

# Federal Reform and Intergovernmental Relations in Switzerland

An Analysis of Intercantonal Agreements and Parliamentary Scrutiny in the  
Wake of the NFA

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# 1 Introduction

As<sup>12</sup> of 2020, the *Forum of Federations*, the most prominent network at the crossroads of practitioners and scientists in the field, reports around 25 existing federal countries, i.e. such where power is (territorially) shared between a central government and the constituent units. While the absolute number is rather small, the group of states makes up 40 percent of the world's population and encompasses both, some of the largest, e.g. India and the U.S., and rather small states, e.g. Switzerland and Austria.<sup>3</sup> Elazar (1987: 6) points out that besides formal federal countries there is a relevant number of states relying on some kind of power-sharing between the central state and the subnational units. The author observes a trend towards more federal arrangements and terms it “[t]he [f]ederalist [r]evolution” (ibid.). This builds on Bell's more general diagnosis that “*the nation-state is becoming too small for the big problems of life, and too big for the small problems of life*” (Bell 1987: 13–14; emphasis in original). What the author means is “*a mismatch of scale*” (ibid. 14; emphasis in original) between scope of problems and political (structural) remedies thereof. Burgess (2012) shares the view that demands towards the state have changed in the late twentieth and early twenty-first century. However, the author argues that despite the empowerment of international and/or non-governmental organizations, the state has kept its significance, because it was able to adjust voluntarily or involuntarily. Among others, it finds expression in “the revitalization of the federal idea [...] [, i.e.] a marked tendency for both existing and new states formally to adopt federal constitutions that signify a particular commitment to unity in diversity.” (ibid.: 1). While some states account as newly federal, e.g. Belgium (1993), others have regionalized while remaining unitary in principle, e.g. Spain (1978), yet others discuss federalism as central principle in future state reforms, e.g. Eritrea (ibid.: 1–2).

What this brief introduction shows is that problems and their political cure are complex, especially in the case of federalism. It accounts for (mostly) territorial issues, while its problem-solving mechanisms are manifold. Furthermore, according to Lépine (2015: 40–42), the problems of the late twentieth and early twenty-first century call for one specific manifestation

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<sup>1</sup> The dissertation is based on one part of the research project *The hidden political effects of the Swiss federal reform: The NFA and the changing power relations in the Swiss cantons* (SNSF No. 159343; <http://p3.snf.ch/Project-159343>, accessed 31 March 2020) that was financed by the Swiss National Science Foundation (SNSF) and principally investigated by Prof. Dr. Adrian Vatter, chair of Swiss Politics at the Institute of Political Science, University of Bern.

<sup>2</sup> The dissertation draws on various working papers by Arens (2017, 2019a, 2019b) and Arens and Freiburghaus (2018). Passages are marked when taken from a published book chapter by the author (Arens 2018). Preliminary findings of this dissertation were published in Arens et al. (2017) and Arnold et al. (2019).

<sup>3</sup> See <http://www.forumfed.org/countries/> (accessed 31 March 2020).

of federalism as a “network of functional polities and institutions” (ibid.: 40) rather than its classical structural devices:

“By functional, we mean that this new dimension of federalism emphasizes much more the efficiency of interconnections than the nature of the component polities. It is less based on the right of each nation to have their proper government, but rather focused on developing authorities and institutions according to their capacity to cope efficiently with specific challenges. [...] This also means that the efficiency among institutions would prevail over democratic procedures within each.” (Lépine 2015: 42).

This nicely delineates the content and scope of the dissertation at hand: It, first, investigates into a specific coordinating and cooperative mechanism within federations that allows to correct for flaws of federal task assignment and constituent units’ incapacities, respectively. Second, it deals with the mechanism’s consequences by analyzing its effects on established democratic processes as well as the democratic responses to these new challenges. Next to sketching out the cornerstones of the dissertation, the statement by Lépine also indicates the study’s actuality so that these “network[s] of functional polities and institutions” are the “new moment in complexity in federalism” (ibid.: 41). It will, however, be shown that, despite its heightened attention of late, the mechanism central to this study is not new.

Now, the following introductory subsections briefly deduce the specific research question(s), present its relevance, and outline the structure of the dissertation. First, in order to pave the way for the discussion of the research question(s), the main concepts of the study are introduced.

### *1.1 Conceptual Environment*

As a normative principle, federalism describes “the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent” (Wheare 1963: 10). The federal principle thus prescribes subnational *self-rule* on matters of local and regional scope and *shared rule* of the subnational units and the federal government on matters that transcend regional capabilities and jurisdiction (Elazar 1987). To not confuse federalism with other means and ways to territorially distribute power, e.g. decentralization, the vertical division and diffusion of jurisdiction needs to be constitutionally enshrined and cannot be unilaterally altered (Hueglin 2013). The constitutional safeguard is the core of federations that are the empirical embodiments of the normative principle of subnational autonomy on the one hand and federally shared jurisdiction on the other. Hence, federations are states that

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possess a federal constitution, i.e. a written agreement enshrining the basic political order of a state (*who does what*), that necessitates the approval of all constituent parts, i.e. the federal government *and* the subnational units (Watts 2008: 8–9). This is the core of what was termed federalism’s “classical structural devices” above.

Since “federalism is some one or several varieties of political philosophy or ideology and [...] federation [...] some type of political institution” (King 1982: 75), the political system and its constitution are only the formal framework within which actors of different levels of government work. Thus, federalism does not only encompass structure (*polities*) but also processes and culture (*politics*). The latter describes the political actors’ behavior according to the logic of compromise and accommodation but also a commitment of the people as a whole towards territorial power sharing and the aforementioned logic of “thinking federal” (Elazar 1987: 192–197; see also Duchacek 1970). Especially, processes and practices within and beyond the federal frame stand out. One procedural characteristic in multi-tiered, federal systems are intergovernmental relations (IGR) that describe “ways and means of operationalizing a system of government” (Elazar 1987: 16). In its broadest terms, IGR are formal and informal interactions of governmental units between and within state layers (Poirier and Saunders 2015a). Thus, they make up the federal “network of functional polities and institutions” (see above). Intergovernmental agreements (IGAs) and intergovernmental councils (IGCs), the two central embodiments of IGR, come into play when self-rule or shared rule is granted but cannot be sufficiently or satisfactorily fulfilled (for a general introduction see Poirier et al. 2015; for an encompassing discussion of IGCs see Bolleyer 2009 and Behnke and Mueller 2017; for an introduction to IGAs see country specific literature).

## 1.2 Research Question(s)

The following analyses take these considerations as point of departure and aim at answering crucial questions with respect to IGAs, primary drawing on the Swiss case. From an international comparative perspective, Switzerland accounts as a prime example of a federal and decentralized state (Lijphart 2012). Not only in structural, but also in procedural and in (federal) political cultural terms it is classified as a prototype of a federation (Elazar 1987: 64–79). Thus, power is (vertically) dispersed with the constituent units, i.e. the Swiss cantons, being responsible for all tasks not assigned to the federal level (Art. 3 Cst<sup>4</sup>, Art. 5a Cst) or voluntarily

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<sup>4</sup> *Cst* is used throughout the whole dissertation as the abbreviation denoting the Federal Constitution of the Swiss Confederation.

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devolved to the local level (Art. 50 Cst). The tasks of the federal level (as well as the joint tasks of both levels) are explicitly enumerated (Art. 54–135 Cst). The task assignment gives manifold leeway for IGR across and within state layers. In Swiss politics, their significance is generally acknowledged as high (Vatter 2018a). As in the internationally comparative literature, intercantonal agreements (horizontal IGAs) and intercantonal conferences (IGCs) account as the central means for horizontal cooperation among the constituent units. Both mechanisms have gained in importance over time (ibid.: 63ff.). One reason thereof is the *Neugestaltung des Finanzausgleichs und der Aufgabenteilung zwischen Bund und Kantonen* (NFA), in force since 1 January 2008. As one of four pillars, the NFA strengthened intercantonal cooperation (Art. 48 Cst), especially with respect to such that requires a sharing of burdens (Art. 48a para. 1 lit. a.–i. Cst). New federal instruments were constitutionally enshrined that can be used to coerce cantons to not only use goods and services provided by other cantons but also to contribute to their production (ibid.). Thus, the reform codified federal enforcement mechanisms in pursuit of enhanced but especially fairer, more balanced horizontal cooperation between the cantons.

The measures are based on scientific literature on the topic, e.g. research on collective action. The latter starts from the premise that cooperation and collective action is needed when the provision of a good cannot be (efficiently) realized by one actor alone – here, the central state or a subnational unit (see Ostrom 1990, 2005). However, group action can also be absent although all potential participants act rational and would gain from cooperation:

“Indeed, unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interests.” (Olson 1965: 2).

Hence, free riding increases the payoff of the actor that defects while it conflicts with the group interests and makes the provision of a public good inefficient and, in the long term, impossible (ibid.). However, coercion or exogenously imposed incentives can function as counteraction assuring the provision of a good (ibid.). By constitutionally settling such measures of coercion and thus incentivizing horizontal cooperation, not only the officials responsible for the NFA (EFD and KdK 2007) but also scientific experts on the topic expected the reform to boost the intensity of IGA-conclusion among the cantons (Bochsler and Sciarini 2006: 36–38). However, barely anything is known about specific effects of the NFA on the cantons and their political systems although they are directly addressed by the reform measures. Thus, the dissertation aims at examining most recent developments in horizontal intercantonal cooperation to

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approach reform effects. However, it does not aim at speaking to research on the Swiss case solely, but rather contributes to the understanding of the working mechanisms within other federations as well. Hence, the subsequent analyses take further federations into account. This broader scope is especially valuable since research on IGR (in federations) is “sometimes underappreciated” (Poirier and Saunders 2015a: 1) and, with respect to horizontal IGR, “not [...] widely studied” (Agranoff 2007: 271). In sum, the dissertation project asks the following basic grand question that is directly derived from the underlying research project on “[t]he hidden political effects of the Swiss federal reform: The NFA and the changing power relations in the Swiss cantons”<sup>5</sup>:

*To what extent has the NFA affected the cantons and their political systems?*

Based on this overall research question, the dissertation links developments in horizontal cooperation to power relations within the subnational units – two subject matters that directly relate to each other. This was already expressed by the idea that functional networks of political units often conflict with established democratic procedures. Accordingly, the basic research question is further split in two. First, the dissertation asks for the significance of horizontal IGAs between the Swiss cantons as well as for the factors that explain their occurrence:

*(I) What is the state of intercantonal cooperation by means of IGAs and what explains the intensity of their use?*

This first specific question shall approach a direct effect of the NFA on the cantons and their interrelations, respectively. Hence, it investigates into the basic observation of Lépine (2012: 41–42) that these institutional networks are a new, especially relevant dimension of federalism. It addresses the first part of the basic research question. The second question, however, targets an indirect effect of the reform and its implications for the cantonal political systems. Thereby, it takes the underlying research project seriously that, among others, asks “how the NFA has influenced [...] the balance of power between cantonal executive and legislative [branches]”.<sup>6</sup> The dissertation draws on the argument that intensity of intercantonal cooperation (see research question I) is directly linked to the power balance between the political institutions in the cantons. Or, as Lépine puts it (see above): an increase in flexible networks that complement the basic federal structure would mean that “efficiency among institutions would prevail over

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<sup>5</sup> See the abstract of the underlying research project (see f.n. 1).

<sup>6</sup> See p. 1 of the abstract of the underlying research project (see f.n. 1).

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democratic procedures within each” (ibid. 2015: 42). This argument needs further clarification before presenting the second specific research question.

IGR constrain the authorities of the respective units since decisions are not taken independently anymore, although lying in the units’ exclusive jurisdiction. While formally fulfilling all characteristics of self-rule, task enactment is (*voluntarily*) *shared*. IGR constitute a “dimension of the practice of federalism” (Poirier and Saunders 2015a: 1) in general and intercantonal agreements have been of crucial importance in Switzerland since early statehood (Kley 2007). They serve various functions, e.g. harmonization of legislation and implementation, common provision of public goods, or the establishment of joint institutions (Pfisterer 2015: 394–395). However, they also threaten the established balance of power due to their executively driven character: “The cantonal parliaments are to a large extent the ‘main absentees’ in [IGR]” (ibid.: 399). Abderhalden (1999: 186–90) argues that one cannot speak of a democratic deficit but rather that in intercantonal coordination the roles in and the process of decision-making differ from the prevalent domestic arena.

Observers criticized the weak participation of cantonal parliaments in intercantonal affairs in the late 1990s and early 2000s and proposed various measures to counteract power losses (e.g. Abderhalden 1999, Möckli 1999). While the expectation of intensified IGA-conclusion was in accordance with the reform goals, it was cautioned that the cantonal parliaments would be further outpaced (Rhinow 2003, Möckli 2009). The reform itself addressed the issue and prescribed minimal standards towards better participation of cantonal parliaments in intercantonal affairs (see Art. 13 FiLaG, Art. 4 IRV).<sup>7</sup> As will be shown, the NFA was accompanied by public debates around the issue of parliamentary participation in intercantonal cooperation that had intensified in the course of the reform process. In most recent literature on the topic, Strebel (2014) shows that nowadays most common instruments securing adequate participation – e.g. information and consultation rights – exist in nearly all cantons. The author also discusses reforms on the cantonal level towards better parliamentary participation and scrutiny against the background of the NFA (2014: 231ff.). However, the findings only provide a first case wise picture of each canton and do not center around the possible relationship between federal reform and the cantonal political systems from a longitudinal and quantitative perspective. Directly building on the first analytical step on IGA-conclusion and the existing

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<sup>7</sup> i.e. the *Bundesgesetz über den Finanz- und Lastenausgleich (FiLaG)*, in force since 1 April 2005, and the *Rahmenvereinbarung über die interkantonale Zusammenarbeit mit Lastenausgleich (IRV)*, passed for ratification on 24 June 2005.

qualitative work on executive-legislative relations in intercantonal affairs, the dissertation asks the following in its second step:

*(II) How do cantonal parliamentary rights of participation and scrutiny in inter-cantonal affairs have developed over time and what explains this development?*

### *1.3 Why it is Worth the Effort: On the Relevance of the Study*

While literature in the international (Parker 2015) and the Swiss context (Bochsler and Sciarini 2006) assign crucial importance to IGAs, barely anything is known about their empirical relevance as well as the factors that drive it. Two exceptions stand out: the investigations by Frenkel and Blaser (1981) and Bochsler (2009) address both questions – state and explanatory factors of IGAs – within the Swiss federal system. However, research on the topic resides in the shadow. Answering research question I adds another point in time to the two existing ones – Frenkel and Blaser (1981) analyze IGAs as of 1980 and Bochsler (2009) as of 2005. The subsequent analysis checks whether the state and pattern of horizontal IGAs have changed against the background of the NFA and its enforcement mechanisms. This is by no means certain. Wälti (1996) is highly pessimistic towards formal federal reform since it occurs so seldomly. The author argues that change rather proceeds “silent”, i.e. informal and incremental: “A close examination of the use of different mechanisms that characterize Swiss federalism shows that not their institutional basis but rather their conscious application by the decision makers have determined the policy outcomes.” (ibid.: 21). Now, the process towards the adoption of the NFA and the determinants of the successful pathway were analyzed in depth (e.g. Behnke 2009, Behnke und Benz 2009, Braun 2009a, 2009b, Broschek 2015, Cappelletti et al. 2014, Wasserfallen 2015). In contrast, research on the *political effects* of the NFA is scarce. The official evaluation reports of the Federal Council (2010, 2014, 2018) give first insights but deal with direct economic rather than political effects of the reform. Concerning the latter, Wälti (1996) does not assign much formal reform capacity to Swiss federalism anyway and argues that change rather proceeds “silent”, i.e. informal and incremental: “[T]he game can be influenced by changing the players rather than the rules of the game.” (ibid.: 23). Against the background of the successful reform process and the taking force of the measures, this critical evaluation of formal institutional change somehow contradicts contemporary ascriptions of the NFA as “probably *the* most important reform of Swiss federalism ever” (Vatter 2018a: 7; emphasis in original). Besides far reaching constitutional and statutory changes, Arnold (2020) shows that the NFA incentivized shifts of costs between the levels of

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government and thus influenced the vertical distribution of (fiscal) power within Switzerland. Given this notable exception of political science research on the topic as well as the varying perceptions of federal reforms in general (Wälti 1996) and in the particular case of the NFA (Vatter 2018a), a further clarification of direct and indirect reform effects on the Swiss federal political system is needed: After ten years since taking force, the subsequent analysis, first, investigates the NFA's effects on number and patterns of IGA-conclusion. By analyzing IGAs against the background of the German *Bundesländer* and the U.S. states as well, the Swiss findings are put into an internationally comparative perspective. Furthermore, in doing so, the dissertation provides for the better understanding of state and patterns of IGAs not only in the single Swiss case but also with respect to a broader set of mature federations.

Second, indirect reform effects are analyzed, namely such on the balance of power between cantonal governments and parliaments, i.e. the two core political institutions on the cantonal level (Vatter 2002). Hence, while the first part approaches the topic by clarifying state and logic behind IGAs to assess its overall significance for the cantons, the second part directly addresses the basic research question on the effects of the NFA on power relations within the cantons. Now, research on the Swiss case provides not only specific descriptive knowledge on single cases (see Iff et al. 2010 for the canton of Berne and Schwarz et al. 2015 for the canton of Uri) but also on all cantons (Strebel 2014). However, and as already brought forth, both approaches lack a longitudinal and quantitative perspective that compares all cantons over time and that does not only provide descriptive but also explanatory insights. Hence, a quantitative comparative analysis of the specific factors explaining institutional change over time lies at the core of the second analytical step: Did the NFA trigger parliamentary reforms in the cantons and what role did other factors play, e.g. the institutional context and the parliaments itself as well as partisan actors within the cantonal arenas? The analysis builds on approaches testing similar effects in other contexts, e.g. the effects of increased activity of state officials on the European level on more parliamentary scrutiny of national governments 'at home' (Raunio and Hix 2000, O'Brennan and Raunio 2007, Winzen 2012, Auel et al. 2015). Furthermore, it draws on a broad and well-backed level of knowledge not only from the Europeanization but also the (more theoretically grounded) policy diffusion literature. Linking these different strands of research makes the analysis highly informative, not only from an empirical but also a theoretical point of view. At last, the study speaks to the "tense relationship" (Sonnicksen 2018) between federalism and democracy, two core concepts of modern statehood. First, it empirically tests the effect of the former – by means of a specific mechanism of IGR – on the latter – the relationship between the executive and the legislative branch in particular. It thus links

federalism with the central political institutional idea of democratic government, i.e. the distribution of state competences towards separate branches of government whereby most of the former are somehow shared by the latter (Montesquieu [1748, 1952] 2001; see also Riklin 1989). According to Sonnicksen (2018; see also Benz 2009a, and Benz and Sonnicksen 2017) it is the “logics of politics” that causes tensions when both principles intersect in the political arena; the friction analyzed in the dissertation at hand reads as follows: “Democracy is based on power of popularly elected parliaments and accountability of executives, while intergovernmental relations in non-centralized polities link executives and generate multiple, yet often incongruous accountability relations.” (Sonnicksen 2018: 42). By empirically investigating the relationship between the two principles, the dissertation as well contributes to this vast field of research (for theorizing contributions see e.g. Benz 2003, 2009a, 2016a, Benz and Kropp 2014, Benz and Sonnicksen 2015, 2017, Kincaid 2010; on the more specific connection between consociationalism and federalism see e.g. Elazar 1985; for empirical tests of the relationship between federalism and democracy see e.g. Bermeo 2002, Lane and Ersson 2005, Erk and Anderson 2009). It is able to draw a link from (the usage of) IGR (in a federation) to (institutional power-relations within a modern) democracy and discusses the backlash from (disruptions in power-relations in a modern) democracy to (the usage of) IGR (in a federation).

#### *1.4 Outline and Summary*

Before fully delving into the topic, this closing subsection outlines the structure of the dissertation and summarizes its most important findings in brief. The dissertation first clarifies the main concepts in the second chapter. It does not only discuss the broad intersection of federalism and IGR theoretically but also carve out the unique characteristics of federal against unitary states empirically. The third chapter then examines the Swiss federal system and the (horizontal) institutions of cantonal IGR. Core to this chapter is the summary of the NFA-measures and the preceding reform process. It sets the stage for all following thoughts and analyses by providing relevant background information on the case at hand. According to the twofold research question, all further sections – theory and hypotheses, data and methods, and the analyses themselves – are split in two to cover both number and patterns of intercantonal agreements on the one hand (research question I) and cantonal parliamentary reforms on the other (research question II). The fourth chapter presents the theoretical considerations and the hypotheses that guide the empirical analyses. The focus lies on the deduction of concrete factors that help explaining the conclusion of intercantonal agreements on the one hand and the

response of cantonal parliaments to enhanced horizontal cooperation on the other. With respect to the former, especially literature on institutional collective action is examined and underpins the respective hypotheses. The argument on timing and scope of cantonal parliamentary reforms draws on Europeanization and policy diffusion literature. The fifth chapter then prepares the empirical analyses by laying out the methods applied. Furthermore, it describes the operationalization and sources of the variables used. Hence, it also provides background information on the various datasets that were compiled for the purpose of this dissertation. Each subsection in the chapter is split in two in order to properly address each of the two analytical steps.

The sixth chapter presents the empirical findings on research question I. It first investigates into number and patterns of intercantonal agreements at different points in time. The analyses show that there is no clear answer to the question on the development of IGAs, especially when taking fiscal measures into account as well: While the mere number of IGAs has not significantly changed of late but consolidated on a high level, positive trends in intercantonal compensations point towards enhanced intercantonal cooperation. The picture is, however, intruding, especially against the background of the NFA. Furthermore, the sixth chapter presents descriptive findings on horizontal cooperation in other classical federations, here, Germany and the U.S. As already pointed out, this aims at further understanding the institution at hand by leaving the Swiss case (for a moment). The crucial question is whether it exist a similar state and a common logic behind IGAs in other federations as well. The findings are mixed so that the three federations vary with respect to intensity of IGA-conclusion but show highly similar patterns of intergovernmental cooperation. This corroborates the main findings from the explanatory multivariate models on the Swiss case: Cooperation by means of IGAs mainly takes place within functional, geographically demarcated areas with proximity and mobility, central indicators of interstate exchange, playing a crucial role and appearing as the main predictors of the intensity of horizontal contractual cooperation.

The seventh Chapter shows descriptively how parliamentary rights and structures have developed by canton over time. Furthermore, it makes use of time-series analysis on panel data to isolate the factors explaining these institutional changes. The analysis finds clear indications that there are times of intensified reform activity that cannot be explained by other factors than period effects directly relating to the NFA reform process. Besides, an in-depth discussion on a typical case (Lieberman 2005) gives further insights on the workings of the explanatory mechanisms. The case study (Small-N analysis, SNA) confirms the results from the Large-N analysis (LNA).

The dissertation closes by summarizing the empirical findings in the eighth chapter. Furthermore, at least two major implications are discussed. Hence, the analyses demonstrate the viability of cantonal political systems: They not only engage in numerous intercantonal agreements, their institutions, here, the legislative branches, are as well capable of reacting to contemporary challenges in general and reforming outdated structures in particular. The dissertation then closes by putting forth the following argument: First, IGAs had led to frictions with established cantonal power-relations, so that these, second, were adjusted towards better participation of cantonal parliaments in intercantonal affairs. Third, enhanced parliamentary rights nowadays constrain cantonal executive branches so that they more and more refrain from concluding further IGAs. Thus, the “logics of politics” of federalism had affected the ones of democracy in the first place, while the “logics of politics” of democracy now strike back and tame the ones of federalism.

Lying at the heart of federalism, horizontal IGR, however, become contested when being intensified to an extent that common democratic processes are bothered. Based on the empirical findings of the dissertation project, it is theorized, that conflict between these two principles finally leads to a partial rescaling of one principle to the benefit of the other.

## 2 Concepts: Federalism and IGR

The following chapter serves as a broad conceptual introduction to federalism and IGR. With respect to former, literature itself mirrors the core of the concept, i.e. noncentralization (Elazar 1987), since there is no general theory of federalism. Rather, various approaches exist that each emphasize certain aspects while others remain in the dark. Landau comments on these conceptual ambiguities as follows:

“Having wandered again through the literature of federalism. I emerge with a prayer: would that our language were [*sic!*] standardized – just a few technical terms would suffice. When I first took this trip, I found federalism proper, dual federalism, cooperative federalism, centralized federalism, mature federalism, national federalism, and what was then the ‘new’ federalism. I am now obliged to add creative federalism, dynamic federalism, contract federalism, the ‘new’ new federalism and, Lord help us, permissive federalism. In Heaven’s [*sic!*] name, what goes on here?” (Landau 1973: 173).

While different federalism scholars bring forward different sets of characteristics that vary in scope and accuracy, core factors, however, exist that must be given to speak of federalism. Similar is valid for IGR: While the term speaks for itself, its use is manifold. It means different things when applied to different fields of research. The following discussion thus asks for a clarification of the very basic concepts of federalism and IGR: What are the defining characteristics of federalism and federations and what separates the latter from non-federations (unitary states)? What exactly constitutes IGR and what specific mechanisms can be subsumed under this term? To what extent are federalism and IGR related to each other? The discussion aims at, first, carving out what federalism is theoretically and empirically and, second, what role IGR play within federations. It introduces the two concepts and analyzes the degree to which both intersect. For a better understanding, federations and non-federations (unitary states) are mapped on a contingency table taking into account the formal distribution of power as well as the effective institutional mechanisms to decide and enact the respective competences. It is argued that horizontal IGR must occur in policy areas that fall under autonomous jurisdiction of the constituent units (self-rule), but that responsibility is finally enacted together and, thus, shared rather than held alone (shared rule). Hence, it is an operational mechanism in federations but, unlike their definitional characteristic, cooperation is horizontal and not vertical, and it is voluntary and not compulsory.

## 2.1 Federalism

The following first subsection lays out several existing perspectives on federalism. After taking stock of the *federal principle* – the very idea of federalism –, the significance of its embodiment in certain institutions, political processes, and a specific political culture is discussed. This threefold approach is well-known from classic federalism literature (see e.g. Elazar 1987), but also taken up in country-specific discussions of federalism (see e.g. Linder and Mueller 2017 for the underlying Swiss case).

### 2.1.1 The Significance of the Federal Principle

Primarily, federalism is a normative principle: “We shall take it that federalism is some one or several varieties of political philosophy or ideology and that federation is some type of political institution.” (King 1982: 75; see also Watts 2008: 8). It describes “the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent” (Wheare 1963: 10). Since coordination and independence are thus the cornerstones of federalism, the concept is incompatible with hierarchical subordination of one layer of government under the other. In more abstract terms, “[t]he simplest possible definition [of federalism] is *self-rule plus shared rule*.” (Elazar 1987: 12; emphasis in original). Both definitions of federalism target the same: “[F]ederal polities are characteristically noncentralized” (ibid.: 34) granting regional self-rule on matters of local and regional scope and shared rule of tasks that necessitate action of the federal institutions (also) representing constituent units and its populations, respectively. All in all, the goal is to solve the underlying allocation problem towards “a sound equilibrium between states and nation” (Friedrich 1968: 17). In this vein, King (1982), the first in conceptually splitting federalism and federation, argues that the allocation of tasks given the federal principle can vary on a continuum ranging from a centralist to a decentralist end with a balanced distribution in between. Thus, authority over policymaking, administration, or fiscal competences can be decentralized or centralized between the national level and the subnational units (Rodden 2004). However, in contrast to decentralization, “[a]ll federal systems must provide existential safeguards against involuntary power transfers from one order of government to another” (Hueglin 2013: 44).

These first reflections on federalism already provide a rather concrete picture of, first, what federalism is, and, second, how it translates into a federal structure. However, this skips the initial step towards the conclusion of a *federal bargain* (Riker 1975) that formally substantiates

the normative concept of federalism. Since the direction of federal state formation – i.e. *coming together* (bottom-up), *holding together* or *putting together* (both top-down) (Stepan 2005) – as well as the motives and factors explaining it – i.e. common interest and external and/or internal threats (Burgess 2006a: 76–101) – vary, the federal principle is rather informed by its semantic origin. Lépine (2012: 31; emphasis in original) describes it as follows: “Federalism comes from a late Latin word, *foedus*, meaning ‘treaty’, ‘compact’ or ‘contract’. *Foedus* comes itself from an older Latin word, *fides*, meaning ‘trust’.” Thus, the federal principle is based on “the idea of cooperation, reciprocity, mutuality, and it implies recognition of entities” (Davis 1978: 3). In this vein, “fidelity” (ibid.: 216) is core to the federal principle and constitutes the federal structure at least at its very outset. In sum, federalism does not only mean autonomy but also “the special kind of sharing that must prevail among the partners, based on a mutual recognition of the integrity of each partner and the attempt to foster a special unity among them.” (Elazar 1987: 5; see also Grodzins 1960).

### 2.1.1.1 Excuse: U.S. Federalism and the Federalist Papers

Following early federalism thinkers, the constitution of 1787 and 1789, respectively, of the United States of America embodies the frame of the first (modern day) federation (Lépine 2012: 39–42). Ipso facto, “modern federalism was invented” (Riker 1975: 94). Lépine (2012: 60) argues that “federalism cannot be seen in a new perspective as long as it is attached to the archetype pattern of the American pattern, developed from the Constitution of 1787 and the *Federalist Papers*.” It seems inevitable to clarify what federalism and federations constitute without taking the U.S. into consideration. Hence, this excuse examines the case in very brief.

The U.S. Constitution was ratified as a compact by the states, i.e. the people vested in the thirteen founding states, and it was, thus, a federal and not a national undertaking (Hamilton et al. [1787–1788] 2014: 185). Stepan argues that the U.S. exemplify Riker’s (1975) federal bargain since “relatively autonomous units [...] ‘come together’ to pool their sovereignty while retaining their individual identities.” (Stepan 2005: 258). Surely, it can be disputed when and to what extent this really was voluntary, especially with respect to the process of federalizing beyond the original thirteen states (Sonnicksen 2019). However, the significance of the U.S. Constitution and its contractual or covenant character are hardly questioned: “In Order [*sic!*] to form a more perfect Union [*sic!*]” (U.S. Const., pmb1.) and in contrast to the former loose confederation, the 1789 U.S. Constitution introduced dual membership so that authority of the states *and* the federal government is directly derived from the people (Hamilton et al. [1787–

1788] 2014: 70; Federalist No. 15; see also Hamilton et al. [1787–1788] 2014: 183; Federalist No. 39). The guiding “principle of *duality* [...] as the clearest fact [of federalism]” (Davis 1978: 114 emphasis in original) is further visible as the U.S. Constitution clarifies the *who does what*, since legitimacy is vested in both the national and subnational governments with a clear center of power missing. The constitution defines what the federal government is allowed to do (U.S. Const., Art. 1 Sec. 8) and what it is not (U.S. Const., Art. 1 Sec. 9). With respect to the states, it clarifies what tasks they *do not* hold (U.S. Const., Art. 1 Sec. 10) and grants them subsidiary power in all areas not explicitly regulated (10. Amendment, U.S. Const.). While essential individual rights are national and supreme to the states’ provisions, “[national] jurisdiction extends to certain enumerated objects only, and leaves to the several States [*sic!*] a residuary and inviolable sovereignty over all other objects.” (Hamilton et al. [1787–1788] 2014: 187). Thus, vertical division of powers clearly follows subsidiarity so that jurisdiction is always assumed to be subnational.

Powers are not only split between but also within layers of government. National government is vested in institutions originating from the nation as a whole – i.e. the House of Representatives following proportional representation –, the states’ populations – i.e. the Senate representing the “[s]tates as political and coequal societies” (Hamilton et al. [1787–1788] 2014: 185) –, or both – i.e. the executive branch (ibid.: 185–186). The senate co-determining national affairs is not only incongruently composed – independent of size, every state is represented by two trustees having one vote each (Art. 3 Sec. 1 U.S. Const.) –, powers between the upper and lower house are symmetric in general – deviations in specific areas appear, e.g. predominance of the Senate in foreign affairs (Art. 2 Sec. 2 U.S. Const.). The bicameral U.S. system is thereby considered “the most powerful legislative body in the world” (Smith 2000: 328–329; see also Llanos and Nolte 2003).

Most importantly, the *Kompetenz-Kompetenz*, i.e. the authority over the general power distribution and state structure, lies in the hands of Congress, i.e. the House of Representatives acting on behalf of the population as a whole *and* the Senate representing the states’ populations (Art. 5 U.S. Const.). Since oversized majorities are required in both houses in order to approve constitutional amendments, the most fundamental questions of government need broad consent among the nation as a whole *and* among the states (Hamilton et al. [1787–1788] 2014: 187). In Federalist No. 39, Madison describes the constitution as follows:

“The proposed Constitution [*sic!*], therefore [...] is, in strictness, neither a national nor a federal Constitution [*sic!*], but a composition of both. In its foundation it is federal, not national; in the

sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.” (Hamilton et al. [1787–1788] 2014: 187).

The discussion shows that the constitution as an institution itself stands out not only for its republican character and its *horizontal checks and balances*, that it is most often associated with, *but also* because of its *vertical separation of powers*:

“In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.” (Hamilton et al. [1787–1788] 2014: 255).

### 2.1.2 *The Significance of the Federal Structure*

So far, federalism was introduced as a normative principle. Most importantly here is the idea of a union given noncentralization (Elazar 1987), i.e. power dispersion and diffusion among multiple territorially demarcated centers that are united whatsoever (Duchacek 1970). Thus, federalism is related to unity despite group identities and spatially divided powers but also politics based on compromise and solidarity (Hueglin and Fenna 2015: 25–46). Conceptually, federalism is described as a nonhierarchical matrix of different but coupled arenas each regulating specific tasks of varying scope (Elazar 1987: 36–38). This establishes a connection to forms of political organization that go beyond the mere idea and principles of federalism by making them meaningful in structural, procedural, and cultural terms. To set the floor, literature differentiates between federal political systems that cover a wide range of non-unitary multi-tiered states with some combination of self-rule and shared rule but varying in the degree of sub- or superordination between its constituent parts and common government (Watts 2008: 8). Within this range, federations stand out for their constitutionally guaranteed balance between their governmental tiers: “[E]ach has sovereign powers derived from the constitution rather than from another level of government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers, and each is directly elected by its citizens.” (ibid.: 9).

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With respect to the aforementioned U.S. case, Wheare (1963: 11) argues that it is the “[c]onstitution which embodied that principle” and derives the following: “Is the federal principle predominant in the constitution? If so, that constitution may be called a ‘federal constitution’.” (ibid.: 15). This legalistic criterion has persisted over time. According to contemporary textbooks, a written and supreme constitution in which the territorial division of powers is enshrined and which neither the constituent units nor common government can unilaterally alter is *the* defining characteristic of federations (Watts 2008, Hueglin and Fenna 2015).

Constitutions as “birth certificate of every federation” (Burgess 2006a: 157) and “perpetual compact[s] of union” (Elazar 1987: 157) among the people and among the constituent units primarily allocate tasks and resources to each tier of government and set up institutions to deal with matters of common interest (Thorlakson 2003). With respect to the allocation of policy responsibilities, Dicey (1915: 130) puts it as follows: “Whatever concerns the nation as a whole should be placed under the control of the national government. All matters which are not primarily of common interest should remain in the hands of the several States.” Examples of most common policy areas that are subject to national legislation are international relations and foreign affairs, defense, economic and monetary policy, trade and customs (Watts 2008: 90). On the contrary, many aspects of social policy and cultural affairs, e.g. health services as well as primary and secondary education, law enforcement and security, e.g. police, are in the hands of the constituent units (Watts 2008: 90). Now, to protect the constitution and the territorial division of powers enshrined in it, federations rely on safeguards and redundancy in order to provide liability or to correct for imperfections (see e.g. Wechsler 1954, Landau 1973). Accordingly, the U.S. case already illustrated that the federal principle is manifested, primarily, in specific political institutions and governmental structures “mediating the interaction between levels of government” (Beramendi 2009: 755). First and foremost, common federal tasks are mostly enumerated while the ones reserved to the constituent units often lack explicit mentioning (Loughlin 2000). The former accounts as one of the central *structural safeguards* of federalism (Bednar 2009: 99–100). However, a ‘watertight’ split of jurisdiction is not only impossible – overlaps can occur although exclusive jurisdiction to one or the other government layer is granted –, legislative tasks can also be desired to rival and concur between the central state and the regions (Agranoff 2004). Surely, who administers these policies remains open: a level of government can simultaneously hold legislative *and* administrative competences or responsibilities can deviate so that one level, usually the federal, legislates while the other, usually the subnational, administers (Watts 2008: 92–93). However, constitutions assign

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responsibilities and prescribe which policy areas are regionally self-ruled and which are under federal shared rule.

While constitutions formally enshrine the federal principle by territorially allocating authority among multiple actors – i.e. territorial noncentralization of powers –, at most the constitution itself serves as the source and locus of power in federations. Not surprisingly and as already shown against the background of the U.S. case, no contractual party can unilaterally alter the codification of the federal principle within the constitution. It rather exist special procedures and thresholds, e.g. simple or oversized majorities in both chambers of federal parliament, approval of a certain amount of constituent unit legislatures and/or simple or special majorities in a referendum vote (Watts 2008: 161–165). However, federal constitutions are not finite documents. Especially, group-related, structural, or efficiency-related, procedural conflicts can be major sources of federal contestation and, thus, trigger constitutional reform (Petersohn 2013). Empirically, Lorenz (2010) shows that federal constitutions are not per se less likely to be amended in comparison to their unitary counterparts. Constitutional change is rather hampered by approval thresholds (constitutional rigidity) but driven by party fragmentation (diversity of interests). This is by no means implausible. Referring to the rather imprecise character of federal constitutions, Duchacek writes as follows:

“There is only an agreement to try to agree at a later date *again* (that is, there is a commitment to add, if possible, new federal bargains to the initial bargain). Federalism is by definition an unfinished business because many issues can be neither foreseen nor immediately solved [...]. But this is the whole point and the political merit of a federal formula. It is based on a wise recognition that in politics many issues cannot be solved now or ever.” (Duchacek 1970: 193; emphasis in original).

This is exactly the basic premise of federalism as conceptualized by Friedrich (1968: 7–8): It is the *process of federalizing*, i.e. an enduring bargain and co-equal decision-making of constituent units in a common and autonomous order. The concept rejects a sovereign within the system: “No one has the ‘last word’.” (ibid.: 8). This does not counter the discussion so far. However, empirically, most federations possess a final sovereign that can be (formally) assigned to one of the levels of government. Thus, since a ‘watertight’ division of powers and tasks is unrealistic and conflicts over the meaning of the constitution occur frequently, structural arrangements have been established to settle disputes between government layers. These mechanisms vary so that oversight and control over political institutions of each government layer most basically lie in the hands of the people. *Popular safeguards* mainly work by means

of periodical elections (Bednar 2009: 107–113). However, conflict mediation cannot only proceed from ‘below’ but also from ‘above’. Significant here is the role of supreme or constitutional courts as *judicial safeguards* by adjudicating disputes in specific cases against the background of general constitutional provisions: “[T]he judiciary is charged directly with constitutional review of government action and therefore is best positioned to set its threshold according to the formal division of authority.” (ibid.: 119).

The discussion above emphasized the prominent role of the federal constitution that lays out the territorial division of powers. However, this leaves open *how* federal governments and constituent units act on their constitutionally enshrined shared tasks. First, there exist various types of shared rule. Mueller (2019: 163) differentiates between centralization, horizontal cooperation, and regional influence in the center. While horizontal cooperation is voluntary and an operational practice, the first and third mechanisms are the most prominent aspects of shared rule in federalism literature. Thorlakson (2003: 16) speaks of “two key features of joint federalism” when addressing multi-level cooperation by centralization and subnational representation in federal legislation. As already discussed, the former, i.e. centralization, also describes the very basic federal division of powers and sovereignty (Mueller 2019: 163–164). The latter, i.e. subnational representation in the center, is another central structural safeguard of federalism (Bednar 2009: 98–107) and most prominently embodied in bicameralism, a “core institution of shared rule” (Benz 2018: 32). However, there is “no one model of bicameralism and no one explanatory theory [...] [,] contemporary bicameral systems [rather] blend ‘inheritance’ and ‘innovation’ to form distinctive legislative arrangements of political representation.” (Uhr [2006] 2008: 475). Thus, a mix of past settings and new ideas explains differently structured bicameral systems. One rationality of the specific bicameral architecture is federalism (ibid.: 479). According to Benz (2018: 32–39), bicameralism embodies the federal principle only when, first, one chamber represents the demos, i.e. the nation as a whole, and the other chamber the demoi, i.e. constituent units, and, second, both jointly decide on certain common matters. Hence, (territorial) representation and (joint) decision-making are crucial when trying to capture (federal) bicameralism. Lijphart (2012) also empirically shows that the existence, power, and composition of a second chamber that is vertically distributing authority counters majoritarianism and goes hand in hand with federalism and decentralization: “As the degree of federalism and decentralization increases, first a shift from unicameralism to bicameralism takes place and then the strength of bicameralism increases.” (ibid.: 201). The fact that the analysis is based on a broad comparison of numerous democratic states underlines the value of this empirical finding: While federalism is a normative and federation a descriptive

concept, symmetric and incongruent bicameralism most often functions as a structural device in pursuit of the federal principle. However, complexity exists that goes beyond this rather broad categorization of bicameral strength and the general link to formal federalism. Mueller (2019: 166) theorizes that this type of “unidirectional, bottom-up thrust of the activity and the attempted projection of collective bindingness over the whole territory” can vary with respect to the actors’ motivations, its use and effects. Consequently, the author broadens the scope towards all kinds of ‘regional lobbying’ in the center. In addition, basic structural variation even within “one of the institutional bastions of federalism” (Galligan [2006] 2008: 272), i.e. territorially based second chambers, occurs. Lijphart’s (2012: 199) upper end of the continuum indicating strong bicameralism includes Argentina, Australia, Germany, Switzerland, and the U.S., that are all mature or, in case of Argentina, emergent federations (Watts 2008). However, this category splits into (at least) two groups: While Argentina (Llanos and Nolte 2003), Australia (Uhr 2000) and Switzerland (Netzle 1998) follow the co-equally deciding and (nowadays) directly elected “paradigmatic federal house” (Patterson and Mughan 2000: 10) of the U.S. (*senate model*), Germany and its *Bundesrat* (*council model*) stands out (Niedobitek 2018a). Independent of whether the *Bundesrat* accounts as “the most federal of upper houses” (Patterson and Mughan 2000: 27) or whether it is denied to be a “‘real’ second chamber” (Niedobitek 2018a: 206), it neither proportionally (congruently) nor equally (incongruently) represents the constituent units’ governments, but weights their votes stepwise. The Basic Law for the Federal Republic of Germany reads as follows:

“(1) The Bundesrat shall consist of members of the Land governments, which appoint and recall them. Other members of those governments may serve as alternates. (2) Each Land shall have at least three votes; Länder with more than two million inhabitants shall have four, Länder with more than six million inhabitants five, and Länder with more than seven million inhabitants six votes.” (Art. 51 para. 1–2 GG).

Furthermore, the *Bundesrat* lacks symmetric power. The Basic Law (GG) differentiates between bills necessitating consent (*Zustimmungsgesetze*; Art. 70 para. 2 GG) and such that can only be postponed by the upper but even though ratified by the lower house to become law (*Einspruchsgesetze*; Art. 70 para. 3 GG). In sum, the variance within these (similarly) strong bicameral systems (Lijphart 2012: 198–201) shall not blur their federal rationalities and functions: First, territorially based second chambers are an institutional channel to fend off central state encroachment in constitutionally enshrined spheres of subnational autonomy. Second, they enable territorial interest representation on common matters in the center. Thus,

bicameralism serves a dual purpose: it protects self-rule and ensures shared rule (Benz 2018: 32–34) by means of representation and redundancy (Mughan and Patterson 2000: 340–343).

### 2.1.3 *The Significance of the Federal Practice and Culture*

Livingston (1952) criticizes early federalism literature for its legal nature and rather emphasizes its socio-territorial basis, i.e. the federal society. While the author acknowledges the relevance of federal institutions for formally absorbing the territorially distributed interests, he gives more importance to their operation: “Whether a constitutional structure may properly be called federal, however, depends not so much on the arrangement of the institutions within it as it does in the manner in which those institutions are employed.” (ibid.: 84). However, scholars following the constitutional-legal tradition do by no means deny this. Wheare (1963: 20) argues “that the practice of the constitution is more important almost than the law of the constitution.” Riker (1969: 146) is as well convinced that “[i]n the study of federal governments [...] it is always appropriate to go behind the [constitutional legal] fiction to study the real forces in a political system.” For others like Friedrich (1968: 18), “federalism is not a fixed and static pattern, but a process [anyway]” that is characterized by enduring cooperation and coordination.

Central to this “ambiguity” (Elazar 1987: 67–68) between structure on the one hand and practice and process (within this structure) on the other is whether and how the constitutionally enshrined federal provisions translate into real action and counter the territorially based demands that arise from the federal principle. Following Riker (1975: 133–141), this transition can take place when there are decentralized parties and party system(s), respectively. The degree of party regularity, i.e. party discipline, and (the coherence of) party control between the regions and the center informs about the degree of autonomy of the former and the latter, so that “one can measure federalism by measuring parties” (ibid.: 137; see also Filippov et al. 2004). Hence, parties and party systems can function as *political safeguard* (Bednar 2009: 113–119) by means of “bind[ing] together [...] the officials of the two levels of government, as well as from state to state [through interdependence]” (ibid.: 96).

Another aspect is considered meaningful for the working of federalism in practice. Following Friedrich, successful federations depend on the existence of “something that has been called the “federal spirit” or the “federal behavior” [...] [, i.e.] a highly pragmatic kind of political conduct” (Friedrich 1968: 39). In reviewing literature on the topic, Riker (1969, 1975) strongly argues that the federal bargain is initially meaningful while federalism becomes rather

insignificant since, after him, the political culture determines the further working of the system. Maybe *the* most enlightening endeavor here is Duchacek's (1970: 341; emphasis in original) concept of a "circular movement of three (mutually reinforcing or mutually eroding) factors: (1) *the constitution*; (2) *the parties*, and (3) [...] *political culture*." The author does not only theorize on the interaction of structure, process/practice and culture altogether but conceptualizes federal political culture as "a set of orientations toward the federal political system and attitudes toward the role of self (in the federal case, the component units as well as the individuals) in the system." (ibid.). This goes beyond the mere logic of compromise and accommodation in the day-to-day workings in federations. These behavioral features are, however, most prominently expressed in Lijphart's (1968, 1969, 1977) consociationalism and consociational democracy, respectively, that overlap with federalism and stable federations, respectively (Duchacek 1985, Elazar 1985, Lijphart 1979, 1985, Steiner and Dorff 1985). Both concepts are by no means equal but have a common denominator, i.e. power sharing, and encompass structure, process and practice, and culture.

## 2.2 IGR

The second grand concept relevant to the study at hand are intergovernmental relations, in brief, IGR. In contrast to federalism, especially the broad range of its application makes a discussion necessary. It does not draw on one or a few strands of research, rather one finds it in numerous fields of political science literature. Hence, the following shall provide a concise definition of the concept and a rough review on its use in, especially, federalism literature.

### 2.2.1 A Minimalistic Definition of IGR

According to Schmidt (2010: 370), IGR belong to the broader field of interorganizational relations and are a subtype thereof. The term describes coordination among governments without transferring competences to a higher state level; a transfer of competences towards a higher state level would constitute a possible next step in pooling power (ibid.). Schmidt (ibid.) further differentiates three varieties of IGR: between governments of different nation states (international horizontal coordination), between governments within the same federal state (domestic horizontal coordination), and, between governments of different state levels (vertical coordination in a multilevel-system). This very basic definition of IGR is too broad in some terms while it is too detailed in others. However, it conforms to highly elaborated endeavors of

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more IGR-specific literature. In his classical contribution, Anderson (1960: 3) defines IGR as all kinds of “activities and interactions occurring between governmental units of all types and levels within the federal system”. Wright (1974: 4) builds upon this definition and states that “[t]he term IGR alerts one to the multiple, behavioral, continuous and dynamic exchanges occurring between various officials in the political system.” Again in more abstract terms, following Opeskin (2001: 129; emphasis in original), IGR “include[] all mechanisms through which governments within a federation are brought *into relation* with each other.” Finally, the most recent and widespread definition of IGR comes from Agranoff:

“This concept involves those transactional activities and interactions between government units and with the nongovernmental sector of all types and levels. If one thinks of a set of governments as operating in a system, IGR focuses attention on the interactions that connect them.” (Agranoff 2004: 29).

This enumeration of well-established definitions is by no means complete. However, they reflect the cornerstones of IGR. At the same time, each definition is too minimalistic in some and too exclusive in other respects. Starting with Anderson (1960: 3), his conceptualization is highly valuable but excludes all non-federal systems. While a separation of the analysis of IGR in federal from the one in unitary systems is widespread (see Rhodes 1992, Harman 1992), limiting the very basic definition to one or the other system automatically narrows the validity to an unnecessarily small sample. This does not rule out that differences in IGR occur that stem from a political system’s overall structure. Rhodes (1992: 316) introduces IGR in unitary states by pointing out that they most commonly proceed between the central state and local units. According to Agranoff (2004; see above), a certain degree of (minimal) subnational autonomy (already) qualifies to research IGR. This underlines a minimal structural necessity of the mere existence of governmental units, what simultaneously implies an at least minimal degree of decentral policymaking or policy-implementation. When this minimal criterion is met, intergovernmental interactions are principally possible.

Furthermore, the conceptualizations vary with respect to the actors or institutions that are put to their center. Agranoff (2004: 29) labels relations between the governmental and nongovernmental sector as IGR. This seems only plausible when nongovernmental actors are third parties since the term basically describes *intergovernmental* relations. Poirier (2018) convincingly argues that IGR “take place between formal state actors”, i.e. the official representatives of a political system. However, third parties, i.e. municipalities and local

authorities or interest groups from the private sector or the civil society, increasingly play a role in IGR (ibid.; see also Poirier and Saunders 2015b: 485–488).

The next ambiguity occurs when following Opeskin (2001: 129) who concretizes that in IGR the *governments* of two or more entities interact. However, it is not necessarily the case that IGR involve the executive branch. Surely, “[a] common characteristic of intergovernmental relations is their executive nature” (Hueglin and Fenna 2015: 239; for further elaborations see section 4.1.2 and 4.2). This originates from the general provision that the executive branch represents a political entity to the outside and is, thus, head of external affairs. However, literature on the topic clarifies that “IGR involves a variety of types of public officials (courts, legislators, executives)” (Agranoff 2007: 249). Poirier and Saunders (2015b: 451–457) comprehensively discuss various legislative institutions and techniques to enable and facilitate IGR. A prime example here are national second chambers that enable subnational legislative or executive officials to directly or indirectly participate in national policymaking (Poirier and Saunders 2015: 452–453; see section 2.1.2). As examined above, the German *Bundesrat* is composed of instructed members and delegates of the *Länder* governments, all embedded in parliamentary systems. It is labeled as “unique” (Niedobitek 2018b: 206) due to this specific representation of the constituent units. However, the council model also exists in Austria. Pelinka (1973) detects extensive similarities between the second chambers of both states, but also differences, especially in structure. The author argues that the rationality behind both second chambers is identical – a representation of the constituent units in national politics (ibid.: 135; see Art. 34 para. 1 B-VG) – while its embodiments strongly vary. The members of the Austrian *Bundesrat* are appointed by the parliaments of the *Bundesländer* (Art. 35 para. 1 B-VG), but once in office, possess a free mandate (Art. 56 para. 1 B-VG). The selection mode is well known from Switzerland and the U.S. subsequent to the foundation of the two federations. The latter used indirect appointment by means of the constituent units’ legislatures until 1912 and 1913, respectively (Art. 1 Sec. 3 U.S. Const., repealed and superseded by the 17<sup>th</sup> Amendment, section 1). The Swiss cantons, vested with the right to self-determine the selection of the members of the *Ständerat*, have successively switched to direct election by the constituent units’ population (Vatter 2018b: 330). These examples show that the description of IGR as *intergovernmental* relations only is too shortsighted.

Furthermore, interparliamentary exchanges between legislatures are also a part of IGR (Poirier and Saunders 2015b: 454–455) and, thereby, without any executives’ participation. An example here is interest organization of U.S. states’ institutions by means of the “coexistence of IGAs [(intergovernmental arrangements)] that represent the interests of the state executives and the

state legislatures separately” (Bolleyer 2006a: 486–489; see also Hanson 2013). Here, IGR do not only reflect the separation and sharing of powers by means of the executive and legislative branches, but also partisan divisions: Next to the core legislative institution of the U.S. states, the *National Conference of State Legislatures* (NCSL), another conservative-aligned association, the *American Legislative Exchange Council* (ALEC), organizes interparliamentary relations as well (ibid.).

Following these clarifications, first, IGR are interactions between state officials of different territorial units under further possible participation of third nongovernmental parties. Second, IGR describe exchanges between governmental units that not exclusively proceed between governments in a narrow sense, i.e. the executive branches. Thus, the discussion so far leads to the definition proposed by Poirier and Saunders (2015: 5; emphasis in original): “[I]ntergovernmental relations [...] refer to the wide variety of ways in which orders of government enter into relations with each other”. Or, put differently: IGR describe all interactions between governmental units of different territorial entities within or across levels of government.

### 2.2.2 *Models, Characteristics and Purposes of IGR*

One of the most received models of IGR (see e.g. Agranoff and Radin 2015 as well as Burke 2014) are the three developed by Wright (1978: 20; 1988: 40), all informed by the question of *who governs* in a political system, i.e. the national or subnational governments (ibid. 1974: 21). Mainly, the author differentiates according to the intensity and direction of the respective national, state, and local relations. The first, i.e. the separated-authority model, nearly rules out IGR due to separated competences of independent and autonomous entities that are “only linked tangentially” (ibid.). Wright (ibid.: 22) argues that court rulings over conflicts of jurisdiction are among the only seldom links here but discredits the model for its empirical irrelevance. Differently, the inclusive-authority model postulates a clearly superior center that dominates in IGR over subordinate state and local entities with limited powers (ibid.: 23–28). A stereotypic policy-instrument are (conditional) grants-in-aid, with which the national level even enlarges its jurisdiction at the expense of the subnational level (ibid.). Between these extreme types of IGR lies the overlapping-authority model that is characterized by bargaining as central authority pattern (ibid.: 28–29). In contrast to the former model, initial power and resulting benefits of IGR are both balanced while bargaining is characterized by cooperation and competition (ibid.). The model somehow seems as a bird’s-eye view on political systems and defined by the

respective overlaps in jurisdiction as their respective names suggest. Powers and entities are completely separated and independent in the first, i.e. the separated-authority model, they are fully fused in a top-down hierarchy in the second, i.e. the inclusive-authority model, and they partially overlap and are interdependent in the third, i.e. the overlapping-authority model.

More informing than Wright's (1974, 1988) classical models of IGR are the patterns of IGR according to Behnke and Mueller (2017: 7). The authors take a crosscutting perspective on political systems and are thereby able to draw all possible relations between the system's governmental units. In their simplified model, they basically differentiate, first, bottom-up and top-down relations between entities of *varying* territorial scope and legal level and, second, interactions between entities of *equal* territorial scope and legal level. This is, however, similar to Wright (1974: 8–14; 1978: 2–4), that elaborates distinctive features to concretize IGR. Characteristics in three respects are briefly discussed here, while surely more dimensions could be added. First, “all the permutations and combinations of relations among the units of government” (ibid. 1978: 8) must be considered. This boils down to the very core of IGR as a relational concept that encompasses minimally two parties that are linked. Generally, IGR can be of bilateral or multilateral character and the interacting governmental units can belong to the federal, state, and/or local level. Analytically, one can differentiate between *vertical* and *horizontal* IGR (see Behnke and Mueller 2017). According to Anderson these two directions make up the “two headings” under which all types of relations can be summarized:

“‘[V]ertical relations’ are those of governmental units that are both territorially larger and legally superior to those units that are territorially smaller, included within, and legally inferior to, the former. ‘Horizontal relations’ are in general those between governments that occupy distinct and separate areas and that stand on a basis of legal equality, or practically so.” (Anderson 1946: 4)

In federations, the former is often labeled as *vertical federalism* and equated with subnational partaking in national legislation by means of bicameralism (Krumm 2015: 44–47). As already brought forth, especially in states that follow the council model, second chambers are the core arena for vertical IGR (Poirier and Saunders 2015b: 452–453). However, this ascription is not unanimously shared. With respect to the classical example here, the German *Bundesrat*, Hueglin and Fenna argue as follows:

“The German second chamber’s construction as a council must not be confused with intergovernmental relations or executive federalism, however. The *Länder* delegates act as

legislators and interact with the elected members of the parliamentary first chamber, the *Bundestag*.” (Hueglin and Fenna 2015: 260).

Benz (2018) and Benz and Sonnicksen (2017) take an opposite stand. According to the researchers, this very construction institutionalizes federal-state-relations and couples parliamentary democracy with federalism. However, the council model of bicameralism is a rather specific institutional arrangement that, within the group of federations, only represents a small number of states. More commonly, IGR involve top-executives and government officials as well as administrators and civil servants, respectively, which interact with each other. A prime example for direct contacts between state entities and the federal government can be found in Canada. While lacking a strong second chamber, the federal government and all provinces possess a department, secretariat, or other structural devices to deal with IGR (Adam et al. 2015: 151–152; see also Smiley 1974, Johns et al. 2007, Gagnon 2009). Already in 1961, the *Ministère des Affaires fédérales provinciales* of Québec – nowadays, the *Secrétariat du Québec aux relations canadiennes* – was founded in order to “promoting full provincial autonomy and facilitating intergovernmental collaboration with respect for the constitution”.<sup>8</sup> This concept of ‘federal-provincial diplomacy’ (Simeon 1972) is however by no means unique to Canada. Jensen and Emery (2011) show that the first U.S. states opened offices in Washington in the early 1940s to directly lobby the federal government for enhanced federal funds that were driven by the state’s structural capacity and political professionalization as well as factors relating to the states’ economy and its governors individual experiences.<sup>9</sup> Similarly, the *Vertretungen der Länder beim Bund* ensure that the German *Länder* are directly, physically, and durably represented in Berlin. They not only organize and coordinate the work of the respective unit in the *Bundesrat* but also monitor federal politics as a whole, inform their institutions ‘at home’ about all relevant developments and possess further representative and lobbyist tasks (Schrenk 2010). Additionally, subnational entities not only interact with their own national government but also in international relations and with other nation states or supranational organizations: ‘paradiplomacy’ (Duchacek 1990) is not a new phenomenon but steadily on the rise (see e.g. Criekemans 2010, Tatham 2008, Kuznetsov 2015). However, ‘individual’, i.e. bilateral direct interactions are just one mechanism of IGR in most federations. More prominent are ‘collective’ IGR of subnational entities against the background of joint councils, commissions, forums, or conferences (Poirier and Saunders 2015b: 458–461). These

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<sup>8</sup> <https://www.sqrc.gouv.qc.ca/secretariat/historique/index-en.asp> (accessed 16 July 2019); for structural changes over time see <https://www.sqrc.gouv.qc.ca/secretariat/historique/titulaires-en.asp> (accessed 16 July 2019).

<sup>9</sup> For further information on the phenomenon in the respective U.S. case, see Haider (1971), Cammisa (1995), Nugent (2009), and Jensen (2016), among others.

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so-called IGCs, i.e. intergovernmental councils, not exclusively but mainly bring together executives of different governments and governmental units, respectively. As discussed in the previous section, the U.S. *National Conference of State Legislatures* (NCSL) is a prime example of interparliamentary and legislative interaction by means of an IGC. More commonly, IGCs are defined as “institutions that bring together the leading executive politicians and senior civil servants of various or all governments in a federation” (Behnke and Mueller 2017: 4). Such can be approached by a policy-oriented – towards understanding interactions and their problem-solving capacity in specific policy areas – or a systemic perspective – to catch general logics and patterns of interactions – mirroring “the distinction between *generalist* (cross-sectoral) arrangements (corresponding to a systemic perspective) and *policy-specific* arrangements (corresponding to a policy-oriented perspective) [...]” (Bolleyer 2009: 17; emphasis in original). The latter describes IGCs organized according to policy sectors exemplified by specialized ministerial conferences, e.g. the Conference of Education Ministers (EDK) in Switzerland, or the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) of the German *Länder*. The former is embodied in conferences among the heads of government, e.g. the Swiss Conference of Cantonal Governments (KdK), or the *Ministerpräsidentenkonferenz* (MPK) in Germany.

According to Watts (2008: 118), “[t]he institutions and processes of executive federalism have usually developed pragmatically rather than by constitutional requirement”. For others, IGR are a dimension of politics and part of the political practice (Poirier and Saunders 2015a: 1). According to Anderson (1960: 4), it applies that “[i]t is human beings clothed with office who are the real determiners of what the relations between units of government will be.” Wright (1974: 2–3; 1978: 9) concludes, that IGR are made up of informal individual behavior, beliefs, perceptions, and preferences of interacting officials. However, he adds the continuous and cumulative nature of IGR (ibid. 1974: 3; ibid. 1978: 12–13). Thus, they are regularized and embedded in “the formal, legal, institutional context within which those relationships originate and flourish” (ibid. 1974: 3). Bolleyer (2009: 23–28) examines IGCs with respect to their degree of institutionalization, i.e. an IGC’s internal differentiation, and integration, i.e. the overall external differentiation of the system of IGCs. Surely, there is also informal direct communication by means of loose face-to-face talks or exchanges via e-mail or telephone. However, this very “core of IGR” (Wright 1978: 9) does not rule out that informal interaction is regularized and institutionalized and results in formal IGR as concrete output or precondition and framework of informal interactions. Although generally being the product of informal

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interactions, an instrument of IGR that is unambiguously formal by definition are intergovernmental agreements (IGAs):

“Formal co-operation activities [...] are based on *contracts and compacts for co-operative action*. In the largest sense, contractual relationships are basic to a federal system which is founded upon a fundamental compact to begin with.” (Elazar 1965: 13; emphasis in original).

IGAs as “the most formal mechanism of cooperation in the tool-box of [IGR]” (Poirier 2001: 7) are thereby located at one extreme of formality while phone calls or e-mail contacts constitute the other extreme. IGCs as well as joint commissions, programs, and procedures are situated in between. Identically to all aforementioned IGR mechanisms, these “formal, written accords between the recognized agents of two or more governments within a single federal state” (Parker 2015: 8) can be of bilateral, multilateral, or omnilateral partnership and (as well) proceed vertically or horizontally (Poirier and Saunders 2015b: 469–470; see patterns by Behnke and Mueller 2017 above). Horizontal IGAs are thereby confederal in nature since they reflect joint law making and administration in confederations or loose unions of formally independent states (Mueller 2019: 165). Furthermore, IGAs can be legally binding and define liabilities among the contracting partners or be of general nature without codifying any direct liabilities (Poirier and Saunders 2015b: 471–472). Lastly, one can speak of *administrative agreements* when they regulate the administration of tasks and define concrete rights and duties of the contracting parties that are the respective authorities and agencies only so that these contracts are not enforceable against third parties. Due to their minor legal status and function, administrative IGAs generally do not necessitate the consent of parliament. In contrast, legislative agreements define abstract norms that are generally applicable and enforceable against third parties. Since they replace domestic law, the approval by the legislative branch is required to become valid and binding (ibid.: 472–473).

After defining IGR and clarifying how they work, their functions and the purposes behind them remain unclear. Thus, before closing this subsection, light shall be shed on rationalities behind interactions among governmental units. To again begin with the reflections of Wright, governmental units make use of IGR to deal with complexity:

“[I]ntergovernmental achievements hinge on coping successfully with complexity. Complexity is an inherent and persistent characteristic of the several features of IGR. Accomplishments in the intergovernmental arena therefore depend on the successful management of complexity.” (Wright 1974: 16).

Complexity here is twofold: complex societal problems are tackled by IGR that are complex themselves. According to Rhodes, IGR must be analyzed against the background of interorganizational research (e.g. Emery and Trist 1969) developed outside political science saying that “[c]omplexity and instability generate uncertainty which the organization acts to reduce or remove.” (Rhodes 1980: 294). In the absence of independence, the organization – here, the governmental unit – constantly interacts with its environment in an open system that influences the organization’s very own goals and actions: “the environment is both constitutive and constituted” (ibid.: 298). Complexity describes the open social system that is rich in structures and marked by a high quantity and quality of relations among its entities (Hillmann 2007: 441). Thus, when entities interact to resolve conflicts or adapt to changing circumstances, i.e. the two main functions of IGR according to Watts (2008: 117), they mainly coordinate themselves. Here, coordination is “the form of political-administrative processing of interdependent problems” (Schmidt 2010: 434). Thus, at the core of IGR lies coordination that is nothing else but the joint processing of problems that arise within the highly complex and open social system. Behnke and Mueller (2017: 8–10) argue that mainly four motivations drive IGCs as one specific IGR-mechanism: influence, autonomy protection, information exchange, and coordination – however, the latter just being one rationality out of four. With respect to IGAs, Poirier (2001) assigns five specific functions to it: policy coordination, procedural cooperation, para-constitutional engineering, regulating by contract and agreements as soft law. Similar to the simple description by Watts (2008: 117), Hueglin and Fenna (2015: 238) argue that IGR are “developed as a response to the much greater need for coordination”. Here, the approach is taken up that interacting governmental units are motivated to apply IGR to coordinate action among each other. The specific purpose behind this very basic coordination is then manifold according to the cited enumerations: influence on other parties, protection of competences and autonomies, information or resource exchange, joint provision of services and infrastructure, harmonization of law and public policies, and so on.

### *2.3 Federalism and IGR: Common Ground?*

After defining the two key concepts, i.e. federalism and IGR, the next section of this chapter clarifies their overlap in theory and empirics. This becomes even more relevant considering the two often being used synonymously, especially in approaches referring to the U.S. system where “many scholars pass easily from the use of one term to the other” (Rosenthal and Hoefler 1989: 2).

### 2.3.1 *Federalism and IGR in Theory*

IGR “is to be found in all federal systems, but also in many others. [...] It is therefore both wider and narrower than the study of federal systems.” (Trench 2005: 226). Anderson (1946: 3) separates the concepts by arguing that while IGR describe all relations, i.e. interactions, among governmental units (within a state), federalism emphasizes the vertical relations between the national and state level as well as the horizontal relations between the states. However, the previous discussion on the constitutive elements of federalism indicate that it is rather the former, i.e. vertical state-federal relations, that stands out in federations. Even in former unions or confederations (and coming together-federations) where horizontal IGR were constitutive for the system, such interactions do not need to be of any greater relevance anymore as the Canadian example shows. Rather, “[t]he constitutionally privileged status of the constituent units reflects the premise of federalism that it is about the recognition of separate political communities” (Fenna 2012: 751; Levy 2007) that, first and foremost, are the states or regions, not the local entities, and their power in the center. Wright puts it as follows:

“[W]hereas federalism emphasizes national-state relationships with occasional attention to interstate relations, the concept of IGR recognizes not only national-state and interstate relations, but also national-local, state-local, national-state-local, and interlocal relations.” (Wright 1978: 8).

In federations, the coequal relationship between constituent units and the federal government is thus a special case of IGR: It is the constitutionally protected state-federal relation special to federations and delineating them from other political systems. However, besides this fundamental and state structuring relationship of coequal ‘partnership’ (Elazar 1965), various connections exist that follow a clear legal hierarchy as known from unitary states (Fenna 2012). This already anticipates what is central when considering federations only: A variety of IGR exist that transcend the system’s crucial and defining characteristic of coequality between the constituent units and the national government. As already depicted, federalism most basically combines self-rule, i.e. autonomy in some respects, with shared rule, i.e. co-decision-making in other respects (Elazar 1987: 12). A clear-cut division of tasks between the federal level and the constituent units as implied by Elazar’s formula can be at best a legal and constitutional directive. However, ‘watertight compartments’ (Watts 2008: 84) are hardly possible so that overlaps of jurisdiction and interdependencies between levels of government occur. With respect to the U.S. system, Grodzins (1960: 75) argues, that the division of power resembles a “rainbow or marble [rather than a layer] cake, characterized by an inseparable mingling of

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differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls”. Due to these blurring boundaries between autonomously and jointly tackled policy areas, “intergovernmental relations essentially must be understood as a political process complementing the formal provisions of power division [...]” (Hueglin and Fenna 2015: 241). Vague constitutional drafting can be one reason here. However, federations and their circumstances are not static but dynamic and, as the U.S. example shows, can change, e.g. from a strict separation of action to cooperation between levels of government to predominance of one over the other layer (Kincaid 2013). Especially modernization processes increased complexity and have thus caused ambiguities over the *who does what* since the assignment of tasks followed the spillover logic at times the respective constitution was drafted (Hueglin and Fenna 2015: 137–138). This might explain increasing importance and reliance on IGR over time. Following Watts (2008: 9), “processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap” are one among few “generally common structural characteristics of federations [...]”. Hence, IGR besides the constitutive vertical state-federal ones can, at best, account as additional ‘safeguards of federalism’, and, at least, as means to compensate for constitutional imperfections (for a conceptualization of a political system combining federalism and IGR see also the ‘picket fence’ by Wright 1974: 14–16; 1978: 61–63).

To conclude: First, “[f]ederalism is built around the idea of intergovernmental relations as one of its main principles is that of ‘shared rule’.” (Csehi 2017: 574). The central idea of federalism, the federal principle, is that of territorial division and noncentralization of power. At the same time, IGR are all interactions between governmental units. Thus, the notion of *sharing* is core to federalism *and* IGR. The second cornerstone of federalism, i.e. self-rule, describes autonomous decisions and actions by definition. However, literature postulates this to be a theoretical claim that only partly proves true in reality:

“[S]elf-rule can be formally introduced to a polity’s governing arrangements but cannot be maintained without the working connections that tie central governments to those constituent units that enjoy measures of independent and interdependent political power, governmental control, and decision-making.” (Agranoff 2004: 26).

Whenever power is devolved to lower levels of government or rests there not being handed over to a higher level of government, it is highly likely that some governmental units in some of their own jurisdiction apply IGR to make use of their autonomy. Although power is then shared, this does not follow a formal directive but is at least theoretically voluntary. Besides the

constitutionally enshrined shared rule-institutions, IGR are hence “particular ways and means of operationalizing a system of government” (Elazar 1987: 16), “a form of oil or friction in any federal machine” (Poirier and Saunders 2015a: 2), or, put simply, “[c]ooperative [p]ractices in [f]ederal [s]ystems” (Agranoff 2011: 248). Further, the discussion illustrated that IGR “can be seen as a universal phenomenon” (Elazar 1987: 16) necessitating at least two governmental units possessing some power that they make use of through interaction and, thus, mutual coordination. This underlines the broad validity of the concept transcending federations.

### 2.3.2 *Federalism and IGR and their Empirical Relevance*

So far, mainly theoretical and conceptual thoughts taken from classic literature on the topic were laid out to broadly define federalism and its embodiment in federations and to describe its manifold intersections with IGR. However, the empirical relevance of the concept(s) remains unclear. To shed some light on it, the following section takes stock of an empirical approach on territorial politics. It aims at investigating the empirical outlook of federalism (and IGR) by means of the *Regional Authority Index* (RAI) by Hooghe et al. (2010, 2016). This is not only one of the most comprehensive and elaborated empirical tools in order to understand (multi-tiered) political systems, it also allows to check whether the discussed theoretical and conceptual concerns match the empirical reality. Since the previous discussion and the RAI are both based on similar approaches, congruence is granted to a certain degree. However, the comparison aims at revealing the decisive factors separating federations from unitary states.

According to its name, the RAI takes the region as unit of analysis and illustrates its legitimate, binding power along the two theoretically derived and empirically validated domains of self-rule and shared rule (Hooghe et al. 2010: 3–5; Hooghe et al. 2016: 16–19). This twofold territorial scope of authority displays the frame of the RAI while the depth of authority and the spheres of regional action further concretize it (Hooghe et al. 2010: 5–7). Finally, the authors distinguish ten dimensions, partially exhibiting sub-dimensions, that read as follows: institutional depth, policy scope, fiscal autonomy, borrowing autonomy, and (legislative and executive) representation (all *self-rule*<sup>10</sup>), as well as law making, executive control, fiscal

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<sup>10</sup> Hooghe et al. define *self-rule* as follows: “The authority exercised by a regional government over those who live in the region” (Hooghe et al. 2016: 28).

control, borrowing control, and constitutional reform (all *shared rule*<sup>11</sup>) (Hooghe et al. 2016: 25–26, 28–29).

Now, which of the dimensions of the RAI are most pronounced in contemporary federations? The subsequent analysis juxtaposes the RAI with a dichotomous categorization of political systems as federations or unitary states. The idea is to add a variable to the RAI that indicates for every state the overall type of political system. This shall then help to find out to what extent these two broad systemic categories of conventional wisdom, federations and unitary states, draw on the two measures of the RAI (self-rule and shared rule). To this end, the RAI is first merged with data taken from Wejnert (2007: 13) coding political systems by their (degree of) “centralization of state authority”. Among others, the database draws on the Polity III-dataset (Jagger and Gurr 1996) that categorizes countries according to their “[g]eographic concentration of decision-making authority” (ibid.: 20) and, thus, as unitary – i.e. “regional units have little or no independent decision-making authority” –, intermediate, or federal – i.e. “most/all regional units have substantial decision-making authority” (Gurr et al. 1990: 83). Missing values for the most recent time, i.e. the 1990s up to 2010, were supplemented by detailed lists of federations provided by Watts (1996: 13; 2008: 12–14). The author draws on a primarily structural criterion and labels federations as such when “neither the federal nor the constituent units of government are constitutionally subordinate to the other” (ibid. 2008: 9). The data is further validated by country reports compiled by Griffiths and Nierenberg (2005) and further online resources.

Table 2.1 shows the two-sample t-test summary statistics for all RAI-indicators (based on their country scores) against the background of the classical dichotomous system categorization as of 2010.<sup>12</sup> For all indicators the negative difference between the means, signifying less regional authority in unitary states compared to federations, is statistically significant in all but one case at the 0.1 and in the residing case at the 1 percent significance level. Logically, federations exhibit higher levels of regional authority that, by a high probability, did not result by chance.

<sup>11</sup> Hooghe et al. define *shared rule* as follows “The authority exercised by a regional government or its representatives in the country as a whole” (Hooghe et al. 2016: 29).

<sup>12</sup> The underlying hypothesis of the test statistic states that the mean values of the RAI-indicators are equal within nominal federations and non-federations. For comparative purposes, all components were standardized onto the range from zero to one, high/low values indicating a high/low degree of regional authority (RAI). Whether the group means are statistically different, was calculated based on the following formulas:

$$SEs = \sqrt{(s1^2/n1) + (s2^2/n2)}$$

$$T = (\bar{y}1 - \bar{y}2) / SEs$$

The degrees of freedom in order to determine the respective p-values are calculated following Satterthwaite (1946) due to unequal sample sizes and, with reference to the shared rule-indicators, unequal variances.

Exemplary is the difference of (minus) 0.51 in the overall RAI-score between federations and unitary states given an index range between zero and one and a t-statistic of (minus) 9.23.

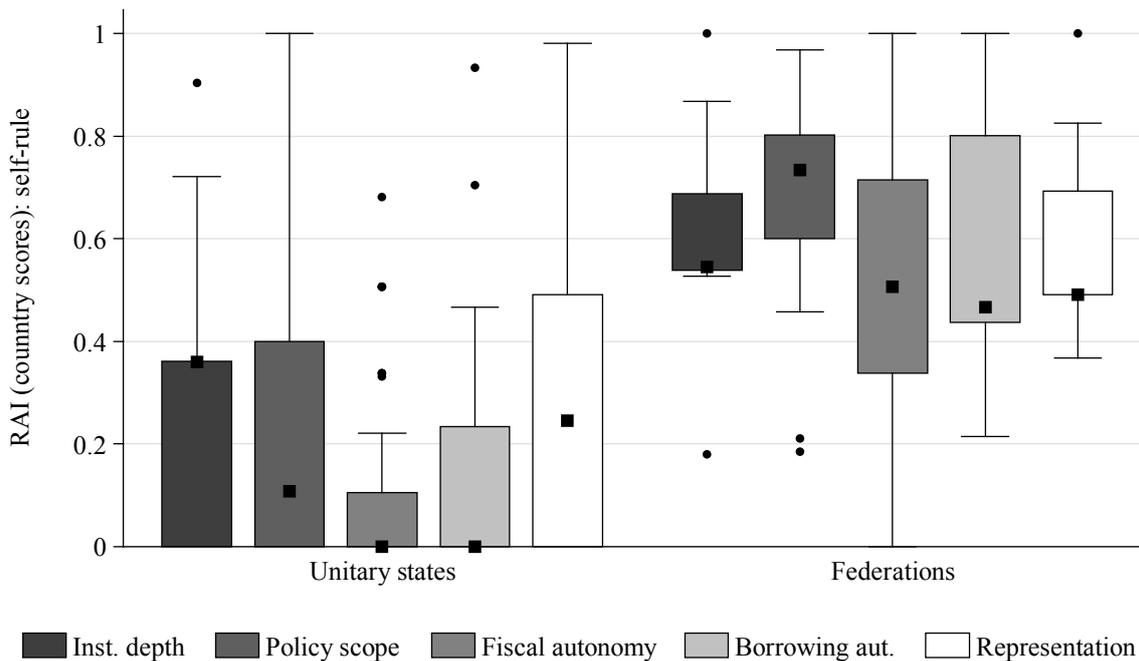
Table 2.1: Regional authority in unitary states and federations, 2010

| Component                |              | All<br>(N=78)  | Unitary<br>States<br>(n=63) | Fed.<br>(n=15) | Diff. | t-value | p-value<br>(diff<0) |
|--------------------------|--------------|----------------|-----------------------------|----------------|-------|---------|---------------------|
| Institutional depth      | mean<br>(sd) | 0.33<br>(0.25) | 0.27<br>(0.22)              | 0.61<br>(0.19) | -0.34 | -6.06   | 0.0000              |
| Policy scope             | mean<br>(sd) | 0.29<br>(0.31) | 0.20<br>(0.25)              | 0.67<br>(0.24) | -0.46 | -6.63   | 0.0000              |
| Fiscal autonomy          | mean<br>(sd) | 0.17<br>(0.25) | 0.08<br>(0.15)              | 0.55<br>(0.25) | -0.47 | -6.99   | 0.0000              |
| Borrowing<br>autonomy    | mean<br>(sd) | 0.22<br>(0.27) | 0.14<br>(0.20)              | 0.55<br>(0.24) | -0.41 | -6.17   | 0.0000              |
| Representation           | mean<br>(sd) | 0.32<br>(0.28) | 0.26<br>(0.26)              | 0.58<br>(0.18) | -0.33 | -5.89   | 0.0000              |
| Self-rule                | mean<br>(sd) | 0.31<br>(0.29) | 0.26<br>(0.23)              | 0.68<br>(0.20) | -0.46 | -7.58   | 0.0000              |
| Law making               | mean<br>(sd) | 0.19<br>(0.33) | 0.07<br>(0.20)              | 0.69<br>(0.28) | -0.62 | -8.19   | 0.0000              |
| Executive control        | mean<br>(sd) | 0.16<br>(0.31) | 0.05<br>(0.14)              | 0.63<br>(0.40) | -0.58 | -5.59   | 0.0000              |
| Fiscal control           | mean<br>(sd) | 0.14<br>(0.31) | 0.04<br>(0.16)              | 0.57<br>(0.42) | -0.53 | -4.81   | 0.0001              |
| Borrowing<br>control     | mean<br>(sd) | 0.07<br>(0.24) | 0<br>(0)                    | 0.36<br>(0.44) | -0.36 | -3.20   | 0.0032              |
| Constitutional<br>reform | mean<br>(sd) | 0.12<br>(0.24) | 0.03<br>(0.11)              | 0.52<br>(0.25) | -0.49 | -7.48   | 0.0000              |
| Shared rule              | mean<br>(sd) | 0.15<br>(0.27) | 0.04<br>(0.10)              | 0.61<br>(0.25) | -0.57 | -8.70   | 0.0000              |
| RAI-Index                | mean<br>(sd) | 0.26<br>(0.27) | 0.17<br>(0.17)              | 0.67<br>(0.20) | -0.51 | -9.23   | 0.0000              |

Note: Own calculations.

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

Figure 2.1: Components of self-rule in unitary states and federations, 2010



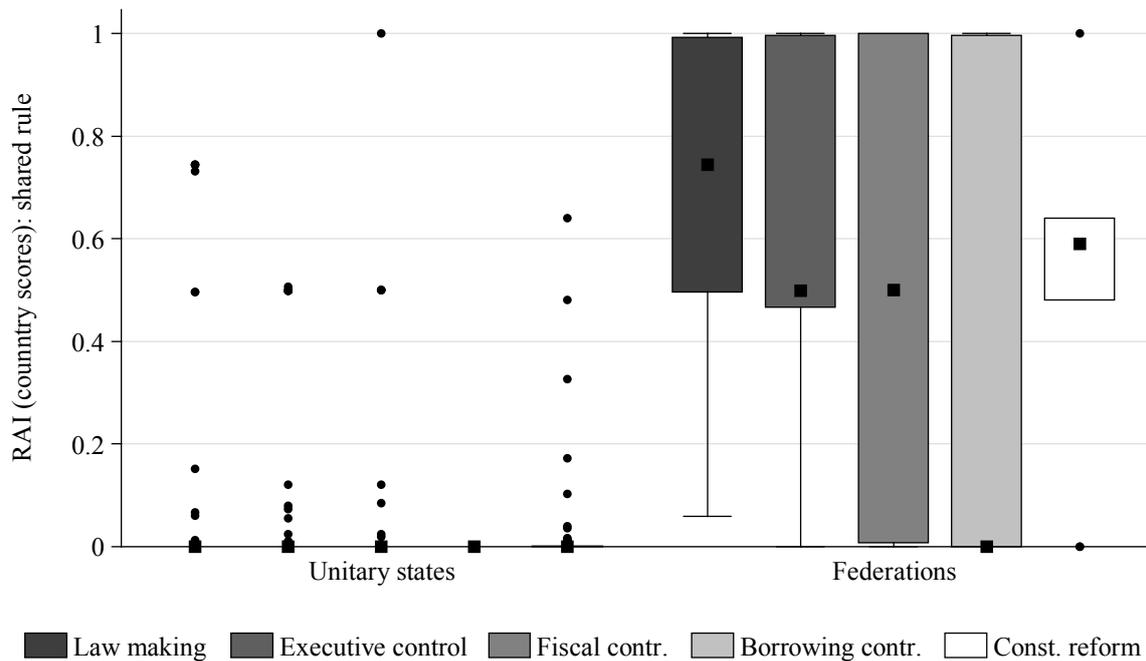
Notes: Own calculations. The bars follow the subsequent logic: the square within each box signifies the median, the boxes range from the first (25<sup>th</sup>) to the third quartile (75<sup>th</sup> percentile), the whiskers cover all data within 1.5 times the interquartile range from the respective end of the box onwards, and the circles outside the range of each box and its whiskers signify outlying data points.

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

More interesting than this general finding are group differences in the scores of the particular indicators and dimensions. In addition to table 2.1, figure 2.1 confirms that the values of the self-rule-indicators overlap to a certain degree between the two groups although they point to different directions. Differences between federations and unitary states are consistent, but, except of fiscal indicators, a certain degree of regional authority is granted on average. Most unitary states ensure some authority to their regions in terms of institutional depth, i.e. an own administration, policy scope, i.e. policy competences in some crucial areas, and representation, i.e. own legislative and/or executive institutions.

On each of the five shared rule-indicators around three out of four unitary states score zero leaving only a very (outlying) minority of these cases with some degree of shared competences. Contrary, in federations joint decision-making is the rule and not the exception. Especially two indicators are pronounced: joint law making of the regions and the central state institutions and veto power of the regions against constitutional change. While the former refers to mechanisms and institutions to allow partaking of the regions in national legislation, e.g. by regional

Figure 2.2: Components of shared rule in unitary states and federations, 2010



*Notes:* Own calculations. The bars follow the subsequent logic: the square within each box signifies the median, the boxes range from the first (25<sup>th</sup>) to the third quartile (75<sup>th</sup> percentile), the whiskers cover all data within 1.5 times the interquartile range from the respective end of the box onwards, and the circles outside the range of each box and its whiskers signify outlying data points.

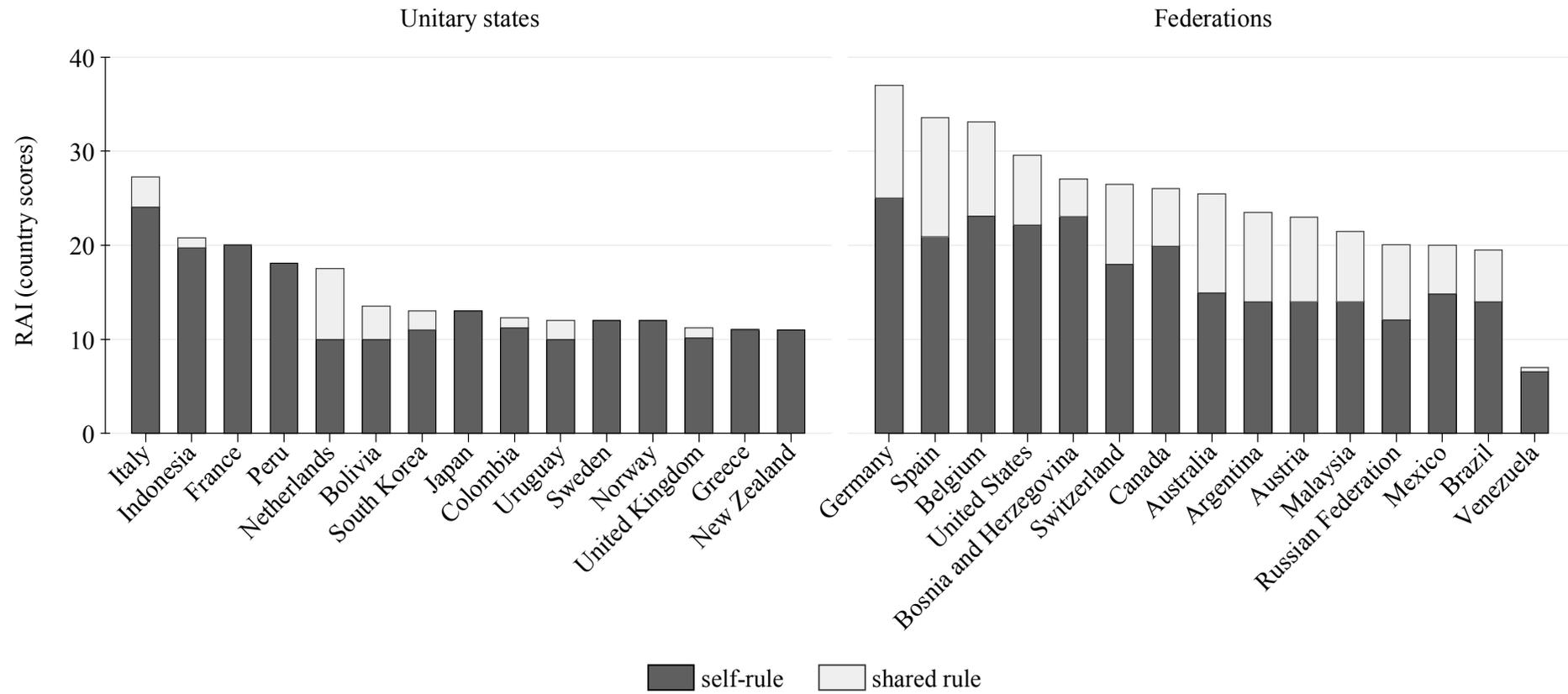
*Sources:* Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

representation in a second chamber, the latter depicts the core idea of shared competences and powers when principal and organizational questions on state structure are at stake. Thus, the existence of “existential safeguards against involuntary power transfers” (Hueglin 2013: 44) and “bicameral legislatures [that] work as a core institution of shared rule” (Benz 2018: 32) are not only theoretically but also empirically significant. Figure 2.2 visualizes that only the distribution of these two indicators are completely separated between federations and unitary states so that only outliers of the one group score within the regular range of the other, and vice versa. This confirms the impression that it is power over fundamental state structure as bargained and enshrined in the constitution as well as the regional representation in national law making, i.e. bicameralism, that are the constitutive features of federations. While the former fixes joint decision-making over the constitution, the latter prescribes joint decision-making over legislation.

Figure 2.3 provides a ranked order of the fifteen states in each group, unitary states and federations, granting most regional authority. It thus displays the top ranked unitary states as well as all fifteen federations. First, as already discussed, federations and non-federations vary

in their overall level of regional authority, the former clearly granting more than the latter. Second, more importantly, while shared rule exists in only some of the top RAI-scoring unitary states, in (nearly) every federation, regions are vested with shared competences at the center. Unitary states provide certain degrees of self-rule but clearly lack shared rule on average. However, figure 2.3 also shows that there are cases that can hardly account as federations when defining the territorial sharing of competences as its cornerstone. In this vein, Venezuela grants some degree of self-rule (in 2010 = 0.26) that is more similar to an average unitary state (in 2010 = 0.23) than a federation (in 2010 = 0.68), and almost no shared rule (in 2010 = 0.04), except of a low level of regional co-determination of national legislation (law making in 2010 = 0.25). Furthermore, it does not fulfill the deduced criteria of regional veto power against constitutional change. With respect to Venezuela as an emergent federation, Watts (2008: 51) explains that “repeated military and autocratic regimes during the nineteenth and twentieth centuries meant that the territorial distribution of power and autonomy of the states virtually disappeared.” Referring to the empirical investigation here, even the “[maintenance of] its federal form” (ibid.) can be seriously doubted. Another case stands out: the “[p]ost-[c]onflict [f]ederal [e]xperiment[.]” (ibid.: 58) of Bosnia and Herzegovina. Next to Venezuela it is the only federation in which the center or the electorate alone can unilaterally alter the constitution, while in all other federations the regions take part by, furthermore, not only possessing voice but even veto in this respect. Although granting a very high extent of self-rule (in 2010 = 0.92), according to the argumentation developed here, Bosnia and Herzegovina can hardly account as a federation. On the other hand, in-depth analyses on unitary states that grant substantial regional co-determination of the national constitution, e.g. the Netherlands and Haiti, are needed to further elaborate on that federal criterion.

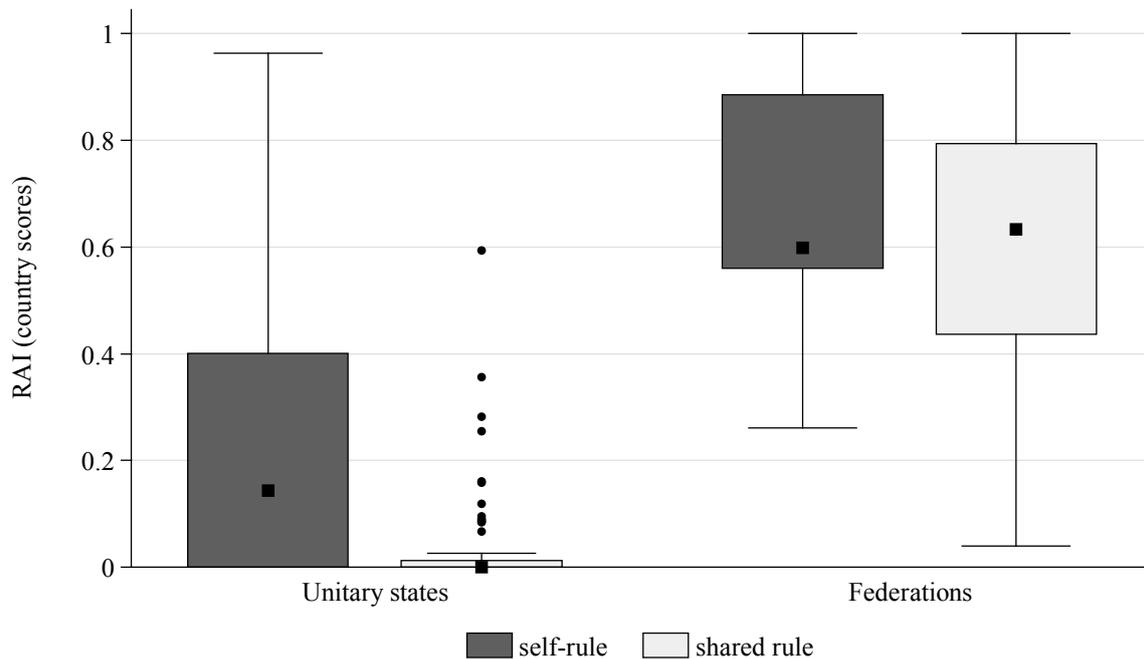
Figure 2.3: Top RAI-scoring unitary states and federations, 2010



Note: Own calculations.

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

Figure 2.4: The RAI (self-rule and shared rule) in unitary states and federations, 2010



Notes: Own calculations. The bars follow the subsequent logic: the square within each box signifies the median, the boxes range from the first (25<sup>th</sup>) to the third quartile (75<sup>th</sup> percentile), the whiskers cover all data within 1.5 times the interquartile range from the respective end of the box onwards, and the circles outside the range of each box and its whiskers signify outlying data points.

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

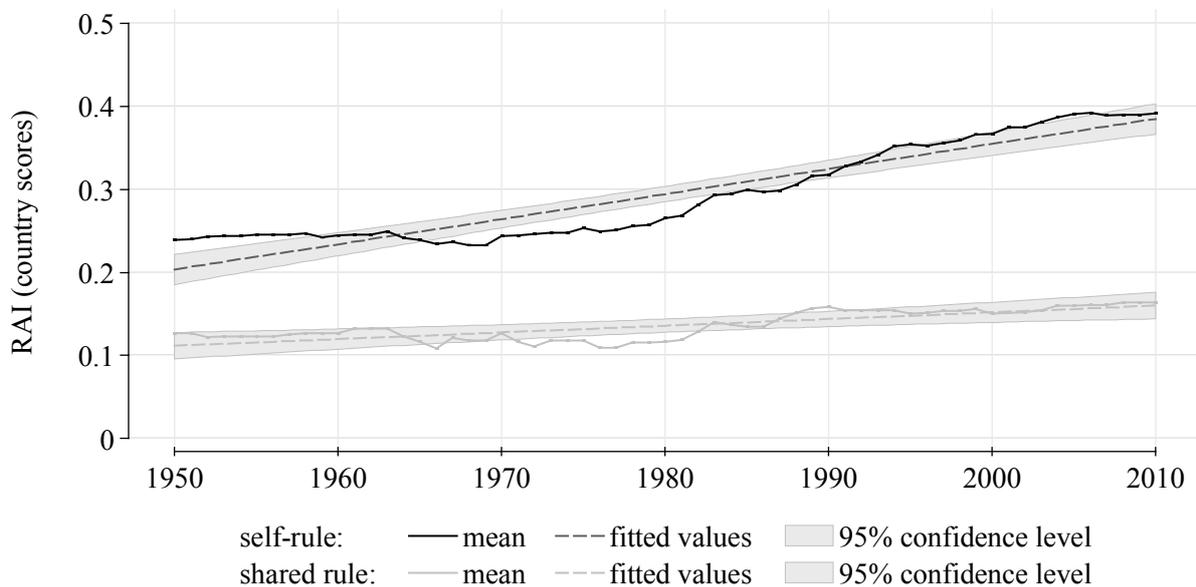
To sum up and following the distribution of both dimensions in figure 2.4, one can even argue that in general meaningful shared rule is a sufficient condition and defining criterion of federations since non-outlying cases do not overlap between the two groups. Thus, there is a clear pattern when matching the detailed RAI-data at its most recent point in time, 2010, with the established (territorial) political system dichotomy of unitary states versus federations. It is the aspect of (meaningful) sharing in the center and not so much autonomy in own affairs that separates these systems. However, when taking the territorial dimension of polities and politics seriously, the cross-sectional approach is limited due to its static perspective leaving open whether the detected patterns are valid at other points in time. Since the RAI covers a great number of years, i.e. 1950 to 2010, and countries, i.e. 80, the subsequent and last introductory step aims at finalizing the conceptualization by taking a dynamic perspective.

Figure 2.5 illustrates “[t]he [r]ise of [r]egional [a]uthority” (Hooghe et al. 2010: title) over time in all countries that cover the entire period from 1950 to 2010<sup>13</sup>. However, a significant increase

<sup>13</sup> Note that the analysis over time only includes countries that cover the entire period of investigation and have non-missing values for all years from 1950 to 2010, i.e. 48 out of 81 countries (59.3 percent) and 2,928 out of 3,827 observations (76.5 percent), respectively. The exclusion of all countries that only partly appear in the panel

is only visible in self-rule (in all countries:  $\beta = 0.0030$ , \*\*\*  $p < 0.001$ ) while shared rule remains constant (in all countries:  $\beta = 0.0008$ ,  $p > 0.1$ ). The former is especially driven by relative stark growth in, first, the extent of independence of regional legislative and executive institutions (representation, in all countries:  $\beta = 0.0035$ , \*\*\*  $p < 0.001$ ) and, second, the range of regionally assigned policies (policy scope, in all countries:  $\beta = 0.0035$ , \*\*\*  $p < 0.001$ ) (see table 2.2). These trends towards more self-rule are clearly prevalent in unitary states, while failing statistical significance in federations. Surely, this must be read with caution since underlying measurement and data on decentralization of policy competences is not as valid as the compilation by Dardanelli et al. (2019) showing a general *decrease* of policy decentralization in mature federations. However, due to the large sample, especially the comparative perspective over time together with unitary states is still highly interesting. It further confirms the impression from the cross-sectional view as of 2010: self-rule is rather a necessary but not a sufficient characteristic of federations, taking high values on average, since it exists in unitary states as well and even gains in importance here. Generally, the trend of empowered regions in their own affairs seems to confirm observers that postulate a growing general importance of subnational politics in the world (e.g. Bell 1987: 13–14; see chapter one).

Figure 2.5: Trend of regional authority in unitary states and federations, 1950–2010



Notes: Own calculations against the background of all countries that cover the whole period of the panel, i.e. 61 years. Thus, only countries are used that span over the whole period from 1950 to 2010 ( $t = 61$ ).

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

is justified by the rationality of displaying time trends that could be biased by the addition of further countries at later points in time. Such would logically change the level of the respective indicator, but therein falsely indicate a change in its trend.

Table 2.2: Regional authority in unitary states and federations over time, 1950–2010

|                          | All<br>(N <sub>obs.</sub> = 2,928; N <sub>entry.</sub> = 48) |                        | Unitary states<br>(n <sub>obs.</sub> = 2,277; n <sub>entry.</sub> = 39) |                        | Federations<br>(n <sub>obs.</sub> = 597; n <sub>entry.</sub> = 11) |                        |
|--------------------------|--|------------------------|---|------------------------|--|------------------------|
| Independent Var.:        | Intercept<br>(β <sub>0</sub> )                               | Year (β <sub>1</sub> ) | Intercept<br>(β <sub>0</sub> )  | Year (β <sub>1</sub> ) | Intercept<br>(β <sub>0</sub> )                                     | Year (β <sub>1</sub> ) |
| Dependent Var.:          |  |                        |   |                        |  |                        |
| Institutional depth      | -4.5011***<br>(1.0322)                                       | 0.0024***<br>(0.0005)  | -3.7765***<br>(0.9742)  | 0.0020***<br>(0.0005)  | -3.7182<br>(2.9986)  | 0.0022<br>(0.0015)     |
| Policy scope             | -6.6200***<br>(1.2125)                                       | 0.0035***<br>(0.0006)  | -6.1132***<br>(1.2195)  | 0.0032***<br>(0.0006)  | -3.7122<br>(3.1720)  | 0.0022<br>(0.0016)     |
| Fiscal autonomy          | -2.7035*<br>(1.3348)   | 0.0015*<br>(0.0007)    | -2.9947*<br>(1.2511)  | 0.0016*<br>(0.0006)    | 1.6231<br>(3.5754)   | -0.0005<br>(0.0018)    |
| Borrowing<br>autonomy    | -4.2198**<br>(1.2110)  | 0.0023***<br>(0.0006)  | -4.2978**<br>(1.4120)   | 0.0022**<br>(0.0007)   | 0.5182<br>(2.9560)   | 0.0000<br>(0.0015)     |
| Representation           | -6.7422***<br>(1.1960)                                       | 0.0035***<br>(0.0006)  | -6.3861***<br>(1.3303)  | 0.0033***<br>(0.0007)  | -3.9399<br>(2.4313)  | 0.0023(*)<br>(0.0012)  |
| Self-rule                | -5.6802***<br>(1.0881)                                       | 0.0030***<br>(0.0006)  | -5.3697***<br>(1.0978)  | 0.0028***<br>(0.0006)  | -2.4497<br>(2.8776)  | 0.0016<br>(0.0014)     |
| Law making               | -0.6823<br>(1.5717)  | 0.0005<br>(0.0008)     | 0.5173<br>(1.7792)  | -0.0002<br>(0.0009)    | -1.2781<br>(2.7899)  | 0.0010<br>(0.0014)     |
| Executive control        | -5.0775**<br>(1.6066)  | 0.0026**<br>(0.0008)   | -2.2831*<br>(0.9569)  | 0.0012*<br>(0.0005)    | -10.2493<br>(5.7867)   | 0.0054(*)<br>(0.0029)  |
| Fiscal control           | -1.1142<br>(1.0827)  | 0.0006<br>(0.0006)     | 0.2386<br>(0.8734)  | -0.0001<br>(0.0004)    | -5.5356<br>(3.4410)  | 0.0029<br>(0.0018)     |
| Borrowing<br>control     | -1.6621<br>(1.0147)  | 0.0009<br>(0.0005)     | 0<br>(-)  | 0<br>(-)               | -6.0827<br>(4.4562)  | 0.0032<br>(0.0022)     |
| Constitutional<br>reform | -0.4556<br>(1.0820)  | 0.0003<br>(0.0005)     | 0.3953<br>(0.9336)  | -0.0002<br>(0.0005)    | -0.0137<br>(2.2593)  | 0.0002<br>(0.0011)     |
| Shared rule              | -1.4577<br>(1.1041)  | 0.0008<br>(0.0006)     | 0.0225<br>(0.8381)  | 0.0000<br>(0.0004)     | -3.4668<br>(2.4351)  | 0.0020<br>(0.0012)     |
| RAI-Index                | -4.5765***<br>(1.0412)                                       | 0.0024***<br>(0.0005)  | -3.7582***<br>(0.8636)  | 0.0020***<br>(0.0004)  | -3.1252<br>(2.5747)  | 0.0019<br>(0.0013)     |

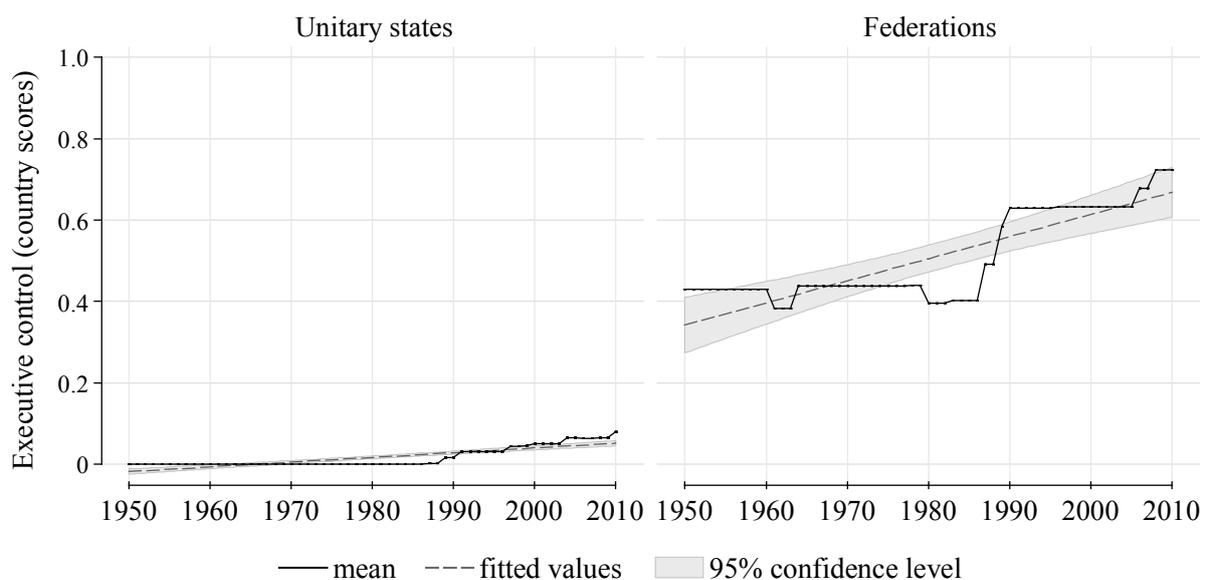
Notes: Own calculations of all countries that cover the whole period of the panel, i.e. from 1950 to 2010 ( $t = 61$ ).

Cluster-robust standard errors (by country) in parentheses; (\*)  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

However, enhanced self-rule might not or, at best, only partially illustrate what Burgess (2012: 1) calls the “revitalization of the federal idea”, or, how Elazar (1987: 6) terms it, the “federalist revolution”. As learned from the static analysis as of 2010, it is shared rule that defines federations, necessarily given certain degrees of self-rule. And, as shown in figure 2.5, shared rule is rather static and does not significantly vary over time. Furthermore, nearly all indicators thereof do not significantly change over time. Stereotypically is the rather time-invariant character of the very basic constitution, i.e. the product of the federal bargain: a regional veto against constitutional reform is, initially, a structural hurdle separating federations from unitary systems and, once bargained, this veto provision over questions on the basic rules and the institutional setup remains unchanged. An exception here is the indicator of executive control measuring the degree to which “[r]egional governments share executive authority with central government in the context of intergovernmental meetings” (Hooghe et al. 2010: 24). This comes very close to what was presented as non-constitutive and voluntary vertical IGR, i.e. IGCs for example (see section 2.2). It is the only indicator of shared rule that has gained in importance (executive control, in all countries:  $\beta = 0.0026$ , \*\*  $p < 0.01$ ; executive control, in unitary states:  $\beta = 0.0012$ , \*  $p < 0.05$ ; executive control, in federations:  $\beta = 0.0054$ , (\*)  $p < 0.1$ ). Thus, such vertical IGR are generally on the rise, here mainly due to developments in (a few) unitary states as well as a considerable number of federations. This makes sense against the background of self-empowered regions in unitary states that also gain influence in the center,

Figure 2.6: Trends of executive control in unitary states and federations, 1950–2010



Notes: Own calculations against the background of all countries that cover the whole period of the panel, i.e. 61 years. Thus, only countries are used that span over the whole period from 1950 to 2010 ( $t = 61$ ).

Sources: Hooghe et al. (2016), Wejnert (2007), and Watts (1996, 2008).

not necessarily by means of fundamental systemic changes, i.e. by voice or veto against constitutional change, but through more direct contacts with the national government leaving the general state structure intact. The trend in federations is also confirmed by the literature reporting increased importance in direct cooperation between the subnational entities and the central state. Figure 2.6 visualizes the development of this mainly extra-constitutional mean of regional power in the center in unitary states and federations.

## 2.4 Conclusion: So What?

Since the two concepts are core to the subsequent analyses, the second chapter of the dissertation aimed at clarifying what federalism and IGR mean in theory and empirics. As a first step in discussing the conceptual cornerstones, the federal principle, i.e. the core of federalism, was elaborated. Then, the three dimensions embodying the federal principle, that is structure, practice/process, and culture, were discussed in length. Similarly, literature on IGR was examined whereupon it was defined as all governmental interactions varying in type, scope, and depth. Federalism and IGR were then compared to check for commonalities and differences. Especially the preceding empirical analysis on the RAI-dataset revealed that self-rule is also widespread in unitary states, while shared rule is not only a necessary but also – with respect to law making of the regions in the center and co-determination of constitutional rules – a sufficient condition for federations to account for this type of system. The analysis over time further revealed that regional self-rule is a dynamic component of a political system while shared rule is rather static. At last, the RAI-data showed that vertical IGR, e.g. intergovernmental commissions, have gained in importance in both federations and unitary states. This is of crucial importance since the following analyses aim at contributing to this intersection of federalism and IGR, but with respect to horizontal interactions that often reside in the shadow.

### 2.4.1 A Comprehensive View: Power Distribution and its Enactment

In this last subsection, first, a typology shall be deduced to, second, locate the research interest of the dissertation project herein. In the aftermath of the discussion above on the general meaning of federalism a stance on this very fundamental theoretical concept can be taken: first, federalism means power sharing on a territorial basis. Second, it transcends structure by process/practice and culture and is, thus, a static, structural *and* a dynamic, behavioral

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characteristic of a political system. This means, that *the* (initial) federal commonality is the idea of a *territorial* division of power as the core of the federal principle that is then formally enshrined and later institutionally enacted. Mueller (2015: 4) “regard[s] federalism as territorial by definition” and leans on various works by Burgess (2006a, 2006b). For grasping territoriality, i.e. the “substance” (Mueller 2012: 99) of federalism, Burgess and Vollaard (2006: 6) propose “the distribution and circumscription of basic competences” as a first and “the way in which rulers provide their services” as a second indicator. With reference to federations only, Bolleyer and Thorlakson (2012) present a two-dimensional classification that comes close to the two indicators. First, the “*location of power*” (ibid.: 568; emphasis in original) displays the degree of decentralization, i.e. “the removal of core resources from the center to lower levels of a multi-tiered system” (ibid.). Second, “*the way governmental levels relate*” (ibid.: emphasis in original) indicates “the extent to which subnational governments exercise their power in a highly autonomous manner or, alternatively, engage in intense interaction processes with other levels of government.” (ibid.: 569). Hence, the exercise of power varies on a continuum from autonomy on the one to interdependence and, thus, intergovernmental interactions on the other end.

These considerations are in line with widely known, classical political system theory as formulated by Easton (1957) or Almond and Powell (1966) emphasizing the processing of societal inputs and demands by means of the political system resulting in the provision of goods and services, i.e. concrete policies. So simple this conception is so valuable is its sequential logic. Furthermore, according to it, information of inputs and outputs helps understanding the political system, i.e. its units, their interplay, and its boundaries. Thus, two things can be taken along for these further initial conceptual thoughts: political systems can be better understood by tracing the demands and inputs as well as their enactment on a procedural sequence.

As discussed, the territorial division of power and competences defining federations allows for at least two sets of inputs and demands, such that are of national and others of subnational scope (e.g. local or regional). With respect to this basic premise, Filippov et al. (2004: 18) state as follows: “[...] the distinguishing characteristic of the thing we call a federal state – the characteristic that must be preserved – is a diversity of interests among its constituent parts. Otherwise there is little justification for anything other than a unitary state.” Thus, there are inputs that territorially originate from a few, many, or all people, meaning issues can depict a low, mediocre, or high (territorial) concern within the population. The corresponding assignment of the inputs and demands to the one, the other, or ‘all’ layers of government, clarifying the *who does what*, is after the diagnosis of a problem the next step in how a political

system acts upon it. The latter decision is, however, only relevant in federations since unitary states are single layered with a clear and supreme power center that monopolizes all competences in the first place (Schmidt 2010: 204). This does not rule out varying degrees of decentralization in unitary states that, however, do not affect the centrally fixed sovereignty or *Kompetenz-Kompetenz* (Hueglin and Fenna 2015: 16–22). In contrast, and as already discussed, the difference, i.e. territorial power dispersion, is fundamental to federations compared to non-federations (unitary states):

“Either way, power is divided and shared between (1) a general (federal or national) government that has certain area-wide (or nationwide) responsibilities, such as national defence and monetary policy, and (2) constituent territorial governments (e.g. states, provinces, *Länder*, republics, or cantons) that ordinarily have broad local responsibilities – such as education, land-use planning, highways, health care, and public safety – and that are also represented, often equally, in the federal legislature.” (Kincaid 2005: 410).

This initial situation and the subsequent ‘choice’ are represented in the rows of table 2.3. The next step in the sequential logic of classical system theory is the effective handling and decision-making by one, the other, or both layers of government. Here, the choice again is twofold and leans on the broad discussion of federalism literature from above: an entity can act *by oneself*, as postulated by the notion of self-rule (category *self*), or it can team up with another entity, in horizontal or vertical direction, formally enshrined or as a result of operational practice, to share responsibility, as postulated by the notion of shared rule (category *shared*). So, the columns in table 2.3 inform about how an issue is institutionally dealt with once it is on the political agenda and assigned to a level of government with fixed or devolved competences. The table thus mirrors the basic indicators of Burgess and Vollaard (2006), the conceptualization by Bolleyer and Thorlakson (2012), and the sequential logic of classical political system theory (e.g. Easton 1957, Almond and Powell 1966). Each combination of tasks and effective enactment can find its expression in various institutions and mechanisms.

Unitary states are expected to mainly face concerns that are of national scope and decide independently upon them ([3], bottom-left). Small scale problems solved by regional self-rule are expected to be clearly more common in federations: However, and as shown by the RAI-data, regional self-rule is also possible in unitary states since they vary in their degree of decentralization ([1], top-left). The variance of tasks and their institutional enactment might end here with respect to unitary states: They predominantly govern by uniform rule of national scope ([3]) or delegate powers downward to subnational units on the central state’s behalf ([1]).

Table 2.3: A sequential mapping of policymaking in federations and unitary states

|   |                 | Institutional enactment ( <i>t</i> ) |                               |
|---|-----------------|--------------------------------------|-------------------------------|
|   |                 | self                                 | shared                        |
| Territorial scope<br>(concern) of a<br>policy area ( <i>t</i> -1) | limited (a few) | Region [1]                           | Region +<br>Region [4]        |
|   | moderate (many) | Region/Central<br>state [2]          | Region + N<br>Regions [5]     |
|   | high (all)      | Central state [3]                    | Region +<br>Central state [6] |

Note: Own illustration.

The variance of territorial scope of tasks and their institutional treatment is clearly higher in federations so that a multitude of other combinations of sequential policymaking is plausible, besides the two. First, federations are unique given the extensive scope of issues concerning all people and acted upon by shared rule ([6], bottom-right). Furthermore and besides exclusive jurisdiction and enactment of the constituent units ([1]) or the central state ([3]), policies concerning many people that can be targeted by either the one or the other government layer ([2], center left) are expected to be a part of federations, i.e. concurrent areas that are open to action of the regional and the federal level. However, and central to this study are tasks that are of limited or moderate scope only but are institutionally enacted together, i.e. by two or a few regional, i.e. subnational, entities, or by many such units in horizontal cooperation ([4], top-right, and [5], center-right). Thus, it is argued here that the specific federal setting incentivizes intergovernmental relations, not only towards intense state-federal relations (see [6] in accordance with the conducted analysis on the RAI-dataset) but also in direction of strong horizontal relations among the constituent units ([4] and [5]). The following dissertation will take up these premises and focus on the latter specific form of IGR.

To sum up the discussions so far: Federalism, embodied in structure, practice, and culture, presupposes tasks of different territorial scope, first, and implies numerous institutional mechanisms to act upon them, second. According to Poirier (2001: 7), “[a]ll complex, multi-level constitutional systems have had to develop tools to co-ordinate the exercise of powers distributed amongst various decision-making entities.” Among others, IGR become highly relevant in the day-to-day-workings of federations covering all tasks that necessitate shared action. Hence, “[i]nstitutional incentives that promote interdependence share that they create pressure towards intergovernmental interaction.” (Bolleyer and Thorlakson 2012: 570). Thus, while self-rule is necessary in federations, shared rule is constitutive in some and inevitable in

other respects to account for the diverse demands. While the empirical analysis on the RAI-dataset revealed that vertical state-federal relations ([6] in table 2.3) are on the rise (figure 2.6), the state and development of horizontal relations among the constituent units ([4] and [5] in table 2.3) reside in the shadow. This is especially true with respect to IGAs “that represent one of the most formal mechanisms of cooperation in the tool-box of intergovernmental relations.” (Poirier 2001: 7).

### 3 Application: Federalism and IGR in Switzerland

The third chapter aims at providing background information on the case at hand. To this end, the first part describes the central institutions of intercantonal cooperation and puts a special emphasis on intercantonal agreements. In doing so, participation of cantonal parliaments when such agreements are at stake is as well examined in brief. The final part of the chapter presents the pillars of the NFA, again focusing on formal provisions that target intercantonal cooperation. It further discusses the main steps in the reform process. Before turning to the horizontal institutions in depth the introductory remarks present the Swiss federal system in brief and the role of horizontal cooperation therein.

#### 3.1 *The Swiss Federal System*

As carved out in the previous chapter, it is the scope of shared rule separating federations from unitary states. Thus, it is hardly surprising that federalism literature puts a special emphasis on institutions allowing for joint decision-making of national and subnational representatives on the federal level, that are, first and foremost, second chambers. This holds true for the Swiss case as well. According to Vatter (2018a: 33), the Council of States (*Ständerat*), i.e. the Swiss upper house of parliament, is “[o]ne of the most important institutions of cantonal influence on federal decision-making.” Furthermore, the author puts it first in his description of institutions of Swiss federalism in general and “[v]ertical institutions” (ibid.) in particular. Other major institutions of joint decision-making of the governmental layers (in vertical direction) are the double-majority clause vesting the cantons with veto power on constitutional amendments (*Ständemehr*) or the role of cantons during the pre-parliamentary consultation process (*Vernehmlassungsverfahren*).

However, Auer (2016: 325; emphasis in original) points out, that horizontal intercantonal cooperation has developed towards a “*characteristic feature of Swiss federalism*”. Due to its voluntary character, it is part of what is often termed cooperative federalism (Jaag 2013). Note, that cooperative federalism covers only such interactions that are not constitutive for a state’s basic federal character, i.e. the core of shared rule (see chapter two). Thus, voluntary sharing is not constitutive for federations but rather a specific form of shared rule (ibid.: 775). This is by no means a variety of federalism exclusively observed in Switzerland. According to Krumm (2015: 29–31), cooperative federalism is one among many general concepts of federalism that are built around few or single features, here, cooperation between (vertical) or within

(horizontal) government layers (ibid.). With respect to the German federal state, Sturm and Zimmermann-Steinhart describe horizontal cooperation as follows:

“Cooperative federalism also covers voluntary ‘self-coordination’ of the *Länder*, for example meetings between the minister-presidents or the heads of department. One also calls this voluntary self-coordination, among others, leading to contractual agreements of considerable scope and duration, the ‘third level’ of federalism (next to the federal and the state level) or horizontal federalism.” (Sturm and Zimmermann-Steinhart (2010: 26; own translation)

As shown in chapter two, horizontal intergovernmental relations are conceptualized under the realm of (voluntary) shared rule (see Mueller 2019). It is at the crossroads of self-rule and shared rule: While it originates from the former, it is conducted by means of the latter. Thus, cooperative federalism is not just characteristic of Swiss federalism but describes the federal interactions between and within levels of government in other federations as well. But what exactly means intercantonal cooperation in general and what are the “horizontal institutions of Swiss federalism” (Vatter 2018a: 33, 63–83) in particular?

According to Auer (2016: 324–325), horizontal cooperation directly derives from the widespread autonomies of the cantons. It mainly stems from the cantons’ general sovereignty within the federal constitutional framework (Art. 3 Cst) as well as its duties (Art. 43 Cst) and autonomies (Art. 47 Cst), e.g. with respect to policy areas under their jurisdiction but also organizational freedom (Art. 47 para. 2 Cst). Art. 48 Cst (and Art. 48a Cst) directly regulates intercantonal relations and goes by the title of “Intercantonal agreements”, also including provisions for the establishment of joint intercantonal institutions and bodies. According to Waldmann and Schnyder von Wartensee (2015: 901–902) this leeway for cooperation is a part of the cantons’ general autonomy in policymaking and organization (rather than an independent structural feature).

More generally, then, intercantonal horizontal cooperation implies “that the cantons do not govern by means of mutual observation and competition but through negotiations and discussions among the governments and between the administrations” (Blatter 2010: 251). Hence the process of policymaking varies from the conventional domestic arena. Furthermore, it may include the participation of the federal government or local entities, i.e. the communes, or solely intercantonal cooperation, i.e. by the cantons only. Here, Pfisterer (2015: 400) observes an even greater degree of vertical integration over time. Generally, literature on the topic also confirms for the Swiss case, that horizontal cooperation has developed as far as constituting an additional level of government by now (Blatter 2010: 251). It complements

autonomous policymaking by the cantons and by the federal government (*ibid.*) and serves two functions in general: coordination and information to represent cantonal interests towards federal government, and pooling resources and harmonizing policies to better perform tasks in cantonal jurisdiction (Auer 2016: 326). This is important to note since intercantonal cooperation is often associated with one of the two only. The central institutions serving horizontal cooperation are intercantonal conferences and intercantonal agreements (Vatter 2018a: 33, 63–83; see also Pfisterer 2015). As to be shown, the former also embrace informal aspects of intercantonal cooperation while the latter are highly formalized.

### 3.2 *Intercantonal Conferences*

As already pointed out in chapter two, IGCs mainly (but not exclusively) bring members of the executive branches or experts from ministries together, either clustered by and composed after regions or policy areas (see Behnke and Mueller 2017). This also holds true for the Swiss cantons. Schnabel and Mueller (2017) count over 50 intercantonal conferences. Most prominently and “[t]he one body to stand out is the KdK”, i.e. the Conference of Cantonal Governments. Next to this nation-wide and generalist IGC, there are numerous nation-wide but policy-specific conferences connecting the state councilors responsible for the respective specific policy areas (Häfelin et al. 2016: 370). Prime examples are the two oldest IGCs, i.e. the Swiss Conference of Cantonal Directors of Education (EDK) and the Conference of Cantonal Finance Directors (FDK) (Auer 2016: 329–332; see also Meyer 2006). Furthermore, there exist six generalist conferences of regional scope (Auer 2016: 329): the Conference of Eastern Switzerland (ORK: GL, SH, AI, AR, SG, TG, GR), the Conference of Northwest Switzerland (NWRK: SO, BL, BS, AG, JU), the Conference of Central Switzerland (ZRK: LU, UR, SZ, NW, OW, ZG), the Conference of Western Switzerland (WRK: BE, FR, VS, NE, VD, GE, JU), the Conference of the Mountain Cantons (RKGK: GL, GR, NW, OW, TI, UR, VS), and the Zurich Metropolitan Area Conference (ZH, ZG, TG, SG, SZ, SH, LU, AG). While the former four reflect the classical regional structure of Switzerland (Trees 2005), the latter two account for spatial specificities, i.e. the alpine region on the one and a specific metropolitan area on the other hand. Furthermore, most of the above-mentioned policy-specific conferences are again replicated within each region. Besides, numerous conferences exist that are composed of experts of the cantonal administrations.

Not only the number of IGCs is remarkable. Compared with other federations, IGCs in Switzerland depict a high degree of institutionalization through regularity of meetings and

internal and external differentiation. Furthermore, the manifold links between the IGCs make it a highly integrated system on a whole (Bolleyer 2006a, 2009) that is well embedded in the consensus orientation of the political system in general: „Hence co-operative behaviour is stabilized by the surrounding fora of decision-making” (Armingeon 2000: 124). In sum, IGCs possess a highly structuring impact on cantonal politics (see also Trees 2005) and follow a rather strict division of labor (Schnabel and Mueller 2017): While the KdK is responsible for the organization of general cantonal interests and their vertical representation towards the federal government, policy-specific conferences coordinate the cantonal interests horizontally to preserve their autonomies. Although possessing a high degree of institutionalization and integration and a strong structuring impact on cantonal politics, informality as introduced by international research (Elazar 1965: 13) plays a key role as well. According to Meyer (2006: 15), IGCs help their participants to maintain and strengthen contact. More basically, they serve their members as platforms to exchange information and as means for consultation, coordination as well as internal and external opinion formation (Häfelin 1969: 43). In sum, the literature agrees on its increasing significance for cantonal politics over time: “Swiss IGCs are increasingly active [...]; they are increasingly visible [...]; and as purely horizontal organizations, they are the ultimate expression of cantonal self-rule [...]” (Schnabel and Mueller 2017: 549–550).

### 3.3 Intercantonal Agreements<sup>14</sup>

In contrast to IGCs, IGAs between governmental units account as the merely formal part of intergovernmental cooperation. IGAs in Switzerland are “agreements of public law that are concluded between two or more cantons on a subject within their jurisdiction [and that] can concern all state functions” (Häfelin et al. 2016: 375; own translation; see also Auer 2016: 342). Most basically and in accordance with international literature, a task that is constitutionally guaranteed as cantonal self-rule is addressed by shared formalized subnational action by minimally two cantons together.

In these introductory remarks, at least three major characteristics become apparent. First, intercantonal agreements lie within public law. According to Waldmann and Schnyder von Wartensee (2015: 904) they are termed as such when they directly or indirectly lead to a harmonization of law, when they regulate the legal relationship between two or more public

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<sup>14</sup> This subchapter is a translated and slightly expanded version of parts of 2.1 *Historische Entwicklung des interkantonalen Vertragswesens* of Arens (2018: 394).

authorities, when administrative tasks and sovereign powers are delegated, when institutions of public law are established or its mutual usage is permitted. Second, as a general rule, intercantonal agreements are contracts predominantly between *cantons*, independent of whether they are bilateral (between two cantons), multilateral (between few to many cantons), or omnilateral (between all cantons). Schweizer and Abderhalden (2014: 1004–1005) argue that intercantonal agreements build on at least *two* contracting cantons while local entities, the federal government, or foreign entities are free to join. Third, and as already discussed against the background of cooperative federalism and IGCs, tasks regulated by means of intercantonal cooperation are such that lie within cantonal jurisdiction, i.e. self-rule, independent of whether they concern lawmaking or policy implementation.

The literature differentiates between two types of agreements according to their legal status. First, an intercantonal agreement can be a legal transaction and can constitute a legal relationship between two parties (*rechtsgeschäftlich*) (Häfelin et al. 2016: 378). Importantly, such IGAs have consequences for the interacting governmental or administrative agencies but not for the people (Auer 2016: 346–347). An example is the case of an administrative task that is tackled by joint action and mutual coordination affecting the respective administrative bodies only. The second type of intercantonal agreements results in a unification of law and is thus of mediate or immediate legislative nature (*rechtssetzend*) (Häfelin et al. 2016: 378–379). This is the case when at least two cantons indirectly or directly set law, i.e. a general abstract provision, through the conclusion of an intercantonal agreement. Generally, the differentiation between these two types of IGAs is hardly possible since it is common that such an agreement contains both administrative and legislative provisions and is of a hybrid type instead (*ibid.*: 379; see also Uhlmann and Zehnder 2011). It follows that the two categories help to separate provisions of different legal status within the same IGA, while it hardly serves as a scheme with mutually exclusive categories to separate IGAs as a whole from each other.

With respect to the treatment and conclusion of IGAs in the domestic arena, the cantons are free to choose what institution acts upon what matter to what degree and at what point in time (Auer 2016: 354). This is based on the general organizational freedom of the cantons. Generally, foreign affairs are a competence of the executive branch, so that it is the cantonal governments bargaining and ratifying intercantonal agreements (*ibid.*). However, cantonal parliaments and the people are generally vested with the power to authorize IGAs given the matter at stake lies within their domestic jurisdiction (*ibid.*: 355–357). Schweizer and Abderhalden (2014: 906–907) argue that the precept of democracy of cantonal constitutions (Art. 51 Cst) obliges the cantons to establish democratic processes allowing participation in

intercantonal affairs not only of the executive branches but also of parliaments and the people. Lastly, intercantonal agreements need to be published somehow. However, Koumbarakis (2009) shows that publishing practices of the cantons are deficient. Nevertheless, according to Schweizer and Abderhalden (2014: 1020; own translation), “[t]he cantons [generally] publish their concluded contracts in their official and systematic catalogue of applicable law”.

The discussion has already revealed some ambiguities. A further shall follow: While contributions in political science postulate that IGAs have especially developed in the most recent decades, historical science observes the opposite, i.e. a more significant role in the distant past. With reference to Bochsler and Sciarini (2006), Linder and Mueller (2017: 180; own translation) state the following: “The significance of intercantonal agreements has strongly increased in the past years”. In contrast, Kley (2007: 372) rather diagnoses “an increasing loss of importance of c[oncordats] due to the centralizing tendencies in the federation”. This ambiguity needs clarification.

When assessing the significance of an institution such as IGAs, it can be decisive to contextualize it. First, the functions it serves need to be examined against the background of the specific period in history – i.e. the Swiss Confederacy until 1798, the unitary Helvetic Republic until 1803, the Mediation and Federal Treaty until 1848, and the Swiss Confederation until today. Second, the degree to which the institution fulfilled these functions serve as a measure to assess its significance for the very period under review. Derived from these two steps broader assessments across periods are possible. From a conceptual perspective, Mueller (2019) argues that IGAs are of confederal rather than federal nature. A more significant role of horizontal cooperation under a confederal regime compared to a federal structure is not only plausible from a theoretical perspective but also with reference to the Swiss case. For the times of the Swiss Confederacy until 1798, Bolle argues in accordance with Vogt (1865: 5) and concludes as follows: “The constitution of the older time itself [could be termed] as a misshapen conglomerate of confederate concordats” (Bolle 1907: 97; own translation). After the unitary break of the Helvetic Republic (1798–1803), concordats served as complements to the two incomplete confederal acts of the Mediation (1803–1815) and the Federal Treaty (1815–1848) (Kley 2007: 371). The transition from confederal to federal order of 1848 onwards was characterized by the endeavor to avoid a regulatory vacuum caused by the numerous new federal competences (insufficiently targeted so far). As a direct consequence, former confederal laws, i.e. concordats, kept validity in parts while others were overridden by new federal legislation (Kley 1999). Thus, intercantonal agreements were of lower importance in the newly founded federation of 1848 although they have partly kept force (Kley 2007: 372). Though,

“special alliances and agreements of political substance” (Art. 7 1848 Cst) were explicitly forbidden in the Swiss confederation of 1848 (see table 3.1). According to Schaumann (1961: 101), this prohibition must be envisaged against the background of the *Sonderbundskrieg*, the short but significant civil war ending the confederal and constituting the federal order, and other political alliances of that time. As Art. 7 1848 Cst states, other legislative and administrative agreements were allowed but had to be reported to the federal government. Execution of a contract could be stopped in case of negative consequences for other cantons or the federal government.

In recent years, significant junctures are observed. The total revision of the federal constitution of 1999 changed the principal treatment of intercantonal agreements from a general prohibition with exceptions to a general permission with exceptions (Bochsler and Sciarini 2006: 28; Schweizer and Abderhalden 2014: 1003). According to Hänni et al. (2000: 324), the totally revised constitution demonstrates a greater openness towards horizontal cooperation among the cantons. However, the federal government still possesses the right of inspection (Art. 186 para. 3 Cst) as well as the approval right in case that the Federal Council or a canton lodges an appeal against an IGA (Art. 172 para. 3 Cst). The NFA, in force since 1 January 2008, then strengthened intercantonal organs (Art. 48 para. 4 Cst). Besides, intercantonal agreements with shared burdens are now explicitly prescribed with the federal level possessing enforcement mechanisms to make IGAs binding for all or single cantons under certain circumstances (Art. 48a Cst).

Now, and as introduced to this short historic summary, Bochsler and Sciarini (2006) postulate that the number of intercantonal agreements has strongly increased over time. With respect to the first year of taking force of the NFA, i.e. 2008, a further increase is rather moderate and conforms to previous growth rates of IGAs (Heuberger 2010). Generally, the assessment of the quantitative development of IGAs at least within the federal framework of 1848 is difficult since time series data capturing the number of IGAs per year is missing. Hence, and in accordance with the short historic overview, the conclusion by Vatter (2018a: 64; emphasis in original) on horizontal cooperation among the cantons over time seems more appropriate: “*Not the very existence of intercantonal cooperation, but its functions and the degree of institutionalization have been transformed throughout history*”. Thus, the legal frame and the mechanisms of IGA-conclusion are more formalized and highly structured nowadays. This does not rule out that IGAs possessed greater significance in pre-1848 times due to empty space in confederal regulation. Thus, they have served (only) as means to centralize policies from the

Table 3.1: Federal constitutional provisions of intercantonal cooperation

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Art. 7 Cst of 1848 (in force since 14 September 1848) (Source: 1848 Cst)

*Besondere Bündnisse und Verträge politischen Inhalts zwischen den Kantonen sind untersagt. Dagegen steht ihnen das Recht zu, Verkommnisse über Gegenstände der Gesetzgebung, des Gerichtswesens und der Verwaltung unter sich abzuschließen; jedoch haben sie dieselben der Bundesbehörde zur Einsicht vorzulegen, welche, wenn diese Verkommnisse etwas dem Bunde oder den Rechten anderer Kantone Zuwiderlaufendes enthalten, deren Vollziehung zu hindern befugt ist. Im entgegengesetzten Falle sind die betreffenden Kantone berechtigt, zur Vollziehung die Mitwirkung der Bundesbehörden anzusprechen.*

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Art. 48 *Verträge zwischen Kantonen* Cst of 18 April 1999 (in force since 1 January 2000) (Source: 1999 Cst)

<sup>1</sup> Die Kantone können miteinander Verträge schliessen sowie gemeinsame Organisationen und Einrichtungen schaffen. Sie können namentlich Aufgaben von regionalem Interesse gemeinsam wahrnehmen.

<sup>2</sup> Der Bund kann sich im Rahmen seiner Zuständigkeiten beteiligen.

<sup>3</sup> Verträge zwischen Kantonen dürfen dem Recht und den Interessen des Bundes sowie den Rechten anderer Kantone nicht zuwiderlaufen. Sie sind dem Bund zur Kenntnis zu bringen.

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Art. 48 *Intercantonal agreements* Cst of 18 April 1999 (in force since 1 January 2008) (Source: Cst)

<sup>1</sup> The Cantons may enter into agreements with each other and establish common organisations and institutions. In particular, they may jointly undertake tasks of regional importance together.

<sup>2</sup> The Confederation may participate in such organisations or institutions within the scope of its powers.

<sup>3</sup> Agreements between Cantons must not be contrary to the law, to the interests of the Confederation or to the rights of other Cantons. The Confederation must be notified of such agreements.

<sup>4</sup> The Cantons may by intercantonal agreement authorise intercantonal bodies to issue legislative provisions that implement an intercantonal agreement, provided the agreement:

- a. has been approved under the same procedure that applies to other legislation;
- b. determines the basic content of the provisions.

<sup>5</sup> The Cantons shall comply with intercantonal law.

Art. 48a *Declaration of general application and requirement of participation* Cst of 18 April 1999 (in force since 1 January 2008) (Source: Cst)

<sup>1</sup> At the request of interested Cantons, the Confederation may declare intercantonal agreements to be generally binding or require Cantons to participate in intercantonal agreements in the following fields:

- a. the execution of criminal penalties and measures;
- b. school education in the matters specified in Article 62 paragraph 4;
- c. cantonal institutions of higher education;
- d. cultural institutions of supra-regional importance;
- e. waste management;
- f. waste water treatment;
- g. urban transport;
- h. advanced medical science and specialist clinics;
- i. institutions for the rehabilitation and care of invalids.

<sup>2</sup> A declaration of general application is made in the form of a federal decree.

<sup>3</sup> The law shall specify the requirements for a declaration of general application and for a participation requirement and regulate the procedure.

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*Notes:* An official translation of the articles is only available for the Cst of 18 April 1999, in force since 1 January 2008 (Cst). For the Cst of 18 April 1999, in force since 1 January 2000 (1999 Cst), and the Cst of 1848, in force since 14 September 1848 (1848 Cst) no such translation is available. The articles are thus reported in German and their original state.

*Sources:* 1848 Cst, 1999 Cst, Cst.

state level of the cantons towards the confederation. Through federalizing, IGAs are as well used to the contrary in the post-1848 era: as measure to counteract centralizing pressure of the federal government. Häfelin (1969: 616f.) and Schaumann (1961: 89; own translation) put it as follows: “In the 19<sup>th</sup> century, agreements between the cantons repeatedly served as precursor of federal legislation. Since the turn of the millennium they have, however, become a measure of defense of cantonal jurisdiction”. Finally, although function and significance of intercantonal agreements changed between the periods, according to Häfelin et al. (2016: 370; own translation), “contracts between the cantons [still] represent the most important aspect of horizontal cooperative federalism.”

Now, the discussion mainly aimed at defining intercantonal agreements and providing information on their functions and significance over time. A crucial point in time was already mentioned: the NFA resulting in a further institutionalization and formalization of intercantonal agreements. While this will be examined in more detail in section 3.4, the subsequent part discusses the role that cantonal parliaments play in intercantonal affairs. The preceding description on intercantonalization on the one hand and the following on the role of parliaments therein on the other represent the content-related frame of this study. The two specific topics are core to, first, the deduction of the hypotheses from general-abstract theory and, second, all empirical analyses conducted.

### 3.3.1 *Cantonal Parliaments in Intercantonal Affairs*<sup>15</sup>

Intercantonal agreements are often linked to the discussion on their democratic legitimacy. According to Linder and Mueller (2017: 180), IGAs are “despite their factual necessity [...] in some parts problematic”. In critically assessing intercantonal agreements, a numerous amount of publications puts the participation of cantonal parliaments in intercantonal affairs to its center. Intercantonal affairs are thereby only one among various examples where cooperative action and joint decision-making challenge conventional cantonal statehood (Brunner 2004). Hänni (1998: 667) argues that intercantonal treaties restrict cantonal parliaments by nature and are thus detrimental to democratic legitimacy. Similarly, Rhinow (2003) criticizes their political downside as follows: “Treaties inevitably bring along a dismantling of democracy and lead to a (further!) strengthening of governments and administrations, [...] [b]ecause de facto it is the governments that substantially ‘set’ law [and] not the parliaments anymore.” (ibid.: 6; own

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<sup>15</sup> This subchapter is a translated and slightly expanded version of parts of 3. *Formale Beteiligung der kantonalen Parlamente an interkantonalen Vereinbarungen* of Arens (2018: 401–408).

translation). And especially Möckli (1999) takes a rather radical stand in attributing the cantonal parliaments “the role of figurants” (ibid.: 7; own translation) in intercantonal affairs by the end of the 1990s (see also Möckli 2009).

Especially in contrast to the latter, Abderhalden (1999) takes a more differentiated approach in her seminal contribution on “opportunities and limits of intercantonal cooperation” (title; own translation; see also Bortler 1976 for his contribution on the topic). The author observes that it is basically variance in the processes of setting up legislation what distinguishes intercantonal from common cantonal law (ibid.: 186–187). Thus, first and foremost, it is the logic of decision-making that varies: While in domestic cantonal affairs the process aims at “detecting one uniform majority opinion” (ibid.: 186), an intercantonal agreement is the result of a bargain among heteronomous interests and forces (ibid.: 186–187). The latter implies a certain loss of autonomy, since intercantonal policies are co-determined by other actors foreign to the respective canton (ibid.: 188). Furthermore, the body taking a decision – in the extreme case, the whole electorate – is reduced to a minimal but democratically legitimated circle – the executive branch (ibid.: 189). While cantonal parliaments might preserve their say (by means of final approval), the ‘take it or leave it’-character of IGAs puts high pressure on the institution towards approval (Möckli 1999: 9; Rhinow 2003: 6). As already pointed out above, this further implies that parliaments are deprived of one of their core functions, i.e. to legislate (Wirz 2018), since lawmaking is far advanced, if not to say finalized, when an agreement enters the parliamentary arena (Möckli 1999: 9; Rhinow 2003: 6). Similarly, parliamentary functions of government control and oversight, and their ability of creating more public attention than the executive branch are restricted given intercantonal agreements (Abderhalden 1999: 190–196). Note that the finding of weakened horizontal checks and balances is also shared by the multi-dimensional assessment of Blatter (2010). In examining various indicators of the quality of democracy of horizontal cooperation, the author assesses the strengthening of the executive branches at the expense of cantonal parliaments as one of the central disadvantages from a liberal output-perspective (ibid.: 258–260).

Based on the diagnosis of a weak position of cantonal parliaments in intercantonal affairs, Abderhalden (1999: 241ff.) proposes various adjustments in cantonal executive-legislative relations to strengthen the latter vis-à-vis the former. The author provides concepts of enhanced parliamentary participation that address, among others, the parliamentary commission that shall be endowed with intercantonal affairs as well as parliamentary rights of information and consultation during the intergovernmental bargain. Iff et al. (2010) and Schwarz et al. (2014:

5ff.) directly draw on these and other propositions and conceptualize parliamentary participation in intercantonal affairs, among others, according to these dimensions.

### 3.3.1.1 *Parliamentary Rights of Information and Consultation*

According to Abderhalden (1999: 247), the “right to information” (own translation) encompasses all instruments with which a parliament is informed comprehensively and timely about planned and ongoing items of business in intercantonal affairs. The author argues that the respective federal law serves as a role model for the cantons (ibid.). The current regulation enshrined in Art. 152 para. 2 of the *Federal Act on the Federal Assembly (Parliament Act, ParLA) of 13 December 2002*<sup>16</sup> spells out as follows:

“ 2 The Federal Council shall inform the Presiding Colleges of the Councils and the committees responsible for foreign policy regularly, comprehensively and in good time of important foreign policy developments. The committees responsible for foreign policy shall also pass on this information to other committees involved in foreign policy related matters.”

The proposition is equivalent to the remarks by Möckli (1999: 12) arguing that a constant and comprehensive information of parliament is an obligation of the government. It complements the established and general measure of parliament to demand information by means of parliamentary questions, among others. The right to information thus constitutes the first step of participation in foreign affairs (ibid.). Strebel (2014: 545) and Schwarz et al. (2014: 12) confirm that the possibility of parliament to file inquiries concerning foreign affairs and the duty of the executive branch to inform parliament on such matters clearly vary in nature. The former, however, exists in every canton (ibid.). The latter is subject to parts of the following analyses, especially with respect to its development over time.

The second mean to participate in intercantonal affairs is by consultation, i.e. the parliamentary right to comment on the respective items of business (Abderhalden 1999: 248). The author as well as Möckli (1999: 12–13) again propose the federal regulations as role model that are

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<sup>16</sup> In her proposition, Abderhalden (1999: 247) refers to the respective regulation in force at that time, i.e. Art. 47<sup>bis</sup>a para. 1 and 2 of the *Federal Act on the Conduct of Business of the Federal Assembly and on Form, Publication and Taking Force of its Enactments (GVG)* (own translation of *Bundesgesetz vom 23. März 1962 über den Geschäftsverkehr der Bundesversammlung sowie über die Form, die Bekanntmachung und das Inkrafttreten ihrer Erlasse (Geschäftsverkehrsgesetz, GVG)*). However, the former and current regulations are materially the same so that the more recent law holds as a role model as well, especially since it is in force since 2003.

currently enshrined in Art. 152 para. 3 and 4 of the *Federal Act on the Federal Assembly (Parliament Act, ParLA) of 13 December 2002*<sup>17</sup>:

- “ 3 The Federal Council shall consult the committees responsible for foreign policy on important plans, on planned changes to the number of Switzerland’s diplomatic and consular representations abroad, and on the guidelines and directives relating to mandates for important international negotiations before it decides on or amends the same. It shall inform these committees of the status of its plans and of the progress made in negotiations.
- 3bis The Federal Council shall consult the committees responsible before it:
- a. provisionally applies an international treaty that must be concluded or approved by the Federal Assembly
  - b. urgently withdraws from an international treaty when any withdrawal should be approved by the Federal Assembly.
- 3ter If the committees of both chambers are against provisional application or immediate withdrawal, the Federal Council shall refrain therefrom.
- 4 In urgent cases, the Federal Council shall consult the presidents of the committees responsible for foreign policy. The presidents shall inform their committees without delay.”

Möckli (1999: 13) adds two measures that clearly exceed the ones presented in their strength of intervention: Veto and instruction. The former exists in the cantons insofar as it is the parliaments possessing the competence to finally accept or reject an intercantonal agreement when it lies in their jurisdiction. In contrast, neither a veto on a government’s bargaining position or on interim results of negotiations nor a right to bind and instruct governments to parliaments’ position exist in the cantons. Schwarz et al. (2014: 12–13) further mention a sixth measure of parliamentary participation in intercantonal affairs, i.e. direct parliamentary support of government in intercantonal negotiations, but conclude that participation in no canton exceeds the second level of consultation rights of parliament vis-à-vis government.

Lastly, it shall be noted that the following analysis is not able to measure the timing of participation. This is assessed as important in the literature (see Möckli 1999: 11) so that it matters whether parliament is informed and consulted at an early stage of negotiation or only

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<sup>17</sup> Largely, the regulation is identical to the original Art. 47<sup>bis</sup>a para. 3–4 of the *Federal Act on the Conduct of Business of the Federal Assembly and on Form, Publication and Taking Force of its Enactments (GVG)* that the cited authors refer to. A little difference exists with respect to the right to comment on guidelines and directives that is explicitly enshrined in the former regulation in Art. 47<sup>bis</sup>a para. 4 (GVG).

at a late stage towards conclusion and implementation of an intercantonal agreement. However, and as already pointed out, the following analysis is interested in the *development* of parliamentary rights in intercantonal affairs and its explanatory factors. Hence, it does not aim at elaborating a comprehensive instrument measuring all facets of parliamentary involvement in IGR but to operationalize it by means of its most important and fundamental indicators.<sup>18</sup>

### 3.3.1.2 *Parliamentary Standing Commission on Intercantonal Affairs*

Parliamentary commissions account as the most important and fundamental institution in the working of the legislative branch and the interplay with its executive counterpart. Trippolini (2007: 26) argues that their decisive role in the political systems of the cantons stems from the fact that cantonal parliaments are rather transformative than arena type legislatures (Polsby 1975). Thus, their main function is legislation and not raising public awareness by debate. Trippolini (2007: 26; own translation, emphasis in original) points out that commissions are “some kind of efficient *mini-parliaments*” that contribute to power-sharing by means of their representative composition and compromise-seeking procedures. With respect to the shape of such preparatory commissions and the commission system, the author first points out that these committees can be of standing or non-standing character (ibid.: 27). Second, different tasks necessitate differently specialized institutions so that it exists commissions of oversight, such with cross-departmental tasks, expert commissions with policy-specific knowledge, and single other commissions, mainly endowed with oversight of special institutions (ibid.: 27–28). The author then identifies different systems in the cantons that vary with respect to the standing or non-standing character of the four types of commissions presented. By analyzing intercantonal affairs in cantonal politics only, Strebel (2014: 339, 344–345) shows that mainly two approaches exist: Intercantonal agreements are treated by standing policy-specific expert commissions *or* are principally assigned to standing specialized commissions of foreign affairs. Non-standing, ad-hoc commissions nowadays play only a minor or no role when intercantonal affairs are at stake. Since they suffer from structural deficits, especially their lagged readiness, the former two approaches are assessed as more powerful in appropriately dealing with intercantonal matters (see Lüthi [1997] for parliamentary commissions in general at the federal level; see Abderhalden [1999: 246] and Schwarz et al. [2014: 19] for assessments of the

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<sup>18</sup> See Arens (2018) for the elaboration and quantification of an encompassing instrument measuring parliamentary participation in intercantonal affairs from a cross-sectional perspective. It considers the following indicators: rights of information and consultation, parliamentary commissions, the state layer on which participation is realized, and parliamentary resources.

distinction with respect to cantonal politics and intercantonal affairs). Strebel (2014: 339ff.) does not classify the two approaches according to which is better capable to participate in intercantonal affairs. The author rather points out that the two follow a different rationality: While policy-specific expert commissions imply a content-related approach, specific commissions on foreign affairs are rather process-oriented (ibid.: 346). Also Schwarz et al. (2014: 19; own translation) do not make a classification but point out that “[t]he stronger the intercantonalization and the development of interparliamentary structures, the more appropriate seems a parliamentary competence center for the monitoring of intercantonal projects”. Möckli (2009: 8) as well emphasizes that continuous representation by means of same organs and actors is of high importance. He thus argues in support of specific standing commissions on foreign affairs for better treatment of and coordination in intercantonal affairs (ibid.). With respect to such commissions, Trippolini emphasizes the following:

“There already exists a considerable number of intercantonal agreements and with the implementation of the new fiscal equalization scheme between the Confederation and the cantons (NFA) stronger intercantonal cooperation can be expected. Hence, a specific commission on foreign affairs (as in the canton of Zug) and the participation in interparliamentary commissions can counter the democratic deficit in the oftentimes executively driven negotiations.” (Trippolini 2007: 27; own translation).

Besides strengthening the main argument that will be tested hereafter, the statement and the whole discussion suggest that a system with a specific standing parliamentary commission on intercantonal affairs is better capable of dealing with intercantonal agreements. Furthermore, as will be shown in the in-depth discussion of the canton of Berne (see section 7.2.2), the existence of such a commission does not rule out that intercantonal agreements are assigned to policy-specific expert commissions. Thus, a system with a specific standing commission on foreign affairs combines the advantages of both approaches: general monitoring of intercantonal affairs is guaranteed by the specific cross-departmental commission, while policy-specific expert commissions can still act upon intercantonal agreements in their jurisdiction.

Having examined IGAs and the ways and means cantonal parliaments act upon them, the discussion so far has introduced two main research objects of this study. Both were prone to major changes on the federal level as the historic summary and the development of the articles of the federal constitution revealed. However, the NFA, one of the crucial junctures of Swiss federalism, was only mentioned briefly. Since it makes up the general background against

which the study here is drawn and since it is assumed to have had major impacts on the former two research objects, it needs further clarification.

### 3.4 *The NFA: A Critical Juncture in Form*

According to officials (e.g. EFD and KdK 2007) but also scientific (e.g. Vatter 2018a) and practical observers (e.g. Economiesuisse 2018), the NFA is one of the most important reforms of Swiss federalism in the history of the Swiss Confederation of 1848. With respect to the need for reform, Siegenthaler and Wettstein (2014: 103; own translation) even call the NFA “realistically perhaps the last chance to modernize Swiss federalism.”

On 24 November 2004, the revised and new constitutional articles introduced by the NFA were adopted at the ballot box with 64.4 percent of all votes in favor of vis-à-vis 35.6 percent of all votes in contrast to the measures.<sup>19</sup> The participation rate was at a low level of only 36.9 percent of all eligible voters casting their vote. The measures clearly received the consent of the cantons (*Ständemehr*) with 23 cantons in favor and only three cantons – i.e. Schwyz, Nidwalden, and Zug – voting in opposition.<sup>20</sup> In the preceding parliamentary arena, the *Ständerat* almost unanimously favored the reform package in the final vote<sup>21</sup>, while a broad majority in the *Nationalrat* favored it as well, however, facing opposition by the greens (GPS) and the social democrats (SPS)<sup>22</sup>. But what exactly did the reform deal with and in what respects did it formally alter the conduct of IGAs among the cantons? Furthermore, how had the latter provisions evolved over time in the reform process and what had been the major points of discussion? The next two sections aim at clarifying these two questions in the respective order. While the first provides an overview of the formal NFA-provisions (digging deeper into the reform than table 3.1, section 3.3), the second investigates the major debates surrounding the emergence of regulations central to this study.

<sup>19</sup> <https://www.bk.admin.ch/ch/d/pore/va/20041128/index.html> (accessed 18 January 2020)

<sup>20</sup> <https://www.bk.admin.ch/ch/d/pore/va/20041128/can514.html> (accessed 18 January 2020)

<sup>21</sup> <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=6570> (accessed 18 January 2020)

<sup>22</sup> <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=6248> and [https://www.parlament.ch/centers/documents/de/VH\\_01\\_074.pdf](https://www.parlament.ch/centers/documents/de/VH_01_074.pdf) (both accessed 18 January 2020)

### 3.4.1 *The Formal Provisions and their Implications*

The officials formulated three broad reform goals, i.e. to reach a more effective fiscal equalization scheme, to disentangle jurisdiction between the federal government and the cantons, and to strengthen vertical cooperation within the federation (BR 2001: 2314). Generally speaking, it aimed at a “strengthening and further development of the federal structure” (ibid.: 2293; own translation) so that the officials labeled it a “[r]eform of the federal structure [itself]” (ibid.; own translation). This further underlines the reform’s magnitude and the assessment of the NFA as being the most important and fundamental endeavor in this respect in the long history of the federation (see the judgement by practitioners and researchers above). To reach the objectives, the reform is built on four pillars:

- I. *Disentanglement of tasks and their financing*: 17 tasks were disentangled to clarify responsibilities. While seven thereof were assigned to the sole jurisdiction of the federal government, ten tasks were allocated to the cantons to strengthen cantonal autonomy and, thus, self-rule (BR 2001: 2335–2336; EFD and KdK: 19–22).
- II. *New forms of coordination and financing of shared tasks*: 17 tasks remain under shared responsibilities of the federal government and the cantons but are tackled by means of new forms of vertical cooperation in decision-making and financing. So-called *Programmvereinbarungen* shall provide the cantons with more flexibility in the way overall defined goals are reached, i.e. by broad policy frames that both have been previously defined and are then financed by the federal government and the cantons in accordance (BR 2001: 2337–2338; EFD and KdK: 23–25).
- III. *Intercantonal cooperation with shared burdens*: Nine tasks are prescribed as targets of horizontal intercantonal cooperation, that can be enforced by the federal level if necessary (BR 2001: 2338–2339; EFD and KdK: 26–28).
- IV. *A new fiscal equalization scheme*: A new fiscal equalization scheme was set up that balances the fiscal disparities among the cantons, that are due to variance in their resources and resource potentials, respectively, as well as their geographic-topographic and sociodemographic burdens (BR 2001: 2359ff.; EFD and KdK: 11–16).

The four instruments can be assigned to two broad categories. While the latter speaks to the *F* of the term *NFA*, i.e. fiscal equalization in the strict sense and levelling of general financial inequalities, the former three deal with the *A*, i.e. the reorganization of tasks between the state levels and the clarification of responsibilities (EFD and KdK: 8–9). Since the subsequent analyses focus on the third instrument, it is solely the NFA-induced constitutional and statutory

changes with respect to intercantonal cooperation with shared burdens that are of interest hereafter. Thus, the following discussion shall answer the following questions, among others: What formal changes were undertaken by the officials responsible for the NFA and what expectations did these modifications raise among political actors, the public, and researchers? What exactly were the rationality and goals of the specific measures at hand?

The officials responsible for the NFA argued that the voluntary character is the main deficit of horizontal cooperation (BR 2001: 2351–2352). It was brought forth that every canton can benefit from specific policies and public goods of others, while no canton can be forced to contribute to their provision (ibid.). According to the officials, mobility and accompanying incongruence between socioeconomic spaces and political jurisdictions had led to increasing loads of central to the benefit of aligned peripheral cantons violating the principle of fiscal equivalence (ibid.: 2350–2351). Thus, three reform goals were formulated: the elimination of non-incorporated spillovers and free riding, efficiency gains using economies of scale, and maintenance of self-rule in the respective policy areas to avoid centralization towards the federal level (ibid.: 2352).

Now, the NFA resulted in mainly three grand modifications with respect to IGR: First, intercantonal institutions can be vested with legislative powers under certain conditions (Art. 48 para. 4 Cst). Second, the constitution now acknowledges intercantonal law being located between federal and cantonal law and binding the cantons to its provisions (Art. 48 para. 5 Cst). Third, and most importantly, intercantonal cooperation with respect to the following specific tasks necessitating the sharing of costs and burdens have been constitutionally enshrined by 1 January 2008 (Art. 48a para. 1 lit. a.–i. Cst; see table 3.1 as well)<sup>23</sup>:

- “
- a. the execution of criminal penalties and measures;
  - b. school education in the matters specified in Article 62 paragraph 4 [Cst];
  - c. cantonal institutions of higher education;
  - d. cultural institutions of supra-regional importance;
  - e. waste management;
  - f. waste water treatment;
  - g. urban transport;
  - h. advanced medical science and specialist clinics;
  - i. institutions for the rehabilitation and care of invalids.”

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<sup>23</sup> The list is drawn from the Cst as in force from 1 January 2008 on, i.e. under inclusion of modifications by the *Bundesbeschluss vom 16.12.2005 über die Neuordnung der Verfassungsbestimmungen zur Bildung* adopted at the on 21 May 2006 (<https://www.bk.admin.ch/ch/d/pore/va/20060521/index.html>; accessed 18 January 2020).

Note that Art. 48a para. 1 lit. a.–i. Cst. originally comprised of eight tasks only: penalties and measures, cantonal universities and universities of applied sciences, certain cultural institutions, facilities of waste and waste water treatment, public transport in agglomerations, supply of advanced medicine, and institutions of integration and care of invalids. Not part of the original enumeration was Art. 48a para. 1 lit. b. Cst on school education further cross-referencing to Art. 62 para. 4 Cst that reads as follows:

“Where harmonization of school education is not achieved by means of coordination in the areas of school entry age and compulsory school attendance, the duration and objectives of levels of education, and the transition for one level to another, as well as the recognition of qualifications, the Confederation shall issue regulations to achieve such harmonization.” (Art. 62 para. 4 Cst).

While this provision is as well part of the NFA-articles, it entered the constitution at a later stage (adopted in May 2006). This might explain the diverging nature of the provision: While the eight original tasks refer to intercantonal cooperation with shared burdens, the provision on school education aims at intercantonal harmonization of primary, and partly secondary, education. Note that the study at hand does not differentiate between the original eight tasks and the one later enshrined since all are evenly part of Art. 48a para. 1 lit. a.–i. Cst. and are thus subject to the NFA-induced federal enforcement mechanisms towards enhance intercantonal cooperation.

The latter are crucial to the enumeration above. The NFA settled two enforcement mechanisms – the *Allgemeinverbindlicherklärung* and the *Beteiligungspflicht* – in the hands of the federal parliament, so that “[a]t the request of interested Cantons, the Confederation may declare intercantonal agreements to be generally binding or require Cantons to participate in intercantonal agreements” (Art. 48a para. 1 Cst). The constitutional provisions are complemented by the *Bundesgesetz über den Finanz- und Lastenausgleich (FiLaG)* of 3 October 2003, in force since 1 January 2008. It concretizes the aforementioned constitutional articles (Art. 10–17 FiLaG). According to Art. 14 para. 1 lit. a FiLaG, an *Allgemeinverbindlicherklärung* may result when requested by at least 21 cantons. Art. 15 para. 1 FiLaG then regulates the *Beteiligungspflicht* so that at least half of all contracting cantons need to call the national parliament to demand the participation of one or more absent cantons.

Finally, Art. 13 FiLaG obliges the cantons to elaborate and close an intercantonal agreement that serves as a framework for any intercantonal cooperation with shared costs and burdens. This *Rahmenvereinbarung für die interkantonale Zusammenarbeit mit Lastenausgleich*

(*Rahmenvereinbarung, IRV*) was concluded on 24 June 2005 and ratified by all cantons by 1 November 2007. It regulates the “principles and procedures” (Art. 1 para. 1 IRV; own translation) of cooperation in the respective areas but opens the possibility to apply these to any other intercantonal agreements outside Art. 48a para. 1 lit. a.–i. Cst (Art. 1 para. 3 IRV). This can be interpreted as an endeavor by the officials to not only reform decision-making and its enactment in the narrowly defined policy areas but also contribute to the overall working of the Swiss federal system. Such an endeavor is seemingly plausible with respect to the role of cantonal parliaments in horizontal cooperation. Since the cantons are sovereign within the federal architecture (Art. 3 Cst, Art. 47 Cst), they are free to autonomously organize and chose a political system given the minimal requirement of a democratic constitution. However, Art. 13 lit. d. FiLaG defines that the IRV, among others, tackles and clarifies participation of cantonal parliaments in intercantonal cooperation with shared burdens. Accordingly, Art. 4 para. 1 IRV stipulates the duty of cantonal executives to inform the respective legislature timely and comprehensively about matters of intercantonal cooperation. Art. 4 para. 2 IRV leaves the concrete regulation of participation rights to the cantons. However, the respective commentary by the Conference of Cantonal Governments (KdK 2005), the institution responsible for the IRV, reveals that Art. 4 para. 1 IRV is thought of as a minimal standard and the basis of every kind of participation (ibid.: 2). Furthermore, according to the KdK, Art. 4 para. 2 IRV aims at concrete action by the cantons to clarify and concretize the rather broad provisions:

“The obligatory wording of para. 2 is intended to underline the fact that corresponding provisions are mandatorily incorporated in cantonal law. It is the task of each individual canton to implement any intercantonal obligations in its cantonal law.” (KdK 2005: 2; own translation).

This again strengthens the interpretation that the NFA-officials endeavored to not only inducing change as formally enshrined by the constitutional and statutory articles but also having a broader effect on the whole system.

Taking together the constitutional (Cst), statutory (FiLaG), and intercantonal measures (IRV), the officials set up a legal framework to lower transactional costs of the cantons in negotiating and managing intercantonal cooperation (BR 2001: 2350). As a result, horizontal cooperation with shared burdens was aimed to be “substantially expanded” (ibid.; own translation). Other sources speak of “strengthened cooperation” (EFD 2007 and KdK: 26) and postulate a regionalization of cantonal politics within “functional areas” (ibid.). Finally, the second evaluation report on the effectiveness of the reform between 2012 and 2015 presents an impact

model of the measures with respect to intercantonal cooperation.<sup>24</sup> The report, first, clarifies that the reform and especially the accompanying legislation, i.e. the FiLaG, aims at “ensuring an appropriate intercantonal sharing of burdens” (BR 2014: 57; own translation). The impact model of intercantonal cooperation then goes as follows (ibid.: 61; own translation): First, goals are set according to the FiLaG and, second, shall be addressed by negotiating and implementing new IGAs. Third, the output then is the regulation of the nine constitutionally enshrined tasks (Art. 48a para. 1 lit. a.–i. Cst; see table 2.1). Fourth, it has an impact insofar as labor is divided between the cantons, what, fifth, means a certain provision of public goods and services as outcome of the measure.

### 3.4.2 *The Cornerstones of the Reform Process and Its Central Issues*

The discussion so far clarified the main formal provisions of the NFA. Furthermore, it laid out the new regulations of intercantonal cooperation with shared burdens that are central to this study. However, the reform process in general and the elaboration of the concrete measures remains in the shadow. Thus, the final part of this chapter aims at tracing back the reform process. It focuses on the development of the reform measures in Art. 48 and 48a Cst from a temporal perspective.

The elaboration of the NFA was by no means a short track but rather a long-term process covering more than ten years. Wasserfallen (2015: 545–546) detects four preparation and negotiation stages. A recently published report by Economiesuisse (2018), the leading interest organization of capital and private business, confirms this broad timetable. Pre-negotiations started in 1992 and focused on existing problems and general reform principles. The report *Framework of Orientation for the Future Design of the Federal Fiscal Equalization* (own translation<sup>25</sup>) by the Conference of Cantonal Finance Directors (FDK 1992) serves as the central document of this initial stage. It broadly takes stock of deficiencies of the fiscal equalization scheme at that time, e.g. the lack of objectives *ex-ante* and a steady monitoring and evaluation *ex-post*, the strong reliance on individual measures with a multitude of partly uncoordinated transfer payments, and the overall failure of the system to lower disparities between the cantons (ibid.: 1–7). However, the report as well proposes a new equalization

<sup>24</sup> Note that such a model can, however, not be found in any of the earlier official documents, but only at this late stage of *ex post* evaluation.

<sup>25</sup> The original title reads as follows: *Orientierungsrahmen für die künftige Ausgestaltung des Bundesstaatlichen Finanzausgleichs* (FDK 1992).

system consisting of three elements: an equalization by the federal government, an equalization among the cantons of cohesive regions, and a general horizontal equalization of varying capacities in tax revenue (ibid.: 7–8). According to the report, the provision of infrastructure of regional scope by single cantons causes regional spillovers for the benefit of other cantons but costs for the providing entities (ibid.: 10–11). While it already names policy areas that are prone to regional cooperation – e.g. education, health care, waste management, culture –, it is cautious about federal coercion and rather speaks of minimal standards to facilitate cooperation or to sanction the evasion of costs (ibid.). The summary of this first relevant report in the reform process has many implications for the study at hand. First, horizontal cooperation among the cantons had been a part of the reform since its very initiation and an original element thereof. This is remarkable since the NFA is mainly associated with the new national fiscal equalization scheme (Economiesuisse 2018). Second, intercantonal compensations are integral to the idea of fiscal equalization. This also suggests that the strict separation of the reform endeavors according to two dimensions, fiscal equalization on the one hand (the *F*) and a disentanglement of tasks on the other (the *A*) (see e.g. EFD and KdK 2007), is hardly possible. Rather, a separate treatment of the equalization scheme – ‘fiscal equalization in a narrow sense’ – and further equalizing measures – ‘fiscal equalization in a wider sense’ – seems appropriate. Thereby, intercantonal cooperation with shared costs and burdens refers to the latter, that is, however, evenly core to the NFA. Third, from the beginning on, it was thought of as a measure furthering public goods of regional scope given the ‘user pays’ principle. Hence, the NFA had ever possessed a regional logic as well, i.e. regional public goods provision in ‘functional areas’ given a respective sharing of costs among the regional partners.

Remarkably, in 1993 a postulate on “[i]ntercantonal [b]urden [s]haring” (postulate no. 93.3288; own translation) was filed and partly adopted by the national council.<sup>26</sup> It mandated the Federal Council to check whether federal rules are necessary on how to divide burdens between cantons providing public goods and such demanding them. Interestingly, the author, Paul Wyss (FDP/BS), emphasized the role of regionally significant cities and urban centers in public goods provision. A year later, Rudolf Strahm (SPS/BE) filed a similar postulate that demanded measures and models to equalize metropolitan burdens (motion no. 94.3307).<sup>27</sup> The author directly referred to the expert and scientific report on *Federal Financial Grants and*

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<sup>26</sup> [https://www.parlament.ch/afs/data/d/gesch/1993/d\\_gesch\\_19933288.htm](https://www.parlament.ch/afs/data/d/gesch/1993/d_gesch_19933288.htm) (accessed 26 January 2020).

<sup>27</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=19943307> (accessed 26 January 2020).

*Compensations on Behalf of the Cantons* by Frey et al. (1994a; own translation<sup>28</sup>) constituting the second milestone in the elaboration of the NFA. It is part of the pre-negotiations, directly follows from the discussed broad framework of orientation (FDK 1992) and depicts a total of four contributions to the topic. In assessing federalism and fiscal equalization from an institutional perspective, Frey and Spillmann (1994: 8–11), first, theoretically argue that it is especially spillovers – leading to freeriding, a suboptimal provision of public goods, and, thus, welfare losses – that have to be internalized and economies of scale that signal a centralization of tasks rather than a decentralization thereof. They reason as follows:

“In a federation, a transfer system is indispensable. Specific public policies cannot be allocated to one specific canton or the federal government. Given the efficiency target, certain services must be offered and financed by individual cantons together with others or with the federal government.” (ibid.: 11).

Thus, task-specific cooperation and transfers among service providing and using entities can help to reach the goal of optimal resource allocation (ibid.: 11–12). Here, tasks of cantonal self-rule with regional spillovers and economies of scale that necessitate earmarked transfers (independent of overall fiscal capacity due to its task-specific character) are central (ibid.: 14–15). The authors pose a meaningful example: the provision of institutions of higher education (ibid.: 21–23). According to the subsidiarity principle, it is economically reasonable to assign higher education to the cantons in the first place. However, since the provision of institutions of higher education have increasing economies of scale within a region, i.e. decreasing average costs per participating entity, it is economically optimal that not each canton *or* just the federal government builds and maintains such an institution (ibid.: 21). Rather, while being territorially located in one canton, all cantons of a cohesive region that use services and facilities shall contribute by means of earmarked transfers according to the respective amount of spillovers that have to be internalized (ibid.). As proposed, the role of the federal government is to set up rules here to facilitate and ensure intercantonal transfers (ibid.: 35–36). Furthermore, the authors make two interesting observations: First, they draw a connection between fiscal equalization and (federal) regional policy (ibid.: 33). This further underlines the purpose of regionalization inherent in the NFA from early on in the reform process. Second, with respect to concrete reform measures, the authors resort to reform propositions from the 1970s (ibid.: 35). Thus, strengthening intercantonal cooperation by means of setting up broad federal rules

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<sup>28</sup> The original title reads as follows: *Der Finanzausgleich zwischen Bund und Kantonen. Expertise zu den Finanzhilfen und Abgeltungen des Bundes an die Kantone im Auftrag der Eidg. Finanzverwaltung und der Konferenz der kantonalen Finanzdirektoren* (Frey et al. 1994a).

on how to fairly divide their costs had not been a new endeavor in reforming the federal state (see Art. 43 para. 3 draft Cst of 1977, Art. 56 para. 5 draft Cst of 1977; see Expertenkommission für die Vorbereitung einer Totalrevision der Bundesverfassung 1977a). All in all, Frey et al. (1994b: 47; own translation) target more “[cost-efficient provision of public goods] by means of an expansion of horizontal equalization of burdens that incentivize optimal functional areas”.

The pre-negotiation phase closes with the report on the 1996 published *Fundamentals* (EFD and FDK 1996; own translation<sup>29</sup>) of the proposed new fiscal equalization between the federal government and the cantons (EFD and FDK 1996). While Wasserfallen (2015: 545) calls it a “[f]irst rough draft proposal”, Economiesuisse (2018: 7) points out that it already possesses all relevant elements of the final reform. With respect to horizontal intercantonal cooperation, it puts forth the economic and equalizing rationalities and the aim to regionalize the proposed policies and concretizes the modalities and types of intercantonal burden sharing (EFD and FDK 1996: 22–23, 26). Furthermore, the list of tasks that shall be targeted by intercantonal cooperation with shared burdens is almost complete: Only one task, i.e. “institutions for the integration and care of invalids” (Art. 48a para. 1 lit. i. Cst; own translation), does not (yet) appear in the draft (EFD and FDK 1996 [Appendix]: 10–14). Some further meaningful information is provided. First, the reform draft reemphasizes the voluntary character of intercantonal cooperation in principle but criticizes a lack of application when it comes to the equalization of burdens (ibid.: 23–24). In contrast to the former reports, it does not only stipulate an incentivizing and coordinating role of the federal government but even intercantonal cooperation under federal compulsion (“*Kontraktzwang*”) (ibid.: 24) (in some of the proposed policy areas). However, and equivalent to the proposition of broad federal rules to coordinate intercantonal cooperation in the late 1970s, this measure is as well not new. Rather, it was also part of the discussions surrounding the draft constitution. For instance, in 1972, the Federal Council (BR 1972: 1075–1076) issued the possibility to force cantons to participate in intercantonal agreements and to expand the competences of intercantonal bodies. The 1977 report on the draft constitution (Expertenkommission für die Vorbereitung einer Totalrevision der Bundesverfassung 1977b: 106–107) argues that the respective formal provisions would allow federal encroachment by means of federal law in significant cases (see Art. 43 para. 3 draft Cst). However, at that time, the provision of concrete mechanisms, e.g. the *Allgemeinverbindlicherklärung*, was rejected on the ground that it would counter the voluntary

<sup>29</sup> The original title reads as follows: *Der Neue Finanzausgleich zwischen Bund und Kantonen: Grundzüge. Bericht der vom Eidg. Finanzdepartement und der Konferenz der kantonalen Finanzdirektoren gemeinsam getragenen Projektorganisation* (EFD and FDK 1996).

character of intercantonal cooperation and violate the “duty of consideration and concern” (see e.g. Art. 43 para. 1 draft Cst; equivalent provisions exist in the current constitution in the Preamble and in Art. 44 para. 2 Cst). It opted for proposing the possibility to set up broad federal rules instead (see discussion above). Furthermore, the preparations of the NFA were paralleled as well by demands for more coercive instruments as early reports and documents let assume. Jean-François Leuba (LPS/VD) filed a parliamentary initiative in 1993 towards the introduction of a federal mechanism to declare intercantonal agreements as generally binding (parliamentary initiative, no. 93.443).<sup>30</sup> This excursion shows that the concretized measures were not introduced to the overall reform debate only in the late 1990s but had been part of similar endeavors in its near and distant past.

As a second, newly included element of the report on the “fundamentals” of the NFA, it outlines the framework contract that shall enable intercantonal cooperation and lower the transaction costs of contracting (EDK and FDK 1996: 26–27). Thereby, it also proposes further region- and task-specific frameworks to facilitate intercantonal cooperation with respect to specific regions and tasks (ibid.: 25–26). Interestingly, intergovernmental conferences among the cantons’ executives are directly named as platforms of such contract negotiations (ibid.: 25–26), what underlines their (prescribed) value in coordinating intercantonal cooperation. Lastly, the role of cantonal parliaments appearing rather prominently in the respective general framework elaborated later (Art. 4 IRV), is not mentioned at all in the draft (EFD and FDK 1996). In addition, indications or, at least, discussions thereof are missing. One may conclude that such considerations had not been issued during the drafting of the NFA up to 1996.

The report of the consultation on this draft then marks the first broad debate transcending the small group of responsible authorities and experts that were selectively involved in the drafting process. According to the *Report on the Results of Consultation* (EFD 1996; own translation<sup>31</sup>) of the NFA-fundamentals, some participants to the consultation assessed intercantonal cooperation as the “*most critical part of the reform project*” (ibid.: 12; own translation, emphasis in original). Among others, the role of cantonal parliaments and the overall processing of intercantonal negotiations by the political institutions within and between the systems was issued by some cantons (ibid.). Since the report is rather brief, a deeper and more detailed discussion is not possible here. However, the scarce information reveals that the NFA and the

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<sup>30</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=19930443> (accessed 27 January 2020).

<sup>31</sup> The original title reads as follows: *Der neue Finanzausgleich zwischen Bund und Kantonen: Grundzüge. Bericht über die Vernehmlassungsergebnisse* (EFD 1996).

debates on its measures were no longer limited to its fiscal impacts but also to its possible *political effects*.

The considerations of the cantons with respect to a democratic deficit in intercantonal cooperation are taken up in the *Final Report of the Project Organization on Behalf of the Bundesrat* (EFD and KdK 1999: 48–49; own translation<sup>32</sup>). However, it does not propose concrete measures here and rather leaves them to the cantonal authorities (*ibid.*). Besides, the report finally depicts all nine policy tasks at which intercantonal cooperation can be made compulsory and that later appeared in the proposed and approved amendments (EFD and KdK 1999: 30). Interestingly, the authors set cooperation in these areas as a minimum and bring forth that, “[o]f course, the cantons are free to solve further tasks in intercantonal cooperation apart from that.” (*ibid.*; own translation). With respect to the sharing of burdens in the areas already concretized, the officials forecast “substantial improvements” (*ibid.*: 180; own translation) for five cantons mainly supplying public goods, i.e. Basel-City, Geneva, Zurich, Berne, and Vaud, supported by contributions from the other 21 cantons mainly benefiting from their provision. As parliamentary interventions in the early 1990s had already suggested, with respect to intercantonal measures, especially cities carrying regional burdens received attention by national parliamentarians. For instance, two motions (no. 97.3662<sup>33</sup>, no. 98.3516<sup>34</sup>) introduced by the social democrats (SPS) and a member thereof, respectively, addressed intercantonal equalization due to metropolitan burdens. Since the elaboration of similar NFA-measures had already been in progress at that time, both motions were transformed into postulates – a less powerful parliamentary instrument – and adopted by a majority in the national council.<sup>35</sup>

The final report of 1999 (EFD and KdK 1999) was as well subject to consultation and had let to similar critics as its predecessor of 1996 (EFD and FDK 1996). Interestingly, cantons that make an assessment here partly take a comparative perspective and argue with reference to the status quo of their own parliamentary rules. For instance, the canton of Solothurn argues that its constitution already regulates parliamentary participation in intercantonal affairs so that the formal provisions exist making it rather a matter of their application in practice (EFD and KdK 2000: 53). To the other end, the canton of Neuchâtel is highly cautious and argues that the

<sup>32</sup> The original title reads as follows: *Der neue Finanzausgleich zwischen Bund und Kantonen. Schlussbericht der Projektorganisation an den Bundesrat* (EFD and KdK 1999).

<sup>33</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefit?AffairId=19973662> (accessed 27 January 2020).

<sup>34</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefit?AffairId=19983516> (accessed 27 January 2020).

<sup>35</sup> See <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=80> (accessed 27 January 2020) and <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=73> (accessed 27 January 2020).

adequate inclusion of cantonal parliaments in intercantonal negotiations is a “very delicate subject” (ibid.: 54; own translation). The canton further emphasizes that the WRK elaborated a report on parliamentary participation in intercantonal affairs in 1997 and was thus already aware of it (ibid.).

In the parliamentary arena, further implications of the NFA were issued in the wake of the final report. While Markus Ruf (independent/BE) called the Federal Council to lay out its overall “[c]oncept of [f]ederalism” (postulate no. 99.3354; own translation)<sup>36</sup>, several parliamentary interventions highlighted intercantonal cooperation in particular (e.g. postulate no. 98.3622<sup>37</sup>; motion no. 99.3108<sup>38</sup>). Thereby, also critical accounts exist. In an interpellation (no. 99.3511)<sup>39</sup> not (directly) drawing on the NFA, Otto Zwygart (EVP/BE), its author, asks the Federal Council the following with respect to the role of IGCs in practice: “To what extent does political decision-making at the intercantonal level undermine democratic participation by the people at the ballot box and the cantonal parliaments?” (own translation). In answering this request, the Federal Council argues that the serious considerations brought forth are mainly a cantonal matter since jurisdiction for cooperation through IGCs lies in the hands of the cantons. It further points out that it aims at strengthening the democratic legitimacy of intercantonal decision-making by the proposed NFA-provisions (see Art. 48 para. 4 Cst). By taking stock of cantonal endeavors towards the foundation of interparliamentary fora, it argues as follows:

“Nowadays, the cantons are aware of the problems that arise from intercantonal cooperative federalism. It is assumed, that in the next years they will strive actively for new instruments and forms of cooperation between IGCs and cantonal parliaments. Here, special emphasis lays on the expansion of information and consultation.” (answer to interpellation no. 99.3511; own translation).

Interestingly, in the answer to the item of business (no. 99.3108<sup>40</sup>), it is the Federal Council itself pointing out that intercantonal lawmaking in general and intercantonal organs in particular

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<sup>36</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=19993354> (accessed 27 January 2020).

<sup>37</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=19983622> (accessed 27 January 2020).

<sup>38</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=19993108> (accessed 27 January 2020).

<sup>39</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=19993511> (accessed 27 January 2020).

<sup>40</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=19993108> (accessed 27 January 2020).

have to respect the integrity and sovereignty of the cantons. Besides, cantonal law and democratic principles shall be considered in the intercantonal arena as well.

Concluding on the political decision-making process leading to the NFA-measures, first broader debates thereof have started in 1996 with the first public consultation procedure (EFD and FDK 1996). Furthermore, the respective report directed to all interested parties already gave rather concrete information on the *planned* measures with respect to intercantonal cooperation. It defined an encompassing, almost final list of policy areas in which intercantonal cooperation that necessitates shared burdens shall be institutionalized (ibid.: 22–23). It even discussed the idea of proposing concrete instruments that allow the federal level to force cantons to enter intercantonal agreements (ibid.: 23–25). Towards 1999, federal and cantonal representatives negotiated *concrete* measures (EFD and KdK 1999). Next to detailed discussions on the proposed measures, “[t]he publication of the final report on the ‘New National Fiscal Equalization’ [strove] for a broad political discussion on the innovative power of the institutions of [Swiss] federalism” (statement of the Federal Council on item of business no. 98.3622<sup>41</sup>; own translation). The concrete measures then were subject to the second public consultation from April of this year onwards (EFD and KdK 1999). The summary above suggests that parliamentary discussions on the instruments at hand took up speed in the wake of the report and the consultation of 1999. The enhanced parliamentary activity on measures that became or already had been part of the NFA, including those of intercantonal cooperation with shared burdens, and on topics alike are a sign of these intensified debates. The approval stage started with the parliamentary process in 2001 and led to the popular vote on the reform on 28 November 2004. This period is subject to the following section and closes the detailed discussion on the NFA-measures and the process towards their approval.

### 3.4.2.1 *The NFA in Parliament*

As a last step in tracing back the NFA-reform process from a raw idea to its adoption at the ballot box in 2004 and taking force in 2008, respectively, a light is shed on the national parliamentary stage. The subsection directly connects to the discussion above since it follows upon the publication of the first official message on the NFA by the Federal Council (BR 2001). The NFA entered the parliamentary arena in 2002 with the formation of a special commission of the Council of States (*Ständerat*, henceforth SR), the first chamber to deal with the reform,

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<sup>41</sup> <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=19983622> (accessed 27 January 2020).

and its acting upon the proposed measures between February and September 2002 (PD 2003: VIII). The SR, publicly and by means of the whole plenary assembly, had then treated upon it from October 2002 on (ibid.). The following remarks mainly draw on the respective parliamentary debates of intercantonal cooperation with shared burdens and all issues related to it. The treatment of the further reform pillars cannot and shall not be covered here.

Intercantonal cooperation with shared burdens had been one of the major issues in the parliamentary treatment of the NFA, even in the introductory debate in the SR of 1 October 2002 (PD 2003: 1–23). Kaspar Villiger, member of the Federal Council and head of the Federal Department of Finance (EFD), in defense of the NFA (object of the Federal Council, no. 01.074), presented it as “one of the central pillars of the reform” (ibid.: 22). Furthermore, he acknowledged that the proposed measures were politically contested and had as well caught the attention of the media (ibid.: 20). This is surprising since the official reports were highly technical – focusing on equalization mechanisms, the respective fiscal calculations, and their financial implications – and the ones on the official consultation depicting mostly positive feedback with only minor and sporadic criticism. However, already the first speaker in the SR, Hansheiri Inderkum (CVP/UR), on behalf of the commission, brought forth, that objections especially from experts of constitutional law had led to modifications of the proposed measures (ibid.: 3). Among others, the participation of cantonal parliaments needs to be guaranteed, accordingly (ibid.). The doubts were widely shared and reinforced by others in the introductory debate. As to be discussed later, the criticism here derives from the will of merely strengthening intercantonal cooperation and its enforcement mechanisms, i.e. the *Allgemeinverbindlicherklärung* and the *Beteiligungspflicht*. In this vein, Thomas Pfisterer (FDP/AG) stated that the purely fiscal and thereby mechanical outlook had changed over time so that the NFA is first and foremost a political reform (ibid.: 12). The MP and legal expert questioned whether the draft of the articles already satisfies general democratic principles. Among others, he argued that cantonal parliaments need to play a significant role in the process of intercantonal cooperation. According to him, the NFA can only be passed successfully when smaller scale cantonal reforms are undertaken in the wake of the NFA to, first, reorganize tasks and their financing as well, and, second, tackle democratic deficits:

“A last political remark: We are working on a major reform. It can only succeed when the cantons tackle respective reforms as well. [...] Doing so will raise the question whether there are also reforms necessary to strengthen democracy and parliaments in the cantons to better integrate the latter. It will only be possible to perform the services and guarantee their financing

[set forth by the NFA] when they [the cantonal parliaments] participate in it.” (ibid.: 13; own translation).

By no means, the introductory debate issued this topic only. Various speakers praised the reform, also the efforts with respect to intercantonal cooperation as well as further propositions thereof. As well, others criticized the NFA-instruments apart from the intercantonal measures. Thus, intercantonal cooperation with shared burdens was not the only but one of the politically contested reform measures right from the start of the parliamentary debate. This holds true for the further reception of the debates of the constitutional and statutory articles in detail.

The efforts to strengthen intercantonal cooperation were already brought forth and skeptically reviewed when not even the respective articles had been acted upon. Thus, in the first debate held on the subsidiarity principle, Philipp Stählin (CVP/TG) posed intercantonal cooperation with shared burdens and its implications for cantonal autonomy and the cantonal political systems as an example of how the NFA and the federal government interferes in genuine cantonal jurisdiction (ibid.: 24). The discussions on the articles regulating intercantonal cooperation with shared burdens then were versatile (ibid.: 27–33). The debate was dominated by questions of whether the list of tasks to be acted upon by IGAs shall be enshrined as a rather flexible statutory or a more rigid constitutional provision and of whether it is the large or rather the small cantons benefiting from intercantonal cooperation. Thomas Pfisterer (FDP/AG) again made an interesting remark with respect to the role of cantonal parliaments in intercantonal cooperation. According to him, the preparatory commission had actively strove at better integrating cantonal parliaments in intercantonal affairs (ibid.: 31). Most likely, he thereby referred to a new statutory article not part of the propositions of the Federal Council but proposed by the commission (Art. 13 lit. d. FiLaG; see discussion in section 2.4.1) defining that the IRV has to clarify the participation of cantonal parliaments in intercantonal cooperation with shared burdens. The provision was not opposed by any speaker and adopted by the SR (ibid.: 56). As a last noteworthy point, the relevance of intercantonal cooperation with shared burdens among the NFA-pillars is reinforced by an amendment to the proposed statutory provision. Vreni Spoerry (FDP/ZH) and others demanded guarantees for strengthened intercantonal cooperation with shared burdens in practice and thus aimed at linking the overall reform to it (ibid.: 65–68). The minority group argued that it is especially the metropolitan, wealthy cantons benefiting from the former while expecting financial losses of the new equalization scheme. This insurance mechanism slightly failed majority support (ibid.: 68).

Following the publication of the first official message of the Federal Council on the NFA in November 2001 and its consideration by the SR in late 2002, the National Council (*Nationalrat*, henceforth NR) scheduled it in mid-2003. Similar to its prior parliamentary treatment, intercantonal cooperation and its implications were as well part of the introductory debate in the lower house (ibid.: 70–91). Especially Hermann Weyeneth (SVP/BE) referred to it when introducing a part of the reform to the plenary assembly on behalf of the commission (ibid.: 71–72). He pointed out that there are three crucial issues for discussion, the first drawing on concerns of institutional balance and democratic principles related to proposed regulations on intercantonal cooperation:

“The NFA-project aims at strengthening [Swiss] federalism. In doing so, the following problems occur: The decision-making process is dominated by governments and administrative bodies. Parliament and the people can only say ‘Yes’ or ‘No’ to finalized solutions, and the cantons can be forced to cooperate against their will.” (ibid.: 72; own translation).

While some speakers supported the notion of intercantonal cooperation exhibiting a democratic deficit – e.g. Hildegard Fässler (SPS/SG) and Hans-Jürg Fehr (SPS/SH) (ibid.: 83) –, Claude Ruey (LPS/VD) argued in contrast and brought forth that the western Swiss cantons had successfully organized in an interparliamentary forum that enhancing democratic decision-making and parliamentary participation in sum (ibid.: 84, 88). The discussion on the proposed constitutional measures with respect to intercantonal cooperation were then as well contested, again, among others, with reference to the reform’s implications for institutional power-relations within the cantons (ibid.: 100–106). However, more interesting here is an amendment of the intercantonal regulations in the statutory law. A minority proposed that the *Beteiligungspflicht* (Art. 14 FiLaG), one of two federal enforcement instruments to further intercantonal cooperation, could be abolished by means of a special ruling of the respective cantonal parliament or its people making them and not the federal institutions the final arbiter in intercantonal affairs (ibid.: 172). However, the amendment was rejected with 47 MPs in favor and 67 MPs in opposition to it (ibid.: 175).

Finally, the revised constitutional and statutory articles (see table 3.1 and discussion in section 3.4.1) received nearly unanimous support in the SR (38 to 2 and 38 to 3 votes; ibid.: 203) and more than a two-third majority in the NR (126 to 54 and 121 to 52 votes; ibid.: 205). In the latter institution, intercantonal cooperation with shared burdens was issued in the final speech of the group of the Liberals once again. They point out that they can only accept the reform under reserve due to the federal enforcement mechanisms in intercantonal affairs (ibid.).

While this summary did not elaborate in detail how the other NFA-pillars were received by the parliamentary chambers, it aimed at providing a picture of how they dealt with the proposed measures on intercantonal cooperation with shared burdens. The debates further reveal that the issue had already caught media attention (ibid.: 105–106). The media outlet that was pointed to, however, mainly consists of public debates among constitutional scholars. Here, two articles seem highly relevant. In a critical article published in the *Neue Zürcher Zeitung* (NZZ 2002a), the professor of constitutional law and former member of the Council of States, René Rhinow (FDP/BL), evaluated the proposed NFA-measures on intercantonal cooperation as being “hardly compatible with autonomy and democracy” (NZZ 2002a: 15). In a direct response, again published by the NZZ (2002b), Rainer J. Schweizer, professor of public law and consultant in the NFA-preparations, argued that the proposed measures are on the path of federal endeavors institutionalizing intercantonal cooperation and rather a formal reenactment of a general understanding and established practice (ibid.: 15). According to the author, majorities for federal compulsion were broad and cantonal parliaments already endowed with participation and scrutiny rights so that intercantonal cooperation had not been a sole executive matter for some time (ibid.). There are further examples showing that the topic was already vivid by the end of the 1990s, at least among political and scientific actors. Just to mention two examples here in addition to the parliamentary and public debates of the early 2000s: The partisan journal of the Social Democratic Party (SPS), the *Rote Revue*, published a highly critical article in 1999 that issued the threat of further executively driven politics by strengthening intercantonal cooperation (Hänsenberger 1999: 10–11). Also, the seminal scholarly work of Abderhalden (1999: 163–184) critically discusses the planned measures by the end of the 1990s (see section 3.3.1).

All this leads one to assume that *the planned reform measures had been open to the public from 1996 on but must have been present in all affected arenas by 2001 the latest* when the Federal Council published the first official message containing the proposed constitutional and statutory articles (BR 2001). After the NFA was adopted at the ballot box in 2004, the measures took force on 1 January 2008. Braun (2009a) argues that the circle of actors involved in the preparations and negotiations was systematically broadened over time. However, the lobby on behalf of cantonal parliaments might had been small. According to the author (ibid.), the reform as a whole exemplifies executive federalism since reform leadership was clearly in the hands of the federal executive and administrative branch, namely the EFD, together with the organized cantonal governments, the KdK (see also Behnke 2010). Following Braun (2009a: 110), democratic legitimacy of NFA-instruments played a role in discussions surrounding the

approval of the reform but did not lead to noteworthy opposition. As targeted by the reform officials, also observers expected an increase of executively driven intercantonal agreements following the NFA (Bochsler and Sciarini 2006) and criticized a further loss of power of cantonal parliaments given the introduction of the enforcement instruments of the NFA (Möckli 1999, Rhinow 2003, Inderkum 2003). As shown, such concerns were subject to not only discussions among members of parliament, further practitioners, and scientists but also within the broader public.

## 4 Theory and Hypotheses: The Multiple Effects of Top-Down Federalism

After laying out the core concepts (in chapter two) and providing basic background information on all research objects (in chapter three), the theoretical expectations are formulated subsequently that shall help to answer the research question(s). The following section thus aims at making theoretical claims on what to expect concerning the specific questions on explanatory factors of IGA-conclusion on the one hand and parliamentary reforms on the other. However, the considerations move away from the Swiss case and are of general and abstract nature since the goal is the deduction of theoretically grounded hypotheses.

The remainder of the chapter is as follows: First, as a meta-theory and broad analytical framework (especially for the analyses on parliamentary reforms), considerations on institutions and institutional change are presented. They are further discussed against the background of applications in similar research, i.e. Europeanization serving as a reference here due to its overall similarities with the developments and effects in the specific case at hand. Second, testable hypotheses on explanatory factors of intercantonal contracting are deduced by means of a theory that aims at explaining cooperation and institutional collective action. This provides theoretical answers to the second part of research question I: *What is the state of intercantonal cooperation by means of IGAs and what explains the intensity of their use?* Third, hypotheses on explanatory factors of parliamentary reforms are derived from policy diffusion literature that enable formulating expectations towards research question II: *How do cantonal parliamentary rights of participation and scrutiny in intercantonal affairs have developed over time and what explains their development?*

### 4.1 Institutions and Institutional Change

As introduced, literature on institutions and institutional change serves as a meta-theory and broad analytical framework. It guides all following considerations. The theoretical answers to research question I are directly derived from thoughts on institutional collective action. Research question II as well directly draws on new institutionalism. It adopts the analytical frame developed hereafter and concretizes the mechanisms by means of findings from Europeanization literature and policy diffusion. Now, when approaching theories on institutions, the prominence of institutional change becomes directly obvious since it is an inherent part of the definition of institutions. The definition by North reveals this:

“Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence, they structure incentives in human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve through time and hence is the key to understanding historical change.” (North 1990: 3).

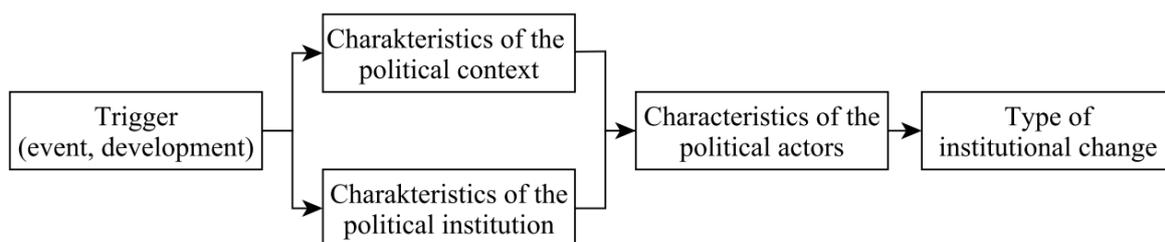
New institutionalism assumes three different modes to explain the interplay of individuals and institutions (Hall and Taylor 1996). Rational choice institutionalism is derived from the behavioral *logic of consequentiality* and argues that institutions are the product of conscious behavior by benefit maximizing and strategically acting individuals with fixed preferences (ibid.: 944–945). Following sociological institutionalists, individual behavior is subject to the *logic of appropriateness* meaning that individual actions follow cultural practices rather than pure instrumentality (ibid.: 946–950). In between the two approaches lies historical institutionalism. Here, society, individual preferences, and institutions interact. Individuals, both apply a rational calculus but are also driven by cultural and normative forces (ibid.: 937–942). The general premise is that history matters so that the present state of institutions cannot be understood without considering their shape in the past (North 1990).

Although institutional change is part of the definition of institutions, a common critic of these well-established new institutionalist approaches is their weakness to explain institutional change. Even historical institutionalism falls short of explaining the general phenomenon as it mainly accounts for stability (and path-dependency) of institutions, due to their stickiness, or abrupt institutional change, induced by shocks at critical junctures (Krasner 1988). When theorizing institutional change in general, Mahoney and Thelen (2010), first, outline four general types of it to, second, provide an explanatory approach thereof (Mahoney and Thelen 2010: 14ff.). The authors differentiate between complete *displacement of rules*, *layering* (adding) of new to existing rules, *drifts* (shifts) in rules due to new external circumstances, and new interpretation of existing rules resulting in *conversion*. Mahoney and Thelen (2010: 15) argue that “the characteristics of both the political context and the institution in question together drive [...] institutional change”. Whether actors can make their preferences count, however, depends on the structural context and institutional capacity of “how institutional arrangements create opportunities for, or place limits on, an official’s ability to translate her desire for structural change into policy” (Cortell and Peterson 1999: 190). One of the key arguments is that veto possibilities within the institutional context, i.e. the number, convergence, and internal cohesion of veto players, affect policy stability (see Tsebelis 1995, 2002).

The examination encompasses all theoretically relevant factors but one: a change trigger. Mahoney and Thelen (2010) do not display such a trigger in their theoretical model. Similarly, Streeck and Thelen are as well ‘only’ interested in “[t]ransformation without disruption” that “unfolds by and large incrementally, without dramatic disruptions like [...] wars and revolutions” (Streeck and Thelen 2005: 4). However, events triggering change are on the one hand inherent in the concept of path dependency (Collier and Collier 1991) and the sequencing of political processes (Mahoney 2000), and, thus, central in at least historically-oriented approaches on institutional change, e.g. historical institutionalism (Thelen 1999). Furthermore, various authors weaken the premise of harsh critical junctures and argue that “[e]very environmental trigger – whether a crisis or non-crisis – creates the opportunity for structural change if it discredits existing institutions or raises concerns about the adequacy of current policy-making processes” (Cortell and Peterson 1999: 185). Triggers can stem from international or domestic pressure and are of different type and scope what, at first sight, denotes certain costs and determines the elites’ autonomy to react upon it (ibid.: 185–187). Pierson (2003: 178–179) exemplifies variance in time horizons of social processes by means of ecological events: While there are such that have a short time horizon in cause and outcome, e.g. tornados, others proceed long in these respects, e.g. global warming.<sup>42</sup>

Summing up, literature on institutional change gives a broad idea of the mechanisms at hand, also when focusing on top-down influence from an upper to a lower level of government, as will be hypothesized later with respect to the influence of the NFA on cantonal political systems. While the specific explanations and the salience of each factor are contested, literature agrees that, first, a reform trigger, second, the characteristics of the institution in question and of the whole institutional context, and, third, the actors at work have to be considered when analyzing institutional change. The general explanatory model that all following analyses draw upon is displayed in figure 4.1.

Figure 4.1: Theoretical model of institutional change



Source: Mahoney and Thelen (2010: 15) with own adjustments.

<sup>42</sup> Here, the *short/short-* and *long/long-*scenarios only are discussed for illustrative purposes.

#### 4.1.1 An Application: Europeanization...

The considerations so far lay the ground and shall be extended by literature on institutional change in a specific case, i.e. Europeanization. Europeanization, not a theory in itself but a concept that heavily draws on some of the aforementioned approaches of new institutionalism (Bulmer 2007: 47), is discussed, among others, as the effect of a window of opportunity that “involves a response to the policies of the European Union (EU)” (Featherstone 2003: 3). As one of different approaches of conceptualizing Europeanization, the “adapting [of] national and sub-national systems of governance to a European political center” (Olsen 2002: 924) is the predominant notion of Europeanization within literature (Bulmer 2007: 47). There are further ambiguities. Europeanization can mean institutional but also policy adaptation (Featherstone 2003: 5–12). Furthermore, the specific factor on the central level inducing change and, thus, triggering the process of adaptation remains contested. In this vein, the argument of the most prominent approach, *goodness of fit* by Börzel and Risse (2003: 61; emphasis in original), reads as follows: “*The lower the compatibility between European and domestic processes, policies, and institutions, the higher the adaptational pressure*”. With reference to an institutional misfit, e.g. arising from the strengthening of the executive branch vis-à-vis other domestic actors by means of new European procedures, the authors argue that this trigger is less direct and change more likely to be incremental and long-term than a policy misfit (ibid.: 62–63). However, two pathways are conceptualized for both types linking adaptational pressure from a misfit with domestic change: formal institutions can empower actors with material and ideational resources and, thus, further action capacity (ibid.: 65). While the former facilitating factors are grounded in rational choice, the latter root in sociological institutionalism. However, critics say that the approach does only apply to cases with a central supranational template to which nation states shall adapt. Furthermore, it hardly explains change in case that there is *no* misfit between the supranational and the national level. Derived from various critics alike, three other mechanisms inducing change can be identified besides goodness of fit. Among others, Knill and Lehmkuhl (2002: 257–259) show that Europeanization cannot only be understood in terms of positive but also negative integration. While in case of the former new rules and templates are set up at an upper state level, i.e. in accordance with the goodness of fit-logic, in the latter domestic change is induced by nullifying existing rules in the absence of any policy template. As a third mechanism, Radaelli (2004: 12) argues that bargaining between state levels so that foreseen upper level policies can function as windows of opportunity are strategically used by actors to preempt decisions. Similar to this mechanism of anticipated reaction, political actors can induce reforms although the domestic status quo matches the EU (Radaelli 2003: 46). What links these

two observations is that upper level action, even when only appearing on the horizon, can function as a window of opportunity that is then being strategically used by the political actors involved. ‘Framing’ integration, part of the fourth mechanism of Europeanization, triggers change not via prescribed formal rules but rather beliefs and expectations (Knill and Lehmkuhl 2002: 258–259). Higher levels of government can function as platforms of discourse and/or trigger processes of learning and discourse ‘at home’ by means of soft law, i.e. altering the perception of problems and diffusing ideas and beliefs (Radaelli 2004:13).

To sum up, literature agrees that environmental pressure alone is not a sufficient condition to explain institutional and/or policy change. Cortell and Peterson (1999: 187–191) highlight policy officials as change agents – in relation to the respective trigger and their institutional position as well as their political calculations and ideology. Similarly, Börzel and Risse (2003: 63–69) conceptualize actors as mediating factors that pursue their own interests in line with the logic of consequentiality or act as norm entrepreneurs following the logic of appropriateness. Actors are, as discussed, by no means unique to goodness of fit. They are central to Radaelli’s (2003) concept of Europeanization of public policy as well. Furthermore, interest constellations in the first or second leg are a crucial feature of Europeanization by institutional compliance, by redistribution of power and resources, and by framing of beliefs and expectations as conceptualized by Knill and Lehmkuhl (2002). The institutional context is as well a rather uncontested factor when analyzing and explaining change in all approaches so that Lehmkuhl (2007: 344) reflects that “[r]eference to their importance is a common feature [...] in the general literature on Europeanization”. However, the author cautions that there are pitfalls associated with institutions, e.g. their breadth and superficiality as well as their endogenous character, and further suggests to contextualize institutions when taking them into account as independent, moderating, or mediating variables (ibid.: 342–347).

#### *4.1.2 ...and its Insights into ‘De-’ and ‘Reparliamentarization’*

As the discussion has shown, literature on Europeanization is well-advanced with respect to analyses on institutions in general. The following section argues that this holds true with respect to institutional power-relations and the phenomenon of ‘deparliamentarization’ as well. The latter is central to the subsequent empirical analyses of the Swiss subnational context as well. Note that Europeanization only serves as an example of institutional change and a specific case of deparliamentarization to trace and explain the development of the research objects at hand. Its similarities to intercantonalization, i.e. the increase in significance of intercantonal affairs

and its implications for the cantons, are striking. The following passage will unfold the parallels by bearing in mind the considerations from section 3.3.1 on cantonal parliaments in intercantonial affairs. Due to the high degree of elaboration of Europeanization, the concept is expected to be fruitful for the objectives of the following analyses as well.

The basic premise of the deparliamentarization thesis is that as a result of integration processes “power has shifted further to the executive at the expense of parliaments and that traditional mechanisms of parliamentary accountability have been weakened” (Raunio and Hix 2000: 144). As powers are continuously shifted upwards outside the domestic arena – here, to the European level –, executives, the main institution responsible for foreign policies, become more important in policy making while legislatures are more often confronted with ‘take it or leave it’-decisions on not amendable agreements. While informational advantages of governments are key to the intergovernmentalist argument of empowered executives (see Moravcsik 1998), researchers on multi-level governance argue that two-level games also constrain governments and rather provide ‘other’ actors and institutions, e.g. non-governmental organizations, with new opportunities (see Benz 2007). However, according to Raunio and Hix (2000: 147–151), modernization, e.g. the increasing use of scientific and technical expertise, as well as party government, e.g. the development of mechanisms to make state officials accountable within parties, have weakened domestic parliamentary governance. The authors show that in the case of European integration this development further weakened national legislatures due to fewer autonomy in many policy areas, the logic of intergovernmental bargaining, an increasing workload, the supremacy of international law, and constraints on own policymaking. However, at least in some cases and to some extent this further loss of power triggered parliamentary efforts to rebalance their powers in policy areas at least partially under jurisdiction of the EU (Raunio 1999, Raunio and Hix 2000; see also Maurer and Wessels 2001). Instruments of empowerment are, among others, offices in Brussels, special European Affairs Committees (EAC), and information rights. Following the loss of power in the first place, the latter development and ‘backfire’ by the legislative branches describes the process of ‘reparliamentarization’.

Now, before turning to the deduction of concrete hypotheses on research question I and research question II some remarks are necessary. First, with respect to the empirical analyses on the Swiss case and the deduction of hypotheses against the background of research question I, restrictions are given. Due to a lack of consistent longitudinal data, the first argument of deparliamentarization can only be approached for the case at hand. However, factors explaining the conclusion of IGAs from a cross-sectional perspective are a first attempt in understanding

the institution at hand. These shall be deduced by respective theory. In short, understanding the process of treaty conclusion does not clarify whether the NFA has spurred intercantonalization what would imply deparliamentarization. However, it provides important pieces of the puzzle of intergovernmental cooperation. The theoretical explanations thereof are subject to the subsequent section. The second theoretical part then takes up the premise of reparliamentarization. Central here is the deduction of factors explaining parliamentary reforms. The theoretical frame of institutional change by Streeck and Thelen (2005) and Mahoney and Thelen (2010) become directly applicable here. Hence, the hypotheses derived reflect the basic ideas of institutional change. Furthermore, the reception of more specific approaches – policy diffusion literature – allows more detailed and testable hypotheses.

#### *4.2 Deparliamentarization: Cooperation Intensity and its Drivers*

The following section aims at understanding intergovernmental treaties as their number was expected to intensify in the wake of the NFA. The intensification would indicate intercantonalization and thus deparliamentarization. Since times-series data is missing, intercantonalization and deparliamentarization themselves cannot be addressed adequately but only approached. However, understanding the conclusion of IGAs from a cross-sectional perspective is a first step towards understanding the object at hand.

Literature on the topic generally hints towards two broad sets of factors that help explain the occurrence of (general) IGR: First, not all problems are subject to IGR and not all problems that are subject to IGR are equally treated. Thus, coordination and the respective instruments might vary due to the specific problem at hand. Second, the interacting entities and the general context in which coordination takes place matter. Hence, intensity of IGR should vary within and between federations due to (subnational) entity- and federation-specific factors.

The section proceeds as follows: first, a strand of theory is summed up, that helps to detect the mechanisms underlying the two factors explaining (general) IGR, i.e. the problem and the instrument with which it is approached, as well as the features of the cooperating entities. The latter are then used to formulate concrete expectations of what explains the number of IGAs.

#### *4.2.1 Framework: Cooperation and Institutional Collective Action*

As set out in chapter one, Olson (1965) theorizes that the provision of a good by means of group action is complicated when the number of group members grows in size. Negative incentives towards free riding and defection might prevail and counter the (economically efficient) provision of a good. However, solutions for such collective action problems within a structure of (lower) level autonomy, whether due to decentralization or federalization, seem obvious, e.g. privatization of the commons through private property rights or central state regulation through a grand state solution (Hardin 1968). Olson (1965) himself argues, that coercion or exogenously imposed incentives can function as counteraction assuring the provision of the good. Ostrom (1990) then shows, that problems of common resource and free riding *can* durably be solved by self-government, depending on specific conditions that must be met, e.g. self-determined operational rules as well as systems of monitoring and sanctioning (*ibid.*: 88ff.). Based on these conditions and derived from case studies, the author proposes a model for analyzing institutional choice under common resource problems by taking specific internal and external factors into account that relate to institutional-choice situations – characteristics of the common resource problem and the collaborators (*ibid.*: 192ff.). The model is refined towards the Institutional Analysis and Development (IAD) framework that not only addresses individual behavior on common resource problems but all kinds of institutional-choice situations (Ostrom et al. 1994: 25). According to the IAD framework every action arena is determined by three exogenous variables: general rules, characteristics of the matter that is acted upon, and characteristics of the community within which interaction takes place (*ibid.*: 37ff.). The action arenas themselves are the room in which the participants interact in specific action situations and, thus, are the inner stage of analysis (*ibid.*: 29ff.). The seven internal variables determining the interaction are as follows: the participants, the positions they take, the actions they undertake, the possible outcomes, the linkages between action and outcome, informational resources and cost and benefit calculations (*ibid.*). As an example of an action situation, Ostrom (2005: 32) later considers negotiations by state executives over international agreements, a process similar to the one that is about to be analyzed later in this study.

As set forth in chapter two, fragmentation of political authority is part of the core of federalism, but it is also the source of major contestation. It means autonomy but does not rule out cooperation. The first remarks in this section now show that fragmentation of authority on the one hand and cooperation on the other are, however, theoretically unproblematic for the provision of public goods when specific conditions are met. Furthermore, the parallels to the

discussion on the NFA-measures are striking: the underlying problems of public goods provision, e.g. free riding, on the one hand and its counteractions, e.g. the federal encroachment mechanisms (coercion) and specific ‘voluntary’ means (e.g. operational rules, see IRV). Now, the Institutional Collective Action (ICA) framework, mainly developed by Feiock (2009, 2013), builds on situations as discussed – non-centralized political systems and problems of public good provision, e.g. diseconomies of scale, spillovers, and common resource coordination – and asks for mechanisms to resolve these collective action dilemmas. It is directly derived from the seminal work of Ostrom (1990, 2005).

The ICA framework describes political mechanisms that approach varying collective action dilemmas and demonstrates under which conditions institutional collective action is more and under which it is less feasible (Feiock 2013: 397–398). Mechanisms to overcome institutional collective action dilemmas can be classified due to the degree of autonomy that is kept or given away by each actor (*ibid.*: 401). The author mainly differentiates between embedded networks, agreements, and delegated authority, when analyzing the depth of integration (*ibid.*: 401–405). As a second dimension, the institutional scope displays the number of actors and functions that is present when applying a cooperation mechanism (*ibid.*: 405). It ranges from single issue and bilateral cooperation over intermediate functions and multilateral partners to multiplex issues and collaboration (*ibid.*: 404–405). Which of the nine resulting mechanisms that derive from these two dimensions fits best depends on the collaboration risk that goes in line with a specific collective action problem (*ibid.*: 406–407). Feiock states as follows:

“The preference of local actors for specific mechanisms to mitigate ICA dilemmas will depend on collaboration risk that reflects the nature of the problem, the preferences and alignments of the actors, and existing institutions that influence the transaction costs local actors face.” (*ibid.*: 406).

Collaboration risk is upstream, thus central to explaining the mere occurrence or absence of cooperation, and compiles of coordination, division, and defection risk (*ibid.*: 406–407). Coordination is crucial for the organization of a specific activity, whereas division problems deal with the fair share of gains and benefits that result from a collective action (*ibid.*). In contrast to these two, the defection risk arises from diverging interests among the collaborating partners and means that a decision of one party to defect can reduce the payoff of all other collaborators (*ibid.*: 407). To understand the magnitude of the coordination, division, and defection problem and the resulting collaboration risk, Feiock (*ibid.*: 410–415) proposes analyzing three main explanations of it: the character of the collective action dilemma to be

solved, the preferences of the potential cooperators – the elites *and* the populations –, and the overall institutional setting in which collaboration takes place.

The nature of the collective action dilemma defines the scale economies as well as the effort to solve common pool resource problems (ibid.: 410–411). To a large amount, the economic costs of the unsolved status quo as well as the potential gains from cooperation directly derive from the underlying problem. The other two variables approach differently and put the potentially cooperating jurisdictions as well as existing institutions to the center (ibid.: 412–413). Micro- as well as macro-level similarities and differences, respectively, meaning such between the potentially collaborating elites on the one side and within the communities on the other side, can explain the magnitude of the collaboration risk and, thus, the probability that collective action takes place (ibid.: 412). Furthermore, the overall structural context is decisive for realizing cooperation among jurisdictions (ibid.: 412–414). Political superstructures, e.g. the degree of centralization or the existence of mediating and brokering institutions, can strengthen or weaken incentives for collective action.

Finally, expected gains need to exceed the transaction costs of cooperation that directly derive from the mechanism to resolve a collective action dilemma. Steinacker (2010: 52) states that “[t]he necessary condition for any cooperative agreement is an increase in total benefits available to all participants”. Thereby, the literature differentiates between four types of costs that are raised by the cooperation mechanisms: information and coordination costs, negotiation and division costs, monitoring and enforcement costs, and agency costs (Feiock 2007, Steinacker 2010). The mechanism to be chosen – formal or informal, non-binding or binding, and so forth – is thereby a product of the degree of collaboration risk that shall be reduced, and the gains expected from its application.

So far, it has been shown that collective action problems are subject to institutional collective action. Here, collaboration risk – e.g. coordination problems, division discord, and defection risk – is crucial to determine whether institutional collective action is more or whether it is less feasible. When realized, it derives a specific mechanism applied to a specific collective action problem under a specific actor constellation. This process is defined by information gathering, negotiation and enforcement, which make up the overall transaction costs that need to be lower than the expected gains from collective action. Thus, approaching collaboration risk, standing at the beginning of every coordination, is key to understand and explain the intensity of IGA-conclusion. The first source of collaboration risk, i.e. the type of ICA dilemma, which is to be resolved, is taken as given: lack of coordination, diseconomies of scale, common pool resource

problems (non-excludability) or negative externalities (Feiock 2013: 410–412). However, theory further proposes actors' preferences and political institutions as a second and third set of sources of collaboration risk (ibid.: 412–415). Preference distributions between the elites as well as between the underlying citizens within and across entities can promote or hinder collaboration. Simultaneously, existing institutions – external rules, political structural variables, and mitigation systems – can encourage or discourage cooperation.

In the following section, general propositions and concrete hypotheses are deduced that base on the assumptions of the ICA framework in general and the source of collaboration risk in particular. After elaborating the general propositions, specific hypotheses are derived in three steps: The first part stresses the notion of preference distributions within and the second such across entities. The third part deals with the impact of super-structures on intergovernmental contracting. To recall, the goal is to come up with testable hypotheses and expectations towards factors explaining the conclusion of intercantonal agreements. While these are clearly grounded in abstract thoughts, they shall inform about factors and conditions under which intercantonal cooperation can be expected. Again, this does not approach intercantonalization and deparliamentarization but provides important theoretical and, later, analytical insights into the rationality and logic of intercantonal cooperation.

#### *4.2.2 Homophily and Preference Similarity*

“Similarity breeds connection” (McPherson et al. 2001: 415) – with this summary phrase McPherson et al. begin their study on homogeneity of social networks. They describe their central research object as follows: “Homophily is the principle that a contact between similar people occurs at a higher rate than among dissimilar people” (ibid.: 416). The authors take an investigation of Lazarsfeld and Merton (1978) on the processes of friendship formation as their point of departure. The latter analyze whether people “tend to *over-select* similars as friends and, at the extreme, to confine their friendships to individuals of like kind” (ibid.: 27; emphasis in original), or, whether heterophily – differences among friends – prevails and explains friendship. Homophily can be categorized into similarity of status – group-affiliations and societal positions – and similarity of values (ibid.: 24). The authors analyze value homophily in depth and show, that friendship is more frequent among people sharing the same values (ibid.: 24–28) and is more persistent over time given these similarities (ibid.: 28ff.). McPherson et al. (2001: 419ff.) further distinguish between baseline and inbreeding homophily; the former signifying static demographical characteristics while the latter describes developing traits

induced by various dimensions. The following characteristics account for status homophily, among others: ethnicity, sex, age, religion, education, occupation, and social class (ibid.: 420–428). Value homophily is composed of attitudes, traits, and beliefs (ibid.: 428–429). These theoretical considerations are reflected in the proposed framework above. With respect to preferences of elites, Feiock (2013: 415) states: “Similarity in preferences in public goods provides information and signals common interests that minimize external decision cost of acceptance of collective choices contrary to internal preferences.” The author lists homophily of the economical, demographical, and ideological profiles of the potentially collaborating elites as decisive factors (ibid.). The same holds true for similarities among the underlying communities.

Zipf (1949) explains the deeper mechanisms behind homophily with the *principle of least effort* guiding human behavior, more precisely “the principle of the *least average rate of probable work*” (ibid.: 6; emphasis in original). The theoretical and empirical findings of Zipf are as well in line with the proposed ICA framework of Feiock (2009, 2013) also pointing towards cost-benefit calculations when explaining cooperation. This is in accordance with empirical tests of the collaboration literature. For example, Minkoff (2013: 272) takes up the ICA framework and introduces his theoretical thoughts on cooperation and transaction costs as follows: “As costs go up and down the interest governments will have in cooperation and their ability to formalize it will fluctuate.” In this vein, it is suggested here that cooperation between the cantons is more frequent among entities that are alike, implying a lower collaboration risk and, thus, lower transaction costs.

*General proposition 1:* The higher the degree of homophily among two cantons, the more frequent they enter into mutual agreements.

Another similar assumption is added. Internal factors of a collaborating unit influence the likelihood that the unit enters into an agreement. The ICA framework reasons as follows: “It is easier for local officials to speak for the jurisdiction in bargaining and negotiating with other organizations and governments when they represent more homogeneous communities” (Feiock 2013: 412). The framework applied argues that agency costs and costs of preference aggregation are positively related to the degree of heterogeneity of a group that finally hinders collaboration (ibid.: 415). Basically, agency costs arise in an agency relationship that is defined as a “contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making [*sic!*] authority to the agent” (Jensen and Meckling 1976: 308). Agency costs encompass costs

of monitoring and bonding as well as residual losses resulting from divergences between an agents' actions and those that would maximize the principals' welfare (ibid.). At the same time, as the definition of an agency relationship reveals, the number of principals can be greater than one, meaning the principal might not be one single and homogeneous actor but can rather consist of various heterogeneous and diversely interested actors. Preference aggregation, also among rational and utility maximizing individuals, can thereby lead to an ambiguous and not transitive preference ordering due to the varying preference orderings of the single individuals (Shepsle and Bonchek 1997: 49ff.). This is the theoretical reasoning for the second proposition:

*General proposition 2:* The higher the degree of homogeneity within a canton, the more frequent it enters into IGAs.

The discussion revealed that cooperation is understood as a multi-stage process. Not only relational factors of the two (potentially) cooperating entities are relevant. Also, an internal preference aggregation and, thus, entity specific factors determine the readiness of cooperation. Consequently, the following question will guide the deduction of testable hypotheses hereafter: What are the concrete factors explaining the number of IGAs per entity and per dyad?

#### *4.2.2.1 Preferences across Elites and Communities*

Feiock (2013: 412, 415) argues, that similarity in the profiles of the political elites as well as the profiles of the respective community further cooperation because they indicate common or homogeneous interests in the provision of public goods. Hence, the following hypotheses on cooperation from a dyadic perspective directly ground in the premise of McPherson et al. (2001: 415) that “[s]imilarity breeds connection”. As theoretically deduced, economic, demographic, and ideological similarities between the political elites, meaning, across units, facilitate negotiations because external decision costs are reduced, and homogeneity within units make the aggregation of preferences easier and, consequently, less costly (Feiock (2013)). So, the argumentation of the previous section concerning a single unit is now assigned to the relationship among units.

Research on the topic shows, that, regarding value homophily, political preferences are strongly correlated with friendship among individuals. By using U.S. survey data, Verbrugge (1977, 1983) demonstrates that the chances of having a first-choice friend with the same political party affiliation are around five times higher than having a best friend with a deviant party association. These effects can be replicated by use of survey data conducted in Germany (ibid.).

Similarly, Knoke (1990) shows that social and discussion networks of individuals possess a high degree of value homophily. Party preferences within these networks are strongly homogeneous, meaning that party preference of an individual is most likely conform to his partisan environment (ibid.). Going one step further, Gerber et al. (2013) analyze the effect of the ideological similarity of communities on contracting activity of their respective political elite. They conclude: the smaller the political distance between two communities, measured by the difference of party registrations, the greater the amount of agreements that are concluded by the elites (ibid.). Minkoff (2013) uses a similar approach, but in his analysis partisan differences among communities do not play a decisive role in determining interlocal cooperation. He argues that the scarce insignificance, although the coefficient is pointing to the proposed direction, is due to the low degree of partisan polarization in parts of the analyzed units (ibid.: 286). For intercantonal cooperation as of 2005, Bochsler (2009: 362) comes to a similar result: “[C]antons with similarly composed governments co-operate slightly more easily, while cantons with opposed governments co-operate less often, but partisan differences are clearly not a general or major obstacle to co-operation.”

*Hypothesis 1.1:* The higher the degree of homophily across political elites of two cantons, the more frequent they cooperate in intercantonal agreements.

Next to political ideological similarities, Feiock (2013: 412, 415) argues that social, demographic, economic, and structural factors across units determine the collaboration risk and, thus, the transaction costs of cooperation. Here too, similarity breeds awareness about information, division and defection costs that make up the overall costs of transaction. Despite the reasonable argumentation, the empirical results are rather mixed. Minkoff (2013), Gerber et al. (2013), and, to some extent, Feiock et al. (2012) can demonstrate that similar wealth – median household income – furthers collective action. The effect of another socioeconomic variable – ethnicity and the differences in the ethnic compilation of two entities, respectively – is not clear cut. However, most of the studies that explain dyadic cooperation demonstrate that more ethnical similar communities are more likely to agree on joint action (Minkoff 2013, Gerber et al. 2013). In this vein, a common language possesses a high degree of explanatory power with respect to intercantonal cooperation (Bochsler 2009). Furthermore, Feiock et al. (2012: 563, 566) argue that population similarity is negatively correlated with cooperation and explain this by approaches of resource dependence that assume actors to profit from uneven partnerships due to provision of complementary information and resources. Minkoff (2013) and Gerber et al. (2013) do not find an effect of this kind. However, Feiock et al. (2012) can show that appointed as well as elected officials responsible for economic development in an US-

American metropolitan area are more likely to cooperate when their respective partner deviates in terms of population size. For intercantonal cooperation as of 2005, Bochsler (2009: 354) plausibly argues that Swiss cantons should be particularly confronted with problems emanating from their small-scale structure while the complexity and quality of public good provision is steadily increasing. However, the analysis reveals, that it is rather the more populated entities that cooperate with each other in general and in costly policy fields like education, science and culture as well as health services and social security in particular (ibid.: 361). Due to the rather scarce state of research on dyadic cooperation and the fact that other more promising explanations will be presented, a general thesis is brought forth here.

*Hypothesis 1.2:* The higher the degree of homophily across the communities underlying the collaborating elites, the greater the number of contractual ties.

McPherson et al. (2001: 431) list family ties as a source of homophily. Simultaneously, the basic structural and physical variable explaining homophily is geography (ibid.: 429). Zipf (1949), by applying the principle of least effort, shows that geographical proximity spurs interaction. The author demonstrates data on the interplay of several indicators pointing towards this effect of localization: The larger the distance between two populations, the smaller the number of shared news items, due to differences in the ascribed value of the single news (ibid.: 387–388); the larger the distance between two communities, the smaller the amount of goods that are interchanged by railway (ibid.: 393–394); the shorter the distance, the higher the number of passengers travelling by airway between two communities (ibid.: 397); or, the closer two cities, the more telephone messages are interchanged (ibid.: 398–400). The connection is hardly doubted within research on cooperation and collective action. Bochsler (2009: 361) shows that the amount of intercantonal contracting decreases with growing distance among two cantons and is significantly higher given two cantons share a common border compared to the absence of a joint demarcation line. It is expected that the positive link between geographical proximity and contractual intensity holds true for the most recent time.

*Hypothesis 1.3:* The higher the geographic proximity between two cantons, the higher the number of joint intercantonal agreements.

In addition to geography, McPherson et al. (2001: 431ff.) discuss the strength of organizational foci – e.g. schools, workplaces, voluntary groups – as sources of homophily and, thus, cooperation. Similar but differently framed reads the observation of Feiock (2013: 412–414, 415). He argues that existing institutions can influence cooperation, among others, in the form of integration mechanisms and network brokers that can facilitate intergovernmental

contracting by reducing transaction costs (ibid.). The reasoning behind this is the effect of repeated action situations providing opportunities to monitor and sanction the counterpart and, thus, making cooperation a beneficial strategy for all (Ostrom 2005: 53–55). In preparation of analyzing the role of organized networks on the amount of cooperation, LeRoux et al. (2010: 269) summarize several theoretical strands as follows: “Social Networks help to establish trust, create norms of reciprocity, and reduce transaction costs, thereby increasing the likelihood that local government officials will engage in service cooperation.” Their investigation reveals a positive link between the activity of an actor within regional associations, e.g. Councils of Government, and the extent of interlocal service cooperation of that actor (ibid.). It is expected that the mitigating function of conferences within the Swiss context to be extraordinary strong due to their high degree of institutionalization and their strong linkages among each other (Bolloyer 2009). Thus, the last hypothesis on empirically explaining dyadic intercantonal cooperation directly builds on the examination of section 3.2 on (regional generalist) IGCs.

*Hypothesis 1.4:* Common membership in regional conferences enhances intercantonal cooperation, while its absence hampers it.

It must be noted that the factors are by no means unique to the specific theoretical framework(s). Rather, they are well established in literature on federalism and IGR. Poirier and Saunders (2015b: 443ff.), for example, highlight that cooperation between entities in a federal system depend on the general context – e.g. geographic factors, wealth and the economy as well as the historic track – or the federal design – e.g. the distribution of competences and resources and the number of constituent units. Besides, the authors put a special emphasis on cross-border or regional cooperation (ibid.: 461) (see e.g. Hueglin and Fenna [2015: 239] and Phillimore [2013: 231] for broad summaries). Most interestingly, one of the leading federalism scholars, Duchacek (1982: 137), puts regional cooperation to the center as well when discussing cooperation and its determinants: “The line between regional and functional organizations is often blurred. Geographic proximity may encourage a common approach to a cluster of functional or technical issues.”

#### *4.2.2.2 Preferences within Elites and Communities*

The ICA framework assumes that collaboration is positively linked to the degree of economic, demographic, and ideological homogeneity within a jurisdiction (Feiock 2013: 412, 415). While this points towards community factors only – they will be discussed subsequently –

another sphere shall be added that might be decisive before intergovernmental agreements can be realized: the political branch. A well-known approach of Political Science that can be drawn upon is the veto players theory developed by Tsebelis (1995, 2002). The approach aims at explaining policy stability (ibid. 1995: 292ff.) by putting veto players – actors whose agreement is necessary for a policy change – within different institutional settings to its center (ibid.: 301ff.). Institutional veto players, one of two types of veto players, are constitutionally entrenched (ibid.: 302). The author argues that the number of veto players (ibid.: 297, 305–308), their congruence (ibid.: 298, 308–311) and their internal cohesion (ibid.: 301, 311–313) determine the degree of policy stability. Being aware of the pitfalls that go in line with applying the veto players theory (Ganghof 2003), its basic assumption and parts of the theory in combination with the ICA framework is made use of hereafter.

Now, with reference to the concrete case at hand, the literature on intercantonal cooperation stresses the tensions that arise from this institution due to its executively driven nature (e.g. Abderhalden 1999, Möckli 1999). This phenomenon was set into context by means of deparliamentarization in section 4.1.2. Now, it is argued that a parliament's power influences the frequency of executively driven intercantonal contracting. It is assumed that an executive branch faces less obstacles to conclude intercantonal agreements when being complemented by a weak legislative branch compared to a situation given a strong parliament. The literature confirms that the cantons vary concerning the power balance between government and parliament in general (Kaiss 2010, Wirz 2018).

*Hypothesis 2.1:* The higher the degree of political-institutional power asymmetry in favor of the executive, the more frequent a canton enters intercantonal agreements.

While institutional veto players have their origin in the constitution, partisan veto players emerge within the political institutions and depend on majorities within other institutions (Tsebelis 1995: 302). It is generally reasoned that “the agreement of partisan veto players [on behalf of policy change] is, *strictly speaking*, neither necessary nor sufficient” (ibid.; emphasis in original). Partisan veto players might dominate within institutions while policy change depends on agreement among these institutions. However, and as already pointed out, the author proposes that policy change is less likely when the number of, the differences between, and the internal variation of the veto players increase (ibid.: 293ff.). One can as well argue with the ICA framework that preference aggregation is costlier and, thus, more difficult the more heterogeneous the central party-political actors are.

*Hypothesis 2.2:* The lower the number of partisan veto players within a canton, the more frequent it enters intercantonal agreements.

Turning to further variables that can influence the frequency of cooperation, first, structural factors need to be taken into consideration. In their early analysis on intergovernmental cooperation, Campbell and Glynn (1990) demonstrate that population size positively affects the intensity of intergovernmental cooperation. This finding is confirmed in more recent studies in the U.S. (e.g. Kwon et al. 2014) but also the Swiss context (Bochsler 2009). LeRoux and Carr (2007) show that structural variables even play *the* major role in explaining cooperation, whereby population size is the factor with the most consistent influence within this block. In a similar vein, Campbell and Glynn (1990) further show, that the degree of urbanization spurs intergovernmental cooperation. However, this finding depends on the level of analysis. While the reported effect relates to the county level, the authors' model falls short of explaining intergovernmental cooperation of cities. On the other hand, Kwon et al. (2014) do not detect such an effect that derives from urban, central in comparison to rural, peripheral areas. Mixed or even contrary results are not surprising. Other studies confirm that there is an effect based on structural variables like population density or population change, while population size does not play a role (e.g. Kwon and Feiock 2010). Additionally, the direction of the effects varies from previous cited studies, what shows that structural factors can have an influence, but a clear pattern is missing. Following Carr et al. (2009), a city's population as well as its growth are positively related to service production within an entity over its provision by another government. A positive effect of population size on internal service provision stands in contrast to the theoretical argument that predicts higher costs of preference aggregation being the result of greater population size leading to a lower magnitude of contracting.

Next, entities that have better economic records might be less reliant on other units in providing goods and services. While high median household income drives cooperation (Kwon and Feiock 2010, LeRoux and Carr 2007), the fiscal capacity of an entity, measured by the percentage of own source revenue, mitigates it (Kwon and Feiock 2010, Kwon et al. 2014). LeRoux and Pandey (2011) similarly show that change in per capita tax revenue positively relates to cooperation activity. The findings are mixed and leave leeway for expectations. However, the analysis here follows LeRoux and Carr (2007: 347) that plausibly argue as follows: “[...] [W]ealthier jurisdictions may be less likely to cooperate because they can meet current service demands through own-source revenues and can easily finance desired service enhancements through their own resources”.

Regarding demographic factors, the ethnical composition of an entity is relevant with respect to a community's homogeneity. The general theoretical argument suits well, so that Kwon and Feiock apply the ICA framework as follows:

“Homogeneity in city demographics can reduce agency costs when government officials negotiate interlocal agreements on behalf of citizens. Similarity among constituents provides greater certainty of the principal's desired outcome, making the agent's task easier.” (Kwon and Feiock 2010: 878)

Research partly confirms this hypothesis, so that some studies detect a positive effect of ethnical homogeneity on cooperation (Kwon and Feiock 2010, Kwon et al. 2014), while others provide mixed (LeRoux and Carr 2007) or no findings in this respect (LeRoux et al. 2010). However, the variable could be of high interest for the analysis of the Swiss cantons, because ethnic diversity, or more precisely, multilingualism, is a key feature of Swiss politics on the federal but also on the cantonal level, depending on the respective canton under conduct.

In sum, next to potential political determinants, structural, economical, and demographical variables can influence the frequency of contracting. Accordingly, the following three additional hypotheses are proposed:

*Hypothesis 2.3:* The larger the population size of a canton, the more frequent it enters intercantonal agreements.

*Hypothesis 2.4:* The higher the economic capacity of a canton, the less frequent it enters intercantonal agreements.

*Hypothesis 2.5:* The higher the degree of ethnical homogeneity within a canton, the more frequent it enters intercantonal agreements.

### *4.3 Reparlamentarization: Institutional Reforms in Response to IGR*

The previous section aimed at understanding the rationality behind IGA-conclusion. Unfortunately, time-series data on its intensity is missing in the case at hand. However, understanding it from a cross-sectional perspective shall mark a first step to approach intercantonalization and deparliamentarization. To further follow the considerations in 4.1.2 it shall now be clarified what explains reparlamentarization. The overall explanatory model that will be deduced directly reflects the basic assumption from literature on institutional change as presented in 4.1 in order to explain parliamentary reforms in the cantons. The basic theoretical

assumptions of the subsequent section are thus in accordance with the proposed meta-theory explaining change by means of a change trigger, the institution under review, and the actors within the political arena. However, it is enriched by more fine-grained approaches that shall help understanding the mechanisms in detail: First, policy diffusion literature is used since it is especially fruitful for the analyses of subnational entities in federal states and provides valuable insights into how the NFA as a top-down mechanism could have triggered institutional change in the cantons. Second, a general proposition on this effect will be deduced that is followed by concrete hypotheses, also with respect to factors that condition the uniform reform trigger.

### *4.3.1 Policy Diffusion and Federalism*

A strand of analyses on federalism that has had a major impact on Political Science in general by transcending this specific field of research is policy diffusion. Originally, it is based on an analysis of “[s]tate [l]ottery [a]doptions as [p]olicy [i]nnovations” by Berry and Berry (1990). In search of “causes [for] a government to adopt a new program or policy” (ibid.: 395) the authors take a subnational unit’s internal *and* external explanatory factors into account. By conducting an event history analysis (EHA), the findings indicate that electoral cycles, party dominance, real per capita income, fiscal state capacity, and the religiosity of a states’ population matter *but also* the behavior of neighboring states. Berry and Berry conclude as follows:

“There is evidence for both the internal determinants and regional diffusion models of state innovation, as both (1) internal political and economic characteristics of a state and (2) the number of previously adopting neighboring states are found to influence the probability of a lottery adoption.” (Berry and Berry 1990: 410).

The study has at least three mayor implications: First, it gives reason to the hypothesis that subnational entities function as policy laboratories in a federal context (e.g. Walker 1969). Second, and more importantly, it demonstrates that both internal and external factors *in interaction* are relevant to understand policy change: Regional diffusion does not uniformly alter the probability of adopting a state lottery; the effect is rather conditioned by domestic state characteristics (Berry and Berry 1990: 408–409). Thus, the focus of policy diffusion models shall not only lie “on the influence of an external source of pressure or ideas” (Dobbin et al. 2007: 457) – e.g. by means of conditionality, leadership, hegemonic ideas –, they have to account for internal determinants of change as well. Berry and Berry (2007: 237–240) further

propose a “unified model of state government innovation” taking up not only external but also internal explanatory factors. In reviewing the literature on the latter, they highlight the motivation of public officials, their resources, and the absence or presence of other policies affecting the adoption or rejection of the innovation at stake (ibid.). To pose an example: While the positive effect of neighbors on lottery adoption is small for a state with moderate fiscal capacity in a postelection year, it is more pronounced in that very state in an election year, and becomes strongest given the state is fiscally poor and holds elections in the very same year. Third, and more generally, the study lays the ground for numerous analyses of policy diffusion. Thus, federalism and policy diffusion literature overlap (at least) in this respect and are mutually informative. Due to the fact that the latter, policy diffusion, can apply to any circumstances while the former, federalism, prescribes a certain territorial distribution of power, hereafter, the general implications of policy diffusion literature are examined, before the processes within federal states are discussed in depth.

Building on Berry and Berry (1990), among others, Dobbin et al. (2007) argue that the crucial distinction between policy diffusion and conventional policy approaches is, that the former account for interdependence among political units, while the latter explains policy choices from a mere domestic perspective. Hence, this second part derives from a similar analytical perspective as the considerations on intergovernmental contracting above. Interdependence (Gilardi 2012b) is thus the main explanation of policy diffusion: “Policy diffusion can be defined as the process whereby policy choices in one unit are influenced by policy choices in other units” (Maggetti and Gilardi 2016: 89). This theory thus acknowledges ‘Galton’s Problem’ and puts its assumption, i.e. the lack of independence, to its center (Braun and Gilardi 2006, Gilardi 2012b). Speaking in methodological terms, Przeworski and Teune (1970: 52) describe the phenomenon as follows: “If the similarity within a group of systems is a result of diffusion, there is only one independent observation, and the degrees of freedom is zero.” Before examining the main mechanisms of policy diffusion an ambiguity must be resolved: According to Gilardi (2012a) studies in this field do not exclusively draw on policies but also political institutions, among others. This is important for the purpose of the following analyses as they deal with varying sorts of political phenomena that are by no means limited to public policies.

While various conceptualizations exist on how to approach policy diffusion, e.g. *hierarchical diffusion* between early modernizing and later imitating states and *spatial diffusion* between proximate states (see e.g. Braun et al. 2007 for an overview); in recent literature, four mechanisms prevail. The first, *learning*, describes the “process whereby policy makers use the

experience of other countries to estimate the likely consequences of policy change” (Gilardi 2012a: 463). Gilardi (ibid.: 464) argues that political actors make use of a variety of information when deciding on policy change, e.g. knowledge by experts, i.e. practitioners and scientists, but also experiences made in other countries. According to Meseguer (2009: 45–47) this ‘updating process’ can base on, first, own, second, regional, and, third, worldwide experiences. Thereby, policy makers draw valuable information from looking ‘back’ or ‘abroad’ while information processing might be rational founded on ‘the laws of statistics’ or bounded using heuristics (Gilardi 2012a: 464). Since learning based on own experiences is not further elaborated in policy diffusion literature, learning from others, regionally proximate or globally scattered countries, is central here. Among various studies on the topic, Gilardi et al. (2009) show that policy makers react to dysfunctional policies ‘at home’ and derive their policy decisions, among others, from elaborated experiences made in other entities. This means that they do not directly take over these policies but with a substantial time lag. Furthermore, Gilardi (2010) shows that the mechanism is conditioned on a variety of factors, here, partisanship and prior experiences but also the success of such reforms and its electoral consequences ‘abroad’ in combination with partisan ideology (ibid.: 656–660). Interestingly, Shipan and Volden (2012: 790) argue that learning is crucially supported by intergovernmental institutions that function as ‘clearinghouses of information’. They back their observation on the seminal work of Füglistler (2012a, 2012b) showing that successful policies and best practices “do not just spread; rather, they need to be channeled [...] [e.g. by] [i]nstitutionalised intergovernmental cooperation or networks [that] are possible channels for policy diffusion and policy learning.” (ibid. 2012b: 337).

The second mechanism is *emulation*, i.e. “the process whereby policies diffuse because of their normative and socially constructed properties instead of their objective characteristics” (Gilardi 2012a: 466). Examples of diffused policies in the realm of ‘constructivism’ are among others educational reforms (mass schooling) or the spread of human rights treaties in the aftermath of World War II (Dobbin et al. 2007: 451–452). Decision-making here is led by the logic of appropriateness, already discussed against the background of sociological institutionalism, and not by consequentiality, e.g. the basis of rational choice institutionalism, central to the learning-mechanism (Gilardi: 2012a: 466). Since this is key to explaining *why* policies diffuse, Dobbin et al. (2007: 452–453) name three (familiar) ways of describing *how* social acceptance is constructed: by following a leading country (role model), by trust in epistemic communities, by perceived similarities and linkages between countries.

When changing policies in the wake of *competition*, “policy makers anticipate or react to the behavior of other countries in order to attract or retain economic resources.” (Gilardi 2012a: 462). The argument grounds in the *Tiebout model* according to which public goods provision is driven by ‘voting by feet’ and interjurisdictional competition for mobile households (Tiebout 1956). As well as the aforementioned mechanism, competition describes horizontal diffusion but rather depicts similarities to learning than emulation since it is as well driven by incentives. However, in analyzing tax competition among the Swiss cantons, Gilardi and Wasserfallen (2016) show how *both* mechanisms, either the one or the other, shape policy choices. While the rates of personal income taxes are generally explained by competition of political entities that are geographically proximate, this effect is conditioned on membership in regional IGCs attenuating tax competition. The authors summarize as follows: “We see that competitive interdependence is stronger when cantonal officials do not interact on a regular basis, which limits the possibilities of social influence and the development and enforcement of norms on the appropriateness of different competition practices.” (ibid.: 57).

Lastly, *coercion* describes that higher levels or more powerful entities “can pressure states to adopt certain policies” (Gilardi 2012a). Due to its involuntary character, it often does not account as a diffusion mechanism. Maggetti and Gilardi (2016: 90) argue that, here, “central actors are coordinating the spread of a policy” what diffusion does not imply. However, coercion is part of most recent publications of leading scholars on the topic (e.g. Gilardi and Wasserfallen 2019, Gilardi et al. 2019). Dobbin et al. (2007: 454–457) summarizes three modes by which coercion can be exercised: Conditionality, i.e. “requirements for aid, loans, or other considerations” (ibid.: 455), policy leadership, i.e. direct “imposition” (Braun and Gilardi 2006: 309), or indirect “go-it-alone power” (e.g. Gruber 2000: 38–40), and hegemonic ideas similar to the already received constructivism (see brief discussion on emulation above). While policy change can stem from changing incentives *or* ideas, more importantly, coercion works through “influence of an external source of pressure or ideas” (Dobbin et al. 2007: 457).

Reviewing the diffusion mechanisms from a theoretical and empirical perspective makes clear that diffusion hardly operates directly. Rather, whether the mechanisms have an effect or not depends on further factors to be present or absent. According to Shipan and Volden (2012: 792), “[j]ust as the political environment and policy maker capacity help determine how and why policies diffuse, so, too, does the policy context and the nature of the policies themselves.” The authors emphasize that policy diffusion is subject to various conditions and factors of the general and specific context, the institutions’ and actors’ characteristics directly operating and deciding, and the subject matters’ characteristics. This conforms to the broad theoretical frame

set forth at the beginning of this chapter with respect to theories on institutions and institutional change. As a last remark, in an earlier study by Shipan and Volden (2008: 851–852), the two authors further showed that all mechanisms examined above should be analyzed in a setting that differentiates between different points in time. Thus, while some diffusion effects are rather immediate and short-lived, i.e. imitation, others are more enduring and relevant not only at time  $t$  but also at  $t+1$ , i.e. learning, competition, and coercion (ibid.).

### *4.3.2 Top-Down Federalism*

According to the review above, multilateral interdependencies in policy formulation and adoption are highly relevant in federal contexts. Such interdependencies include (vertical) coercion as one potential diffusion mechanism. The mechanism shall be described more closely in the light of federalism literature since an effect related to vertical coercive policy diffusion is part of the argument of this study, i.e. in shape of an effect of the NFA on the political systems of the cantons.

Now, while Berry and Berry's (1990) investigation into "[s]tate [l]ottery [a]doptions as [p]olicy [i]nnovations" accounts as the landmark study in policy diffusion research, similar approaches had already been brought forth at its time of publication. Maybe the earliest effort here is Walker's (1969) study on diffusion among the American states by comparing their behavior given 88 policy programs. The author is interested in whether and at what point in time a state adopts a certain policy and compares enactments by states relative to the others. While his *innovation scores* show mixed findings – i.e. accelerated harmonization, partly cutting across regional borders, partly remaining within regional clusters –, subsequent studies point out various weaknesses of the analysis. For example, Gray (1973) argues that it does not adequately separate between policies and policy areas, respectively, as well as neglecting the differences between horizontally and vertically diffusing policies.

The latter disaggregation was already discussed and reflected by some of the four diffusion mechanisms of current research. However, its early detection in federalism literature or, at least, research on subnational entities within a federal state underlines its importance. Here, especially the early emphasis on vertical, top-down diffusion of policies stands out. Against the background of social security policies, Gray (1973) cautions to differentiate between diffusion among states on the one hand and such that involve the federal government as well on the other. The author shows descriptively that federally incentivized policies spread faster and more

abrupt than horizontally diffusing state policies; the latter rather follow an ‘S’-shaped growth curve (ibid.). Welch and Thompson (1980), in direct reaction, argue that “[n]either Walker nor Gray, however, deal systematically with the federal government and its potentially powerful effect on the rates of state policy innovation and diffusion.” (Welch and Thompson 1980: 715). First, the authors show that fiscally incentivized policies by the federal government, mainly by means of grants-in-aid, diffuse faster than so-called state preserve policies (ibid.: 723ff.). Second, and by disaggregating the effects, they demonstrate that it is especially the ‘carrot’ – i.e. positive fiscal incentives like granting money for state implementation – and less the ‘stick’ – i.e. negative fiscal incentives like cutbacks of existing funds – driving the relatively higher speed of top-down diffusion, that nevertheless takes years to decades (ibid.):

“In sum, incentives provided by the federal government do stimulate the diffusion of policies through the states. Incentives of direct fiscal aid are more effective than indirect incentives in stimulating rapid early diffusion, but both types of federal incentives are about equal in promoting diffusion through all states.” (Welch and Thompson 1980: 727).

This brief discussion on these three prominent, early studies of the field shows that vertical interactions generally and top-down influence specifically is not new in research on policy diffusion on the one hand and federalism literature on the other. Not surprisingly, research has concretized the effect since. While it seems uncontested that the federal level can influence policymaking of the constituent units (under certain circumstances), Bednar (2011) provides further theory in this respect. According to the author, there exist four ways for the federal government to “[n]udging [c]ostly [e]xperimentation” (ibid.: 511) or, more generally, to make a subnational entity consider policies that it otherwise, i.e. without interference, would not. The rationality is that the respective policy enhances common welfare by positive externalities while costs outweigh benefits for the policy providing entity. Next to fiscally incentivizing subnational action, e.g. by block grants (ibid.: 511–512), “the federal government has the power to *nudge* state policy by making one policy more salient than another” (ibid.: 512; emphasis in original). This surely constitutes a rather soft method, but, nevertheless, it puts pressure on subnational policy makers. Karch (2012), for example, illustrates the empirical relevance of the mechanism. The author aims at explaining the timing of state policymaking on embryonic stem cell research as a function of the national government’s and, thus, the public’s attention to the topic. Interestingly, it is argued that the national government acts as an agenda-setter by means of the president’s national address as well as the national parliament’s drafting of a respective bill and the presidential veto against it (ibid.: 50–52). The analysis indeed reveals that these national measures have an impact on subnational policymaking (ibid.: 52ff.). However, while

national interventions spur subnational action, i.e. the timing of bill introduction and the degree of pressure put on subnational agendas, it does not bring a particular bill to success (ibid.: 55–57).

Next to incentivizing or nudging constituent units, national policymakers can use preemptive powers to set baselines or minimal standards that every entity must adhere (Bednar 2011: 513). Classic examples here are welfare state policies, environmental regulations or tax rates and bases, all potentially incentivizing a race-to-the-bottom, when there are no common rules and minimal criteria. Bednar (ibid.: 513) argues that compliance is mandatory so that “states do not have a choice about following the federal government’s base policy. But it may open an opportunity for states to experiment when otherwise the systemic forces would make it prohibitively costly.” In any case, it touches upon the power relations between levels of governments, since “[p]reemption [is] the constitutionally granted power of the federal government to limit state and local governing authority in a particular policy area” (SoRelle and Walker 2016: 488).

Lastly, parties can enable policy decisions that lead to costly experimentation for that very entity while enhancing general welfare of the federal state (Bednar 2011: 513–514). Coupled and integrated party systems and parties (Filippov et al. 2004) may further “long-term interests rather than short-term whims” (Bednar 2011: 514) so that party-based reward systems are another channel of federal nudging of subnational policymakers.

To sum up the discussion, “[d]iffusion is the process by which an innovation is communicated through certain channels over time among the members of a social system.” (Rogers 1983: 5; emphasis in original). It thus involves communication of new ideas, uncertainty about alternatives, information reducing this uncertainty, and social change as consequence of invention, diffusion, and adoption or rejection of these new ideas (ibid.: 5–7). The diffusion process in detail takes many shapes with the *vertical influence model* (Berry and Berry 2007: 231) being one among various describing the direction and exact diffusion mechanism; may the latter be learning, emulation, competition, or coercion. The general proposition concerning the empirical analyses on the effect of the NFA on cantonal political systems goes as follows:

*General proposition 3:* Vertical pressure from the federal level explains the adoption of structural reforms within the cantons.

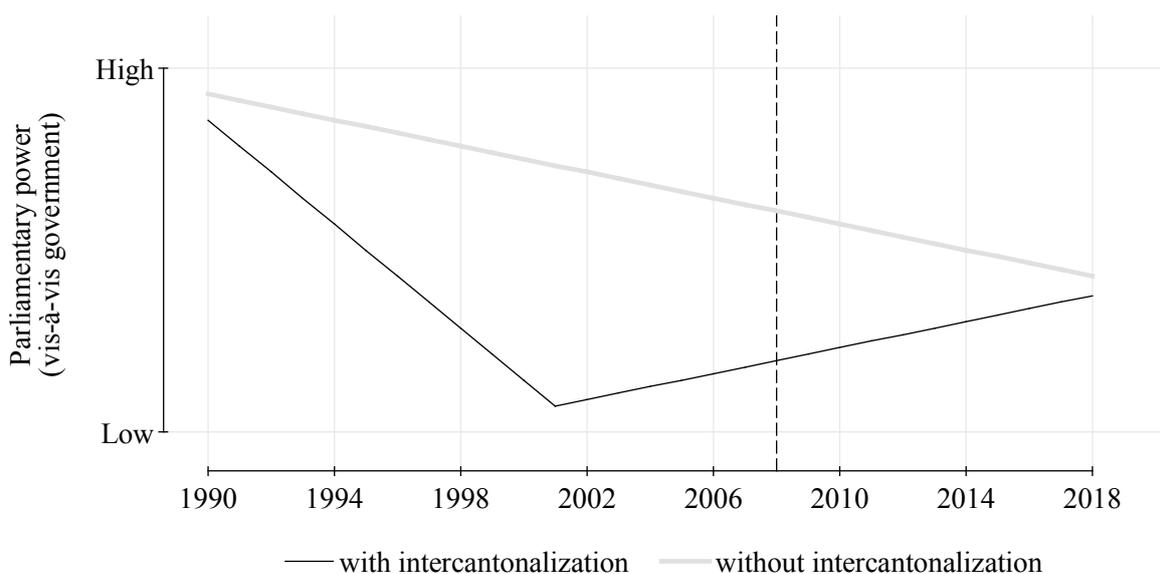
The next section proposes concrete explanatory factors that not only originate from the external, federal but also the internal, cantonal sphere. Furthermore, they reflect the basic ideas of

institutional change that is initiated by a reform trigger and is contingent on the institution at hand and the institutional context as well as the relevant actors. Besides, it takes the findings from Europeanization literature seriously and directly builds on the idea of vertical nudging.

#### 4.3.2.1 Triggering Change from ‘Above’

Based on the theoretical reflections so far, the development highlighted in figure 4.2 shows the expected development of parliamentary participation in intercantonal affairs against the background of intercantonalization in general and the NFA, its constitutionally enshrined enforcement mechanism, and the accompanying legislation. First, enhanced intercantonalization goes in line with a deparliamentarization of the cantonal political systems. While the former is reported by Political Science scholars (e.g. Bochsler and Sciarini 2006), the latter is emphasized especially by legal experts (e.g. Abderhalden 1999, Möckli 2003) (see section 3.3 and 3.3.1). The argument here is that the NFA is expected to be a reform trigger for parliamentary reforms in the cantons. This expectation conforms to new institutionalism literature that puts such a trigger at the beginning of institutional change (e.g. Cortell and Peterson 1999). This effect is empirically well demonstrated by Europeanization literature that further developed towards an own theoretical school of thought (e.g. Featherstone and Radaelli 2003, Bulmer 2007). According to it, Europeanization caused a deparliamentarization of

Figure 4.2: Executive-legislative relations with and without intercantonalization



Note: The figure shows the hypothesized de- and reparliamentarization effect with respect to intercantonalization and draws on the respective model from Europeanization literature.

Source: Raunio and Hix (2000: 161) with own adjustments.

national parliaments of EU member states, first, triggering parliamentary reforms and a reparliamentarization in EU affairs, second (e.g. Raunio and Hix). The specific diffusion mechanism of vertical coercion could explain how the effect plays out (e.g. Gilardi 2012a). Noteworthy are approaches of federalism literature that directly derive thereof, especially federal nudging as proposed by Bednar (2011). Thus, simply increased attention to the goal of further intercantonization in the wake of the elaboration of the NFA could have caused cantonal parliamentary action. Karch (2012) empirically demonstrates such an effect in the U.S. context. Furthermore, the IRV and its prescription of minimal standards of parliamentary participation in intercanton agreements with shared burdens could have functioned as federal preemption setting a baseline that opened a window of opportunities for cantonal parliaments and incentivized them to undertake broader reforms. A similar effect from U.S. literature, but with respect to partisan preemption, was discussed above (SoRelle and Walker 2016). The examination of intercanton affairs and the role of cantonal parliaments in section 3.3 and 3.3.1 substantiate the reasoning that executively driven intercantonization further emphasized by the NFA caused a backlash by cantonal parliaments by means of parliamentary participation. Rhinow (2003: 6), already cited above, describes the first part of figure 4.2, i.e. the decline of parliamentary power as follows: “Treaties inevitably bring along a dismantling of democracy and lead to a (further!) strengthening of governments and administrations”. Concerning the second part of figure 4.2, Bolleyer (2010) makes an interesting observation with respect to the effect of the NFA on *interparliamentary* coordination. With reference to Sciarini (NZZ 2005), the researcher states the following:

“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-canton cooperation shifting power further towards cantonal executives [...]” (Bolleyer 2010: 429).

Note that the subsequent hypothesis proposes a more basic effect of the NFA on parliamentary participation in intercanton affairs in the domestic cantonal arena:

*Hypothesis 3.1: The NFA triggered parliamentary reforms in the cantons improving parliamentary rights of participation and scrutiny in intercanton affairs.*

However, as Berry and Berry’s (2007) unified model of external *and* internal determinants of policymaking proposes, relying on external factors only falls short of detecting all explanatory variables. This is in line with the very basic framework of institutional change (see figure 4.1)

as well as Europeanization literature. Here, Hix and Goetz (2000: 20) argue that “there is no direct translation of adaptive pressures [...] into adaptive reactions” and emphasize the importance of contextualizing upper level effects by taking domestic institutions and actors into account. Thus, two further factors are presented that are expected to be crucial to explaining variance in the translation of external pressure onto the domestic arena.

#### 4.3.2.2 General Executive-Legislative Relations

Concerning general executive-legislative relations, the deduction of a hypothesis as well mainly draws on Europeanization literature. The value of contextualization is reinforced here since there is not *one* model of parliamentary participation and scrutiny of their governments towards which all states converge. Rather it exists systems with parliaments of varying strength in EU affairs (Karlus 2012, Winzen 2012, Auel et al. 2015). Among the first authors in showing variance instead of convergence of national parliaments in their scrutiny mechanisms are Maurer and Wessels (2001). However, Raunio (1999) clarifies that all EU member states’ parliaments somehow increased in activism and that the institutional devices possess commonalities as well, e.g. the reliance on a specific standing commission on EU affairs. Shared is the perception that national parliaments are not losers but latecomers “[a]lways [o]ne [s]tep [b]ehind” (ibid.: 180) on two accounts: First, they have undertaken endeavors to strengthen their position only after the Treaty of Maastricht but not earlier (Maurer and Wessels 2001) and, second, they are rather reactive than proactive institutions (Raunio 1999; see also case studies like the one by Töller [2004] on the German *Bundestag*). Besides, the first point reinforces hypothesis 3.1 since in EU affairs a supranational treaty has triggered change on the national level – i.e. highly similar to the effect discussed above. Concerning the absence of one clear model of adaptation, Benz (2004) and Auel and Benz (2005) show that parliaments change incrementally and follow a certain institutional path: adaptations must be in line with former functions and strengths (see also Dimitrakopoulos 2001). For the Swiss case of intercantonalization, the external effect of the NFA is expected to be contingent on internal factors, first and foremost, such that relate to the immediate institutional environment. This as well conforms to the general analytical framework (see figure 4.1) that states that institutional change might be induced by an (external) trigger but then depends on the institution at hand and its direct environment.

A states’ legislative branch cannot be analyzed independent of the executive branch – their relationship is crucial to its understanding (Kreppel 2017: 118). This holds true for the Swiss

cantons as well (e.g. Iten 1990, see also Vatter 2002). Hence, the direct environment of legislative branches are executive branches and the interrelations, respectively. To remain in the valuable example of Europeanization, the variation of the executive-legislative relation in a specific policy area is determined by its general (im)balance “with the parliament controlling the government to the same extent in European matters as it does in the context of domestic legislation” (Raunio and Hix 2000: 158). The argument here is that “the overall strength of the legislature ‘spills over’ to European affairs” (Raunio 2009: 330) meaning that “integration has [...] led to a positive spill-over, as parliaments have sought to strengthen their constitutional and political position vis-à-vis their governments” (Raunio and Hix 2000: 151). Raunio (2005) shows, that the general power of parliament within the EU15, operationalized by the agenda power of parliament and the extent to which it attracts lobbyists, is a necessary condition for the level of parliamentary scrutiny in EU affairs. By applying qualitative comparative analysis (QCA) and subsequent correlation analysis, Karlas (2012) confirms this finding for the EU27: it is the general strength of parliamentary committees explaining the degree of control of national parliaments over EU decision-making. In another analysis, Karlas (2011) comes to the same finding for the ten Central and Eastern European states that enlarged the EU in 2004 and 2007, respectively. While the date of accession, a strong predictor in other studies, is set virtually zero, the author gives insights into what elements of the general executive-legislative relation actually ‘spill over’ to parliamentary scrutiny in EU matters. It is not interdependence as measured by control over formation and dismissal of a state’s government but rather its legislative activity together with participation rights that are both more fine-grained measures of the executive-legislative relation (ibid.: 261–262, 270).

*Hypothesis 3.2: The general executive-legislative relation determines the power of the respective cantonal parliament in intercantonal affairs.*

The hypothesis translates the main finding of Europeanization literature to the Swiss federal context: Principally strong cantonal parliaments are expected to be strong in the specific field of intercantonal affairs as well and have undertaken parliamentary reforms early on. In contrast, their counterparts, generally weak parliaments, lack influence in intercantonal affairs as they do in domestic affairs and are latecomers with respect to parliamentary reforms.

### 4.3.2.3 Party Politics

As a last determinant proposed here, party politics and the effect of partisan ties between the branches shall be discussed here. This is broadly in line with the overall theoretical framework on institutional change that emphasizes the role of relevant actors as well. In Europeanization literature, Börzel (1999) shows that informal institutional culture determines the capacity to adapt to changing circumstances. While German cooperative federalism is driven by cost-sharing strategies against the background of subnational representation within the central state, Europeanization has caused incremental change towards participation of the *Länder* in EU matters (ibid.: 582–586). On the other side, competitive regionalism in Spain in the absence of regional influence on the national level reinforced cost-shifting and confrontational strategies and kept the regions away from the negotiating table for long (ibid.: 587–591). Similarly, Bergman (1997: 380–81) argues that states sharing power vertically are more adaptive to power sharing in a multi-level system. However, Börzel and Sprungk (2003: 22–23) conclude that executive dominance on every level of government is even more pronounced the more levels participate in European policies. Thus, empowering the regional level means empowering the respective regional governments, primarily.

Other studies on Europeanization emphasize the role of parties and party competition, respectively: When there is broad representation of parliamentary parties in government, there is no need and no majority for enhanced parliamentary scrutiny. Otherwise, in case of a high degree of party fragmentation and/or a meaningful opposition, trust in government is weak and further incentives to make the government accountable to parliament are given. Following Auel and Christiansen (2015: 270), “[d]ivergent preferences – and thus less trust – can be expected for coalition governments [as well]” what indicates that party competition and fragmentation itself can determine parliamentary scrutiny (Raunio and Hix 2000, Karlas 2012). Conceptually, principal-agent theory (Jensen and Meckling 1976) and veto players theory (Tsebelis 1995, Tsebelis 2002) become meaningful again: Parliamentary costs of monitoring and binding do not seem plausible given a broad backing of government within parliament. Surely, while lacking parliamentary majority the opposition party can still use voice strategies and thereby demand change (Benz 2004). By contrast, strengthening parliamentary rights becomes highly probable when the majority of parliament is not represented in government and change is at least more likely the more fractionalized parliament and/or government is.

*Hypothesis 3.3: The stronger political competition between and within parliament and government is, the more likely are reforms strengthening parliamentary participation and scrutiny in intercantonal affairs.*

To close the deduction of the hypotheses, it must be noted that the theoretical considerations are broad since the effects to be analyzed are manifold. Hence, the various strands of literature are necessary to appropriately formulate expectations on the mechanisms at hand.

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## 5 Methods and Data

Before turning to the empirical analyses, the methods shall be explained in detail. Furthermore, the operationalization of the variables as well as the data sources are discussed hereafter.

### 5.1 *Quantitative and Qualitative Data Analysis*

The following two subsections present the methods used to test the hypotheses in order to finally answer the research question(s). While all methods of the following analysis of chapter six can be clarified by one subsection only, the remarks on chapter seven are divided in two. Since the latter diverge in their basic analytical approaches, they require special treatment: While the first roots in quantitative analyses on time-series data, the second combines a qualitative approach with quantitative methods and draws on content analysis.

#### 5.1.1 *Methods for Analyzing Intercantonal Cooperation*

The approach of the first empirical part leans on the study of Bochsler (2009) that serves as a model here. Thus, the systematics of the analytical steps are drawn therefrom. While the study is partly replicated, the endeavor presented hereafter not only draws on new original data (see section 5.2.1) but adds important refinements to it, especially with respect to model specification (see section 5.2.2).

The first part of chapter six is descriptive and aims at exploring the underlying data. To do so it relies on visualizations illustrating the distribution of the central variable – the number of intercanton agreements – against the background of several potentially relevant factors, e.g. time, policy area, canton. The descriptive part closes with a spatial proximity graph of intercanton cooperation that needs further clarification: It will group the observations in a multi-dimensional space by employing *Multidimensional Scaling* (MDS) (see e.g. Bartholomew et al. 2008: 55ff.; Backhaus et al. 2016: 611ff.; König 2017). While the cantons are the observations, the intercanton agreements function as variables. The latter are all binary receiving the value of 1 when a canton has concluded a contract and the value of 0 when the respective canton is not a contracting party. Similarity and, thus, proximity between each two cantons are calculated by the phi coefficient (Pearson 1900a). Hence, proximity is not indicated by the number of agreements where two cantons are contracting partners but also the number of IGAs where both are absent altogether. Hence, the map reads as follows: The higher the

number of intercantonal agreements where two units both participate or are jointly absent compared to the number of agreements where only one but not the other unit is partner, the more proximate are two cantons in terms of contracting intensity, and vice versa.

The inferential statistics are twofold. At first, the *Quadratic Assignment Procedure* (QAP)<sup>43</sup> is applied as proposed by Hubert and Schultz (1976). This step is taken first since agreements are not unilateral by nature, meaning the underlying data is in truth relational. On that condition, a simple *Ordinary Least Squares Regression* (OLS) would result in biased standard errors when calculated against the background of dyadic and relational data. The latter means that one pair of two units counts as one observation with each unit being part of numerous and thus non-independent observations. Consequently, the non-independence of the observations requires special treatment. Krackhardt (1987, 1988) shows that the use of QAP solves this problem of autocorrelation. It permutes the array of the dependent variable so that the connection to the independent variables is dissolved. OLS regression will be drawn on the original data as well as on the numerous permuted datasets. Then, the correlation coefficients of the original model are compared to the distribution of the respective coefficients in the models that are calculated based on the randomly permuted data. The new p-values of the observed correlation coefficients are finally the chances with which the observed effects occur under random assignment of the values of the dependent and the independent variables (ibid. 1987: 175–179; ibid. 1988: 362–363). Hence, truly significant correlations are observed when the chance of occurrence of an observed effect is sufficiently small when measuring the same relation under random assignment of the dependent variable to the independent variables. While the correlation coefficients are calculated by means of simple OLS, the QAP corrects for the biased standard errors of these very OLS-coefficients.

The first analytical part closes with an OLS regression on fixed cantonal intercepts taken from the dyadic model. This aims at investigating the unexplained number of IGAs per canton that remains from the first model. This last step as well accords to the study of Bochsler (2009).

### 5.1.2 *Methods for Analyzing Parliamentary Participation over Time*

The second part of the analysis proceeds according to the nested analysis approach by Lieberman (2005: 435–436): “It combines the statistical analysis of a large sample of cases with

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<sup>43</sup> See also Gilardi and Füglistler (2008) for an extensive discussion on the value of this approach and its application against the background of the Swiss federal system in general and the Swiss cantons in particular.

the in-depth investigation of one or more of the cases contained within the large sample.” The author proposes to conduct a preliminary Large-N analysis (LNA) first to test the basic connections derived by theory (ibid.: 438–439). In case of a satisfactory (unsatisfactory) model fit, the author proposes a small-N analysis (SNA) on typical (deviant) cases (ibid.: 437, 443–448). Mixed methods, i.e. a combination of a quantitative (LNA) with a principally qualitative approach, are generally recommended over single method designs since they help to avoid methodical shortcomings and premature conclusions (Munck and Snyder 2007a, 2007b). However, Rohlfing (2008) cautions to not overestimate nested analysis and argues that especially the tests of model (mis)specification in order to travel from LNA to SNA are highly demanding and need to draw on quantitative and qualitative considerations. Generally, it should be noted, that the SNA is applied here to further discuss the mechanisms at hand. Thus, it is used in its very basic sense “to assess the plausibility of observed statistical relationships between variables” (Lieberman 2005: 435).

### 5.1.2.1 LNA: Testing Explanatory Factors Quantitatively

The LNA of this second analytical part principally fits a simple linear cross-sectional model that aims at minimizing the estimation error by means of OLS. The relation between the variables shall be clarified by the following function that accounts for the underlying panel data that consists of a number of sequences each tracking the same unit ( $i$ ) over a period of time ( $t$ ). According to the first Gauss-Markov assumption, the function to be estimated is linear in parameters (Wooldridge 2016: 52, 317).

$$y_{it} = x_{it}\beta + v_{it} \quad \begin{array}{l} i = 1, \dots, N; \\ t = 1, \dots, T \end{array} \quad (\text{I})$$

However, due to the underlying data structure, and in order to result in a valid estimator, other assumptions of the OLS require special attention. First, the data consists of  $t$  time series per unit  $i$ , both together defining the specific observations. Thus, the sample is not random due to the fact that, in case of a balanced panel, it comprises of  $t$  observations per unit  $i$  (Wooldridge 2016: 313). While the need for non-collinear and thus independent covariates is identical in cross sectional and panel data, it does not need special treatment here (Wooldridge 2016: 318). Furthermore, according to the Gauss-Markov theorem the OLS results in a *best linear unbiased estimator* (BLUE) when, among others, the error term, here,  $v_{it}$ , has a conditional mean of zero.

$$E(v_{it} | x_{it}) = 0 \quad (\text{II})$$

Among others, omitted variable biases or measurement errors cause violations to this assumption. Especially the former occurs more readily in the context of time series and panel data. Here, the assumption rules out that the error term  $v_{it}$  is uncorrelated with not only the present but also the value of  $x_{iT}$  at any given earlier or later point in time (see subsequent discussion on serial correlation).

An omitted variable is likely also to cause different variances of the error term  $v_{it}$  given different values of  $x_{it}$ . Thus, only in case of constant variance of the omitted variables, the homoscedasticity assumption would hold true although unobserved covariates affect the dependent variable. A classic example to illustrate a violation is household consumption given different levels of income: While the variance in lower income households is expected to be small due to the income restriction, variance in consumption is expected to increase given increasing levels of income. Given heteroscedasticity, the OLS estimators are still unbiased and consistent – but not efficient –, while the standard errors of these estimators cannot be validly estimated and are incorrectly specified – whether being over- or underestimated. The homoscedasticity assumption must also hold true for panel data and reads as follows:

$$\text{Var}(v_{it} | x_{it}) = \sigma^2 \quad (\text{III})$$

Revisiting the assumption of the error term possessing a conditional mean of zero and a constant conditional variance, it should be normally distributed as follows:

$$v_{it} \sim N(0, \sigma^2) \quad (\text{IV})$$

Lastly, the phenomenon of serial correlation is specific given panel data. In the absence of random sampling as discussed above, the error term  $v_{(it)g}$  of observation  $i$  in unit  $g$  at time  $t$  is likely to be correlated with  $v_{(js)g}$  of observation  $j$  in the same unit  $g$  at time  $s$ :

$$\text{Cov}(v_{it}, v_{is} | x_{it}, x_{is}) = 0 \quad t \neq s \quad (\text{V})$$

The idea is that the effect of a variable with its specific value  $x_{it}$  is not independent of the effect of the value of this specific variable at another point in time, i.e.  $x_{is}$ . The reason for the equation above not equaling zero can be serially correlated error terms,  $v_{it}$  and  $v_{is}$ . A violation of no autocorrelation by means of serial correlation is often caused by the fact that a variable has seldom a timely isolated and independent effect so that the dependent variable is rather a function of the actual *and* lagged value of an independent variable. This violation of no autocorrelation is also known as *first-order* serial correlation, while it shall not imply that only variable values of two adjacent points in time lack independence. Also possible are processes of *higher-order* autocorrelation.

Another type of autocorrelation becomes meaningful given panel data. A violation to the following assumption of no autocorrelation between the error terms of two observations of two different units,  $i$  and  $j$ , at the same point in time,  $t$ , given a certain covariate would also lead to a violation of what was proposed under (V) as zero conditional mean. In the context of panel data, a covariance that does not equal zero, thus, a violation to the following assumption, often stems from shocks and events that contemporaneously affect all observations jointly at the same point in time.

$$Cov(v_{it}, v_{jt} | x_{it}, x_{jt}) = 0 \quad i \neq j \quad (VI)$$

Against the background of this discussion, especially the treatment of the error terms in panel data analysis requires special attention. Two extreme scenarios can be contrasted with each other. Therefore, table 5.1 shows two variance-covariance matrices that best display what shape the error term takes given the regression equation for each single observation separately. The variance-covariance matrices are capable of illustrating under which conditions the assumptions of homoscedasticity and no autocorrelation hold true or are violated otherwise. The upper part of table 5.1 shows the distribution of the error term for every observation  $n$  given homoscedasticity –  $Var(v_{it}|x_{it}) = \sigma^2$  – and no autocorrelation across space –  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt}) = 0$ . The latter, specific form of no autocorrelation is violated in case of, e.g., events and shocks that affect all observations contemporaneously. The lower part of table 5.1 illustrates a cross-sectional scenario in which the two assumptions are violated due to heteroscedasticity and unit-specific variation in the error terms, i.e.  $\sigma_{ii}^2$ ,  $\sigma_{jj}^2$  up to  $\sigma_{nn}^2$ , and autocorrelation between the observations, i.e.  $\sigma_{ij}^2$  up to  $\sigma_{jn}^2$  and  $\sigma_{ji}^2$  up to  $\sigma_{nj}^2$ , respectively.

Table 5.1: Variance-covariance matrices of the error terms under varying conditions

- a. *Cross-sectional data*: Homoscedasticity –  $Var(v_i|x_i) = \sigma^2$  – and no autocorrelation across space –  $Cov(v_i, v_j|x_i, x_j) = 0$  – given a fixed point in time  $t$ .

$$(v|x) = \begin{matrix} & & v_1 & v_2 & \dots & v_N \\ \begin{matrix} v_1 \\ v_2 \\ \dots \\ v_N \end{matrix} & = & \left[ \begin{array}{cccc} \sigma^2 & 0 & \dots & 0 \\ 0 & \sigma^2 & \dots & 0 \\ \dots & \dots & \dots & \dots \\ 0 & 0 & \dots & \sigma^2 \end{array} \right] \end{matrix}$$

- b. *Cross-sectional data*: Heteroscedasticity –  $Var(v_i|x_i) = \sigma_{ii}^2$  with  $\sigma_{ii}^2 \neq \sigma_{jj}^2$  – and autocorrelation –  $Cov(v_i, v_j|x_i, x_j) \neq 0$  – given a fixed point in time  $t$ .

$$(v|x) = \begin{matrix} & v_1 & v_2 & \dots & v_N \\ \begin{matrix} v_1 \\ v_{2t} \\ \dots \\ v_N \end{matrix} & \left[ \begin{array}{cccc} \sigma_{11}^2 & \sigma_{12} & \dots & \sigma_{1N} \\ \sigma_{21} & \sigma_{22}^2 & \dots & \sigma_{2N} \\ \dots & \dots & \dots & \dots \\ \sigma_{N1} & \sigma_{N2} & \dots & \sigma_{NN}^2 \end{array} \right] \end{matrix}$$

- c. *Panel data*: Homoscedasticity –  $Var(v_{it}|x_{it}) = \sigma^2$  – and no autocorrelation across time –  $Cov(v_{it}, v_{is}|x_{it}, x_{is}) = 0$  – and space –  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt}) = 0$  – in point  $t$  and  $s$  in time.

$$(v|x) = \begin{matrix} & v_{11} & v_{12} & v_{21} & v_{22} & \dots & v_{it} & v_{is} \\ \begin{matrix} v_{11} \\ v_{12} \\ v_{21} \\ v_{22} \\ \dots \\ v_{it} \\ v_{is} \end{matrix} & \left[ \begin{array}{cccccc} \sigma^2 & 0 & 0 & . & \dots & 0 & . \\ 0 & \sigma^2 & . & 0 & \dots & . & 0 \\ 0 & . & \sigma^2 & 0 & \dots & 0 & . \\ . & 0 & 0 & \sigma^2 & \dots & . & 0 \\ \dots & \dots & \dots & \dots & \dots & \dots & \dots \\ 0 & . & 0 & . & \dots & \sigma^2 & 0 \\ . & 0 & . & 0 & \dots & 0 & \sigma^2 \end{array} \right] \end{matrix}$$

*Note*: The singular dots denote that no assumption was made for the respective combination of error terms. The cells are of no importance for the purpose of these elaborations.

- d. *Panel data*: Heteroscedasticity –  $Var(v_{it}|x_{it}) = \sigma_{it,it}^2$  with  $\sigma_{it,it}^2 \neq \sigma_{is,is}^2$  – and autocorrelation across time –  $Cov(v_{it}, v_{is}|x_{it}, x_{is}) \neq 0$  – and no autocorrelation across space –  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt}) = 0$  – in point  $t$  and  $s$  in time.

$$(v|x) = \begin{matrix} & v_{11} & v_{12} & v_{21} & v_{22} & \dots & v_{it} & v_{is} \\ \begin{matrix} v_{11} \\ v_{12} \\ v_{21} \\ v_{22} \\ \dots \\ v_{it} \\ v_{is} \end{matrix} & \left[ \begin{array}{cccccc} \sigma_{11}^2 & \sigma_{11,12} & 0 & . & \dots & 0 & . \\ \sigma_{12,11} & \sigma_{12}^2 & . & 0 & \dots & . & 0 \\ 0 & . & \sigma_{21}^2 & \sigma_{21,22} & \dots & 0 & . \\ . & 0 & \sigma_{22,21} & \sigma_{22}^2 & \dots & . & 0 \\ \dots & \dots & \dots & \dots & \dots & \dots & \dots \\ 0 & . & 0 & . & \dots & \sigma_{it}^2 & \sigma_{it,is} \\ . & 0 & . & 0 & \dots & \sigma_{is,it} & \sigma_{is}^2 \end{array} \right] \end{matrix}$$

- e. *Panel data*: Heteroscedasticity –  $Var(v_{it}|x_{it}) = \sigma_{it,it}^2$  with  $\sigma_{it,it}^2 \neq \sigma_{is,is}^2$  – and autocorrelation across time –  $Cov(v_{it}, v_{is}|x_{it}, x_{is}) \neq 0$  – and space –  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt}) \neq 0$  – in point  $t$  and  $s$  in time.

$$(v|x) = \begin{matrix} & v_{11} & v_{12} & v_{21} & v_{22} & \dots & v_{it} & v_{is} \\ \begin{matrix} v_{11} \\ v_{12} \\ v_{21} \\ v_{22} \\ \dots \\ v_{it} \\ v_{is} \end{matrix} & \left[ \begin{matrix} \sigma_{11}^2 & \sigma_{11,12} & \sigma_{11,21} & . & \dots & \sigma_{11,it} & . \\ \sigma_{12,11} & \sigma_{12}^2 & . & \sigma_{12,22} & \dots & . & \sigma_{12,is} \\ \sigma_{21,11} & . & \sigma_{21}^2 & \sigma_{21,22} & \dots & \sigma_{21,it} & . \\ . & \sigma_{22,12} & \sigma_{22,21} & \sigma_{22}^2 & \dots & . & \sigma_{22,is} \\ \dots & \dots & \dots & \dots & \dots & \dots & \dots \\ \sigma_{it,11} & . & \sigma_{it,21} & . & \dots & \sigma_{it}^2 & \sigma_{it,is} \\ . & \sigma_{is,12} & . & \sigma_{is,22} & \dots & \sigma_{is,it} & \sigma_{is}^2 \end{matrix} \right. \end{matrix}$$

Due to the aforementioned pitfalls of the underlying data structure, a *time-series–cross-sectional analysis (TSCS) with panel corrected standard errors (PCSE)* following the standard approach by Beck and Katz (1995) is calculated against the background of the 26 cantons (units) over 29 years from 1990 to 2018 (time). The combination of number and type of units and points in time justify that TSCS and not panel data analysis is selected as method of analysis. While in TSCS the units of analysis are fixed and finite, e.g., here, constitutive units in a federation, panel data analysis consists of a random sample that is repeatedly observed, e.g. survey respondents. As a rule of thumb, in TSCS the number of time points is bigger than the number of units, while the opposite holds true for panel data analyses. Thus, in case of the former a common research strategy is to increase the number of points in time to better understand the units of observation – TSCS is interested in the units themselves over time. Panel data analysis, in contrast, generally draws on a large sample but a limited number of panels, so that inference can be improved by including more units but not necessarily more points in time. The subsequent analysis is run to not only describe but also explain the development of the central variable within the specific units under conduct. As already mentioned, the number of units is limited to the 26 cantons, while the number of years of analysis amounts to 29 years.

The model testing the deduced hypotheses is built upon the following pillars. First, unit dummies and panel-corrected standard errors account for unit-specific serial correlation. Thus, the model corrects for autocorrelation within countries over time. Note that unit dummies are

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only used in the first model later calculated where the effect of time-invariant variables is not (yet) tested (see model 7.1 in table 7.1). In all following models, standard errors are still panel-corrected, but the unit dummies are omitted in order to calculate the effects of time-invariant variables (see models 7.2–7.4 in table 7.1). The latter not only allow for testing the effects of institutional variables that are central here but, however, together with the panel-corrected standard errors, also fulfill the same function as unit-dummies in methodical terms, i.e. to account for unit-specific serial correlation (see e.g. Kittel and Obinger 2002).

Second, the problem of serial autocorrelation is further targeted by the inclusion of a lagged dependent variable (Beck and Katz 1996). However, Achen (2000) and Plümper et al. (2005) argue that relevant trends can be absorbed by the inclusion of a theoretically irrelevant lagged dependent variable. The authors propose to only include it when  $y_{it-1}$  explains  $y_{it}$  in theoretical terms. Furthermore, it will be shown that the distribution of the dependent variable is highly discontinuous as it does not steadily develop but rather changes its levels at specific points in time while holding these levels before and after. A lagged dependent variable would then erase most of the observations from the equation and calculate the model only on a minor set of observations. However, it can be evenly, and more reasonably, argued that this is the very logic of a within estimation. Hence, the subsequent analysis will rely on models with a lagged dependent variable to conform to the abovementioned methodical concerns, especially to account for serial autocorrelation, while taking the counterarguments seriously in the discussion following the presentation of the main findings (see figure 7.4 and 7.5 and the respective discussions).

Third, time dummies account for contemporaneously correlated errors and panel heteroscedasticity. Hence, effects of omitted variables that bias the error terms of all units simultaneously but only at a certain point in time are controlled for.

In contrast to Beck and Katz (1995: 637–638) proposing a first-order autoregressive (AR1) process common to all units, it can be as well argued in favor of using the more conservative approach of unit-specific first-order autocorrelation (Kmenta 1986). The reasoning here could be theoretical: it seems implausible that the cantons exhibit no differences so that the same serially autocorrelated omitted variables determine the dependent variable in the same way and the coefficient of the AR1 of each panel is identical. Beck and Katz (1996: 7–8) themselves critically discuss the notion of identical or varying serial correlation parameters per unit since the model allows for various unit specificities, e.g. unit-specific error terms. Among others, they argue that unit-specific serial autocorrelation is obsolete given the inclusion of the lag of

the dependent as an independent variable in the model. They further give empirical evidence for their reasoning. Due to the more conservative approach, unit-specific first-order autocorrelation will be applied in the models displayed and discussed in chapter 7.2, while the same models using a first-order autoregressive process common to all units will be calculated and displayed in the appendix (see table 7.1.1).

After deriving these main properties of the TSCS-model, mainly in accordance to Beck and Katz (1995), their main contribution lies in the calculation of panel corrected standard errors (PCSE) in order to correctly predict the mean derivation by calculating the mean error of the model estimators. Given homoscedasticity and no autocorrelation against the background of cross-sectional data as illustrated in the first variance-covariance matrix in the upper part of table 5.1 (a.), the standard errors of the beta coefficients (VII) and the underlying estimates of the error terms (VIII) are calculated as follows:

$$Var(\hat{\beta}) = \frac{\hat{\sigma}^2}{\sum_{i=1}^n (X_i - \bar{X})^2} \quad (\text{VII})$$

$$\hat{\sigma}^2 = \frac{\sum_{i=1}^n \hat{v}_i^2}{n-k-1} \quad (\text{VIII})$$

Given the last variance-covariance matrix in table 5.1 (d.) illustrating heteroscedastic and serially correlated error terms in panel data, Beck and Katz (1995: 638) propose calculating the variances and covariances of the residuals by means of the average correlation of the residuals of any unit across time. The estimator of  $\sigma^2$  (IX), i.e.  $Var(v_{it}|x_{it})$ , and  $\sigma_{it,jt}$  (X), i.e.  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt})$ , from the last matrix of table 5.1 (d.) reads as follows:

$$\hat{\sigma}_{it}^2 = \frac{\sum_{t=1}^T \hat{v}_{it}^2}{T} \quad (\text{IX})$$

$$\hat{\sigma}_{it,jt} = \frac{\sum_{t=1}^T v_{it} v_{jt}}{T} \quad (\text{X})$$

The respective variance-covariance matrix lays the basis for the correct calculation of the standard error of the effect estimators. The matrix in table 5.2 shows the result of the transformation of the variances and covariances of the error terms across time and space according to the above mentioned equations (IX) and (X), i.e. a variance-covariance matrix with unit-specific, time-constant variances in the absence of autocorrelation between the error terms of different units.

Table 5.2: Variance-covariance matrix of the error terms in TSCS with PCSE

Panel data: Homoscedasticity across units –  $Var(v_{it}|x_{it}) = \sigma_i^2$  with  $\sigma_i^2 \neq \sigma_j^2$  – and no autocorrelation across time –  $Cov(v_{it}, v_{is}|x_{it}, x_{is}) \neq 0$  – but space –  $Cov(v_{it}, v_{jt}|x_{it}, x_{jt}) = \sigma_{it,jt}$  with  $\sigma_{it,jt} \neq \sigma_{it,nt}$  – after panel correction of standard errors (PCSE).

$$(v|x) = \begin{matrix} & v_{11} & v_{12} & v_{21} & v_{22} & \dots & v_{it} & v_{is} \\ \begin{matrix} v_{11} \\ v_{12} \\ v_{21} \\ v_{22} \\ \dots \\ v_{it} \\ v_{is} \end{matrix} & \left[ \begin{matrix} \sigma_1^2 & 0 & \sigma_{11,21} & 0 & \dots & \sigma_{11,it} & 0 \\ 0 & \sigma_1^2 & 0 & \sigma_{12,22} & \dots & 0 & \sigma_{12,is} \\ \sigma_{21,11} & 0 & \sigma_2^2 & 0 & \dots & \sigma_{21,it} & 0 \\ 0 & \sigma_{22,12} & 0 & \sigma_2^2 & \dots & 0 & \sigma_{22,is} \\ \dots & \dots & \dots & \dots & \dots & \dots & \dots \\ \sigma_{it,11} & 0 & \sigma_{it,21} & 0 & \dots & \sigma_i^2 & 0 \\ 0 & \sigma_{is,12} & 0 & \sigma_{is,22} & \dots & 0 & \sigma_i^2 \end{matrix} \right] \end{matrix}$$

To conclude, the subsequent equation with unit- and time-fixed effects (see note to the equation to the treatment and meaning of unit-fixed effects), a lagged dependent variable following an unit-specific first-order autocorrelation process, and panel corrected standard errors to estimate the standard errors of the regressors is estimated in the analysis following in chapter seven:

$$y_{it} = \beta_0 + \beta_1 y_{it-1} + \beta_2 T_{it} + \beta_3 exe_i + \beta_4 T_{it} * exe_i + \beta_5 pc_{it-s} + \beta_k x_{itk} + v_{it}$$

with  $i = 1, \dots, N; t = 1, \dots, T (s = 0, 1, 2); k = 1, \dots, K.$

- $y_{it}$  = Index of parliamentary participation and scrutiny in intercantonal affairs.
- $y_{it-1}$  = Lagged index (dependent variable) at time  $t-1$ .
- $T_{it}$  = Time period: 1990–1995, 1996–2000, 2001–2004, 2005–2007, 2008–2018.
- $exe_i$  = Executive dominance (lawmaking; intercantonal affairs, commissions excluded)
- $pc_{it-s}$  = Partisan competition between government and opposition (IEO)
- $x_{it}$  = ( $k$  number of) Controls
- $v_{it}$  = Error term

Note: The first model testing effects of time-variant variables only includes unit dummies not displayed above. The equation illustrates the logic of all further models without unit-dummies to account for time-invariant institutional effects, among others,  $exe_i$ .

\* Multiplication sign marking interaction terms of the abovementioned variables

### 5.1.2.2 SNA: Content Analysis as Mixed-Methods-Approach

The SNA directly builds on the TSCS analysis examined above. It takes its findings into account and aims at checking its robustness. The mixed methods approach is mainly justified by the reasoning that a purely quantitative approach could fall short here (see also the introductory discussion to this section 5.1.2). The first quantitative part of this second section will be able to analyze variation in the degree of parliamentary participation in intercantonal affairs over time and to give first indications of what explains this variation. While the NFA was a national reform, thus, every canton was confronted with the very same federal alterations, a uniform effect of this potential cantonal reform trigger is hardly plausible. A quantitative approach alone can hardly account for possible indirect effects on the cantonal political systems as hypothesized in this study, among others. Hence, the LNA explained above is, first and foremost, capable of checking for such uniform time effects as well as effects of variables conditioned on specific points in time in the NFA history. Thus, it can only broadly approach effects stemming from the NFA.

To validate the results of the LNA, and as proposed by Lieberman (2005), a mixed method strategy for comparative research combining a preliminary LNA with a subsequent SNA is taken up here: “[Nested analysis] assumes an interest in both the exploration of general relationships and explanations and the specific explanations of individual cases and groups of cases” (ibid.: 436). The SNA on one or multiple cases digs deeper into the findings drawn from the LNA, be it by in-depth analyses of a relationship detected in the first step or parts of the research project that could not be addressed by the LNA (Lieberman 2005: 440). When turning from the LNA to the SNA the following question must be answered: “How can we draw valid meaning from qualitative data? What methods of analysis [...] will get us knowledge that we and others can rely on?” (Miles and Huberman 1994: 1). Following Miles and Huberman (1994: 10–12) qualitative data analysis comprises three to four steps, respectively: data collection, data reduction, data display, and conclusion drawing and verification. The SNA here will thereby draw on content analysis, “a research technique for the objective, systematic, and quantitative description of the manifest content of communication” (Berelson 1952: 18). Two things stand out: First, the methodological approach is truly quantitative although it draws on qualitative data. Second, it puts communication to the core of analysis. This pins back to Lasswell (1948), that is according to Franzosi, and next to Berelson, one of the “father founders of the technique” (Franzosi 2007: XXi). With reference to the famous Lasswell formula (“Who Says What In Which Channel To Whom With What Effect”; Laswell 1948: 216) the following analysis is

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especially interested in the messages in parliamentary debates. Messages thereby carry content whose dimensions can be quantified by means of content analysis (Benoit 2010: 269). Although central, the mere messages constitute only one variable that needs to be analyzed together with the source of the message, the channel over which it is transported, the context, and the audience to which the message is directed (Benoit 2010: 269–270). This reemphasizes the enduring relevance of the Lasswell formula in communication processes, also in the political arena. Klingemann (1989) for example uses quantitative content analysis of German party manifestos over time to analyze the emphasis that political parties put on the various policy fields and specific topics within these fields. Similarly, Laver et al. (2003) use word scores generated from party manifestos to estimate policy positions. Bleses and Rose (1998) analyze how justifications for and against changes of social policy developed over time by investigating into the parliamentary debates in the German *Bundestag* when crucial labor market and family policies were at stake. Druckman et al. (2009) use content analysis to investigate electoral campaigns in the U.S. context using web-based data while Hill et al. (1997) apply the method to analyze U.S. senators' ideology. These examples show that content analysis can be conducted not only by means of qualitative *but also* quantitative analytical techniques. While more and more studies apply it in the former sense, it is originally grounded in the latter (see e.g. Mayring 2010). The subsequent SNA takes this original path and uses quantitative content analysis.

As pointed out in the introductory remarks to this second analysis, the SNA starts with selecting cases for following in-depth analyses. This selection procedure directly builds on the findings from the LNA (Lieberman 2005: 437, 443–448). It is argued that in case of a satisfactory model fit, well predicted cases are chosen accounting as typical and qualifying for in-depth SNA to “fine-tune a theoretical argument” (ibid.: 444). In contrast, when the model provides unsatisfactory results, the SNA-cases should be such that help to reformulate the model by showing how the connections in fact work (ibid.: 445–446). This mainly reflects some of the case study types proposed by Gerring (2006, 2008) and Seawright and Gerring (2008), e.g. the selection of typical cases given the LNA model fit is good and of deviant cases when the model fit is poor. In the logic of the nested analysis approach, case selection can only be made when the findings from the LNA are available and the SNA is in direct preparation. Thus, the selection will be undertaken when passing from the LNA to the SNA. Finally, to recall by what the SNA is motivated here: It aims at making descriptive inference, at gaining in-depth knowledge, and at understanding the mechanisms of the relationships at hand (Gerring 2004: 346).

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## 5.2 Operationalization and Data

The following second part of this section on methods and data describes the operationalization of the variables. Furthermore, a special emphasis is put on the presentation of the data used. Each subsection follows the overall twofold approach of analyzing IGA-conclusion in the first place and parliamentary participation therein in the second.

### 5.2.1 Dependent Variables

The two analytical steps use different dependent variables. How to operationalize and measure IGA-conclusion will be presented first. Second, operationalization and data of subnational parliaments' involvement in intercantonal affairs will be discussed.

#### 5.2.1.1 IGA-Conclusion

The dependent variable of the first analytical part is intercantonal cooperation indicated by the number of intercantonal agreements in force in 2016. The agreements are collected for all 26 cantons as well as by all possible pairs of cantons. While the data frame that the former variable builds on is in wide format, the latter is carried out in a matrix comprising 26 times 26 cells. Hence, the number of observations increases from 26 up to 325 when analyzing pairs of cantons. Note that the data is cross-sectional but draws on a large time horizon, e.g. the oldest intercantonal agreement still in force is of 1564. However, the data illustrates the state of intercantonal contracting *as of 2016*, i.e. it provides information on all intercantonal agreements in force in 2016. Furthermore, the scale of measurement of the dependent variable is metric.

The data collection depicts information on all intercantonal agreements per canton. They were compiled based on an examination of all cantonal systematic statute books, the so-called *systematische Gesetzessammlungen*. The statute books were accessed online via the cantonal webpages<sup>44</sup>. For further information, the data compilation draws on the legal online platform of *LexFind*<sup>45</sup>. Among others, it provides an own categorization scheme so that intercantonal agreements are marked as such. This further helped identifying all intercantonal agreements in force in 2016. Responsible for the content of this legal online platform is the *Zentrum für Rechtsinformation – ZRI* on behalf of the *Schweizerische Staatschreiberkonferenz*. Originally

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<sup>44</sup> See the appendix for the complete link list.

<sup>45</sup> <http://www.lexfind.ch/> (accessed 31 August 2017).

it was maintained by the University of Fribourg on behalf of the Conference of Cantonal Directors of Justice and Police (KKJPD). Next to these two main sources, ambiguities in the data were reexamined by consulting earlier but thematically identical data collections by Frenkel and Blaser (1981) as well as Bochsler (2009). Since the analysis also aims at comparing contracting activity over time, the former data was digitalized by the author. It comprises of all intercantonal agreements in force in 1980. The latter compilation by Bochsler (2009) is accessible online and entails all IGA in force in 2005.<sup>46</sup> Furthermore, it represents the basis of the own data compilation as of 2016 and the digitalized data as of 1980 in structural terms: Format and systematics are adopted from this model dataset. As a further important remark on the data, *Gegenrechtserklärungen*, i.e. declarations of reciprocity (own translation), are not part of the data collection of Frenkel and Blaser (1981: 7) and are thus ignored in the following descriptions and analyses. Since they surely account as intercantonal agreements (Auer 2016: 348), their exclusion leads to a certain vulnerability of the analysis. However, this is the only way to validly compare the three datasets. Furthermore, the data compilation as of 2016 revealed that declarations of reciprocity are in some cases published jointly or only under reference to its source without displaying the text of content. Accordingly, Uhlmann and Zehnder (2011: 14) pose the insufficient publication of declarations of reciprocity as an example when arguing in favor of more transparent and complete publication of IGAs in general. Hence, the inclusion of declarations of reciprocity would not only make the comparison of IGA-conclusion over time impossible but would also introduce uncertainty with respect to cross-sectional comparisons. The dataset of Bochsler (2009) was modified in this respect so that declarations of reciprocity were excluded ex-post.

IGA-conclusion is, however, not solely analyzed for the Swiss cantons. Rather, the findings from the Swiss case shall be partly discussed and checked against the background of other federations. To this end, the state and rationality of horizontal contractual cooperation among the subnational units is examined for the German *Bundesländer* and the U.S. states as well. The case selection will be further elaborated and justified in section 6.3 in direct advance of the descriptive analyses of these additional cases.

For the German case, the process of data collection is equivalent to the compilation of all IGAs between the Swiss cantons. Hence, the collection of state law (*Landesrecht*) of each *Bundesland* was scanned to capture all *Staatsverträge* in force as of 2018.<sup>47</sup> Five of the 16 subnational units

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<sup>46</sup> See <https://www.bochsler.eu/data.html#konkordate> (accessed 31 August 2017).

<sup>47</sup> See the appendix for the complete link list.

provide separate lists already containing all valid IGAs that were used here. For the remaining eleven states the respective state law as displayed online was scanned with the help of keyword-based search.<sup>48</sup> For every IGA detected it was checked whether a parliamentary approval law is given as well qualifying it as a *Staatsvertrag*. Equivalent to the Swiss compilation, data was cross-checked and validated by consulting *beck-online.DIE DATENBANK*<sup>49</sup>, a legal web-platform providing information on federal and subnational law. Data was compiled in June and July 2018.

Data on the U.S. case builds on the database of interstate compacts by the *National Center for Interstate Compacts* and the *Council of State Governments CSG*, respectively (*CSG's National Center for Interstate Compacts Database*).<sup>50</sup> According to own ascription, the original database contains information on “state-by-state interstate compact membership, serving as the most useful and innovative search tool for researching interstate compacts available”. The fact that various scientific publications on the topic (see e.g. Hanson 2013) rely on this database justify its use. However, data was cross-checked by means of Ballotpedia, an online source on U.S. politics in general, and ballot measures and elections but also interstate compacts in particular<sup>51</sup>. Furthermore, data was compared to similar older endeavors providing lists on all interstate compacts (e.g. Zimmerman 2012a) or such in specific policy areas (e.g. Zimmerman 2012b). Note that the motivation of also examining state and rationality of IGA-conclusion in the German and the U.S. case is to deepen the understanding of horizontal contracting in these two additional federations by means of descriptive analyses only. Hence, it does not aim at replicating the whole analysis on the Swiss case but rather at comparing crucial findings from the cantons with descriptive insights into horizontal cooperation among the *Bundesländer* and the U.S. states.

Furthermore, the indicator used as dependent variable in the analysis on IGA-conclusion is critically assessed for the Swiss case. Rather than the mere number of IGAs, intercantonal revenue and expenditure are presented as indicators measuring intercantonal cooperation with shared burdens. This shall especially contribute to the discussion on the specific effects of the NFA on intercantonal cooperation. To compile a valid measure here, the annual reports on the financial statistics of each canton (FS Model) provided by the Federal Finance Administration

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<sup>48</sup> The following search terms were used: “*Staatsvertrag*”, “*Vertrag*”, “*Verwaltungsabkommen*”, “*Abkommen*”, “*Vereinbarung*”, “*Übereinkunft*”.

<sup>49</sup> <https://beck-online.beck.de/Home> (accessed 29 July 2018).

<sup>50</sup> See <http://apps.csg.org/ncic/> (accessed 12 January 2020).

<sup>51</sup> See [https://ballotpedia.org/Chart\\_of\\_interstate\\_compacts](https://ballotpedia.org/Chart_of_interstate_compacts) (accessed 12 January 2020).

(EFV 2020<sup>52</sup>) were consulted to capture all intercantonal revenue and expenditure over time. Within each report the tables containing revenue and expenditure are scanned for such concerning other cantons or concordats (all positions depicting information on “*Kantone und Konkordate*”). All such positions are summed up and set into relation with the overall total of all revenue and expenditure, respectively. The data displays information for 1990 to 2017.

### 5.2.1.2 Parliamentary Participation in Intercantonal Affairs

The analyses on parliamentary participation in intercantonal affairs over time use an index that measures the following three components that make up the core of formal participation and scrutiny of the legislative branch in foreign affairs: information rights, consultation rights, and the existence of a special permanent committee of foreign affairs. Note that the former two are rather indicators of the same variable, i.e. parliamentary rights, while the third relates to structure, i.e. parliamentary commissions. The focus on these very indicators is derived from analyses of the Swiss cantons (e.g. Abderhalden 1999, Strebel 2014, Iff et al. 2010, Schwarz et al. 2014; see section 3.3.1) but also backed by international comparative research, e.g. Europeanization literature (e.g. Auel et al. 2015, Winzen 2012, Winzen 2013).<sup>53</sup> First, a dummy

Table 5.3: Indicators of parliamentary participation in intercantonal affairs

| Indicator                  | Value | Information  |
|----------------------------|-------|--|
| <i>Information rights</i>  | 0     | No obligation of the executive to inform the legislative branch about general intercantonal developments or negotiations of specific intercantonal agreements.               |
|                            | 1     | Obligation of the executive to inform the legislative branch about general intercantonal developments or negotiations of specific intercantonal agreements.                  |
| <i>Consultation rights</i> | 0     | No right of consultation (statement) of the legislative branch on intercantonal matters (and no obligation of consultation of the executive towards the legislative branch). |
|                            | 1     | Right of consultation (statement) of the legislative branch on intercantonal matters or obligation of consultation of the executive towards the legislative branch.          |
| <i>Committee</i>           | 0     | No special permanent committee on intercantonal affairs given.   |
|                            | 1     | Special permanent committee on intercantonal affairs given.  |

Note: This table is a translated, modified, and reduced version of *Tabelle 2: Übersicht über die Kategorisierungen der Beteiligungsformen* of Arens (2018: 411).

<sup>52</sup> <https://www.efv.admin.ch/efv/en/home/themen/finanzstatistik/berichterstattung.html> (accessed 2 January 2020)

<sup>53</sup> For further information on the indicators at hand see the discussion in section 3.3.1.

variable on information rights measures the executive branch's obligation to inform the legislature about general intercantonal developments or negotiations of specific intercantonal agreements. Second, consultation reflects the enshrined parliamentary right to deliver a statement on the matter at stake and is as well measured by a dummy variable. Third, "[e]ffective parliamentary scrutiny depends not only on the amount and type of information provided by the government but also on parliamentary capacities to deal with and process this information" (Auel et al. 2015: 67). Therefore, a dummy variable measures whether it exists a special permanent committee that is endowed with intercantonal affairs. The coding of all indicators is summarized in table 5.3. Towards the analysis the three are added up to an index.

Not relying on a singular indicator but rather one or more composite measures is a well-established practice in comparative literature on parliaments. Schnapp and Harfst (2005) for example compare the legislative rights vis-à-vis the executive branch in 22 western democracies by means of various measures of control structures – e.g. number and kind of parliamentary commissions –, resources – e.g. parliamentary staff and supportive infrastructure –, as well as rights – e.g. information rights of the commissions. The reasoning is shared here that comprehensive indices rather than single indicators are more capable of grasping the research object at hand. However, the following analysis is not able to catch up with such an encompassing approach as just discussed. Mainly two reasons justify the usage of a composite measure consisting of three indicators only. First, since the analysis focuses on parliamentary participation in intercantonal (or foreign) affairs only, the number of possible variables is naturally limited compared to analyzing executive-legislative relations in general (see Schnapp and Harfst 2005). Second, since parliamentary participation in intercantonal affairs is tracked over time, also the compilation of information on four proposed dimensions by Schwarz et al. (2014), among others, is hardly possible. However, the index that is to be analyzed draws on, what is believed here, the three most fundamental indicators of parliamentary participation in intercantonal affairs.

The data on these three indicators covers the years 1990 to 2018 and is taken from cantonal statute books<sup>54</sup>, more precisely, the cantonal constitutions, parliamentary law, and parliamentary rules of procedure. First and foremost, it was compiled online. Since above mentioned sources, the cantonal statute books, mostly provide information on the current

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<sup>54</sup> The respective documents were consulted by means of the online version of the systematic statute book of each canton, e.g. [https://gesetzsammlungen.ag.ch/frontend/texts\\_of\\_law](https://gesetzsammlungen.ag.ch/frontend/texts_of_law) for the canton of Argovia. Furthermore, the legal online platform <http://www.lexfind.ch/> was checked for older versions of the required documents when not accessible (anymore) by means of the website of the respective state chancellery (see example above).

provisions that are in force, further investigations were required to also compile data from preceding provisions, especially such that were in force during the 1990s and at the turn of the millennium. To this end, a formal inquiry at the state chancelleries was undertaken in May 2018. Finally, still pending documents were enquired at the Swiss National Library (NL). Note that missing values still exist in single cases for the very beginning of the period of investigation. The cases exhibiting these missing values can be reconstructed in the descriptive analysis. For this type of analysis, they are of no problem. In contrast, values of the single cases where data on the dependent variable is missing (at the beginning of the period of observation) are interpolated for the multivariate and explanatory analysis. To this end, nearest neighbor interpolation is used (see e.g. Sibson 1980, 1981). This seems appropriate since it is hardly plausible that a canton witnesses change on the dependent variable at the very beginning of the period of observation. This reasoning will be further substantiated when conducting the descriptive analysis on the non-interpolated data (see figure 7.1 in section 7.1).

### *5.2.2 Independent Variables*

The final section on methods and data presents the independent variables. The order of the data description follows the analytical steps so that the independent variables used to explain IGA-conclusion are presented first, and the variables of the model towards explaining parliamentary reforms follow second.

#### *5.2.2.1 Explaining IGA-Conclusion*

The operationalization and data of the independent variables of the first analytical part is presented in two steps either. First, the independent variables of the model explaining single state cooperation will be laid out. Second, the ones that help explain dyadic cooperation are presented. Note that the order is reversed in the analytical procedure of chapter six (see the discussion in section 5.1.1). This is due to the higher degree of sophistication of the dyadic model (QAP). The data sources of the two model (QAP and OLS), however, originate from the same basic sources.

Now, central to explaining IGA-cooperation *per unit* (canton) is the balance of power between the executive and the legislative branch (hypothesis 2.1). Data comes from Wirz (2018) that directly builds on similar approaches of international comparative literature (see e.g. Schnapp

and Harfst 2005) but also in the context of the Swiss cantons (e.g. Kaiss 2010, 2012). The measure used only draws on a cantonal parliament's lawmaking powers since this is among the most relevant tasks of cantonal parliaments and directly linked to intercantonal agreements. It considers the agenda-setting function, the scope of lawmaking powers, the strength of the preparatory commissions, rights with respect to intercantonal affairs, and general parliamentary instruments (Wirz 2018: 293, 295–297). With respect to the function at hand, high values signify a strong parliament vis-à-vis a relatively weak government while low values stand for a weak legislative and a strong executive branch. While this index measures the degree of horizontal power balance, the polity-dimension of the decentralization index of Mueller (2015) accounts for the institutional balance of power in vertical direction, i.e. between the cantonal and local level. Thus, the latter replaces the former in additional models to capture the effect of institutional power sharing more comprehensively. The following applies: The higher the values of institutional decentralization, the higher the degree of autonomy of the local vis-à-vis the cantonal level, and vice versa.

Hypothesis 2.2 states that political homogeneity within entities makes contracting easier. For this cause, the analysis explaining cooperation per canton builds on a composite measure by Altman and Pérez (2002: 89–90, 98). To display partisan conflict between the governmental branches, the authors calculate the ratio between the seat share of the (typical) oppositional party and the (typical) governmental party in parliament. This so-called “Index of Effective Opposition” (IEO) does not simply sum up the size of parties in parliament according to their status as oppositional party not represented in government or governmental party possessing one or more seats in the executive branch. It “rewards a larger opposition bloc, rather than the balance between government and opposition” (ibid.: 98), meaning that fragmentation within each bloc is punished and leads to a lower score of the overall group's strength, and vice versa. While values close to 0 indicate minimal parliamentary opposition, higher values imply low coverage of parliamentary parties in the executive branch. Due to its skewed distribution, the analysis uses the logarithmized values. The index is derived from international comparative literature but is as well applied to the Swiss cantons. Thus, it is part of the encompassing dataset on quality of democracy in the Swiss cantons by Vatter et al. (2012) and used in numerous studies on the cases at hand (Bühlmann et al. 2013, Bühlmann et al. 2014, Dlabac and Schaub 2012). Data comes from Vatter et al. (2020).

The further variables of the first model are as follows: population size (1990–2016, arithmetic mean, logarithmized; FSO 2020) (hypothesis 2.3), the total of intercantonal equalization payments per capita (2008–2016, arithmetic mean; EFV 2020) (hypothesis 2.4), and official

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multilingualism (dummy variable) in a canton (hypothesis 2.5). Furthermore, a control accounts for the linguistic divide between French- and Italian-speaking cantons on the one hand and German-speaking cantons on the other (dummy variable).

The main part of the analysis explaining cooperation *per dyad* (pair of two cantons) builds on the same data sources as already cited. Intercantonal characteristics of two cantons stem from the direct relation of these units. Thus, especially the data format but also some specific variables vary compared to the analysis per unit.

First, the indicator of homophily across the political elites is a disproportionality measure for the composition of cantonal executives in comparison (hypothesis 1.1). Therefore, the political-ideological affiliations – left, center, right – of the parties in each government are compared. Categorization and data come from Vatter et al. (2020). The three political-ideological blocs and not single party affiliations are used here to not overestimate partisan differences between two institutions. Thereupon, the least-squares index (LSq) after Gallagher (1991) is calculated that results in high values when the cantonal governments of two cantons vary considerably with respect to their political-ideological affiliation.

Next to testing the effects that directly derive from homophily among the political elites, several variables test the influence of community characteristics that are compared between each dyad (hypothesis 1.2). Concerning population size, the analysis follows the model study by Bochsler (2009: 357) and assigns the size of the smaller canton of each dyad to the respective pair as the one determining whether cooperation takes place or not. The author shows that the bigger the population size of the smaller canton the more frequent cooperation takes place. This implies that mainly more populous cantons cooperate with each other, while small scale cantons are rather unattractive partners.

Next, it shall be assessed whether pairs of cantons with mixed structural features, urban and rural, are more likely to cooperate. The rationality here is that uneven partnerships might incentivize cooperation. If this holds true, the dyad receives the value of 1, otherwise it is given the value of 0. First, each canton is categorized according to its largest community: It counts as rural when the largest community in the canton does not reach 50,000 inhabitants. When it possesses one or more city centers of 50,000 inhabitants or more it counts as urban. Data is again taken from the Swiss Federal Statistical Office (FSO 2017).

The same logic as of the test of population size might apply to the economic capacity of a canton in relation to a potential partner. Thus, the total of intercantonal equalization payments per

capita of each canton is compared to its partner and the lower value is assigned to the dyad. Data comes from the Federal Finance Administration (EFV 2017).

The rest of the variables is self-explanatory. Commonality in language – German, French and Italian (still hypothesis 1.2) – is included as a dummy variable and displays the value of 1 when two cantons share the characteristic, otherwise 0. With respect to hypothesis 1.3, geographical proximity, common borders (dummy variable), and the distance between the capitals of two cantons shall test whether closeness breeds cooperation.<sup>55</sup> Furthermore, the number of persons that commute to work as of 2016 is taken from the Structural Survey of the Swiss Federal Statistical Office. The data was provided on demand. For statistical reasons (multicollinearity), the absolute number of the respective commuter matrix was used and not the weighted number that is calculated to display the correct overall number of commuters between two cantons. Lastly, common membership in one of the four regional generalist IGCs (ORK, NWRK, ZRK, WRK) reflecting the four classical Swiss regions (see Trees 2005) (hypothesis 1.4) combines characteristics of a regional-geographical determinant and such of a mitigating super-structure. The variable is a dummy and takes the value of 1 when common membership is given, and 0 otherwise.

#### 5.2.2.2 *Explaining Parliamentary Participation over Time*

Three independent variables are core to the second analytical part on parliamentary participation in intercantonal affairs: The NFA and the various publications and decisions related thereto, the general level of power balance between the executive and the legislative branch, and the degree of partisan competition between governmental and oppositional parties.

The first independent variable is accounted for by the inclusion of period dummies. This rather crude measure is necessary since the analysis tries to assess a top-down effect within a federation on its constituent units with a counterfactual, i.e. a control group, being absent. This problem is well known from EU literature. Following Schmitter, an obstacle in research on the EU is that “no realistic or compelling assessment of the impact of the EU on domestic democracy can afford to ignore taking *counterfactuals* into account.” (Schmitter 2003: 82; emphasis in original; see also Hix and Goetz 2001: 21). Thus, testing for time shocks that are potentially related to the NFA is the only way to quantitatively approach an (indirect) political effect of the reform on legislative institutions in the cantons. Simultaneously, testing for time

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<sup>55</sup> Distances are taken from <https://www.luftlinie.org/> (accessed 29 June 2017).

effects is also methodically necessary (see section 5.1.2). As discussed, an NFA-effect is plausible from the end of the 1990s onwards. While it cannot be ruled out that discussions had begun earlier, the following points in time are crucial (see section 3.4.2): the publication of and consultation on the report of the so-called NFA-fundamentals (1996; EFD and FDK 1996), the publication of the official message and proposition of the reform by the Federal Council (2001; BR 2001), the ballot on the revised constitutional and statutory articles (2004<sup>56</sup>), the conclusion of the IRV (2005), and the taking force of the revised constitutional and statutory law (2008; EFD and KdK 2007). The design allows for testing all potentially relevant periods in time so that it is not only theoretically plausible but also empirically testable that other periods than the ones discussed were more crucial. With respect to a mechanism of Europeanization that has not been mentioned yet, ‘anticipated reaction’, Radaelli (2004: 12) assumes that domestic adaptation can take place before EU-negotiations are finalized. The researcher argues that actors might foresee conclusions and consequences of such supranational negotiations and undertake domestic action during the process to gain credit ‘at home’ or avoid negative effects. Evenly plausible is a lagged effect, so that parliamentary rights were changed only after a certain period has passed. This further justifies why it is not fruitful to define and test specific years only but rather periods. Drawing on the aforementioned dates, the following periods are accounted for: 1990–1995, 1996–2000, 2001–2004, 2005–2007, 2008–2018.

The general level of power balance between the executive and the legislative branch is indicated by the general power of parliament in lawmaking taken from Wirz (2018) (see above). From the index some components, i.e. the ones measuring the role of parliament in intercantonal affairs as well as the strength of parliamentary commissions (ibid.: 293, 296), are excluded. Unfortunately, the data is cross-sectional exhibiting only one value for each canton.

According to the indicator used to explain IGA-conclusion, partisan competition between the branches of government is as well operationalized by the *Index of Effective Opposition* (IEO) by Altman and Pérez (2002: 89–90, 98). To recall its features: It is calculated as the ratio between the weighted difference between the parliamentary seat share of the oppositional parties and the representation of the governmental parties in parliament. Again, it reads as follows: The higher the values, the stronger the opposition and the share of parties not represented in the executive branch.

Next to these three core variables that allow for testing hypotheses 3.1, 3.2, and 3.3, controls will be included into the model to more adequately specify all possible effects: First, a

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<sup>56</sup> <https://www.bk.admin.ch/ch/d/pore/va/20041128/index.html> (accessed 31 March 2020).

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categorical variable that measures the membership in one of the four classical regional generalist IGCs, i.e. the ORK, NWRK, ZRK, or WRK (see Trees 2005), is controlled for to check potential regional dependence of parliamentary reforms. This is especially plausible with respect to the literature on policy diffusion (see section 4.3). Similarly, Wirz (2018) shows for the Swiss cantons that parliamentary rights within a unit are related to the strength of the legislative branches in the neighboring units. To further control for such a clustering effect, the mean value of the dependent variable of the directly adjacent cantons is differenced and lagged to model change in neighboring cantons at previous points in time. Next, the growth rate of the number of intercantonal agreements per canton between 1980 (Frenkel and Blaser 1981) and 2005 (Bochsler 2009) are included. This measure indicates the degree of intercantonalization that each unit faced in the second half of the 20<sup>th</sup> century. Thus, it illustrates a direct measure of pressure of intercantonal politics and is as well expected to trigger change in the cantons. It complements the hypothesized NFA-effect (period-variable) but is broader in scope since it measures actual intercantonalization in general. The theoretical reasoning could as well lie in top-down effects as proposed by the respective literature on Europeanization (see section 4.1.2) and policy diffusion (see section 4.3.2). As a last control, the analysis takes the core institution of the political systems of Switzerland into account, i.e. direct democracy. Therefore, the so-called Stutzer-index (Stutzer 1999) displays the number of and access to direct democratic institutions. Next to the index value for 1970 and 1996, it is replicated for 2010 as well (Vatter et al. 2020). The used measure is the mean index value for all three points in time. The variable reads as follows: The higher the value, the more accessible is direct democracy in a canton.

## 6 Reform Effects I: Intergovernmental Agreements

The first analytical part on IGA-conclusion and its rationality is carried out in three steps. First, descriptive statistics are presented to give general insights into the patterns of intercantonal cooperation by means of intercantonal agreements. While this is the main goal of the description, special attention is paid to possible effects caused by the NFA. Second, the inferential statistics provide answers to the question of why Swiss subnational entities contract. A dyadic perspective is taken first while remaining variance is approached by a simple OLS-model on cantonal fixed intercepts second. The exclusive view on the Swiss case closes by a critical account on how to validly measure horizontal cooperation among subnational entities, especially against the background of the NFA. Third, the scope of the analysis is broadened by discussing horizontal cooperation between the constituent units in two comparable cases, i.e. Germany and the U.S., against the descriptive and explanatory findings of the Swiss case.

### *6.1 Intergovernmental Agreements in Switzerland in the Post-NFA-Era*

As discussed in chapter five, a test of the effects of a reform on contracting intensity would necessitate a longitudinal design and time-series data. Due to a lack of such data, the section aims at better understanding the research object at hand by means of investigating state and rationality behind IGA-conclusion. Furthermore, the following analyses shall at least approach the question of whether the NFA has spurred IGA-conclusion. To this end, three data compilations of different but comparable origin are contrasted and inform about the state of intercantonal contracting as of early 1980 (Frenkel and Blaser 1981), 2005 (Bochsler 2009; see also Bochsler and Sciarini 2006), and 2016 (own data compilation). While the data of Frenkel and Blaser (1981) was digitalized for the cause of this study, modifications of the data by Bochsler (2009) were necessary to make all three compilations comparable (especially with respect to the exclusion of all declarations of reciprocity). Since all data presented are not longitudinal for itself but cross-sectional as of the respective point in time, the three adjusted cross-sections at least enable to approach a longitudinal perspective based on three scattered points in time.

### 6.1.1 *Who contracts with whom? A Descriptive Account*

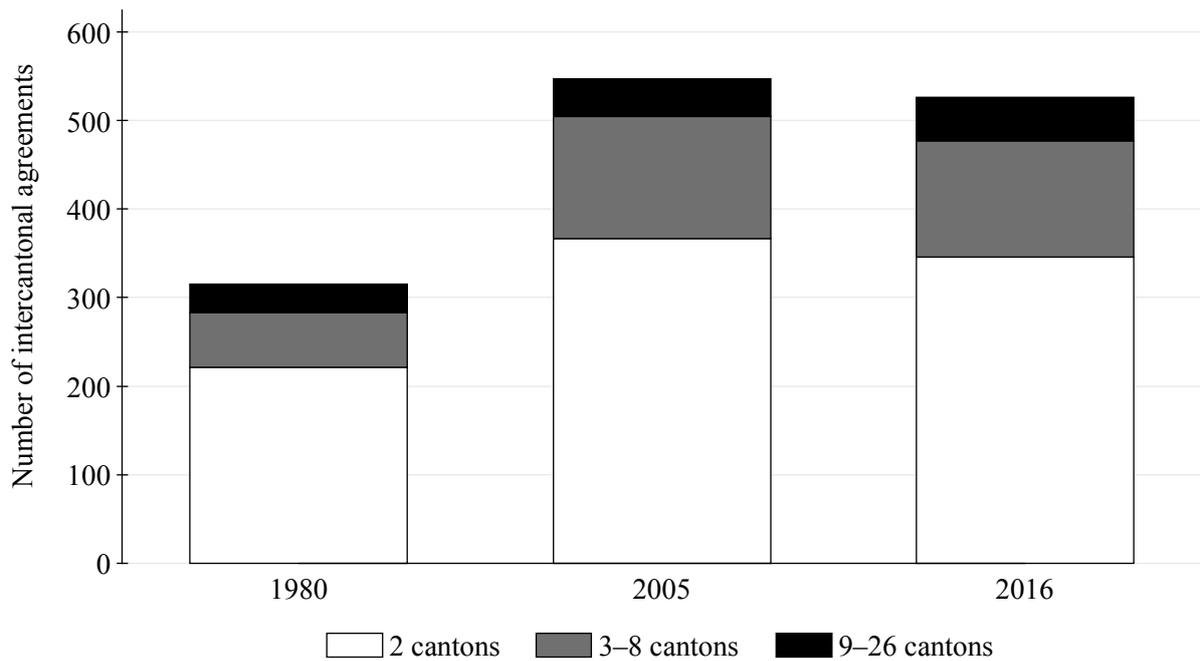
Frenkel and Blaser (1981) report over 300 intercantonal agreements in force at the beginning of the 1980s. By means of respective data by Bochsler (2009), likewise under exclusion of declarations of reciprocity here, 547 intercantonal agreements exist as of 2005. This illustrates that the increase of IGAs between the two points in time (Bochsler and Sciarini 2006, Bochsler 2009) is *not* due to deviations in the scope of the datasets since the analysis here provides comparable numbers for all dates. Rather, the mere number of IGAs had indeed increased between the beginning of the 1980s and this early stage after the turn of the millennium. The state of IGAs as of 2016, again under exclusion of declarations of reciprocity, draws a similar picture compared with 2005 and reports 526 IGAs in force. The number of IGAs is at a similarly high level indicating a consolidation of intercantonal agreements during, at least, the last ten years. Figure 6.1 illustrates the numbers at the three points in time.<sup>57</sup>

The figure further indicates that the majority of all IGAs in 1980 as well as in 2005 and 2016 are of bilateral nature. The relative share only minorly varies between 70.16 percent in 1980, 67.09 percent in 2005 and 65.78 percent in 2016. Differences are slightly more pronounced with respect to multilateral contracts between three to eight cantons: While in 1980 every fifth IGA (19.68) is of intermediate scope, every fourth IGA involves three to eight cantonal parties in 2005 (25.23) and 2016 (24.90 percent). Only a small amount of all intercantonal agreements at each point in time comprises nine or more cantons (1980: 10.16; 2005: 7.68; 2016: 9.32 percent). This initial view suggests that intercantonal contracting, first, had indeed increased over time and consolidated on a high level, and, second, is rather stable in its appearance with respect to the scope of contracting partners. Note that especially the second observation will be subject to further examinations later.

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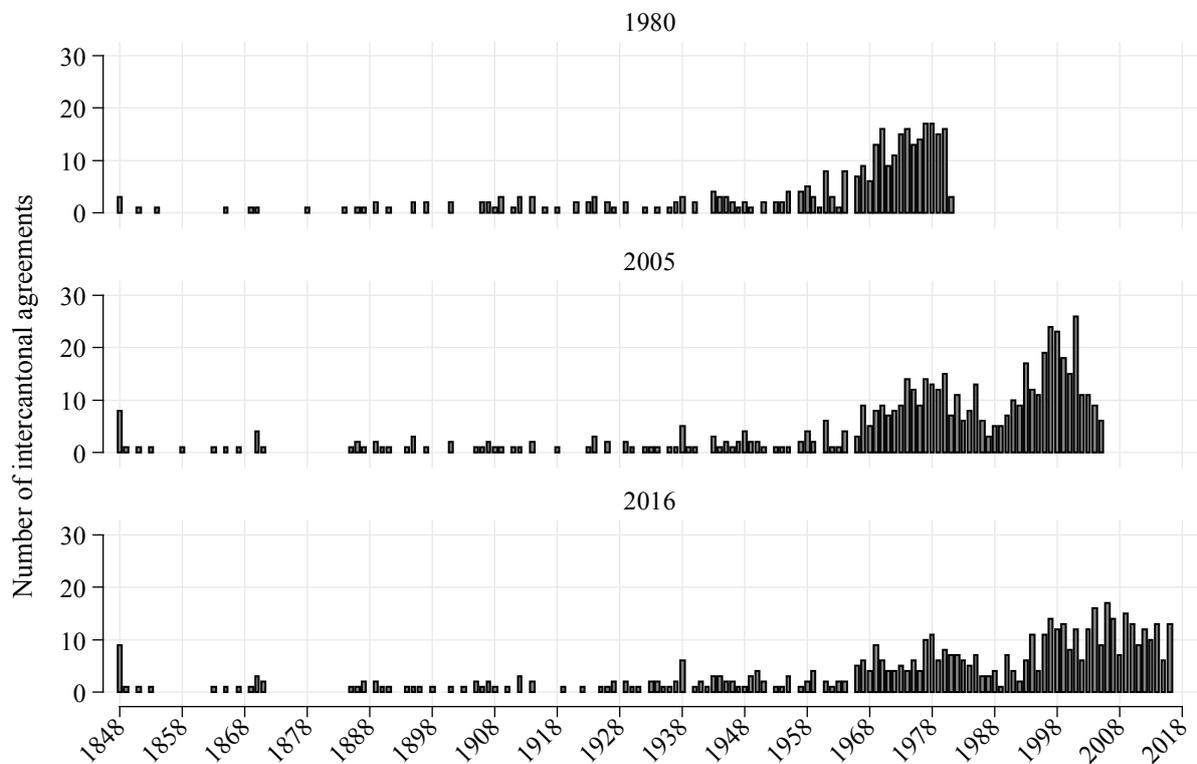
<sup>57</sup> Note that the numbers under inclusion of all declarations of reciprocity are nearly identical, so that around 760 intercantonal agreements exist as of 2005 and 2016.

Figure 6.1: Number of intercantonal agreements by partners (1980, 2005, 2016)



Note: The figure shows all intercantonal agreements of 1980, 2005, 2016, all declarations of reciprocity excluded.  
 Sources: 1980: Frenkel and Blaser (1981); 2005: Bochsler (2009) with own adjustments; 2016: Own data compilation on the basis of the cantonal statute books and <http://www.lexfind.ch/> (accessed 31 August 2017) and reexamined by means of the abovementioned older data by Frenkel and Blaser (1981) and Bochsler (2009).

Figure 6.2: Number of intercantonal agreements by year (1980, 2005, 2016)



Note: The year 1847 embraces the sum of all contracts that have been concluded earlier and are still in effect. For further information, see figure 6.1.  
 Sources: See figure 6.1. See Arens et al. (2017) for an earlier version of this figure.

Figure 6.2 shows the number of intercantonal agreements by year of its conclusion and taking force, respectively. As already emphasized, the data only captures all agreements of 1980, 2005, and 2016. Each snippet of the figure is thus not able to provide a trend over time but plots the number of intercantonal contracts by year of conclusion. Hence, what might look like time series are cross-sections instead. With respect to the state of IGAs as of 1980 (Frenkel and Blaser 1981), some contracts date back to the pre-1848 period, thus, being older than the federation itself. While 25 percent of all IGAs had been concluded up to the early 1950s, half of all intercantonal agreements result from a good ten years between 1970 and 1980. Hence, the grand majority of all IGAs is of recent date close to the respective time of data compilation. Furthermore, the distribution of IGA-conclusion is similar in 2005 and 2016. At both points in time, 25 percent of all IGAs originate from the pre-1848 period up to around 1970. Then, while 50 percent of all IGAs as of 2005 were concluded between 1983 and the end of the time of observation, 50 percent of all IGAs as of 2016 stem from 1993 or a more recent point in time. This indicates that intercantonal contracting is subject to a process of steady and continuous renovation – note that the data grasps the contracts as a whole and not single articles that are revised even more frequently. The latter might be a reason for why the number of IGAs did not increase in the most recent period although the NFA took force in between that should have spurred intercantonal contracting instead.

On closer inspection of the data, it is highly likely that the NFA especially triggered the revision of existing contracts as to meet expectations raised by the officials, e.g. higher demands on the amount and calculation of intercantonal compensations in various areas or intercantonal harmonization in public education. The yearly monitoring reports by the ch Stiftung (*various years*) provide examples. The *Monitoring-Bericht Föderalismus 2007* first argues that the taking force of the IRV in May 2007 is generally assessed as a clear indication “that the cantons are willing to enhance intercantonal cooperation with shared burdens” (ch Stiftung 2008: 16; own translation). This underlines the study’s first basic expectation of increased contracting among the cantons in the wake of the NFA. The report further highlights that the Conference of Cantonal Directors of Social Affairs (SODK) passed the *Interkantonale Vereinbarung für soziale Einrichtungen (IVSE)* during 2007 to make similar earlier regulations compatible with new legislation that is part of the NFA (ibid.). A look into the IVSE confirms the description (see Art. A1–3 IVSE). The SODK’s commentary on this new IGA (SODK 2007) points out that the IVSE is intended to replace the *Interkantonale Vereinbarung über Vergütungen an Betriebsdefizite und die Zusammenarbeit zugunsten von Kinder- und Jugendheimen sowie von Behinderteneinrichtungen (Heimvereinbarung)*. This latter IGA dates back to 1984 and

similarly tackled the placement of persons in need of care in institutions outside the canton of residence. However, it was less broad in scope of its regulations, e.g. not including the field of addiction and special schools. Nonetheless, and besides this example, there are other IGAs directly originating from the NFA, e.g. the *Interkantonale Kulturlastenvereinbarung* of 1 July 2003<sup>58</sup> among cantons of mainly Central Switzerland as well as the *IKZAV* of 24 November 2009<sup>59</sup> among northeastern cantons. Both regulate public goods provision and usage with respect to cultural institutions and both directly draw on IRV-provisions (see Art. 16 and Art. 19 IKZAV). The link between the conclusion of these intercantonal agreements can be traced back by the aforementioned yearly federalism-monitors of the ch Stiftung (2009: 22). A third example shall add another possibility of how the cantons might have acted upon the new NFA-measures. By entering the *Interkantonale Vereinbarung über den schweizerischen Hochschulbereich (Hochschulkonkordat)* of 20 June 2013, the canton of Berne terminated the *Interkantonales Konkordat über universitäre Koordination* of 9 December 1999 as well as the *Vereinbarung zwischen dem Bund und den Universitätskantonen über die Zusammenarbeit im universitären Hochschulbereich* of 14 December 2000 (GR BE 2014). Thus, new contracts might directly derive from various less encompassing IGAs that are consolidated into one.

Table 6.1 gives further insights into how contracting per unit changed over time. First, the overall mean number of IGAs per canton clearly accelerated between 1980 and the turn of the millennium and again slightly increased up to 2016: While a canton on average took part in 49 intercantonal agreements in 1980, mean contracting activity per subnational unit amounted to 84 IGAs in 2005 and 90 IGAs in 2016. How come that in the past ten years the overall number of IGAs even slightly decreased (see figure 6.1) while its average number per canton slightly increased? An explanation could be that, indeed, and as discussed above, a consolidation process was under way at times of the intermediate data collection, i.e. around 2005, and in the wake of the NFA. An indication backing this claim is the fact that while the average numbers of bilateral IGAs between two and multilateral IGAs between three to eight contracting cantons was stabile (and has even slightly declined) between 2005 and 2016, the average number of omnilateral IGAs has risen from 30 to 38 IGAs per canton between these two recent points in time. This jump becomes even more impressive when considering that the number had increased by the same margin between 1980 and 2005, from 22 to 30 omnilateral IGAs.

<sup>58</sup> *Vereinbarung über die interkantonale Zusammenarbeit im Bereich überregionaler Kultureinrichtungen (Interkantonale Kulturlastenvereinbarung)* of 1 July 2003 (Argovia, Lucerne, Schwyz, Uri, Zug, and Zurich).

<sup>59</sup> *Vereinbarung über die interkantonale Zusammenarbeit und den Lastenausgleich im Bereich der Kultureinrichtungen von überregionaler Bedeutung (IKZAV)* of 24 November 2009 (Appenzell Inner-Rhodes, Appenzell Outer-Rhodes, St. Gallen, and Thurgovia).

Table 6.1: Intercantonal agreements per canton (1980, 2005, 2016)

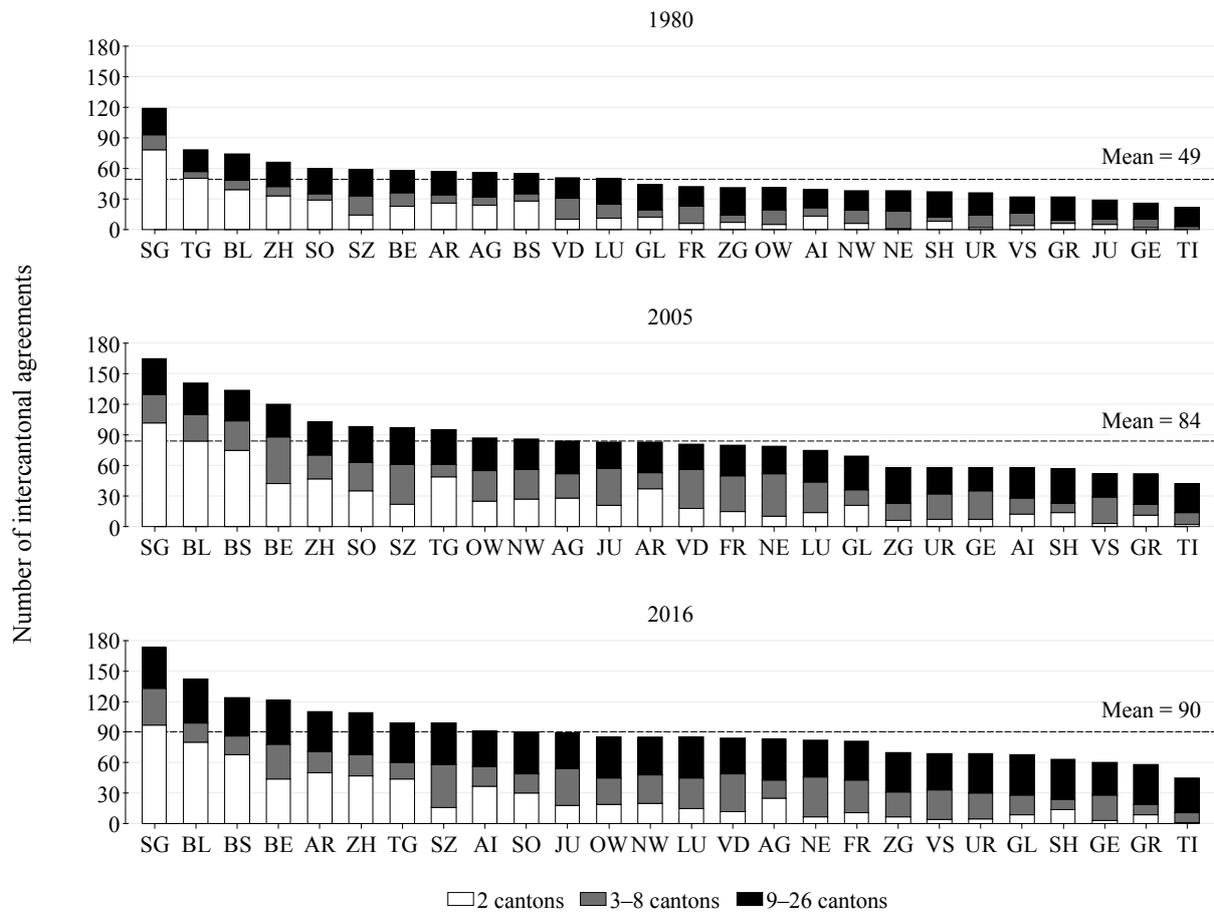
| <i>Number of contracting partners</i> | <i>Point in time</i> |        |        |
|---------------------------------------|----------------------|--------|--------|
|                                       | 1980                 | 2005   | 2016   |
| <i>All cantons</i>                    |                      |        |        |
| Mean                                  | 49                   | 84     | 90     |
| (standard deviation)                  | (20)                 | (30)   | (28)   |
| Minimum/Maximum                       | 22/119               | 42/165 | 45/173 |
| <i>2 cantons (bilateral)</i>          |                      |        |        |
| Mean                                  | 17                   | 28     | 27     |
| (standard deviation)                  | (18)                 | (26)   | (25)   |
| Minimum/Maximum                       | 0/78                 | 2/102  | 1/97   |
| <i>3–8 cantons (multilateral)</i>     |                      |        |        |
| Mean                                  | 10                   | 26     | 25     |
| (standard deviation)                  | (5)                  | (10)   | (9)    |
| Minimum/Maximum                       | 3/21                 | 9/46   | 10/42  |
| <i>9–26 cantons (omnilateral)</i>     |                      |        |        |
| Mean                                  | 22                   | 30     | 38     |
| (standard deviation)                  | (3)                  | (4)    | (3)    |
| Minimum/Maximum                       | 16/27                | 23/36  | 32/43  |

Note: See figure 6.1.

Sources: See figure 6.1.

Figure 6.3 illustrates the number of intercantonal agreements by canton and number of contracting partners. It confirms table 6.1 and the discussion thereto. Furthermore, it illustrates the considerable variation between the cantons with respect to intensity of cooperation. At each of the three points in time, the canton of St. Gallen stands out with the most IGAs concluded by far (1980: 119; 2005: 165; 2016: 173). Since contracts set up at one point in time normally endure over a specific period, it is not surprising that the rank order of the cantons is highly interdependent between 1980, 2005, and 2016. There are several cantons, that possess an above average number of IGAs at all three points in time, i.e. Basel-Country, Basel-City, Berne, Zurich, Thurgovia, Schwyz, and Solothurn. More interestingly than the cantons at the top might be the one at the bottom of the distribution, e.g. Geneva, Ticino, and Grisons. As Bochsler and Sciarini (2006: 34–35) and Bochsler (2009: 358–359) already show, it is especially these and other peripheral cantons that engage less in intercantonal contracting.

Figure 6.3: Number of intercantonal agreements by canton (1980, 2005, 2016)



Notes: See figure 6.1.

The abbreviations read as follows: AG: Argovia; AI: Appenzell Inner-Rhodes; AR: Appenzell Outer-Rhodes; BE: Berne; BL: Basel-Country; BS: Basel-City; FR: Fribourg; GE: Geneva; GL: Glarus; GR: Grisons; JU: Jura; LU: Lucerne; NE: Neuchâtel; NW: Nidwalden; OW: Obwalden; SG: St. Gallen; SH: Schaffhausen; SO: Solothurn; SZ: Schwyz; TG: Thurgovia; TI: Ticino; UR: Uri; VD: Vaud; VS: Valais; ZG: Zug; ZH: Zurich.

Sources: See figure 6.1. See Arens (2018) for an earlier version of this figure.

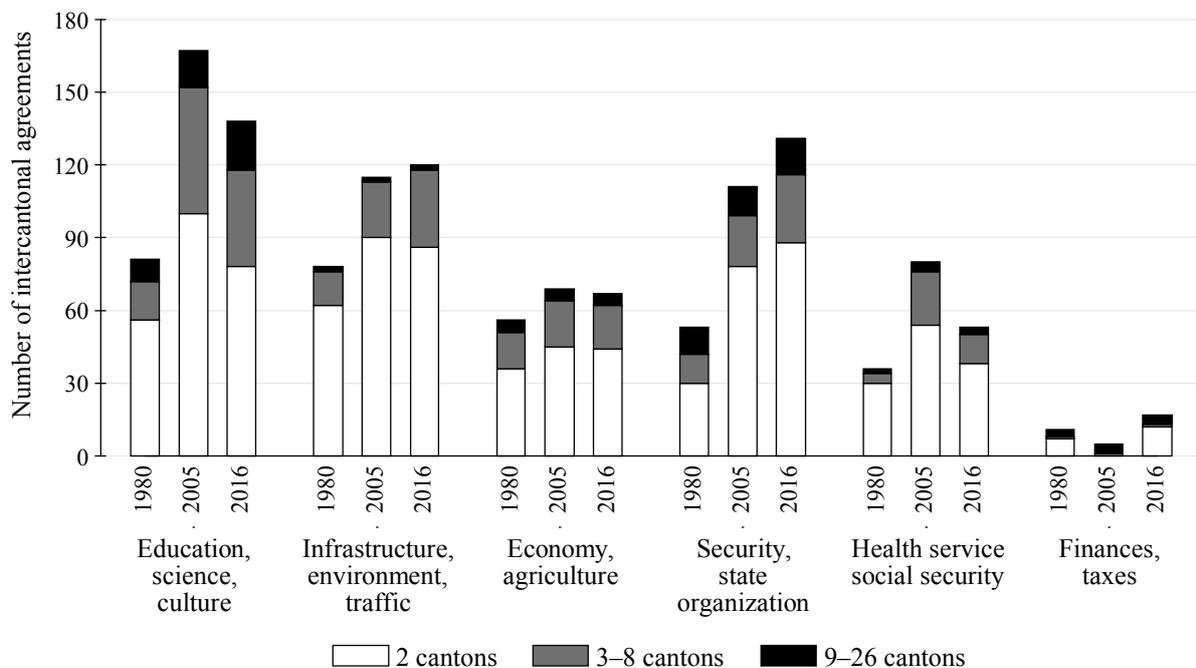
Figure 6.4 shows the extent to which the different policy areas are addressed by intercantonal agreements. At each of the three points in time, education, science, and culture is predominant (1980: 81; 2005: 167; 2016: 138). This makes especially sense against the background that the policy area lies at the core of subnational self-rule and constituent units’ autonomies in general. This holds true for the Swiss case since the religious divide between catholic and protestant *Stände*, among others, stands at the forefront of federal state building in 1848 (Vatter 2018a: 14–19). According to Dardanelli and Mueller (2019: 142) administrative and legislative competences over policies with respect to culture and pre-tertiary and tertiary education have widely remained in the hands of the cantons over time. This provides huge leeway for IGAs since the cantons are free to autonomously legislate and administer *or* collectively tackle the tasks by means of voluntary intercantonal cooperation. With reference to education policies,

Criblez observes increasing efforts to set up IGAs, mainly against the background of federal pressure towards uniform policies and the so-called “Swiss Education Area” (see Art. 61a Cst): “Since the 1990s, education policy in Switzerland has become the politics of state treaties, that shall be continued and expanded (*Hochschulkonkordat*). It can account as the effectuation of what was termed “cooperative federalism” (Häfelin, 1969; Dominicé, 1969) in the 1970s: close horizontal cooperation among the cantons.” (Criblez 2008: 292; own translation).

Figure 6.4 illustrates this stark increase of IGAs in education, science, and culture. However, the already discussed probable consolidation process at the beginning of the millennium might be visible here as well since the absolute number of such IGAs has decreased on a high level between 2005 and 2016. Noteworthy, nearly half of all these intercantonal agreements in force in 2016 are multi- or omnilateral (43.48 percent). This speaks to the observation of Criblez and the efforts in harmonizing policies in the area of education (as well as culture and science) in pursuit of the so-called *Swiss Education Area*.

What can be derived from figure 6.4 with respect to the other policy areas? As of 2016, second and third most IGAs are observed in the area of security and state organization (131) and in regulating infrastructure and environment (120). The figure lets assume that contracting with

Figure 6.4: Number of intercantonal agreements by policy area (1980, 2005, 2016)



Note: See figure 6.1.

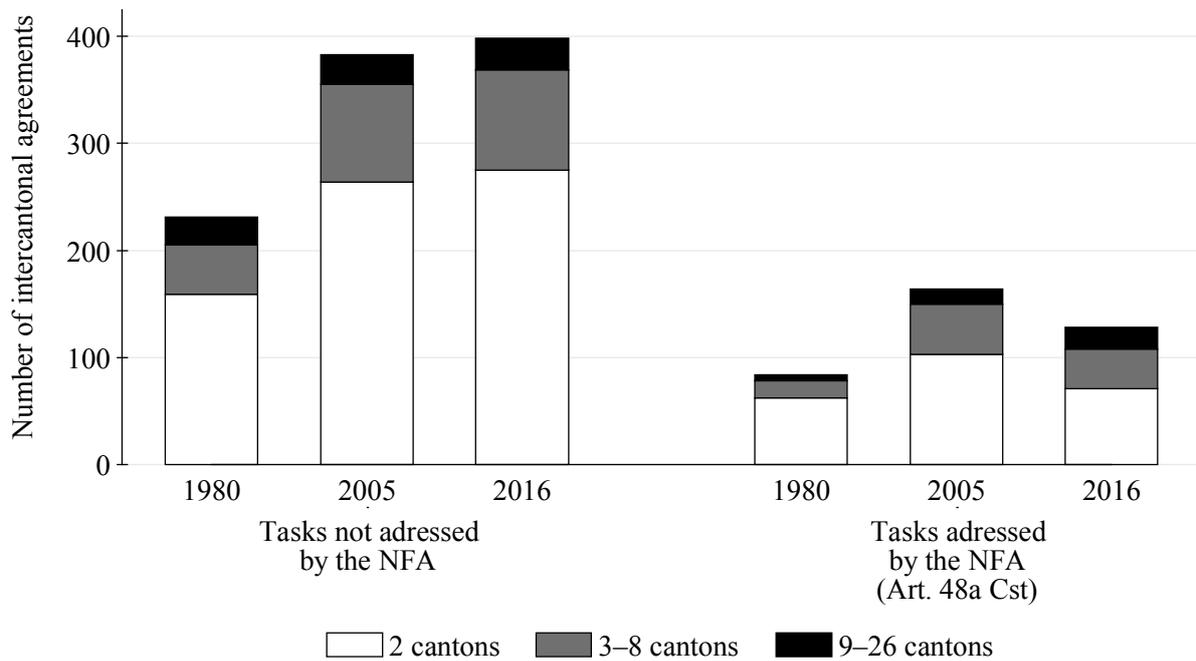
Sources: See figure 6.1. See Arens et al. (2017) for an earlier version of this figure.

respect to finances and taxes is least developed. However, it is especially this category that is affected by the exclusion of all declarations of reciprocity since the grand majority thereof lies within this category. It would easily be at the top of the table and mark the category most heavily regulated by IGAs as of 2005 (see Bochsler and Sciarini 2006) and 2016 (see Arens et al. 2017).

The discussion so far provided possible explanations for the mixed findings of figure 6.1 when only looking at the mere number of IGAs before and after the taking force of the NFA. The analyses at the three points in time indicate that the reform did have an effect, while broad quantitative measures like the plain N of all IGAs in force fall short of measuring it appropriately. Rather, the numbers on steady and continuous renovation of intercantonal contracts together with the examples of newly set up, replaced, or condensed IGAs suggest that the reform had led to changes. Table 6.1 and figure 6.3 further differentiate the picture and showed that the average number of overall IGAs per canton in general and omnilateral IGAs per canton in particular have accelerated in the most recent period. Thus, the overall outlook of intercantonal IGAs has changed towards more large-scale and consolidated small- and medium-scale cooperation. However, with respect to possible reform effects, the descriptions must be interpreted with caution, since the data so far encompasses *all* horizontal IGAs among the cantons, and not only those within the range of Art. 48a para. 1 lit. a.–i. Cst. Thus, the data displayed so far does not allow answers to the question of whether the NFA has really enhanced contracting in the policy areas it targeted.

To take stock of the reform more adequately, first, the analysis by policy area can discriminate between all IGAs concluded before and after the NFA has taken force in 2008. Generally, around every fifth intercantonal agreement as of 2016 (18.63 percent) took effect in 2008 or a more recent point in time (see the discussion on figure 6.2). Thus, a considerable amount of all IGAs dates to a post-NFA year. Interestingly, nearly forty percent of all omnilateral IGAs (38.78 percent) have been in effect only since 2008. This further strengthens the observation that latest efforts in intercantonal contracting aim at especially broad coordination. Concerning changes since 2008 within other policy areas next to (the strong increase of IGAs in) education, science, and culture – 25.36 percent of all IGAs in force in 2016 have originated since then –, most renewal was undertaken in the area of health services and social security: more than every third intercantonal agreement (35.85 percent) dates to 2008 or later. Here, now, the examination of the specific tasks enshrined in Art. 48a para. 1 lit. a.–i. Cst. is of interest since education and health lied at the center of the NFA as well. However, can the new contracts in these policy areas really be traced back to their constitutional codification by means of the NFA?

Figure 6.5: Number of intercantonal agreements in NFA-areas (1980, 2005, 2016)



Note: See figure 6.1.  
Sources: See figure 6.1.

To this end, all contracts of the three datasets were carefully coded according to whether being covered by Art. 48a para. 1 lit. a.–i. Cst. and, thus, potentially subject to federal enforcement or not. Figure 6.5 shows the number of IGAs in and out of the NFA-range for 1980, 2005, and 2016. Astonishingly, the relative number of IGAs that would have been covered by the NFA as of 1980 already amounts to 26.58 percent. Thus, around every fourth IGA dealt with one of the tasks of Art. 48a para. 1 lit. a.–i. Cst. aiming at public goods provision with shared burdens or intercantonal harmonization in educational policies. The ratio is slightly higher for 2005 (29.98 percent) and lower for 2016 (24.33 percent). Thus, in relative terms, contracts on public goods provision and intercantonal educational harmonization had always been similarly developed compared to the overall state of IGAs. However, in absolute terms, the respective contracts have clearly gained in number with 164 such IGAs (out of 547) in 2005 and 128 (out of 526) in 2016 compared to 84 (out of 316) in 1980. Hence, intercantonal agreements in the NFA-policy areas as well as intercantonal harmonization in school education have increased between the 1980s and the beginning of the millennium. An explanation for the decrease of late can again be found in the possible consolidation process in the wake of the NFA.

Lastly, when comparing the composition of the IGAs in the NFA-areas with its counterparts, especially in 2016, IGAs within Art. 48a para. 1 lit. a.–i. Cst. are characterized by a higher scope of contracting partners (see figure 6.5). Among the IGAs covered by the NFA,

multilateral and omnilateral contracts constitute around 45 percent (44.53 percent) of all respective IGAs, while they represent only a good 30 percent (30.90 percent) of all non-NFA-IGAs. Thus, multilateral and (potentially) omnilateral IGAs are clearly overrepresented here.

Similar to the discussion on figure 6.1 and table 6.1, IGA-conclusion per canton has not decreased but at least consolidated, also with respect to the policy tasks targeted by the NFA. Equivalent to the findings on all IGAs, table 6.2 illustrates that especially the average number of omnilateral IGAs per subnational unit has clearly increased between 1980 and 2005 *and* between 2005 and 2016. Altogether, the findings on the development of contracting activity in the NFA-policy areas are backed by the official evaluation reports of the Federal Council (BR 2010, 2014, 2018). The first report evaluating the development between 2008 and 2011 concludes as follows:

“The already intensive intercantonal cooperation has been further strengthened since the taking force of the NFA. In important areas, basic contracts of cooperation could be set up. [...] In total, the reinforcement of intercantonal cooperation with shared burdens as targeted by the NFA is under way.” (BR 2010: 83).

*Table 6.2: Intercantonal agreements per canton in the NFA-areas (1980, 2005, 2016)*

| <i>Number of contracting partners</i> | <i>Point in time</i> |       |       |
|---------------------------------------|----------------------|-------|-------|
|                                       | 1980                 | 2005  | 2016  |
| <i>All cantons</i>                    |                      |       |       |
| Mean                                  | 12                   | 27    | 28    |
| (standard deviation)                  | (5)                  | (8)   | (7)   |
| Minimum/Maximum                       | 4/26                 | 15/49 | 19/48 |
| <i>2 cantons (bilateral)</i>          |                      |       |       |
| Mean                                  | 5                    | 8     | 5     |
| (standard deviation)                  | (5)                  | (8)   | (6)   |
| Minimum/Maximum                       | 4/26                 | 0/26  | 0/20  |
| <i>3–8 cantons (multilateral)</i>     |                      |       |       |
| Mean                                  | 3                    | 9     | 8     |
| (standard deviation)                  | (1)                  | (3)   | (4)   |
| Minimum/Maximum                       | 1/5                  | 4/16  | 2/16  |
| <i>9–26 cantons (omnilateral)</i>     |                      |       |       |
| Mean                                  | 4                    | 9     | 15    |
| (standard deviation)                  | (1)                  | (2)   | (1)   |
| Minimum/Maximum                       | 2/6                  | 6/13  | 13/18 |

*Note:* See figure 6.1.

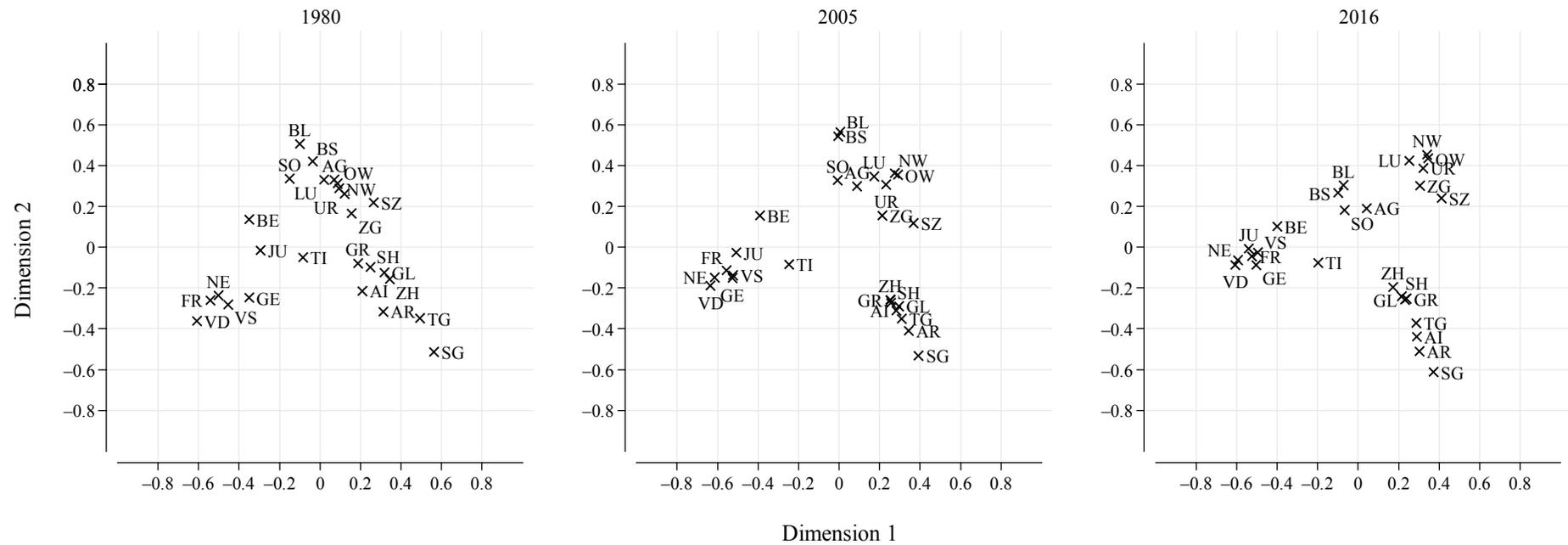
*Sources:* See figure 6.1.

Intercantonal contracting has been looked at with respect to various features in this chapter so far. Still, crucial questions are unanswered with respect to IGAs, among others, the one posed in the title to this subchapter: Who contracts with whom? Some descriptions could already approach the question in parts. The average number of intercantonal agreements per canton was discussed above, and it was highlighted that the number of omnilateral, i.e. (potentially) federation spanning, IGAs had increased between 1980 and 2005 and has been boosted between 2005 and 2016. Table 6.1 also informed about the average numbers of bilateral and multilateral IGAs per canton. The numbers are as well informative for contracting activity with respect to its territorial distribution. They give relevant background information on the most fundamental general changes over time that should also affect the territorial patterns of IGA-conclusion. Figure 6.6 illustrates the latter in a spatial proximity graph computed by means of classical multidimensional scaling (MDS). The landscape of intercantonal contracting is rather vague in 1980 so that figure 6.6 shows a cloud of points and not cohesive and clearly demarcated groups of cantons for this early point in time. While it already suggests that IGA-conclusion is territorially informed with cantons of the same region located more closely together. A cluster analysis on the data implies that, however, two clusters are the most appropriate solution here (Calinski–Harabasz pseudo-F index: 3.96 for two clusters): A north-/eastern cluster (under inclusion of the canton of Ticino; see bottom right of the first illustration of figure 6.6) faces the broad and rather loosely related group of the residing 17 cantons of central, northwestern, and western Switzerland.<sup>60</sup> As discussed against the background of table 6.1, especially multilateral contracting with three to eight cantonal parties is limited with on average only ten such IGAs per canton in 1980. The scope of cooperation is clearly regional in this category. With its low average per unit in 1980, this regional dimension of cooperation is at a still immature state at this time what is confirmed by figure 6.6. Simultaneously, especially bilateral contracting was as well not too strong in absolute terms (see table 6.1). All in all, limited bi- and omnilateral and hardly developed multilateral cooperation could lie behind the overall scattered positions of the cantons in 1980.

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<sup>60</sup> The calculations are executed by hierarchical clustering in general and average-linkage clustering in particular. Other hierarchical linkage methods, i.e. single-linkage, complete-linkage, and weighted-average linkage, result in a high variance of possible cluster solutions. The Calinski–Harabasz pseudo-F stopping rule results in a high but varying number of groups based on these alternative hierarchical linkage methods. Since they, however, partly overestimate the number of clusters, the basic solution after the average-linkage calculation is given most weight here. Furthermore, the alternative hierarchical linkage methods similarly lead to two- to three-cluster-solutions when using the Duda–Hart  $Je(2)/Je(1)$  stopping-rule instead of the Calinski–Harabasz pseudo-F index. Thus, a low number of (around) two rather non-cohesive clusters seems most appropriate here.

Figure 6.6: Proximity of cantons in intercantonal contracting (1980, 2005, 2016)



*Note:* The figure shows all intercantonal agreements as of 1980, 2005, and 2016. The proximity between each two cantons is calculated by means of multidimensional scaling (MDS). While the 26 cantons are the observations, each agreement constitutes one variable. The coding is binary so that each canton receives a value of 1 when it is partner to a contract and a value of 0 otherwise. Similarity of pairs (for the measure see phi coefficient after Pearson 1900a) is defined as follows: The higher the number of shared agreements and such in which none of the two units at hand participate compared to the number of agreements where only one but not the other is partner, the closer two units. For further information see figure 6.1. For the abbreviations see figure 6.3.

*Sources:* See figure 6.1. See Arens (2018) for an earlier version of the figure as of 2016.

For 2005, the cluster analysis suggests four groups of cantons that contract more intensively among each other. The Calinski–Harabasz pseudo-F index that is used as the decisive test statistic obtains its maximum of 4.81 against the background of four intercantonal clusters.<sup>61</sup> The cantons are divided along clear territorial-regional lines separating eastern and northeastern from those of central, western, and northwestern Switzerland. The MDS on the data of 2005 (see figure 6.6) confirms this clustering. It further hints towards the fact that the partition between the cluster of central and northwestern Switzerland is not that clear cut. Accordingly, the cluster analysis suggests five clusters as second most appropriate solution that would further split the northwestern region into two (sub-)clusters, i.e. Argovia together with Solothurn and Basel-Country with Basel-City. As the increase in the Calinski–Harabasz pseudo-F between 1980 (3.96 for two clusters) and 2005 (4.81 for four clusters) signals, distinctiveness of the appropriate solution strongly increases, furthermore displaying new and more differentiated compositions of the clusters. What lies behind these changes? Since the number of multilateral IGAs accelerated from on average only ten in 1980 to 26 multilateral IGAs per unit in 2005 (see table 6.1), intercantonal contracting has regionalized between 1980 and the new millennium with enhanced policy-making and implementation on an intermediate, regional scope. The IGA-network of 2005 illustrates this finding by more cohesive and regionally demarcated groups of intensified cooperation in 2005 against the afore-discussed vague picture of only loosely connected cantons in 1980.

While the differences between 1980 and 2016 are even more striking than between 1980 and 2005, there is also variance in contracting between the two rather successive points in time of 2005 and 2016. With respect to table 6.1 it was already discussed that especially omnilateral cooperation per unit starkly increased, while bi- and multilateral IGAs have remained at a high average level. As figure 6.6 illustrates, the cantons of the regions of eastern and northeastern (bottom right), central (top right), northwestern (top center), and western Switzerland (including Berne and Ticino; center left) are tightly grouped together with very high proximity of the units within each of these groups. The cluster analysis confirms the illustration and as well leads to the aforementioned four clusters implying that intercantonal cooperation as of 2016 is predominantly and strongly regional.<sup>62</sup> The Calinski–Harabasz pseudo-F-test statistic

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<sup>61</sup> The calculations are executed by hierarchical clustering in general and average-linkage clustering in particular. Other hierarchical linkage methods, i.e. single-linkage, complete-linkage, and weighted-average linkage, result in similar solutions with the Duda–Hart  $Je(2)/Je(1)$  stopping-rule, however, partly suggesting five instead of four clusters. The Calinski–Harabasz pseudo-F stopping rules suggests a four-cluster-solution in three of the four linkage methods applied.

<sup>62</sup> The calculations are executed by hierarchical clustering in general and average-linkage clustering in particular. While the results of single-linkage clustering deviate from this solution, complete-linkage and weighted-average

that is used to select the most appropriate cluster solution displays a high value of 5.12 that is clearly higher than the one of the optimal solution for 1980 (3.96 for two clusters) and 2005 (4.81 for four clusters). Especially the difference to the cluster analysis of 2005 resulting in the same composition of cantons is noteworthy: The growth in this global and thus comparable test statistic implies even more distinctive and cohesive clusters in 2016 compared to 2005. Besides, omnilateral contracting gained in importance most recently. However, differences should not be overestimated since they are not too grave. The findings further strengthen the assumption that a process of consolidation was under way at the beginning of the millennium that is captured here by the data of 2005. The overall high number of intercantonal agreements, especially with respect to bi- and multilateral cooperation, together with regionally demarcated clusters that are, however, not yet as clear and distinctive as in 2016 back this claim.

Table 6.3: Hypotheses on the explanations of intercantonal contracting

|                               |   |
|-------------------------------|---|
| <i>General proposition 1:</i> | The higher the degree of homophily among two cantons, the more frequent they enter into mutual agreements.  |
| <i>Hypothesis 1.1:</i>        | The higher the degree of homophily across political elites of two cantons, the more frequent they cooperate in intercantonal agreements.                  |
| <i>Hypothesis 1.2:</i>        | The higher the degree of homophily across the communities underlying the collaborating elites of two cantons, the greater the number of contractual ties. |
| <i>Hypothesis 1.3:</i>        | The higher the geographic proximity between two cantons, the higher the number of joint intercantonal agreements.   |
| <i>Hypothesis 1.4:</i>        | Common membership in regional conferences enhances intercantonal cooperation, while its absence hampers it.   |
| <i>General proposition 2:</i> | The higher the degree of homogeneity within a canton, the more frequent it enters into IGAs.  |
| <i>Hypothesis 2.1:</i>        | The higher the degree of political-institutional power asymmetry in favor of the executive, the more frequent a canton enters intercantonal agreements.   |
| <i>Hypothesis 2.2:</i>        | The lower the number of partisan veto players within a canton, the more frequent it enters intercantonal agreements.                                      |
| <i>Hypothesis 2.3:</i>        | The larger the population size of a canton, the more frequent it enters intercantonal agreements.   |
| <i>Hypothesis 2.4:</i>        | The higher the economic capacity of a canton, the less frequent it enters intercantonal agreements.   |
| <i>Hypothesis 2.5:</i>        | The higher the degree of ethnical homogeneity within a canton, the more frequent it enters intercantonal agreements.                                      |

linkage mostly lead to identical solutions, by means of the Calinski–Harabasz pseudo-F as well as the Duda–Hart Je(2)/Je(1) stopping-rule.

### 6.1.2 Explaining Variance in Cooperation among the Cantons

The descriptive analysis was able to illustrate contracting intensity in general (over time) and by canton. Further, it was shown which policy areas are more and which are less subject to intercantonal cooperation. By discriminating between intercantonal agreements covered by Art. 48a para. 1 lit. a.–i. Cst., the nature of these specific contracts could be approached. At last, the geographical distribution of IGAs mainly suggests that a territorial logic lies behind its conclusion since clear regional clusters of contracting cantons are observable. Thus, the descriptions so far can approach the question of *who contracts with whom*. However, hard tests of explanatory factors stand out. The following multivariate analyses shall thus not only clarify *who contracts with whom* but rather show *what exactly explains the emergence of these contracts*. The expectations as deduced in section 4.2.2 are again listed in table 6.3. Accordingly, the analytical strategy is twofold. The first step aims at explaining the intensity of intercantonal cooperation per cantonal dyad; the perspective already taken at the end of the descriptive analysis (see figure 6.6). Thereby, the interpretation draws on a general model taking all intercantonal agreements into consideration, but also an additional analysis on all IGAs targeted by Art. 48a para. 1 lit. a.–i. Cst. It is generally assumed that more similar cantons face lower (transaction) costs and, as a result, cooperate more frequently (general proposition 1). More precisely, next to political-partisan (hypothesis 1.1) and community similarities (hypothesis 1.2), it is hypothesized that especially geographical proximity (hypothesis 1.3) and common membership in regional IGCs spur cooperation (hypothesis 1.4).

The second analytical step takes the amount of cooperation per canton into account that cannot be explained by dyadic relations. Thus, the proceeding is inductively since, first, all relevant relational factors are tested and, second, the unexplained rest is further analyzed by unit-specific variables. Basic to the latter is the proposition that more homogeneous cantons face lower costs of internal preference aggregation and, thus, cooperate more readily (general proposition 2). The specific hypotheses then suggest an effect from political-institutional (hypothesis 2.1) and partisan (hypothesis 2.2) as well as community related variables (hypotheses 2.3, 2.4, and 2.5).

Table 6.4 shows the results of the dyadic analysis by means of the Quadratic Assignment Procedure (QAP). The number of observations is 325 reflecting all possible pairs of subnational entities. The dependent variable is logarithmized due to its right-skewed distribution. The first hypothesis from a dyadic perspective (1.1) states that homophily among political elites of two units spurs cooperation. The least squares index (LSq) or Gallagher index (Gallagher 1991)

Table 6.4: Determinants of intercantonal cooperation from a dyadic perspective (QAP)

|  | Model 6.1                | Model 6.2               | Model 6.3                | Model 6.4                |
|--|--------------------------|-------------------------|--------------------------|--------------------------|
| Executive branch<br>(LSq)                    | -0.02598*<br>(0.01535)   | -0.01253<br>(0.01628)   | -0.01118<br>(0.01839)    | 0.00198<br>(0.01913)     |
| Population size<br>(smaller canton, log.)    | 0.04065**<br>(0.01803)   | 0.00034<br>(0.01910)    | 0.02480(*)<br>(0.02093)  | -0.01502<br>(0.02163)    |
| Community types<br>(urban-rural)             | 0.00589<br>(0.01550)     | -0.00827<br>(0.01673)   | -0.02248(*)<br>(0.01833) | -0.03659*<br>(0.01891)   |
| Equalization payments<br>(lower, per capita) | -0.00001<br>(0.00002)    | -0.00004*<br>(0.00002)  | -0.00001<br>(0.00002)    | -0.00004*<br>(0.00002)   |
| Language<br>(common)                         | 0.22942***<br>(0.02825)  | 0.18911***<br>(0.02932) | 0.35191***<br>(0.03698)  | 0.31097***<br>(0.03563)  |
| Border<br>(common)                           | 0.05736**<br>(0.02437)   | 0.01960<br>(0.02851)    | 0.00040<br>(0.02790)     | -0.04130(*)<br>(0.03168) |
| Distance<br>(log.)                           | -0.25293***<br>(0.02603) |                         | -0.24073***<br>(0.02787) |                          |
| Commuters<br>(log.)                          |                          | 0.09014***<br>(0.01049) |                          | 0.08858***<br>(0.01115)  |
| Regional. generalist IGC<br>(common)         | 0.08802***<br>(0.02131)  | 0.13780***<br>(0.02142) | 0.06605**<br>(0.02492)   | 0.11070***<br>(0.02413)  |
| Constant                                     | 3.99280***<br>(0.00000)  | 2.88075***<br>(0.00000) | 3.13389***<br>(0.00000)  | 2.07913***<br>(0.00000)  |
| FE cantons                                   | Yes                      | Yes                     | Yes                      | Yes                      |
| Number of observations                       | 325                      | 325                     | 325                      | 325                      |
| R <sup>2</sup>                               | 0.850                    | 0.835                   | 0.803                    | 0.794                    |
| Adj. R <sup>2</sup>                          | 0.833                    | 0.817                   | 0.780                    | 0.770                    |

Notes: Standard errors in parentheses. (\*)  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

Dependent variable in models 6.1 and 6.2: All intercantonal agreements (log.).

Dependent variable in models 6.3 and 6.4: Intercantonal agreements in Art. 48a para. 1 lit. a.–i. Cst (log.).

Sources: See chapter 5.2.

calculated for the executive branches of each dyad tests this effect. It takes high values if the ideological composition – the indicator compares differences in strength of the three main political camps, i.e. the left, center, and right – of the government varies between two units. In

model 6.1, i.e. the basic model on all intercantonal agreements, the coefficient is negative and statistically significant at the 5 percent significance level what means that high ideological disproportionality between cantonal governments hampers the conclusion of IGAs. This effect of party group dissimilarity between the cantonal governments, however, loses its significance in the further models. Thus, no substantial differences occur in the effect of partisan group affiliation. Rather, the findings generally show that political affiliations, at best, play a subordinate role in intercantonal cooperation. Thus, the result is rather in line with studies that do not find an effect of partisan homophily on cooperation intensity between two subnational entities. By analyzing interlocal relations, Minkoff (2013: 286) argues that the absence of partisan politics is especially prevalent in small-scale contexts so that partisan and ideological factors do not offer plausible explanations for cooperation. At the same time, the author leaves open to what extent (heightened) partisan polarization affects cooperation (*ibid.*). The findings here reflect these considerations by showing only a slightly and partly significant and small effect not confirming but also not entirely speaking against the proposition that partisan homophily spurs cooperation. This ambiguous result makes, however, sense against the background of cantonal politics. Polarization of and competition in cantonal politics have somehow increased over the last decades (see e.g. Ladner [2004: 142–148] for party polarization or Bochsler and Bousbah [2015] for competition in government elections). However, and from an internationally comparative perspective, cantonal political systems still resemble “the familiar picture of Switzerland as a prototype of a strong consensus democracy” (Vatter and Stadelmann-Steffen 2013: 87). All in all, the potential effect of partisan differences on intercantonal cooperation is best captured by the model study of Bochsler (2009: 362) and his conclusion, that as well holds true here: “[C]antons with similarly composed governments co-operate slightly more easily, while cantons with opposed governments co-operate less often, but partisan differences are clearly not a general or major obstacle to co-operation.”

The next hypothesis assumes a relationship between community factors and the frequency that the respective elites conclude an agreement (hypothesis 1.2). The indicators tested deal with structure and economy on the one hand and language on the other. As demonstrated in the theoretical section the state of research does not reduce the broad field to a small number of indicators that cover all potential community effects. With respect to structure, table 6.4 provides mixed findings: While Bochsler (2009: 361–362) can be confirmed that cooperation intensity increases by population size of the smaller canton, the intensity, however, declines with increasing size of the more populous partner, as postestimations show. These effects are interpreted as follows: increasing size of population sets further demands towards politics that

is satisfied by means of more intercantonal cooperation with larger partners. For very populous cantons, however, incentives towards cooperation are low since they can provide most policies autonomously. Thus, demands come with population size necessitating cooperation that is met mostly by more populous cantons but not such that are capable of meeting all demands autonomously.

The community type has no general effect on cooperation intensity: cooperation is not higher when a dyad consists of a canton with a city center and a canton without a city compared to constellations of two similar cantons, i.e. both being urban or both rural. Additionally, the lower the economic capacity of one of the two contracting partners measured by the amount of equalization payments, the higher the intensity of cooperation. This shows that it is especially less wealthy cantons that rely more intensively on cooperation with more economically firm partners, whereas cooperation becomes less necessary given increasing capacity. However, the effects are only significant at the 5 percent significance level in two out of four models. Lastly, with respect to structural factors, linguistic bonds play a major role for intercantonal cooperation: It takes place more frequently when two cantons share the same language while a linguistic divide hampers it. Thus, hypothesis 1.2 suggesting effects of homophily (and heterophily) of the cantonal communities at hand in terms of structure, economy, and language can be upheld although findings are mixed, and magnitude of the effects limited.

Since language and territory are related within the Swiss federation (see e.g. Neidhart 2002), the effect of language could be evenly discussed in the wake of hypothesis 1.3. It states that geographical proximity spurs cooperation. Four indicators are tested here: common borders, distance between the cantonal capitols, the number of commuters, and membership in the respective regional IGC, i.e. the regional conference of state governments. The latter combines an effect derived from regional attachment with a political-institutional effect of a mitigating super-structure and therefore constitutes an own hypothesis (hypothesis 1.4). Note that the effects of distance and commuters is tested in separate models to avoid multicollinearity. The coefficients of the indicators show that regional proximity is *the* central explanation of intercantonal cooperation. Especially low distances between two cantons, high numbers of commuters among them, and membership in the same regional IGC spurs intercantonal contracting. These factors have the most consistent effects when referring to all intercantonal agreements (models 6.1 and 6.2) but also when analyzing those of Art. 48a para. 1 lit. a.–i. Cst only (models 6.3 and 6.4). However, the models testing the determinants of cooperative behavior in the latter show slightly different results with respect to cooperation across common borders. This confirms the impression gained by figure 6.6 and table 6.2 that intercantonal

cooperation in the policy areas addressed by the NFA is stronger supra-regional and especially less bilateral. Furthermore, here it is clearly the more financially weak cantons that are strongly involved in cooperation. This could be due to the fact that tasks addressed by Art. 48a para. 1 lit. a.–i. Cst are such that require a fair share of burdens, meaning, that they are rather cost-intensive.

Generally, the main finding of the first part of the inferential statistics reads as follows: It is especially the functional areas that determine intercantonal cooperation, while political factors play only a minor or no role at all. Furthermore, the model fit is good. The proposed models explain around 80 percent of the variance within the dependent variable in all models.

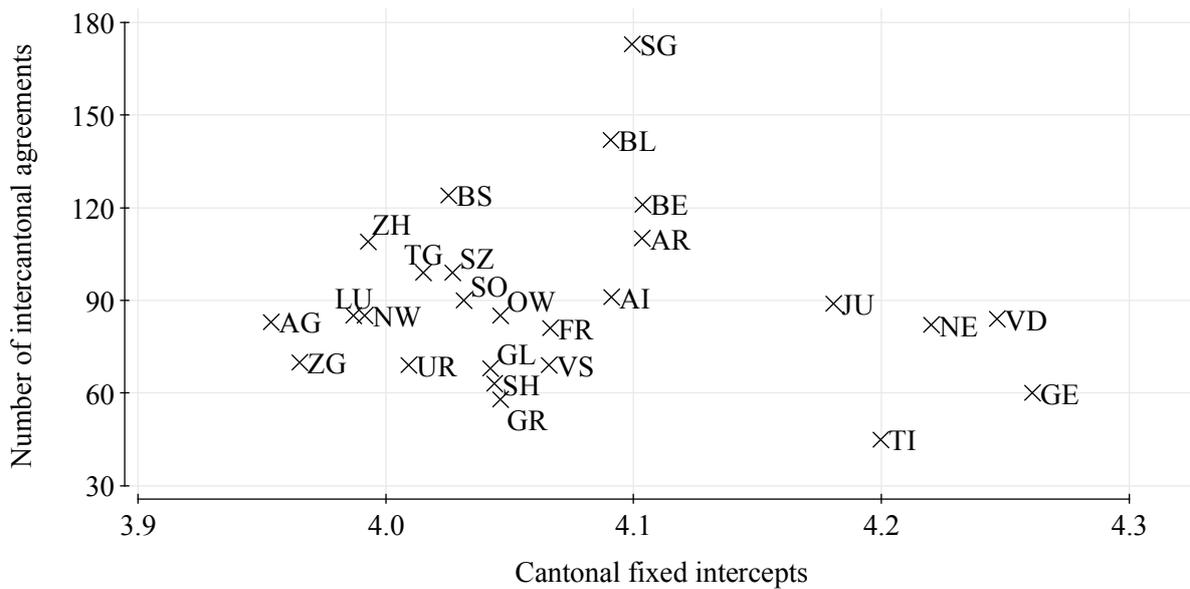
Figure 6.7 shows the number of intercantonal agreements as observed and the cantonal fixed intercepts as calculated by means of the QAP regression (see model 6.1, table 6.4). First, it illustrates that peripheral cantons, e.g. Geneva or Ticino, cooperate to a relatively high degree given their lack of beneficial structural conditions promoting and generally explaining intercantonal cooperation. The finding draws on Bochsler (2009: 363) who argues that the more a canton contracts, the less incentives it has to establish further agreements. In other words, the cantons cooperate with each other to a necessary degree and, thus, with declining marginal utility. Second, figure 6.7 underlines the high explanatory power of the QAP regression while it fails to explain cooperation in some cases according to increasing values on the  $x$ -axis. The model unveils many factors that are responsible for the variance of intercantonal cooperation but does not sufficiently specify the determinants of cooperation of cantons like Geneva and Ticino but also Neuchâtel and Vaud, just to mention the most evident ones.

Table 6.5 shows an OLS regression on the cantonal fixed intercepts aiming to explain residing factors uncovered so far. The analysis again draws on Bochsler's approach (2009: 365) but includes, among others, political-institutional unit-specific features to explain the residing variance in contracting behavior per canton.<sup>63</sup> The variables tested follow the second general proposition that reads as follows: The higher the degree of homogeneity within a canton, the more frequent it enters into intercantonal agreements.

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<sup>63</sup> Bochsler (2009: 364–366) mainly deepens the analysis by an explanatory model that puts the, what the author calls, 'natural network potential' to its center, i.e. "the number of concordats that a canton would have, due to its geographical location, its language, and due to the political colour of its government, if it were as active in cooperation as an average canton." (ibid.: 364). He shows that it indeed is a very good predictor of the cantonal fixed intercepts, i.e. the unexplained part of the QAP regression.

Figure 6.7: Observed number of intercantonal agreements and cantonal baselines



Note: On the y-axis, the figure displays the number of intercantonal agreements that were in force in 2016, under exclusion of all declarations of reciprocity (*Gegenrechtserklärungen*). The x-axis shows the fictive number of agreements after controlling for the explanatory factors of the QAP regression. More precisely, it displays the cantonal fixed intercepts (cantonal baselines) from model 6.1, table 6.4. For the abbreviations see figure 6.3.

Sources: See figure 6.1.

While the models 6.5, 6.6, 6.7, and 6.8 in table 6.5 use fixed cantonal intercepts from all IGAs as dependent variable (deduced from model 6.1 in table 6.4), the models 6.9, 6.10 and 6.11 in table 6.5 draw on the unit intercepts from the NFA-areas only (deduced from model 6.3 in table 6.4). The two basic models testing the hypothesis 2.1 to 2.5, i.e. model 6.5 and 6.9, mainly confirm figure 6.7 and the separation of French-speaking cantons from their German-speaking counterparts. Hence, residing variance is due to group-differences rather than general explanations stemming from the hypothesized factors tested. Thus, while the models 6.5 and 6.9 explain more than half of the variance – the  $R^2$  and adjusted  $R^2$  clearly exceed 50 percent in both models –, none of the hypothesized covariates have an effect on the dependent variable. Neither political-institutional (executive-legislative relations; see hypothesis 2.1) nor partisan competition (IEO by Altmann und Pérez-Liñán 2002; hypothesis 2.2), or structural features like population size (hypothesis 2.3), economic capacity (hypothesis 2.4), or cantonal multilingualism (hypothesis 2.5) are capable of explaining the residing variance. Postestimation analyses however show that the models need refinements: The cantons of Berne, Fribourg, and Valais are outliers in model 6.5. All three are at the linguistic border between French- and German-speaking Switzerland and are officially multilingual. Thus, the control of linguistic area is further differentiated by means of an intermediate category of these linguistically mixed

Table 6.5: Determinants of cantonal fixed intercepts (OLS)

|  | Model 6.5                  | Model 6.6                   | Model 6.7                                     | Model 6.8                  | Model 6.9                 | Model 6.10                 | Model 6.11                |
|--|----------------------------|-----------------------------|---|----------------------------|---------------------------|----------------------------|---------------------------|
| Executive dominance<br>(lawmaking, index)    | 0.0170<br>(0.107)          | -0.0299<br>(0.0777)         |   |                            | -0.0867<br>(0.190)        | -0.155<br>(0.153)          |                           |
| Polity-decentralization<br>(index)           |                            |                             | -0.0445(*)<br>(0.0216)                        | -0.0813***<br>(0.0157)     |                           |                            | -0.0197<br>(0.0450)       |
| Political Competition<br>(IEO, log.)         | -0.0106<br>(0.0374)        | 0.00784<br>(0.0249)         | -0.0389<br>(0.0344)                           | -0.0490<br>(0.0371)        | -0.00726<br>(0.0668)      | 0.0230<br>(0.0491)         | -0.0308<br>(0.0688)       |
| Population size<br>(log.)                    | 0.00976<br>(0.0164)        | 0.00381<br>(0.0115)         | 1.15e <sup>-8</sup><br>(4.15e <sup>-8</sup> ) | -0.00706<br>(0.0147)       | 0.0432<br>(0.0294)        | 0.0338<br>(0.0226)         | 0.0322<br>(0.0279)        |
| Economic capacity<br>(equalization payments) | -0.00000874<br>(0.0000144) | -0.00000570<br>(0.00000986) | -0.00000387<br>(0.0000120)                    | 0.000000163<br>(0.0000139) | -0.0000117<br>(0.0000257) | -0.00000908<br>(0.0000194) | -0.0000119<br>(0.0000256) |
| Multilingualism<br>(ref.: monolingual)       | -0.0607<br>(0.0428)        |                             | -0.0542<br>(0.0362)                           | -0.0342<br>(0.0409)        | -0.0955<br>(0.0765)       |                            | -0.0948<br>(0.0767)       |
| Latin cantons<br>(ref.: German-speaking)     | 0.149***<br>(0.0308)       |                             | 0.0876*<br>(0.0415)                           |                            | 0.276***<br>(0.0551)      |                            | 0.241**<br>(0.0828)       |
| Language (ref.: German)                      |                            |                             |   |                            |                           |                            |                           |
| French and German<br>(mixed)                 |                            | 0.0455<br>(0.0332)          |   |                            |                           | 0.0849<br>(0.0654)         |                           |
| French and Italian<br>(exclusive)            |                            | 0.194***<br>(0.0247)        |   |                            |                           | 0.345***<br>(0.0486)       |                           |
| Constant                                     | 3.893***<br>(0.200)        | 4.007***<br>(0.137)         | 3.996***<br>(0.0510)                          | 4.094***<br>(0.197)        | 2.591***<br>(0.358)       | 2.772***<br>(0.270)        | 2.650***<br>(0.373)       |
| Number of observations                       | 25                         | 25                          | 25  | 25                         | 25                        | 25                         | 25                        |
| R <sup>2</sup>                               | 0.635                      | 0.812                       | 0.703   | 0.633                      | 0.656                     | 0.785                      | 0.655                     |
| Adj. R <sup>2</sup>                          | 0.513                      | 0.750                       | 0.604   | 0.536                      | 0.541                     | 0.713                      | 0.540                     |

Notes: Standard errors in parentheses. (\*)  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

Dependent variable in models 6.5–6.8: Cantonal baseline (fixed intercepts) from model 6.1, table 6.4, on all intercantonal agreements.

Dependent variable in models 6.9–6.11: Cantonal fixed intercepts from model 6.3, table 6.4, on intercantonal agreements in Art. 48a para. 1 lit. a.–i. Cst.

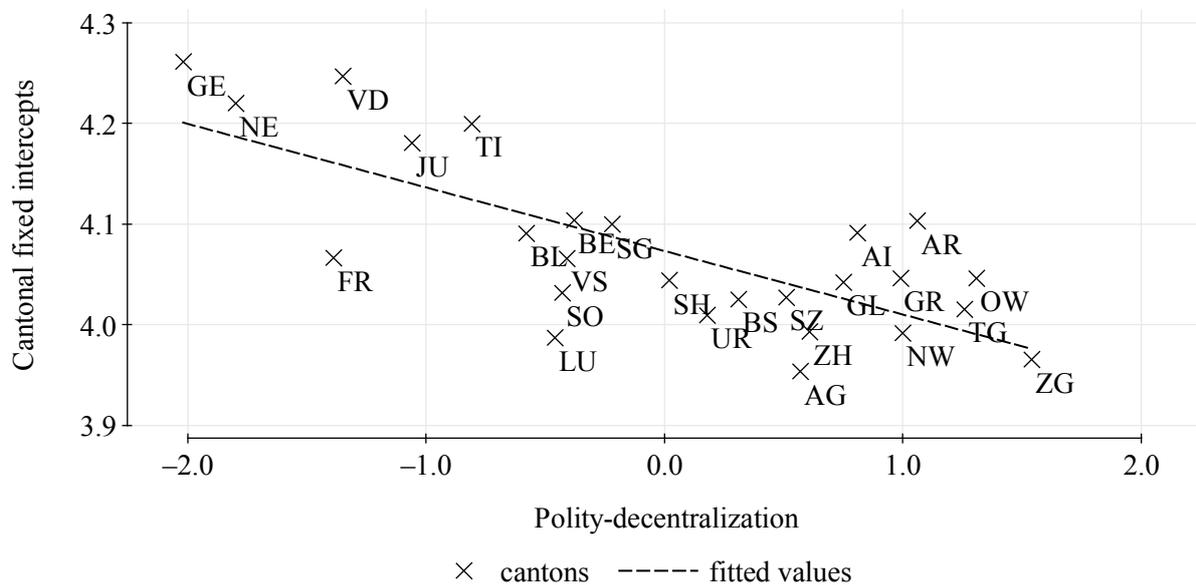
Source: See chapter 5.2

cantons. The variable on official multilingualism that as such does not have a general effect on the dependent variable is excluded from the model. Grisons is the only remaining multilingual canton that would distinguish this variable from the newly created additional category of the measure of linguistic areas. Model 6.6 and 6.10 confirm the procedure by showing significant differences in the dependent variable between the three linguistic categories: While the three mixed cantons (German-French) score slightly higher than the German-speaking cantons, including Grisons, the French-speaking cantons together with Italian-speaking Ticino clearly have the highest number of IGAs not explained by the relational model. Hence, unit- and group-specificities are highest here. The special, intermediate position of the mixed French- and German-speaking cantons makes sense since they might face special demands of their linguistic communities necessitating intercantonal cooperation with linguistically equivalent (neighboring) cantons of the German- *or* French-speaking part of Switzerland. Now, the higher number of IGAs in French-speaking Switzerland together with Ticino that is not sufficiently explained by the relational model remains. It raises further questions, especially since the mean number of observed IGAs of that group (73) is clearly below the overall average (90) and especially the mean number of intercantonal agreements in the German-speaking part of Switzerland (96). With respect to the mostly technical issues addressed by the NFA, somehow, no group differences exist (overall mean and mean number of observed IGAs in both groups: 28). This underlines Bochsler's (2009: 364–366) interpretation that every canton needs to cooperate to a necessary degree while further cooperation is mainly explained by a canton's network potential, i.e. “the sum of potential ties” (ibid.: 364) with other cantons. With respect to the findings from table 6.5, it implies that *it is not* a lower willingness to cooperate in western Switzerland and the Ticino but a lower potential stemming from less inductive (structural) factors of the respective network.

Now, the approach here aims at detecting further unit-specific factors that could explain cooperation independent from relational factors. Two remarks are necessary: First, the relational models in table 6.4 explain most variance in cooperation between the cantonal dyads, leaving only a little unexplained rest. Second, the discussed network potential represents an established and powerful explanatory factor that must be kept in mind when analyzing the dependent variable at hand. Especially the models 6.7 and 6.11 in table 6.5 add a factor to the discussion that has, to the best of the author's knowledge, not been analyzed in this context: inner-cantonal decentralization. Since executive-legislative relations do not have a significant effect in the models 6.5 (6.6) and 6.9 (6.10), inner-cantonal polity-decentralization (Mueller 2015) is believed to be an appropriate alternative to the original measure of institutional checks

and balances in a canton. However, it varies in its dimension since it does not indicate horizontal but vertical division of power (Mueller 2015: 63–69). In model 6.7, table 6.5, the effect is mainly but not entirely absorbed by the variable measuring the linguistic area a canton is located in, French- or Italian-speaking or German-speaking. Although model 6.8 is then reduced by this strongest explanation, i.e. group differences between linguistic areas, the model still explains around 50 percent of existing variance in the dependent variable ( $R^2 = 0.60$ ; adjusted  $R^2 = 0.50$ ). Especially inner-cantonal polity decentralization becomes highly significant, i.e. at the 0.1 percent significance level. The negative sign shows that the more decentralized a canton is with respect to its legal framework and the perceived local autonomy (e.g. Giacometti 1941), the less it engages in intercantonal cooperation. Since the measure is a proxy of vertical division of power, the reasoning for the effect on the (residing) number of intercantonal agreements per unit could read as follows: Due to the greater autonomy and power of the local units, the cantonal government can less easily enter an IGA due to its restricted competences and the more powerful position of the local entities in cantonal decision-making, respectively. The bivariate connection between the two variables (Pearson's  $r = -0.74$ ;  $p = 0.0000$ ) is displayed in figure 6.8.

Figure 6.8: Cantonal baselines and cantonal polity-decentralization (Mueller 2015)



Note: On the y-axis, the figure displays the fictive number of agreements after controlling for the explanatory factors of the QAP regression, i.e. the cantonal fixed intercepts (cantonal baselines) from model 6.1, table 6.4. The x-axis shows the degree of institutional inner-cantonal decentralization as calculated by Mueller (2015: 63–69). The bivariate correlation is measured by Pearson's  $r$  (Pearson 1896). For the abbreviations see figure 6.3. Sources: The data on inner-cantonal polity-decentralization is taken from Mueller (2015: 219).

## 6.2 *A Critical Assessment of Intercantonal Relations in Switzerland*

The first part of the closing of this chapter aims at reflecting upon the main indicator of cooperation as used in the descriptive and inferential statistics, i.e. contracting activity among the cantons. In doing so, it mainly provides new insights by means of a fiscal measure that is argued to enhance the understanding of intercantonal cooperation over time and per canton. Hence, the following critical reflections of the findings mainly draw on a further indicator of horizontal cooperation in Switzerland and its implications with respect to effects of the NFA.

### 6.2.1 *Measuring the Quality instead of the Quantity of Cooperation*

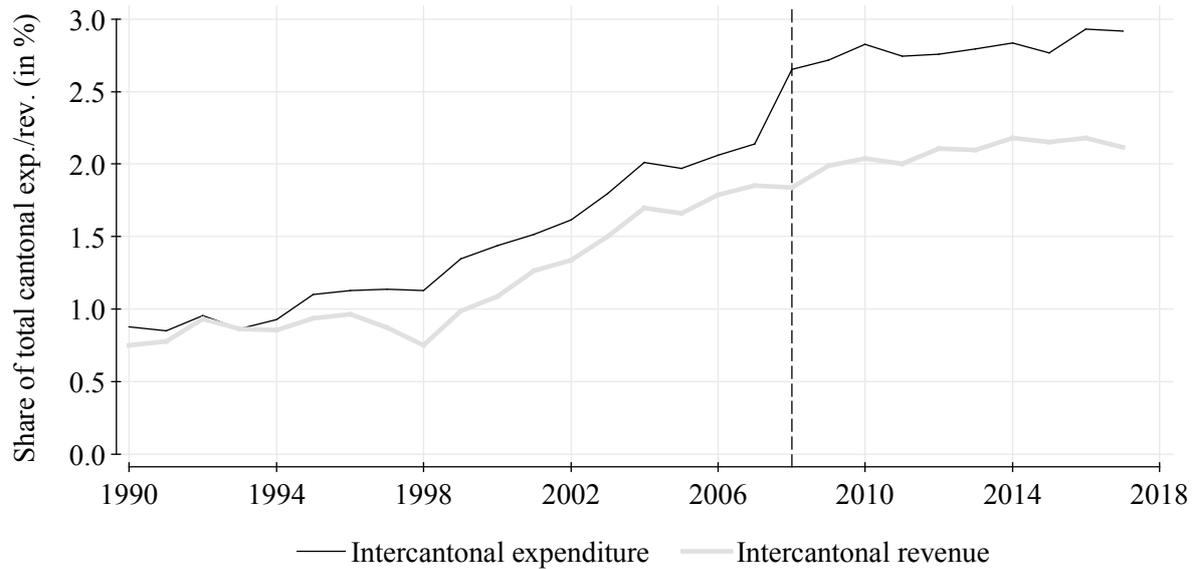
First, to recall the descriptive analyses of 6.1.1, the findings on intercantonal cooperation were mixed: The number of IGAs had increased from 1980 to 2005 and has consolidated on a high level instead of further increasing between 2005 and 2016. Intercantonal cooperation has also changed its outlook by more regionally demarcated and more (potentially) federation spanning, omnilateral IGAs of late. A more regionally differentiated network of contracting and more cohesive regional clusters over time best demonstrate these early findings. With respect to the NFA in particular and the tasks within the NFA-induced Art. 48a para. 1 lit. a.–i. Cst., it could be similarly shown that IGA-participation per canton had, first, increased and has, second, consolidated on a high level with continuously enhanced omnilateral cooperation up to 2016. Now, to again recall the target of the reform (see section 3.4.1): The new constitutional articles as well as accompanying legislation established legal frameworks to lower transaction costs but also mechanisms of federal encroachment in order to further IGA-conclusion in specific areas. As the goal of this NFA-pillar, intercantonal cooperation with shared burdens was aimed to be “substantially expanded” (BR 2001: 2350; own translation). Since the facilitation of intercantonal cooperation was part of the initial idea of reform, the measures are deeply rooted in the economic fundamentals that had guided the project. From the beginning, enhanced intercantonal cooperation was evaluated as a central instrument in accounting for regional spillovers and taking advantage of economies of scale. Thus, the idea of compensations is central to the NFA and the instruments enshrined in Art. 48 and Art. 48a para. 1 lit. a.–i. Cst (see Frey and Spillmann 1994). Drawing on the number of IGAs only might lead to wrong conclusions since the main goal of the reform was to increase equalization between those cantons providing public goods and the ones using them (as well). Indeed, increasing the number of IGAs was part of the NFA-debates. However, at the core of the reform lied facilitated

public goods provision and its fair compensation according to the ‘user pays’-principle (especially see the discussion on the impact model at the end of section 3.4.1). It is as well possible that this goal is reached despite the mere number of IGAs remains stable with no substantial quantitative increase. Examples thereof are discussed in the descriptive section on the number of IGAs before and after the NFA took force (see section 6.1.1). Now, to what extent has the NFA affected intercantonal compensations as part of horizontal cooperation among the cantons? The question, however, does not only inform about the NFA and its effects but also intercantonal cooperation in general.

The evaluation reports on the effectiveness of the reform give first indications. The report on the period between 2008 and 2011 is not able to provide any numbers on compensations before and after the reform but identifies ongoing enhanced intercantonal cooperation (BR 2011: 81–83). The reports for 2012 to 2015 (BR 2014) and 2016 to 2019 (BR 2018) are more specific and do not only provide a list of all IGAs covered by Art. 48a para. 1 lit. a.–i. Cst. but also inform about the scope of intercantonal compensations. The following descriptions draw on these findings but also condensed financial statistics displaying the amount of intercantonal revenue and expenditure per canton. Examining the cantonal developments of these key figures over time, i.e. before and after the NFA taking force, further allows to assess the role of each canton as public goods provider on the one or rather their consumer on the other.

The evaluations on the effectiveness of the NFA up to 2015 (BR 2014: 123–126) and up to 2019 (BR 2018: 87–90) both report a stark increase in intercantonal compensations with respect to the tasks enshrined in Art. 48a para. 1 lit. a.–i. Cst. The intercantonal payments have doubled in the aftermath of the NFA compared to the pre-reform-era. However, the effect is mainly due to the compensations payed for the provision of cantonal universities and especially of universities of applied sciences. As of 2015, they make up around one fifth (cantonal universities) to half (universities of applied sciences) of all cantonal expenditure with respect to all expenditure for institutions of higher education (ibid. 2018: 88). Hence, nearly a fourth of all cantonal expenditure with respect to the tasks enshrined in Art. 48a para. 1 lit. a.–i. Cst. is covered by intercantonal compensations (ibid.). With its overall share of around three percent of total cantonal expenditure, the report speaks of a “remarkable” (ibid.) amount.

Figure 6.9: Aggregated intercantonal expenditure and revenue (1990–2017)



Notes: Own calculation based on the annual reports on the financial statistics of each canton (FS Model) (EFV 2020). Intercantonal revenue and expenditure displays all revenue and expenditure from and to other cantons or intercantonal agreements (see all positions on “*Kantone und Konkordate*” in the respective reports). The vertical dashed line highlights the taking force of the NFA in 2008.

Source: EFV (2020).

Figure 6.9 confirms the latter finding and the overall significance of intercantonal payments based on data of the EFV (2020a): Nearly three percent of all cantonal expenditure goes to other cantons or intercantonal institutions. In both cases, the payments are rooted in intercantonal agreements. In the post NFA-era, the overall total of intercantonal payments, i.e. the aggregate of all intercantonal payments per canton and year, ranges from around 2 billion CHF in 2008 to 2.7 billion CHF in 2017. The picture of the pre NFA-era is similar but revolves on a lower level: The minimum of aggregated intercantonal compensations of around 300 to 400 million CHF in 1990 sharply contrasts with its maximum of more than 1.5 billion CHF in 2007. Now, changes in the time series between 2007 and 2008 must be treated with caution: comparison is problematic due to technical changes in the financial statistics between these two points in time, i.e. new standards in accounting.<sup>64</sup> Thus, the direct shift from the year before, 2007, to the year of the NFA taking force, 2008, cannot be validly interpreted. However, the numbers within the two periods inform very well about the respective developments and give indications on the overall trend. Figure 6.9 clearly illustrates stark increases in the amount of intercantonal payments relative to the aggregated overall expenditure of the cantons up to 2007 and between 2008 and 2017 as well. While it grows from 0.88 percent in 1990 to 2.12 percent in 2007, it

<sup>64</sup> <https://www.efv.admin.ch/efv/de/home/themen/finanzstatistik/daten.html> (accessed 31 March 2020).

again increases from 2.65 percent in 2008 to 2.91 in 2017. The relative aggregated revenue from intercantonal agreements are slightly lower, what may root in inaccuracies in aggregation. For example, cantonal revenue from public enterprises (“*Finanzeinnahmen von öffentlichen Unternehmungen*”, position 446; see Federal Finance Administration EFV 2020a) depicts information on all kinds of interests, e.g. intercantonal agreements as well, but cannot, however, be disaggregated (see also FDK 2020 [Anhang A]: 44) and is hence not included here. This makes it plausible that figure 6.9 and the following considerations underestimate intercantonal revenue.

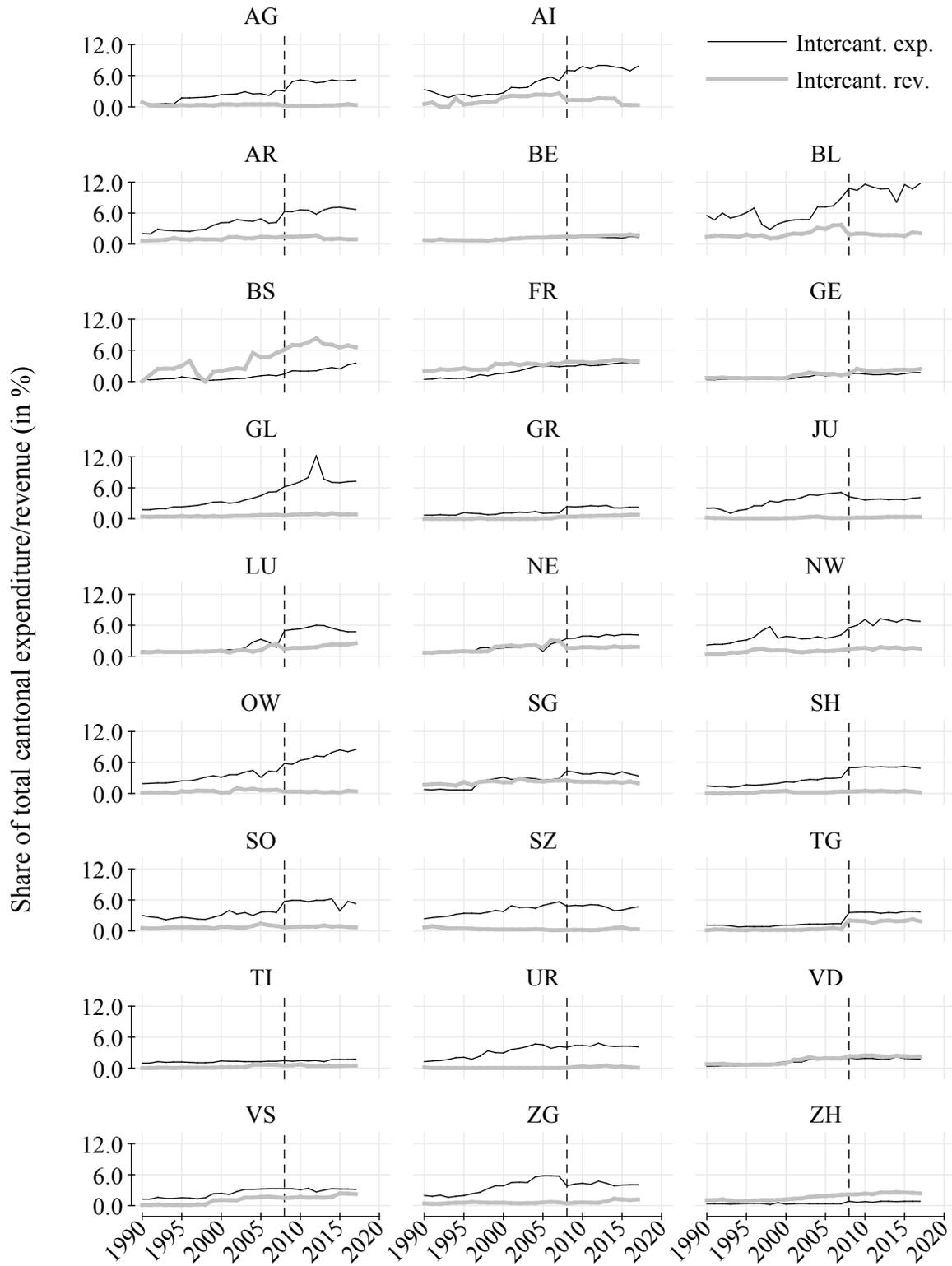
Now, as a last interesting finding on the aggregated data, the amount of intercantonal expenditure and revenue are comparable to such of the general horizontal payments as part of the equalization scheme of financial resources and burdens: In 2017, such payments make up 3.58 percent of all aggregated cantonal expenditure and are thus only somewhat higher than intercantonal payments as summarized above. Revenue from the equalization scheme between the federal government and the cantons is, however, clearly higher and amounts to 5.82 percent of total aggregated cantonal revenue as of 2017.<sup>65</sup>

The evaluation of the NFA for 2011 to 2015 (BR 2014: 123; own translation) reports “a qualitative improvement of intercantonal cooperation with shared burdens [...] [so that] [s]ingle cantons explicitly refer to the IRV, which, according to them, especially led to a convergence between the prices for public good usage and its effective costs.” Since the question of convergence cannot be answered here due to limitations in the data, more details on the distributions per canton further help understanding horizontal cooperation in Switzerland and its development. Figure 6.10 shows how much each canton spends to other cantons and intercantonal agreements and how it is compensated therefore by means of intercantonal revenue. Due to the limited degree of differentiation of the data in contrast to the special analyses of the evaluation reports (BR 2014, BR 2018), it is not possible to carve out policy areas or even the specific tasks of Art. 48a para. 1 lit. a.–i. Cst. Since compensations in the latter make up the lion’s share of all such payments among the cantons (see the comparative numbers on intercantonal compensations outside Art. 48a para. 1 lit. a.–i. Cst; BR 2018: 88), it can be assumed, that figure 6.10 captures the majority of all intercantonal payments and thereby mainly draws on developments in the NFA-targeted areas, as well. Secondly, as discussed above, cantonal revenue from intercantonal sources are likely to be underestimated and thus have to be interpreted with caution.

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<sup>65</sup> The numbers were calculated based on the same datasets as figure 6.9 and 6.10 (EFV 2020).

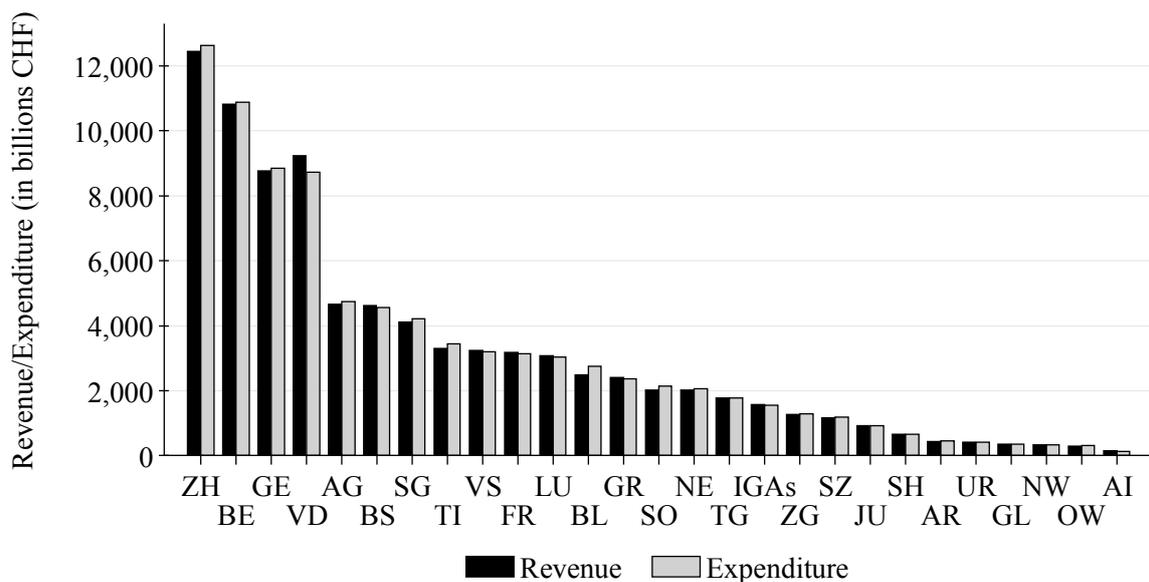
Figure 6.10: Intercantonal expenditure and revenue by canton (1990–2017)



Notes: See figure 6.9. For the abbreviations see figure 6.3.  
 Source: See figure 6.9.

With respect to figure 6.10, intercantonal payments and earnings follow an upwards trend in most cantons. However, some developments stand out: In the cantons of Basel-City and Zurich intercantonal revenue clearly exceeds expenditure. This underlines their positions as regional, or even supra-regional, centers providing public goods on a large scale that are frequently used and partially financed by other cantons. Basel-City accounts as a center in the northwest and its development in intercantonal finances is mirrored by the ones of its neighbor, Basel-Country. Both cantons maintain numerous intercantonal agreements (see also figure 6.6) and figure 6.10 illustrates which canton is more likely to be the provider of public goods and which is the (joint) user of these. Similarly, Zurich is the urban center and focal point especially for cantons in the east and northeast of Switzerland; it is hardly surprising that intercantonal revenue exceeds expenditure. Lastly, in some cases, intercantonal payments make up a relevant amount of all cantonal expenditure: For the two small and peripheral cantons of Appenzell Inner-Rhodes and Appenzell Outer-Rhodes intercantonal expenditure makes up around six to eight percent of all their expenditure between 2008 and 2017. The similarly small and rural cantons of Nidwalden and Obwalden display similarly high numbers, so that intercantonal cooperation by means of intercantonal compensations in exchange to the usage of public goods provided by others is a highly relevant expenditure item. The maximum of intercantonal payments as a percentage of overall cantonal expenditure is reached in Glarus – again, small, rural, and peripheral in profile – in 2012 and amounts to 12.24 percent. Post NFA, expenditure in Basel-Country averages 10.72 percent, again, underlining the reliance of the canton on horizontal cooperation.

Figure 6.11: Mean of cantonal and intercantonal revenue and expenditure (2008–2017)



Notes: The figure displays mean revenue and expenditure per unit of all cantons and IGAs. Data is derived from the yearly reports on the Swiss financial statistics (EFV various years). For the abbreviations see figure 6.3.  
Sources: EFV (various years).

Reported numbers from the income statements and financial accounts of the cantons between 2008 and 2017 (EFV *various years*) sum up the discussion: When totaling all IGAs and counting them as one additional canton, it would rank 17<sup>th</sup> when comparing mean revenue and expenditure between all, now 27, cantons between 2008 and 2017. As illustrated in figure 6.11, it clearly exceeds most of the small, peripheral, and/or rural cantons, e.g. the ones mentioned above, and is placed below averages – i.e. around 3'200 (in billions of CHF) for revenue and expenditure – in behind Thurgovia and before Zug.

The description confirms that intercantonal cooperation has gained in significance over time. Intercantonal expenditure and revenue, i.e. the provision of intercantonally provided goods and the compensations payed for their use, remained on a low level during the 1990s but have steadily increased since the end of this decade. The sum of payments from and to other cantons is thereby comparable to total revenue and expenditure of smaller cantons. However, it can be differentiated between public goods providers and users since cantons with regional and supra-regional city centers emerge as the former and rather rural but geographically adjacent cantons as the latter. This confirms the finding on the mainly regional patterns of IGA-conclusion within functional areas. Furthermore, the state and development of intercantonal revenue and expenditure resemble the intensity of IGA-conclusion but show that their significance in fiscal terms has not consolidated but even increased in the post NFA-era.

### *6.3 A Critical Assessment from an International Comparative Perspective*

After introducing a fiscal measure to the debate on horizontal cooperation in Switzerland, the descriptive findings on the patterns of intercantonal contracting are tested by means of an international comparison. By analyzing the number of existing IGAs, still the central indicator of horizontal cooperation in this study, in two other classical federations, i.e. Germany and the U.S., the rationality of cooperation is brought to a first international comparison. This second step of the critical assessment asks for the state of subnational IGAs in these two federations and discusses them against the background of the findings from the Swiss case. It checks whether the conclusion of IGAs follows a regional logic and mainly takes place within functional areas as well or whether such patterns are missing. Thus, the chapter closes by means of descriptions on *who contracts with whom* in subnational Germany and the U.S. It aims at broadening the scope of the analysis and the conclusions thereof.

It shall be explained first, why a comparison of Switzerland with Germany and the U.S. is of value. As shown in chapter two, all three federations are among those scoring highest on the *Regional Authority Index* (RAI) (Hooghe et al. 2010, 2016). The index illustrates the scope of self-rule and shared rule that the constituent, i.e. regional, units possess. Furthermore, all three conform to what Watts (2008: 29–38) calls “mature federations”. However, when following Hueglin and Fenna (2015) all three vary with respect to characteristic governmental features as well: their rationality (cultural or territorial), the general form of government (presidential or parliamentary), bicameralism (senate or council model), division of power (legislative or administrative), and vertical IGR (cooperative, regulatory, competitive). The authors carve out four basic models of which two refer to two cases analyzed here: the American model and the German model (ibid.: 55ff.). The Swiss case does not make up an own ideal type but exhibits features of all four basic models – the authors further propose what they call the Canadian model and the EU model. They describe the evolution of the Swiss case as follows:

“[T]wo features of the American model were incorporated: elements of legislative division of powers, and a popularly elected second chamber with equal representation. [...] Swiss federalism then evolved as a mix of American constitutionalism, direct democracy, consociational power-sharing, and German-style administrative division of powers.” (ibid.: 67)

Table 6.6 shows the two models based on German and U.S. federalism and adds the Swiss case to it. More important than the specific values of the categories is that they vary with respect to crucial features directly or indirectly related to their federal structures and processes. Note that such models as rendered in table 6.6 always involve pitfalls, especially with respect to the clear assignment of cases to categories. Therefore, it is important to not overestimate the stylized differences. For example, while each case started at different levels of legislative and administrative decentralization at the outset of its federalization, the U.S. states, the German *Bundesländer*, and the Swiss cantons have arrived at similar levels of legislative and administrative powers vis-à-vis the federal government by now (Dardanelli et al. 2019). However, they (still) diverge with respect to the division of fiscal competences. Dual federalism with both levels of government possessing clearly demarcated legislative and respective administrative powers has early lost its significance in the model case of the U.S. (e.g. Corwin 1950, Grodzins 1960). The German case has, however, persisted in its integrated structure with strong lawmaking power of the federal government and strong administrations of the *Länder* (e.g. Sturm 1997), despite reform endeavors (e.g. Benz 2016b, Kropp and Behnke 2016). The Swiss case remains at the crossroads of the two with shared lawmaking competences and

comprehensive administrative powers of the cantons (e.g. Vatter 2018a, Ladner and Mathys 2018).

Given variance in some and similarity in other respects, the following descriptive insights shall clarify how horizontal IGR work in the three cases from a comparative perspective, since the basic models in table 6.6 refer to the vertical dimension only when categorizing the federations with respect to IGR. To this end, the following section clarifies state and rationality of *horizontal* IGR in the form of intergovernmental IGAs. To recall the central findings from the Swiss case: Horizontal cooperation within Switzerland is extensive, mainly driven by functional-territorial factors, and of regional scope most notably.

Table 6.6: Basic models and categories of federal organization

| Model / State    | Rationale   | Form of Government   | Second Chamber | Division of Powers         | IGR (vertical) |
|------------------|-------------|----------------------|----------------|----------------------------|----------------|
| American / USA   | Territorial | Presidential         | Senate         | Legislative                | Regulatory     |
| German / Germany | Territorial | Parliamentary        | Council        | Administrative             | Cooperative    |
| – / Switzerland  | Cultural    | Assembly-independent | Senate         | Legislative-administrative | Cooperative    |

Notes: Hueglin and Fenna (2015: 56–58, 61–63) with own adjustments. For such in the category of “[d]ivision of [p]owers” see Dardanelli et al. (2019). The assignment of the descriptive labels of each variable to the Swiss case is based on the following sources: Speich Chassé (2012) and Vatter (2018a: 14–19) for the cultural basis as rationality of federal organization (see also Church and Dardanelli 2005); Vatter (2018b: 43–56) for the classification of the form of government as an ‘assembly-independent regime’ (Shugart and Carey 1992); Vatter (2018a: 33–43) for the assignment of the senate model as organizational principle of the bicameral system; Dardanelli and Mueller (2019) for the mixed legislative-administrative division of powers with both the federal and cantonal level possessing some (but not complete) power in each, legislation and administration; Bolleyer (2006b) for the cooperative character of (vertical) IGR (see also Pfisterer 2015).

Sources: Hueglin and Fenna (2015: 56–58, 61–63) with own adjustments according to the notes above.

### 6.3.1 Intergovernmental Agreements in Germany

IGR in the Federal Republic of Germany are similarly structured when compared to the Swiss case. Among others, permanent state agencies in the capitol of Berlin and regular meetings between the Federal Chancellor and the state minister-presidents constitute channels of voluntary vertical interaction. In contrast, the much-noticed phenomenon of *Politikverflechtung* (Scharpf 1985) stems from obligatory cooperation through the *Bundesrat*, i.e. the second chamber composed of the heads of the state executives (council model). Horizontal cooperation

mainly takes place in generalist or policy specific IGCs (see Hegele and Behnke 2013, 2017) and by means of IGAs between the *Länder* (for a general overview see Kropp 2010: 125ff.; for a summary of domestic IGR in Germany see Lhotta and Blumenthal 2015):

“On the horizontal dimension – the *third level*, in the jargon of constitutional experts –, the *Länder* have started to harmonize law by legislative and administrative contracts even before the foundation of the Federal Republic and, to this end, have created permanent institutions like the Standing Conference of the Ministers of Education and Cultural Affairs [...]” (Scharpf 1989: 5–6; own translation; emphasis in original).

Thus, IGAs between the *Länder* are well-known to German constitutional history beyond the 1949 ‘Bonn Republic’ and its successor (Schneider 1961: 2). However, and unlike the Swiss case, the constitutional codification of IGAs in the German basic law (GG) is rather weak. It is especially mentioned in Art. 29 para. 8 GG on new delimitation of the territory of the *Länder* in general and in Art. 118 GG on territorial issues of specific states. Next to other direct but scattered references (see Art. 32 para. 3 GG, Art. 118 GG, Art. 118a GG, Art. 130 para. 1 and 3 GG, Art. 135 para. 5 GG), IGAs are mainly derived from Art. 30 GG stipulating sovereignty and self-rule of the *Länder*: “Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*.” Thus, principal statehood of the constituent units and their powers sufficiently justify the conclusion of IGAs (Schladebach 2007: 241–242). This does not only apply for the most recent federal order but also former federal attempts or actual confederal structures. Against the background of the unsuccessful *Paulskirchenverfassung* of 1849 and the Bismarck constitution of 1871, Schneider (1961: 2; own translation) cautions that the general principle of state sovereignty applies to the German case as well: “The right of subnational units to conclude contracts is regarded as federal self-evidence, that does not require codification in the federal constitution, but is rather tacitly premised.” These introductory remarks reaffirm the discussion on IGR in general, while both similarities and differences occur with respect to such observed in the Swiss case in particular: IGAs are part of voluntary horizontal cooperation among the constituent units and directly originate from constitutionally granted subnational self-rule, while the degree of constitutional formalization is lower in the German compared to the Swiss case.

Before turning to the descriptive analysis, a concise definition is needed of what accounts as IGA in the German case. The similarities to the Swiss case are again striking. Basically, literature differentiates between administrative and legislative or other significant IGAs (Kropp 2010: 135; see also Niedobitek 2018b). The former, so-called *Verwaltungsabkommen*, are

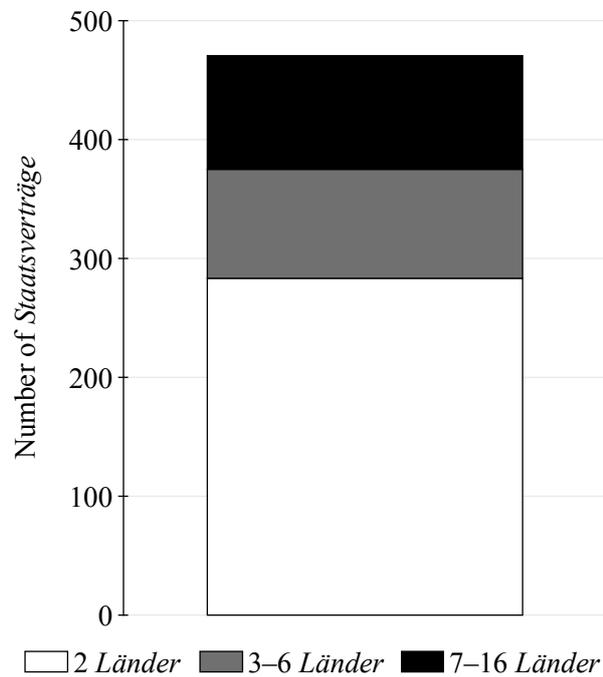
contracts of public law between the *Länder* originating from their administrative jurisdiction and binding administrative agencies only (Schneider 1961: 9–10). In contrast, legislative or other significant IGAs, so-called *Staatsverträge*, are contracts of public law that bind the participating states in all their powers, i.e. legislation, execution, and judiciary, and thus directly affect the states' citizens (ibid.: 8–9). Hence, Schladebach (2007: 243–246) argues that the two are differentiated based on content-related criteria. Accordingly, one speaks of a *Staatsvertrag* (and not a *Verwaltungsabkommen*), when it, first, relates to matters of legislation regulating subject matters in a general-abstract form, thereby affecting all citizens, and lying within parliamentary competences (ibid.: 244–245). Second, *Staatsverträge* might bind extraordinary financial resources and thus touch upon parliamentary budget power (ibid.: 245). Third, as *Staatsverträge* also account such that are of high political relevance; again, the consent of parliament as directly elected lawmaker applies valid (ibid.: 245–246). Generally, and in accordance with the literature on the topic, the following analysis draws on all IGAs between the *Bundsländer* that conform to Vedder's predominant definition of *Staatsverträge*, that reads as follows:

“Contracts requiring approval, i.e. ‘*Staatsverträge*’, are such regulating subject matters that necessitate a formal law according to the domestic legal framework, that have already been regulated by such a law or that oblige the parties to legislate on that matter, as well as such that concern the parliamentary power of the purse, and further such that establish joint institutions, that transfer sovereign rights to other entities, or that acknowledge sovereign rights of other *Länder*.” (Vedder 1996: 162).

As of 2018, 470 *Staatsverträge* between the German *Länder* exist (see figure 6.12). Schneider (1961: 34–85) reports around 340 legislative *and* administrative agreements for the beginning of the 1960s while Vedder (1996: 57) counts a good 200 *Staatsverträge* for the end of the 1980s and the beginning of the 1990s, respectively. The number as of 2018 clearly exceeds the numbers for both reported previous points in time. Thus, an overall intensification of horizontal contracting among the *Bundsländer* is, similarly to the Swiss case, highly plausible. The overall total of German IGAs is only slightly lower when compared to its equivalent in Switzerland (N=526). Most *Staatsverträge* are of bilateral nature (60.21 percent). However, a considerable number of all IGAs are multilateral with three to six contracting units (19.57 percent) or even of (potentially) omnilateral scope encompassing seven to 16 *Länder* (20.21 percent). Especially the latter stands out: While in Switzerland only every tenth IGA is clearly

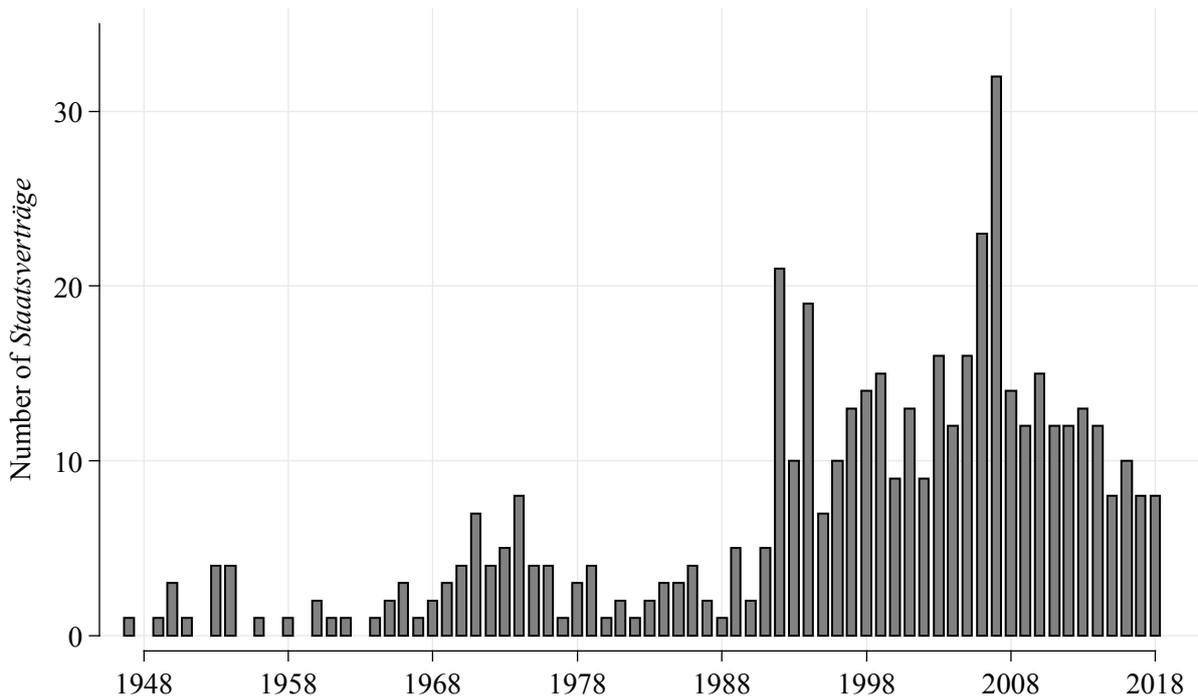
exceeding regional borders and can be labeled a potentially nationwide horizontal contract, in subnational Germany a such is observed even in every fifth case. Thus, *Staatsverträge* have a stronger harmonizing effect in breadth that should be even more restrictive to the contracting units since flexibility goes down and inertia goes up with an increasing number of partners. However, two things must be noted with respect to the German in comparison to the Swiss case. First, the calculation of all German *Staatsverträge* does not exclude so-called *Änderungsstaatsverträge* that are rearrangements of existing IGAs: Every amendment to an existing contract leads to a new IGA, with minor or major revisions, while the original document that the revision draws upon stays in force (Schladebach 2007: 252–253). A prominent example here is the *Staatsvertrag über den Rundfunk im vereinten Deutschland vom 31. August 1991* that sets uniform provisions for public but also private radio and broadcasting for all *Länder*. The last and twenty-first amendment has become effective by mid-2018 while (most of) the former as well as the original contract are still in force. Given 113 *Änderungsstaatsverträge* in force, they not only account for around a quarter (24.04 percent) of all horizontal IGAs, but make up nearly half of all (potentially) omnilateral *Staatsverträge* (42.11 percent). This puts the reported high number of German subnational IGAs and particularly omnilateral ones into perspective. Second, the low overall difference to the Swiss case needs to be treated with further caution since the description of the state of intercantonal agreements does not take *Gegenrechtserklärungen* into account. Hence, similarities in the overall level of IGAs shall not be overestimated.

Figure 6.12: Number of *Staatsverträge* by partners (2018)



Note: The figure displays all *Staatsverträge* in force in 2018.

Sources: Data was compiled by means of the collection of state law (*Landesrecht*) of each *Bundesland* and validated using the legal web-platform *beck-online.DIE DATENBANK* (see section 5.2.1).

Figure 6.13: Number of *Staatsverträge* by year (2018)

Note: See figure 6.12.

Sources: See figure 6.12.

Figure 6.13 illustrates the dates of taking force of all *Staatsverträge* as of 2018. It gives indications on the durations of all IGAs still valid as well as on critical junctures of intensified contracting. First, as in the Swiss case, horizontal cooperation consists of durable agreements that are valid for decades. While the history of German IGAs is less old than the one experienced in the Swiss case, Germany as well possesses contracts that predate the modern federation. Most prominently, the *Königsteiner Staatsabkommen* of March 1949, coordinating the financing of research institutions of high significance and transregional scope, was concluded even before the Basic Law took force.<sup>66</sup>

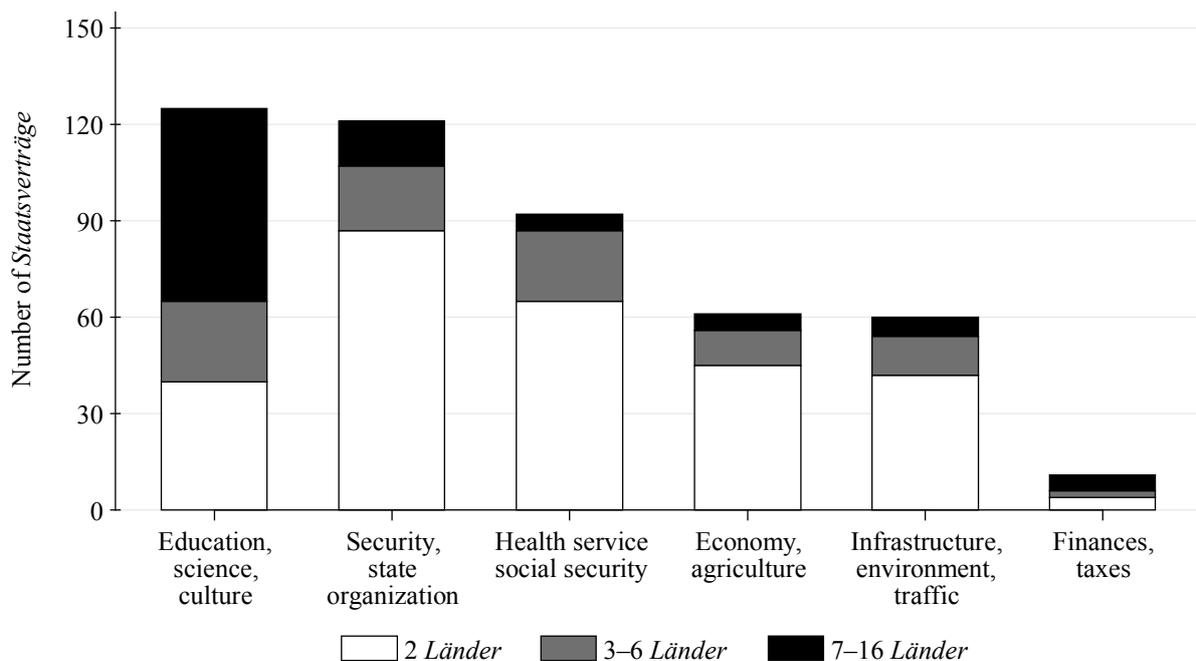
Secondly, with respect to figure 6.13, horizontal cooperation in Germany is as well subject to continuous revision since most IGAs are of recent date: Three-quarter of all *Staatsverträge* took force between the beginning of the 1990s and 2018. The figure further indicates that German reunification spurred the conclusion of IGAs since there (still) exist many IGAs that were concluded in its direct aftermath. This makes especially sense with respect to preceding discussions on the role of IGAs against the background of large scale structural and systemic changes. While Benz (1999: 67–68) describes German vertical state-federal relations as

<sup>66</sup> The *Staatsabkommen der Länder der Bundesrepublik Deutschland über die Finanzierung wissenschaftlicher Forschungseinrichtungen* took force on 1 April 1949 and the *Grundgesetz* on 24 May 1949.

characterized by “exceptional centralization in the process of unification”, this also holds true for horizontal relations: The regulatory vacuum caused by German reunification led to an enhanced number of IGAs driven by the newly-formed German states that from then on have taken part in horizontal cooperation as well.

Figure 6.13 shows a second peak of IGA-conclusion in 2006 and 2007, respectively. An effect of the *Föderalismusreform I*, in force since 1 September 2006, is plausible. Like the NFA, among others, it aimed at clarifying jurisdiction of the levels of government and, among others, increasing self-rule of the *Länder* in some policy-areas. Now, (potential) reform effects must be treated with caution (Auel 2008, Behnke 2010), especially due to divergence between reform goals and formal provisions on the one hand and the degree to which they had (substantial) effects in practice on the other. However, Reus and Vogel (2018) show that subnational policymaking has indeed increased in the aftermath of the reform exhibiting a surprising high degree of variance between the *Länder* (see also Leuning and Pock 2010 for an early but ambiguous assessment). Reutter (2006: 17), however, expected rising horizontal cooperation in the entangled policy areas: “It is justified to expect an increase in the number of laws passed by the state parliaments. Though, the existing functional linkages in many areas still make coordination necessary between the *Länder* [...]” Against the background of figure 6.13, it is plausible that the *Föderalismusreform I* has indeed enhanced the conclusion of *Staatsverträge*.

Figure 6.14: Number of *Staatsverträge* by policy area/partners (2018)

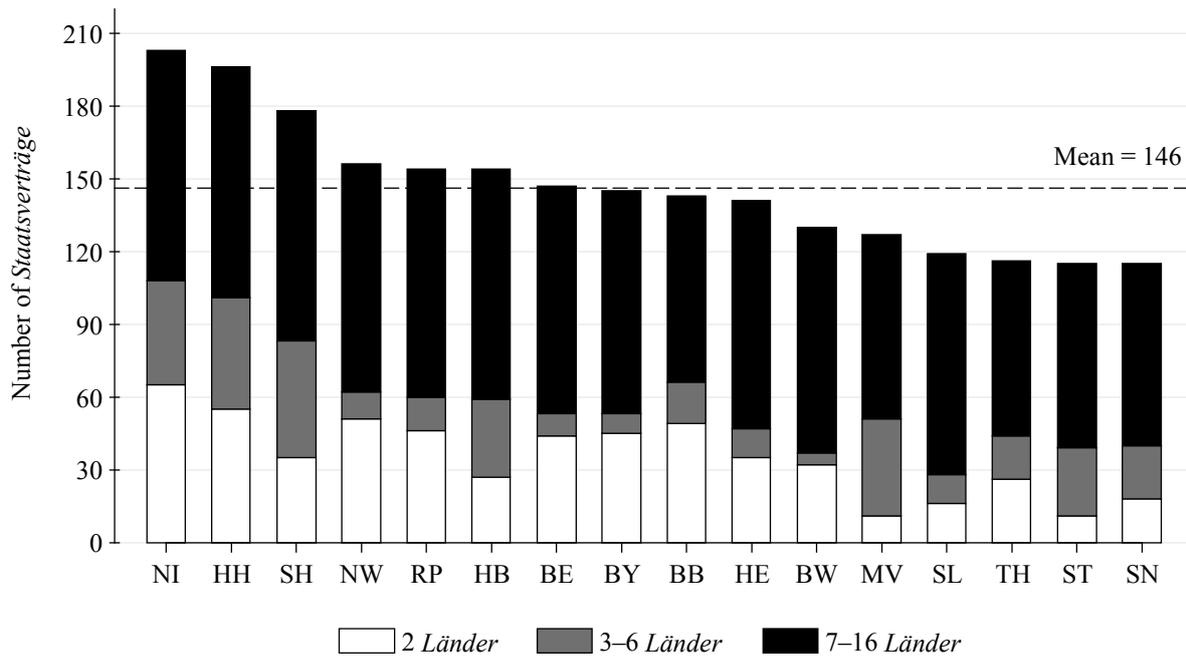


Note: See figure 6.12.  
Sources: See figure 6.12.

Before turning to the intensity of cooperation per state and its overall pattern, figure 6.14 shows the policy areas that are tackled by German *Staatsverträge*. The rank order is similar to the Swiss experience: Most horizontal IGAs exist in the area of education, science, and culture. The *Länder* possess a high degree of subnational autonomy here (Kaiser and Vogel 2019: 90) what gives them special leeway to also conclude and enter *Staatsverträge*. Furthermore, the IGAs are of comparatively high breadth with respect to the number of contracting parties what speaks to the harmonizing character that they have in the underlying area. The high number here is also driven by the states' overarching competences with respect to media (ibid.). However, and as exemplified above against the background of the so-called *Rundfunkstaatsverträge*, the number of rearrangements of existing IGAs (*Änderungsstaatsverträge*) is especially high here what must be considered when interpreting this finding. Other policy areas of intensified horizontal cooperation are security and state organization, e.g. to enable police cooperation and resolve boundary conflicts, but also health service and social security. Especially the significance of the former in interstate relations is known from the Swiss case. It must be noted that in the German case the category comprises general provisions on special purpose associations, while these are mostly assigned to the area of infrastructure, environment and traffic in the Swiss case due to their higher degree of differentiation and contractually enshrined purpose. This could also explain why cooperation in the latter area plays a minor role in Germany (at first sight).

Turning to cooperation per *Land* (figure 6.15), the mean number of *Staatsverträge* (146) clearly exceeds its Swiss counterpart. However, this again is due to country specificities: (the inclusion of) *Änderungsstaatsverträge* especially in omnilateral contracting on the one hand and (the exclusion of) *Gegenrechtserklärungen* on the other. In contrast, variation within Germany is highly informative so that figure 6.15 shows a clear division in contracting intensity between the old West German states and the newly-formed German states of the former German Democratic Republic (GDR). The latter all score below average what could be plausibly explained by their shorter track as part of the Federal Republic of Germany. In comparison, the former can draw on a longer continuous federal history given the 'Bonn Republic' from 1949 on with horizontal ties having developed even earlier.

Figure 6.15: Number of *Staatsverträge* by Land/partners (2018)



Notes: See figure 6.12.

The abbreviations read as follows: BB: Brandenburg; BE: Berlin; BW: Baden-Württemberg; BY: Bavaria; HB: Bremen; HE: Hesse; HH: Hamburg; MV: Mecklenburg-West Pomerania; NI: Lower Saxony; NW: North Rhine-Westphalia; RP: Rhineland-Palatinate; SH: Schleswig-Holstein; SL: Saarland; SN: Saxony; ST: Saxony-Anhalt; TH: Thuringia.

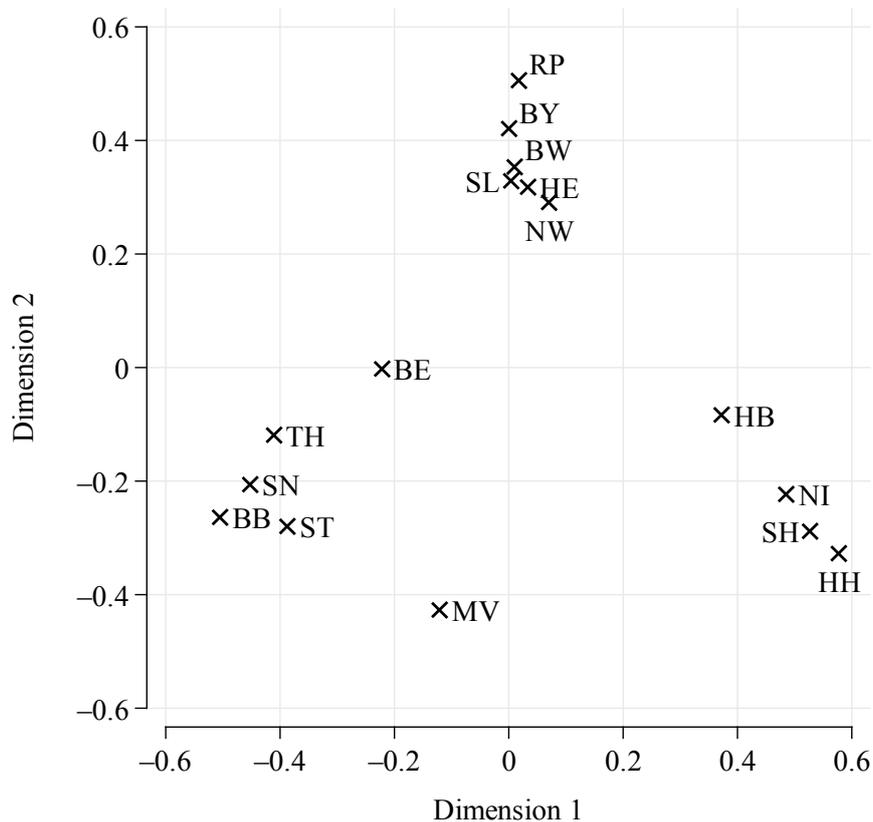
Sources: See figure 6.12.

Lastly, figure 6.16 shows the pattern of IGA-conclusion in Germany and provides answers to the question of *who contracts with whom*. The MDS and a subsequent cluster analysis<sup>67</sup> illustrate that horizontal cooperation in Germany especially takes place within three geographically demarcated and clearly regional groups of states: A cluster of six western and southern states of the former ‘Bonn Republic’ (Bavaria, Baden-Württemberg, Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saarland), a group of (old western) states of the north (Bremen, Hamburg, Lower Saxony, Schleswig-Holstein), and a cluster of the new eastern *Bundesländer* (Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt, Thuringia) including formerly divided Berlin. The Calinski–Harabasz pseudo-F-test statistic possesses a value of 4.16 that lies below the respective value for the Swiss case of recent times (2005 and 2016). This indicates a lower cohesion of the most appropriate cluster solution and might be due to the high number of omnilateral *Staatsverträge*. Furthermore, there are also ties

<sup>67</sup> The calculations are executed by hierarchical clustering in general and average-linkage clustering in particular. Furthermore, the results are confirmed by single-linkage clustering, complete-linkage and weighted-average linkage. While the Calinski–Harabasz pseudo-F points towards the solution with three groups, Duda–Hart Je(2)/Je(1) stopping-rule mainly recommend four to five groups that, however, only further differentiate the principal three clusters.

transcending the three groups but pointing to the regional dimension of horizontal cooperation in Germany as well. An example thereof is enhanced cooperation between coastal Mecklenburg-West Pomerania and geographically proximate and evenly coastal *Länder* of the northern cluster. In sum, the pattern shows features of two guiding principles of federal Germany: First, (still given) strength of nationwide horizontal IGAs speaks to the basic logic of ‘unitarization’ and the constitutionally enshrined target of equal living conditions throughout the whole territory (Art. 72 para. 2 GG) (see e.g. Schmidt 1962, Benz 2002, Kropp 2010). Second, and against the notion of the so termed “*verkappte[r] Einheitsstaat*” (Abromeit 1992, see also Hesse 1962), the clearly regional dimension in the pattern of German *Staatsverträge* as well points to “trends towards regionalization of politics, driven by social, economic and political developments.” (Benz 2009b: 2).

Figure 6.16: Proximity of the *Länder* in horizontal cooperation (2018)



Notes: See figure 6.12. For the calculation of the map see the information in section 5.1.1 as well as the notes on figure 6.6. For the abbreviations see figure 6.15.

Sources: See figure 6.12.

### *6.3.2 Intergovernmental Agreements in the U.S.*

Schaumann, a legal expert of contract law, proposes the parallel examination of horizontal cooperation among the constituent units in Switzerland and the U.S. due to its manifold similarities. He describes the development towards modern IGAs for both cases as follows:

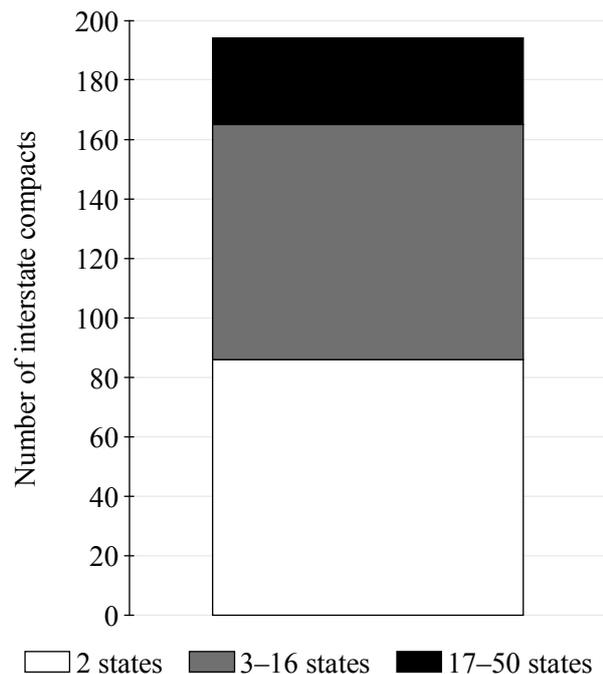
“In the United States of America and in Switzerland during the transition from a confederation to a federation one had to avoid that tediously achieved political unity was again disputed through intergovernmental agreements among the constitutive units. Such considerations led to the prohibition of special alliances contracts of political content in Art. 7 1848 Cst and the similarly interpreted provision of Art. I sect. 10 para 1 of the U.S. constitution.” (Schaumann 1961: 101; own translation).

Noteworthy is not only the comparison between the two but also the description of the tensed relationship between the federal government and the states for the U.S. case (as well). And indeed, the relationship is still best described as a “tug of war” (Ryan 2011) that, however, is more and more decided in favor of the former. This is especially visible in the turn from cooperative to coercive state-federal relations over time (Kincaid 1990, 2013). The latter can be best described as “impositions of federal policies and rules on state and local governments” (ibid. 2015: 64). However, it must be noted that U.S. state-federal relations are still characterized by non-polarized and path-dependent administrative cooperation between the levels of government as well standing in stark contrast to prevalent coercive federalism (ibid.: 67–74). Now, these developments mainly refer to vertical IGR. In contrast, textbooks broadly describe horizontal IGR as “stepchild” (Krumm 2015: 155; own translation) of American federalism. This might, however, only hold true for some but not all channels of horizontal IGR. IGCs in the U.S. are “interest group-like organizations” (Bowman 2017: 5) that are horizontally organized but highly active in vertical state-federal relations as well. However, they are in a contested position since they not just compete with other interest groups but also reflect polarization of U.S. politics: “[O]ne consequence of lessened consensus across states is a corresponding diminution of their vertical influence.” (Bowman 2017: 18). Beside IGCs, literature lists multistate legal action, uniform state law, and interstate compacts as mechanisms of horizontal interstate cooperation (e.g. Bowman 2004a, 2004b). The latter accounts as “[t]he traditional mechanism for cooperation among the states” (Bowman 2004b: 35). In comparison to IGCs, interstate compacts rather resemble the non-polarized part of horizontal IGR in the U.S., since “[m]any [...] involve important administrative, financial, substantive, and technical questions.” (Zimmerman 2011: 36; see also Zimmerman 2012a). Art. I Section 10 U.S. Const.

provides the legal basis for the states to conclude or enter interstate compacts. However, two restrictions exist: First, it forbids contracting with respect to certain enumerated subject matters, e.g. (political) alliances or coining money (Art. I Section 10 para 1 U.S. Const.; see introductory reference to this subsection). Second, it stipulates that interstate compacts require congressional consent (Art. I Section 10 para 3 U.S. Const.). Against this background, most contributions to the literature define interstate compacts in rather minimal terms as “formal agreement[s] or contract[s] between two or more states” (Bowman and Woods 2007: 349) or as “legal document[s] that combine[] the attributes of a state statute and a contract” (Florestano 1994: 13). Zimmerman (2011: 33) puts it more comprehensively: “Interstate compacts and agreements are constitutionally authorized formal methods of multistate cooperation and resolution of controversies between states.”

Now, to what extent do states cooperate by means of interstate compacts and does the U.S. case as well resemble the predominant regional patterns of cooperation detected so far? First, 194 interstate compacts are in effect as of 2019 (figure 6.17). The slight relative majority are bilateral agreements (44.33 percent). Multilateral contracts of three to 16 partners account for a similar number of around four out of ten interstate compacts (40.72 percent) and are thus an integral part of interstate contracting as well. Least widespread but still possessing relevance in horizontal cooperation are omnilateral and (potentially) nationwide compacts (14.95 percent). Generally, the numbers confirm recent approaches on the topic. In his latest examinations, Zimmerman (2011: 45–

Figure 6.17: Number of interstate compacts by partners (2019)



Note: The figure displays all interstate compacts as of 2019.

Sources: Data was compiled by CSG’s National Center for Interstate Compacts Database<sup>68</sup> and validated by means of Ballotpedia<sup>69</sup> and publications on the topic in general (e.g. Zimmerman 2012a) and in particular (e.g. Zimmerman 2012b).

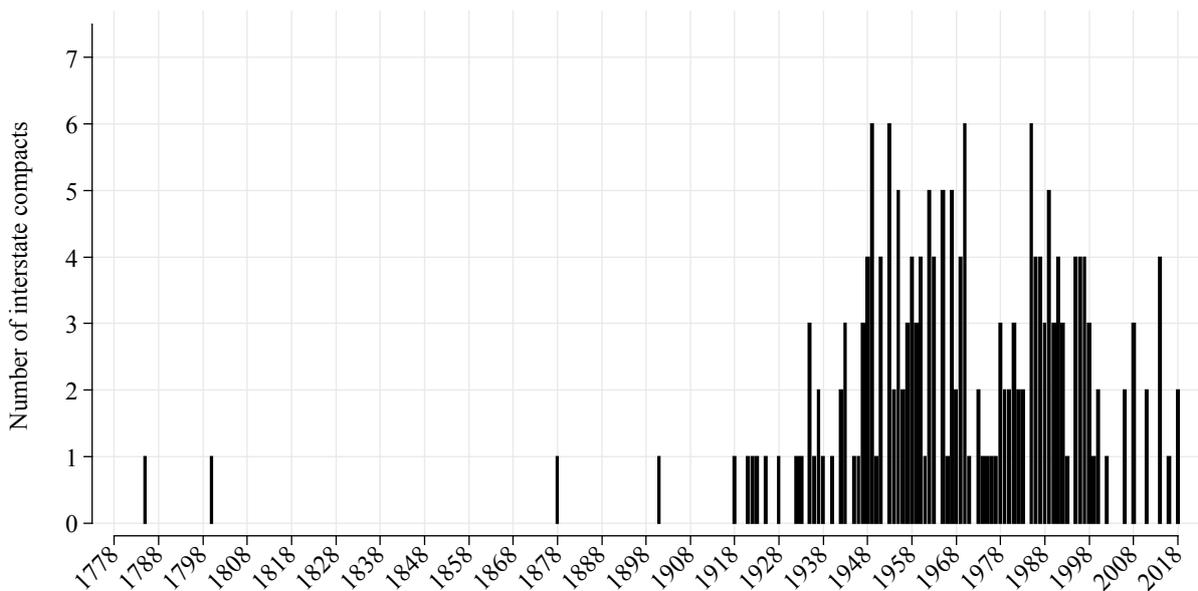
<sup>68</sup> See <http://apps.csg.org/ncic/> (accessed 12 January 2020).

<sup>69</sup> See [https://ballotpedia.org/Chart\\_of\\_interstate\\_compacts](https://ballotpedia.org/Chart_of_interstate_compacts) (accessed 12 January 2020).

46; see also Zimmerman 2012a) reports around 160 active interstate compacts as of 2009. Bowman (2004b: 35–36) counts 155 (without border compacts) and 181 IGAs (with border compacts), respectively, as of 2003. These numbers for the years following the turn of the millennium indicate a consolidated state of contractual horizontal cooperation at a rather low level compared to the two federations analyzed earlier.

This impression holds when looking at the distribution of all interstate compacts as of 2019 by date of formation. First, figure 6.18 shows that interstate compacts as of today draw on a long history. The oldest interstate compact still in effect was formed in 1785, i.e. the *Maryland and Virginia Boundary Agreement of 1785* settling the boundary between the two states and regulating further border-related conflicts, e.g. with respect to fisheries and navigation (Zimmerman 2011: 33; *ibid.* 2012a: 114–115). The date of formation falls into the time of confederal rule under the Articles of Confederation (1781–1789) and predates the modern federation (1789–today). This finding confirms very similar descriptions of the Swiss and the German case, where the oldest contracts still in force are of pre-federal times as well. Second, and as well observed in the formerly analyzed cases, the state of all IGAs in force is an accumulation of contracts that have formed over a long period of time. Here, a first phase of intensified interaction leading to IGAs that are still valid can be observed between the 1940s and the 1970s. Welch and Clark put it as follows:

Figure 6.18: Number of interstate compacts by year (2019)



Note: See figure 6.17.

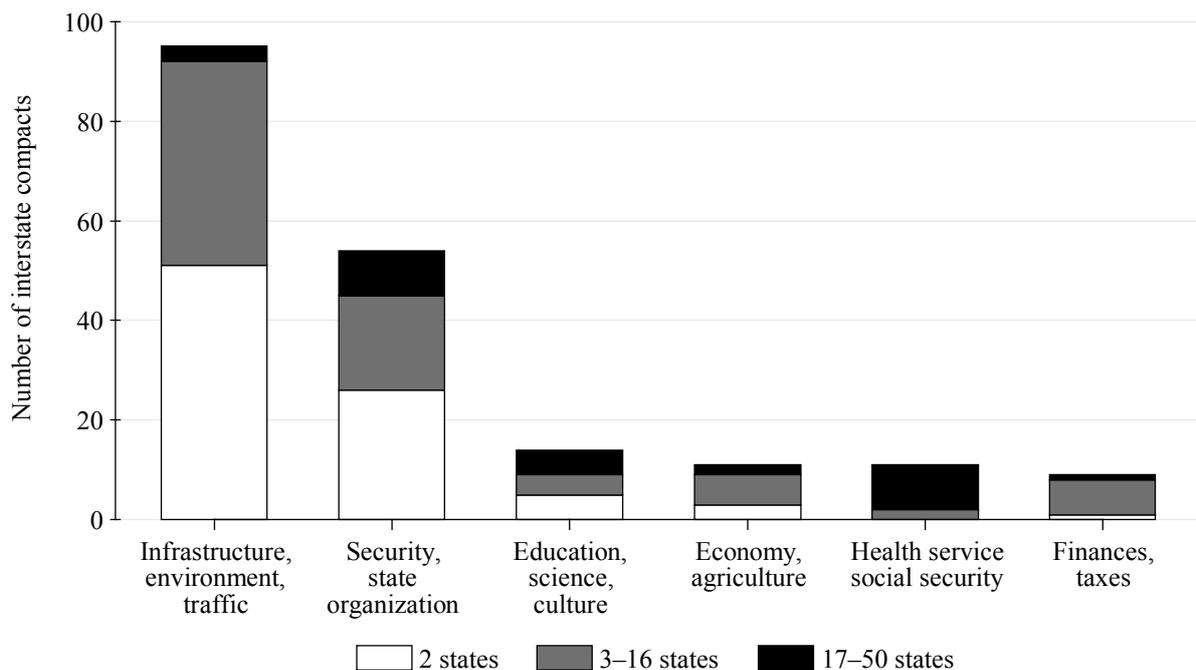
Sources: See figure 6.17.

“Until 1920, compacts were almost entirely a dead letter in intergovernmental relations, being utilized primarily to settle state boundary disputes. Since then, compact utilization rose markedly, as the rate of compact creation jumped almost fourfold between 1921–39 and 1960–69.” (Welch and Clark 1973: 477).

Figure 6.18 shows a second period of intensified contract formation of still valid IGAs, that is from the mid-1980s to the end of the 1990s. Since then the intensity of IGA-conclusion has ceased so that as of today only a small share of all active interstate compacts was concluded in the last 15 to 20 years. From this cross-sectional perspective as of 2019, and in contrast to the Swiss and German case, IGAs have lost in significance in the U.S. of late.

Figure 6.19 illustrates the core topics addressed by interstate contracting. The distribution is clearly less balanced compared to the previously examined cases. The lion’s share of all interstate compacts, around three-quarter of all IGAs, addresses two groups of topics: Infrastructure, environment, and traffic (48.97 percent) as well as security and state organization (27.84 percent). Within the former, issues related to water and water resource management play a crucial role (see also Schlager and Heikkila 2009, Zimmerman 2012b), while the latter depicts a high number of boundary contracts but also such regulating corrections and crime control. Furthermore, the high number of bilateral and multilateral IGAs in these two categories indicates the significance of cooperation within geographically demarcated areas.

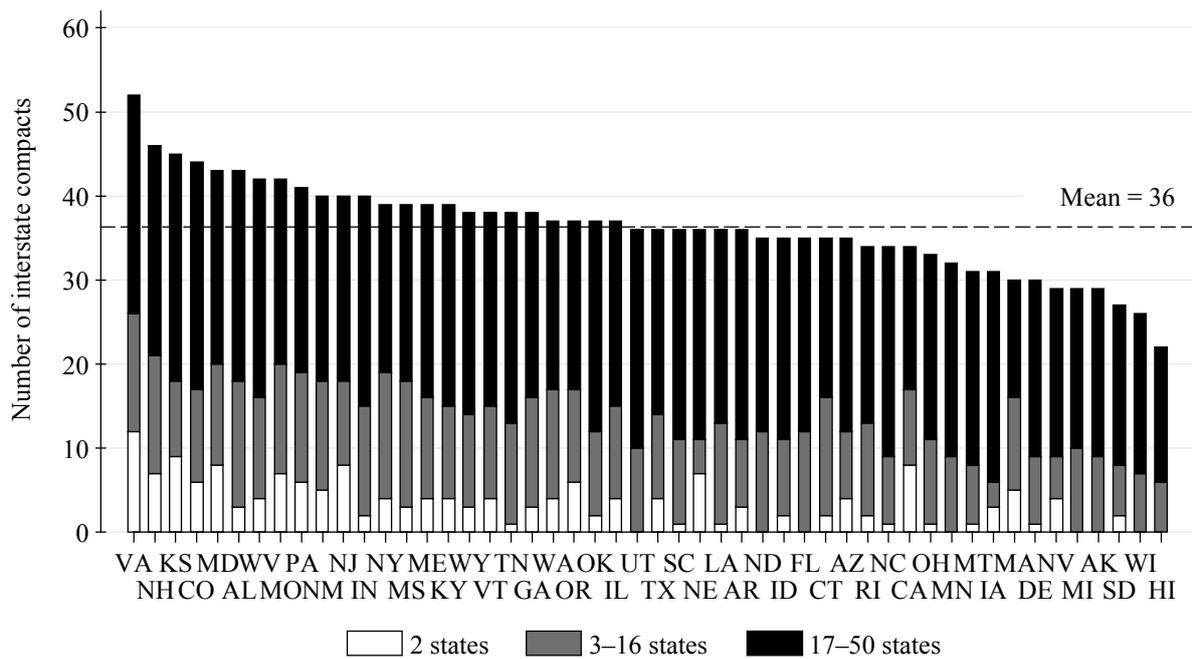
Figure 6.19: Number of interstate compacts by policy area/partners (2019)



Note: See figure 6.17.

Sources: See figure 6.17.

Figure 6.20: Number of interstate compacts by state/partners (2019)



Note: See figure 6.17.

The abbreviations read as follows: AL: Alabama; AK: Alaska; AZ: Arizona; AR: Arkansas; CA: California; CO: Colorado; CT: Connecticut; DE: Delaware; FL: Florida; GA: Georgia; HI: Hawaii; ID: Idaho; IL: Illinois; IN: Indiana; IA: Iowa; KS: Kansas; KY: Kentucky; LA: Louisiana; ME: Maine; MD: Maryland; MA: Massachusetts; MI: Michigan; MN: Minnesota; MS: Mississippi; MO: Missouri; MT: Montana; NE: Nebraska; NV: Nevada; NH: New Hampshire; NJ: New Jersey; NM: New Mexico; NY: New York; NC: North Carolina; ND: North Dakota; OH: Ohio; OK: Oklahoma; OR: Oregon; PA: Pennsylvania; RI: Rhode Island; SC: South Carolina; SD: South Dakota; TN: Tennessee; TX: Texas; UT: Utah; VT: Vermont; VA: Virginia; WA: Washington; WV: West Virginia; WI: Wisconsin; WY: Wyoming.

Sources: See figure 6.17.

On average, every U.S. state takes part in only 36 interstate compacts. Figure 6.20 display the number of compacts by state and shows that Virginia ranks highest (N=52) and Hawaii lowest (N=22). The number of the latter and other states at the lower end of the distribution, e.g. Alaska but also Wisconsin and Michigan, suggest that geographical characteristics could explain contracting intensity among the U.S. states as well. Especially relative isolation and location at the external border seem meaningful. The significance of such factors is underlined by the fact that the aforementioned states take part in multilateral or omnilateral IGAs only with bilateral contracts being absent. As experienced in the German case, the composition of IGAs per state is highly affected by enhanced omnilateral and potentially nationwide compacts. Only in Virginia bi- and multilateral cooperation equals this broadest form of cooperation, while the latter accounts for the majority of all IGAs per state in all other units. In sum, one observes the following: Interstate cooperation takes place on a comparatively low level and is characterized by a low number of bilateral but relatively high shares of multilateral and omnilateral agreements. Assessed by its mere number, the significance for most policy areas is negligible.

Security and state organization, i.e. corrections and police cooperation, as well as infrastructure, environment, and traffic, i.e. water management, are exceptions here. Especially with respect to the latter, interstate compacts are frequently used (e.g. Zimmerman 2012a, Zimmerman 2012b) and highly capable of solving common pool resource problems (Schlager and Heikkila 2009, Heikkila et al. 2011, Schlager et al. 2012).

Finally, figure 6.21 shows the pattern of cooperation. The MDS reflects the deduction of five groups of enhanced cooperation by means of cluster analysis.<sup>70</sup> The five clusters are as follows:

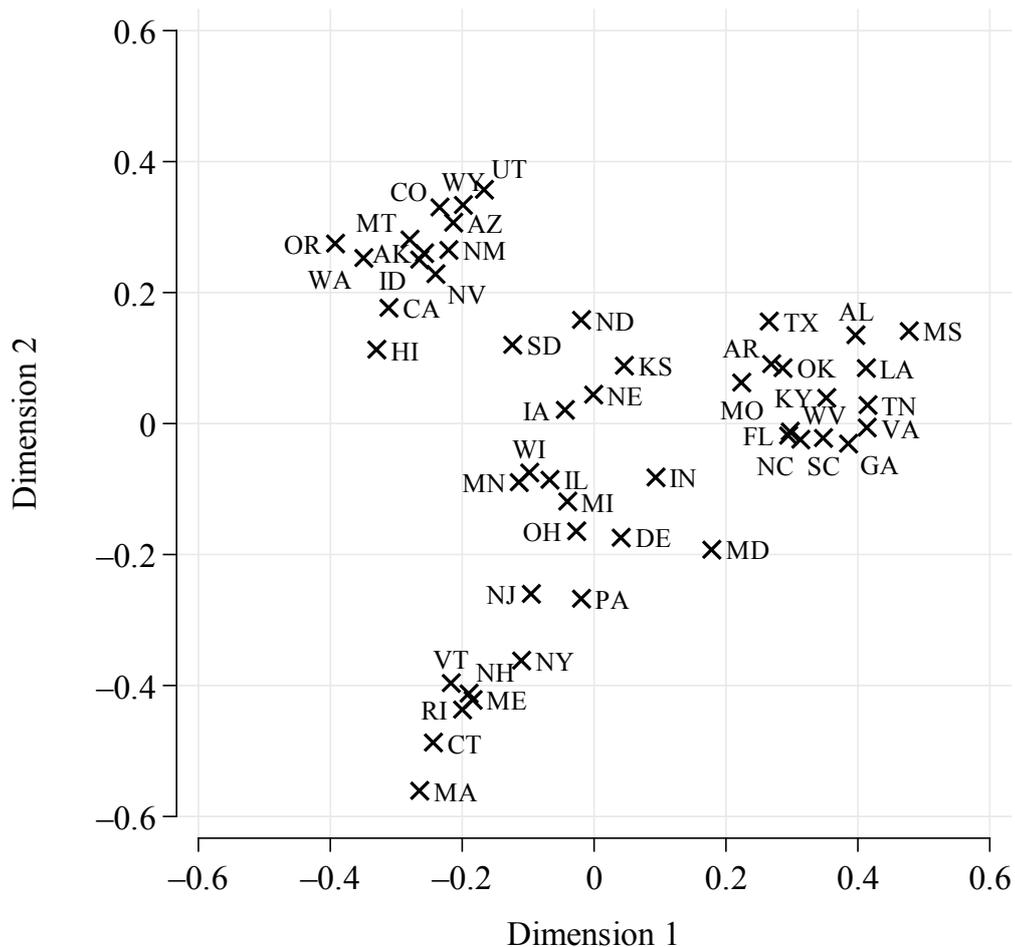
- (I) Tennessee, Arkansas, Mississippi, Oklahoma, Kentucky, Texas, Alabama, Virginia, West Virginia, North Carolina, Georgia, Maryland, South Carolina, Louisiana, Florida.
- (II) Kansas, Missouri.
- (III) Utah, Washington, Alaska, Hawaii, New Mexico, Wyoming, Idaho, Arizona, Oregon, Colorado, Nevada, Montana, California.
- (IV) Indiana, Pennsylvania, Delaware, Wisconsin, Nebraska, New York, Michigan, North Dakota, Iowa, Ohio, South Dakota, New Jersey, Illinois, Minnesota.
- (V) Vermont, New Hampshire, Rhode Island, Maine, Massachusetts, Connecticut.

With some exceptions, the five clusters generally conform to the official Census Bureau Regions (U.S. Census Bureau 2012), i.e. the official structural-geographical division of the U.S. Thus, they show a clear regional character. The first cluster comprises of all states of the south except from Delaware directly bordering the Northeast but still accounting as part of the South Atlantic Division. The second cluster comprises of the neighboring states Kansas and Missouri. Due to enhanced cooperation among the two, they are split from their original regional cluster of states of the Midwest (IV). The third cluster (III) encompasses the complete Western Region. The broad forth Midwestern cluster (IV) then includes Delaware from the South Atlantic Division as well as New York, New Jersey, and Pennsylvania from the Middle Atlantic Division. This leaves the Northeastern cluster (V) with the New England states only. Hence, figure 6.21 does not only confirm Elazar's (1984: 197) famous description of New England as "a sectional confederation within the American federal system" but rather shows an overall regional logic of cooperation despite the strength of omnilateral and nationwide IGAs. To reflect the analysis on the U.S. states, a definitional description of horizontal IGAs in the U.S.

<sup>70</sup> The calculations are executed by hierarchical clustering in general and average-linkage clustering in particular. Furthermore, the results are mainly confirmed by single-linkage clustering and weighted-average linkage while complete-linkage indicates a varying solution. For the former three methods, the Calinski-Harabasz pseudo-F and Duda-Hart  $Je(2)/Je(1)$  stopping-rule point towards a five-cluster-solution, while these test statistics indicate a lower number of clusters when the analysis is conducted by means of complete-linkage.

by Zimmerman (2011: 7) suits well: “An interstate compact is a valuable mechanism for promoting interstate cooperation or centralizing certain powers on a regional basis for purposes of provision of services, construction and operation of physical facilities, such as bridges and tunnels, and for regional or nationwide regulation.” (Zimmerman 2011: 7). It nicely captures the mostly technical character of interstate compacts providing infrastructural public goods or coordinating services but also pronounces the twofold nature of regional cooperation on the one hand and nationwide IGAs on the other. Lastly, the findings must be interpreted against the background of the overall relatively low number of interstate compacts when compared to Swiss intercantonal agreements and German *Staatsverträge*. This may partly explain the scarce state of research on the topic in the U.S. (Florestano 1994: 15–17) but also the abovementioned ascription of horizontal cooperation as “stepchild” (Krumm 2015: 155; own translation) of American federalism.

Figure 6.21: Proximity of the states in horizontal cooperation (2019)



Note: See figure 6.17. For the calculation of the map see the information in section 5.1.1 as well as the notes on figure 6.6. For the abbreviations see figure 6.20.

Sources: See figure 6.17.

### 6.3.3 Commonalities and Differences in Intergovernmental Cooperation

Section 6.3 started with the premise that the federal organization of the Swiss, the German, and the U.S. case possess both similarities and variance (see table 6.6). As taken from the literature, the basic models inform about the characteristics of vertical but leave open the functioning of horizontal IGR. Especially relevant for the organization of the latter could be the federal rationale, i.e. territorial in the German and the U.S. and cultural in the Swiss case, as well as the division of power between the levels of government, i.e. legislative in the U.S., administrative in Germany, and a combination of both in Switzerland. Compared to the other variables – the form of government, the second chamber, and vertical IGR –, all mainly referring to the national level, the federal rationale and the division of power directly relate to the origin and powers of the subnational units. It is, however, not the goal to explain variance in IGAs by means of variance in the categories of federal organization here. Rather, the former shall be conclusively assessed.

Table 6.7: Basic models and categories of federal organization

|                                      | Swiss cantons                                | German <i>Bundesländer</i>                   | U.S. states                                  |
|--------------------------------------|--|--|--|
| <i>IGA-intensity</i>                 | <i>high</i>                                  | <i>high</i>                                  | <i>low</i>                                   |
| Total number of IGAs (mean per unit) | 526 (90)                                     | 470 (146)                                    | 194 (36)                                     |
| <i>Historic track</i>                | <i>long</i>                                  | <i>short</i>                                 | <i>long</i>                                  |
| Year of oldest IGA                   | 1564   | 1947   | 1785   |
| Phases of renewal                    | 1970s onward<br>1990s onward                 | 1990s onward<br>[Föd.reform I]               | [Post-WWII]<br>[Mid-1980s onward]            |
| <i>Policy area</i>                   | <i>generic self-rule</i>                     | <i>generic self-rule</i>                     | <i>generic self-rule</i>                     |
| First most addressed                 | Education, science, culture                  | Education, science, culture                  | Infrastructure, environment, traffic         |
| Sec. most addressed                  | Security, state organization                 | Security, state organization                 | Security, state organization                 |
| <i>Breadth of IGAs</i>               | <i>small-scale</i>                           | <i>small-scale</i>                           | <i>medium scale</i>                          |
| Bilateral IGAs (%)                   | 65.78  | 60.21  | 44.33  |
| Multilateral IGAs (%)                | 24.90  | 19.57  | 40.72  |
| Omnilateral IGAs (%)                 | 9.32   | 20.21  | 14.95  |
| <i>Clusters</i>                      | <i>Regional functional (non-politicized)</i> | <i>Regional functional (non-politicized)</i> | <i>Regional functional (non-politicized)</i> |
| Number of clusters                   | 4  | 3  | 5  |
| Territorial logic                    | regional                                     | regional                                     | regional                                     |

Notes: The numbers are taken from the descriptive analyses on all three cases (sections 6.1.1, 6.3.1, and 6.3.2).

Now, bearing in mind the preceding discussions on the three cases, table 6.7 summarizes some of the most informative numbers from the previous sections. The headings of each section (in italics) provide a summary of the thematical blocs that accord to the figures presented earlier. The table again shows that IGAs are numerous in the Swiss and the German case while they lag behind in the U.S. not playing a significant role here. This is astonishing since the latter could have drawn on a long historic track of horizontal cooperation but, however, had not speed up until the post-WWII period. And even thereafter one can hardly speak of an intensification in absolute terms compared to the other cases at hand. The development in the German case is just the opposite: Unlike the Swiss cantons, the German *Bundesländer* have built its large number of IGAs within a rather short time. However, all three are similar in the topics they address, i.e. policy areas that are part of their generic self-rule. More variance exists with respect to the number of contracting parties: While in the Swiss and German case more than every second IGA is bilateral (small-scale), multilateral cooperation is remarkably high in the U.S. case (medium scale). This is somehow related to the number of clusters and the logic behind their formation that can be best summarized by referring back to Duchacek (1982: 137) (see section 4.2.2.1): “The line between regional and functional organizations is often blurred. Geographic proximity may encourage a common approach to a cluster of functional or technical issues.” However, the author adds that this logic of confederal cooperatives covers coordination between non-adjacent and more distant units as well. The description combines *the* main commonality from the comparison of the Swiss cantons with the German *Bundesländer* and the U.S. states: First, geographic characteristics in general and proximity in particular are highly likely to explain subnational cooperation in all three cases at hand since regional patterns dominate the picture. Second, it is rather technical and non-politicized issues that are addressed by these contracts most frequently. It must be noted that also an alternative logic of cooperation is observed to some extent in all three cases at hand. Hence, the summary in table 6.7 does not rule out non-technical and federation spanning IGAs with a harmonizing effect on policies that could be otherwise encroached by the federal government. The significance of multi- and omnilateral IGAs on education, science and culture are a clear indication thereof.

Having said that, and in order to conclude with this main commonality, figure 6.22, 6.23, and 6.24 illustrate horizontal cooperation among the Swiss cantons (as of 2016), the German *Bundesländer* (as of 2018) and the U.S. states (as of 2019) against the background of the actual maps of the subnational units within their national borders. The biggest difference between these maps and the proximity graphs already presented (see figure 6.6, 6.16, and 6.21) is that the units’ distances in the latter were calculated by MDS while they are fixed and determined

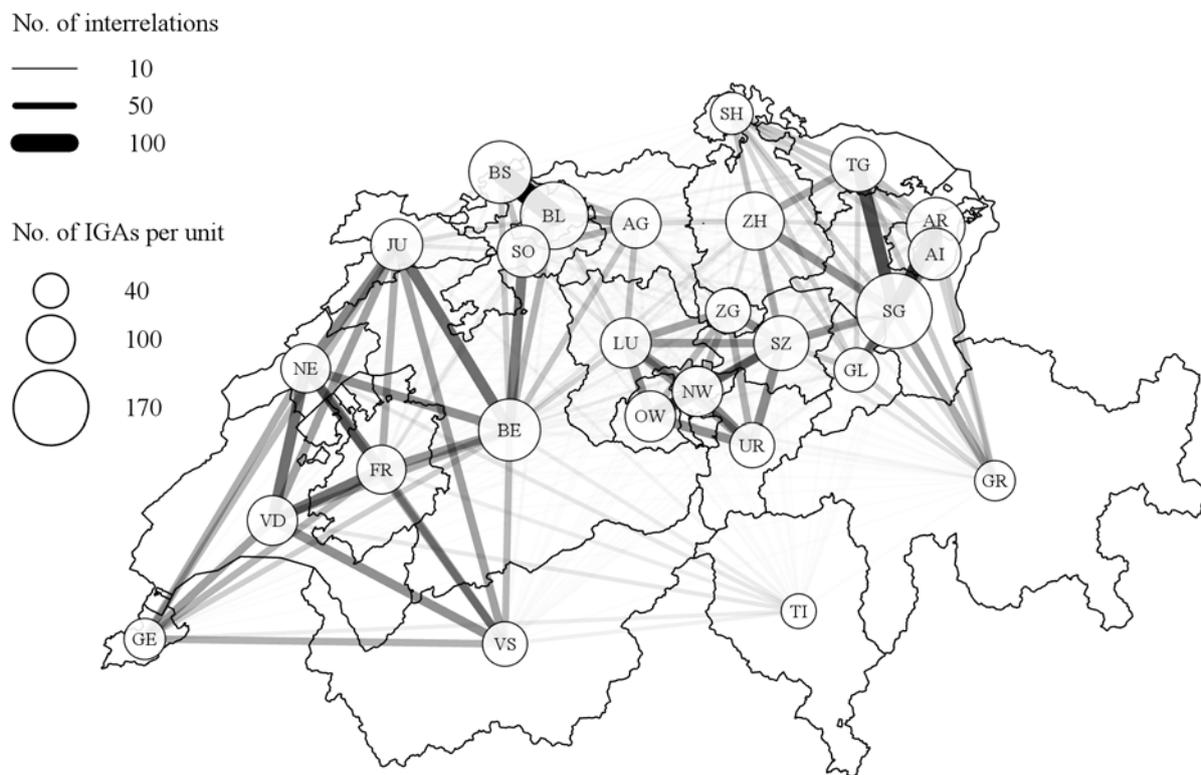
by their natural geographic position in the former. The size of the circles within the maps displays the absolute number of agreements per unit. The connecting lines between the circles illustrate the number and strength of their interrelations: the thinner and more transparent a line between two entities, the less they cooperate.

The figures show that each unit in all cases at hand is linked to all others due to federation spanning IGAs. However, the reasons for the low intensity of cooperation of some and the high engagement of others become more clearly visible. For example, figure 6.22 further confirms why the canton of Ticino only sporadically participates in horizontal cooperation: It is not some sort of (political) unwillingness to cooperate but rather relative geographic isolation that makes the conclusion of horizontal IGAs less reasonable. The same accounts for the state of Hawaii and the state of Alaska in the U.S. case (see figure 6.24). Furthermore, all three figures confirm the clustering of the subnational entities within regional functional spaces. Figure 6.22 makes the regional logic of horizontal cooperation among the Swiss cantons in the west, northwest, center, and east apparent. Figure 6.23 shows the rather clear partition of contracting among the German *Bundesländer* in three regional clusters of the coastal north, the newly-formed *Länder* of the east, and the western and southern states (see also figure 6.16). Deviations in line with the argument of cooperation within regional spaces and incentivized by functional interests are as well visible: Mecklenburg-West Pomerania belongs to the cluster of the newly-formed eastern states but maintains multiple interrelations with the evenly coastal and partly adjacent units of the northern cluster. Furthermore, Berlin is heavily connected to not only its original eastern cluster but to all other entities as well due to its status and responsibilities as the country's capital.

The size of the circles illustrates the number of IGAs per entity. Interestingly, and especially in the Swiss case, there exist units that are characterized by their particularly high number of IGAs compared to the others of the same cluster. For example, the canton of St. Gallen stands out in the cluster of eastern and northeastern Switzerland, respectively. Similarly, the canton of Basel-City is the central provider of public goods in the northwest, making it the prime contracting partner of Basel-Country. Furthermore, the intensity with which the canton of Berne contracts is noteworthy since it is not that narrowly bound to its cluster (see also figure 6.6). Rather, the position of the canton as a "bridge head" (Bochsler and Sciarini 2006: 35; own translation) between the cantons of the west and northwest as well as in eastern direction is confirmed here. This justifies the high overall number of IGAs although the canton is not a center within a clearly demarcated region. The intensity with which it contracts rather stems from its connections to all sides. In contrast to the Swiss case, the three German clusters show a different

internal logic. The variance within them is less pronounced than the variance between them. Hence, the northern cluster is characterized by a high average number per unit while the opposite holds true for the eastern cluster. The units of the western and southern group lie somewhere in between. Thus, it seems less the case here, that each cluster possesses a clear regional center. However, in the east, for example, the manifold connections between the capital region of Berlin and the surrounding state of Brandenburg are striking as well. This resembles the pattern of cooperation between the Swiss cantons of Basel-City and Basel-Country. Hence, more elaborate analyses are necessary here that could explain cooperation among the German (and the U.S.) states to further investigate these first descriptive insights.

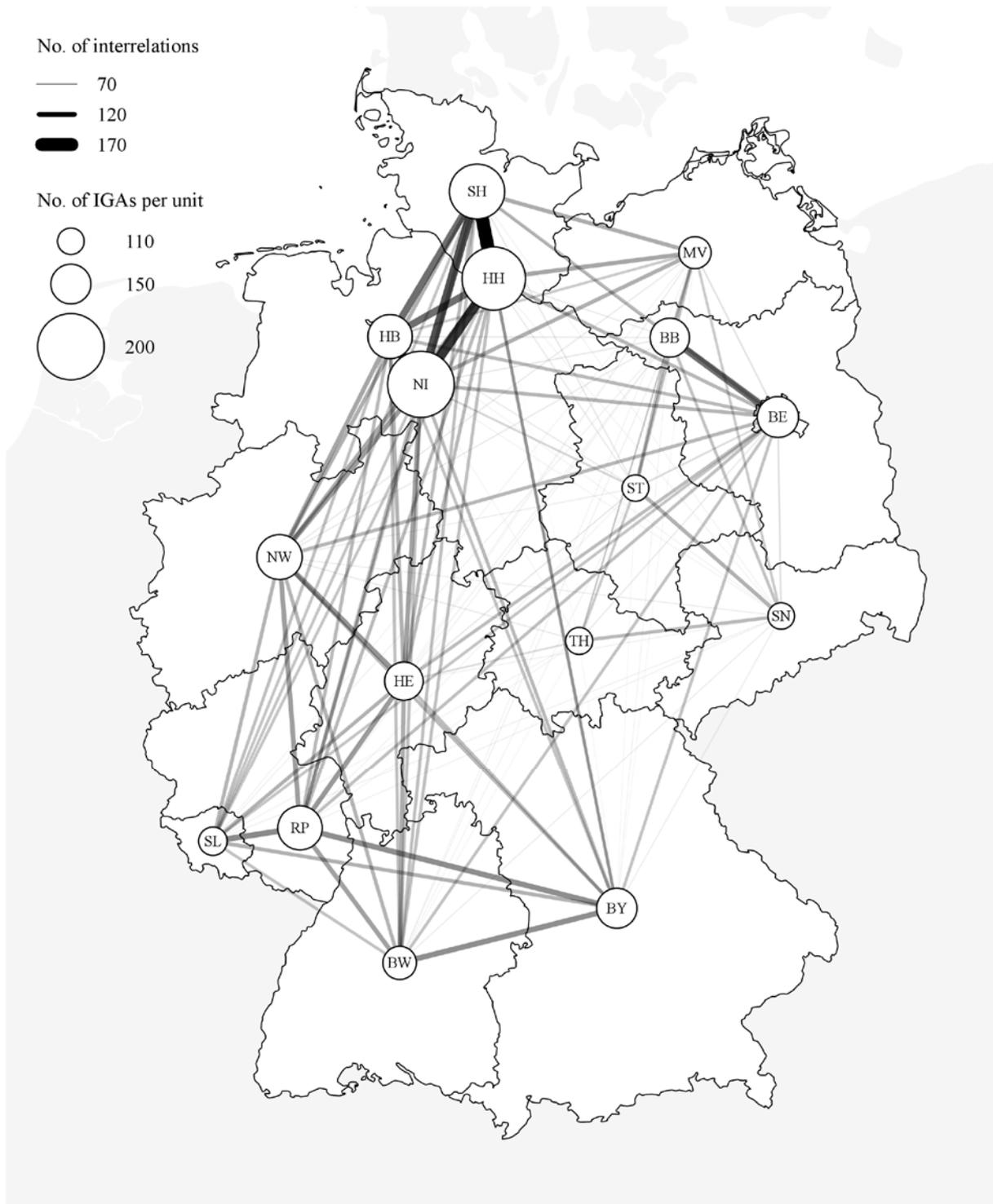
Figure 6.22: Network map of all intercantonal agreements (2016)



*Note:* The figure shows all intercantonal agreements as of 2016. The proximity between each dyad is fixed due to the entities' respective natural geographical position. The strength of cooperation is indicated by the breadth and opacity of the lines connecting the entities: The thicker and more opaque a line, the more IGAs exist between two entities. The size of the circles is determined by the absolute number of IGAs per unit: the larger a circle, the higher the overall number of IGAs of a unit.

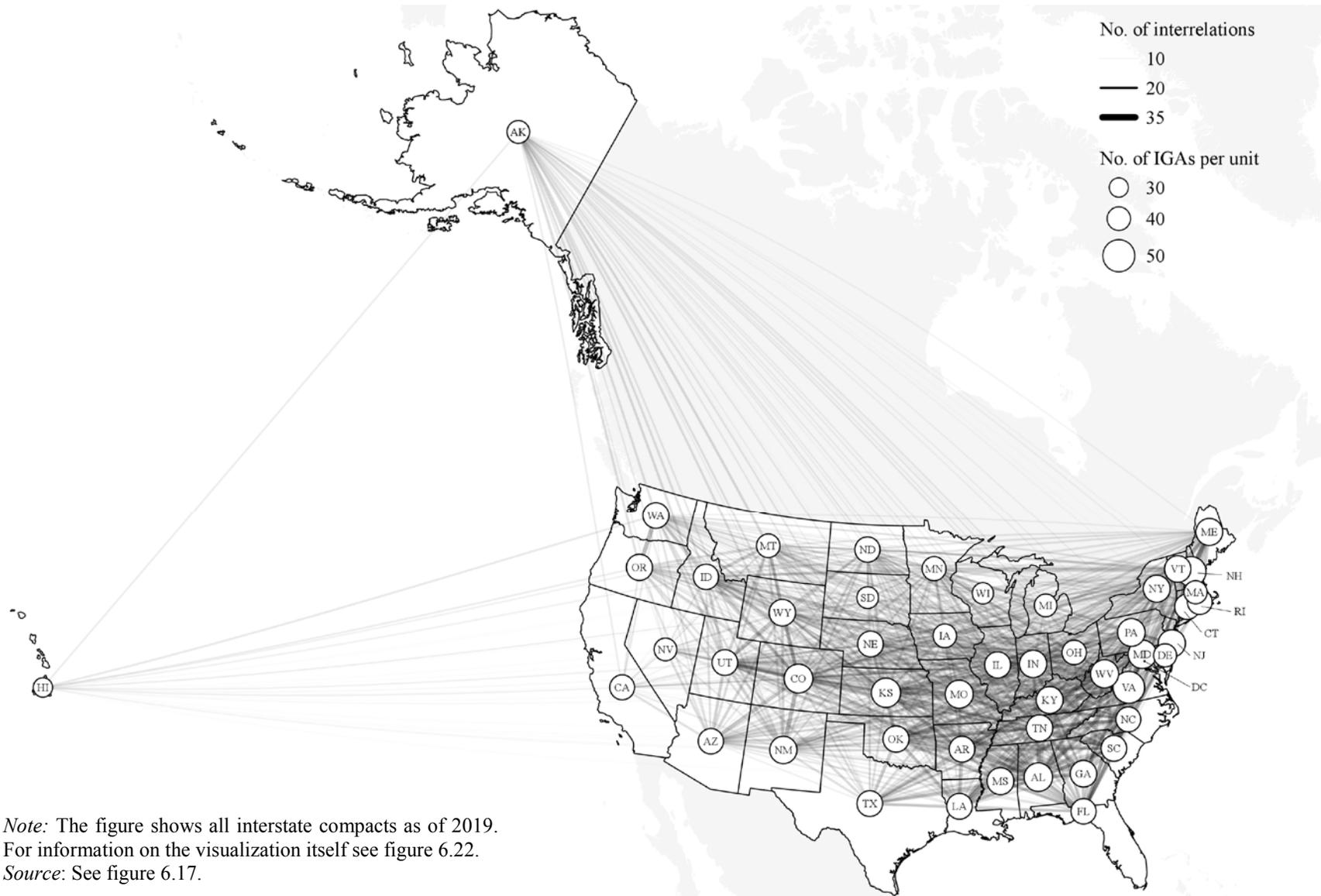
*Sources:* See figure 6.1.

Figure 6.23: Network map of all Staatsverträge (2018)



Note: The figure shows all *Staatsverträge* as of 2018. For information on the visualization itself see figure 6.22.  
Sources: See figure 6.12.

Figure 6.24: Network map of all interstate compacts (2019)



Note: The figure shows all interstate compacts as of 2019.  
 For information on the visualization itself see figure 6.22.  
 Source: See figure 6.17.

To sum up the findings from this first analytical chapter: Horizontal cooperation by means of IGAs is a confederal remedy for shortcomings in the federal structure. While the tasks are of original self-rule but exceed the capabilities and/or appropriateness of ordinary subnational policymaking, IGAs allow for their accomplishment by the constituent units in absence of any federal action. They are of high significance in two of the three analyzed federations and can be expected to become even more significant in the future. At last, they are best described as policy-solutions in regional functional spaces and, thus, rather deal upon technical, non-polarized matters than aim at large-scale harmonization of lawmaking that would come close to federal centralization.

## 7 Reform Effects II: Parliamentary Participation

The analyses so far examined the development, current state, and rationality of intercantonal contracting in general and with respect to the specific tasks targeted by the NFA. In the section above, the Swiss case was compared to subnational Germany and the U.S. states. Generally, it could be shown that horizontal cooperation mainly serves as a measure for regional policymaking within geographically demarcated functional areas. Furthermore, the degree to which the conclusion of IGAs is politicized is limited. However, the descriptive analyses on contracting intensity and fiscal compensations both indicate that cooperation is of crucial significance in subnational Switzerland and have intensified in the long (IGAs) and short run (intercantonal revenue and expenditure). This may have further weakened cantonal parliaments, since, as known from international literature on the topic, “[a] common characteristic of intergovernmental relations is their executive nature” (Hueglin and Fenna 2015: 239; see also Smiley 1974). As discussed in 3.3.1, intercantonalization is subject to major contestation in the Swiss case as well. Thus, the empirical findings from the first analytical step make the answering of research question II on the development of parliamentary participation in intercantonal affairs even more pressing. As hypothesized in section 4.3.2, parliamentary rights are expected to have been increased against the background of the NFA, that might have served as a reform trigger. However, the effect is expected to be contingent on the general power relations between the executive and the legislative branch and partisan competition. The following descriptive and explanatory analyses aim at testing these propositions.

### 7.1 *Parliamentary Participation and Scrutiny in Intercantonal Affairs over Time*

Figure 7.1 illustrates the course of the time series of the index of parliamentary participation and scrutiny for each canton separately. The index indicates basic parliamentary means to participate in intercantonal affairs (see section 3.3.1). Note that statistical tests justify the index construction towards this measure with three items, i.e. information rights, consultation rights, and a standing commission on intercantonal affairs.<sup>71</sup> The vertical line marks the year 2008, the

<sup>71</sup> All three items are significantly correlated when testing bivariate connections (Pearson’s  $r$  [information rights, consultation rights] = 0.9135,  $p < 0.001$ ; Pearson’s  $r$  [information rights, standing commission on intercantonal affairs] = 0.5839,  $p < 0.001$ ; Pearson’s  $r$  [consultation rights, standing commission on intercantonal affairs] = 0.5743,  $p < 0.001$ ). Cronbach’s alpha takes a score of 0.8729 indicating that all three items are on the same scale. The Kaiser-Meyer-Olkin measure (KMO) takes a modest value of 0.6519 indicating that a further factor analysis can be undertaken. The principal-component factor analysis using orthogonal varimax rotation then results in a one factor-solution meaning that there is one underlying factor composed of the three items with eigenvalue  $> 1$  and maximal variance reduction – the deduction of one factor is confirmed by the respective scree-test.

latest point in time where noteworthy action was undertaken by the federal level, i.e. the taking force of the NFA on 1 January 2008. Parliamentary rights in intercantonal affairs were unknown by the beginning of the time span under conduct. At the beginning of the 1990s, the index takes the value of zero in all cantons except of Jura (and Basel-Country) so that formal participation of cantonal parliaments in intercantonal affairs was generally absent.<sup>72</sup> Three units witness no change at all at any given point in time and remain in a premature state: Glarus<sup>73</sup>, Appenzell Inner-Rhodes and Nidwalden. The former two still have an active *Landsgemeinde* – the only two popular assemblies left on the cantonal level – in which the institutional role of the electorate is strongest while parliament is in many areas rather preparatory compared to the rest of the cantons (Schaub 2016). The *Landsgemeinde* in Nidwalden (as well as in Appenzell Outer-Rhodes and Obwalden) was abolished during the 1990s. In these units, the institutional composition varies considerably. Thus, deviation from the common pattern is not surprising. In the remaining cantons, institutional change with respect to parliamentary rights in intercantonal affairs takes place but not until the end of the 1990s and the beginning of the 2000s, respectively. There is no clear cut when parliamentary rights were enhanced but rather a period beginning with early modifications in Geneva and Vaud and ending with (partial) reforms of cantonal constitutions, parliamentary law, and/or parliamentary rules of procedure in Solothurn and Zurich in 2013. Surprisingly, in St. Gallen and Schwyz parliamentary participation in intercantonal affairs was partially rebuilt in 2016. In the former, for example, the special permanent commission on intercantonal affairs was abolished as part of a reorganization of the whole committee system and justified by general doubt on its performance.<sup>74</sup> Thus, institutional change is neither exclusively abrupt – in eight of the 26 cases change proceeds gradually – nor strictly unidirectional – three cantonal parliaments again restrict their own rights over time. However, a general pattern exists: From 2000 and 2001 onwards, formal parliamentary participation in intercantonal affairs has been generally enhanced in most cantons. This underlines similar research showing that nowadays most cantonal parliaments possess fundamental rights of participation in intercantonal affairs (see Strebel 2014, Arens 2018).

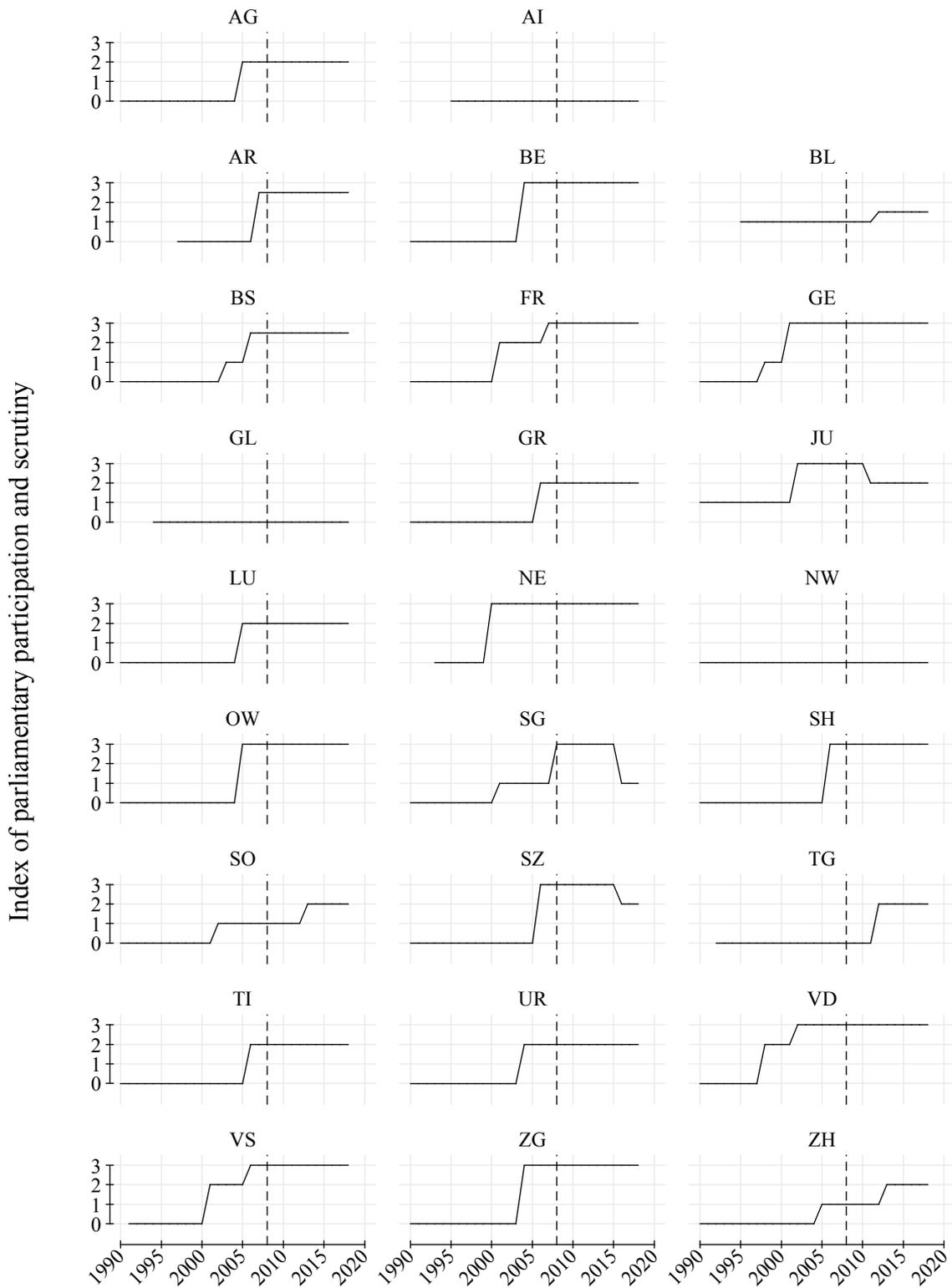
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<sup>72</sup> Note that some cantons exhibit missing values at the very beginning of the investigation period due to missing information on the dependent variable for early points in time.

<sup>73</sup> In Glarus, the legislative branch passed a reform of the *Landratsverordnung*, i.e. the cantonal parliamentary law, granting itself information and consultation rights in late 2018 ([http://gesetze.gl.ch/app/de/texts\\_of\\_law/II%20A%2F2%2F3](http://gesetze.gl.ch/app/de/texts_of_law/II%20A%2F2%2F3), accessed 31 March 2020). The date exceeds midyear so that the new values of the indicators would have been assigned to the case for 2019 that, however, lies outside of the time of observation.

<sup>74</sup> See <https://www.ratsinfo.sg.ch/geschaefte/2551#statements> (accessed 31 March 2020).

Figure 7.1: Parliamentary participation and scrutiny in intercantonal affairs, 1990–2018



Note: The vertical dashed lines highlight the taking force of the NFA in 2008.

Source: Own compilation based on cantonal statute books and a formal inquiry at the state chancelleries as well as further investigations (see section 5.2.1). See Arnold et al. (2019) for an earlier version of this figure.

## 7.2 Explaining Parliamentary Participation in Intercantonal Affairs over Time

The following section asks for explanatory factors of the general time trend of parliamentary rights of participation in intercantonal affairs as shown above. It draws on a general proposition and three specific hypotheses (see table 7.1). Mainly, a top-down effect is assumed stemming from the NFA and the debates on its consequences, respectively (hypothesis 3.1). Derived from Europeanization literature, among others, it is further expected that the generally strong parliaments had redefined the specific rights and structures first and before the rather weak legislative institutions undertook respective reforms (hypothesis 3.2). Third, partisan conflict between the executive and the legislative branch could affect reform activity: the stronger the opposition in parliament, the more likely are structural reforms of the parliament as a whole (hypothesis 3.3). Furthermore, controls are integrated into the model that are mainly derived from the findings on state and rationality of IGA-conclusion (see chapter 6).

A small-N analysis (SNA) will follow the multivariate TSCS-model and large-N analysis (LNA) in order to provide further insights into the possible mechanisms at hand. Thus, the study takes the general proposition seriously, that “[t]he SNA should be used to answer those questions left open by the LNA” (Lieberman 2005: 440). However, it is especially applied here to further test the plausibility of the general effects carved out by the LNA and to discuss them against the background of a typical case, i.e. the canton of Berne.

*Table 7.1:* Hypotheses on the explanations of parliamentary rights in intercantonal affairs

|                               |  |
|-------------------------------|--|
| <i>General proposition 3:</i> | Vertical pressure from the federal level explains the adoption of structural reforms within the cantons.   |
| <i>Hypothesis 3.1:</i>        | The NFA triggered parliamentary reforms in the cantons improving parliamentary rights of participation and scrutiny in intercantonal affairs.  |
| <i>Hypothesis 3.2:</i>        | The general executive-legislative relation determines the power of the respective cantonal parliament in intercantonal affairs.  |
| <i>Hypothesis 3.3:</i>        | The stronger political competition between and within parliament and government is, the more likely are reforms strengthening parliamentary participation and scrutiny in intercantonal affairs. |

### 7.2.1 *Multivariate Model: Institutions Matter*

Table 7.2 refines the descriptive findings by presenting the results of the TSCS regression model. Drawing on the basic model (7.1) and the first test of hypothesis 3.1 and 3.3, statistically significant changes in the dependent variable occur from the period between 2001 and 2004 on (see figure 7.2) – the time span starting with the publication of the official message in 2001 leading to the approval of the NFA at the ballot box in 2004. The significances underline that there is a general time trend while keeping partisan competition between the political branches constant as well as controlling for varying unit effects and the level of the dependent variable at the previous point in time. Thus, model 7.1 and figure 7.2 confirm the impression from figure 7.1 that parliamentary participation in intercantonal affairs generally increased in the cantons before the NFA took force in 2008. Partisan competition, in contrast, does not even have an effect in this first and reduced model. The reason thereof could be that the classical divide between governmental and oppositional parties is absent in Swiss cantons since all are consensus democracies with oversized coalitions being the rule and not the exception (Vatter 2018b: 233–234). Accordingly, there are only few units in the period under conduct, where strength of parties not represented in government make up a considerable amount in parliament: In only ten percent of all cases (canton–year) representation of parliamentary parties in government is lower than around two-thirds of the overall legislative seat share. While partisan competition in the cantons is increasing, e.g. by means of heightened competitiveness in governmental elections (Bochsler and Bousbah 2015), broad unified government is still prevalent. An effect of, say, divided government, the clearest expression of partisan conflict here, is not traceable due to this phenomenon nearly completely missing. Independent of this strict criterion of a partisan split between the legislative and executive branch, an effect of partisan conflict between parliamentary parties in and out of government on parliamentary reforms cannot be confirmed. The insignificances of the measure at hand rather suggests that stronger oppositional parties in parliament do not significantly affect whether parliamentary reforms towards better participation in intercantonal affairs are undertaken.

Table 7.2: Determinants of parliamentary participation in intercantonal affairs, 1990–2018

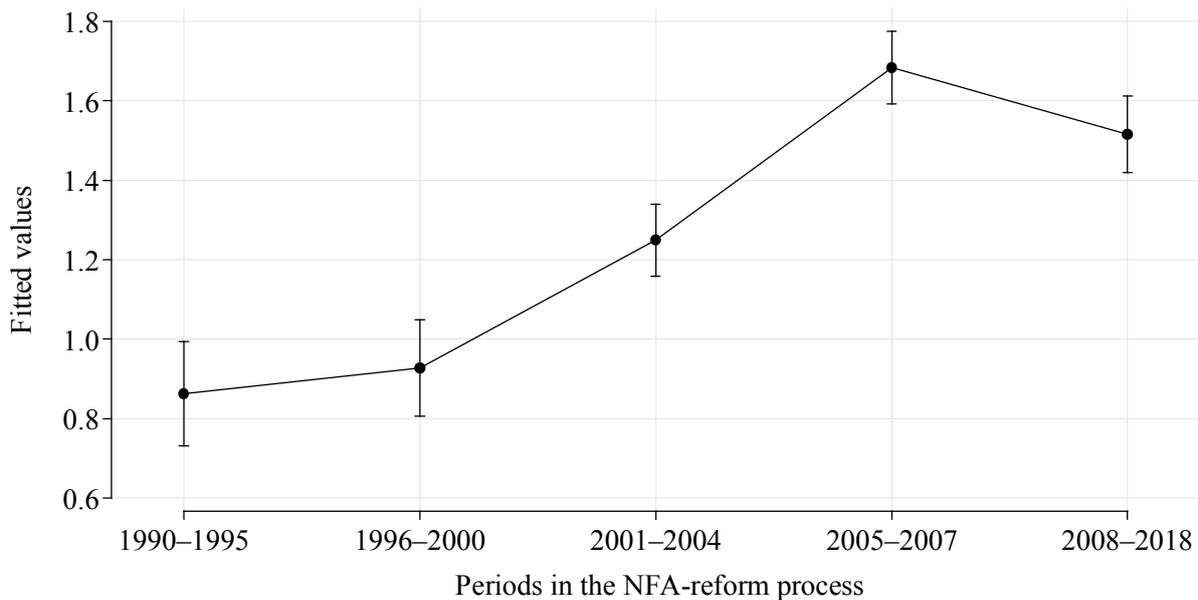
|                             | Model 7.1         | Model 7.2         | Model 7.3          | Model 7.4          |
|-----------------------------|-------------------|-------------------|--------------------|--------------------|
| Lagged DV <sub>t-1</sub>    | 0.736*** (0.0370) | 0.855*** (0.0261) | 0.801*** (0.0334)  | 0.733*** (0.0394)  |
| Time                        |                   |                   |                    |                    |
| Period 1: 1990–1995 (ref.)  |                   |                   |                    |                    |
| Period 2: 1996–2000         | 0.0640 (0.0520)   | –0.173 (0.190)    | 0.520*** (0.0722)  | 0.232 (0.390)      |
| Period 3: 2001–2004         | 0.386*** (0.0630) | 0.275 (0.202)     | 1.183*** (0.137)   | 1.415** (0.436)    |
| Period 4: 2005–2007         | 0.820*** (0.0912) | 1.072*** (0.194)  | 0.571*** (0.166)   | 1.435** (0.495)    |
| Period 5: 2008–2018         | 0.652*** (0.103)  | 0.360* (0.172)    | 0.685*** (0.134)   | 1.130** (0.430)    |
| Executive dominance         |                   | 0.00918 (0.227)   |                    | 0.104 (0.379)      |
| Time # Exe. dom.            |                   |                   |                    |                    |
| Period 1 # Exe. dom.        |                   |                   |                    |                    |
| Period 2 # Exe. dom.        |                   | 0.426 (0.290)     |                    | 0.165 (0.433)      |
| Period 3 # Exe. dom.        |                   | 0.0494 (0.317)    |                    | –0.314 (0.471)     |
| Period 4 # Exe. dom.        |                   | –0.851** (0.303)  |                    | –0.987* (0.479)    |
| Period 5 # Exe. dom.        |                   | –0.0143 (0.249)   |                    | –0.404 (0.426)     |
| Direct Democracy            |                   |                   | –0.00160 (0.0186)  | 0.0180 (0.0398)    |
| Time # DD                   |                   |                   |                    |                    |
| Period 1 # DD               |                   |                   |                    |                    |
| Period 2 # DD               |                   |                   | –0.111*** (0.0228) | –0.0530 (0.0334)   |
| Period 3 # DD               |                   |                   | –0.205*** (0.0332) | –0.197*** (0.0355) |
| Period 4 # DD               |                   |                   | 0.0358 (0.0326)    | –0.0124 (0.0412)   |
| Period 5 # DD               |                   |                   | –0.0474* (0.0224)  | –0.0609* (0.0294)  |
| Δ in IGAs (1980–2005; log.) |                   |                   |                    | 0.0461 (0.0750)    |
| Time # Δ in IGAs (log.)     |                   |                   |                    |                    |
| Period 1 # Δ in IGAs (log.) |                   |                   |                    |                    |
| Period 2 # Δ in IGAs (log.) |                   |                   |                    | 0.0269 (0.0595)    |
| Period 3 # Δ in IGAs (log.) |                   |                   |                    | 0.153* (0.0664)    |
| Period 4 # Δ in IGAs (log.) |                   |                   |                    | 0.174* (0.0737)    |
| Period 5 # Δ in IGAs (log.) |                   |                   |                    | –0.0159 (0.0463)   |
| Regional Generalist IGC     |                   |                   |                    |                    |
| Canton of TI and ZH (ref.)  |                   |                   |                    |                    |
| Central Switzerland         |                   |                   |                    | 0.172** (0.0605)   |
| Western Switzerland         |                   |                   |                    | 0.255*** (0.0594)  |
| Northwest Switzerland       |                   |                   |                    | 0.136* (0.0591)    |
| Eastern Switzerland         |                   |                   |                    | 0.0928 (0.0655)    |
| DV of neighboring cantons   |                   |                   |                    |                    |
| Diff. Mean <sub>t-1</sub>   |                   |                   |                    | 0.0247 (0.0628)    |
| Diff. Mean <sub>t-2</sub>   |                   |                   |                    | 0.112* (0.0563)    |
| Political Competition       |                   |                   |                    |                    |
| IEO (log.) <sub>t</sub>     | –0.241 (0.148)    | –0.229 (0.149)    | –0.211 (0.148)     | –0.257(*) (0.148)  |
| IEO (log.) <sub>t-1</sub>   | 0.266 (0.170)     | 0.305(*) (0.176)  | 0.305(*) (0.178)   | 0.335(*) (0.173)   |
| IEO (log.) <sub>t-2</sub>   | 0.174 (0.158)     | –0.115 (0.151)    | –0.163 (0.149)     | –0.173 (0.154)     |
| Constant                    | –0.0473 (0.0815)  | 0.0128 (0.140)    | 0.0289 (0.0710)    | –0.217 (0.330)     |
| FE cantons                  | Yes               | No                | No                 | No                 |
| Number of observations      | 662               | 662               | 662                | 638                |
| Number of cantons           | 25                | 25                | 25                 | 25                 |
| R <sup>2</sup>              | 0.922             | 0.924             | 0.928              | 0.929              |

Notes: Standard errors in parentheses; (\*)  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

Dependent variable: Index of parliamentary participation and scrutiny over time, 1990–2018

Sources: See chapter 5.2.

Figure 7.2: Predictive margins of the period dummies

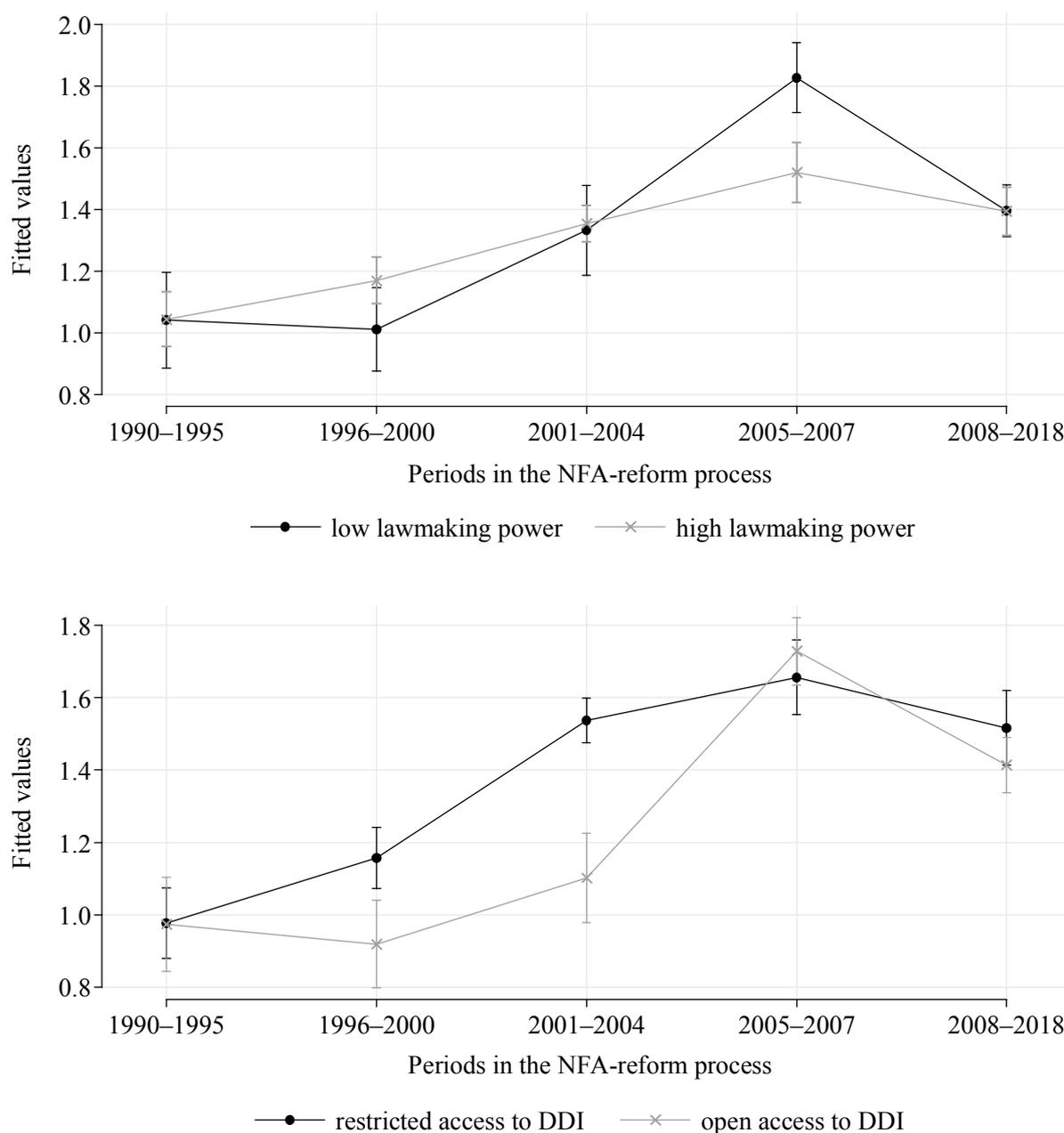


*Note:* The plot displays the predictive margins of the period dummies of model 7.1, table 7.2. The effects are statistically significant within the 95 percent confidence intervals illustrated by the capped spikes. The calculations are based on TSCS with PCSE.

*Source:* Own calculations.

In model 7.2, table 7.2, the proxy of general strength of parliamentary lawmaking is included by means of an interaction term with the variable displaying the reform period. For methodical reasons the unit-dummies are omitted accordingly (see section 5.1.2). Two effects stand out: The coefficient of the interaction for the period between 2005 and 2007 is statistically significant and negative. In this late point in time, when the reform was already adopted at the ballot box, especially the comparatively weak parliaments undertook reforms with respect to their say in intercantonal affairs. In the previous periods, the sign of the coefficient is positive but fails statistical significance. This hints towards early reform activity of the strong given early public debates and late reforms of the weak parliaments when the NFA was already sealed. However, only the latter is statistically meaningful. Figure 7.3 (top) illustrates the effect of general parliamentary lawmaking power given the respective period within the NFA reform process. The effects are calculated at the variable's mean plus (high general parliamentary lawmaking powers) and minus one standard deviation (low general lawmaking powers).

Figure 7.3: Predictive margins of lawmaking power and direct democratic access



*Note:* The plot displays the predictive margins of general parliamentary lawmaking power (top) and openness of direct democratic institutions (bottom) conditioned on the period dummies as of model 7.2 and 7.3, table 7.2. The effects are statistically significant within the 95 percent confidence intervals illustrated by the capped spikes. The calculations are based on TSCS with PCSE.

*Source:* Own calculations.

The third model (7.3) in table 7.2 calculates the effect of formal openness of direct democratic institutions and excludes the partly complementary institutional measure of parliamentary strength. The two effects of the Stutzer-index (Stutzer 1999) displayed in figure 7.3 (bottom) are those for high – the index' mean plus one standard deviation – and low formal direct democratic access – the index' mean minus one standard deviation. The predictive margins show the following picture: cantons with strong direct democratic institutions lag behind with

respect to enhancing parliamentary rights in intercantonal affairs compared to cantons with restricted access to such institutions. A plausible explanation that is backed by research on the topic (e.g. Vatter and Stadelmann-Steffen 2013) goes as follows: The cantonal political systems are consensus democracies balancing powers between the institutions so that there is not one that dominates the system. This means that the classically strong executive branches in the cantons are countered either by a strong parliament *or* a strong public by means of strong direct democratic institutions. Thus, easy formal access to the latter can guarantee participation and scrutiny in intercantonal affairs not necessitating comprehensive parliamentary rights in these respects. Hence, hypothesis 3.2 stating that the general executive-legislative relation determines the respective power relation in intercantonal affairs is confirmed but needs refinement: it is not a relation between two specific institutions but rather power sharing in general that matters. This only leaves open *by which* institution the executive branch is checked but assures *that* it is checked anyway.

Before turning to the findings from model 7.4, the included controls of this most comprehensive and elaborated approach shall be clarified in brief: Since cooperation by means of intercantonal agreements is mainly explained by a regional, functional rationality (see chapter 6), the variables explaining IGA-conclusion are introduced to the model on parliamentary reforms as well. First, overall contracting activity of each canton is included to measure the degree to which cantonal parliaments are confronted with intercantonal affairs. Thereby, the change rate of the overall number of intercantonal agreements per canton between 1980 (Frenkel and Blaser 1981) and 2005 (Bochsler 2009) is calculated. Here, the assumption could be that the more intercantonal affairs have intensified towards the turn of the millennium, the more readily parliamentary participation rights are enhanced in the period under conduct. Second, the centrality of regional generalist IGCs in cantonal IGR legitimize the second control. It is assumed that institutionalized regional coordination between the respective executive branches, i.e. the building blocks of intercantonal cooperation and coordination in general, incentivizes cooperation and coordination by the legislative branches (as well). Since regional generalist IGCs and their territorial scope are among the central variables explaining the intensity of IGA-conclusion, it is assumed to explain scope and timing of parliamentary reforms. This indicator of regionally coordinated parliamentary action is further derived from anecdotal evidence and the case of early formalized cooperation among parliaments of French-speaking cantons (see e.g. Möckli 2009, Strebel 2014, Arens 2018). In model 7.4, table 7.2, the index values of the dependent variable of the four generalist regional conferences of Central (ZRK), Eastern (ORK), Western (WRK), and Northwestern Switzerland (NWRK) are case wise compared to

the ones of cantons without steady and fixed ties to one of these classical regional generalist IGCs, i.e. Ticino and Zurich. Third, and following a similar logic, the average change of the dependent variable of all neighboring cantons at previous points in time is included. The plausibility of such an effect is especially suggested by policy diffusion literature and the specific mechanism of (horizontal) policy learning (see chapter 4.3.1). Accordingly, it is argued here that parliamentary reforms within a canton are affected by parliamentary reforms in a canton's direct environment.

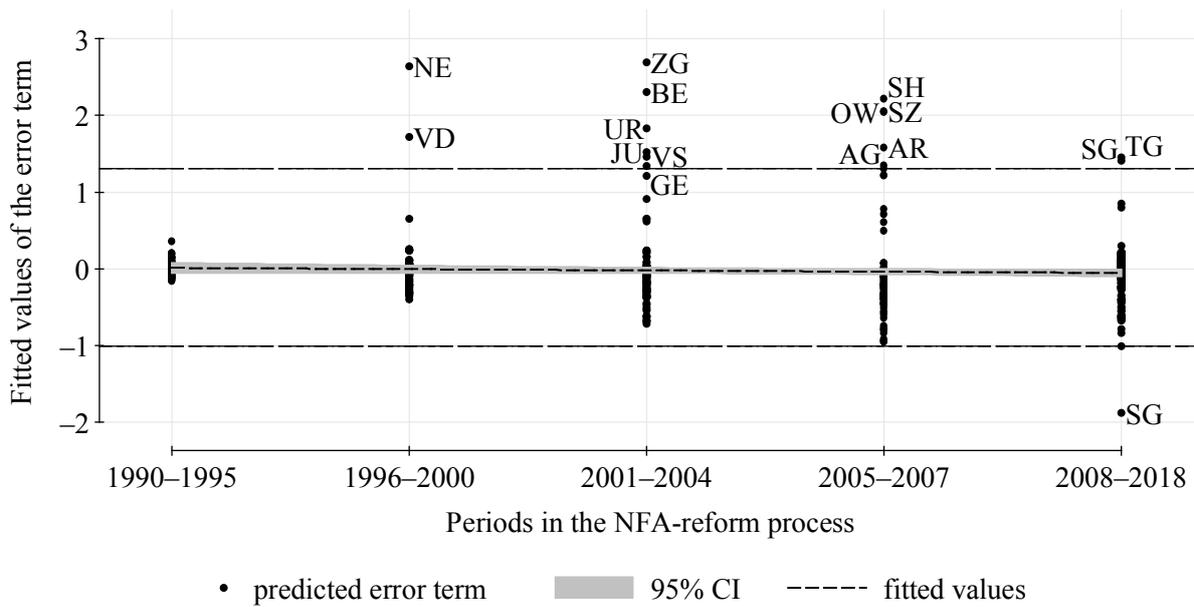
Turning to the effects of model 7.4, first, the period dummies displaying the phases of the reform process are again significant so that there is an effect that is unexplained by any of the other variables but the mere periods in time. Thus, the first hypothesis stating that there is an effect stemming from the reform process and the debates in the wake of the NFA can be upheld. The effects of the other covariates are weaker compared to the models 7.2 and 7.3. However, they do not vanish so that the discussion above remains valid. Hence, model 7.4 shows that the effects of the institutional factors, general parliamentary power in lawmaking and direct democratic access, are both stable and (partly) significant also when controlling for further covariates. Thus, institutions of power-sharing matter so that late adopters of parliamentary rights are the rather weak parliaments. In contrast, cantons undertaking early reforms and thus strengthening representative democracy are such that only have restricted access to direct democracy. Hence, the refined hypothesis 3.2 is valid also against the background of this full model. At the same time, party competition again fails statistical significance in this final model so that hypothesis 3.3 can be rejected: Partisan politics do not play a significant role in reforms on better parliamentary participation in intercantonal affairs.

The newly introduced covariates all have a significant effect on the dependent variable: The degree to which parliaments enhance their rights depends on their regional affiliation (see variable *Regional Generalist IGC*) and territorial embeddedness and neighbors (see *Differenced Mean of DV of neighboring cantons*), respectively. Furthermore, the degree of intercantonalization matters so that especially such parliaments undertake reforms at an early stage that faced a large increase in intercantonal agreements from the 1980s towards the turn of the millennium. While this speaks to a problem-oriented and thus rational behavior, there are still period-effects that are independent of all other covariates tested. As already pointed out, a stable explanation of the development of parliamentary rights in intercantonal affairs are the time periods themselves that underlie this analysis. But how exactly does such a reform process towards enhanced rights in intercantonal affairs look like? And does the explanation grounded in the NFA and its surrounding debates still hold true when tracing a parliamentary reform from

start to finish? Or are there other variables not tested so far that explain the observed general trend mainly taking place during the early 2000s? Before approaching these questions, some remarks on the robustness of the multivariate models shall be made. Furthermore, details from the analysis on the case central hereafter are laid out to justify its selection and to give first insights on what constitutes it with respect to the present quantitative perspective.

Concerning its robustness, the full model in table 7.2 (model 7.4) does not possess serial autocorrelation ( $Cov(v_{it}, v_{is} | x_{it}, x_{is}) = 0$ ). Tests on heteroscedastic and varying error terms conditioned on the covariates ( $Var(v_{it} | x_{it}) = \sigma_i^2$  with  $\sigma_i^2 \neq \sigma_j^2$ ) and spatial autocorrelation ( $Cov(v_{it}, v_{jt} | x_{it}, x_{jt}) = \sigma_{i,jt}$  with  $\sigma_{i,jt} \neq \sigma_{i,nt}$ ) by means of panel heteroscedasticity provide mixed results. Test statistics show, that autocorrelation of error terms across space at the very same point in time as well as uneven distributions of underlying variances of the error terms are not given in general so that especially the use of time and period dummies, respectively, leads to unbiased betas. However, the problem of common and contemporaneously correlated error terms cannot be ruled out completely. Figure 7.4 illustrates the error terms by unit over time. The horizontal boundaries are drawn to include 95 percent of all observations, while the outlying 2.5 percent at the positive and negative ends of the distribution are labeled by their cantonal acronym. Especially the increased variance of the error terms of numerous observations in the periods from 2001 to 2004 and 2005 to 2007 illustrate that the model is not able to fit the values of the dependent variable at specific points in time for specific observations. Figure 7.4 shows that this is not a unit-specific problem since 14 of the 16 outlying cases are unique cantons with only St. Gallen appearing twice as an outlier. For ten cantons (Appenzell Inner-Rhodes is a missing) the error term is constant and constantly small, respectively. Figure 7.5 exemplifies the phenomenon for the canton of Berne, a typical case, by plotting the fitted as well as the observed values of the dependent variable over time: The outlier in the variance of the error term stems from the abrupt and stark increase of the dependent variable that can hardly be predicted for the specific and correct year of observation. The equivalent plots for all cantons further show that only error terms in cantons where change proceeds stepwise or no change occurs are sufficiently small to account as non-outlying. This illustrates the limitations of the quantitative approach and provides further justification for an analysis and discussion of one case in-depth.

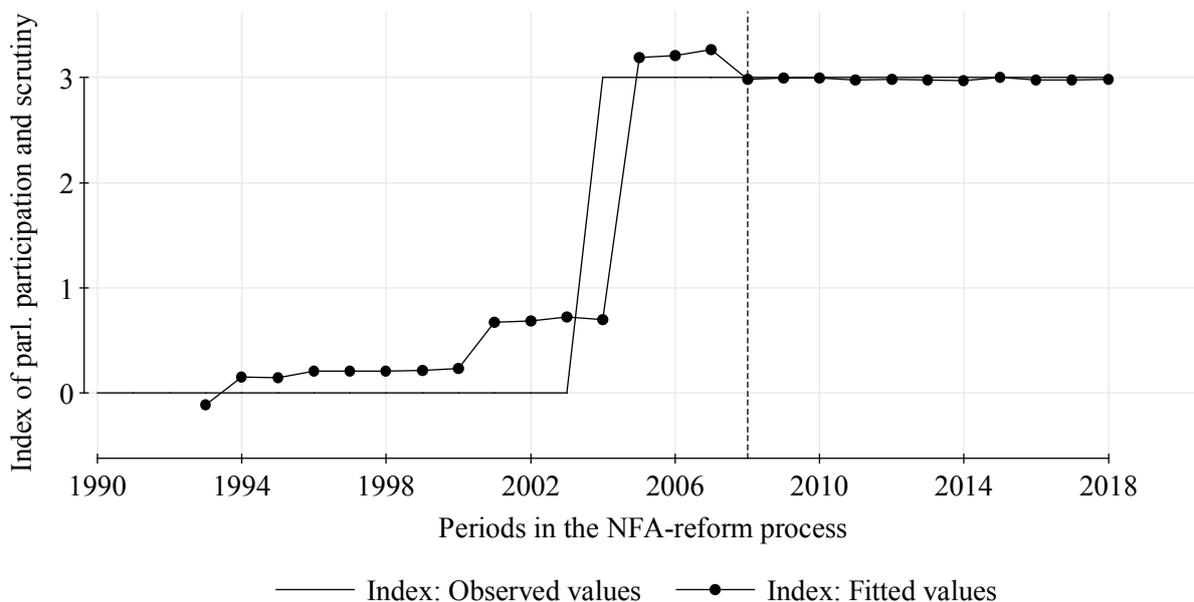
Figure 7.4: Predicted error terms over time



Note: The plot displays the predicted error terms given model 7.4, table 7.2. Thus, it draws on the full model testing all hypotheses under inclusion of further covariates. The dashed horizontal lines are drawn as to capture 95 percent of all observations. Observations labeled by their abbreviation above and below this threshold are outliers, i.e. such that possess values on their dependent variable at a certain point in time that are insufficiently explained by the model at hand.

Source: Own calculations.

Figure 7.5: Predicted and observed index values for the canton of Berne



Note: The plot displays the predicted value of the dependent variable for the canton of Berne given model 7.4, table 7.2. Thus, it draws on the full model testing all hypotheses under inclusion of further covariates. The vertical dashed line highlights the taking force of the NFA in 2008.

Source: Own calculations.

The in-depth analysis follows hereafter and examines how and why parliamentary rights with respect to intercantonal affairs have developed in the case of the canton of Berne. It is a typical case in the sample since it is among the majority of the cantons that revised the aforementioned rights altogether by means of one broad reform and not stepwise. Furthermore, it scores highest on the composite measure so that information and consultation rights as well as a standing commission on intercantonal affairs exist by the end of the research period (value of 3). The deviation from the mean of all cantons (value of 2.10) seems negligible since information and consultation rights are basic and also a standing commission on intercantonal affairs is set up in nearly half of all cantons in 2018. The latter is thus no exception and the overall high score on the index rather shows that all fundamental parliamentary means are given. Tracing such a canton seems more promising than one in which only single but not full rights exist. Furthermore, Berne undertook the reform leading to these enhanced rights in intercantonal affairs in 2004, thus, neither at a very early, nor a late point in time. In addition, other relatively high-scoring cantons seem more specific cases, among others, cantons of Western Switzerland (see information on early inter-parliamentary coordination by means of the WRK), cantons with special geographical location, e.g. Basel-City and Schaffhausen, or such of small and specific scale, e.g. Zug and Obwalden. At last, Berne ranks neither high nor low on general lawmaking powers of parliament as well as on partisan competition, the two further hypothesized independent variables.

### *7.2.2 Case Study: The Bernese Parliament under Revision*

As stated above, the legislative branch of the canton of Berne possesses encompassing rights and means to participate in intercantonal affairs and scrutinize the executive branch therein by 2018, the end of the observation period. When tracing back the evolution of these rights and means, one must start with the partial revision of the parliamentary law (GRG [BE] 1989) as well as the parliamentary regulation (GO [BE] 1988) by the end of the 1980s. While the former dates back to 8 November 1988, the latter was agreed upon on 9 May 1989. The two are complemented by the cantonal constitution of 6 June 1993 (Cst [BE] 1993). The three acts set the baseline. Foreign or intercantonal affairs are neither mentioned in the constitution – except that the executive branch is generally responsible – nor are they part of the parliamentary law and regulation. There neither exist rights of information or consultation in support of the parliament nor policy specific standing commissions or a commission specifically entrusted

with intercantonal affairs. Hence, parliamentary participation in intercantonal affairs was not formally enshrined in the canton of Berne in the beginning of and during the 1990s.

The turn of the millennium marks a sharp change (see also figure 7.5). The existing parliamentary law and the parliamentary regulation were partially revised on 9 February 2004. The revised acts exhibit the following changes: The executive branch is obliged to inform the parliament about its plans in intercantonal relations as well as consult the parliament on those matters (Art. 36 GRG [BE] 1989). Thereby, it is the newly introduced *Oberaufsichtskommission* (OAK) that coordinates foreign affairs on behalf of the parliament (Art. 22 para. 2 lit. g–h GRG [BE] 2004). However, the preparation of intercantonal acts is still up to a special, non-standing commission or assigned to a standing commission, depending on the specific topic and decided upon in each case individually. Furthermore, the partially revised parliamentary law creates the conditions for enduring interparliamentary structures by setting up *Delegations on Foreign Affairs* (Art. 30a ff. GRG [BE] 2004; own translation). They are an extended arm of parliament, in close cooperation with the OAK (Art. 30c GRG [BE] 2004) and entrusted with the representation of the cantonal legislative branch in intercantonal parliamentary institutions (Art. 30a GRG [BE] 2004).

A look into the so-called *Vortrag*, the official document prepared by the advisory commissions on behalf of the MPs as well as the subsequent parliamentary debates (and decision) on the respective articles gives indications on factors explaining these far-reaching formal provisions. Following the *Vortrag*, the institutionalization and expansion of parliamentary rights and structures in foreign affairs was just one part of a broader parliamentary reform (SK [BE] 2003 [Beilage 29]). Thereby, the reform exhibits two project areas, foreign affairs being addressed by the first part and dating back to an adopted but pending parliamentary proposal, a so-called motion giving the executive branch the order to prepare an act or a report or to take certain measures. The *Motion Ratsbüro (Neuenschwander, Rüfenacht) – Stärkung der Stellung des Grossen Rates im Bereich der äusseren Angelegenheiten (200/99)* was filed on 9 September 1999 and adopted by the Grand Council of Berne, the cantonal parliament, on 31 January 2000 (see SK [BE] 2000: 9–11). The proposal called for the creation of the legal, organizational, and financial fundamentals to improve parliamentary participation in foreign affairs. More precisely, it targeted better information, obligated consultation, and adequate domestic and intercantonal structures. The authors of the motion justify the objectives by an increase of cooperation between the cantons, via intercantonal agreements or conferences, and between the cantons and the federal government, e.g. the cantonal participation in federal foreign policy. They exemplify their reasoning with reference to the (planned) NFA, e.g. the federal instruments to declare

specific intercantonal agreements generally binding or to force single cantons to participate in intercantonal contracts. Furthermore, they point to current deficits, e.g. the high degree of executive dominance in foreign affairs, as well as developments in other cantons. The authors conclude as follows:

“The four proposed measures are the result of scientific and political discussions of the topic. A part of it is already realized in other cantons. Another part gains in importance against the background of the taking force of the new fiscal equalization.” (SK [BE] 2000: 10; own translation).

Even the State Council, the cantonal executive branch, agreed upon the proposed measures and recommended the parliament to adopt the motion by 10 November 1999. The parliament voted on behalf of it by 31 January 2000, with an overwhelming majority of 131 votes to 4 with 11 abstentions (SK [BE] 2000: 11). However, no changes were immediately undertaken, so that the motion was not further elaborated. Finally, all four measures were included in the parliamentary reform of 2004: a standing commission on foreign affairs, the *Kommission für Aussenbeziehungen*, was proposed (SK [BE] 2003 [Beilage 29]: 36–37) and should have been vested with extensive competences on intercantonal acts (ibid.: 39). The advisory commissions (SK [BE] 2003 [Beilage 29]: 11–12) further explain the reasoning that underpins the proposed changes to finally strengthen the parliament when intercantonal acts are at stake. First, they point to developments in the French-speaking western part of Switzerland where parliaments had already possessed extensive participatory means. Second, it is argued that the canton of Berne already engages in contracts that prescribe the delegation of MPs to interparliamentary commissions with a clear legal basis missing. Third, it is brought forth that the NFA would increase the overall importance of intercantonal cooperation, thus, leading to a further empowerment of the executive at the expense of the legislative branch and an imminent democratic deficit. Further following the authors, a commission on foreign affairs could function as a counterbalance to the highly integrated executives and the high degree of institutionalization of intercantonal conferences. Finally, they argued that the OAK could serve as an alternative in case that a standing commission for this specific area only is rejected. So far, this confirms the generalized multivariate and quantitative model tested in section 7.2.1 for the specific case of the Bernese parliament: Reform proposals were driven by similar endeavors in other cantons serving as role models, (perceived) intercantonalization of politics through enhanced executive cooperation in IGCs and an increase in intercantonal agreements, as well as the expected consequences of the NFA. Partisan competition, not having an effect in general, did not play a role here as well.

The November session's *Tagblatt des Grossen Rates des Kantons Bern* of 2003 records the first reading of the proposed revision of the parliamentary law and regulation. The Grand Council, i.e. the cantonal parliament, rejected a standing commission on foreign affairs by 94 votes to 63 with 3 abstentions (SK [BE] 2003: 1001). In the plenary discussion five members of parliament – two each from the Swiss People's Party (SVP) and the Liberals (FDP) and one from the Green Party (GB) – took sides against such a standing commission and seven MPs – mainly from the Social Democrats (SP) – speaking in favor of it. A content analysis conducted by the author sums up the main arguments of the debate. Table 7.3 displaying the frequencies of the arguments in the debate shows the following: As major counter argument, it was brought forth that there is no need for a standing commission on foreign affairs, because the OAK or ad-hoc commissions are equally capable of participating in intercantonal affairs. Thus, the opposing side mainly adopted the only argument by the advisory commissions in opposition of the proposed changes. The residing arguments are of less importance: it is argued that a new standing commission is not in line with the goal of lean governmental structures, that an enduring commission on foreign affairs would cause too high costs, and that intercantonal affairs are a classical domain of the executive branch purposely holding more competences here. The central argument of MPs in favor of the proposed articles was that a standing specific organ on foreign affairs is the only institution to adequately deal with such matters and that the assignment of such acts to the OAK or ad-hoc commissions is not an appropriate alternative. Power asymmetries between the executive and the legislative branch were addressed almost as often. Further arguments, minorly expressed, were the following: Parliamentary rights and structures in the French speaking cantons (and at the federal level) are potential role models, the importance of intercantonal legislation is increasing over time, and interparliamentary cooperation is an effective tool to prepare intercantonal treaties. The NFA was only mentioned in one speech to underpin the necessity to increase parliamentary participation. Interestingly, several actors, not only of the promoters of enhanced structures but also of the opposing side, mention the *Motion Ratsbüro (Neuenschwander, Rüfenacht) – Stärkung der Stellung des Grossen Rates im Bereich der äusseren Angelegenheiten (200/99)* adopted in parliament on 31 January 2000 as the basis of this discussion. The motion and its central arguments were examined above and are well-reflected in the parliamentary debate.

Table 7.3: Arguments on the 2004 revision of parliamentary law (GRG [BE] 2004)

| Code name               | Description  | Direction     | Absolute frequency (n) | Relative frequency (%) |
|-------------------------|--|---------------|------------------------|------------------------|
| <i>Motion Ratsbüro</i>  | Reference to parliamentary motion no. 200/99   | Neutral       | 6                      | 9.84                   |
| Small steps             | No substantial improvements but evaluation of current situation needed                             | In opposition | 0                      | 0                      |
| Disruption of processes | New processes with negative consequences, e.g. uncertainty, inertia, against lean state structures | In opposition | 3                      | 4.92                   |
| Executive competence    | IGR as classical executive domain  | In opposition | 2                      | 3.28                   |
| Costs                   | Costs of new structures, especially a new commission   | In opposition | 4                      | 6.56                   |
| Alternatives            | Solution by means of given alternatives, e.g. the OAK or ad-hoc commissions                        | In opposition | 6                      | 9.84                   |
| General reform required | General need to act and revise the respective rights   | In favor      | 0                      | 0                      |
| Executive dominance     | While executive branches are highly organized, weak legislative branches lag behind                | In favor      | 10                     | 16.39                  |
| Intercantonalization    | (Increasing) Importance of intercantonal affairs   | In favor      | 6                      | 9.84                   |
| Best solution           | Proposed measures as best solutions while alternatives, e.g. OAK, are not appropriate              | In favor      | 11                     | 18.03                  |
| Role models             | Development in western Switzerland and on the federal level as role models                         | In favor      | 7                      | 11.48                  |
| Interparl. cooperation  | Measures as precondition for interparliamentary cooperation  | In favor      | 5                      | 8.20                   |
| NFA                     | Consequences of the NFA  | In favor      | 1                      | 1.64                   |
| Total                   |  |               | 61 (N)                 | 100 (%)                |

Note: The frequencies (entries) of the arguments are derived from content analysis of the 2003 November session's debate of the *Gesetz über den Grossen Rat (Grossratsgesetz; GRG) (Änderung)* (SK [BE] 2003: 997–1001).

Source: Own calculations.

The rejected articles were revised by the advisory commissions. The added *Vortrag* sums up the previous debate in parliament (SK [BE] 2004 [Beilage 2]: 9) and confirms the content analysis of table 7.3: First, there is broad consensus to strengthen the Grand Council in foreign affairs. However, a standing specific commission on those matters is not necessary, so that the tasks shall rather be assigned to existing organs, e.g. the OAK. Furthermore, some MPs requested a less costly solution. The modified proposition towards the second reading combining those demands was tacitly adopted on 9 February 2004. The new structure, already outlined above, then stipulates general parliamentary competences in foreign affairs in the hands of the OAK (Art. 22 para. 2 lit. g–h GRG [BE] 2004), with powers to prepare intercantonal acts delegated case wise to special non-standing commissions or an existing standing commission. Art. 36 GRG ([BE] 2004) gives the OAK the rights to information and consultation in foreign affairs. Finally, Art. 30a, 30b, and 30c GRG ([BE] 2004) can be evaluated as setting the most important changes by institutionalizing parliamentary delegations as representations in interparliamentary commissions (SK [BE] 2004 [Beilage 2]: 10).

In comparison to the quantitative analysis in 7.2.1, the specific discussion on the measures is (naturally) finer grained. However, most of the factors tested in the generalized model reappear. The balance of power between the institutions matters so that this argument is one of the most pronounced ones in favor of revisions. Furthermore, some arguments add up to a general factor, that explains motives behind the reform in the canton of Berne that can be transferred to other cantons as well: general concerns with respect to intercantonalization of politics stemming from their perceived development, their prediction against the background of the NFA, or possible solutions by means of interparliamentary institutions. Thus, it is hardly possible to split the lines of argumentation while they all draw on the same phenomenon, i.e. (perceived) intercantonalization. The reference to the parliamentary motion no. 200/99 (see SK [BE] 2000: 9–11) that stems from this perception further underlines this finding. Furthermore, developments in other (proximate) cantons and regions matter as well so that the diffusion mechanism of policy learning controlled for in the multivariate model is confirmed with respect to the reform in the typical case at hand.

The adoption of the IRV on 28 November 2006 marks the next step without bringing direct changes. As discussed in section 3.4.1, the IRV itself is part of the NFA and aims at regulating the principles and procedures of intercantonal cooperation with shared burdens, constitutionalized on the federal level in Art. 48a BV and further differentiated in federal laws and regulations. Thus, the IRV is directly derived from federal politics. It points out *what* shall be addressed in detail by cantonal legislation, leaving the cantons leeway to find own solutions

for *how* to specify parliamentary provisions in intercantonal affairs (SK [BE] 2006 [Beilage 34]: 3). However, the IRV sets minimal standards as well, that are binding as soon as a canton ratifies the treaty. In the Bernese *Vortrag* it is argued that the Grand Council fulfills these minimal standards explicated in Art. 4 para. 1 IRV<sup>75</sup>, and that cantonal law exhibits a legal basis to treat intercantonal acts. However, three refinements are brought up for discussion. First, it is proposed to enshrine parliamentary participation in the cantonal constitution (SK [BE] 2006 [Beilage 34]: 4–5). Second, an earlier inclusion of the Grand Council, during the phase of treaty negotiations, could be elaborated and discussed in depth. Third, crucial terms could be defined to prevent given or resolve future ambiguities. However, the authors of the *Vortrag* conclude that no changes of cantonal law are needed to match the provisions of the IRV. Accordingly, the IRV was tacitly adopted with 124 votes to zero with zero abstentions (SK [BE] 2006 [Beilage 34]: 1123).

In 2009 parliamentary law and the respective regulation was again partially revised, however, foreign affairs not being central but rather one further field of action among others (SK [BE] 2008 [Beilage 21]: 15ff.). Though, the *Vortrag* points out that it was the IRV that signaled a need to take action to adapt to developments in the field of foreign affairs (*ibid.*: 4–5). Two areas are identified: First, the existing structures are criticized for being too complicated and the division of responsibilities among the various actors not being clear and practicable (*ibid.*: 16–18). While this rather refers to a restructuring because of serious deficits of the existing system, the second area, the extension of participation rights, is directly linked to the IRV. The unanimous acceptance of the IRV not just marks the starting point of the discussion, especially the measure to constitutionally enshrine participation rights is extensively discussed (*ibid.*: 19). In doing so, the advisory commission abstracts from the narrow field of intercantonal cooperation with shared burdens, that was addressed by the IRV, to all kinds of cantonal foreign affairs:

“The instruments of participation could as well cover other areas of foreign policy [...]. Improvements of participation of the Grand Council in foreign affairs seems [...] desirable, because cross-border regulations and politics are more and more important.” (*ibid.*: 18–19; own translation)

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<sup>75</sup> Art. 4 para. 1–2 IRV (*Stellung der kantonalen Parlamente*): “1 Die Kantonsregierungen sind verpflichtet, die kantonalen Parlamente rechtzeitig und umfassend über bestehende oder beabsichtigte Vereinbarungen im Bereich der interkantonalen Zusammenarbeit mit Lastenausgleich zu informieren. 2 Im Übrigen regelt das kantonale Recht die Mitwirkungsrechte des Parlaments.”

In the first reading (1 September 2008), nearly all amendments were unanimously approved by parliament leading to the following structure: Art. 22 para. 3 lit. a–d GRG ([BE] 2009) redefines the competences of the OAK in foreign affairs with lit. b assigning the competence to prepare intercantonal acts to the OAK. Art. 36 GRG ([BE] 2009) clarifies rights to information and consultation of the OAK. Furthermore, the delegations of foreign affairs were restructured with the respective articles (Art. 30 Lit. a–c GRG [BE] 2009) mainly specifying their organization and rights. All the aforementioned changes were tacitly adopted. Only one article regulating by whom the delegations shall be administrated, here subordinated to the executive branch, was subject to deeper discussions and initially rejected (100 votes to 3 with 2 abstentions; SK [BE] 2008: 726). The respective article was adjusted and newly proposed with administrative tasks of the delegations of foreign affairs now assigned to the administrative corps of the legislative branch, thus, making their organization directly subordinate to parliament. This article (Art. 30 Lit. d GRG [BE] 2009) was tacitly adopted on 19 January 2009. All in all, while the changes proposed and agreed upon in 2004 were highly controversial and of substantial character, the changes completed in 2009 were of incremental nature and small scale only.

The next step in time is marked by the total revision of the parliamentary law and the parliamentary regulation in 2014. To sum up the overall result of the reform with respect to foreign affairs, that was only one amongst numerous areas where a need for action was warranted: Art. 26 GRG (BE) settles the standing and special commissions in general and Art. 26 para. 2 GRG (BE) defines a standing commission centrally concerned with foreign affairs, the *Kommission für Staatspolitik und Aussenbeziehungen* (SAK), in particular. Art. 39 GO (BE) concretizes the organization as well as tasks and competences of this commission. Art. 39 para. 6 lit. e GO (BE) says that the SAK is responsible for the preparation of all acts that lie within the area of foreign affairs and not in the jurisdiction of another policy specific standing commission. Art. 39 para. 6 lit. f GO (BE) replaces the delegations of foreign affairs by assigning the respective tasks to the SAK. Furthermore, Art. 40 para. 3 GO (BE) defines that the policy specific standing commissions are responsible for all acts of foreign relations of their particular sector. Art. 40 para. 4 GO (BE) assigns them representative competences in interparliamentary organs. When turning to formal rights in foreign affairs, Art. 56 GRG (BE) mainly restructures the existing rights of information and consultation and subsumes them into one article. According to the rights of the SAK, Art. 56 para. 4 GRG (BE) assigns the respective policy specific commission the representative role in intercantonal parliamentary organs. Art. 62 GO (BE) enhances parliamentary information rights by stipulating a periodic report in support of the respective commission. With respect to the aforementioned article (SK [BE]

2013 [Beilage 2]: 51) but also to the general connections between the executive and the legislative branch, the *Vortrag* confirms that the new legislation is mainly codifying common practice into law (SK [BE] 2013 [Beilage 2]: 9). The answer of the OAK to an interpellation (no. 157/2008, *Rolle und Stellung der interparlamentarischen Kommissionen und ihrer Delegationen*) filed in 2008 by MP Christophe Gagnebin (SP) confirms the existence of such a practice in absence of a clear legal basis:

“The OAK is informed by the State Council on a regular basis about items of business in foreign affairs that are in preparation, so that it can intervene if necessary. This is an informal and well-accepted approach by both sides (OAK, State Council).” (OAK 2008: 4; own translation)

Generally, the changes that were undertaken in 2014 are again not of substantial nature: with the OAK, a commission responsible for acts of foreign relations had existed before, information and consultation rights had already been granted and the law had defined provisions of sending delegates to interparliamentary organs. However, the observation matches the general goal of the reform to clarify and modernize responsibilities and procedures (and not to introduce entirely new rights and structures) (SK [BE] 2013 [Beilage 2]: 4).

The January session’s *Tagblatt des Grossen Rates des Kantons Bern* of 2013 gives deeper insights on how the changes came about, especially with respect to the SAK that was rejected in previous endeavors. The introduction of the latter, i.e. the standing commission on foreign affairs, as well as the redefining and restructuring of information and consultation rights were nearly uncontested. Art. 26 para. 2 GRG was disputed, but due to the introduction of further proposed policy specific standing commissions and not the SAK, and finally accepted by a clear majority of 95 votes to 50 with one abstention (SK [BE] 2013: 27). Art. 56 para. 4 GRG, stating that the commissions provide advices and make recommendations on behalf of the executive branch *during* treaty negotiations, was unsuccessfully disputed as well (92 votes to 40 with three abstentions). The totally revised parliamentary law was accepted by 95 votes to 30 with 17 abstentions in the first reading and, the edited law, by 115 votes to zero with five abstentions in the second reading during the June session 2013 (SK [BE] 2013: 68). The here central passages within the parliamentary regulation were all tacitly accepted and the GO as a whole was approved by a substantial majority of 115 votes to zero with 19 abstentions in the first reading and 112 votes to 28 with 5 abstentions in the second reading.

More interesting than the changes itself are the paths that led to those changes. The initial debate in the January session of 2013 (SK [BE] 2013: 3) as well as the remarks in the *Vortrag* (SK [BE] 2013 [Beilage 2]: 3) state that it were two motions both filed by the OAK in 2010 that

triggered the total revision: motion 070/2010 *Schaffung einer Kommission des Grossen Rates für Aussenbeziehungen* and motion 071/2010 *Einleitung einer Totalrevision des kantonalen Parlamentsrechts*. The titles already spell out what the two motions propose. Motion 070/2010 demands for the formation of a standing commission of foreign affairs, as later introduced in the shape of the SAK, while motion 071/2010 asks for a total revision of the parliamentary law. Interestingly, both motions make references to each other what indicates that they are directly linked. A standing commission on foreign affairs is proposed as part of a totally revised parliamentary law (motion 070/2010), while it is argued in favor of a total revision of the parliamentary law by discussing necessary adjustments concerning the role of the legislative branch in foreign affairs (motion 071/2010).

Both motions were adopted by a large majority; motion 070/2010 by 87 votes to 44 with four abstentions and motion 071/2010 nearly unanimously by 124 votes to five with five abstentions. Motion 070/2010 on the introduction of a standing commission on foreign affairs is of special interest here. A second content analysis – the findings are displayed in table 7.4 – reveals how the members of parliament argued when dealing with this measure. First, of the nine MPs holding a speech six spoke in favor of the proposition, including the speaker of the OAK, the speaker of the parliament's office, a Social Democrat, a MP of the EVP, and two MPs of the SVP. Only three MPs argued against it, affiliated to the EDU, the FDP, and the BDP. However, each of the three acknowledged deficits on the side of parliament in foreign affairs and expressed a need for action. Accordingly, all three proposed to convert the motion into a postulate with which the government would have been charged to only prepare a report on possible courses of action. Thus, the voices raised in contrast did mainly favor a step-by-step policy and demanded an evaluation of alternatives in detail before approving a new standing commission. Other singularly expressed arguments are known from the 2003 debate, more precisely, that a lean government is favored which forbids the creation of such new structures and that costs must be considered before approving a new commission. The favoring side met those claims mainly by three lines of argumentation. First, intercantonal relations are perceived as becoming increasingly important over time. Second, how decisions are taken and how power is divided between the institutions, to the disadvantage of the legislative branch, signals that a reform needs to be undertaken. Third, the given assignment of foreign affairs to the OAK, originally a supervisory commission, is perceived as highly unsatisfactory whereby a standing commission on foreign affairs (only) is evaluated as an ideal solution. This is mainly in line with the wording of the motion. The OAK initially justified its proposition by criticizing that

Table 7.4: Arguments in the parliamentary debate on motion 070/2010

| Code name               | Description  | Direction     | Absolute frequency (n) | Relative frequency (%) |
|-------------------------|--|---------------|------------------------|------------------------|
| <i>Motion Ratsbüro</i>  | Reference to parliamentary motion no. 200/99   | Neutral       | 0                      | 0                      |
| Small steps             | No substantial improvements but evaluation of current situation needed                             | In opposition | 5                      | 8.77                   |
| Disruption of processes | New processes with negative consequences, e.g. uncertainty, inertia, against lean state structures | In opposition | 2                      | 3.51                   |
| Executive competence    | IGR as classical executive domain  | In opposition | 0                      | 0                      |
| Costs                   | Costs of new structures, especially a new commission   | In opposition | 3                      | 5.26                   |
| Alternatives            | Solution by means of given alternatives, e.g. the OAK or ad-hoc commissions                        | In opposition | 4                      | 7.02                   |
| General reform required | General need to act and revise the respective rights   | In favor      | 6                      | 10.53                  |
| Executive dominance     | While executive branches are highly organized, weak legislative branches lag behind                | In favor      | 11                     | 19.30                  |
| Intercantonalization    | (Increasing) Importance of intercantonal affairs   | In favor      | 13                     | 22.81                  |
| Best solution           | Proposed measures as best solutions while alternatives, e.g. OAK, are not appropriate              | In favor      | 13                     | 22.81                  |
| Role models             | Development in western Switzerland and on the federal level as role models                         | In favor      | 0                      | 0                      |
| Interparl. cooperation  | Measures as precondition for interparliamentary cooperation  | In favor      | 0                      | 0                      |
| NFA                     | Consequences of the NFA  | In favor      | 0                      | 0                      |
| Total                   |  |               | 57                     | 100                    |

Note: The frequencies are derived from content analysis of the 2010 September session's debate of the *Geschäft 2010.8804. 070/10 Motion OAK (Blaser, Steffisburg) – Schaffung einer Kommission des Grossen Rates für Aussenbeziehungen* (SK [BE] 2010: 650–660).

Source: Own calculations.

the parliament has no power to co-determine the content of an intercantonal treaty but can only approve or disapprove the final text (SK [BE] 2010: 650–651). With reference to the scientific report by Iff et al. (2010), the commission further argues that intercantonal cooperation is increasing in quantity and complexity. Hence, adjustments are needed. On that ground, enhanced participation rights are discussed as well as the deficits of the actual solution with the OAK possessing major competences in this area while not being able to meet all demands.

Outside the debate, the parliament's office favors the proposition as well and even goes beyond it (SK [BE] 2010: 651–652). More interestingly, the point of departure of its argumentation reads as follows:

“In the last years, cooperation across cantonal borders has steadily increased. [...] This development was reinforced by the new national fiscal equalization and division of tasks between the Confederation and the cantons (NFA) and the accompanying framework treaty on intercantonal cooperation with shared burdens (IRV).” (SK [BE] 2010: 651; own translation).

This underlines the reasoning subsequent to the first content analysis that it is hardly possible to separate the explanatory factors from each other: While the NFA was not mentioned in the debate examined by means of the second content analysis, it is nevertheless part of the reasoning behind these later revisions and the introduction of the SAK.

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## 8 Conclusion

The dissertation started with a detailed reading of the two core concepts, federalism and IGR, and their manifold overlaps: Federalism describes “the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent” (Wheare 1963: 10) and federation its structural realization characterized by a territorial division of jurisdiction, i.e. regional self-rule and federal shared rule. As the empirical analysis showed, it is especially the latter, the idea of sharing, that separates federations from unitary states. Consequently, IGR, i.e. all interactions between governmental units of different territorial entities within or across levels of government, are nothing different but a condition for sharing in politics in the first place and are thus core to federations (among others). Thus, classical U.S. literature emphasizing a great intersection between both concepts (e.g. Anderson 1960, Elazar 1962) becomes valuable. According to Wright (1974: 16), “intergovernmental achievements hinge on coping successfully with complexity” while the federal system resembles exactly such a complex system, i.e. a “marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls.” (Grodzins 1960: 74). However, both concepts only intersect but do by no means completely overlap. Constituent units in federations possess (a minimum of) self-rule, while “intergovernmental relations can be seen as a universal phenomenon, to be found wherever two or more governments interact in the development and execution of public policies and programs.” (Elazar 1987: 16).

However, by drawing on such self-rule areas lying in exclusive jurisdiction of the constituent units, the first broad empirical analysis (see chapter 6) showed that in the Swiss case horizontal cooperation by means of IGAs is widespread. Thus, also policy areas that are assigned to the subnational units exclusively might by far not be acted upon autonomously. This also confirms the sequential mapping of task assignment and task enactment in chapter two (see table 2.3 in section 2.4.1). Furthermore, the empirics show, at least for the Swiss case, that IGAs have increased in significance of late. While the mere number of intercantonal agreements was enhanced in the long run, it rather consolidated in the wake of the NFA. However, especially the amount of compensations payed between the cantons for mutual usage of services and public goods has starkly increased. Thus, reform goals with respect to intercantonal cooperation with shared burdens, i.e. the internalizing of spillovers and ensuring fiscal equivalence (Siegenthaler and Wettstein 2004), were clearly fulfilled.

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Now, from an internationally comparative perspective the findings of the analyses on intensity of horizontal cooperation are mixed: While it possesses great importance in the German case as well, the U.S. case stands in contrast. In the latter, interstate compacts are a rather rarely occurring institution in subnational politics. This might be due to the explanatory factors of such IGAs, as illustrated against the background of the Swiss cantons: Cooperation mainly takes place within specific geographically demarcated areas. Distance and the degree of interexchange between the subnational entities, e.g. measured by the number of commuters, highly matter for IGA-conclusion. Due to the much smaller scale of the Swiss cantons, but also the German *Bundesländer*, the need for horizontal cooperation might be higher compared to the U.S. case. Furthermore, Bolleyer (2009) shows that IGR also depend on the political institutional context so that cooperation is more widespread in systems that already share power (extensively) while it is seldom in such that concentrate power in single or a few offices (ibid.). The selection of the two comparative cases also suggested that all three follow different models of federal organizations (table 6.6 in section 6.3; see also Hueglin and Fenna 2015: 56–58, 61–63) what could as well explain variance in horizontal cooperation. However, and as the description was able to demonstrate, it is an instrument of regional policymaking in any case analyzed here, given differences to the extent to which it serves as means of national harmonization as well. One can conclude as follows: “[IGR] work[] in recognizable and broadly similar ways in most systems, and its variations are best accounted for by the differences between those systems.” (Trench 2005: 226). With respect to the first remark, one can add that IGA-conclusion in particular follows a regional functional pattern most notably. With respect to the second remark, overall country specificities occur but could only be described and not finally explained here.

As already discussed, and with respect to the NFA, a consolidation of intercantonal agreements on a high level but increasing compensations among the cantons were observed. This is a valuable finding since the latter was a goal of the NFA that formally strengthened intercantonal cooperation as a whole (Art. 48 para. 4–5 Cst) and institutionalized intercantonal agreements with shared burdens (Art. 48a para. 1 lit. a.–i. Cst). However, the NFA, “realistically perhaps the last chance to modernize Swiss federalism” (Siegenthaler and Wettstein 2004: 103; own translation) and “probably *the* most important reform of Swiss federalism ever” (Vatter 2018a: 7; emphasis in original), formally changed the outlook of state-federal relations with respect to horizontal intercantonal cooperation. Based on Art. 48a para. 1 lit. a.–i. Cst, the federal level can now enforce single or all cantons to cooperate in the prescribed policy areas. The provision not only counters the originally voluntary character of intercantonal cooperation. An increased

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intensification of horizontal cooperation also means further deterioration of executive-legislative relations since intercantonal cooperation are foreign affairs driven by cantonal executives. However, those responsible for the reform aimed at establishing minimal standards with respect to parliamentary participation in the constitutionally enshrined policy areas as well (see IRV). Furthermore, experts were aware of potentially negative effects on cantonal parliaments as critical media outlet and parliamentary debates showed as early as of the late 1990s and the early 2000s, respectively.

As theoretically expected, and as a kind of ‘backfire’, the description to the second analytical part showed that parliamentary reforms to rebalance executive-legislative relations accompanied NFA-preparations and -negotiations in the early 2000s and the taking force of the NFA later. The subsequent TSCS-models confirmed that the periods in the NFA-reform process indeed had an effect independent of other factors. However, the NFA is not the only explanatory factor for better parliamentary participation in intercantonal affairs: Differences in the degree of adaptation appear with respect to general lawmaking powers of the legislative branch, the strength of direct democratic institutions, given regional clusters and spillover effects from the direct environment, as well as dependent on the actual degree of intercantonalization. Still, as the time-contingent effects as well as the outlier analysis showed, period effects and, hence, the NFA plays a central role here. In sum, it seems that “[b]ackbenchers learn[ed] to fight back” (Raunio and Hix 2000: 142), also in the context of cantonal democracies.

While, the quantitative analysis over time was only able to give first indications of whether the hypotheses derived from theory are of principal relevance here, finer grained qualitative-quantitative analyses were needed to further study the mechanisms at hand. By means of an in-depth discussion of an ‘on the line’-case (Lieberman 2005), the logic of parliamentary reforms with respect to intercantonal cooperation could be further examined. The factors derived from theory and tested by means of quantitative analyses are mainly backed by the discussion. The content analyses on the parliamentary debates preceding the approval of reforms enhancing participative means in intercantonal affairs in the canton of Berne confirmed that considerations on the executive-legislative relationship matters but also general developments of intercantonalized politics, that also the NFA is part of. While the latter is hardly mentioned in the analyzed debates it is part of the most relevant parliamentary initiatives, especially the *Motion Ratsbüro (Neuenschwander, Rüfenacht) – Stärkung der Stellung des Grossen Rates im Bereich der äusseren Angelegenheiten (200/99)*, filed in 1999 and adopted in 2000 (see SK [BE] 2000: 9–11). The motion stands at the very forefront of all formal revisions to enable and strengthen participation of the Bernese Grand Council in intercantonal affairs. Thus, it is central

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to all reform endeavors. It is directly linked to the more general and more frequently expel- led argument that parliamentary revisions are needed because of intercantonalized politics. In the abovementioned motion the NFA is used as an example of intercantonalization of cantonal politics and thus part of this central justification. Hence, it is part of the explanation of the parliamentary reforms analyzed here. An assessment of MP Blaisse Kropf (GPS) of previous revisions of the Bernese parliamentary law during the introductory debate of its most recent one in 2013 and 2014, respectively, illustrates this:

“Changes in intercantonal cooperation, for example those related to the new fiscal equalization scheme NFA, had made it necessary that the competences of parliament were adjusted and expanded.” (SK [BE] 2013: 8; own translation).

In sum, the analyses were first able to show how horizontal cooperation has developed over time and what explains its occurrence in the Swiss case. They were able to provide an answer to research question I that asked the following: *What is the state of intercantonal cooperation by means of IGAs and what explains the intensity of their use?* The answer now is that horizontal cooperation among the Swiss cantons is intense and has intensified in the last decades. Main explanation of IGA-conclusion are geographical and functional factors making it a rather non-polarized field of politics. In abstracting from the Swiss cantons to other comparable cases, a general regional logic of subnational cooperation could be detected.

Research question II was especially interested in the reaction of the democratic institutions to enhanced IGR: *How do cantonal parliamentary rights of participation and scrutiny in inter-cantonal affairs have developed over time and what explains this development?* It could be shown that the NFA and, more generally, intercantonalization of politics have led to parliamentary reforms towards better participation and scrutiny in intercantonal affairs. Thus, perceived and/or actual intercantonalization and (the threat of) an accompanying increase in executive dominance triggered cantonal parliaments to undertake reforms in order to strengthen their own position in intercantonal affairs. Now, these two findings on the effects of the NFA on the cantons and the cantonal political systems have (at least) two major implications that are discussed subsequently.

### *8.1 On the Feasibility of Cantonal Political Systems*

As a first implication, the analyses of this dissertation point towards a high degree of problem-solving capacity of the Swiss cantons in general and the cantonal legislative branches in

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particular. This may counter consensus on the topic. The following brief discussion shall provide arguments that are however indicative of such high cantonal problem-solving capacity.

First, it is not contested that they face manifold challenges, e.g. stemming from increasing centralization over time (Dardanelli and Mueller 2019) or from a certain degree of local autonomy in any case (Mueller 2015). However, cantons are still viable political actors: They (still) possess legislative, administrative, and especially fiscal competences – the degree of the latter is nearly unique in an international comparison (Watts 2008). Furthermore, they are well embedded in horizontal intercantonal coordination and vertical federal interactions through various institutional channels (Vatter 2018a: 32ff.). With respect to the former, the analyses in chapter six showed that, first, intercantonalization has intensified over time and consolidated on a high level. Second, the policy areas that are targeted by means of IGAs are manifold. And, third, it is especially a tool to provide policies on a regional level for which the cantons each are too small and the federal government too big. Thus, an assessment of Schaumann (1961: 125; own translation) of the early 1960s might be still true and has gained in validity: “If we make a final assessment of contract law among the constituent units in a federation, we identify therein a kind of reserve of vivid statehood [...]” Vigorous horizontal coordination is, however, not only observable with respect to the conclusion and patterns of intercantonal agreements or the amount of intercantonal compensations for shared services and public goods. The successful coordination of interests or vertical influence on federal policymaking, both, through IGCs are remarkable. The elaboration of the (federal) NFA under cantonal codetermination is a prime example: “The successful negotiation of this landmark reform is evidence for a remarkably high problem-solving capacity of the Swiss federal system.” (Wasserfallen 2015: 551). Wasserfallen (ibid.) comes to this conclusion after showing that tax competition among the cantons, one of the central intercantonal frictions, was timely suspended during crucial state-federal negotiations phases on the NFA. However, there are other examples that proof the cantonal abilities, e.g. policymaking with respect to education. Manz and Criblez (2018) show that cantonal state councilors responsible for educational affairs determined federal educational policies to a large extent during the last century through holding an additional legislative mandate at the federal level. The influence of cantonal state councilors on the new federal constitutional articles on education (2006) provides a similar example. Although it meant a centralization of powers, Fischer et al. (2010: 752) show that “the cantons were very powerful actors – if not the most powerful ones – in this decision-making process”. With respect to the same case, Schnabel and Mueller (2017) show that the cantons successfully coordinated their interests horizontally, by means of the EDK, and defended their cantonal autonomy against

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federal encroachment vertically, by means of the KdK. Independent of a specific policy area, Widmer and Rieder (2003) show that the cantons proofed a high degree of reform capacity with respect to institutional reforms during the 1990s.

These examples all show that the cantons (still) possess viable political systems. They are further in line with the findings from the empirical analyses of this dissertation showing that the cantons heavily draw on intercantonal contracting. However, the analyses do as well suggest variance in this respect so that the cantons are not a monolithic bloc. Rather they vary with respect to their engagement in intercantonal cooperation. Similarly, cantonal parliaments vary with respect to timing and degree to which they have countered intercantonalization and the accompanied institutional domination by the executive branch. Hence, cantonal parliaments are by no means static and helplessly dominated by the executive branch. They rather react to changing circumstances and proceed with a certain degree of problem-orientation. The finding that cantons engaging more in intercantonal politics have witnessed parliamentary reforms earlier than others is intruding here. Hence, these reforms are not at random but rather informed by factual pressure. Furthermore, the finding that reform activity is conditioned on the general strength of a parliament and the access of direct democratic institutions, respectively, demonstrates that institutional checks and balances are right in place. Hence, cantonal political systems may still account as fine-tuned consensus democracies. Vatter (2007) and Vatter and Stadelmann-Steffen (2013) show for the Swiss cantons and in comparison with other subnational entities that a strong executive branch principally faces one of the two, a similarly strong legislative branch or strong direct democratic institutions, but is hardly the only strong and dominant institution in a canton. This is confirmed here with respect to cantonal provisions on the treatment of intercantonal affairs as well.

Surely, ambiguities might still remain. Cantonal parliaments, the rights of the people reserved, possess the legislative power and are the lawmaking institutions in the cantons (Auer 2016: 52). Hence, they account as “the highest cantonal institution and cantonal supervisory authority” (ibid.; own translation). Vatter (2018a: 119) cautions that “[d]e facto, however, the cantonal parliaments do – generally speaking – hardly live up to their powerful position guaranteed by the cantons’ constitutions.” Correspondingly, the researcher draws the following picture when commenting on the latest parliamentary reform in the canton of Berne as presented in section 7.2.2: “The cantonal parliaments are caught in the middle” (Bund 2013: 19), meaning, they face pressure from below, i.e. the local entities possessing wide ranging local autonomy, they are accountable to the people that can further intervene by means of various direct democratic institutions, they are in a direct power relation to strong and directly elected governments, *and*

they need to cope with increasing intercantonal lawmaking. Thus, more formal competences as settled by the parliamentary reform(s) in the Bernese case are an endeavor to regain control (ibid.). The analysis showed that the capacity to undertake such formal reforms by the cantonal parliaments is generally given and it is used reasonably. However, experts are right when cautioning that formal provisions do not automatically translate into practice. Among others, this draws back to the remarks in chapter two of comprehensively understanding political systems and federations with respect to structure, practice, and culture. This accounts for cantonal parliaments in intercantonal affairs as well so that the objections are right. Rhinow (2003: 8) argues that formal measures are only necessary conditions that do not automatically rebalance executive-legislative relations in daily politics. Further practitioners confirm that it is especially the insistence on the formal rights that effectively empowers legislative branches (SGP 2009: 18).

## *8.2 Federalism, IGR and Democracy: (Un)related Concepts*

The second implication from the analyses concerns the compatibility of federalism and IGR on the one hand with democracy and democratic principles of policymaking on the other. The frictions with respect to horizontal cooperation by means of IGAs were discussed in length in the preparatory chapters towards the analyses. However, it must be noted that, first, the same discussions as observed in the Swiss case on democratic deficits given executive driven horizontal cooperation (e.g. Abderhalden 1999) are observed in the comparative cases of Germany (e.g. Knothe 2011) and the U.S. (e.g. Ridgeway 1971) as well. Second, literature on the Swiss case (e.g. Blatter 2010) and international comparative research (e.g. Benz 2009b, Benz 2016a) show that the assessment of whether federalism and IGR conflict with democracy depends on the perspective taken. Thus, there are arguments that speak in favor of compatibility, e.g. subsidiarity and minority protection, and such that point towards incompatibility, e.g. undermining of democratic (proportional) representation. The critics of IGR and their deteriorating effect on established checks and balances between the executive and the legislative branch is clearly an argument brought forth by advocates of the latter suggesting incompatibility (e.g. Benz 2009a: 8). A further shared commonality is the advice to strengthen parliamentary rights as a remedy. However, according to Benz (2003) and Benz and Sonnicksen (2017), a general assessment falls short since it is rather the configurations and the degree to which federalism and IGR are coupled with democracy that allow for an evaluation. Thus, whether (in)compatibility is given or absent can only be assessed against the background

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of the workings of the one and the other in combination. Hence, the German case with (compulsory) vertical representation of state executives in the *Bundesrat* tightly couples the cooperative nature of German federalism with partisan competition of parliamentary democracy; two systems' characteristics that are incompatible and, at best, lead to opaque compromises or dispute settling by constitutional court rulings and, at worst, to deadlock and stalemate (ibid.: 14–16; see also Lehmbuch 2000). In contrast, the analysis on the Swiss case speaks to a high degree of compatibility due to (non-polarized) consensus democracy on the one and (voluntary) cooperative federalism on the other hand:

“[D]emocratic federalism in Switzerland rests on a flexible structure, in which both regime dimensions are only loosely coupled, with outcomes of the different mechanism of policy-making being adjusted in the processes.” (Benz and Sonnicksen 2017: 18).

The analyses here speak to such an adjustment from the interaction of the two dimensions, federalism and IGR with democracy, implying a self-regulation of frictions (while some tensions might still remain): It was shown that, first, intercantonalization by means of IGAs, albeit a useful and necessary tool for the cantons, involves a certain erosion of checks and balances (deparliamentarization), leading to, second, a rescaling of parliamentary rights (reparliamentarization). While these two developments and their mutual dependency could be illustrated by the analyses of this dissertation, it is finally hypothesized that interactions remain in place: As early as of 2008, the ch Stiftung (2009: 17), a foundation institutionally coupled to the KdK, cautions that (at least in the area of education policy) an increasing ‘exhaustion’ of cantonal parliaments concerning intercantonal agreements is apparent. The same ‘exhaustion’ is reported by Hugo Kayser (CVP/NW), former state councilor and president of the regional generalist Conference of Central Switzerland (ZRK) (NLZ 2011). Beat Vonlanthen (CVP/FR), former state councilor and president of the policy-specific Conference of Cantonal Energy Directors (EnDK), draws on experiences of colleagues from other cantonal governments and is rather pessimistic with respect to intercantonal harmonization in energy policy:

“My colleagues are reserved, because they are [still] troubled with intercantonal agreements, especially stemming from [negative] experiences in the area of education. Many told me, that they do not have a chance when they introduce an intercantonal agreement to their legislative branch. Cantonal parliaments do not accept intercantonal agreements anymore. They want to contribute actively and determine the details [...] [of a provision] themselves.” (NZZ 2014; own translation).

To conclude, enhanced parliamentary rights and activity, in the second place, stemming from original intercantonalization, in the first place, might (again) ‘backfire’ and hamper horizontal coordination among the cantons. This could imply a continuous balancing between the two characteristic features of federalism and IGR on the one hand and democracy on the other towards a new sound equilibrium. However, whether the hypothesis holds true needs further examinations. Crucial empirical findings that speak to parts of this interaction could be provided by this dissertation whatsoever.

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## Appendix

Link list of the statute books (*systematische Gesetzessammlungen*) of the Swiss cantons:

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|                              |   |
|------------------------------|---|
| Argovia (AG):                | <a href="https://gesetzessammlungen.ag.ch/">https://gesetzessammlungen.ag.ch/</a>   |
| Appenzell Inner-Rhodes (AI): | <a href="https://ai.clex.ch/">https://ai.clex.ch/</a>   |
| Appenzell Outer-Rhodes (AR): | <a href="http://www.bgs.ar.ch/">http://www.bgs.ar.ch/</a>   |
| Berne (BE):                  | <a href="https://www.belex.sites.be.ch/frontend/texts_of_law?locale=de">https://www.belex.sites.be.ch/frontend/texts_of_law?locale=de</a>   |
| Basel-Country (BL):          | <a href="http://bl.clex.ch/">http://bl.clex.ch/</a>   |
| Basel-City (BS):             | <a href="http://www.gesetzessammlung.bs.ch/">http://www.gesetzessammlung.bs.ch/</a>   |
| Fribourg (FR):               | <a href="https://bdlf.fr.ch/">https://bdlf.fr.ch/</a>   |
| Geneva (GE):                 | <a href="https://www.ge.ch/legislation/rsg/main.html">https://www.ge.ch/legislation/rsg/main.html</a>   |
| Glarus (GL):                 | <a href="http://gesetze.gl.ch/app/de/systematic/texts_of_law">http://gesetze.gl.ch/app/de/systematic/texts_of_law</a>   |
| Grisons (GR):                | <a href="https://www.gr-lex.gr.ch/app/de/systematic/texts_of_law">https://www.gr-lex.gr.ch/app/de/systematic/texts_of_law</a>   |
| Jura (JU):                   | <a href="https://rsju.jura.ch/">https://rsju.jura.ch/</a>   |
| Lucerne (LU):                | <a href="http://srl.lu.ch/">http://srl.lu.ch/</a>   |
| Neuchâtel (NE):              | <a href="http://rsn.ne.ch/">http://rsn.ne.ch/</a>   |
| Nidwalden (NW):              | <a href="https://www.navigator.ch/nw/lpext.dll?f=templates&amp;fn=main-hit-h.htm&amp;2.0">https://www.navigator.ch/nw/lpext.dll?f=templates&amp;fn=main-hit-h.htm&amp;2.0</a>   |
| Obwalden (OW):               | <a href="http://gdb.ow.ch/">http://gdb.ow.ch/</a>   |
| St. Gallen (SG):             | <a href="https://www.gesetzessammlung.sg.ch/frontend/texts_of_law">https://www.gesetzessammlung.sg.ch/frontend/texts_of_law</a>   |
| Schaffhausen (SH):           | <a href="http://www.rechtsbuch.sh.ch/">http://www.rechtsbuch.sh.ch/</a>   |
| Solothurn (SO):              | <a href="https://bgs.so.ch/">https://bgs.so.ch/</a>   |
| Schwyz (SZ):                 | <a href="https://www.sz.ch/behoerden/amtsblatt-gesetze-entscheide/gesetzessammlung/gesetzessammlung.html/72-416-413-1366-681">https://www.sz.ch/behoerden/amtsblatt-gesetze-entscheide/gesetzessammlung/gesetzessammlung.html/72-416-413-1366-681</a> |
| Thurgovia (TG):              | <a href="http://www.rechtsbuch.tg.ch/">http://www.rechtsbuch.tg.ch/</a>   |
| Ticino (TI):                 | <a href="https://www3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/index">https://www3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/index</a>   |
| Uri (UR):                    | <a href="http://ur.lexspider.com/intro/register_vollstaendig.html">http://ur.lexspider.com/intro/register_vollstaendig.html</a>   |
| Vaud (VD):                   | <a href="http://www.rsv.vd.ch/rsvsite/rsv_site/index.xsp">http://www.rsv.vd.ch/rsvsite/rsv_site/index.xsp</a>   |
| Valais (VS):                 | <a href="https://lex.vs.ch/">https://lex.vs.ch/</a>   |
| Zug (ZG):                    | <a href="https://bgs.zg.ch/app/de/systematic/texts_of_law">https://bgs.zg.ch/app/de/systematic/texts_of_law</a>   |
| Zurich (ZH):                 | <a href="https://www.zh.ch/internet/de/rechtliche_grundlagen/gesetze.html">https://www.zh.ch/internet/de/rechtliche_grundlagen/gesetze.html</a>   |

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Link list of state law (*Landesrecht*) of the German *Bundesländer*:

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|                                  |   |
|----------------------------------|---|
| Brandenburg (BB):                | <a href="http://bravors.brandenburg.de/de/vorschriften_schnellsuche">http://bravors.brandenburg.de/de/vorschriften_schnellsuche</a>   |
| Berlin (BE):                     | <a href="http://gesetze.berlin.de/jportal/portal/page/bsbeprod.psml">http://gesetze.berlin.de/jportal/portal/page/bsbeprod.psml</a>   |
| Baden-Württemberg (BW):          | <a href="http://www.landesrecht-bw.de/jportal/portal/page/bsbawueprod.psml">http://www.landesrecht-bw.de/jportal/portal/page/bsbawueprod.psml</a>                                   |
| Bavaria (BY):                    | <a href="http://www.gesetze-bayern.de/?AspxAutoDetectCookieSupport=1">http://www.gesetze-bayern.de/?AspxAutoDetectCookieSupport=1</a>   |
| Bremen (HB):                     | <a href="https://www.transparenz.bremen.de/vorschriften-72741">https://www.transparenz.bremen.de/vorschriften-72741</a>   |
| Hesse (HE):                      | <a href="https://www.rv.hessenrecht.hessen.de/lexsoft/default/hessenrecht_rv.html#default:0">https://www.rv.hessenrecht.hessen.de/lexsoft/default/hessenrecht_rv.html#default:0</a> |
| Hamburg (HH):                    | <a href="http://www.landesrecht-hamburg.de/jportal/portal/page/bshaprod.psml?st=lr">http://www.landesrecht-hamburg.de/jportal/portal/page/bshaprod.psml?st=lr</a>                   |
| Mecklenburg-West Pomerania (MV): | <a href="http://www.landesrecht-mv.de/jportal/portal/page/bsmvprod.psml?st=lr&amp;sm=fs">http://www.landesrecht-mv.de/jportal/portal/page/bsmvprod.psml?st=lr&amp;sm=fs</a>         |
| Lower Saxony (NI):               | <a href="http://www.voris.niedersachsen.de/jportal/portal/page/bsvorisprod.psml">http://www.voris.niedersachsen.de/jportal/portal/page/bsvorisprod.psml</a>                         |
| North Rhine-Westphalia (NW):     | <a href="https://recht.nrw.de/lmi/owa/br_start">https://recht.nrw.de/lmi/owa/br_start</a>   |
| Rhineland-Palatinate (RP):       | <a href="http://landesrecht.rlp.de/jportal/portal/page/bsrlpprod.psml">http://landesrecht.rlp.de/jportal/portal/page/bsrlpprod.psml</a>   |
| Schleswig-Holstein (SH):         | <a href="http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/page/bsshoprod.psml">http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/page/bsshoprod.psml</a>     |
| Saarland (SL):                   | <a href="https://www.saarland.de/landesrecht.htm">https://www.saarland.de/landesrecht.htm</a>   |
| Saxony (SN):                     | <a href="https://www.revosax.sachsen.de/">https://www.revosax.sachsen.de/</a>   |
| Saxony-Anhalt (ST):              | <a href="http://www.landesrecht.sachsen-anhalt.de/jportal/portal/page/bssahprod.psml">http://www.landesrecht.sachsen-anhalt.de/jportal/portal/page/bssahprod.psml</a>               |
| Thuringia (TH):                  | <a href="http://landesrecht.thueringen.de/jportal/portal/page/bsthueprod.psml">http://landesrecht.thueringen.de/jportal/portal/page/bsthueprod.psml</a>                             |

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Table 7.1.1: Determinants of parliamentary participation intercantonal affairs, 1990–2018 (AR1)

|                             | Model 7.5         | Model 7.6         | Model 7.7          | Model 7.8          |
|-----------------------------|-------------------|-------------------|--------------------|--------------------|
| Lagged DV <sub>t-1</sub>    | 0.772*** (0.0345) | 0.899*** (0.0228) | 0.863*** (0.0311)  | 0.797*** (0.0410)  |
| Time                        |                   |                   |                    |                    |
| Period 1: 1990–1995 (ref.)  |                   |                   |                    |                    |
| Period 2: 1996–2000         | 0.0652 (0.0578)   | –0.137 (0.279)    | 0.397*** (0.0899)  | 0.176 (0.432)      |
| Period 3: 2001–2004         | 0.346*** (0.0672) | 0.413 (0.298)     | 0.907*** (0.136)   | 1.314** (0.458)    |
| Period 4: 2005–2007         | 0.650*** (0.0856) | 0.986*** (0.265)  | 0.542*** (0.159)   | 1.492** (0.501)    |
| Period 5: 2008–2018         | 0.509*** (0.0913) | 0.261 (0.234)     | 0.496*** (0.141)   | 1.001* (0.444)     |
| Executive dominance         |                   | 0.0222 (0.325)    |                    | 0.00133 (0.423)    |
| Time # Exe. dom.            |                   |                   |                    |                    |
| Period 1 # Exe. dom.        |                   |                   |                    |                    |
| Period 2 # Exe. dom.        |                   | 0.357 (0.417)     |                    | 0.171 (0.518)      |
| Period 3 # Exe. dom.        |                   | –0.259 (0.448)    |                    | –0.517 (0.547)     |
| Period 4 # Exe. dom.        |                   | –0.951* (0.400)   |                    | –1.205* (0.528)    |
| Period 5 # Exe. dom.        |                   | –0.0539 (0.338)   |                    | –0.484 (0.467)     |
| Direct Democracy            |                   |                   | 0.00393 (0.0208)   | 0.0424 (0.0365)    |
| Time # DD                   |                   |                   |                    |                    |
| Period 1 # DD               |                   |                   |                    |                    |
| Period 2 # DD               |                   |                   | –0.0834** (0.0269) | –0.0162 (0.0315)   |
| Period 3 # DD               |                   |                   | –0.153*** (0.0343) | –0.135*** (0.0313) |
| Period 4 # DD               |                   |                   | –0.00502 (0.0345)  | –0.0223 (0.0377)   |
| Period 5 # DD               |                   |                   | –0.0461 (0.0274)   | –0.0453 (0.0250)   |
| Δ in IGAs (1980–2005; log.) |                   |                   |                    | –0.0232 (0.0757)   |
| Time # Δ in IGAs (log.)     |                   |                   |                    |                    |
| Period 1 # Δ in IGAs (log.) |                   |                   |                    |                    |
| Period 2 # Δ in IGAs (log.) |                   |                   |                    | –0.0416 (0.0600)   |
| Period 3 # Δ in IGAs (log.) |                   |                   |                    | 0.0412 (0.0662)    |
| Period 4 # Δ in IGAs (log.) |                   |                   |                    | 0.0241 (0.0785)    |
| Period 5 # Δ in IGAs (log.) |                   |                   |                    | –0.136** (0.0523)  |
| Regional Generalist IGC     |                   |                   |                    |                    |
| Canton of TI and ZH (ref.)  |                   |                   |                    |                    |
| Central Switzerland         |                   |                   |                    | 0.0126 (0.0489)    |
| Western Switzerland         |                   |                   |                    | 0.218** (0.0718)   |
| Northwest Switzerland       |                   |                   |                    | 0.0713 (0.0535)    |
| Eastern Switzerland         |                   |                   |                    | –0.0681 (0.0641)   |
| DV of neighboring cantons   |                   |                   |                    |                    |
| Diff. Mean <sub>t-1</sub>   |                   |                   |                    | 0.0326 (0.0638)    |
| Diff. Mean <sub>t-2</sub>   |                   |                   |                    | 0.0720 (0.0571)    |
| Political Competition       |                   |                   |                    |                    |
| IEO (log.) <sub>t</sub>     | –0.351* (0.175)   | –0.319 (0.175)    | –0.334 (0.178)     | –0.297 (0.174)     |
| IEO (log.) <sub>t-1</sub>   | 0.352 (0.218)     | 0.407 (0.231)     | 0.412 (0.229)      | 0.405 (0.224)      |
| IEO (log.) <sub>t-2</sub>   | –0.175 (0.179)    | –0.151 (0.176)    | –0.177 (0.176)     | –0.166 (0.178)     |
| Constant                    | 0.0102 (0.0960)   | 0.00758 (0.209)   | 0.0145 (0.0819)    | –0.195 (0.353)     |
| FE cantons                  | Yes               | No                | No                 | No                 |
| Number of observations      | 662               | 662               | 662                | 638                |
| Number of cantons           | 25                | 25                | 25                 | 25                 |
| R <sup>2</sup>              | 0.897             | 0.901             | 0.898              | 0.901              |

Notes: Standard errors in parentheses; (\*)  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ .

Dependent variable: Index of parliamentary participation and scrutiny over time, 1990–2018

In contrast to table 7.2, models 7.1–7.4, calculations are based on a first-order autoregressive (AR1) process.

Sources: See chapter 5.2.

## **Declaration of Authorship**

I hereby declare that I have written this thesis without any help from others and without the use of documents and aids other than those stated above. I have mentioned all used sources and cited them correctly according to established academic citation rules. I am aware that otherwise the Senat is entitled to revoke the degree awarded on the basis of this thesis, according to article 36 paragraph 1 letter o of the University Act from 5 September 1996.

Berne, 30 June 2020

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Place, date

Alexander Urs Arens

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Name