a polity of divided powers. Efforts of parliaments to come to terms with the complexity of multilevel governance are worth paying attention to, not least because of similar problems of democracy which notoriously exist in multilevel and federal systems in general.

3. What Canada can learn from Europe

It goes without saying that experiences made in particular contexts cannot simply be transferred into policy recommendations for other jurisdictions. Therefore, when considering what Canada can learn from the emerging multilevel parliamentary patterns in the EU, we first have to clarify the main differences between the two federal systems. This clarification will help to identify those aspects of the European experience that might be relevant for policy transfer.

First, different social structures have to be taken into account. In comparative perspective, both federations can be characterized as multinational. Yet, the European Union constitutes a “poly-national” federation, while Canadian federalism holds together a divided society in which the province of Quebec and the governments of Aboriginal peoples play a particular role. This societal basis of federalism has supported decentralising trends in Canada. Consequently the allocation of power between the federal and the provincial governments is subject to continuous dispute. Of particular significance is the debate about the federal government’s spending power. As all attempts to solve these conflicts by constitutional amendments have failed, it is hard to see how procedures of subsidiarity controlled by parliaments, such as those applied in the European Union, would help. The Canadian method of applying opt-out clauses has proven to be more effective in working against the encroachment of the federal government in provincial affairs under the conditions of a divided society, as it allows some provinces to maintain their power while others seek federal support or coordinate their policies.

The second difference concerns structures of intra-governmental politics. In the “Westminster” type of parliamentary system that exists in Canada, the government and majority party in parliament (when there is one) act together in a closer relationship than occurs in “consensus” democracies of the European-type. In the Westminster system, particular procedures or provisions for reinforcing accountability of executives to national parliaments that are applied in Europe may be superfluous. However, information rights may support the opposition parties and stimulate parliamentary debates on issues of intergovernmental policy-making.

Third, the risk of unintended effects in multilevel governance caused by parliaments is not as high in Canada as in EU member states. In the EU, most powers are shared between European and national institutions, and member state governments wield decision-making power in the Council. Even after majority voting became the regular decision rule in the Council, individual governments still profit from a strong position, as decisions cannot be made without the consent of a qualified majority of states. Thus while European policies are made in structures of “joint-decision-making”, intergovernmental relations in Canada are more competitive, whereas coordination between jurisdictions results from voluntary negotiations. Under these conditions, individual parliaments can issue their veto against intergovernmental agreements without risking outcomes that run against their interests. In voluntary negotiation, no decision can be made against the will of one government or its parliament. If intergovernmental negotiations fail, each government is free to go it alone, which is not possible in structures of joint decision-making such as those which exist in the EU.

However, executive federalism in Canada has resulted from informal intergovernmental relations, which have been reinforced by the creation of the Council of the Federation. There is hardly any doubt that the need for coordination between levels and jurisdictions is increasing. More and more, governments will have to participate in intergovernmental negotiations and agreements. Hence the need to better integrate parliaments in these processes is no less important in Canada than it is in the EU. For this reason, parliaments could profit from improving their capacities to cope with the challenges of multilevel governance. So far committees of intergovernmental relations are the exception in Canadian parliaments while they have proven to be a successful institutional innovation in parliaments of EU member states. Inter-parliamentary communication does not play a significant role in multilevel governance in Canada, although the Canadian sub-organisation of the Commonwealth Parliamentary Association provides an institutionalised platform for the exchange of opinions.

Arguably, inter-parliamentary dialogue could turn out to be even more important in Canada than in the EU, if it intensifies political communication across the whole federation. Executive federalism has failed to reduce the cleavages in the Canadian federal system. Participation of non-governmental associations in intergovernmental policy-making has proven to be difficult.¹⁵ This being the case, parliaments may fill in the gaps and organise discourses that can contribute to the stabilization of Canadian federalism. European experiences provide no proof that such efforts will succeed. But they show that in multilevel polities parliaments should put more emphasis on their communicative function, and they should redefine this function in view of the multilevel character of politics. Therefore, exchange of experiences in this field across the Atlantic seems to be fruitful.

References

Auel, Katrin and Arthur Benz, eds. (2005) *The Europeanization of Parliamentary Democracy*, London (Routledge).

Benz, Arthur (2004) Path-Dependent Institutions and Strategic Veto Players - National Parliaments in the European Union; *West European Politics* 29 (5): 875-900.

Brock, Kathy (2003) Executive Federalism: Beggar Thy Neighbour?, in: François Rocher and Miriam Smith (eds.), *New Trends in Canadian Federalism*, Petersborough (Broadview Press, 2nd ed.), 67-83.

Crum, Ben und John E. Fossum (2009) The Multilevel Parliamentary Field: A framework for theorising representative democracy in the EU; *European Political Science Review* 1 (2): 249-271.

Kielmansegg, Peter G. (2003) Integration und Demokratie, in: Markus Jachtenfuchs and Beate Kohler-Koch (eds.), *Europäische Integration*, Opladen (Leske + Budrich), 49–83.

Kiiver, Philipp (2006) *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*, The Hague (Kluwer).

LeDuc, Lawrence (2007) European Elections and Democratic Accountability: the 2004 Election to the EP, in: Joan DeBardeleben and Achim Hurrelmann (eds.), *Democratic Dilemmas of Multilevel Governance*, Basingstoke (Palgrave Macmillan), 139-157.

Moravcsik, Andrew (1994) *Why the European Community Strengthens the State: Domestic Politics and International Institutions* (Center for European Studies Working Paper Series 52), Cambridge/Mass. (Center for European Studies).

Neunreither, Karlheinz (2005) The EP and National Parliaments: Conflict or Cooperation?, *Journal of Legislative Studies* 11 (3/4): 466–489.

O'Brennan, John and Tapio Raunio, eds. (2007) *National Parliaments within the Enlarged European Union. From 'Victims' of Integration to Competitive Actors?* Abingdon (Routledge).

Raunio, Tapio (2009) *National Parliaments and European Integration: What we know and what we should know*, ARENA - Center for European Studies, University of Oslo: ARENA Working Paper (online) 02/2009. http://www.arena.uio.no/publications/working-papers2009/papers/WP02_09.pdf.

Raunio, Tapio and Simon Hix (2000) Backbenchers Learn to Fight Back: European Integration and Parliamentary Government; *West European Politics* 23 (4): 142-168.

Simmons, Julie M. (2008) Democratizing Executive Federalism: The Role of Non-Governmental Actors in Intergovernmental Agreements, in: Herman Bakvis and Grace Skogstad (eds.), *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Don Mills/Ontario (Oxford University Press), 355-379.

Smith, Jennifer (2003) *Federalism*, Vancouver (UBC Press).

¹ Brock, Kathy (2003) Executive Federalism: Beggar Thy Neighbour?, in: François Rocher and Miriam Smith (eds.), *New Trends in Canadian Federalism*, Petersborough (Broadview Press, 2nd ed.), 67-83.

² Moravcsik, Andrew (1994) *Why the European Community Strengthens the State: Domestic Politics and International Institutions* (Center for European Studies Working Paper Series 52), Cambridge/Mass. (Center for European Studies).

³ Smith, Jennifer (2003) *Federalism*, Vancouver (UBC Press).

⁴ e.g. Kielmansegg, Peter G. (2003) Integration und Demokratie, in: Markus Jachtenfuchs and Beate Kohler-Koch (eds.), *Europäische Integration*, Opladen (Leske + Budrich), 49–83.

⁵ LeDuc, Lawrence (2007) European Elections and Democratic Accountability: the 2004 Election to the EP, in: Joan DeBardeleben and Achim Hurrelmann (eds.), *Democratic Dilemmas of Multilevel Governance*, Basingstoke (Palgrave Macmillan), 148.

⁶ Raunio, Tapio and Simon Hix (2000) Backbenchers Learn to Fight Back: European Integration and Parliamentary Government; *West European Politics* 23 (4): 142-168.

⁷ Kiiver, Philipp (2006) *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*, The Hague (Kluwer); O'Brennan, John and Tapio Raunio, eds. (2007) *National Parliaments within the Enlarged European Union. From 'Victims' of Integration to Competitive Actors?* Abingdon (Routledge); Raunio, Tapio (2009) *National Parliaments and European Integration: What we know and what we should know*, ARENA - Center for European Studies, University of Oslo: ARENA Working Paper (online) 02/2009. http://www.arena.uio.no/publications/working-papers2009/papers/WP02_09.pdf.

⁸ The amendments that came into force in 2009 consolidated the “primary law” of the EU, defined by different Treaties, with two documents now remaining. The Treaty on the European Union includes aims and principles, rules on institutions and procedures, and amendment procedures, while the Treaty on the Functioning of the European Union mainly concerns powers and policy-making.

⁹ According to this principle, “the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (article 5 section 3 TEU). The principle does not apply to areas which do fall within the exclusive competences of the Union.

¹⁰ Two votes are assigned to each member state. In those states where two legislative chambers exist, each chamber can cast one vote; in other states a parliament has two votes.

¹¹ Neunreither, Karlheinz (2005) The EP and National Parliaments: Conflict or Cooperation?; *Journal of Legislative Studies* 11 (3/4): 466–489.

¹² Crum, Ben und John E. Fossum (2009) The Multilevel Parliamentary Field: A framework for theorising representative democracy in the EU; *European Political Science Review* 1 (2): 249-271.

¹³ Benz, Arthur (2004) Path-Dependent Institutions and Strategic Veto Players - National Parliaments in the European Union; *West European Politics* 29 (5): 875-900.

¹⁴ Auel, Katrin and Arthur Benz, eds. (2005) *The Europeanization of Parliamentary Democracy*, London (Routledge).

¹⁵ Simmons, Julie M. (2008) Democratizing Executive Federalism: The Role of Non-Governmental Actors in Intergovernmental Agreements, in: Herman Bakvis and Grace Skogstad (eds.), *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Don Mills/Ontario (Oxford University Press), 355-379.