

Teaching Federalism

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Foreword

Rupak Chattopadhyay

Over the last three decades, there has been a resurgence of interest in federalism. Much of this is driven by the desire of policymakers working in fragile states to draw from the federalism toolkit to find solutions in countries as varied as Myanmar, Iraq and Sudan. Equally, given the complexity brought on by globalization, established federations have been looking for ways to obtain efficiencies and increase the resilience of service delivery. There is, therefore, a need worldwide for education about federalism. This book will make an essential contribution to enriching and expanding secondary and post-secondary education on federalism.

The Forum of Federations, which has extensive education and training outreach, was founded in 2000, at a time of heightened interest in federalism as an antidote against separatism. The organization was established by Canada, which had just emerged from an existential crisis with the failed referendum on Quebec separation. The Forum of Federations was created by the Government of Canada to support peer-to-peer exchanges on the practice of federalism and to expose Canadian policymakers to comparative federalism experiences. Since 2000, the Forum has worked in more than 40 countries, of which ten are now Forum partners. The Forum does not advocate a particular model of federalism, nor does it suggest that federalism is the only solution in divided societies. Rather, the Forum provides interested parties with access to high-quality information, analysis and training on federalism.

The Forum operates on the principle that federal and other forms of multilevel government can offer solutions to intractable governance challenges posed in and by diverse societies. By allowing varying degrees of self-determination within a larger national whole, multilevel systems provide stakeholders with a sense of agency and control over the governance of their own lives while maintaining the advantages of shared government for general and common purposes. The Forum also believes multilevel government can facilitate more inclusive societies in which linguistic, cultural, religious, and ethnic differences are recognized and valued within a single state. These systems can thus facilitate more inclusive, responsive and, thereby, effective government.

More than 40 percent of the world's people resided in over 25 federal countries in 2022. More importantly, some hybrid states now draw from the federalism toolkit, without calling themselves federations. Highly devolved countries such as Kenya and the United Kingdom are examples of such systems. Even countries like Indonesia and the Philippines are highly decentralized and draw on federal principles in organizing territorial administrations in Aceh and Mindanao.

From its inception, the Forum's main mission has been as a clearing house for knowledge on federalism. Thus, from the very beginning, education and teaching have been at the core of the Forum's work. There has been an increased demand for federalism education as the Forum expanded its work in post-conflict countries. The Forum was a pioneer in building up a corpus of thematic publications on comparative federalism.

One of the first comparative volumes was a reference, *Handbook of Federal Countries* (2002). The book provided a snapshot of how the world's federations are organized. The handbook was most recently updated in 2020: Griffiths, Ann, Rupak Chattopadhyay, John Light and Carl Stieren (eds) (2020), *The Forum of Federations Handbook of Federal Countries*, Cham: Palgrave Macmillan.

Between 2005 and 2015, the Forum worked with the International Association of Centers for Federal Studies on a Global Dialogue Program, which produced comparative volumes on nine structural facets of federalism. The books (listed below) cover a number of themes captured by this volume:

- Kincaid, John and G. Alan Tarr (eds) (2005), *Constitutional Origins, Structure, and Change in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Majeed, Akhtar, Ronald L. Watts and Douglas M. Brown (eds) (2006), *Distribution of Powers and Responsibilities in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Le Roy, Katy and Cheryl Saunders (eds) (2006), *Legislative Executive and Judicial Governance in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Shah, Anwar (ed.) (2007), *The Practice of Fiscal Federalism: Comparative Perspectives*, Montreal and Kingston: McGill-Queen's University Press.
- Michelmann, Hans (ed.) (2009), *Foreign Relations in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Steytler, Nico (ed.) (2009), *Local Government and Metropolitan Regions in Federal Systems*, Montreal and Kingston: McGill-Queen's University Press.
- Moreno, Luis and César Colino (eds) (2010), *Diversity and Unity in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Poirier, Johanne, Cheryl Saunders and John Kincaid (eds) (2015), *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics*, Don Mills, ON: Oxford University Press.
- Detterbeck, Klaus, Wolfgang Renzsch and John Kincaid (eds) (2015), *Political Parties and Civil Society in Federal Countries*, Don Mills, ON: Oxford University Press.

Aroney, Nicholas and John Kincaid (eds) (2017), *Courts in Federal Countries: Federalists or Unitarists?*, Toronto: University of Toronto Press.

The Global Dialogue developed a unique methodology. First, while each volume includes a dozen case studies, they are anchored by a core of six countries representing the prototype federal models: Australia, Canada, Germany, India, Switzerland and the United States. Second, each chapter is shaped by a detailed template that makes it easy for readers to compare across case studies. This methodology has continued to be at the core of all comparative volumes produced by the Forum. Indeed, the Global Dialogue volumes have been at the center of the Forum's Federalism 101 educational programs, and have been used widely. The two most in-demand volumes are those on fiscal federalism and local government. This has been the case particularly because these subjects are of great relevance in an increasing number of non-federal multilevel systems, and we are updating this material.

Drawing on its unparalleled global network of experts, research organizations, and local partners, the Forum has facilitated the sharing of experiences and insights to promote empirically grounded learning and capacity building. Consequently, the Forum since 2010 has been publishing comparative volumes on policy aspects of federalism. Themes in this category include the titles below, to list a few:

- Slack, Enid and Rupak Chattopadhyay (eds) (2011), *Finance and Governance of Capital Cities in Federal Systems*, Montreal and Kingston: McGill-Queen's University Press.
- Joppke, Christian and F. Leslie Seidle (eds) (2012), *Immigrant Integration in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Slack, Enid and Rupak Chattopadhyay (eds) (2013), *Governance and Finance of Metropolitan Areas in Federal Systems*, Don Mills, ON: Oxford University Press.
- Marchildon, Gregory P. and Thomas J. Bossert (eds) (2018), *Federalism and Decentralization in Health Care: A Decision-Space Approach*, Toronto, ON: University of Toronto Press.
- Wong, Kenneth K., Felix Knüpling and Mario Kölling (eds) (2018), *Federalism and Education: Ongoing Challenges and Policy Strategies in Ten Countries*, Charlotte, NC: IAP Press.
- Leuprecht, Christian, Mario Kölling and Todd Hataley (eds) (2019), *Public Security in Federal Polities*, Toronto, ON: University of Toronto Press.
- Chattopadhyay, Rupak, Felix Knüpling, Diana Chebenova and Liam Whittington (eds) (2021), *Federalism and the Response to COVID-19: A Comparative Analysis*, London and Delhi: Routledge.

Because the Forum is meant to be a responsive curator of federalism knowledge for policymakers, the Forum has published reports, occasional papers, and other educational and technical-assistance resources. For example, in response to needs expressed by donor agencies worldwide, the recent 2020 report *Gender Equality and Federalism: Opportunities and Challenges in*

Multilevel Governance addresses how institutional arrangements in federal and devolved systems can advance the cause of women and provide women additional entry points into politics. Two primers, *Introduction to Federalism* and *Introduction to Fiscal Federalism*, have been translated into dozens of languages.

Over the last decade, the Forum has built up an impressive repository of information and knowledge products in print and online. Most of our publications are freely accessible to researchers and teachers of federalism everywhere and we are working to make all future publications open access. We have had the privilege of having the world's leading experts contribute to this knowledge base. This includes the editors and almost all the contributors to this book.

This book, therefore, is a welcome resource for the Forum and will be an invaluable guide for teachers of federalism in both academic and non-academic settings. Each chapter provides a useful framing of how students should understand issues under each theme and provides helpful guidance for how teachers set learning goals. The editors are very forward looking in including themes such as Political Culture, Democracy and Federalism, Social Policy, Conflict Resolution, Asymmetric Arrangements, and Indigenous Peoples. These themes are of great relevance to policymakers. The Forum plans to undertake comparative work in several of these areas. There is no question that we will use this volume as a point of departure to elaborate and communicate key issues for the themes.

John Kincaid and J. Wesley Leckrone are to be congratulated for assembling a cast of stars to contribute to *Teaching Federalism: Multidimensional Approaches*. This book will remain an important reference for many years.

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Introduction to *Teaching Federalism: Multidimensional Approaches*

John Kincaid and J. Wesley Leckrone

We are delighted that Edward Elgar Publishing invited us to develop this book on teaching federalism as part of its series on teaching subjects of contemporary importance. The prospect of assembling such a book was challenging because, while we, like other scholars, often write about federalism for academic and lay audiences, we do not, perhaps, give much systematic thought to how to teach federalism beyond what we do in our classrooms. Elgar's invitation also prompted us to wonder how our friends and colleagues around the world approach the subject.

After all, approximately 28 countries in the world might be regarded as having a constitutional or operational form of federal governance (depending on one's definition of a federal system). As of 2022, these federal countries accounted for 44.4 percent of the world's landmass, 48.5 percent of the world's GDP, and 41.5 percent of the world's population. If one also counts the European Union (EU) as a supranational confederation or quasi-federation, then adding the people who live in the EU's non-federal countries brings the proportion of people living under a federal arrangement to 45.3 percent of the world's population. If one includes the United Nations as at least a loose confederal arrangement, then nearly every person on the planet resides under a federal arrangement. Federalism, therefore, is a principle of governance and of government organization with wide applications.

Yet, most people know little, if anything, about federalism. When asked questions about federalism or their own federal system in surveys, most people express opinions but few can define federalism or describe its structures or operation. We also know very little about where, by whom, and how often federalism is taught in primary and secondary schools and in universities and colleges worldwide. Some survey information is available for North America (Kincaid and Cole 2014, 2016, 2018) but apparently not for elsewhere. Further, teachers, professors, and students in developing countries, as well as many students in developed countries, often lack funds and adequate libraries to acquire books and other resources for teaching federalism. Furthermore, many educators who teach about federalism do so from the perspective of

their own country and have difficulty locating federalism comparatively or elucidating its many facets.

This book seeks to help fill these gaps by providing substantive introductory information about important facets of federalism presented by accomplished scholars, along with ideas for how to teach each topic and evaluate students' learning as well as suggested readings on each topic. Each chapter is organized as follows:

- Brief explanation of the topic
- Reasons to study the topic
- How the topic fits into federalism research and study
- Learning objectives
- How to structure and teach the topic
- Questions for class discussions or essays
- Readings for students
- Test/examination questions
- Points for evaluation
- Suggestions for further reading
- References

Like federalism, this book is a bundle of compromises. The chapters had to be kept short in order to accommodate enough topics to make the book useful within the publisher's page limits. This was a daunting task for the authors who were asked to provide pithy presentations of complex topics in ways comprehensible to students. The book covers 20 substantive facets of federalism important for understanding contemporary issues of federalism and federation. Also included are case studies of five important federal countries: Germany, India, Nigeria, Switzerland, and the United States. These countries were selected to illustrate some of the varieties of federalism in today's world.

The book, therefore, seeks to be a key resource for educators who teach federalism or wish to do so anywhere in the world. The book also provides enough information to make it a useful introductory resource for students studying federalism.

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- Kincaid, John and Richard L. Cole (2018), 'Is the teaching of federalism dead or alive in Canada and the United States?', in John R. Allan, David L. A. Gordon, Kyle Hanniman, André Juneau, and Robert A. Young (eds), *Canada: The State*

of the Federation 2015—Canadian Federalism and Infrastructure, Montreal and Kingston: McGill-Queen's University Press, pp. 263–83.

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1. Theories of covenant and federalism: deep roots with multiple shoots

Glenn A. Moots

EXPLANATION OF COVENANTING AND FEDERALISM

Covenants are agreements or pacts used to create a new polity or join existing ones. This action is often necessitated by the absence of an existing authority, as may be the case in a frontier community. Covenanted bodies are formed with voluntary consent by independent and equal parties committing to joint action or obligation. Though the parties to a covenant – whether individuals, defined communities, or legitimate polities – are distinct, their mutual respect and common cause articulated in a covenant creates a new political or social entity. The implicit or explicit moral obligations created by a covenant, including limits on authority, define ‘federal liberty’. This conditional liberty differs from ‘natural liberty’ or the freedom to do whatever one desires (Elazar 1998b, 26–7, 1995, 43–4; Winthrop [1645] 1908).

Covenanting may integrate elements of natural law or natural right but is distinctly different from political arrangements that are organic, hierarchical, or founded by conquest.

Covenants usually include many of the following elements: an historical prologue indicating the parties involved; a preamble stating the general purposes of the covenant and the principles behind it; a body of conditions and operative clauses; a stipulation of the agreed-upon sanctions applied if the covenant is violated; an oath to make the covenant morally binding; and provisions for reaffirmation (Elazar 1995, 24, 194–5).

Covenanting enjoys a rich history beginning with the Hebrew peoples and extending into contemporary pseudo-covenants, treaties and trade agreements (Elazar 1998b, 101–59). Strong form or orthodox covenanting draws deeply from theological roots, often making God a party to the covenant and emphasizing both a vertical relationship (with God) and a horizontal relationship (among the people). Weaker forms of covenanting emphasize moral and relational goals, perhaps their divine origin or noting the need for a transcendent

source of power (Elazar 1998b, 250–1). Political compacts and contracts, which also may contain some of these characteristics, are arguably derivative of covenants.

The word ‘covenant’ is translated from a word (*berith* or *b’rit*) used more than 300 times in the Hebrew Bible to refer to cutting, binding, or eating. In ancient covenanting ceremonies, parties to a covenant voluntarily bound themselves to one another, often with a ceremony including a sacrifice (cutting) or a meal. Unlike agreements used by similar ancient societies (e.g., Hittite agreements), the biblical covenants emphasized equality or reciprocity rather than superiority or vassalage. In later Latin usage, the Hebrew word gave way to *foedus*, the root of the English ‘federal’, German ‘föderal’, French ‘fédérale’ (feminine) and ‘fédéral’ (masculine) and the like.

Biblical covenants such as the ones God made with Abraham (Genesis 15, 17, 22) and at Mt. Sinai (Exodus 19–24) include political elements such as land and law. Biblical covenants made between the kings of Israel and its respective tribes are essential examples of early federal covenants (2 Samuel 5; 1 Kings 8, 12; 2 Chronicles 10). Christians appropriated these covenants of the Hebrew Bible or Old Testament for both theological and political purposes. Covenanting’s highest modern expressions in the Reformation synthesized quasi-federal medieval constitutionalism and Protestant political theology. This synthesis is exemplified in the federalism of Johannes Althusius (Althusius 1995; Hueglin 1979). Though covenants were used mostly by societies sharing the same biblical religion, the case of the Jewish patriarch Abraham covenanting with the Philistine king Abimelech (Genesis 21) demonstrates that covenants should not be confined to homogeneous persons or polities and can instead reconcile unity and diversity.

Although covenanting is unique and understudied in political theory, there are some similarities to more familiar ideas in political theory. Covenantalism shares with ancient Greek and Roman politics the conviction that human flourishing and other moral purposes of community (such as security, prosperity or justice) are pursued in common. Covenanting’s respect for self-rule and rights overlaps with liberalism and enables competitive federalism. With communitarianism, however, covenanting may also situate individuals (or a group) in a community obliging particular values and duties, even group rights. This encourages shared rule under federalism. Covenanting eschews extreme individualism or statist politics such as one would find in libertarianism, socialism, fascism or communism. Because covenants emphasize moral obligations, perhaps even theological commitments, it may appear conservative or reactionary. But insofar as covenants enable new moral commitments and communities, covenanting can also appear radical or progressive, such as the International Covenant on Civil and Political Rights adopted by the United Nations in 1966.

REASONS FOR STUDYING COVENANTING

Covenanting is an essential historical and conceptual basis of federalism and federal constitutionalism. It is also seminal in the development of related ideas in both political theory and comparative politics. The successful legacy of covenanting as a foundation for federalism is especially evident in countries with a Reformed Protestant present or past, particularly the United States and Switzerland. When contrasted against other nations that have unitary sovereignty or *constitutional* federalism without *operational* federalism, this variable of a legacy for biblical religion arguably comes into sharp relief.

As a unique form of political conceptualization and expression, covenanting ideally promotes a particular kind of political culture, unique political institutions, and political behavior – all of which arguably enable or affect federalism's success. Covenanting's rich moral and theological tradition encourages reciprocal and relational outcomes that might bolster otherwise fragile federal arrangements (Elazar 1995, 20–21, 35–52). Furthermore, political covenants discourage thinking of political morality as simply obeying 'the letter of the law'. As something more akin to a political or social world view, the moral obligations of covenants reconcile power and justice and thereby facilitate federal elements such as separation of powers. Covenanting's strong moral sense may also enable federalism to cohere amidst otherwise factional national, ethnic, racial, linguistic or religious diversity. Unlike some other ideas of political origins (though resembling social contract theory), covenanting's emphasis on federal liberty and the equality and freedom of adhering parties also empowers resistance against authoritarianism, including that which might undermine operative federalism (Elazar 1996, 79, 247).

Anything resembling covenanting today in constitution-making, treaties or pacts can best be described as weaker form covenanting. Hence, federal agreements increasingly look more like contracts or compacts and less like covenants. Nevertheless, covenants or pseudo-covenants arguably still exist to provide a moral vision for those entering federal arrangements (Elazar 1998b, 8; Novak 2005, 30–31). A prime example of this would be the American Declaration of Independence (Elazar 1988, 89–106).

Though the success of Rawlsian liberalism has presently discouraged explicitly religious politics, an increasingly post-liberal future, including benign religious developments, may revive the relevance of covenanting.

HOW COVENANTING FITS INTO FEDERALISM RESEARCH AND STUDY

The precise role or significance of covenanting or covenantalism in contemporary federalism is historical (as in the case of America), speculative or conceptual. To use Elazar's framework, covenants have given way to compacts and contracts or weak form covenanting. Covenanting and its related language nevertheless remains an essential legacy subject within federalism and within political theory or comparative politics more generally: *foedus*, *pactum* or *pactio*, *confederatio*, *contractus* and *consocentio*, for example.

It is not coincidental that the godfather of studies on political covenanting, Daniel Elazar, is also essential for any study of federalism, and he considered the former essential for understanding the latter. Of course, Elazar also produced (and facilitated) considerable research on federalism that has nothing to do with covenanting. We are then left to wonder how we isolate this variable of covenanting either for appreciating and applying Elazar's work, or for understanding federalism generally. For example, how might covenanting provide a deeper moral teleology for federalism? Is a moral teleology essential for operative federalism? Does a moral teleology oblige a theological or transcendent dimension? These are difficult empirical questions, apart from considerations of variables like 'trust', for example, but remain essential speculative or conceptual questions.

LEARNING OBJECTIVES

Students should be able to identify and distinguish three models by which societies come into existence as described by Elazar (1995, 35–51), explaining how a covenant differs from an organic or hierarchical society – including its relationship to Elazar's matrix model.

Students should be able to identify and describe the historical foundation of political covenanting in the Bible, including the political content of early Hebrew covenants. They should understand why including God in a covenant raises the moral stakes, so to speak (e.g., Stackhouse 1996).

Students familiar with political theory should be able to discern similarities and differences between covenantal federalism and other ideas in the history of political theory, such as covenant in Thomas Hobbes and contract in John Locke.

They should be able to discuss how federal systems, in trying to respect the integrity and freedom of their members, arguably rely on a deliberate moral vision and moral accountability for preserving federalism as some combination of cooperation and competition. How might the challenges of federalism

(especially challenges of power and justice) be better navigated by all parties if they commit to these obligations explicitly rather than relying merely on the letter of the law? Do students think that a covenantal formulation is necessary for preserving the moral undergirding of federalism?

Students should also consider how biblical covenants remained influential, if not seminal, in Anglo-American and European constitutionalism, particularly in the two centuries subsequent to the Reformation. This should include the American Declaration of Independence, the federal Constitution of 1787, as well as other essential elements of covenantal constitutionalism in early America (Lutz 1980).

Students should also be able to identify weak versus strong forms of covenanting in federal constitutionalism, identifying the various elements of a covenant and determining whether they exist in a particular federal constitution.

HOW TO STRUCTURE AND TEACH COVENANT

First, situate covenants in the context of federalism and political thought generally. Elazar's material is best at doing this, including his preface to the biblical covenants. It is important to lay this groundwork so students understand that the biblical foundations are to be read for their political merits. Insofar as they are reading the biblical text in addition to Elazar's presentation of it, they must take the biblical text seriously as historical politics and avoid two obstacles. In an academic setting, they will be tempted to reduce it to allegory or fable. For those personally convicted, the biblical text is revelation; they will want to read it as theology. Neither will be salutary.

How deeply students should study the Jewish (biblical) case, including both the primary source as Elazar's own analysis, should be determined by the level of student, their preparation, and curricular context. As part of a larger study of contemporary federalism or federal constitutionalism, as one might approach it in comparative politics for example, the applicability of the Jewish case is arguably limited. However, covenanting and the biblical cases are understudied in political theory generally and may merit close attention for that reason. The same can be said for federalism as a subject within political theory, which doubly makes the case for taking covenanting, including the biblical case, seriously (Hueglin 2019).

Students should then move to the Protestant Reformation. There is significant literature on covenanting in the Reformation and in Protestant countries, almost all of it also understudied for its significance in political theory. Though much Protestant covenanting is theology proper, one can discern significant political expressions in Britain and on the continent. Heinrich Bullinger's political theology, primarily his *De testamento seu foedere unico et aeterno* or *The One and Eternal Testament or Covenant of God* (1534) is significant for (1)

making direct association with the Hebrew precedent and (2) building a foundation for covenantal politics (especially Abrahamic) in Reformed (Calvinist) Protestant polities. A slightly later political expression is the pseudonymously published *Vindiciae Contra Tyrannos* ([1579] 1994), a Huguenot tract arguing that all political societies consist of covenants involving the people, God, and the ruler(s). Neither of these works is explicitly federal as we typically think of federal, but both are significantly political. Students should also note the obligations emphasized in the *Vindiciae*, obligations that arguably justify (but do not require) resistance against tyranny. Many of these covenant thinkers applied the term *foedifragus*, meaning ‘breaker of the covenant or league’, to tyrants and aggressive polities (Schmid 2007, 328).

The highest expression of Protestant federalism as political federalism, Johannes Althusius’s *Politica* ([1614] 1995), is essential. Emphasize to students that this was written in a pluralistic political milieu. Emden, where Althusius served as a syndic (mayor), was a German Reformed (Calvinist) city state with a Lutheran provincial lord, a Catholic emperor and a Spanish Kingdom. Althusius locates sovereignty in a people whose lives are lived in consociated private and public associations he calls ‘symbiotics’, the art of living together. In considering our own contemporary diverse political circumstances, recall how Althusius inches away from the confessional state presupposing unity around metaphysical questions and towards a more deliberate and pragmatic ‘political science’ that looks more like federalism – while still presupposing a moral order.

Follow this Protestantism to early America, particularly New England (but extending to 11 states in total). What students will find here is what Elazar called ‘America’s Covenantal Vocation’. Federal liberty contrasted with natural liberty, a recurring theme in Elazar’s work, is found in Winthrop’s *Address to the General Court* ([1645] 1908). In addition, Lutz analyzed and cataloged numerous founding documents through 1721, all of which serve to demonstrate the perpetual influence of covenantalism in America (Elazar 1998b, 33–7). Students can also survey these for themselves to get a flavor of them. Lutz has identified those items he considers true covenants in a handy stand-alone documentary history with commentary (Lutz 1998).

Students might then consider how to trace these early covenants into the founding constitutionalism of the states. They can also include comparisons and contrasts with the Declaration of Independence, Articles of Confederation and federal Constitution of 1787.

If a fuller treatment of the evolution of the covenant tradition in America into frontier societies is appropriate, stick with Volume 3 of Elazar’s multi-volume study of the covenant (Elazar 1998b). If the goal is a more deliberate consideration of federalism in the American tradition, with decreasing empha-

sis on the covenant, then Elazar's dedicated study of America's constitutional tradition is better (Elazar 1988).

QUESTIONS FOR CLASS DISCUSSION OR ESSAYS

1. When people make an agreement, is that agreement less valid if one or the other party has greater or lesser power or status? Why or why not? Should partners in an agreement be considered essentially equal in obligation to one another? Why or why not?
2. On some important occasions (e.g., a wedding or when testifying in court), people might swear oaths, often invoking God as a witness. Is an oath, especially before God, more likely to be kept than different godless kinds of promises? Why or why not?
3. What kinds of freedom should people retain when they enter into an agreement, especially political ones? What freedoms do they give up?
4. Under what conditions should people be allowed to break an agreement, especially one that subjects them to rules (as a political agreement is wont to do)?
5. Constitutionality of laws may not be easily discerned from reading the constitution itself. Where else might people look to help decide whether a law is constitutional besides the law itself?
6. If an existing polity or community joins a federal arrangement, which powers should be surrendered and which retained? Why? Provide a moral argument rather than one based only on expediency or efficiency.
7. What elements of covenanting are evident in colonial American documents? What do you think about the inclusion of these elements? Are covenantal elements found in colonial era document preceding the founding of other modern federations?
8. What elements of covenanting can you discern in the American Declaration of Independence? Are similarities to the Declaration's morality implied in the Preamble to the U.S. Constitution or other national constitutions, or bills of rights?
9. What elements of covenanting, or morals-based promise-keeping (including divine witnessing), can be seen in American state constitutions? Are such elements present in constituent-unit constitutions of other federations?
10. Are divine witnessing and moral promising more, or less, practical in an especially pluralistic world?
11. What particular challenges of contemporary federalism might be best addressed through something resembling a covenant? Why?

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TEST/EXAMINATION QUESTIONS

1. Identify the parts of a covenant and explain the potential value of each to supporting successful federalism.
2. Explain how a covenant, or strong form covenanting, differs from weak form covenanting as a compact or contract.
3. Relate Elazar's theory of federalism to his study of covenanting.
4. Identify elements of covenanting in the Declaration of Independence and how these are reflected in American constitutionalism as well.
5. Identify elements of covenanting, if any, in one's own constitution or in other federal constitutions.
6. Critique Elazar's proposition that American constitutionalism, including its biblical influences, are seminal for subsequent federalism.

POINTS FOR EVALUATION

- A variation would be for students to create their own covenant, deploying each part identified by Elazar, or even hypothetically draw one up joining actual or imagined participants assigned by the instructor, thereby testing application of the covenant formula to diverse or unequal parties. There

ought to be a prologue establishing the who, what and when of the covenant and a preamble that summarizes the purpose of the covenant and its supporting principles. After this, the covenant should state its binding terms, penalties for covenant breaking, and an oath by which the parties bind themselves. There may also be terms for recommitting to the covenant (covenant renewal).

- Strong form covenanting explicitly invokes a divine or transcendent witness or enforcer of traditional moral objectives. Weaker forms rely on weaker moral purposes, even those more utilitarian or self-interested.
- Discourage center–periphery models and instead emphasize Elazar’s ‘matrix’ model that is multi-centric. Each partner is a center of sorts, demonstrating Elazar’s concern with freedom, justice, power and equality. Power and purpose are distributed across self-rule and shared rule.
- Answers should be guided by Elazar’s *The American Constitutional Tradition*, but the degree of detail depends on the student’s level. Some elements should be quite clear while others will require more attention or discernment.
- This is essentially an upper-level question for those better versed in the academic literature on federalism. On the one hand, some scholars have considered characteristics of American federalism unfit for multinational or diverse partners. On the other hand, paradoxically, American federalism is the one that Elazar considers closest to strong form covenanting and also appropriate for challenging federal situations. Seeing these paradoxes, even reconciling them, should be a test of seeing where covenanting and federalism do or do not overlap.

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2. *The Federalist*: the world's seminal source on federalism

Troy E. Smith and Ryan D. Nelson

EXPLANATION OF *THE FEDERALIST*

The Federalist papers, written in 1787–88, remain the seminal source on modern federalism – still widely read, cited, and translated into many languages.

The Federalist is a sophisticated work of political theory on free, republican, and federal government. It was written to clarify the meaning of important provisions in the proposed Constitution of the United States, including federalism, the separation of powers, checks and balances, republicanism, representation, and how, contrary to popular beliefs at the time, a geographically large federal republic could protect liberty and promote the public good. Thus, *The Federalist* is widely regarded as the authoritative statement on the intentions of the US Constitution's framers, and its ideas are at the core of civic culture and essential to civics education in the United States. Since the 1780s, however, the political theories underlying *The Federalist* have garnered worldwide attention.

The Federalist was conceived by Alexander Hamilton shortly after the 1787 Constitutional Convention in Philadelphia as a series of newspaper articles to persuade New Yorkers to support the proposed US Constitution and elect pro-Constitution delegates to the state's ratifying convention. Opposition to the Constitution in New York and some other states was strong. To help him, Hamilton enlisted fellow New Yorker, John Jay, and Virginian, James Madison. Jay got sick and wrote only five essays, while Hamilton and Madison published an essay every three to four days. Over seven months, the three wrote 85 essays. Those newspaper articles (and a few others) were later assembled and published in two volumes titled *The Federalist*.

They published their articles under the pseudonym *Publius*, probably referring to Publius Valerius Publicola, who, according to *Plutarch's Lives*, helped found the Roman republic and defended it several times from tyranny. *Publius*

seems intended to suggest the authors were patriots and republicans dedicated to individual liberty and the public good (Kincaid n.d.).

The Federalist was considered by many of the founding generation as one of the best explications of the Constitution (Dietze 1960, 4–7; Rossiter 1961, vii). *The Federalist* has been disparaged as political propaganda and marred by inconsistency, but its remarkably consistent and comprehensive account of the Constitution, complex arguments, insight, and thoughtfulness have stood the test of time.

The Federalist explains why the Constitution's free, republican, and federal system of government better protects liberty for posterity than the Articles of Confederation or other confederal forms of government. Republican government is government by elected representatives whose objective is the common or public good. Federal government was a unique creation of the US Constitution that divides political power and responsibility between regional (or state) governments, each supreme in its own sphere of power, and a general (or national) government, itself divided into three branches. Together, republican federal governance is a means to achieve free government, limited by a written constitution and the rule of law, that ensures the safety and security of the nation from external and internal threats and protects individual rights, liberties, and property.

Because many Americans questioned the viability of this untested form of government, *The Federalist* sought to build public understanding and support for a shift from confederation to federation. Federalism, *Publius* argued, is a governmental system that divides power between the national and state governments in a manner preventing one plane of government from dominating the other, providing general unity and broad diversity. The Constitution's federal system does this by, first, creating a national union united by a general idea of a national government's nature and purpose, and endowed with sufficient express powers to protect against foreign aggression and domestic insurrections and to regulate interstate and foreign commerce. Second, federalism provides an important check against the abuse of political power by both national and regional actors by creating separate governments (national and state) that can push against each other. Historically, small, homogenous republics could be captured by dangerous factions, but *Publius* recognized the potential for such capture of a national government. Finally, federalism allows the states to exercise self-governing discretion on issues that mainly affect them. The intended result is shared government and self-government, and unity and diversity as envisioned by the nation's motto *e pluribus unum* (from the many, one).

REASONS TO STUDY *THE FEDERALIST*

There are at least four good reasons to study *The Federalist*. First, it is a significant work of political philosophy that explains the principles of free, republican, and federal government. For example, *The Federalist* explains the meaning and rationale of the division of powers and responsibilities between a national government and constituent regional governments. It also explains the structural protections against national power by separating powers among the two houses of Congress, the judiciary, and the executive. Though *The Federalist* is a great source for learning about the theory, structure, concepts, and principles of America's system of government that collectively seek, as stated in the Constitution's preamble, 'to form a more perfect Union', facets of those theories and principles have universal applicability.

Second, *The Federalist* is one of the most cited texts by the US Supreme Court. It has been cited directly in more than 350 cases and by justices on all sides of the judicial spectrum. Citations to *The Federalist* by the justices began in the 1820s and have increased in the modern era (Corley, Howard, and Nixon 2005, 332). In a well-known case on the division of powers between national and state governments, for example, the majority and dissenting opinions debated *Publius's* intent and understanding of federalism (*Printz v. United States*, 521 US 898 (1997)). Other US courts also cite *The Federalist*, especially the US Courts of Appeals and state supreme courts. Those who wish to understand American government and judicial decisions, and to participate in those debates, should have a good understanding of *The Federalist*.

Third, *The Federalist* is an excellent source for studying argumentation and good writing. The textbook *Classical Rhetoric for the Modern Student* recommends studying *Federalist* #10 because it 'epitomizes the clear, eloquent style and the compelling logic with which Hamilton, Madison, and Jay argued their case' (Corbett and Connors 1999, 215). For example, in that essay, *Publius* wrote,

Liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency. (Cooke 1961, 58)

In two sentences, Madison provided a clear, coherent, concise, and powerful defense of individual liberty.

Finally, the value of *The Federalist* extends to people around the world who have used its ideas to create federal systems and foster liberty and democracy, adapted to local circumstances. Worldwide interest in federalism and

The Federalist increased after the Berlin Wall fell in 1989, and while many federations created after 1788 follow the American model, not all do so. *The Federalist* provides important principles for establishing free government. For example, many authoritarian regimes' written constitutions provide expansive, yet empty guarantees of freedom, because the words of a written constitution carry little significance without structural protections and proper application. In contrast, the US Constitution's federal system creates a 'double security' of structural protections to guarantee freedom by dividing governmental powers between national and state governments and then again within those governments (see *Federalist* #51).

HOW *THE FEDERALIST* FITS INTO FEDERALISM RESEARCH AND STUDY

The Federalist employs a 'new science of politics' that seeks to achieve popular government in a pluralistic civil society, while preventing the dangers of popular government (such as majority tyranny). The means to accomplish this is a 'compound republic' that combines national and federal elements into an extended republic. Although the concept of separating powers within the national government was much older than the new nation, the division of powers in a federation, rather than confederation, with a national government able to tax and legislate for individuals was unprecedented in theory and practice.

As the basis for this new science, *The Federalist* has been a core source for research and study. US Supreme Court Chief Justice John Marshall wrote that *The Federalist* 'is a complete commentary on our Constitution, and it is appealed to by all parties in the questions to which that instrument gave birth' (*Cohens v. Virginia*, 19 US (6 Wheat.) 624 (1821)). During the second half of the nineteenth century, attention to *The Federalist* waned, but it revived at the beginning of the twentieth century with the advent of modern political science. Scholarly and popular interest in *The Federalist* increased to the point when, in 1961, four modern US editions of *The Federalist* were published: Cooke (which most scholars regard as the most authoritative), Rossiter (the most popular), Wright, and Fairfield (abridged edition).

As scholars have sought to understand various aspects of federal systems, they have returned to *The Federalist* for answers or ideas. *The Federalist* is often a starting point for the study of comparative federalism. Wheare cites *The Federalist* multiple times in *Federal Government* (1980), as do Elazar's *Exploring Federalism* (1987), Hueglin and Fenna's *Comparative Federalism* (2015), and Burgess's *Comparative Federalism* (2006).

LEARNING OBJECTIVES

The following learning objectives would fit a course using *The Federalist* to study federalism. First, explain the problems the American federal system of government sought to mitigate or correct, and compare those problems to one's own country or other countries. Fulfilling this objective requires understanding the historical context that influenced the American Revolution and informed the debates over whether the Articles of Confederation could be reformed or needed to be replaced by a different form of government. Many of the first 40 *Federalist* essays focus on this issue.

Second, explain how the American framers' federal union sought to contribute to 'a more perfect Union'. This requires distinguishing between and explaining the purposes of confederation and federation; the constitutional components that are national and those that are federal; the institutions and processes of a 'compound republic'; how federalism checks the dangers of democracy without undermining popular government, including electoral systems that favor places over persons (e.g., the electoral college and electing senators via state legislatures) (see Vermeule 2011); and how *Publius* thought disputes between the general and state governments should be resolved to foster public support for the Constitution (compare *Federalist* #17 and #39). In short, students should explain how the United States federal system's institutions and processes contribute to both shared rule between the general and state governments and self-rule within each state. Outside the United States, *The Federalist's* ideas can help students reflect on the political circumstances and prospects of their own country.

Finally, improving students' critical reading, thinking, and writing skills can be accomplished with thoughtful analysis of *The Federalist*. *The Federalist* is a real-time response to a controversial debate during the American founding era that is an excellent example of persuasive advocacy.

HOW TO STRUCTURE AND TEACH *THE FEDERALIST*

Ideas for teaching *The Federalist* can be found in Patrick (1988). How the course is structured will differ depending on whether *The Federalist* is taught as part of a general-electives program, political science major, or graduate course.

Undergraduates, especially those in a general-electives course, might need some encouragement to study *The Federalist*. Some class time, therefore, should be dedicated to making this case. A few ways to do this are:

- Present plaudits for *The Federalist* from George Washington, Thomas Jefferson, Justice Joseph Story and Chief Justice John Marshall, Chancellor James Kent, and others (see Dietze 1960, 1–7).
- Introduce Hamilton, Madison, and Jay as real people with real challenges. For example, showing the song ‘Alexander Hamilton’ by Lin-Manuel Miranda builds empathy with Hamilton’s struggles and gives hope that struggles also bring success (https://www.youtube.com/watch?v=KXcGV8G1_kg).
- Be clear that reading *The Federalist* will challenge students but dedicating effort to *The Federalist* improves their ability to read, understand, and write complex ideas.
- Explain how *The Federalist* foreshadows many modern-day political debates in society, such as the tyranny of a majority over a minority, structural protections of liberty, factious parties and interest groups, and intergovernmental cooperation.
- Encourage students to raise questions and discuss insights they find in reading *The Federalist* to motivate them to read carefully.

Not all 85 *Federalist* essays need to be taught, nor need they follow numerical order. Teachers should formulate an order and structure that works for their purposes. Below are essays from *The Federalist* that are most relevant to federalism:

- *Federalist* #1: Introduces *The Federalist* and the important question of whether countries are able to establish good government from reflection and choice or are dependent on accident and force.
- *Federalist* #4–8: Key benefits of a federal union are safety and security against foreign threats, domestic insurrections, and wars between the states.
- *Federalist* #10: How the Constitution and state governments mitigate the problems of factions in a republic.
- *Federalist* #15, #21–3: Problems with the Articles of Confederation.
- *Federalist* #17: Hamilton’s view of the purpose of federalism and how an intergovernmental dispute can be resolved by the people through the political process.
- *Federalist* #18–20: Lessons from ancient Greek, German, and Netherland confederations on the problems and weaknesses of confederations.
- *Federalist* #29: Federalism as found in the states’ militias subject to regulation by Congress.

- *Federalist #32–3*: Hamilton explains the difference between exclusive and concurrent powers, specifically in relation to taxation, and the limits of the ‘supremacy clause’ and ‘elastic clause’.
- *Federalist #37*: Problems experienced by the Constitutional Convention include how to separate powers and responsibilities between the general and state governments.
- *Federalist #39*: Madison’s view of federalism, including federal aspects of the Constitution and how intergovernmental disputes can be resolved by the Supreme Court.
- *Federalist #51*: Checks and balances on government power and the role of federalism in this system.
- *Federalist #62*: A compound republic allows state legislatures to choose the state’s US senators.
- *Federalist #68*: Explains the electoral college as the method for selecting the president; though it does not deal explicitly with federalism, the presidential selection method ensures influence is felt from the states rather than regions or the nation.
- *Federalist #78*: The Supreme Court’s authority to protect states from federal encroachment by declaring federal laws unconstitutional.
- *Federalist #84*: The national government’s powers are limited, and a bill of rights is unnecessary to prevent national tyranny.

Additional readings from the Anti-Federalists will expose students to trenchant critiques of the Constitution, many of which are part of America’s contemporary political discourse. For example, many Anti-Federalists favored a bill of rights despite *The Federalist’s* argument that a bill of rights was unnecessary because the Constitution’s structural protections provided sufficient checks against oppressive national power. Anti-Federalists also sought to limit the supremacy clause and the necessary and proper clause of the Constitution. By highlighting the risks in these clauses, Anti-Federalists contributed to future interpretations of the Constitution (Storing 1981).

Encourage students to read the essays before class and try their best to understand them. Then, they can compare their understandings during class discussion. In class, a version of text crawling that moves through the essay focusing on select passages can be effective. To do this, different students are asked to read a specific passage aloud; then the class discusses that passage’s meaning and implications. The goal is to develop students’ critical reading skills so they can understand the ideas and apply them to contemporary political issues.

QUESTIONS FOR CLASS DISCUSSION OR ESSAYS

1. What are the benefits and problems of federation over confederation?
2. What does *Publius* mean by a 'compound republic'?
3. Can the compound republic overcome factions to produce solutions benefitting the general good or is it merely a tool for aggregating varying factions into shifting majorities so that no single faction could ever take control?
4. Which elements of the Constitution are national and which are left to the states? What was the reasoning behind placing those elements within national or state jurisdiction?
5. Do the Constitution's federal elements undermine democracy or foster popular government?
6. How can a federation promote unity and diversity without creating an *imperium in imperio*?
7. How did *Publius* think intergovernmental disputes between the national and state governments would be resolved?
8. How does *Publius* envision the federal system fostering shared rule and self-rule?

Along with the primary theme of each paper, *The Federalist* is filled with multiple observations and insights, any one of which might attract student attention and long discussions. For example, while essay #37 discusses the challenge of dividing political authority between the general and state governments, Madison's reference to God at the end raises questions such as: is Madison's reference to God sincere or manipulative; are references to God in political and public discussions appropriate; and would references to God in *The Federalist* have been more common if it was written for citizens in states other than New York? Teachers should encourage exploration of the ideas that interest students, but they will also need to manage the discussion to cover the course material.

READINGS FOR STUDENTS

- Amar, Akhil (1998), *The Bill of Rights: Creation and Reconstruction*, New Haven, CT: Yale University Press.
- Boudreaux, P. (2004), 'The Electoral College and its meager federalism', *Marquette Law Review* **88** (2), 195–250.
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- Storing, Herbert (1981), *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution*, Chicago, IL: University of Chicago Press.
- Yarbrough, J. (1985), 'Rethinking *The Federalist*'s view of federalism', *Publius: The Journal of Federalism* 15 (1), 31–53.

TEST/EXAMINATION QUESTIONS

1. How does the federal system envisioned by *Publius* seek to overcome the problems of the Articles of Confederation?
2. According to *Publius*, what is a compound republic and what are its benefits?
3. How did *Publius* think intergovernmental disputes between the national and state governments would be resolved?
4. Do institutions such as the Supreme Court, electoral college, election of senators by state legislatures (before the 17th Amendment), and the Constitution's ratification by states rather than popular vote foster or harm popular government?
5. Compare and contrast *Publius*'s and Anti-Federalists' views on the proper size of a republic and explain how that influences what system of government each prefers.
6. Why did *Publius* view a bill of rights as 'not only unnecessary' but even 'dangerous'?
7. Why establish multiple branches within the national government? Is the national government's separation of powers too separated or not enough? Is the US separation-of-powers arrangement better or worse than a parliamentary system?
8. What is the national–state division of powers in the US Constitution and how does that compare with other federal constitutions?
9. What is the case for having the residual powers lie with the state governments rather than national government (as in Canada)?
10. *Federalist* #2 remarks that Americans were 'a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government.' Given the diversity in modern America and globalism, are *The Federalist*'s principles still relevant today?

POINTS FOR EVALUATION

Assessing achievement of the course's learning objectives can be done through structured in-class discussions and debates, short writing assignments, essays, and exams. In-class debates might divide students into federalists and anti-federalists to debate questions. This might include debates on the proper size of republican government, whether a Supreme or Constitutional Court will be a centralizing institution, or how a bill of rights will protect or impair individual rights and affect the constituent states' self-rule prerogatives.

To evaluate whether students develop the ability to understand *The Federalist*, short writing assignments might include reading notes, argument diagrams, a single paragraph identifying a *Federalist* essay's primary claim and supporting evidence, or a one-page evaluation summarizing an essay's argument and providing a critical application to a contemporary issue.

Essays and exams can evaluate if students understand the problems with confederation and expected benefits of federation. These evaluations should ask students to identify the federal features found in the Constitution, how those features were intended to improve government and union, and which features contribute to shared rule and self-rule. This can be done by asking students to identify whether and why a power belongs to the national or state governments, or by explaining how a legal or political issue left to the states rather than the national government can be better understood using *The Federalist*.

Advanced classes should be able to identify how *Publius's* ideas differ from how the government works today and contemporary arguments for change. For example, why did Americans adopt the 17th Amendment changing how senators are elected? Explain why factions were thought to be problematic and how the Constitution's structural protections would control them. Compare and contrast *The Federalist's* argument for the Electoral College with arguments to abolish it. Consider *Publius's* argument that a federal bill of rights would be dangerous. Do globalism and modern economies require a powerful national government or is a federal union still beneficial? Do judges function today as *Publius* thought they would?

SUGGESTIONS FOR FURTHER READING

- Amar, A. R. (1993), 'Anti-Federalists, the *Federalist Papers*, and the big argument for union', *Harvard Journal of Law & Public Policy* **16** (1), 111–18.
- Coenen, Dan T. (2007), *The Story of The Federalist: How Hamilton and Madison Reconceived America*, New York: Twelve Tables.
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3. Comparative federalism: what is a federation and how do we study more than one?

Alan Fenna

EXPLANATION OF COMPARATIVE FEDERALISM

Comparative federalism is the study of the nature, operation, possibilities and effects of federal governance forms across two or more cases. Federal governance comprises a spectrum of institutional forms including loose confederal arrangements, archetypally federal systems, and federacies (Elazar 1987, 6). It may even encompass non-territorial federalism. Being interested in both structures and dynamics, comparative federalism is a branch of comparative politics and comparative government. It involves several elements, including a set of identifying criteria, a set of sorting criteria, an understanding of the techniques of comparison, and an appreciation of the range of questions that might be asked about federal systems.

First is a reasonably well-defined set of cases: which countries qualify as federations, or, if not federations, as having some federal arrangements? A number of ambiguities arise, including systems that appear federal in practice while not being so officially and vice versa, and systems whose federal quality is greatly compromised by their degree of centralization or absence of democracy. That is premised in turn on a defensible conception of the principles and practices of federalism and, based on that, formulation of a workable definition.

Some federalism scholars such as Wheare adopted a rather strict definition. He defined a federal government as one that embodies 'predominantly a division of powers between general and regional authorities, each of which, in its own sphere, is co-ordinate with the others and independent of them' (Wheare 1963, 33). For him, the United States, Switzerland, Canada, and Australia were the best examples. At the other extreme, Elazar (1987, 12) favoured the 'simplest possible definition ... *self-rule plus shared rule*', with self-rule referring to the ability of the constituent units to exercise some self-government, and

shared rule referring to the existence of an overarching central government serving the collective interests of the federation. In between lie a range of variations, all of which ultimately seek to distinguish federal from unitary governance – including unitary systems with a considerable degree of devolved authority – and from systems that are more federal in form than in substance. For most scholars, democracy is an important element – or even a *sine qua non* – of federalism because the respect for separate spheres of power seems to require it. There is no ‘right’ answer to these definitional questions, but the process of trying to answer them is a key part of comparative federalism.

Second is to sort those countries into types according to their mode of federalism or other important characteristics that may affect how their federal system operates. Although there are any number of criteria for such sorting, a handful are particularly salient. Is it a federation designed to accommodate forms of deep diversity, or is the society mononational? Is it based on an approach to dividing powers according to the ‘dual’ or the ‘administrative’ mode? Is it presidential or parliamentary? Is it a stable advanced liberal democracy? Is it a coming together, holding together, or putting together federation, or some combination of these?

Third is to understand the principles and practices of comparative analysis and how those might apply to federations. This includes the concepts of ‘most similar’ and ‘most different’ forms of comparison and their logics and requirements, principles and forms of causal explanation, and qualitative and quantitative small-*N* and large-*N* analyses. While it is debatable whether systematic comparison is essential for robust causal explanations, it is certainly valuable. In this context, it typically involves finding two or more federations sufficiently similar as to control for as many other variables as possible and then isolate factors explaining different outcomes. The more cases, the easier it is to control for other variables, but the less likely they are to be similar.

Finally, there is the more substantive question: what do we want to know about the operation of federal systems? These generally fall into one of two categories: federalism as the dependent or independent variable. As a dependent variable, attention is focused on how federations come into being, whether they last, how they function, and how they evolve. The survival of federal systems is particularly relevant in today’s world where it offers potential for accommodating deep diversities and reducing conflict. The functioning of federations encompasses such institutions and processes as the representation of constituent units in central institutions, the practical operation of the division of powers, vertical and horizontal fiscal arrangements for revenues and transfers, management of conflict, arrangements and practices of intergovernmental relations, judicial resolution of jurisdictional disputes, and constitutional amendment. As an independent variable, attention is focused on the ways federalism affects politics and policy-making – particularly the complex ways in

which it may either obstruct or facilitate policy-making. Included in the latter are such propositions as the ‘laboratory federalism’ thesis in which constituent governments serve as laboratories for policy innovation and the notion of alternative venues for advancement of policy. In many cases, the questions may well link back to theoretical concerns of political science more broadly, such as the competing perspectives of neo-institutional and society-based explanations.

REASONS TO STUDY COMPARATIVE FEDERALISM

Comparative federalism seeks to move beyond what one can learn from the study of a single federation by considering the practices and experiences of multiple cases. This serves several purposes. First, it allows us to understand *federalism* as a general phenomenon by contrast with the workings of any given *federation*. If federalism is a general category of government, then there are limits to what one case can tell us about it and to what one can learn about the applicability of federal-type arrangements to political challenges. Second, it illuminates the character of any specific case – what might be typical and what might be unusual – and suggests how things might be done differently. It is all too easy when immersed in the politics of one country to lapse into a parochialism that takes the status quo for granted (Weissert 2011). Third, it allows us to use the comparative method to propose and test explanatory propositions about how federal systems come into being, function, and evolve. Thick description and process tracing of an individual case can provide a good basis for causal explanation, but external validation is generally considered highly desirable. Propositions tested across a number of other cases provide the basis for more robust findings.

HOW COMPARATIVE FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

Since federalism first became a significant field of study in the early to mid-twentieth century, it has tended to follow two parallel tracks: works focused on federalism as a general phenomenon, and works focused on one particular federation. Often the latter drew very little on the former and paid scant attention to experiences elsewhere. Those tracks have converged to a significant extent, and comparative federalism is now at the centre of federalism research, seeking to produce more insightful analysis of individual cases as well as more generalizable understanding. In doing so, it is often seen as an antidote to parochialism and as advancing scholarship beyond description to more robust forms of explanation. Comparative analysis is now applied to any number of topics in the field – including second chambers, courts, intergov-

ernmental councils, the trajectory of federations, practices of fiscal federalism, accommodation of potentially conflicting identity groups, and secessionism.

LEARNING OBJECTIVES

Undergraduate students should come away from a course on comparative federalism with a sense of how to understand and define federalism as a system of government; how we can most usefully distinguish between different types of federation and how the core institutions associated with federalism vary across the countries; and current practices and issues of federalism.

Postgraduate students should, in addition, have a sense of what approaches one can take to a comparative analysis of federal systems, and what federalism questions have been the focus of comparative analysis.

HOW TO STRUCTURE AND TEACH COMPARATIVE FEDERALISM

The most straightforward way to teach this subject is to begin by following the template used by Hueglin and Fenna (2015) and Watts (2008). The basic organizing tool in both books is the main institutional aspects of federalism: division of powers, fiscal federalism, bicameralism, intergovernmental relations, constitutional amendment, and judicial review. Hueglin and Fenna structure analysis of each aspect by reference to a heuristic typology comprising a small number of inductively derived models. These distinguish some main forms in which federations appear depending on key institutional features such as how they organize the division of powers and the representation of the constituent units in the central government. That typology can serve as both a useful framing device and a point of reference for discussion about how to define and categorize federal systems. One could preface this institutional survey with a brief history of the federal experience covering the major early confederacies and the emergence of modern federalism in the United States.

With that as a basic knowledge foundation, students can then be introduced to any number of thematic questions. These include: origins, success and failure, deep diversity and secessionism, long-run dynamics, federalism and democracy, virtues and vices of federalism, interesting variations such as the European Union (EU), federated states or non-territorial federalism, and management of major policy challenges such as climate change or a pandemic. Success and failure emerged as a major concern in the mid-twentieth century process of de-colonization and has taken on a new lease of life with aspirations for federal solutions to deeply divided and post-conflict societies. Research has revolved around the supposed ‘paradox of federalism’, whereby autonomy is seen as potentially either inviting or assuaging separatism. Established feder-

ations, meanwhile, are often seen as condemned to a relentless centralization and functioning in a way that may either hinder or facilitate policy-making. At the margins, meanwhile, the question is whether federalism can bring together established sovereign states, as in the EU, reconcile distinctive communities to existence in an otherwise unitary setting, or work when the different communities are not territorially separated as federalism otherwise assumes.

While this would suffice for a normal undergraduate course, graduate seminars and perhaps final-year undergraduates should also be introduced to the more methodological and theoretical issues of the field. On the methodological side, they could be given one or two basic texts on the comparative method and one or two examples of its application to questions of federalism. Depending on which comparative studies were chosen, one could also draw out the theoretical perspectives being advanced in those studies.

QUESTIONS FOR CLASS DISCUSSION OR ESSAYS

1. How do we know a federal system when we see one?
2. What is the difference between confederal, federal, and federated systems?
3. What are the different ways federal systems emerge?
4. What is the difference and relationship between federalism and decentralization?
5. What are some of the criticisms of federalism, and what advantages have been claimed for federalism?
6. What are the general patterns in the way federal systems divide powers?
7. How does the division of powers function in the modern world?
8. What role has judicial review played in adjudicating the division of powers in federal systems?
9. Is federal bicameralism a necessary, important, or incidental component of a federal system?
10. What are some of the ways in which federal systems are affected by their fiscal arrangements?
11. In what ways might federalism help accommodate or exacerbate territorially based identity differences?
12. Take two studies comparing some aspect of two or more federations and explain how they use the comparative method and how robust their conclusions seem.

READINGS FOR STUDENTS

Elazar, Daniel J. (1987), *Exploring Federalism*, Tuscaloosa: University of Alabama Press.

- Fenna, Alan (2019), 'What hope for comparative federalism?' in John Kincaid (ed.), *A Research Agenda for Federalism Studies*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 76–92.
- Hueglin, Thomas and Alan Fenna (2015), *Comparative Federalism: A Systematic Inquiry*, 2nd edn., Toronto: University of Toronto Press.
- Riker, William (1964), *Federalism: Origin, Operation, Significance*. Boston, MA: Little, Brown and Company.
- Watts, Ronald (2008), *Comparing Federal Systems*, 3rd edn., Montreal and Kingston: McGill-Queen's University Press.
- Where, K. C. (1963), *Federal Government*, 4th edn., Oxford: Oxford University Press.

TEST/EXAMINATION QUESTIONS

1. Provide and justify a definition of federalism and apply to five existing federations.
2. Explain the way powers are divided in federal systems, discussing the logic of assignment and clarifying the differences between concurrent, exclusive, and residual powers. Draw on at least two different federations to illustrate.
3. How have the older federations changed over time? What factors have driven change and what role have the main institutions of federalism played in those processes?
4. What is 'intergovernmental relations' and why is it important in modern federalism? How does it vary between some of the main federations?
5. What is 'the comparative method' and how might it be applied to studying aspects of federalism? Draw on two or more comparative studies to illustrate.

POINTS FOR EVALUATION

Understanding and Defining Federalism. Draw upon and compare existing definitions, indicating how they relate to the 'spirit' (Burgess 2012) or principle of federalism and identifying core and associated institutions. Juxtapose with unitary government, decentralized government, and shades of federalism such a confederal government.

Distinguishing Different Types of Federation. Show how federations differ in design, societal characteristics, form of representative government, degree of development, and the like. Indicate some of the differences in the way constitutional amendment, second chambers and judicial review work.

Current Practices and Issues of Federalism. Students should be able to discuss some of a range of matters such as fiscal federalism, the spending power and fiscal equalization; intergovernmental conflict, cooperation, coordination and collaboration; and regional tensions and secessionism.

Postgraduate students should, in addition, be able to show an understanding of the methods, possibilities and limitations of comparative analysis and an understanding of how these are manifest in some of the studies that have been done in comparative federalism.

SUGGESTIONS FOR FURTHER READING

General

- Burgess, Michael (2006), *Comparative Federalism: Theory and Practice*, London: Routledge.
- Burgess, Michael (2012), *In Search of the Federal Spirit: New Theoretical and Empirical Perspectives in Comparative Federalism*, Oxford: Oxford University Press.
- Dardanelli, P., J. Kincaid, A. Fenna, A. Kaiser, A. Lecours, and A. K. Singh (2019), 'Conceptualizing, measuring, and theorizing dynamic de/centralization in federations', *Publius: The Journal of Federalism* **49** (1), 1–29.
- Duchacek, Ivo (1987), *Comparative Federalism: The Territorial Dimension of Politics*, Lanham, MD: University Press of America.
- Gagnon, Alain-G. and Arjun Tremblay (eds.) (2020), *Federalism and National Diversity in the 21st Century*, Cham: Springer.
- Griffiths, Ann, Rupak Chattopadhyay, John Light, and Carl Stieren (eds.) (2020), *The Forum of Federations Handbook of Federal Countries 2020*, Cham: Springer.
- Kincaid, John (ed.) (2019), *A Research Agenda for Federalism Studies*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.
- Mueller, S. and A. Fenna (2022), 'Dual versus administrative federalism: origins and evolution of two models', *Publius: The Journal of Federalism*, **52** (4), 525–52.
- Palermo, Francesco and Karl Kössler (2017), *Comparative Federalism: Constitutional Arrangements and Case Law*, Oxford: Hart.
- Yilmaz, Serder and Farah Zahir (eds.) (2020), *Intergovernmental Transfers in Federations*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.

Theory and Method

- Braun, Dietmar (2015), 'Between parsimony and complexity: system-wide typologies as a challenge in comparative politics', in Dietmar Braun and Martino Maggetti (eds.), *Comparative Politics: Theoretical and Methodological Challenges*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 90–124.
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- Noël, A. (2014), 'Studying your own country: social scientific knowledge for our times and places', *Canadian Journal of Political Science* 47 (4), 647–66.
- Peters, B. Guy (2015), 'Is comparative politics useful? If so, for what?', in Gerry Stoker, B. Guy Peters and Jon Pierre (eds.), *The Relevance of Political Science*, Basingstoke: Palgrave Macmillan, pp. 169–89.
- Riker, W. (1970), 'The triviality of federalism', *Politics* 5 (2), 239–41.
- Simeon, Richard (2015), 'Is federalism like snow and is it exportable? Some cautionary notes on the study of federalism', in Karlo Basta, John McGarry, and Richard Simeon (eds.), *Territorial Pluralism: Managing Difference in Multinational States*, Vancouver: University of British Columbia Press, pp. 99–120.
- Simeon, R. and B. Radin (2010), 'Reflections on comparing federalisms: Canada and the United States', *Publius: The Journal of Federalism* 40 (3), 357–65.
- Tarrow, S. (2010), 'The strategy of paired comparison: toward a theory of practice', *Comparative Political Studies* 43 (2), 230–59.

Some Comparative Studies

- Biela, Jan, Annika Henzl, and André Kaiser (2012), *Policy Making in Multilevel Systems: Federalism, Decentralization, and Performance in the OECD Countries*, Colchester: ECPR Press.
- Bolleyer, Nicole (2009), *Intergovernmental Cooperation: Rational Choices in Federal Systems and Beyond*, New York: Oxford University Press.
- Broschek, J. (2015), 'Pathways of federal reform: Australia, Canada, Germany, and Switzerland', *Publius: The Journal of Federalism* 45 (1), 51–76.
- Erk, Jan (2008), *Explaining Federalism: State, Society and Congruence in Austria, Belgium, Canada, Germany, and Switzerland*, London: Routledge.
- Lecours, André (2021), *Nationalism, Secessionism, and Autonomy*, New York: Oxford University Press.
- Schnabel, Johanna (2020), *Managing Interdependencies in Federal Systems: Intergovernmental Councils and the Making of Public Policy*, Cham: Palgrave Macmillan.
- Turgeon, Luc and Richard Simeon (2015), 'Ideology, political economy and federalism: the welfare state and the evolution of the Australian and Canadian federations', in Alain-G. Gagnon, Soeren Keil, and Sean Mueller (eds.), *Understanding Federalism and Federation*, Abingdon: Ashgate, pp. 125–42.
- Wallner, Jennifer and Gerard Boychuk (2014), 'Comparing federations: testing the model of market-preserving federalism in Canada, Australia and the United States', in Luc Turgeon, Martin Papillon, Jennifer Wallner, and Stephen White (eds.), *Comparing Canada: Methods and Perspectives on Canadian Politics*, Vancouver: University of British Columbia Press, pp. 198–221.

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4. Federalism and constitutionalism: a relation based on interdependency

Elisabeth Alber and Francesco Palermo

EXPLANATION OF FEDERALISM AND CONSTITUTIONALISM

Federalism and constitutionalism are not simple, static notions. Both concepts have existed for centuries, as have debates on their universal definitions. In the various world regions, federalism and constitutionalism carry meanings and nuances that have developed differently under different historical circumstances and in relation to different power balances (Palermo 2021). Because of the dynamism and relativism of both concepts, their intersections are a multifaceted and yet understudied research field (Saunders 2019). Nonetheless, they are inherently linked: federalism cannot develop outside the framework of constitutionalism; at the same time, federalism has been one of the main instruments for the development of constitutionalism.

Federalism evokes a vertical distribution of public powers between orders of government that, while all are subject to the constitution's supreme authority, enjoy a variable degree of self-rule. Federalism is grounded in a combination of unity and diversity, implied by the origin of the concept in the Latin word *foedus* (covenant) and embodied in the formula of self-rule and shared rule (Elazar 1987, 5). The degree and practical manifestations of self-rule and shared rule vary greatly according to institutional, historical, cultural, geographical, and economic specificities of federal systems (Watts 2008) and of their 'federal spirit', namely, the socio-political capacity to sustain federalism as a principle that animates a federation in the face of challenges and constant change (Burgess 2012). Relatedly, while 'there may be federalism without federation', but 'no federation without some matching variety of federalism' (King 1982, 76), no global theory of federalism exists (Gamper 2005). The question whether one should be elaborated remains contested. Some scholars call for a new, dynamic federal theory (Popelier 2021); others stress a concept-inspired descriptive-explanatory approach in federalism studies (Palermo and Kössler 2017, 2).

Constitutionalism means limitation of government. It promotes rule of law over rule of men (Hasebe and Pinelli 2013, 12) and requires the legal realm to limit and regulate the political one (Grimm 2016, 200–201; Sartori 1962, 855). Process, namely, the commitment to constitutional modes of argument to resolve disagreement (Feldman 2011, 123), is fundamental to this aim. Given this common foundation, approaches to constitutionalism may diverge on the attributes, underlying principles, and aims of constitutional governance.

Both federalism and constitutionalism are instruments to constrain power by dividing it (federalism) and limiting it (constitutionalism) through institutional, procedural and other rules. The combination with constitutionalism determines the effectiveness of federalism, helping to make federal systems robust but also adaptable (Bednar 2009). Federalism as a process can be both part of the problem or part of the solution. It is problematic whenever its institutional manifestations (i.e., the constitutional tools for the regulation of territorial and societal pluralism) do not advance constitutional democracy. This happens whenever the rule *by* law and not the rule *of* law is in place. Russia, Ethiopia, Venezuela, and Myanmar exemplify rule by law. If instead federalism is to advance constitutional democracy, as conventional federal theory claims it should, then the rule of law (i.e., standards that define the characteristic virtues of a legal system) and constitutionalism (i.e., constitutional norms that lay down precepts such as the rule of law, democracy, human rights, and the separation of powers) must be in place.

Only through constitutionalism can federalism effectively perform its main function: protecting more than one interest by the multiplication of decision-making instances that, among different orders of government, fragment and dilute the majority principle and thereby produce a counter-majority, a pluralistic effect (Palermo 2015, 506). Such a pluralistic effect serves the ‘need of people and polities to unite for common purposes [and] yet remain separate to preserve their respective integrities’ (Elazar 1987, 33). By serving pluralism, federalism is inherently linked to constitutionalism’s democratic dimension, for when it merely vertically organizes the same power (controlled and seized by one person, one party, one group), it results in an empty shell. Only when linked with constitutionalism can federalism serve its normative purpose of enhancing democracy and the rule of law. Constitutionalism prescribes the structures and procedures of governance, the limitations on the powers of government. It produces ‘democracy over time’ (Rubinfeld 2001). Without constitutionalism and the rule of law, federalism cannot perform its task of democratically organizing pluralism.

REASONS TO STUDY FEDERALISM AND CONSTITUTIONALISM

As constitutionalism and federalism are so deeply interlinked, looking at them in conjunction casts light on a number of very significant important trends.

First, almost half of the world's population lives in federal or federal-like systems, in no less than 28 countries that identify as federal or (at least in part) function as such (Kincaid 2019). It also shows that many systems have only recently committed to constitutional federalism (i.e., the constitutionally regulated allocation of powers, resources, and competences) and to the rule of law. In such systems, federalism, devolution, or significant decentralization are regarded as recipes to solve conflicts – in recent times, most frequently ethno-national conflicts (Alber and Breen 2022) – strengthen democracy, and increase state capacity (Fombad and Steytler 2019; Neo and Bui 2019; Uprimny 2011). In doing so, they often focus too much on self-rule and too little on shared rule. This makes the systems fragile, with persistent conflicts. Absent adequate bodies and procedures integrating the participation of constituent units in the federation government's decision-making, and their involvement in intergovernmental relations, constitutional federalism remains confined to the spirit of the law.

Second, only the combination of federalism and constitutionalism allows for the effective management of societal complexity. Federalism is founded on the idea that multiple sources of authority deconcentrate powers among several actors. Constitutionalism provides the framework for this to happen based on the rule of law. Thus, constitutional federalism is the realm in which legal pluralism can be least controversially and most undeniably made manifest (Ryan 2020). Ultimately, constitutional federalism with its structures and procedures allows for valuable cross-jurisdictional platforms in which pluralist deliberation and innovative policymaking may occur. Federalism may create asymmetries, but asymmetries exist in reality, and it is one of the goals of constitutionalism to enhance equality by treating the same situation equally and different ones differently. The challenge is to not use asymmetry to create additional separation between territories or orders of government and their societies, but to ensure that all interests and societies are adequately involved in shared rule (Popelier and Sahadžić 2019). This balance is as much at the core of federalism and constitutionalism as process and policy experimentation.

Third, constitutionalism fuels the engine of federalism. It makes it normative, not least by making the vertical division of powers procedurally enhanced and enforceable in courts. As conflicts can emerge in federal systems regarding the scope of powers, or from disagreement regarding the interpretation of the distribution of powers, or due to subnational resistance against centralizing

trends, a system that prevents and adjudicates conflicts is necessary. Conflict prevention encompasses a range of procedures and institutions of intergovernmental relations through which potential conflicts are averted or lead to litigation (Poirier et al. 2015). When conflicts are unavoidable, the judiciary often resolves disputes. Constitutional rules are needed to make such a system of conflict prevention and resolution reliable, effective and non-arbitrary. If federalism is not proceduralized and cannot be litigated, it is deprived of its main function of accommodating different claims (pluralism) within a constitutional framework.

HOW THE CONSTITUTIONAL DIMENSION FITS INTO FEDERALISM RESEARCH AND STUDY

The inextricable link between federalism and constitutionalism is ‘one of those relationships ... that we simply take for granted’ (Burgess and Gagnon 2010, 1). While the facets of this link are still investigated and debated among scholars, it is unquestionably one of the key topics for federalism studies. The reason for this lies in the federal idea’s origin: ‘People and states throughout the world are looking for federal solutions to the problems of political integration within a democratic framework’ (Elazar 1987, 6).

One of the most significant challenges facing federalism scholars in constitutional law and political science is how to combine pluralism with good and effective governance. Federalism research is at the heart of one of the most pressing challenges in the history of humanity: how to order public life and how to limit, organize and regulate power in a way that guarantees freedom and efficiency, unity and plurality, and autonomy and coordination. Framed differently, federalism research investigates how to make decisions in a manner that is democratic, transparent, inclusive, and effective so that policymaking accounts for different claims, interests, and legitimacies.

Constitutionalism is crucial to this aim. It lays down functioning safeguards that ought to sustain federalism in practice. These include structural safeguards such as the fragmentation of power and the participation of constituent units in federal decision-making, popular safeguards for public control over government officials, political safeguards through a multi-party system, and judicial safeguards like judicial review and enforcement of the constitutionalized distribution of competences.

In short, the constitutional dimension fits into federalism research because it assists the ultimate end of federalism, namely, a federation’s ability to maintain functionality over time thanks to and despite the differences it pools together (unity in diversity). Of course, the study of extraconstitutional workarounds used by institutional actors because of political imperatives is also important in federalism research as it shows the operational contours of formal rules.

LEARNING OBJECTIVES

Teaching federalism against the background of constitutionalism serves different objectives, depending on the type (undergraduate, graduate, or postgraduate) and field of study (especially law and political science, but also philosophy and political economy).

There are two main learning objectives in studying federalism and constitutionalism. First, students should understand the meaning and operation of the federal provisions in a constitution. Only against the background of constitutionalism can the way such provisions work become clear, including by considering constitutional adjudication based on them. Second, students should understand federalism as a principle of constitutionalism and see it as a tool for enhancing and guaranteeing pluralism.

Students shall:

1. Acquire knowledge on relevant constitutional provisions on federal governance, including the way institutions operate.
2. Use this knowledge to discuss issues of governance in relation to real-case observation.
3. Familiarize themselves with the most relevant case law (constitutional adjudication) on the most controversial federal issues, including, *inter alia*, financial relations and conflicts on the division of powers among levels of government.
4. Become familiar with basic aspects of contemporary constitutionalism in different contexts, such as Western democracies, countries in transition to democracy, and supranational organizations.
5. Critically understand the strengths and limits of constitutional law in regulating social and political processes, including the preconditions that make it work.
6. Develop awareness of how each institution and each citizen can contribute to uphold and improve constitutional federalism (among various orders of government and in various functions).

Students should identify and explain why particular political systems run under the name of constitutional federal systems and why others do not. By focusing both on federalism and constitutionalism, and their intersection, students will understand the black-letter law and how law works in practice.

HOW TO STRUCTURE AND TEACH FEDERALISM AND CONSTITUTIONALISM

To teach federalism and constitutionalism, three background elements have to be considered. First, constitutional law is not only the product of politics; it also is constitutive to and a limitation for politics. Analytical and empirical leverage over our understanding of this field can only be gained by acknowledging that politics matters in making constitutional reality always different (to different degrees) from constitutional law. Second, because of the dynamism and relativism of both concepts, teaching federalism and constitutionalism and their intersection can be approached from different angles. Deciding what not to cover is as important as deciding what to do. Third, a good grasp of the black-letter law (institutions, procedures, rules, adjudication) is necessary to understand how federalism and constitutionalism intersect. It is a precondition for any discussion on constitutional federal politics: the ways in which federalism as a constitutional principle is situated within the broader socio-political and institutional context, and the role actors (political parties, citizens, lobbyists) play in federal policymaking, with the judiciary being the primary regulator of last resort.

The starting point for teaching federalism and constitutionalism is to determine how the course fits into your curriculum. If your course is likely to be the students' only exposure to the topic, then a major part of your teaching will focus on helping students to understand the normative underpinnings of federalism and constitutionalism, and to master the legal provisions in relation to one federal system or aspect of it. If your curriculum has further courses in the study of law and politics (Whittington et al. 2008), then encourage students to apply federalism and constitutionalism to case-study analyses that refer to more than one federal system or aspect. Students are likely to enhance comprehension of their own system while globally expanding their understanding of federalism and constitutionalism.

General suggestions include:

- Introduce students to the intellectual history of constitutional concepts, the normative underpinnings of constitutional principles, and federalism as one of the oldest and most rooted constitutional principles.
- Explain that constitutionalism in a democracy both limits and empowers government of, by, and for the people.
- Focus on the *telos* (abstract purpose) of both concepts in the sense of a telological (foundational–functional) interpretation of a federal system and its underpinnings.

- Explain that constitutional law has mostly shifted from a dual to a cooperative model of federalism and refer to worldwide examples and the reasons for such a shift.
- Explore the different types of safeguards for federalism and refer to worldwide examples.
- Discuss the complementarity of the different types of safeguards for federalism and the fact that any federal system is unlikely to flourish without a federal culture that is distinctive of, and intrinsic to, the different political communities of the different orders of government, and that a federal democracy will not endure without public understanding and support for its undergirding ideas.
- Challenge students to compare their constitutions and federal systems, or aspects thereof, with other systems (for example, the structure of the different governments; the distribution of powers, resources, and competences; the limitations on powers of the branches of the governments; the guarantees of human rights; the methods of constitutional amendment or change; and the role of constitutional adjudication).

Concrete suggestions include:

Analyze and discuss rulings from different courts that show the different approaches in place and time when solving federal issues. Examples include:

- Supremacy and homogeneity clauses in federal constitutions.
- Commerce clauses and different approaches in space and time: United States (*Gibbon v. Ogden* 1824, *Wickard v. Fillburn* 1942, *United States v. Lopez* 1995), Canada (Reference Re Securities Act 2011), European Union (*Commission v United Kingdom* 1983, *Federal Republic of Germany v European Parliament and Council of the European Union* [Tobacco case] 2000) and examples from other federations or quasi-federations.
- Federal loyalty and secession issues: Belgian Constitutional Court (49/1994 and 42/1997), Canada Reference Secession of Québec (1998), Spain (31/2010 on Catalan statute and 42/2014 on secession), Germany (Housing Funding case 1952, 1 BVerfGE 299, 315 and secession of Bavaria 2018).
- Financial relations (Valdesalici and Palermo 2018).

Analyze and discuss how policy areas are regulated in different federal systems. Policy areas could include (Palermo and Kössler 2017, 321–447):

- Fundamental rights protection
- Social welfare and health care
- Environmental protection
- Immigration and migrant integration
- External relations of subnational entities

- Education (Wong et al. 2018).

Discuss new challenges in (constitutional) legitimacy of federalism, such as:

- Participatory procedures and federalism.
- Federalism beyond the state (supranational integration, particularly the European Union and other regional organizations) (Palermo 2020).
- The degree of asymmetry necessary in federations and the variables that make such degrees path-dependent.
- Analysis of trends in federal reforms after 1989, to see the growing relevance of the accommodation of ethno-national claims.
- Analysis of a country's parliamentary debates in order to measure the presence of federalism in the political discourse.
- Analysis of the public debate in the media to determine the degree to which federal culture is rooted in a given country and society.

Simulations help students experiment with the issues involved in complex negotiations about federalism. Also consider inviting practitioners to class and incorporate visits to institutions and courts.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

Like the previous section, keep in mind whether students are undergraduate, graduate, or postgraduate.

1. Why is constitutionalism so central to federalism? Explain using examples from different countries.
2. How does federalism contribute to constitutionalism's development? Focus on instruments and their development in one or more federal systems.
3. What are the most important attributes and underlying principles of constitutional federalism?
4. What are the main institutional and political safeguards of federalism?
5. How are powers distributed among orders of government? Discuss different countries (or groups of countries).
6. How is a certain policy area regulated in different federal systems?
7. What has been the judiciary's role in determining the evolution of federalism in your country or in a given country or group of countries?
8. What are the main constitutional differences between federal systems with common law and civil law traditions?
9. What are the main traits of dual and cooperative federal systems and how are they evolving?

10. What are the main challenges for constitutional federalism currently and how do they diverge from the past (especially from pre-1989)?
11. What is the meaning of federalism in countries that present a federal structure divorced from democracy and the rule of law? What are the indicators for such a divorce?

READINGS FOR STUDENTS

Print Sources

- Alber, Elisabeth and Michael Breen (2022), 'Federalism and ethnic relations', in Javier Cremades and Cristina Hermida (eds.), *Encyclopedia of Contemporary Constitutionalism*, Cham: Springer.
- Bednar, Jenna (2014), 'Subsidiarity and robustness: building the adaptive efficiency of federal systems', in James Fleming and Jacob Levy (eds.), *Federalism and Subsidiarity: NOMOS LV*, New York: NYU Press, pp. 231–56.
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- Serna de la Garza, Jose (2000), 'Constitutional federalism in Latin America', *California Western International Law Journal* **30** (2), 277–301.
- Steytler, N. (2016), 'Domesticating the leviathan: constitutionalism and federalism in Africa', *African Journal of International Comparative Law* **24** (2), 272–92.

Online Resources

- Database of Constitutions: <https://www.constituteproject.org/?lang=en>.
- Simulation Game Let's Go Federal! <https://www.eurac.edu/en/institutes-centers/institute-for-comparative-federalism/pages/simulation-game-let-s-go-federal>.

TEST/EXAMINATION QUESTIONS

The following exam questions group relevant topics in federalism and constitutionalism and need to be adapted depending on the profile of the students.

1. Discuss the terms federalism, federal systems, and constitutionalism.
2. Discuss how federalism and constitutionalism intersect.

3. Discuss the different types of safeguards for federalism (structural, popular, political, judicial) and apply them to your country, another country, or a group of countries.
4. Discuss how powers can be distributed between orders of government, what conflicts may arise from each model and what mechanisms exist to prevent and adjudicate them in each model.
5. Discuss how a certain policy field is regulated in a given federal system and the role of different actors in that policy field.

POINTS FOR EVALUATION

Based on the level and field of the students, instructors should think of the ideal exam format related to the learning objectives, and the grading system.

For federalism and constitutionalism, these are two: assessing the factual knowledge of students and assessing their ability to apply, analyze, and discuss their learning in a broader context (by referring to relevant current events for specific aspects covered in the course).

A closed-book exam should be used when the instructor wants to determine whether students have memorized certain information and can reproduce it. It is of use when the goal of the instructor is to assess the students' abilities to reproduce the black-letter law or specific concepts. If written, responding to multiple-choice questions is possible, though not ideal. Students should rather be asked to actively present their knowledge by responding to open questions (individually or in teams).

An open-book exam should be used when the goal is to assess the students' abilities to critically process and interpret material. Students are required to find meaning in (new) information (when they are asked to discuss case law) or to form well-founded opinions based on a critical approach (when they are asked to discuss certain aspects or concepts, individually or in teams or as part of a simulation game). This type of examination requires special considerations with regard to the students' education level and the grading system. In most cases, this is a take-home exam (short essay or research paper). It is useful when an instructor wants to pose questions that require an in-depth study or when there is no practicable way to prevent the use of unauthorized aids.

SUGGESTIONS FOR FURTHER READING

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5. Distribution of powers in federal systems: federalism's heart

John Kincaid

EXPLANATION OF THE DISTRIBUTION OF POWERS

The distribution (or assignment) of powers (or competences or responsibilities) is a necessary feature of federal systems. Federalism means divided power, even if minimal. Riker defined a federation as one in which each order of government 'has at least one area of action in which it is autonomous' (1964, 11). For example, defense is normally delegated to the federation government; primary and secondary education is often delegated to the constituent governments (e.g., states or cantons). There is no ideal way to distribute powers; different federations do it differently and for different reasons.

Three types of powers require distribution: legislative, executive (including administrative), and judicial. Within the legislative and executive fields lie fiscal, allocative (or distributive), regulatory, and redistributive powers. Among the policy powers requiring distribution are:

Agriculture	Citizenship	Civil law
Criminal law	Culture	Currency
Defense	Economy	Education: primary
Education: higher	Elections	Employment/Labor
Energy: oil, nuclear, etc.	Environment	Financial services
Fire protection	Foreign affairs	Health
Language	Law enforcement	Media
Natural resources	Postal service	Social welfare
Telecommunications	Transportation	Urban planning
Voting	Water supply	Weights and measures

Some constitutions (e.g., Argentina and India) also delegate emergency powers to the federation government to intervene in the constituent governments or disturb the distribution of powers under certain circumstances.

Many powers can be subdivided. In law enforcement, for example, community police patrols have a small economy of scale amenable to local control, but forensics and prisons require larger jurisdictions, and interjurisdictional and international crime require federation participation.

Distribution Criteria

One set of criteria is scope versus status, that is, the appropriate geographic scope of a power or the status demands of constituent polities. Regarding scope, as Madison noted in *Federalist* 10, powers affecting ‘the great and aggregate interests’ of the whole country can be assigned to the federation government while ‘the local and particular’ are reserved ‘to the state legislatures’ (Cooke 1961, 63). Matters of scope, however, may require compromise to accommodate cultural, political, or economic status demands of constituent polities.

Economy of scale is another criterion. Powers with large economies of scale (e.g., defense) may be best allocated to the federation; those with small economies of scale (e.g., primary education) may be best assigned to regional or local governments.

Another criterion is cost–benefit internalization, or decentralization theorem (Oates 1972) and fiscal equivalence (Olson 1969). Constituent governments may be best assigned powers for which the costs and benefits of exercising those powers can be contained within constituent boundaries. Exercises of powers that generate negative externalities or spillovers (e.g., air pollution), positive externalities (e.g., poverty alleviation), or free riders (who benefit from services they do not pay for) may be better assigned to the federation government, which can more nearly internalize the costs and benefits of legislating on such matters as pollution and welfare redistribution. Federation provision of such services can also foster more equity among citizens living in different constituent jurisdictions. A challenge of cost–benefit internalization is that, in principle, it requires a different geographic jurisdiction for virtually every public service and, thus, numerous overlapping jurisdictions.

A related criterion is administrative costs. Are the administrative costs efficient and roughly equivalent to a power assignment, or is more or less centralized administration more or less efficient and cost-effective? A corollary is whether an order of government has the administrative capacity to execute a power that might be assigned to it.

Another criterion, prominent in the European Union (EU), is subsidiarity; that is, the federation should exercise only powers that achieve outcomes that

cannot be attained by constituent governments. What can be done locally should stay local.

Relatedly, a democracy criterion holds that power distribution should maximize the ability of citizens to vote for the kinds and levels of public goods they want, bearing both the benefits and costs of their choices.

Social justice is a further criterion. Elazar contended that 'federalism is concerned simultaneously with the diffusion of political power in the name of liberty and its concentration on behalf of unity or energetic government' (1987, 33). This criterion also extends to women, LGBTQ people, and other historically marginalized groups. How will a particular distribution of powers advantage or disadvantage such groups? For instance, assigning family-law powers to traditionalistic constituent governments can foster women's oppression.

Distribution Issues

Another matter is whether to distribute power symmetrically, whereby all the constituent governments have equal powers and are on an equal footing with each other and the federation government, or asymmetrically, whereby constituent governments have unequal powers and footings.

Many political and cultural factors influence power distributions. Constitution writers often emulate other federal constitutions, as in the U.S. Constitution's influence on many later federal constitutions. If national unity is an imperative, more powers might be assigned to the federation government than constituent governments. Preferences for a planned economy favor more federation powers; preferences for a market economy will limit federation and constituent-government powers. In post-conflict federations, mistrust might limit federation powers and make the allocation of law enforcement and security powers contentious. In multinational federations, certain constituent polities demand substantial authority over such matters as culture, religion, education, and language.

Natural resources often pose a challenge because resource-rich constituent governments want to own them and keep the revenue from their extraction, but constituent control can create wealth disparities in the federation. Off-shore resources are usually assigned to the federation government.

Powers are ordinarily distributed through a written constitution because power distribution lies at the core of federalism and requires fundamental agreement among the federating parties. However, some federations also distribute some powers through post-constitutional laws or bilateral agreements between the federation and particular constituent governments. Power distribution is often contentious because constitution writers disagree on which government should do what. When establishing unity with diversity, tensions arise between allocating powers sufficient to maintain federation unity

through shared rule and sufficient, as well, to maintain constituent self-rule for diversity.

Historically, powers were divided between a federation government and its constituent regional governments (e.g., states). Some modern federal constitutions recognize local governments as a third order of government (Steytler 2009), thus requiring delineations of local powers. Additionally, since the 1960s, indigenous peoples in extant federations have demanded restorations of sovereign powers that pre-date those federations.

Constitution writers must decide which powers to list, and in what detail: federal, constituent regional, constituent local, and concurrent powers. India's Constitution lists federal, state, and concurrent powers in detail, but allows states to delineate local-government powers. The U.S. Constitution has only a short list of federation powers; Canada's Constitution lists federation and provincial powers.

A related issue is whether federation-government officers, especially, should be able to interpret the constitutional distribution of powers so as to exercise powers implied from the expressly enumerated powers. The U.S. Constitution has the 'necessary and proper' clause, also called the 'implied powers', 'elastic', and 'sweeping' clause, permitting the federal government to expand its powers. One purpose of detailing powers is to reduce such interpretation.

Assigned powers can be exclusive, concurrent, shared, and residual. Exclusive powers can be exercised only by the government granted those powers. Concurrent powers can be exercised by the federation or constituent governments. Australia has extensive concurrent powers. Wheare contended: 'It is most important to decide whether a federal government should be organized with a concurrent jurisdiction' because while the idea is often attractive, it increases 'disputes about jurisdiction' (1963, 77). Shared powers belong to both orders of government. For example, both orders might possess certain exclusive education powers. Because it is impossible to list every conceivable power, most federal constitutions assign unlisted powers – called residual or reserved powers – to the constituent governments, as in Switzerland and the United States, or to the federation government, as in Belgium and Canada.

Canada and the EU are unusual in allowing constituent governments to opt in or out of certain federation rules, policies and programs. Notable is the notwithstanding clause in Canada's Charter of Rights and Freedoms, which allows the federation and provincial parliaments to suspend a portion of the Charter for five years, and possibly more.

Otherwise, federal constitutions ordinarily establish the supremacy of federation laws over conflicting constituent-government laws.

There is a major power-distribution difference between dual and integrated (or cooperative) federations. In a dual system, such as Brazil, Canada, and the

United States, specific powers belong to each order of government, each of which has legislative, executive, and sometimes judicial authority to exercise its powers. In an integrated system, such as Austria, Germany, and South Africa, most powers are shared in that most authority to make laws (i.e., legislate) is allocated to the federation government while the power to implement (i.e., execute) those laws is delegated to the constituent governments. Thus, legislative and executive powers over most policy fields can be separated and assigned to different orders of government.

In practice, it is difficult to maintain exclusive watertight compartments. Further, political forces shift power distributions over time. Distance has grown between the constitutional distribution of powers and the operational distribution due to rising centralization in most federations and to more interdependent than independent exercises of specific powers. Conflicts over the exercise of distributed powers are often resolved by courts, but can also be resolved by intergovernmental negotiation, elections, constitutional change, or emergency powers.

Belgium sought to distribute powers exclusively between the federal government and constituent cultural communities and territorial regions. Among other things, this exclusivity allows communities and regions to conclude international agreements on matters that fall within their powers under the principle of *foro interno, foro externo*. Exclusivity, however, makes federal intervention in constituent affairs difficult and encourages duplication and gridlock.

Judicial powers do not always mirror legislative and executive power distribution (Aroney and Kincaid 2017). They do so in the U.S. dual system because the federal and state governments each have their own complete and independent court systems, including supreme courts, rooted in their respective constitutions. More common is a single judicial system with an apex supreme or constitutional court, although the system may have different courts for different orders of government and give constituent governments different shared-rule mechanisms to staff the courts and issue rulings.

Fiscal Powers

Powers to tax, spend, and borrow also require distribution (Shah 2007). In principle, each order of government should have sufficient tax powers to pay for its expenditure choices. This also is a matter of accountability under the principle that politicians who enjoy spending taxpayer money should first experience the pain of extracting it from the taxpayer. For many reasons, though, it is impossible to align tax and expenditure powers neatly. Hence, intergovernmental transfers and equalization policies pervade federal systems, in part to remedy interjurisdictional wealth differences as well as vertical

imbalances whereby constituent governments' expenditure responsibilities exceed their revenue capacities.

Assignment of tax and fee powers depends partly on one's philosophy of government. In one view, constituent regional and local governments should only tax immobile assets (e.g., a real-estate property tax) so as to prevent mobile assets from fleeing high-tax jurisdictions. Another view holds that constituent regional and local governments should tax mobile assets (e.g., personal and corporate income taxes) so as to allow interjurisdictional competition to motivate governments to improve services and lower costs (Kenyon and Kincaid 1991). However, administrative costs and capacities loom large because not every order of government has the capacity to administer particular taxes, and certain taxes, such as a value added tax (VAT), lend themselves to federation assignment.

Every federation government is given borrowing authority, though sometimes with constitutional limits. In some federations, such as the United States, the constituent states can borrow at will without federation restraints. This choice works only if the federation government imposes a hard budget constraint by refusing to bail out defaulting governments. Otherwise, constituent governments will borrow recklessly in anticipation of bailouts. Hence, many federations limit and supervise borrowing by their constituent governments.

In the final analysis, a judicious distribution of powers among governments, along with separation of powers within governments, can provide, as Madison contended in *Federalist* 51, a 'double security' for 'the rights of the people' (Cooke 1961, 351).

REASONS TO STUDY THE DISTRIBUTION OF POWERS

Power lies at the center of political science, and the distribution of powers lies at the center of federal systems. Lasswell (1936) famously defined politics as who gets what, when, and how. In federal systems, politics involve contentious questions of which orders of government get what powers and when and how they can exercise those powers, and for whose benefit. Distributing powers also affects, and is affected by, culture and values. Thus, understanding federalism requires understanding the nature and purposes of distributing powers among multiple governments.

Studying federalist distributions of powers provides unique insights into the ways we can think about structuring power, especially to ensure unity and preserve diversity, protect democracy against autocracy, and ensure freedom against tyranny. Issues of power distribution illustrate the kinds of power struggles that occur in political systems; the reasons why actors zealously want, or hold onto, particular powers; the challenges of limiting powers to

preserve democracy and freedom while still providing robust governance; the techniques of cooperating and coordinating exercises of power; the different political, administrative, and fiscal requisites of exercising different powers; the social-justice consequences of different power distributions; and the kinds of powers needed for the operation of any political system.

Studying power distribution also implicates key cost–benefit questions about centralization, decentralization, and non-centralization in political systems because the distribution can accentuate one or the other. Some critics contend that too decentralized or non-centralized a distribution of powers in a federation can produce duplication, fragmentation, inefficiency, and lower social welfare. Other critics contend that centralization can be inefficient, bureaucratically lethargic, oppressive of minorities, and ignorant of the diverse needs and capacities of regional and local communities.

HOW THE DISTRIBUTION OF POWERS FITS INTO FEDERALISM RESEARCH AND STUDY

Because the distribution of powers is federalism's *raison d'être*, it is discussed widely in the literature, but there is no systematic comparative research beyond case studies. However, a number of proffered generalizations could serve as hypotheses for rigorous research.

For example, pre-1945 federations seem to list powers in more general terms than do newer federations, which emphasize detail. Civil law federations list powers in more detail and have more limited judicial review than other federations (Majeed, Watts, and Brown 2006, 325 and *passim*).

Multinational and multicultural federations have asymmetrical power distributions more often than homogeneous federations (Popelier and Sahadžić 2019). Socially homogeneous federations assign more powers to the federation government; socially diverse federations assign more powers to the constituent governments (Watts 2008).

Coming together federations often distribute powers only through the federal constitution; holding together federations sometimes provide post-constitutional procedures for further distributions. Coming together federations frequently specify the exclusive and concurrent powers of the federation and leave residual powers to the constituent states. Holding together federations often specify the powers of the constituent governments and leave residual powers to the federal government (Majeed, Watts, and Brown 2006).

When a constitution lists powers in detail, fewer powers fall into the residual category.

There also is a question of whether the possession of residual powers is beneficial. Locating residual powers in the states in the United States has not

prevented centralization; locating residual powers in the federation government in Canada has not prevented decentralization.

LEARNING OBJECTIVES

Upon instruction, students should be able to:

1. Explain what is meant by the distribution of powers, why federalism requires divided powers, and why a written constitution is normally required to distribute powers.
2. Explain the key purposes of distributing powers rather than concentrating powers in a national government.
3. Explain the criteria employed to distribute powers and understand their pros and cons.
4. Explain how and why legislative, executive, and judicial powers might be assigned conterminously within each order of government, as in dual federations, or separated across the orders of government, as in integrated federations. Also recognize the pros and cons of each.
5. Explain symmetric and asymmetric power distributions and why different actors support one or the other, and understand their pros and cons.
6. Explain exclusive, concurrent, shared, residual, and emergency powers and understand their pros and cons.
7. Explain how political, economic, and cultural forces affect the constitutional and operational distribution of powers and why, over time, the operational distribution deviates from the constitutional distribution.
8. Explain the costs and benefits of distributing different types of taxing and borrowing powers among federation, regional, and local governments.

Upon instruction, graduate students, should be able also to:

1. Critically analyze all the facets of the distribution of powers.
2. Conduct methodologically rigorous empirical research testing hypotheses about the distribution of powers, such as the ones listed above.

HOW TO STRUCTURE AND TEACH THE DISTRIBUTION OF POWERS

Introductory lectures and discussions rooted in assigned readings can establish a foundation for understanding the distribution of powers, criteria for distribution, and the like. This topic, however, lends itself to simulations. Ask students to imagine they are founding a federation in a geographically large country with a largely homogeneous population. Ask students or small groups to represent different regions and demographic groups; then ask them to draw

on the powers listed above and employ the various criteria for distribution to explain how and why they would distribute powers symmetrically and/or asymmetrically in their federation.

This simulation can be varied in many ways: (1) a federation with two versus three orders of government, (2) a geographically small federation, (3) a multinational federation having territorially concentrated minorities, (4) a federation having low wealth differences among constituent jurisdictions versus one having high wealth differences, (5) a post-conflict federation, (6) a coming together versus holding together versus putting together federation, and so on. For students who live in a unitary country, ask how they would distribute powers to make their country federal – and if it would be beneficial to go federal.

Such simulations require students to grapple with all the empirical and normative issues involved in distributing powers. Simulations give students insights into how well the various criteria for distributing powers work in practice and also require them to debate and make hard compromises with each other.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. How important is a written constitution for distributing powers? Why or why not?
2. Among the criteria for distributing powers, which is most efficient, equitable, or politically feasible? Why?
3. Compare the distribution of powers in three federations and seek to determine the logic of those distributions.
4. What are the advantages and disadvantages of short general versus long detailed listings of powers in a constitution?
5. What are the pros and cons of listing only the federation's powers, or only federation and constituent-government powers, or concurrent powers as well?
6. Why does the operational distribution of powers usually deviate from the constitutional distribution over time, and is the deviation a betrayal of the constitution or fulfillment of its spirit? Answer this question by examining one's own federation in comparison with at least one other federation.
7. What advantages and disadvantages adhere to a dualist (e.g., United States) versus integrated (e.g., Germany) distribution of powers? Why?
8. What are the advantages and disadvantages of symmetric versus asymmetric power distributions? Why?
9. What are the advantages and disadvantages of assigning residual powers to the federation government versus the constituent governments? Why?

10. Should politicians who have the pleasure of spending taxpayer money first experience the pain of extracting it from the taxpayer? What are the costs and benefits of separating spending powers from taxing powers?
11. Should all constituent governments be authorized to borrow at will? Why or why not, or under what circumstances?
12. Should the distribution of taxation powers allow or suppress competition among constituent governments? Why?
13. What types of power distributions might best enhance freedom, equity, and social justice for the most citizens? Why?

READINGS FOR STUDENTS

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POINTS FOR EVALUATION

Given the importance of basic factual knowledge for undergraduates, multiple-choice and short-answer tests are appropriate. In-class essays are useful for assessing students' ability to describe and use their factual knowledge to address basic power-distribution issues. Out-of-class essays where students access literature are useful for assessing students' ability to understand deeper normative and empirical facets of the distribution of powers. Using simulations, however, provides the best vantage point to evaluate how students understand and manage distribution-of-powers issues. Evaluating graduate students should exceed these methods to encompass a rigorous normative or empirical research paper.

Points for evaluation include:

- Do students understand the centrality of the distribution of powers in federalism, reasons for a constitutional distribution, and causes of contention over power distribution?
- Can students evaluate the criteria for power distribution in theory and practice?

- Do students understand the dynamics of power distribution and the common deviations of operational from constitutional power distributions?
- Do students explain rationales for, and pros and cons of, symmetric versus asymmetric power distributions?
- Can students delineate exclusive, concurrent, shared, residual, and emergency powers, and explain their advantages and disadvantages?
- Can students explain costs and benefits of distributing various taxing and borrowing powers among federation, regional, and local governments?

SUGGESTIONS FOR FURTHER READING

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6. Second chambers in federal systems: shared-rule guarantors or party hacks?

Anna Gamper

EXPLANATION OF SECOND CHAMBERS

Second chambers in federal systems have had a long history. Even longer is the history of second chambers without federalism. Their origins lie in ancient institutions of elitist composition, which is still reflected in their being named ‘Senate’ (Luther 2006, 3–31). It took until the late eighteenth century to combine the idea of a second chamber with a federal structure. It was the U.S. Senate that became the prototype of a second chamber in a federal system. Its idea was to represent the states within the federal order, mainly responsible for passing federal legislation together with the other chamber, the House of Representatives. The states should thus not just have their own powers (self-rule), but also be able to partake in the exercise of federal power (shared rule). While the U.S. model of a federal second chamber – 49 of the states have bicameral legislatures, too – is still based on the principles of equality (each state is represented by two senators, irrespective of geographic or population size) and perfect bicameralism (both houses have, in principle, equally strong powers), many of today’s federal chambers have been designed differently (Palermo and Kössler 2017, 165–77; Watts 2008, 147–54); a few of them do not exclusively follow the principle of territorial representation, but also include representatives of cultural, ethnic or other diverse communities (Saunders 2020).

A majority of second chambers has an unequal composition, meaning that the component units are represented by different numbers of delegates, very roughly in accordance with population sizes, which, similar to the composition of first chambers, seeks to bring representation more in line with majoritarian democracy than a symmetric representation of the component units; still, weighted numbers are often combined with a minimum or maximum representation requirement. Also, the total number of members, varying between little more than a dozen and several hundreds, as well as their appointment modes, differs very much. In some countries, delegates are directly elected

by the regional citizens, while in others they are elected by the regional parliaments; sometimes they are members of the regional governments or follow a mixed composition. Sometimes, the component units are represented by delegations restricted to uniform or weighted block voting, such as in Germany or South Africa, but in many federal second chambers, each individual member has a free mandate, given also that a component unit may be represented by members belonging to different parties. In most cases, moreover, federal second chambers have weaker powers than the respective first chambers (which, in turn, are composed of representatives directly elected by the federal citizens), following the model of imperfect bicameralism. As second chambers of bicameral parliaments, their powers primarily relate to legislation, but they often partake in a number of other functions, too. Such extra-legislative powers include, *inter alia*, scrutiny over the executive, rights of appointment or powers related to inter- or supranational relations (Palermo and Kössler 2017, 193–200). As regards legislation, second chambers may have full or piecemeal powers, such as the right to initiative, suspensive or absolute veto rights, the right to invoke a referendum or to appeal to a court against a bill or an enacted law (Gamper 2018a, 125–9). In most federal systems, second chambers are only vested with some of these powers, which may depend on the object of legislation, for example when it relates to the federal constitution or particular component interests.

While the overall legal powers of federal second chambers may thus turn out stronger or weaker, their political functioning depends also on other factors. Second chambers are often criticized as politically dysfunctional, mostly because their members do not truly represent regional interests, but stick to political parties and their policies, which may or may not follow federalist purposes. In many cases, their allegiance entails the non-exercise of existing veto powers, while in other cases it may produce deadlocks, depending on whether the same political parties have a majority in both houses. The mode of appointment plays a certain role here because directly elected members of a second chamber may be more responsive to regional electorates, but even this need not be so in all cases. In some countries, second chambers have not been replaced, but to some extent rivaled by alternative mechanisms (Palermo and Kössler 2017, 177–8; Palermo 2018), such as informal intergovernmental conferences, direct approval rights of the component units, or by special voting procedures in the first chamber. Only in very few cases, such as in some island federations and Venezuela, does no federal second chamber exist. Whether alternative mechanisms could, however, regularly replace an institutionalized, constitutionally entrenched second chamber and avoid political partisanship is doubtful, though (Gamper 2020). So far, at least, second chambers have survived in federal habitats much better than in those of unitary states.

REASONS TO STUDY SECOND CHAMBERS

Second chambers are part of bicameral parliaments in more than a third of the countries around the world. In most of these, the reason behind the second chamber lies in a federal, quasi-federal or other decentralized form of state. Nearly all federal constitutions provide a bicameral federal parliament, and in some federal systems even the component parliaments have a bicameral structure. Although the majority of second chambers has fewer or weaker powers than the first chamber (imperfect bicameralism), they are still important, constitutionally entrenched institutions of territorial representation. As long as federal constitutions do not provide for other forms of shared rule, especially in matters pertaining to federal legislation, federal second chambers remain an essential ingredient of the federal system.

However, it is not just due to their long tradition and constitutional entrenchment that they are a topic worth learning about. They have also been subject to much criticism, both in political practice and academia. They are considered politically dysfunctional when their members do not represent territorial interests, but are loyal to their political parties. If vested with weak powers, they are often considered unable to properly represent those interests, while second chambers with strong powers are sometimes criticized for producing deadlocks and slowing down political processes. What, however, could be a meaningful alternative for allowing the component units to participate in federal matters – above all federal legislation, including even reforms of the federal constitution that could concern their future existence?

As long as such alternatives are lacking, how could second chambers be improved in order to exercise their important role in a more efficient and representative way? Such improvements might concern their organization, for example whether the component units are represented equally or unequally, or whether members should be elected directly by the component citizens, and/or their functional design. Some suggest that second chambers should partake in federal matters that specifically concern the component units, while others hold a full and general array of powers to be important. In any case, it should be considered that federal second chambers – differently from elitist second chambers in some unitary states – possess a strong degree of democratic legitimacy because their members – directly or indirectly – represent the regional peoples. A second chamber may also contribute to the separation of powers by providing checks and balances vis-à-vis the first chamber. It should not be overlooked, therefore, that, quite apart from possible dysfunctions from the viewpoint of federalism, they may have other constitutional functions that are important as well.

HOW SECOND CHAMBERS FIT INTO FEDERALISM RESEARCH AND STUDY

Second chambers have been a very traditional object of federalism research and study. The historical prototype of a federal second chamber, namely the U.S. Senate, inspired most other of today's federal systems to establish a similar chamber, even though each federal second chamber ultimately has its own organizational and functional design. Definitions of federalism have, however, sometimes emphasized the abstract necessity of shared rule (Elazar 1984; Watts 2008). Even though shared rule is usually realized by federal second chambers, more recently, some scholars have suggested they are mere 'indicators' of federalism (Popelier 2021) and that the existence of a federal second chamber is not an indispensable institutional hub, as long as the component units were guaranteed some say in federal matters in one way or another. Other authors lament the lack of an effective federal culture (Palermo and Kössler 2017, 49–50) in the political functioning of federal second chambers, which, in their opinion, makes them more or less irrelevant for the definition of federalism. Still, and perhaps exactly because they are controversial, federal second chambers have remained an object of interest in the field of federalism research, mostly in the context of shared rule and intergovernmental relations but also in (a)symmetric federalism, namely, as to the question of whether the component units are represented equally or unequally.

Moreover, it is not just scholarship on federalism that is concerned with federal second chambers. They are also a more general object of research on parliaments, representative democracy and the separation of powers.

LEARNING OBJECTIVES

The teaching of federal second chambers pursues a number of learning objectives, but consider that these must always be adapted to the type (undergraduate or postgraduate) and field of study (e.g., law, political science, history, sociology):

- Students should have basic knowledge about the origins of second chambers and their specific functions for federal systems.
- Students should be able to understand that shared rule is an indispensable ingredient of federalism, that there are different methods of achieving shared rule and to what extent it might be compensated by self-rule of the component units. They should be able to discuss the role of second chambers in this theoretical context.
- Students should have comparative knowledge of the organization of second chambers in federal systems, in particular regarding different

modes of composition (number, qualification) and appointment (direct or indirect election, governmental appointment, mixed system) of their members. They should be able to put these different modes in context with issues such as democratic legitimacy, (im)perfect bicameralism and political (dys)functioning of federal systems.

- Students should have comparative knowledge of the functions of second chambers in federal systems, being able to identify different ranges of legislative and extra-legislative powers. They should be able to put the exercise of these different powers in context with issues such as (im)perfect bicameralism and political (dys)functioning of federal systems.
- Students should be able to discuss the political functioning of federal second chambers. They should know about the reasons for dysfunctions and be able to discuss possible solutions.
- Students should be able to identify alternative mechanisms to federal second chambers and discuss whether they can be a meaningful tool for all kinds of federal systems.

HOW TO STRUCTURE AND TEACH SECOND CHAMBERS

First of all, consider whether your students are undergraduates or postgraduates and what their standard of previous knowledge is. What is the field of their study (e.g., law, political science, history, sociology)? Consider that second chambers are not just a phenomenon related to federalism, but that your students may have encountered the topic in other contexts, for example the more general study of bicameralism and parliamentarism.

An introduction could be a reading of *The Federalist Papers*, Nos 62–6, which discuss the U.S. Senate from the historical perspective of a prototypical federal second chamber. If students come from various jurisdictions with bicameral parliaments, ask them to tell the others of the respective experiences of their countries and to compare the different types of a second chamber.

Present the main models of federal second chambers to your students: tell them about the historical origins of such chambers and explain why federal second chambers constitute a category of their own within the broader category of bicameralism. Inform your students about differences between federal second chambers and about whether these are due to a specific type of federalism. Are stronger second chambers rather typical of older, full-fledged, coming-together federations than younger, emerging or holding-together federations? Is perfect bicameralism rather typical of the former than of the latter category? Is asymmetric representation of the component units or the inclusion of representatives of ethnic or cultural communities rather connoted with the latter than the former category?

Discuss the possible roles of federal second chambers: is a legally and/or politically strong role of such chambers desirable from the perspective of federalism because the component interests are in all cases represented more efficiently? Or is there a risk of deadlocks that slow down legislative processes? How should federal second chambers manage internal conflicts between members and delegations, does a simple majority voting system suffice? Which kinds of powers are most relevant for the representation of component interests? Should federal second chambers have equally strong powers as the first chamber at least when the federal constitution is amended because this might particularly concern their own status or that of the component units? Can a bicameral mediation committee be meaningful for the resolution of conflicts between both chambers? What is the role of federal second chambers in an emergency or crisis, for example in case of a secession?

Discuss, moreover, the dysfunctionalities of federal second chambers: what are the reasons for these? Are they caused by constitutional misarrangements, or are they due to a lack of 'federal culture'? To what extent are political parties, their structures, internal processes and policies responsible for such dysfunctionalities? Could these deficits be improved, and how? Can trade-offs between shared rule and self-rule (e.g., less powers of the federal second chamber, more powers for the component units or vice versa), as practiced in some countries, offer a solution? Ultimately, should federal second chambers be abolished or replaced by alternative mechanisms (e.g., intergovernmental conferences, direct approval of component units, 'federalized' composition and voting in a unicameral parliament)? Or do other arguments, quite apart from federalism, plead for federal second chambers (e.g., added democratic legitimacy, checks and balances between both chambers)? Group your students into teams that argue for and against such options.

Postgraduate students, in particular, could be asked to examine a number of constitutional texts and find out how federal second chambers are regulated: are they typically involved in legislative processes, at what stage and to what extent? Do they possess any other, non-legislative powers, and do these powers relate to the component units? Are their composition and appointment fully provided by the federal constitution, or is this to some extent left to the component constitutions? For these purposes, students could be grouped into different teams that explore either different constitutional texts and/or different issues relating to a second chamber. One other team could be asked to explore the constitutions of the few federal jurisdictions with unicameral parliaments, and compare the specificities of these parliaments with regard to federalism and shared rule. All teams shall present the results of their research afterwards for general discussion. Which constitutional arrangements seem to be particularly favorable to the representation of component interests?

If students are especially interested in the practical working of federal second chambers, think about a possible excursion to the seat of that chamber or about an invitation of one or more members or ex-members of that chamber for a panel discussion online or in presence with your class.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Do you think that federal second chambers are outdated institutions that are no longer relevant to an efficient functioning of federal systems? What are their inherent problems, and can these chambers be improved?
2. Are there any better forms of representing territorial interests or practicing shared rule than a federal second chamber? Discuss the advantages and disadvantages of various options.
3. Do you think that federal second chambers have more legitimacy than other kinds of second chambers (in unitary states) exactly because they are placed in a federal system?
4. Are there any particular federal second chambers across the globe that could be used as best (or worst) practice examples? Explain why you think that this is the case: is it because of a particular organization or functions, or is it just a question of 'federal culture'?
5. The U.S. Senate was the prototype of a federal second chamber. Discuss its role today and its possible use as a model for other federal states.
6. Will equal numbers of members of each component unit be undemocratic if the population size varies among the component units? Is equal representation confederal in nature? Do different numbers, roughly based on population size, eventually resemble the composition of a first chamber?
7. Does the classification of federalism – and federal states – as symmetric or asymmetric, as original or derivative, as mature or emerging have an impact on the design and role of federal second chambers?
8. Do you think that perfect or imperfect bicameralism is better suited for a federal system? In the case of imperfect federalism, which functions do you consider the most important for a federal second chamber?
9. Are problems with which federal second chambers are associated peculiar to federalism or bicameralism, or are they generally inherent in modern parliaments and party politics?
10. Do you think that local governments should be represented in a 'territorial' second chamber as well, such as in the French Senate? Should non-territorial communities, in particular minorities, be represented in a federal second chamber? Would this weaken or strengthen federalism and why? Where regional second chambers exist at component level, whom do they represent?

READINGS FOR STUDENTS

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- Hamilton, Alexander, James Madison, and John Jay (1961), *The Federalist*, ed. Jacob Cooke, Middletown, CT: Wesleyan University Press.
- Le Roy, Katherine and Cheryl Saunders (eds.) (2006), *Legislative, Executive, and Judicial Governance in Federal Countries*, Montreal and Kingston: McGill-Queen's University Press.
- Luther, Jörg, Paolo Passaglia, and Rolando Tarchi (eds.) (2006), *A World of Second Chambers*, Milan: Giuffrè Editore.
- Palermo, F. (2018), 'Beyond second chambers: alternative representation of territorial interests and their reasons', *Perspectives on Federalism* 10 (2), 49–70.
- Palermo, Francesco and Karl Kössler (2017), *Comparative Federalism: Constitutional Arrangements and Case Law*, London: Hart Publishing.
- Patterson, Samuel and Anthony Mughan (eds.) (1999), *Senates: Bicameralism in the Contemporary World*, Columbus: Ohio State University Press.
- Watts, Ronald (2008), *Comparing Federal Systems*, 3rd edn., Montreal and Kingston: McGill-Queen's University Press.

TEST/EXAMINATION QUESTIONS

Undergraduate Questions

1. Describe the main options for the composition and appointment of the members of a federal second chamber.
2. Describe the range of functions that could be exercised by a federal second chamber. Which functions do you consider most important from the perspective of federalism?
3. Distinguish between perfect and imperfect bicameralism and discuss the main impact of each model on a federal system.
4. What are the main reasons for political dysfunctionalities of federal second chambers?

Postgraduate Questions

1. Discuss the model of the U.S. Senate vis-à-vis other federal second chambers. Could some of them be used as best-practice examples?
2. Discuss the possibility of alternative mechanisms (intergovernmental conferences, 'federalized' composition and voting in a unicameral parliament or similar) through which shared rule could be practiced instead of a second chamber. Would these mechanisms be suitable as a regular model for all federal systems?

3. In which ways could members of a federal second chamber be motivated to be more responsive to the needs of the component units?
4. How can inequalities among the component units, both with regard to their needs and their formal representation, be avoided when it comes to decision-making in the federal second chamber?

POINTS FOR EVALUATION

Instructors should consider for their evaluation whether their students are undergraduate or postgraduate and their field of study (e.g., law, political science, history, sociology). Depending on these circumstances, students may be expected to know more or less about, for instance, constitutional, political or other issues relating to federal second chambers. The learning objectives must therefore be adapted to these circumstances.

For evaluating whether the learning objectives have been reached, instructors should choose between various types of presentations or exams, for example in teams or individually, orally or in writing, possibly also in a research paper format. Students should be able to actively present their knowledge and not just respond to multiple-choice questions.

Undergraduate students should be able to put second chambers in context with federalism and understand the need for shared rule, namely, that the component units must be able to partake in federal matters, above all federal legislation. They should be able to identify the main organizational and functional options for federal second chambers and have basic knowledge about their possible deficits. They do not need to know details or have comparative knowledge about federal second chambers.

Postgraduate students should be able to discuss federal second chambers more profoundly, from theoretical, national, and comparative perspectives. A research paper might be more suitable for evaluating these students. Students should be able to analyze and discuss the political and academic criticism of federal second chambers as well as possible benefits deriving from them, also with regard to democracy and separation of powers.

SUGGESTIONS FOR FURTHER READING

- Baldwin, Nicholas and Donald Shell (eds.), *Second Chambers*, Abingdon: Routledge.
- Belser, E. M. (2018), 'The Swiss Ständerat: a model of perfect bicameralism', *Perspectives on Federalism* 10 (2), 152–81.
- Gamper, A. (2018a), 'Legislative functions of second chambers in federal systems', *Perspectives on Federalism* 10 (2), 117–33.
- Gamper, A. (2018b), 'Representing regions, challenging bicameralism: an introduction', *Perspectives on Federalism* 10 (2), i–ix.

- López-Basaguren, A. (2018), 'The secession issue and territorial autonomy in Spain: bicameralism revisited', *Perspectives on Federalism* 10 (2), 238–67.
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- Patterson, S. C. and A. Mughan (2001), 'Fundamentals of institutional design: the functions and powers of parliamentary second chambers', *The Journal of Legislative Studies* 7 (1), 39–60.
- Popelier, P. (2018), 'Bicameralism in Belgium: the dismantlement of the Senate for the sake of multinational confederalism', *Perspectives on Federalism* 10 (2), 215–37.
- Russell, M. (2018), 'Attempts to change the British House of Lords into a second chamber of the nations and regions: explaining a history of failed reforms', *Perspectives on Federalism* 10 (2), 268–99.
- Saunders, Cheryl (2020), 'The possibilities and pitfalls of bicameralism', in Alain-G. Gagnon and Johanne Poirier (eds.), *Canadian Federalism and Its Future: Actors and Institutions*, Montreal and Kingston: McGill-Queen's University Press, pp. 27–52.
- Schiller, Wendy (2000), *Partners and Rivals: Representation in U.S. Senate Delegations*, Princeton, NJ: Princeton University Press.

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7. High courts in federations: neutral referees or team players?

Nicholas Aroney

EXPLANATION OF HIGH COURTS IN FEDERATIONS

Federations typically involve a distribution of responsibilities between federal and state (or provincial or cantonal) governments. This distribution is usually contained in a written constitution (Dicey 1915, 144–54). Under the constitution, the federal legislature typically has power to make laws on topics considered important for the whole federation, while the state legislatures have power to make laws on topics considered important for states (Majeed, Watts and Brown 2006). Occasionally, the federal and state governments disagree about the interpretation and application of the constitutional distribution of responsibilities. For example, the federal legislature might make a law which the states believe exceeds the federation's constitutional powers, trespassing into matters reserved to the states. Federal constitutions typically provide for the resolution of such disputes by the courts, especially the highest court of appeal in the federation. This dispute-settling function exercised by the courts is called constitutional judicial review (Watts 2008, 157–61; Palermo and Kössler 2017, 261–80).

The distribution of responsibilities between the federal and state governments is possible because federations involve the establishment of at least two distinct orders of government. Each order of government, federal and state, has its own government institutions. In modern constitutional systems, the three most important institutions of government are the legislature, executive and judiciary. The legislature has power to make laws, the executive is responsible to implement the law, and the judiciary is authorized to resolve disputes about the law (Le Roy and Saunders 2006). Federations take essentially two approaches to the organization of the judiciary. They may establish a single system of courts operating for the entire federation (the states included), or they may institute a dual system with distinct systems of courts operating at a federal and state level (Aroney and Kincaid 2017, 10–11, 524–9).

In some federations, all courts have authority to resolve constitutional disputes about the powers and responsibilities of the federal and state institutions of government. Within such systems, courts are organized in a hierarchical structure enabling a party to a dispute to appeal the legality of a lower court's decision to a higher court. In such systems, there is usually a highest court of appeal, called either the supreme court or the high court, which has authority to make a final determination. In other federations, specialist courts adjudicate matters concerning particular areas of law. These specialist courts usually include a class of courts known as constitutional courts, which have particular responsibility to adjudicate constitutional disputes, including disputes about the constitutional powers and responsibilities of the federation and states (Kelsen 1942).

REASONS TO STUDY HIGH COURTS AND FEDERALISM

High courts and constitutional courts perform an important function in federations because they help to ensure that the constitutional allocation of powers and responsibilities between the federation and the states is maintained (Bednar 2008, 119–24; Delaney 2022). Disputes can arise within federal systems concerning an array of issues (Aroney and Kincaid 2017; Aroney 2019). These include:

- the scope of powers of the federation and the states
- the constitutional validity of federal and state laws and executive acts
- possible inconsistencies between federal and state laws
- interference by one order of government in the capacity of another order of government to perform its constitutional functions
- representation of the states or the people of the states in federal institutions to enable the states to participate in the governance of the federation as a whole
- the origins and foundations of the federal constitution and the means by which the constitution can be revised or amended.

Without some means by which disputes between the federal and state governments can lawfully be resolved, a federal system could fall into chaos and confusion. Citizens may be confused as to which sets of laws they are obliged to obey in cases of inconsistency between federal and state laws. Worse still, disagreements between the federation and the states may degenerate into open conflict and even civil war. As noted, federal systems are based on a constitutional allocation of legislative, executive and judicial powers between the federation and the states (Le Roy and Saunders 2006). Judicial review by

courts is an important protection for both the federal and the state institutions of government and the integrity of the federal system. For this reason, judges need to have the character, legal skills and experience to adjudicate federalism disputes in an unprejudiced manner between the interests of the federation, the states and other parties to the dispute. Judges are typically given tenure of office and security of remuneration to shield them, as much as possible, from political influence or interference (Wheare 1947, 66; Halberstam 2008).

This important function exercised by the courts, and their constitutional insulation from politics, does not mean they are infallible or beyond criticism, or that their decisions have no profound political implications. In most federations, the decisions of the courts are scrutinized and often criticized. In many federal systems, the courts have had a long-term tendency to interpret and apply the constitution in a manner that favors the federation over the states. In other federal systems, the courts have adopted a more balanced approach. In many federal systems, the highest courts of appeal or constitutional courts are appointed by the federal government. It is sometimes argued that this explains, at least partly, why courts often appear to favor the federation over the states. The particular constitutional allocation of responsibilities between the federation and the states, and the interpretation of that allocation by the courts, is unique to each federal system. Some countries have relatively centralized federal systems; others are more decentralized. A federal country's centralization or decentralization is a function of its history, culture and politics, and these factors also influence the way the courts interpret the constitutional allocation of powers between the federation and the states (Schneider, Kramer and di Toritto 2009; Popelier 2016; Aroney and Kincaid 2017, 494–534).

HOW HIGH COURTS FIT INTO FEDERALISM RESEARCH AND STUDY

Federal systems can enable ethnically, religiously, culturally and economically diverse political communities to be part of a larger unified political community while preserving their distinct identities (Moreno and Colino 2010; Aroney 2016). Federal systems can also enable these diverse political communities to govern themselves while also participating together in the governance of the federation as a whole (Elazar 1987). This combination of 'self-rule' with 'shared rule', and the maintenance of 'diversity' with 'unity', depends on the constitutional allocation of responsibilities and powers between the federation and the states. The courts thus play a vital role in preserving these principles of self-rule and shared rule and in maintaining a balance between diversity and unity in federal systems.

Politically diverse communities are likely, at times, to disagree about important political decisions and government policies. Federal systems are means

by which these disagreements can be managed and resolved. Their long-term success and viability depend on an array of factors, including the wisdom with which their constitutions are designed and drafted, the wisdom with which their political leaders make decisions and adopt policies, and the wisdom with which the courts adjudicate constitutional disputes concerning the allocation of powers and responsibilities between the federation and the states (see Bednar 2008).

LEARNING OBJECTIVES

Students should acquire both basic knowledge and deeper understanding of the role and function of courts in federal systems so they can engage in critical reflection and wise deliberation about the design, operation and reform of federal systems more generally. In particular, students should:

- obtain a basic knowledge and understanding of the ways in which federal constitutions distribute powers and responsibilities, and of the importance of this distribution for the viability of each federal system;
- obtain a basic knowledge and understanding of the important functions of courts in federal countries, the ways in which court systems are organized, and the conditions under which judges are appointed and hold office;
- develop a deeper knowledge and understanding of the significance of courts in federal countries for the maintenance of diversity and unity and the preservation of self-rule and shared rule;
- identify the various kinds of disputed constitutional issues that can arise in federal systems and how these disputes are resolved by the courts;
- understand and evaluate the role played by courts in interpreting federal constitutions and resolving federalism disputes; and
- develop an understanding of the common characteristics and functions of courts in federal systems as well as an understanding of the ways in which the courts in particular federal systems are organized or function in different or unique ways.

HOW TO STRUCTURE AND TEACH HIGH COURTS IN FEDERATIONS

To explain the principles of self-rule and shared rule, divide the class into groups and present them with an issue to be resolved by deliberation, debate and majority vote – such as the particular methods of assessment in the course. Ask each group to decide on the method of assessment independently of the other groups. Have each group appoint a spokesperson to describe and defend the group's decision. Take a record of those decisions, identifying the ways

in which the groups' decisions are the same or similar and the ways they are different or contradictory. Also identify for each group the number of students who supported the group decision and the number who dissented. Next, categorize the student decisions into particular approaches to student assessment and tally the number of student votes in favor of each approach. Record the tallies of student votes so that the results in each group are recorded as well as the results for the whole class. Draw the students' attention to any differences in outcome if the decisions were to be made: (a) for each student group by that group; (b) for the whole class by all of the student groups with each group having a single vote; (c) for the whole class by all the students in the class with each individual student having a single vote. Ask the students to consider the significance of these differences in outcome and to reflect on the reasons why one might favor methods (a), (b) or (c). These considerations might concern the capacity of the decision-making system to adopt policies that:

- are most preferable or most suitable for most students
- are determined through processes that maximize the participation of students
- treat all students in the class fairly, equally or appropriately.

To explain the significance of the judicial resolution of federalism disputes, have students consider the full array of pedagogical issues over which the class might deliberate and whether particular issues are best addressed using decision-making methods (a), (b) or (c). These issues could include: curriculum, teaching, assessment, timing, and so on. Have students reflect on the benefits of more or less unity or diversity of decision-making powers in relation to these matters. Given a certain allocation of responsibilities and decision-making procedures (i.e., (a), (b) or (c)), have students reflect on what sorts of disputes might arise and how those disputes might best be resolved. Have students reflect on the implications of appointing a 'judicial' committee consisting of three students to resolve such disputes, and the consequences of the appointment of those students by decision-making methods (a), (b) or (c).

To help students understand how the same dynamics arise in federal systems, ask students to read and discuss summaries and extracts from a selection of judicially decided cases in particular countries. Palermo and Kössler (2017), for example, offer a survey and discussion of the following topics: fundamental rights, social welfare and healthcare, environmental protection, immigration and migrant integration, and external relations. Students could read and discuss some of these materials.

For deeper understanding, use standard constitutional law casebooks to provide a brief precis and an extract from the reasons given by the courts in each case. The following English-language casebooks are suggested:

- Australia: Aroney and Murray 2022
- Canada: Magnet 2007; Hogg 2019
- Comparative: Murphy and Tanenhaus 1977; Cappelletti 1979; Jackson and Tushnet 2014; Palermo and Kössler 2017
- European Union: Weatherill 2016
- Germany: Kommers and Miller 2012
- South Africa: Kende 2015
- United Kingdom: Young, Turpin and Tomkins 2021
- United States: Kommers et al. 2018; Rotunda and Gershan 2021.

Using these casebooks, the students could focus on a selection of pivotal *historical* cases that have shaped court approaches to adjudicating federalism disputes. For example, students could be asked to read and compare extracts from the following cases:

- Australia: *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129
- Canada: *Citizens Insurance of Canada v Parsons* (1881) 7 AC 96
- Germany: *Southwest State Case 1* BVerfGE 14 (1951)
- South Africa: *In re: National Education Policy Bill* 1996 (3) SA 289
- United Kingdom: *Imperial Tobacco Ltd v Lord Advocate* [2012] UKSC 61
- United States: *McCulloch v Maryland* 17 U.S. 316 (1819).

Building on these cases, students could then be invited to compare and consider approaches to constitutional adjudication of federalism disputes being used *currently* by the courts. For example, students could compare:

- Australia: *New South Wales v Commonwealth* (2006) 229 CLR 1
- Canada: *References re Greenhouse Gas Pollution Pricing Act* (2021) 455 DLR (4th) 1; 2021 SCC 11
- Germany: *Television Case 12* BVerfGE 205 (1961)
- United States: *National Federation of Independent Business v Sebelius* 567 U.S. 519 (2012).

To understand the background and significance of these and other cases, students could also use expert discussion of the federalism jurisprudence of particular countries (see Baier 2006; Taylor 2006; Schneider, Kramer and di Toritto 2009; Aroney and Kincaid 2017; and Palermo and Kössler 2017).

It can also be illuminating to compare the ways in which courts interpret the ‘federal’ nature of the constitution and its constituent foundations. Cases that illustrate particular approaches include:

- Australia: *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31
- Canada: *Reference re: Amendment of the Constitution of Canada* [1981] 1 SCR 753; *Reference re Secession of Quebec* (1998) 161 DLR 4d 385
- European Union from the perspective of the European Court of Justice: *Van Gend en Loos v Nederlandse Administratie der Belastingen*, Case 26/62, [1963] ECR 1; *Costa v ENEL*, Case 6/64, [1964] ECR 585
- European Union from the perspective of the German Constitutional Court: *Brunner v European Union Treaty* [1994] 1 CMLR 57
- European Union from the perspective of the UK Supreme Court: *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5
- United States: *Texas v White* (1869) 74 U.S. (7 Wall) 700; *New York v United States* 505 U.S. 144 (1992).

One very important source of federal power in the United States is the so-called ‘commerce’ power, which is the power to ‘regulate commerce with foreign nations, among the several states, and with the Indian tribes’ (U.S. Constitution, Article I, sec. 8). Similar federal powers are conferred in Australia, Canada and the European Union. However, the powers are expressed differently and have been interpreted differently. Students could read and discuss the following cases:

- Australia: *Airlines of New South Wales Pty Ltd v New South Wales (No 2)* (1965) 113 CLR 54; *Cole v Whitfield* (1988) 165 CLR 360
- Canada: *Citizens Insurance of Canada v Parsons* (1881) 7 AC 96; *General Motors of Canada Ltd v City National Leasing* [1989] 1 SCR 641
- European Union: *Simmenthal SpA v Ministero delle Finanze italiano*, Case 35/76, [1976] 2 ECR 1871
- United States: *Gibbons v Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *Wickard v Filburn* 317 U.S. 111 (1942); *United States v Lopez* 514 U.S. 549 (1995).

Further insights can be gleaned by comparing the approach of the courts to questions of electoral apportionment (Aroney 2008). Students could consider the following cases:

- Australia: *McGinty v Western Australia* (1996) 186 CLR 140
- Canada: *Reference Re Provincial Electoral Boundaries (Sask.)* [1991] 2 SCR 158
- Germany: *Apportionment Case II* (1963) 16 BVerfGE 130
- United States: *Wesberry v Sanders* 376 U.S. 1 (1964).

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. What are the specifically ‘federal’ features of a constitution that can give rise to political and legal disputes? How are these features related to the principles of self-rule and/or shared rule?
2. In what ways are responsibilities and powers distributed between the federation and the states in federal systems? Do particular allocation methods tend to favor the federation or the states?
3. Do particular methods of allocation influence the way courts interpret and imply the constitution when resolving federalism disputes?
4. In what ways are courts, especially high courts and constitutional courts, appointed? In what ways are courts insulated from the political branches of government? Is this insulation effective?
5. Does the appointment of judges by federal governments have consequences for the types of persons appointed and the approaches they take to interpreting and applying the constitution in federalism disputes?
6. Do requirements that judicial appointments must be approved by state governments or drawn from state jurisdictions have consequences for the persons who are appointed and the approaches they take?
7. What specific methods of interpretation do courts use when adjudicating constitutional disputes? What is the role of ‘text’, ‘structure’, ‘history’, ‘intent’, ‘purpose’, ‘ethics’, ‘principle’ or ‘comparison’ in such interpretations?
8. How can particular methods of allocating power (to the federation and the states) influence the interpretation of those powers? Consider the significance of whether the powers are ‘presupposed’ or ‘conferred’ by the federal constitution, and whether they are allocated ‘specifically’ or ‘generally’ on either the federation or the states.
9. To what extent can the specific nature of the powers conferred on either the federation or the states influence the ways in which courts interpret those powers? Consider, for example, powers to regulate matters such as interstate trade and commerce, foreign affairs, immigration, hospitals and healthcare, education, language and marriage.
10. How can conceptions of the nature of the federal system influence the interpretation of the federal constitution (e.g., whether it was formed by *integration* of originally independent states or by *devolution* within an originally unitary state)?
11. How can the cultural or political background of a federal country influence the interpretation of its constitution (e.g., whether the federation is uninational or plurinational, and homogenous or heterogenous in ethnicity, religion, language, culture, economics and political ideology)?

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TEST/EXAMINATION QUESTIONS

1. What is the most important function of a high court in a federation and why is this role so important?
2. Is constitutional judicial review necessary or desirable in a federation?
3. Do courts in federations tend to centralize power, decentralize power or maintain a balance?
4. What is the difference between a high court and a constitutional court?
5. Compare the functioning and operation of high courts and constitutional courts in federations. In what ways are they similar and in what ways

are they different, and how do those differences shape the way that they function?

6. Explain and give examples of the differences between unified and dualistic court systems in federations. In what ways do these differences influence or shape the way that the courts function in a federal system?
7. What factors, if any, explain the functioning of courts in federations as either centralizers or decentralizers of power? What can be done to help ensure that the courts exercise their judicial review functions effectively and appropriately?
8. What method or methods are used by courts when interpreting and applying federal constitutions? What method or methods should they use? In what ways do particular methods influence or shape the outcomes of particular federalism cases?

POINTS FOR EVALUATION

Students should demonstrate knowledge of the following matters and an understanding of their significance:

- the specifically ‘federal’ features of constitutions that can give rise to political and legal disputes and their relation to the principles of self-rule and shared rule and the maintenance of unity and diversity;
- the ways that responsibilities and powers are distributed between the federation and the states in federal systems and the special role played by courts in adjudicating disputes concerning those distributions;
- the differences between high courts and constitutional courts and the effects of those differences for how courts function in federal systems;
- the ways in which judges are appointed and court systems are organized in federal systems and their implications for approaches taken by the courts when resolving federalism disputes;
- the methods courts use to interpret federal constitutions and their systematic tendencies towards centralization, decentralization or the maintenance of a balance between centralization and decentralization.

SUGGESTIONS FOR FURTHER READING

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8. Intergovernmental relations: the lifeblood of federalism

Johanne Poirier

EXPLANATION OF INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS

Federalism is profoundly relational. Both the theory and concrete incarnation of federalism rest on a combination of self-rule (or autonomy) and joint rule (concerted action, cohesion) (Popelier 2021). Regardless of the actual configuration, every federal system will – by definition and necessity – entail interaction between federal partners. Intergovernmental relations (IGR) refer to the institutions, mechanisms, processes and power plays through which this interaction unfolds between federal partners (Poirier, Saunders and Kincaid 2015).

In most federations, vast domains of policy development and implementation require some collaboration – or generate friction – between orders of government. Through IGR, federal actors redistribute resources, share information, make joint decisions, and elaborate interlocking arrangements. IGR structures the interface between exclusive, but closely related, powers. It can also help clarify ‘who actually does what’ in the context of shared or concurrent jurisdiction. IGR can also lead to an order of government trenching on another order’s jurisdiction in ways that contravene the formal division of powers. Competing models of IGR can co-exist in a federation, depending on periods or policy issue (Agranoff 2007).

IGR can be vertical (between federal authorities and constituent units), horizontal (between the latter), bilateral or multilateral. Increasingly, federalism scholarship considers actors beyond those with formal constitutional authority. These actors may include local governments, indigenous nations, minorities, and civil society or private sector actors. Sometimes, federal authorities bypass constituent regional units to deal directly with local governments or citizens in a way that ‘squeezes out’ constituent units and generates ‘hourglass federalism’ (Courchene 2004). Federal design is complex. IGR generates, and unveils, additional layers of complexity in public action.

IGR occurs through rich networks of institutions and mechanisms. Cooperative IGR techniques include the legislative branch but far more frequently the executive branch of government. The former include legislative harmonization, delegation of administrative or regulatory functions by one order of government to another, dedicated parliamentary committees, or, more rarely, direct interaction between elected officials of distinct orders of government, sometimes through regionally based associations. At the executive level, federal diplomacy occurs through high-level ministerial councils and often intense and constant interaction between policy specialists from the various orders of government, including, in some contexts, dedicated IGR departments (Schnabel 2017). IGR can also involve arms-length or administrative agencies to which the various orders of government delegate certain functions. The myriad of intergovernmental agreements concluded between federal actors (occasionally with third parties), and which may be legally binding or not, plays essential functions in nearly every federal system (Poirier 2004; Parker 2015; Fahey 2020).

The dynamics of IGR depend on specific institutional arrangements, history, party politics, constitutional and political culture, form of government, socio-demographic diversity, resource distribution, policy areas, and timing. Even in a single federal system, IGR oscillates between institutionalization and informality. More recent federal systems, particularly those that arose through devolution from a unitary structure, tend to anticipate and institutionalize interaction to a greater extent than older federations. Similarly, civil law federations more often provide legal frameworks for intergovernmental institutions and cooperative processes than do their more pragmatic counterparts influenced by the Anglo-American and common law tradition. The latter more often consider virtually all IGR to be almost exclusively political in nature (even if affected by court decisions, for instance). For example, the former more readily recognize some form of constitutionalized ‘federal loyalty’ or duty of good faith, which must guide the actions of various orders of government and which courts can oversee (Poirier and Saunders 2015; Fleiner and Saunders 2013; Gamper 2010). Of course, many federal regimes fall somewhere between this dichotomy (Poirier and Saunders 2015).

Regardless of where IGR is situated on the scale of (in)formality, it plays similar roles in various federations. IGR helps determine who does what, who pays for what, and how things are done in specific policy areas. IGR also contributes to the the gradual, ad hoc transformation of dualist federal systems into more integrated ones, in the (re)creation of regional blocks within a particular federation, on the margins of the official federal architecture and without recourse to formal constitutional amendments (Osaghae 2015). In this respect, IGR is an instrument of para-constitutional engineering that can significantly affect the federal equilibrium (Poirier and Hartery 2022).

Despite its prevalence, IGR can be hard to decipher because relations can often unfold behind closed doors or at administrative and operational levels. Thus, IGR is essential, ubiquitous, idiosyncratic, and yet, opaque (Poirier 2019). In nearly all federal systems, IGR reinforces the executive branch to the detriment of the legislative and judicial ones, which can create serious issues of transparency, accountability, and respect for the ‘federal rule of law’.

REASONS TO STUDY IGR

Political scientists, economists, historians, policy analysts, and constitutional and administrative law specialists who seek to decode the federal phenomenon all have to delve into IGR at some point. This allows us to contrast the formal constitutional set-up and theory with the reality of federalism ‘as it is lived’.

Questions related to IGR are likely to affect every theme examined in this volume, from second chambers to fiscal federalism, division of powers and courts to constitutionalism, political (and legal) culture to electoral regimes, local government to asymmetry, plurinational federalism and relations with indigenous peoples to conflict resolution and secession, and from the potential and pitfalls of federalism for gender equality and democracy to comparative methodology. Similarly, it is nearly impossible to understand specific case studies – whether they focus on particular federations, institutions, or policy areas – without reflecting on the IGR dynamics and mechanics through which interaction actually occurs between orders of government. All these angles require consideration for the equilibrium between autonomy and cohesion, self-rule and joint rule. IGR is often the pivot for balance between both sides of this equation. Thus, the reason to study IGR is that it is nearly impossible to understand federalism without doing so.

HOW IGR FITS INTO FEDERALISM RESEARCH AND STUDY

The literature broaches IGR from countless angles. The following illustrations are far from exhaustive.

- Political *processes* largely determine the nature and dynamics of IGR. Scholars seek to capture the motivation behind the decision to cooperate or not (Bolleyer 2019; Parker 2015) or to assess the impact of IGR on the federal balance (e.g., its centralizing or decentralizing effect). In this context, IGR can be described as collaborative, cooperative, competitive, egalitarian, hierarchical, confederal, even coercive (Kincaid 1990; Stephens and Wikstrom 2007).

- IGR also refers to the *means* through which interaction occurs between orders of government. For instance, second chambers are often presented as an essential centerpiece of any federal system. Yet, bicameralism has not met its promise of offering effective participation to constituent units (Saunders 2020; Fessha 2021). Instead, various forms of IGR may offer more effective, flexible, adapted means of securing the ‘joint rule’ dimension of federalism (Palermo 2018).
- Political science and law literatures also seek to capture the mechanisms and institutions that structure interlocking action in decision-making, with executive institutions and processes getting the most focus. Remarkably under-studied are the ways in which the legislative branch contributes to federal interaction, including harmonization of laws, delegation of regulatory and administrative powers from one order to another, sharing best practices, or – at least in parliamentary federations – scrutiny of collaborative actions undertaken by the various executive branches.
- Trends in constitutional interpretation favoring overlapping jurisdiction, even in formally dualist federations, have IGR implications (Steytler 2017). If several orders of government can act, there might be duplication, tension, emulation, or negotiations. Most policy areas in federal systems involve some interaction between orders of government at the policy development, implementation and evaluation stages.
- Federal theory often posits that federalism enhances democracy, notably by increasing opportunities for political participation and the ability of citizens to lobby different orders of government to enact policy preferences. However, in most federal systems, IGR is notoriously executive-dominated, and, in some cases, the decisions that emerge from intergovernmental negotiations are shielded from effective parliamentary and judicial scrutiny. Thus, the intersection between federalism, democracy and the rule of law has profound IGR implications (Benz 2017).
- Feminist scholars have examined how federalism offers both opportunities and challenges for gender equality (Vickers 2019). One might hypothesize that IGR reinforces the executive branches in ways that can marginalize gains made by women – and other minorities – in political participation in elected assemblies. Top-level IGR is arguably not only executive- but also male-dominated. In some federations, however, women are present in large numbers in the less visible layers of public administration where concrete collaboration, information-sharing, and the like occurs. Exploring this dimension of IGR through a gender lens might yield enlightening insights.
- Certain issues, though not framed as studies of IGR per se, can be understood through the IGR lens. For instance, explorations of ‘federal loyalty’ (Gamper 2010) or the ‘federal spirit’ (Burgess 2012) are about the commitment to maintaining good faith and constructive relations between federal

partners. Similarly, exploring nested and competing national identities in plurinational federations (Gagnon 2021) indirectly raises issues of relationality between relevant actors and, thus, of IGR.

LEARNING OBJECTIVES

When studying IGR, students should understand that:

- IGR is an essential component of the ‘shared rule’ dimension of federalism.
- Every federal system includes both institutionalized and informal IGR. The definition of what is (in)formal partly depends on the disciplinary and legal culture lenses being used by authors.
- IGR may be cooperative, competitive, coercive, or collusive depending on time period, partisan politics, and policy area.

Depending on the level of instruction and time devoted to IGR, students should also be able to:

- Identify distinct IGR mechanisms (those that involve the legislative and executive branches, agencies, civil service, agreements, etc.).
- Contrast IGR in a particular federal system with others by using analytical concepts such as horizontal, vertical, bilateral, multilateral, formal or informal arrangements or trends.
- Trace major trends in IGR in a particular federal system and understand how relations may evolve through time, policy areas, and so on.
- Contrast IGR modalities and trends between distinct federal systems.
- Recognize the impact of IGR on political and legal accountability (democracy, judicial review).
- Perceive the impact of IGR not only on a federal system’s formal actors but also on other groups, particularly marginalized ones, including indigenous peoples and ethno-linguistic or sexual minorities.
- Reflect on how IGR affects and alters a country’s formal federal architecture, as evidenced by the written constitution, for instance. Does IGR transform how powers are actually exercised, despite their official allocation? Does IGR complement – or serve as an alternative to – the second chamber?

HOW TO STRUCTURE AND TEACH IGR

Topics to be broached in teaching IGR have been addressed above. This is a possible sequence:

1. Concepts and institutional framework

2. Main IGR actors, institutions and mechanisms
3. Case studies (countries, institutions, policy issues)
4. Major trends
5. Challenges of accountability.

More interesting, perhaps, is the question of *how* to address the decoding of IGR.

Relevant, effective, and realistic pedagogies will depend on the number of sessions allocated to IGR, whether students are undergraduate or graduate, and whether the course is delivered in a large hall or a small seminar. Methods will also depend on whether evaluations take place through exams or research papers, and, in the latter case, whether students can engage in minimal empirical enquiry. Approaches will depend also on whether IGR is addressed through a comparative lens or a single federation.

Pedagogical approaches might include:

- Critical summary of readings by students, individually or in small teams. Students may be asked to prepare a list of questions for class discussion.
- Large classes may be divided into discussion groups. Cue questions might include:
 - Identify five IGR methods used in a policy area we have been studying.
 - Think of a topic you are studying in a different course (e.g., electoral politics or international relations). How are issues in that course affected by IGR?
 - What is the impact of IGR on the centralized/decentralized nature of the federal system we are studying?
- Given IGR's practical dimension, guest speakers can lift the veil of federalism 'as it is lived'. They might include:
 - Policy specialists who deal with intersecting multi-level constitutional powers and policy action. How do they manage? What works or not? What would they do differently? What reforms would they suggest?
 - Political actors who have negotiated federalism matters from seemingly mundane cooperative arrangements to major constitutional reform.
 - Constitutionalists or public law specialists who might explain the formal (and informal) methods of interaction in the particular system.
- Have note takers map out discussion or synthesize presentations by guest speakers.
- In a seminar, create teams of country-specific experts. Have each group synthesize the history, geography, ethno-linguistic diversity, constitutional design, division of powers, political and economic trends, and so on, of a specific federation.

- Once they have presented their findings, the class can explore IGR more transversally in their various federal systems.
- Students could compare second chambers as well as top-level inter-governmental councils, or contrast formal ‘administrative federalism’ (German-style) with interlocking practices in dualist systems where each order has its own civil service mandated to implement its own programs.
- Another way of studying IGR, particularly with graduate students or in specialized seminars, is to see how IGR intervenes at the policy development, funding, and implementation stages of specific policy areas (e.g., environmental protection, immigration, housing).
- If technology allows, class presentations can be completed by commentaries posted on the electronic forum of the class’s teaching platform. Students may be asked to comment on three or four presentations through the term. Comments should not only summarize the presentation, but engage broadly with the rest of the course material.
- In all contexts, building on students’ strengths, prior training or professional experience, interests, or linguistic abilities enriches discussions.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. What are the principal institutions and mechanisms of IGR (as found in constitutional, quasi-constitutional or statutory texts, plus secondary sources)?
2. Do the IGR mechanisms effectively meet policy objectives?
3. How would you characterize IGR in a particular federal regime or time frame: confrontational, collaborative, coercive, collusive? Explain why and give at least three examples.
4. How does IGR illustrate the nature of a particular federal system’s political culture or ‘federal spirit’?
5. Is the way IGR is formalized, or not, a marker of legal culture (e.g., civil law versus common law federations)? Give examples and explain why.
6. Does IGR circumvent second chambers? Is IGR just a tool of power politics? Give examples.
7. Exploring IGR comparatively, discuss advantages and disadvantages of formalized IGR. What are best and worse IGR practices?
8. Should courts police how federal partners interact with each other? If so, how should this be done? Should courts only impose procedural rules, such as consultation, or should they review the outcome of a policy taken without due regard for the federal spirit?
9. Is IGR always executive-led? Is IGR a form of consociational democracy?

10. Is IGR an effective way of including important actors who are not ‘official’ partners in a federation’s functioning, such as municipalities, certain minorities, or indigenous peoples?
11. Does IGR play different roles in mono-national versus plurinational federations?
12. Is IGR a tool for introducing asymmetry in a federal system that is officially symmetrical (or the opposite)?
13. What mechanisms ensure accountability in IGR: special parliamentary committees, legislative obligations to publish documents concerning the conduct of IGR, or judicial review by certain kinds of courts?
14. Is IGR just a function of party politics? If so, does greater IGR institutionalization mitigate the partisanship that flows from party politics?
15. Select three assigned readings: critically assess them and bring the authors into conversation with one another.

READINGS FOR STUDENTS

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TEST/EXAMINATION QUESTIONS

Undergraduate Questions

1. Discuss the main formal institutions and informal practices that structure interaction between orders of government in a specific federal system.
2. What are the main trends in IGR in a specific federation and how have they evolved over time?
3. Does IGR compensate for an inability of the second chamber to ensure proper participation of constitutive units in federal law- and policy-making?
4. Choose a contemporary policy challenge and describe who can do what to address it from a constitutional perspective and who actually does what from an IGR perspective.
5. What is the impact of IGR on the division of powers?

Postgraduate Questions

1. Do you think certain IGR institutions or mechanisms in other federal systems could be 'imported' into yours? If so, why? If not, why not? How could this adaptation take place (informally, through IGR negotiation or through a constitutional amendment)?
2. Does mainstream literature miss important IGR mechanisms, trends, or processes present in the global South or within and between indigenous cultures in the North?
3. Are the asymmetry between constituent units and differences of powers between federal authority and components of the federation reinforced by IGR? Is this a positive or problematic effect of IGR? Explain.
4. Should federal loyalty, comity, and spirit affect IGR? If so, should courts ensure that federal partners act accordingly?
5. What are IGR's implicit para-constitutional functions?
6. Should the legal system structure IGR? If so, how? Is IGR a marker of legal culture? How so?
7. Does IGR generate a 'democratic deficit'?

POINTS FOR EVALUATION

Elements of evaluation should align with the learning objectives. They will depend on discipline, pedagogical approaches, and level of students' prior training. Several evaluation points were identified above.

Regardless of the mode of evaluation, students should understand the prevalence of IGR, the wide range of institutions and informal means through which interaction occurs between orders of government, as well as major trends. They should be able to define and distinguish between vertical, horizontal, multilateral, bilateral, asymmetrical, cooperative, competitive, and coercive IGR and provide examples of each. They should be able to describe how IGR shapes policy development, funding, and delivery, and be sensitive to how IGR may reinforce or marginalize official members of the federation. Students should understand that IGR plays out differently in dualist versus integrated federations. In the former, the transformation towards more overlapping jurisdiction and interlocked action might run counter to formal institutions, judicial scrutiny, and parliamentary oversight. In the latter, interaction is somewhat built into the system, and IGR will reinforce how those structural elements function, or sometimes run counter to them.

Graduate students should go beyond description and synthesis and provide a critical assessment of the issues addressed in class. They might build on their own work (in a doctoral thesis for instance) to address an aspect of IGR. They can work in a multi-disciplinary fashion (combining political theory and constitutional law, for instance) or conduct original empirical research. They also could discuss the distinct impact of IGR on plurinational versus mono-national federations, reflect on how institutions adapt to ensure accountability in the IGR context, or the role IGR plays in para-constitutional engineering.

SUGGESTIONS FOR FURTHER READING

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9. Fiscal federalism: federalism's nerve tissue?

Anwar Shah

EXPLANATION OF FISCAL FEDERALISM

Fiscal federalism studies the benefits and costs of fiscal decentralization, fiscal competition, the division of taxing, spending, borrowing, and regulatory powers, and the exercise of such powers by multiple orders of government in federations.¹ It also provides a framework based on basic economic principles to evaluate the division of constitutional authority and its exercise in these areas to advance the public interest. Thus, it covers the positive and normative aspects of decentralized fiscal arrangements.

Further, the constitutional and institutional arrangements – including the number of constituent units, political party regimes, executive, legislative, and judicial institutions, and traditions, culture, history, and path dependency – play essential roles in shaping fiscal arrangements. Therefore, broader contours of the constitutional landscape affect the practice of fiscal federalism.

A Stylized View of Fiscal Constitutions

Under a unitary constitution, a country has a single or multi-tiered government where effective control of all government functions rests with the central government. A stylized grouping of fiscal constitutions on the centralization/decentralization spectrum would show 'one republic' – a unitary fiscal constitution as the most centralized – and Montesquieu/Kincaid's confederate republic of city states or 'civic republics' (Kincaid 1990) as the most decentralized multi-order structure. In a confederate republic of city states or civic republics, the central government is the agent of the member units and may not have any independent taxing and spending powers unless specifically authorized by the city states. Hamilton–Madison–Jay's 'compound [federal] republic' or various forms of federations would occupy an intermediate space on this spectrum (Hamilton, Madison, and Jay 2012).

A unitary constitution facilitates centralized decision-making to further national unity. It places more emphasis on national security, law and order, uniformity, and equal access to public services than on democratic rights, voice and exit options, and diversity of preferences. A decentralized unitary constitution might overcome some of these shortcomings and with the added virtue of constraining duplicate layers of legislative and executive organs and associated costs, especially of intermediate tiers of government as in Scandinavian countries.

In a confederate republic, constituent governments are self-financed, and the confederate government is financed by contributions from member governments. A confederate republic comprising autonomous self-governing city states or ‘civic republics’ (Kincaid 1990) or Tiebout communities, places a premium on democratic choice, the exercise of voice and exit through voting by ballots and/or feet, diversity of preferences, and virtues of home rule and community governance. Since such small jurisdictions are vulnerable to hostile action, the central government for the confederate republic, financed by contributions from member civic republics, assumes national security and defense obligations. It also discharges other economic responsibilities authorized by the member states, such as a common currency and joint monetary authority.

An important alternative vision of multi-order governance – the compound federal republic comprising a compact between states and an independent central government – was conceptualized by American founders for governing the United States of America and subsequently redefined and replicated in many countries (see Inman and Rubinfeld 1991; Kincaid 1995). About 28 countries have various forms of ‘federal’ governance (Boadway and Shah 2009).

REASONS TO STUDY FISCAL FEDERALISM

Major aspects of fiscal federalism relate to the benefits and costs of fiscal decentralization, especially fiscal competition, the division of powers among orders of government for spending, taxing, borrowing, and regulation, and institutions of fiscal relations. The division of powers and fiscal competition have important implications for political, economic, and social union and the working of an internal common market. Further, the division affects the efficiency and equity of public service provision consistent with local preferences, economic stabilization and growth, and interjurisdictional fiscal equity.

Consider the case for and against fiscal competition. The Tiebout tradition views fiscal competition as a beneficial way to induce a match of local preferences and policies and to tame the Leviathan and foster innovation. The case against fiscal competition is that it is destructive and induces a ‘race to the bottom’.

The importance of appropriate spending assignments cannot be over-emphasized. If national defense and internal security, which are national in scope by their nature, are assigned exclusively to local governments, the nation might become vulnerable to external aggression and internal subversion. In turn, if municipal services are delivered by the national government, there would be an inadequate account of local preferences, economies of scale and scope, and lesser potential for holding the government accountable for service-delivery failures. Adherence to fiscal federalism principles helps avoid such pitfalls. A study of fiscal federalism typically documents *de jure* and *de facto* assignment of spending responsibilities and evaluates these for efficiency and equity.

A study of taxing powers is important to ensure that various orders of government have adequate revenues consistent with their expenditure needs. Further, each order should have significant autonomy to raise revenues from its own sources to deliver the menu and quality of services consistent with its constituents' preferences. Such autonomy is critical for local accountability. Such an analysis also looks at the nature of various taxes and their bases and implications of the assignment for adequacy of revenues and efficiency in tax collection, compliance and administration, efficient factor mobility, and smooth working of the internal common market.

Borrowing is needed to finance infrastructure on intergenerational equity grounds, but not all governments can have prudent access to capital markets. An analysis of borrowing authority examines the fiscal health of governments to access capital markets for sustainable infrastructure financing. It also looks at bankruptcy provisions to discourage imprudent borrowing and ensure that the delivery of critical public services is not jeopardized by defaults. Further, it studies the macroeconomic stabilization impacts of borrowing.

The study of intergovernmental fiscal transfers is important for several reasons. Transfers are important for bridging vertical and horizontal fiscal gaps, reducing interjurisdictional fiscal disparities, providing compensation for benefit spill-overs, setting national minimum standards for merit services, influencing local priorities in areas of high national but low local priority, overcoming infrastructure deficiencies, and providing economic stabilization. Fiscal federalism analyzes the existing grant structure's consistency with its objectives and evaluates these for their impacts on efficient and equitable service delivery, fiscal discipline, and local fiscal behavior.

Regulation has essential implications for standards and quality of public and private service provision, the safety of goods and services, and their impacts on the local, national, and global environment, and quality of life. Regulations also safeguard the health of residents, transportation safety, prudent hazardous-waste disposal, and pandemic mitigation. They aim to prevent the sale of substandard and unsafe goods and services and drugs open

to abuse. They also provide complaint and redress mechanisms against consumer exploitation and can prevent barriers to trade and factor mobility within the nation.

Institutions of executive federalism offer opportunities for intergovernmental consultation, coordination and deal-making on contentious issues and overcoming threats of open conflicts with secession potentials. Such institutions also help develop rapid unified responses to emerging crises, natural disasters, and pandemics that may or may not affect various constituent units uniformly across the nation. Institutions of legislative federalism are helpful in ratifying agreements on fiscal arrangements reached behind closed doors by institutions of executive federalism.

HOW FISCAL FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

Properly structured fiscal arrangements can work as the glue that binds a federation, just as ill-conceived arrangements can act as a solvent and incentivize disintegration. Fiscal federalism principles seek to preserve local autonomy and flexibility and linguistic, ethnic, cultural, and religious identity while satisfying national objectives of protecting disadvantaged individuals and groups and poorer regions and localities. Overall, various federations structure their fiscal arrangements to try to achieve fiscal decentralization and national unity while protecting diversity. In doing so, they take into consideration trade-offs associated with fiscal decentralization and attempt to strike a balance between centralization and decentralization consistent with national preferences.

The division of taxing, spending, and regulatory powers is guided by having self-rule to provide a diverse menu of public services and taxes to suit local preferences with local accountability while having shared rule or a predominantly federal rule to ensure minimum standards of commonly agreed merit services. Provisions against any barriers to trade and factor mobility help preserve an internal common market (e.g., the Interstate Commerce Clause in the U.S. Constitution) and federal pre-eminence in certain areas of legislation, such as citizens' fundamental rights and anti-discrimination.

Some federations use federal and state/provincial and provincial/state-local equalization transfers to lower-order governments to ensure that every citizen, regardless of place of residence, has access to a reasonably comparable bundle of public services at a sufficiently comparable tax burden.

The regulatory framework for borrowing can help ensure fiscal discipline and deal with fiscal insolvency.

Institutions of executive and legislative federalism limit conflicts and race-to-the-bottom responses to develop unfair competitive edges and cement unified responses.

LEARNING OBJECTIVES

1. What is federalism? What is its rationale and origins? What are its stylized institutional varieties, and what is the rationale for each variation? Which countries have a federal or quasi-federal constitution?
2. What is government's role in a federal economy? Which public services are best delivered in partnership with the private sector or beyond government entities?
3. What are the costs and benefits of fiscal decentralization, especially considering fiscal competition?
4. What should guide the jurisdictional design as to the number of orders of government and geographical delineation of lower orders of government? Should local governments have constitutional status, or should they be creatures of second-order governments?
5. What are the roles of various orders of governments for each public function? What rationale is used to assign these roles?
6. What financing instruments should be available to what order of government and why? What should be the impediments to their use as a 'race towards the bottom'. What are some useful insights from international practice?
7. What are the objectives and rationales of intergovernmental transfers? How should these be designed and structured to be consistent with those objectives? What is their role in ensuring equitable access to a reasonably comparable bundle of public services across the federation? How can these be used to encourage a 'race to the top'?
8. What economic principles guide borrowing decisions? What are the available instruments and their appropriate use? What institutional arrangements are needed to deal with insolvency? Which countries do better in ensuring fiscal discipline and why?
9. How are the regulatory powers assigned for various functions, internal movement of goods and services, and factor mobility? What are the underlying economic principles? Should some fundamental principles be enshrined in the constitution?
10. What are the challenges in decentralized fiscal governance? How can one ensure macro stability and fiscal discipline under decentralization?

HOW TO STRUCTURE AND TEACH FISCAL FEDERALISM

The course could be structured as a progressive learning experience, with each lecture banking on the knowledge gained earlier. A scenario for a progressive accumulation of knowledge is presented below.

The course could be structured in four parts: (1) lectures dealing with various aspects of the design of fiscal constitutions, (2) analyses of the theory and practice of revenue sharing and transfers, (3) discussions of finance and public service provision, and (4) insights into persistent and emerging challenges that can impact a federation's harmonious working.

Design Aspects of Fiscal Constitutions

A series of lectures can begin by introducing basic concepts of fiscal federalism and their historical origin and contexts. Distinguish between unitary, federal, and confederal constitutions and present alternate models of federalism in theory and practice. Identify sources of inefficiency and inequity in a market economy and present rationales for public intervention (Boadway and Shah 2009). Discuss pros and cons of fiscal decentralization, especially regarding fiscal competition. Present arguments to show that, ultimately, the assignment of powers in a federation and optimal policies pursued by each order of government depend on the same efficiency and equity considerations that warrant government intervention in the first place. However, the fact that federal economies consist of various autonomous jurisdictions means there are several additional efficiency and equity considerations (Weingast 2006; Breton 1996). Some considerations arise from the fact that decentralization has different effects on the fiscal capacities of different subnational jurisdictions, giving rise to fiscal inefficiencies and fiscal inequities. Others arise from the independent policies of governments at a given level affecting residents or governments of neighboring jurisdictions, so-called horizontal fiscal externalities. Still others arise from policies undertaken at a given level of government that affect governments at another level, known as vertical fiscal externalities. These various effects influence the case for decentralization, as they represent costs of decentralization that must be set against the many benefits. They also determine the structure of fiscal arrangements that should exist between the orders of government. The main purpose of the fiscal arrangements is to facilitate the decentralization of fiscal responsibilities in a way that minimizes costs.

One can then evaluate the pros and cons of decentralized spending, taxing, and regulatory responsibilities and highlight the theoretical and practical considerations and trade-offs policymakers confront in making appropriate

choices in centralizing or decentralizing various responsibilities (Boadway 1992; Kincaid 1995). It should be stressed that assigning a service to a specific order of government does not necessarily imply public provision because the government could purchase such services from beyond government providers. A common dictum of accountable decentralized governance is to ensure that finance follows function whenever feasible. Tax assignment, beyond efficiency in tax administration, must recognize the importance of a coordinated and harmonized tax system to ensure an internal common market and economic union. Assignment of natural resource taxes requires additional care because natural resources are distributed unevenly across the federation, potentially creating fiscal inefficiencies and inequities that often spark conflict in a decentralized system. Financing local governments also raises issues of differential fiscal capacity, with some local governments being unable to self-finance local services. While municipal services should be mostly self-financed, higher-order transfers are needed to finance social services. Comparative perspectives on the division of powers and the practice of fiscal federalism and lessons drawn from diverse experiences would also be helpful.

Lectures on local government organization and finance should present analytical approaches to local governance that help students understand the role of local governments and compare and contrast institutional arrangements (Dollery and Wallis 2001). This should be complemented by discussing stylized models and institutions of local governance as practiced in different parts of the world during past centuries. One can conclude with a comparative overview of local government organization and finance in selected industrial and developing countries with a view to drawing lessons for future reform (Shah 2006a, 2006b; Dollery, Kitchen, McMillan, and Shah 2020; Kitchen, McMillan, and Shah 2019).

Theory and Practice of Revenue Sharing and Transfers

The second part should focus on why matching revenue means with expenditure needs as closely as possible for each order of government is desirable to strengthen accountable governance. In practice, such a goal is not realized due to greater difficulties in decentralizing taxing powers than expenditure responsibilities and to the desire to leave the federal government with some room for its spending power to influence subnational policies to achieve national objectives.

A mismatch between the revenue means and expenditure needs, or vertical fiscal gap, usually for lower orders of government, is common in federal countries for reasons discussed earlier, hence the need to discuss the pros and cons of revenue sharing and various other instruments of intergovernmental finance. Also, highlight the incentives, accountability implications, and poten-

tial impacts of various instruments and associated designs and draw lessons from good and bad practices (Boadway and Shah 2007). This part would conclude by discussing the borrowing powers of various orders and institutional mechanisms, instruments, and their appropriate use and restraints to ensure fiscal prudence and minimize risks that may trigger service-delivery fallouts, insolvency, and/or macro instability.

Finance and Public Service Provision

Part three should emphasize that the goal of decentralized decision-making is to ensure that local governments deliver services consistent with local preferences, make the most cost-effective use of tax monies, provide fair governance, and are answerable to their residents. How to structure fiscal and institutional arrangements to achieve such objectives for merit goods such as education, health, infrastructure, and poverty alleviation, while supporting decentralized decision-making, should motivate discussion of the provision and finance of various public services.

Persistent and Emerging Challenges

Finally, address several alleged fallouts from fiscal federalism: leviathan governments, macroinstability, wasteful horizontal, vertical, or interjurisdictional competition, and a race to the bottom and/or fiscal mismanagement and barriers to trade and factor mobility, widening regional disparities and a higher incidence of bribery and corruption. These claims can be scrutinized by having recourse to available conceptual guidance and empirical evidence. Additionally, address newer challenges to fiscal federalism arising from globalization and the information revolution. Also examine institutional arrangements for executive and legislative federalism for consultation and coordination to reach broad-based consensus and avoid conflicts.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Compare the United States' and Canada's decentralized fiscal constitutions with Australia's and India's centralized fiscal constitutions.
2. Compare the working of decentralized unitary systems in Scandinavian countries with the Austrian and German federal systems.
3. What should be the federal government's role in health and education when these functions are assigned to provincial/state orders?
4. How should multistage goods and services taxes and resource taxes be assigned, and why?

5. Because macro shocks typically have different impacts across states/provinces, is a coordinated response desirable or feasible?
6. Does fiscal equalization help in regional convergence?
7. Is there a link between equalization transfers and fiscally induced migration? Do such transfers create long-term fiscal dependencies?
8. Should provinces/states and local governments be fully autonomous in their borrowing powers with no opportunity for federal intervention? Why or why not?
9. Do federal and subnational fiscal rules work in a federal system?
10. Institutions of executive federalism mostly work behind closed doors. Does this work undermine citizen-based accountability, or do they make a dysfunctional system of governance work better by resolving conflicts without grandstanding?
11. Globalization has moved several federal government functions to supra-national regimes, creating a democratic deficit. Intermediate orders of government have diminishing economic roles but retain strong political clout internally. In addition, the international competitiveness of nations is now divorced from resource bases but depends on local innovations with a stronger role for local governments. How can federal, state, and local government roles be adjusted to this changing world?

READINGS FOR STUDENTS

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TEST/EXAMINATION QUESTIONS

Undergraduate Students

1. What are the benefits and costs of fiscal decentralization? How do you strike the right balance considering trade-offs associated with fiscal centralization and decentralization?
2. Compare decentralized governance under federal and unitary constitutions on macroeconomic stability, regional cohesion, convergence, growth, economic efficiency, service delivery, corruption, and citizen-based government accountability.
3. What are the basic principles for dividing general and function-specific spending powers?
4. What are the basic principles for assigning taxing and revenue-raising powers?
5. What should be the constitutional foundations of local governance? Is it better to treat local governments as an autonomous order or as a creature of intermediate-order governments?
6. What is the taxonomy of grants and their conceptual impacts? Compare various types of conditional matching and non-matching grants. How do you rank them for consistency with various economic objectives?
7. Compare input-based with output-based conditional grants and other forms of performance-oriented grants.
8. What is the justification of fiscal equalization transfers in a federation? Do they work as glue or solvent in a federation? Do they help or hinder market-adjustment mechanisms?
9. What should be the guiding principles and institutional arrangements for borrowing? How does one ensure that fiscal health and fiscal solvency are not jeopardized? What mechanisms should be instituted to deal with fiscal insolvency?

Graduate Students

1. What is fiscal competition? Is it beneficial or destructive for federal systems?
2. What are the better arrangements in a federation for ownership and sharing of natural resource revenues?

3. What governance system is better at bridging the economic divide within nations and facilitating regional convergence? Present theory and the evidence.
4. Is federal governance more conducive to corruption? Why and why not? Present theory and the evidence.
5. Is federal governance more prone to creating leviathan governments or overgrazing? Discuss the theory and the evidence.
6. Do decentralized fiscal systems pose a threat to macro stability and growth? Why or why not? Discuss conceptual guidance and present empirical evidence to support your case.
7. How does one ensure fiscal discipline in a federal system?
8. Which governance system would better secure an international competitive advantage in a changing world?
9. Which system of governance has lower agency costs and reduces transaction costs for people to hold the government accountable?
10. With the instantaneous transmission of information and knowledge, do we still need empowered intermediate orders of government (states and provinces) to ensure good governance?
11. How does one deal with threats of secession in a federation? Present good and bad examples.
12. What are the better arrangements for local government oversight by higher-order governments? Discuss good and bad real-world practices.

POINTS FOR EVALUATION

- Knowledge about the concepts and history of federalism. Appreciation of the merits and demerits of centralized versus decentralized fiscal systems and how federal systems attempt to balance these considerations.
- Good understanding of comparative federalism practices and how to evaluate them.
- Demonstration of the principles to guide the division of spending, taxing, and regulatory powers. Appreciation of the role of local government autonomy in promoting citizen empowerment. Appreciation of the rule that 'finance follows function' to the extent feasible for local accountability.
- Appreciation of the need and the use of various types of fiscal transfers and how to evaluate these for consistency of their design with intended objectives and impacts.
- Appreciation of the role of fiscal equalization transfers in mitigating regional fiscal disparities.
- Appreciation that decentralized fiscal systems work better for service delivery consistent with local preferences.
- Appreciation of the needs and risks associated with borrowing privileges.

- Appreciation that decentralized fiscal management does not threaten macro stability.
- Appreciation that local empowerment and local accountability can reduce corruption.
- Appreciation of how the institutions of executive and legislative federalism can produce a swift and orderly response to emerging challenges.

SUGGESTIONS FOR FURTHER READING

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NOTE

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10. Federal political culture: federalism's glue?

David McGrane

EXPLANATION OF FEDERAL POLITICAL CULTURE

It is best to understand the research on federal political culture as a branch or offshoot of the larger literature on political culture inspired by Almond and Verba's *The Civic Culture: Political Attitudes and Democracy in Five Nations* (1965). Scholars generally see political culture as the basic sentiments, beliefs, and values of citizens concerning politics (McGrane and Berdahl 2013, 481). They often associate political culture with societies or jurisdictions as a whole, rather than with individuals. It does, however, provide individual citizens with a set of political norms to learn, follow, share, or even reject if they want to be contrarian. For instance, Elazar famously groups American states into moralistic, individualistic, and traditionalistic political subcultures (Elazar 1984). As such, to use Wiseman's metaphor, a political culture of a society is 'patterned, cross-generational, enduring, and relatively stable. It is more like the climate than the weather of transitory political events' (2007, 21). Unlike ideology that can be intensely personal, political culture is the property of a collective, and it encompasses how a society feels about fundamental parts of the polity such as the ability of citizens to affect political decisions or the role that governments should play in regulating the free market.

The case for explicitly linking federal political culture to the larger literature on political culture is strengthened by looking at the origins of the concept in academic literature. The concept of federal political culture appears to have originated in Duchacek's *Comparative Federalism: The Territorial Dimension of Politics* where he argues that 'federal political culture' could be a part of a country's larger political culture as conceived by Almond and Verba (1970, 341). He describes federal political culture within a country as encompassing 'a set of orientations toward the federal political system' (Duchacek 1970, 341). He hypothesizes that the success of federations depends on public support for the values that are embodied by federal governance such as a 'federal creed, social factors, federal qualities of the society, or federal charisma' that are

related to what he calls the 'extraconstitutional aspects of federalism' (1970, 346). While Duchacek does not elaborate further, his idea that there could be a federal element of a country's political culture that has something to do with federalism as a sociological or psychological phenomenon that exists outside of the formal institutions of government and the activity of political elites sparked the interest of several researchers.

Since the 1980s, a literature on federal political culture has emerged that is animated by lively debates on what the concept means and how to measure it. Some scholars have approached these debates in a theoretical and qualitative manner that dives deeply into the principles that would sustain a strong federal political culture. Often drawing on political philosophy, they theorize about how strong federations are underpinned by support among citizens for balancing autonomy with partnership, valuing unity as well as diversity, and respecting the need to share power and resources (King 1982; Kincaid 1995; Wildavsky 1998; Burgess 2012). There is also discussion of the extent to which a strong federal political culture is a necessary and sufficient condition for a federation to exist (Elazar 1987; Bednar 2009) and the connection between federal political culture and the older concept of 'federal spirit' that denotes society's informal faith in the principles of federalism that underlies its formal federal structures (Burgess 2012). Overall, this qualitative literature examines what makes federal political culture unique in reference to the political cultures that underpin unitary states and how federal values become broad organizing principles of a society's politics.

Other scholars have taken a more quantitative approach that relies on survey questions and public opinion research. These scholars have had debates about whether to define federal political culture using survey questions that ask the respondent about their specific policy preferences regarding federalism, such as whether the federation government or constituent governments should administer the public healthcare system, or by trying to measure the respondent's deeply held beliefs about federalism, such as how important it is to have constituent governments that can express different regional identities (Fafard, Rocher, and Côté 2010; Brown 2012a, 2012b; Rocher and Fafard 2013; Kincaid and Cole 2016). There has also been debate over whether to use survey questions that refer to the respondent's own country or use generic questions that refer to no particular country (Brown and Deem 2019; McGrane and Berdahl 2020). Specific questions have the advantage of capturing how the respondent's experience with their own federation shapes their feelings towards federal governance, while generic questions have the advantage of being able to be used across different countries (even non-federal countries) and avoiding conflating regional grievances with values related to federalism. This public opinion research culminates in competing evaluations over which countries have stronger and weaker federal political cultures. For example,

studies have generally found that in North America, Canada has the strongest federal political culture while Mexico has the weakest. The United States falls somewhere in between (Cole, Kincaid, and Rodriguez 2004; Kincaid and Cole 2011). More recent research finds a stronger federal political culture in Canada, Switzerland, and the United States along with weaker federal political cultures in Belgium, Australia, and the United Kingdom and moderate federal political cultures in France and Germany (Brown, Deem, and Kincaid 2022, 12).

Overall, there is no single uncontested definition of federal political culture nor is there agreement on how to measure it. I would submit, based on the research outlined above, a simple definition of federal political culture is the measurement of how all citizens in a country feel about federalism. It tries to measure how much citizens value the importance of sharing and dividing political power in a federal arrangement or what Elazar called their ‘will to federate’ (1987, 192).

REASONS FOR STUDYING FEDERAL POLITICAL CULTURE

Even if agreement among scholars on the definition and measurement of federal political culture is difficult to find, it remains a very useful concept.

Research on federalism generally concentrates on public policy, the activity of political elites, and the structure and operation of federal institutional arrangements. Alternatively, quantitative studies of federal political culture explore how federalism exists in the minds of the general public outside of formal political institutions. It helps us understand what the ‘average person’ thinks about federalism and how much they value or do not value the ideas behind the federal arrangements in their country. For their part, qualitative studies of federal political culture also move beyond the formal institutions of federal governance. They tackle tough questions about how federal principles can both conflict with and complement each other, thereby helping us understand the cultural phenomena that strengthen and weaken federations.

Most important, federal political culture is a concept that can be used to evaluate the health of federations. The presence of a strong federal political culture suggests well-functioning federal arrangements that are supported by citizens; the presence of a weak federal political culture suggests there may be a disconnect between what citizens desire and existing political arrangements. When it comes to looking at a federation’s health, federal political culture can be used like a marine telescope from the crow’s nest of a ship to scan for storm clouds on the horizon or to feel satisfied because everything is smooth sailing ahead. Such evaluations are useful to both academics studying specific countries and to practitioners of federalism like bureaucrats and politicians

who want to understand the current levels of support for federal arrangements among the citizens they govern. As such, the usefulness of federal political culture is worth the trouble of finding a solid definition and appropriate set of measures to operationalize the concept, no matter how difficult that may be.

HOW FEDERAL POLITICAL CULTURE FITS INTO FEDERALISM RESEARCH AND STUDY

How federal political culture fits into federalism studies depends on whether we are looking at qualitative or quantitative studies of federal political culture. Qualitative studies of federal political culture have much to contribute to the political theory of federalism that looks at how federalism is treated in canonical works (e.g., Montesquieu 1989) or more contemporary research (e.g., Taylor 1993). They offer conceptualizations to this literature to help understand the underlying strengths, weaknesses, and tensions within federations. In particular, they can help us examine the deeper cultural and intellectual differences between federations that are primarily territorially based and those based on the co-existence of different nations within the same federation (e.g., differences between federalism in Belgium and the United States).

The quantitative literature on federal political culture has much in common with research on citizen attitudes towards devolution and the appropriate division of powers among multiple orders of government (see Henderson et al. 2013; Jacobs 2017; Schakel and Brown 2022). Indeed, quantitative research on federal political culture is important for understanding the deeply held beliefs of citizens about federalism that form the societal basis for a country's constitutional arrangements that divide and share political power. For instance, a recent study illustrated how citizens who have high levels of federal political culture are more likely to support devolutionary reforms (Brown, Deem, and Kincaid 2022). Exploring the relationship between federal political culture and support for, or opposition to, devolution will undoubtedly lead to more interesting research in the future.

LEARNING OBJECTIVES

There are three primary learning objectives for students when it comes to federal political culture. First, students must be taught how to distinguish between 'political culture' and 'federal political culture'. It is crucial for the instructor to explain the overarching concept of political culture and briefly sketch the political culture literature emanating from Almond and Verba's work. Only when students have a solid grasp of the concept of 'political culture' can they begin to understand that 'federal political culture' is a constituent element of a society's broader political culture. Second, students should

be apprised of the differences between quantitative and qualitative studies of federal political culture. Instructors should explain how quantitative studies rely on mass surveys and inferential statistics to make generalizations about various countries' federal political cultures. By contrast, instructors should describe how qualitative research on federal political culture is much more like political theory research in its use of canonical sources and propositional logic to explore fundamental concepts about federalism such as shared rule and autonomy. Finally, the instructor should try to impart to students that there is healthy scholarly debate over the conceptualization of federal political culture.

HOW TO STRUCTURE AND TEACH FEDERAL POLITICAL CULTURE

Using four basic questions, it is possible to use the Socratic method to structure lectures and classroom discussions about federal political culture.

Instructors can start their lecture on federal political culture by asking students what they think about when the term 'political culture' is mentioned. The students may have some learning from other courses to share and will probably have some interesting general ideas about what constitutes the 'political culture' of a country. The instructor can then provide background on the origins of political culture studies in the 1960s and allude to the continuing scholarly interest in the concept of political culture in political science.

Once the instructor and students have established what is meant by 'political culture', the next logical question to ask the students is: what is federal political culture? There are many different angles from which to discuss this question, and the instructor may want to let the conversation go in several directions before asking students to become more concrete and precise in their thoughts. If federal political culture is about feelings towards federal governance, students might want to discuss what types of feelings are encompassed within federal political culture. Students might be curious about where federal political culture exists. They may want to discuss if federal political culture is about how the average citizen feels about federalism or about how political elites think about federalism. Students might have some interesting ideas about what constitutes a strong or weak federal political culture. The instructor could use examples from such federal countries as the United States and Germany to illustrate different parts of the concept of federal political culture such as support for sharing power between different orders of government. Further, students and the instructor could explore if there can be federal political culture in non-federal countries (cf., Brown, Deem, and Kincaid 2022) or if different parts of a country can have different federal political cultures. There could be a discussion about how different nations within a country or different territories within a country view federalism in different ways, therefore constituting

competing federal political cultures in the same country. A wide-ranging discussion of this nature could be capped with the instructor presenting some of the definitions of federal political culture found in academic literature.

When students and the instructor have finished exploring definitions of federal political culture, the next question to discuss is: how can scholars measure federal political culture? During this discussion, it is likely that class discussion will explore the differences between the quantitative and qualitative approaches to studying federal political culture. Some students might argue that a normative approach similar to political philosophy is best for understanding what really constitutes a country's federal political culture. Others may counter that an empirical approach based on survey research gives a more accurate reflection of a country's federal political culture. The instructor could end this discussion by outlining how scholars have used both quantitative and qualitative methods to study federal political culture.

Finally, the instructor could ask the class: why study federal political culture? This question might elicit discussion and debate on the utility of the concept of federal political culture. Students could be encouraged to think about the usefulness of studying how federal governance happens within institutions compared to the usefulness of studying feelings about federalism within the minds of citizens. The instructor could take this opportunity to contrast the academic literature on federal political culture with research on other topics in federalism that have been explored during the course.

One way to finish the class is to have a group activity where students answer five survey questions from quantitative studies on federal political culture. For instance, each student could answer the question: 'How important is it to have multiple levels of governments to allow for different laws in response to varying circumstances in different parts of a country? 0=Not important at all; 1=Slightly important; 2=Moderately important; 3=Quite important; 4=Extremely important' (McGrane and Berdahl 2020, 129). Students answering '4' would have a much stronger federal political culture than students answering '0'. If students are asked five questions on a scale of 0 to 4, they could calculate a federal political culture score for themselves on a range of 0 to 20 (0=very weak federal political culture and 20=very strong federal political culture). If every group has five students, they can calculate a federal political culture score for their group on a range of 0 to 100. Students find it interesting and amusing to compare their scores to their classmates and to see which groups in the class have the highest and lowest levels of federal political culture. The instructor can use this activity to more deeply explore the challenges with defining and measuring federal political culture as well as encouraging reflection about the advantages of quantitative and qualitative approaches to studying federal political culture.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Are generic survey questions or country-specific survey questions better for measuring federal political culture?
2. When studying federal political culture, should survey questions ask the respondent about specific policy preferences regarding federalism or ask about the respondent's deeply held beliefs about federalism?
3. Are there differences between the federal political culture of territorially based federations and multinational federations?
4. How is federal political culture related to support for the devolution of powers?
5. Is the concept of federal political culture a good way to evaluate a federation's health?
6. How would you describe the federal political culture of your own country? Is it uniform all over your country? Could there be regional variations within the federal political culture of your country?
7. Can a unitary country have a federal political culture?
8. What can be done by governments to build up a strong federal political culture? In particular, think about countries transitioning to federalism such as the United Kingdom, Iraq, or Nepal, and countries with quasi-federal arrangements such as South Africa and Spain.

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TEST/EXAMINATION QUESTIONS

1. What is the difference between 'political culture' and 'federal political culture'?
2. What are the differences between quantitative and qualitative studies of federal political culture? Is one approach better than the other?
3. How have various scholars defined federal political culture? Is there debate about the competing definitions of federal political culture? If so, what is the nature of that debate?

POINTS FOR EVALUATION

Corresponding to the three learning objectives outlined above, there are three points for evaluation of a student's understanding of federal political culture. First, students must comprehend that federal political culture (i.e., citizens' feelings towards federal political arrangements) exists alongside other elements of a country's political culture like feelings of efficacy or level of support for market liberalism. Second, students should be able to clearly outline the differences between quantitative and qualitative studies of federal political culture. Third, while students do not need to get deeply immersed in the details of these debates, they should be aware that scholars struggle to operationalize the term 'federal political culture' and that there are many competing definitions of this term.

SUGGESTIONS FOR FURTHER READING

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11. Political parties in federal systems: key players in the federal game

Klaus Detterbeck

EXPLANATION OF POLITICAL PARTIES IN FEDERAL SYSTEMS

Political parties can alter the federal game. They can reinforce and deepen the institutional divisions of powers that are inherent to federal structures, or they can mitigate these divisions by establishing an integrated national political space (Thorlakson 2020). The complex ways in which party politics impact federal dynamics is a key area of research. Federalism studies benefit from including the political agency of parties. It is up to the players to determine how formal rules come to life.

When looking at the role of parties in federal politics, researchers treat them as independent factors, that is, as makers of the federal architecture (Riker 1964; Stepan 2001). However, causality also runs in the other direction. Parties and party systems can be seen as dependent variables that adapt to the federal framework in which they organize and compete with one another. Integrated federal systems may encourage parties to foster vertical and horizontal linkages, while dual federal systems may create stronger spheres of autonomy within the constituent governments, in which the different layers of territorial party politics remain more visibly distinct. Parties reflect and reinforce the institutional logic of their federal environment (Hepburn and Detterbeck 2013).

When combining both perspectives of this ‘two-way mutual interaction’ (Watts 2004), a fuller picture emerges of the relationship between parties and federalism. Parties are shaped by federal structures, but they are also powerful drivers of federal developments. Parties engage in electoral and parliamentary competition for the representation of citizens and for the making of public policies. If they do so in a federal context, territorial complexity is added, as political contestation takes place in multiple and interconnected arenas simultaneously. The strategies they choose to succeed in party competition, such as

emphasizing territorial cleavages or stressing the need for national unity and federal solidarity, will have repercussions on federal dynamics.

REASONS FOR STUDYING POLITICAL PARTIES IN FEDERAL SYSTEMS

The relationship between parties and federalism is complex, as both are embedded in a wider social and political context. For parties, federal arrangements form part of the institutional framework in which they work, but other institutional arrangements, like the system of government and the electoral system, are equally important. In addition, social cleavages and economic developments frame party agency, as well as intra-party factors, such as party ideology and party tradition. For federalism, governments, bureaucracies and courts are dominant political players, next to parties, which mostly provide the personnel for elected government positions. Interest groups and civil society organizations may channel distinct regional interests and identities into processes of federal representation separate from, or connected to, political parties (Detterbeck et al. 2015).

Conceptually, research on federal party politics differentiates between the level of individual party organizations and the level of party systems. The former revolves around the degree of vertical integration between different territorial party layers. Integrated parties are characterized by formal and informal cooperation of federal and subnational party branches. They are active at different levels of the political system and coordinate these activities pervasively as unified organizations. Parties with lower levels of vertical integration allow for autonomous action at different levels. Finally, non-integrated parties may be present at one territorial level only or share little more than a common label when appearing in federal and subnational arenas (Smiley 1980; Deschouwer 2006).

The key conceptual tool, at the level of party systems, is the degree of territorial symmetry or congruence in party competition. Researchers are interested in three forms of congruence. First, at the level of voters, the similarity of electoral behavior in federal and subnational elections is analyzed along with the parallelism of political cleavages in the different arenas. Second, party systems are examined in order to find out if the same set of individual parties is present and if party competition follows the same logic across territorial levels. Third, the similarity of specific government formulas and coalition arrangements at federal and subnational levels can be studied (Fabre and Swenden 2013). Asymmetry in party competition is often associated with the success of regionalist and nationalist parties, which are competing in parts of the federal state only and focus their policy agendas on subnational empowerment and autonomous self-determination (De Winter et al. 2018).

As this overview of the research area demonstrates, studying federal party politics allows us to tap into many of the most important issues in federalism research. A party perspective adds a focus on actors and strategies, and is therefore particularly relevant for a dynamic understanding of federalism. Federal systems are in a permanent process of adapting to new realities, combining continuity with change (Benz and Broschek 2013). The agency of parties is one of the key factors for understanding such processes.

HOW POLITICAL PARTIES FIT INTO FEDERALISM RESEARCH AND STUDY

While federalism studies have integrated party perspectives in a broad variety of themes, four strands of research have been particularly relevant. The first strand refers to constitutional politics and the general notions of unity and diversity in federal systems. Centralizing tendencies in federations have been associated with integrated party politics, in which national allegiances cross-cut territorial divisions. Most prominently, Riker (1964) assumed that federal centralization would correlate directly with having the same parties in office at different levels and with a high degree of party cohesion. Accounts that are more balanced seek to evaluate how institutional designs and party strategies interact in maintaining or threatening federal stability (e.g., Filippov et al. 2004; Swenden and Maddens 2009). The role of parties in constitutional reform has also been studied intensively, particularly with regard to the decentralist agenda of regionalist and nationalist parties (Toubeau and Massetti 2013).

A second strand looks at party agency in federal policymaking and intergovernmental relations. Party compositions of governments can have an impact on policy choices and outputs. In federal systems, different political majorities and their party ideologies may explain policy divergence between subnational jurisdictions, at least partly (Greer 2006). Policy conflict between the federal and state governments in the United States context, for example, on matters such as abortion, same-sex marriage and gun control, can be understood as a divide between liberal and conservative political camps (Kincaid 2012).

In a similar vein, there is a party dimension in intergovernmental relations. While parties have a dominant role in parliaments and governments around the globe, their capacities to determine multi-level coordination vary widely. In some countries, vertical party linkages and party ideologies are a vital part of intergovernmental decision-making; in others, party labels of governments do not matter much for intergovernmental coordination. Comparative research has shown that different levels of functional interdependence in federal designs and political dynamics, such as the priorities of government in choos-

ing between autonomy and collaboration, can account for these differences (Behnke and Müller 2017; Bolleyer 2018).

A third, and related, strand has studied the role of parties in second chambers. In federal democracies, such houses have been established to represent subnational interests in the federation government. They exemplify the shared-rule component of federal systems. However, second chambers strongly differ in terms of legislative strength and composition (Gamper 2018). There is also variation with respect to party influence. In general, members of parliamentary second chambers are under stronger pressure than their counterparts in presidential systems to display cohesive party voting. The Australian Senate and the German *Bundesrat* are prime examples of ‘party houses’, in which federal party strategies and subnational policy interests have to be balanced (Swenden 2010).

The fourth strand has taken up questions of conflict management and the accommodation of territorial interests in federal systems. One prominent avenue of research has been the debate on the paradox of federalism. In some cases, federalism and decentralization have contributed to reducing conflict, while heightening tensions and claims for secession in other cases (Erk and Anderson 2010). Brancati (2008) makes a strong point that the strength of regionalist and nationalist parties is determining the effects of federalism and decentralization. Other authors add that power-sharing mechanisms have to accompany self-rule autonomy in order to prevent parties from flagging territorial demands (see Keil and Anderson 2018).

LEARNING OBJECTIVES

As the discussion above has shown, the notion of a ‘two-way mutual interaction’ (Watts 2004) is at the center of any debate on the relation between federalism and political parties. If we are to transfer the academic debate into the classroom, this idea can perfectly guide our thinking because it makes sense to separate the two perspectives analytically. The list of learning objectives is divided into two sections, in which the causal direction is reversed.

First, how does federalism shape party politics? Students should:

- Understand the importance of federal designs (e.g., theories of joint versus dual federalism) for party politics
- Evaluate the interplay of institutional, social and party-related variables in federal party politics
- Explore the effects of federal change on party adaptation
- Analyze electoral behavior, party competition, and government formation in federal contexts
- Study patterns of vertical integration in federal parties.

Second, how does party politics drive federal dynamics? Students should:

- Understand the importance of party strategies (e.g., in rational and constructivist theories) for federal developments
- Combine constitutional and institutional explanations of federalism with party politics and social cleavages
- Study processes of federal change from a party politics perspective
- Analyze the role of parties in policymaking at federal and subnational level, bicameral legislation and intergovernmental coordination
- Explain the impact of parties on conflict management.

HOW TO STRUCTURE AND TEACH PARTY POLITICS IN FEDERAL SYSTEMS

Empirically, we do not know much about the actual practice of teaching federalism in political science. As a noteworthy exception, Kincaid and Cole (2014) conducted a survey among U.S. colleges and universities. They found that for the last few decades, there has been a significant increase of undergraduate and graduate courses on federalism and intergovernmental relations. The curriculum covers many aspects, most prominently policy issues, federal–state relations, theories of federalism, fiscal matters and the role of interest groups and other political actors. There is a strong emphasis on American federalism, while comparative federalism has rather remained the ‘dark continent’ of political science teaching (see also Kincaid and Cole 2016, 2018).

Taking these results as a starting point, we may assume that students often learn about federalism as a vital part of the political system of their own country, if they live in a federal country. The role of parties and party systems can be integrated into the syllabus in two different ways: either as a cross-cutting theme on issues like federal policymaking and intergovernmental relations or as a stand-alone theme, in which the party perspective will be more dominant.

Students are often fascinated with the power struggles associated with party politics. If we manage to show the federal framework in which actors are playing these games, students can be expected to gain a much better understanding of politics.

Next to courses on domestic federalism, comparative perspectives can be very helpful to discover the broad variety in the interaction between parties and federal systems. Comparative federalism often works with typologies to order the universe of cases and to arrive at conclusions that are more general. Typologies also serve to detect patterns of interactions between social, institutional and actor-related variables. For federal party politics, criteria for typologies can include cleavage structures, federal arrangements, electoral

systems and systems of government. Typologies can also differentiate between integrated and non-integrated parties and party systems. Courses on comparative federalism may thus be useful to familiarize students with the benefits and limits of typological approaches (Collier et al. 2012).

In a similar vein, students can learn more about case-oriented approaches when looking at the interaction between parties and federalism. The strong contrast between Canadian and German federal party politics, for example, is an excellent starting point. Cases like Belgium, India, Malaysia, Nigeria or Spain allow us to study the agency of parties in ethno-nationalist conflict (see Detterbeck et al. 2015). The complex interplay of a multitude of factors often warrants a more in-depth analysis of individual cases and their development over time. Methodological concepts, such as formative events, path developments, critical junctures and process tracing, can be brought to life by applying them to real cases in the classroom (see Gerring 2011).

With respect to teaching style, there are many good arguments to focus on methods of active learning. Class sessions in which students actively participate and engage with the topics can complement and enrich lectures and individual reading of the literature, although the more traditional forms of teaching and learning are still useful and needed for providing basic knowledge, theoretical thinking and conceptual clarity. However, including elements of active learning can contribute to better learning experiences and outcomes (Trudeau 2005; Whitmann Cobb 2016).

Structured debates, with teams of students preparing their positions in advance and then exchanging arguments before class, are useful for sparking students' interest, strengthening communication and teamwork skills, and connecting theories to real-world phenomena (Oros 2007). Group discussions, in the classroom and online, help to sharpen arguments and to engage with federalism issues (Trudeau 2005). Simulations and role-plays are widely discussed methods of experimental learning that allow students to take on specific characters, interact with others and change perspectives (Hess 1999; Asal and Blake 2006).

Methods of active learning often involve reducing the complexities of reality in order to make debates and plays more attractive. It is therefore important to reflect on these experiences in debriefing sessions, where students can evaluate how they have acted and what they have learned about politics.

For teaching federalism, scenarios in the literature include engaged-learning role-plays in which students take on the role of parliamentary representatives in legislative work (Emenaker 2014), and flipped classroom models in which groups of students collaboratively work on a series of engaged assignments related to federalism issues (Whitmann Cobb 2016). There are also strategy games in which students play federal, subnational and local government officials, for example in fighting a 'zombie epidemic' (Hally 2021).

In all of these scenarios, a party perspective can easily be added. Classroom discussions could be centered on the key question of how parties contribute to federal stability and federal change. Students could explore under which circumstances parties have been agents of centralization or decentralization, either with regard to one specific country or comparatively. The specific role of regionalist and nationalist parties can be discussed in a structured debate format, with some participants advancing arguments with regard to minority representation, while others stress the potential threat for national integration.

In role-plays and simulations, students can act as party representatives in games that focus on specific areas of policymaking or intergovernmental bargaining. Their briefs may include ideological positions, government responsibilities and strategic goals of 'their' party. In flipped classroom models, students could identify and develop party positions on contested federal issues, or design media content for a party campaign on constitutional change. Generally speaking, active learning allows students to better explore the impact of parties and federalism, and vice versa.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

The following questions may help to structure teaching and learning on federalism and political parties:

1. Should parties reinforce and deepen the federal division of powers, or should they work to mitigate these divisions?
2. What is the role of parties in processes of federal change? Under which circumstances do parties become agents of centralization or decentralization?
3. Are regionalist and nationalist parties a threat to federal stability?
4. Do integrated parties contribute to effective policymaking in federal systems?
5. Does it matter in intergovernmental relations if the federal and constituent governments are controlled by the same party?

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TEST/EXAMINATION QUESTIONS

1. How do parties adapt to the type of federal system (e.g., integrated or joint versus dual federalism) in their country? (undergraduate)
2. Explain the difference between integrated and non-integrated parties. Does it matter for federalism? (undergraduate)
3. How do political parties have an impact on federal dynamics? Think about constitutional politics, policymaking and intergovernmental relations. (undergraduate)
4. Are regionalist and nationalist parties a threat to federal stability and conflict management? (postgraduate)
5. In which ways can parties contribute to changes in the federal system? (postgraduate)
6. What can we say in comparative perspective about the relevance of parties for federalism? (postgraduate)

POINTS FOR EVALUATION

For evaluating the outcomes of courses on parties in federal systems in relation to the learning objectives above, students should have an elaborate understanding of:

- the ways in which federalism, and different types of federal systems, shape party politics
- the significance of party politics for federal developments, federal policy-making and the accommodation of territorial conflict
- the relevance of institutional, sociological and intra-party variables in determining the interaction between parties and federalism
- the concepts of territorial symmetry and vertical integration in federal party politics
- the importance of comparative perspectives, typologies and case-oriented approaches for studying federalism and parties.

SUGGESTIONS FOR FURTHER READING

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12. Local governments in federal systems: deepening federal democracy?

Nico Steytler

EXPLANATION OF LOCAL GOVERNMENTS IN FEDERAL SYSTEMS

Local government is increasingly seen as an integral part of federal governance systems; it is often recognized as an order of government in federal constitutions and performs a range of functions exclusively and/or concurrently with the federal and state (regional or provincial) governments. This also makes it part of a country's system of intergovernmental relations. The recognized place and role of local government in federal systems are, however, a relatively new phenomenon of the past 50 years because in the 'classical' federations of the United States, Switzerland, Canada, and Australia, local government was merely a competence of state governments.

'Local government' is an opaque, collective concept, bringing into its ambit a variety of governance institutions. What they have in common is that there is no other order of government between them and the communities they serve (Steytler 2009, 4), leading to the claim that it is the government closest to the people.

The main form of a local government is usually a multi-purpose legal entity, democratically elected, that provides a range of services in a demarcated area. These institutions, called variously municipalities, communes, local authorities, councils, or *Panchayats*, typically provide household necessities such as water, sewage, refuse removal, electricity, and community-based services such as street lighting, public amenities, stormwater systems, roads, and public order. They also perform delegated functions on behalf of states and/or federal governments. Overall, they are often accorded a measure of autonomy to make final decisions, which may include authority to pass subordinate legislation.

Local governments vary hugely in territorial and population size, which may affect the range of functions they perform. The vast majority of federal countries have large numbers of municipalities with small populations. With a population of over 1.1 billion, India has nearly a quarter million local authorities.

The United States' population of 328 million is served by over 90,000 local government institutions. Among the mid-size federal countries of Europe, Germany (80 million) has 12,241 local entities, while Spain (47 million) has 5,563. Even relatively small countries have high numbers: Austria has 2,095 municipalities (8.9 million); Switzerland has 2,775 (8 million). Only a few federations have relatively large municipalities: Nigeria has 770 local authorities for a population of 180 million people; Australia has about 700 local authorities (30 million); and South Africa, 257 municipalities (58 million). In all these countries, the vast majority of local governments are small, often with less than 1,000 residents. This, of course, dramatically impacts their ability to perform a range of basic municipal functions, often evoking calls for their consolidation.

Multi-layered local governments have been one response to the smallness of most municipalities. In rural areas, a large number of small municipalities are often grouped in an overarching district or county government. In India, there are three layers of local authorities, building up from the village to the district. In large urban cities, functioning as social and economic units, multi-layered urban governance has been sought in a few federations through the establishment of area-wide metropolitan councils performing designated functions requiring economies of scale, and the constituent municipalities doing the rest. Also found in large metropolitan areas are single-purpose local entities that provide, for example, only electricity, water, or waste management. Another variant of the single-purpose local authority are school districts across most states in the United States.

How, then, does this vast array of local governments fit into federal systems that are conventionally conceived of as dual in nature: the federal government and one layer of constituent units? This categorization has been challenged; federal scholars now define federations as consisting of *at least two layers* (Watts 2008); local government has increasingly been added as a third one.

REASONS TO STUDY LOCAL GOVERNMENT IN FEDERAL SYSTEMS

Local government in federal systems is a new and dynamic area in federal studies. First, local government is increasingly recognized in federal constitutions as an order of government, alongside the federal and state governments, with the right to a measure of autonomy regarding the affairs of the local community. At first, in the old, classical federations, such as the United States, local government was simply a competence of the states, provinces or cantons. After World War II, there has been a slow, but steady process of recognizing local government as a component of federal systems. Since the 1990s, constitutions of new federal or hybrid-federal systems almost without exception

include local government as an order of government. However, such recognition varies considerably and has not made local government an equal partner alongside federal and state governments. Explicit recognition of local government as a constituent unit of the federation is found in Brazil, South Africa, Mexico, Nigeria, and Nepal. In Germany, Spain, and Switzerland, the right of local authorities to self-govern local community affairs is constitutionally protected. In a few constitutions, local government is included in the division of powers, by listing local competences. However, in India and Nigeria, these listed competences fall to the discretion of the states. Only in Brazil, South Africa, and Nepal may local governments directly assert their constitutionally allocated powers.

Second, in the literature on fiscal federalism, local government finances are often treated as an integral part of the structure and practice of fiscal federalism. Although state governments mostly deal with local governments, in a number of federations there are also direct relations between the federal government and local government in the form of intergovernmental fiscal transfers and tied (or conditional) grants. The proper funding and functions of local governments have also been regarded as being closely intertwined with the health and well-being of the intergovernmental fiscal relations system of the country as a whole (see Shah 2007a).

Third, given that local government performs a range of functions in terms of either statute or the constitution, and also forms part of intergovernmental fiscal systems, there is evidence in some countries of local government being included in the formal systems of intergovernmental relations (IGR). This entails the formation of organized local government, which on occasion is even constitutionally recognized (for example, Germany, Switzerland, Austria, and South Africa), presenting local government in national intergovernmental forums. An example is Australia, where the Australian Local Government Association had a seat at the peak IGR body, the Council of Australian Governments, the other members being the Commonwealth prime minister, the state premiers and the two territories' chief ministers (Sansom 2009, 23). A further development is inter-municipal relations in the form of agreements between municipalities to jointly deliver specific types of services (e.g., water and sanitation in Brazil's metropolitan areas).

Fourth, apart from its legal/constitutional position, local government has shown that it is fulfilling an important governance role by providing essential services. This came acutely to the fore during the Covid-19 pandemic; local authorities in a range of federal countries played a supportive role in the provision of healthcare, preventive measures, and social and economic support for their affected communities (Steytler 2022a).

A final reason why local government in federal systems is a dynamic topic concerns the developing discourse on the place and role of cities in general,

and metropolitan areas in particular, in the governance of countries. As Hirshl (2020, 2021) points out, the vast majority of the population in developed economies lives in cities, while a dramatic growth in mega-cities is witnessed in the global South. Cities are economic engines and must address the challenges of environmental protection, climate change, poverty and international migration. Yet, they are not constitutionally recognized to play a meaningful role in this regard. In federal systems, the situation is no different if not more complicated. The only exceptions are federal capital cities; some have developed into city states (Buenos Aires, Mexico City), while others have been specifically created (Washington, D.C., Addis Ababa, Canberra ACT, Brasilia, and Abuja FT). As noted above, there is increasing constitutional recognition of local government, but not of cities per se; they are usually under or near complete control of state governments. Increasingly there are strong arguments for a greater role of cities, as a distinct type of local authority, which should also find expression in the federal framework of governance.

HOW LOCAL GOVERNMENT FITS INTO FEDERALISM RESEARCH AND STUDY

Local government fits into the field of federalism research on the following grounds. First, the overall objects of local government are supportive of, and reinforce, those of federalism. In some countries, local authorities perform the function of accommodating societal diversity be it ethnicity, culture, or religion. Exemplifying this is Ethiopia's establishment of zonal local authorities for minority groups in larger ethnic-based regions (Ayele 2014). Local government further rolls out the goal of subnational efficiency in service delivery, matching services with local preferences more acutely. This was the primary goal of the 73rd and 74th Amendments to India's Constitution in 1993. Also, where local authorities come in the form of large cities, they may also act as a check and balance against the abusive use of centralized power, as evidenced by the positive role played by Brazilian cities during the Covid-19 pandemic in the face of presidential denialism (Rodrigues et al. 2022).

Second, the service-delivery role that local authorities play (or should play) is underpinned by the federal principle of subsidiarity; state functions should be performed at the lowest level of government and are shifted to higher levels of government only when the lowest level is unable or unsuitable to do so.

Third, local government plays a democracy-deepening function, a central theme of federalism. In a number of federations, local democracy was the building block of democracy after a period of authoritarian or military rule. Not only were the first elections in Germany after Nazi rule for local authorities, but the Basic Law enshrined the principle of local self-government. Likewise, after the authoritarian rule of General Francisco Franco, Spain's

1978 Constitution guaranteed self-government for both autonomous communities and municipalities. The entrenchment of local democracy was also witnessed in Brazil after the end of the military dictatorship and in South Africa after the end of racist minority rule.

In short, both in practice and in the literature, local government is now treated as a component, albeit not a full partner, in federal governance. In formulating a set of principles for the design of a federal system, a number of Swiss constitutional lawyers produced *Principles of Federalism: Guidelines for Good Federal Practices – A Swiss Contribution*, which includes a section on local government along with the usual federal fare of distribution of powers, fiscal federalism, and intergovernmental relations (Koller et al. 2012).

LEARNING OBJECTIVES

The overall learning objective is to show students the role and place of local government in federal systems. Does local government perform a peripheral role, or has it become an integral part of the federal system, performing clear and important functions with some autonomy?

The first learning objective is the nitty-gritty of local governance. What is the legal basis of local governance: statutory, constitutional, or both? Flowing from such a basis, what are the powers and resources to execute its governance mandate? What is the democratic basis of the government closest to the people? Are local councils fully elected and accountable to the local residents? Is participatory democracy a reality? What level of autonomy does local government enjoy in theory and practice? How is the division of powers affected? Once power is divided, what systems and processes ensure coordination and cooperation?

A second learning objective is to underscore that the study of local government in federal systems is inherently multi-disciplinary. Students should ideally be able to traverse the disciplines of law, politics, and economics in order to get an understanding of how the federal system operates as a whole.

A third objective is to show that local government is a dynamic area, continually developing and reshaping federal systems. Students should be equipped to observe and monitor new developments. The aim is to create a curiosity and awareness that they live in multi-level systems of governance that are not static. For example, large metropolitan areas are dominating our landscape; how does their governance shape federal systems? How can local government and community play a role in addressing the main challenges of the future, such as economic growth, poverty, inequality, and climate change?

HOW TO STRUCTURE AND TEACH LOCAL GOVERNMENT IN FEDERAL SYSTEMS

The first element in teaching local government in federations is to ensure that students (whether undergraduate or postgraduate, whether having a background in law, politics, economics, sociology, or public administration) have a thorough grasp of the fundamental features of classical federations that comprise two orders of government. This would entail knowledge about the structures of federations, the principle of self-rule and shared rule, the institutions of a federation, the role of the constitution, and judicial enforcement. Equally important, what were the driving motives for each federal system?

The second element is examining the history of local government in a country (or in a number of countries for comparison). Historically, were local authorities democratic institutions exercising some autonomy? What were the reasons for including or excluding local government as a constituent unit of the federation? Where there was a change in the position of local government at some stage in the country's constitutional history, what prompted it? What form did it take?

The third element is to examine the legal framework for local government. Where there is constitutional recognition, what is the nature and ambit of such recognition? Is local government accorded powers that make local self-government meaningful for the communities they serve? Linked to policy powers, does local government have protected taxing powers to provide the necessary resources for its service mandate? Are all local governments accorded equal or symmetrical constitutional recognition or is the pattern asymmetrical where some local governments have more constitutional powers than others? Finally, does the capital city have a special status?

In federations where there is no recognition of local government in the federal constitution, have subnational constitutions provided a measure of protection, as has been the case in the United States and Australia? If so, what is the nature of such recognition? U.S. state constitutional provisions for municipal and county home rule are an example (Krane, Rigos, and Hill 2001).

The fourth element is the democratic nature and functioning of local government. What are the political institutions of local authorities, and what is their democratic nature? Has local government, being the government closest to the people, led to greater public participatory practices such as participatory budgeting (Shah 2007b)?

The fifth element is the nitty-gritty of local governance. Pertinent issues include the powers and functions of local government and whether they matter to the local community. To what extent does local government share powers with the other orders of government, in the sense that in a particular policy

area, the state or provincial government is also operative, which requires coordination and cooperation? Directly linked to the powers and functions of local governments is their financing. Focus on the level of fiscal autonomy local authorities may or may not enjoy in giving effect to policy choices. A feature that often distinguishes local government from states is the supervisory role the latter play over the former. Supervision includes standard setting, support, monitoring, routine review of decisions, and intervention if necessary. The extent of supervision also defines the level of local autonomy.

A sixth element is the intergovernmental relations between local government and the regional and federal governments. Local authorities most often organize among themselves in order to deal with other orders of government in a unified manner; organized local government associations of various types exist in many federations. In addition to relations with state government, do local governments have direct relations with the federal government?

A seventh element is the political dimension of local governance. Is there a local political culture distinct from that at the state and federal level? Are local elections run along apolitical lines, or are local elections part and parcel of national politics? What is the popular interest in local elections? Is equitable gender representation an issue? Is local government the training ground for state and national politicians?

A final element is the main challenges facing local government in federal systems. In particular, the governance of large metropolitan areas is a key issue for federations worldwide.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Should federal systems include local government in a country's constitutional framework, recognizing it as an order of government? What are the pros and cons?
2. Should the principle of subsidiarity apply from local government upwards, and if so, be entrenched in law?
3. During the Covid-19 pandemic, did your local government play any significant autonomous role in responding to the pandemic? If so, was it involved in lock-down measures, health measures, and/or social and economic amelioration measures? Overall, was it responding adequately and quickly to residents' needs?
4. Another crisis looming is climate change. What is, and/or should be, the role of local government in mitigating climate change? Do responses require coordination and cooperation, and how best can this be achieved?
5. Have mayors of big cities become influential political actors in both state and national politics? Is there a need for the financial, political, and social significance of big cities to be reflected in a change to their legal status?

6. Most federations have large metropolitan areas, and they are the future of urbanization in the global South. They are the home of millions of people, the engines of economic growth, and the sites of poverty and inequality. How should these areas be best governed?

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TEST/EXAMINATION QUESTIONS

Undergraduate Students

1. Is local government a constitutionally recognized order of government in your country? If so, what are its distinguishing features, and do they matter in practice?
2. Are local governments in your country enabled to respond effectively to the needs of their communities with regard to the services the latter require?
3. What is local government's level of autonomy in law and practice? To what extent can a local government determine its own agenda or perform state or federal functions?

4. What are the principal revenue sources of local government in your country? Do local councils collect the majority of their own revenue, or do they depend to a significant degree on transfers from either the state or the federal governments? Is there an equalization system?
5. Is there a system of supervision over local governments in your country? If so, has it been an important feature to ensure good government?

Postgraduate Students

1. From comparative and historical perspectives, discuss the evolution of local government becoming an order of government in federal systems.
2. From a comparative perspective, what is the value of recognizing local government as an order of government which forms an integral part of a federal system?
3. Where local government is seen as forming part of the federal system, how is it accommodated in the formal (or informal) intergovernmental relations structures and processes? Have direct relations developed between local and federal governments?
4. From a comparative perspective, discuss how large metropolitan areas are governed in federal countries.

POINTS FOR EVALUATION

Instructors evaluate the discussions, essays, and examinations against the learning objectives. Students should be able to master the material, and be conversant with the issues and debates according to their years of study and discipline. With reference to local government in federal systems, successful students should be able to demonstrate and appreciate the following:

- First, there should be a thorough understanding of local government (of their own country, and for students in advanced study, of other countries as well) and how its role and place fit into the broader federal system. It is both a practical question and a theoretical challenge, which builds on a good grasp of federalism.
- Second, because the role and place of local government in federal systems is a multi-disciplinary study, students must show an ability to deal with materials and concepts from law, politics, and economics. They must be able to draw the linkages between the various disciplines and be able to think 'out of the box' of their 'silo' disciplines.

The way in which students are assessed depends, of course, on their year of study. Postgraduate students would benefit from long essays that explore issues from a comparative perspective in detail.

SUGGESTIONS FOR FURTHER READING

- Dollery, Brian, Harry Kitchen, Melville McMillan, and Anwar Shah (eds.) (2020), *Local Public, Fiscal and Financial Governance*, New York: Palgrave Macmillan.
- Geissler, Rene, Gerhard Hammerschmid, and Christian Raffer (eds.) (2021), *Local Public Finance: An International Comparative Regulatory Perspective*, Cham: Springer.
- Hirshl, Ran (2020), *City, State: Constitutionalism and the Megacity*, New York: Oxford University Press.
- Shah, Anwar (2007a), 'Introduction: principles of fiscal federalism', in Anwar Shah (ed.), *The Practice of Fiscal Federalism: Comparative Perspectives*, Montreal and Kingston: McGill-Queen's University Press, pp. 3–42.
- Silva, Carlos N. (ed.) (2020), *Contemporary Trends in Local Governance: Reform, Cooperation and Citizen Participation*, Cham: Springer.
- Slack, Enid and Rupak Chattopadhyay (eds.) (2009), *Finance and Governance of Capital Cities in Federal Systems*, Montreal and Kingston: McGill-Queen's University Press.
- Slack, Enid and Rupak Chattopadhyay (eds.) (2013), *Governance and Finance of Metropolitan Areas in Federal Systems*, Toronto: Oxford University Press.
- Steytler, Nico and Zemelak Ayele (2018), 'Local governments in African federal and devolved systems of government: the struggle for a balance between financial and fiscal autonomy and discipline', in Alice Valdesalici and Francesco Palermo (eds.), *Comparing Fiscal Federalism*, Leiden: Brill/Nijhoff, pp. 299–327.

REFERENCES (WORKS NOT CITED ABOVE)

- Krane, Dale, Platon N. Rigos, and Melvin B. Hill (2001), *Home Rule in America: A Fifty-State Handbook*, Washington, DC: CQ Press.
- Rodrigues, Gilberto M. A., Vanessa Elia de Oliveira, Marcelo Maria Hernández, and Christian Altavilla (2022), 'Brazil and the fight against Covid-19: strengthening state and municipal powers', in Nico Steytler (ed.), *Comparative Federalism and Covid-19: Combatting the Pandemic*, London: Routledge, pp. 239–57.
- Sansom, Graham (2009), 'Commonwealth of Australia', in Nico Steytler (ed.), *Local Government and Metropolitan Areas in Federal Systems*, Montreal and Kingston: McGill-Queen's University Press, pp. 7–36.
- Shah, Anwar (ed.) (2007b), *Participatory Budgeting*, Washington, DC: World Bank.
- Watts, Ronald (2008), *Comparing Federal Systems*, 3rd edn., Kingston: Institute of Intergovernmental Relations.

13. Federalism and democracy

Robert P. Inman

EXPLANATION OF DEMOCRACY AND FEDERALISM

For United States citizens and those of Australia, Canada, Germany, South Africa, and India, democracy and political decision-making by national, state or provincial or cantonal, and local governments – known formally as federal governance – may seem synonymous. The national government decides the “big” issues such as national defense and monetary policy, state or provincial governments set regional services such as highways, universities, and water quality, and local governments provide local K-12 schools and police and fire protection. Citizens elect a president or prime minister and a national legislature to set national policies, governors, or premiers and state/provincial legislatures to decide regional policies, and local councils to manage local affairs.

But to Norwegians, Swedes, the French, and New Zealanders, such systems may seem like a lot of extra “work.” Why cannot an elected national government set common policies for defense, roads, the environment, education, and protection that apply for the whole country, while perhaps allowing for local variation (mountains, harbors; rich, poor) when necessary? Surely one elected government is more efficient, certainly less “hassle,” and probably more equitable. But perhaps not. Don’t we want to allow for differences in people’s tastes in deciding government services? Young families want good schools and perhaps fewer walking trails, while retirees want safe walking paths and no longer need good schools. Perhaps electing people you know from your community is easier than evaluating the credentials of strangers from far away. Finally, national taxes and transfers can allocate incomes from rich to poor, but just as easily from poor to rich. Further, very redistributive national taxes may discourage economic growth and the potential to raise everyone’s incomes.

While we all want to live in a democratic society, it is not obvious we want that democracy to be national or federal. That is the agenda for this course: How might we think carefully about the structure of democratic governance? Should a country’s democracy have one national government, called a unitary democracy, or multiple governments with separately assigned responsibilities called a federal democracy?

LEARNING OBJECTIVES

For the undergraduate for whom this course may be their only course in politics or political economy, the objective should be: Does the student now have a deeper understanding of how their own government's democratic institutions foster, or inhibit, an inclusive, open, and reasoned (or least collegial) debate, and eventual adoption of public policies? For the student for whom the study of political economy is a core part of their general or professional education, the objective should be: Does the student understand how the institutions of democratic federalism impact the specifics of government policymaking (e.g., spending, tax rates, regulations), and, with that understanding, how might those institutions be reformed to provide a more efficient, equitable, and inclusive democracy?

HOW TO STRUCTURE AND TEACH DEMOCRACY AND FEDERALISM

Each topic below should be allocated two to three 1.5-hour classes.

- Topic 1: What do we mean by democratic governance?
- Topic 2: What do we mean by federal governance and why might we like it?
- Topic 3: Do we need to be federal to be democratic?
- Topic 4: Do we need to be democratic to be federal?
- Topic 5: Is federalism right for economic growth and economic efficiency?
- Topic 6: Is federalism right for economic fairness?
- Topic 7: Is federalism right for democratic governance?
- Topic 8: All things considered, do you favor federal governance?

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

Topics 1 and 2

Describe the fundamental institutions of a federal democracy. What makes a government democratic? Federal? What are those institutions as prescribed in the United States' and South Africa's democratic constitutions, for example? What do you like about democratic governance? Federal governance?

The case for, or against, democratic federalism can be made in theory, as did the American Founding Fathers in the *Federalist Papers*. But is there any evidence from countries' actual experiences with federal governance that supports the case for democratic federalism?

Topics 3 and 4

Can a country choose to be democratic but not be a federal democracy? If not federal, what institutions of governance will be “missing”? Examples?

Can a country choose to be federal, but not democratic? If not democratic, what institutions of governance will be missing? Examples?

What is so attractive about being both *federal and democratic*? Examples?

Topic 5

What institutions of federal governance might be important for economic growth? For the efficient performance of markets?

Might those same institutions of democratic federalism also contain a risk of discouraging growth or efficient markets? If so, is the problem democracy, or federalism?

Topic 6

Federalism may lead to significant disparities in the provision of local and state/provincial government services, either across jurisdiction lines or even within jurisdictions through discrimination against minorities. Are you concerned about such disparities? If so, why?

What would you propose as a solution to correct such inequalities or discriminatory treatment and what order of government – national, state/provincial, and/or local – will be required to implement your proposed solution? Why?

Topic 7

At what levels of government – local, state/provincial, or federal – do you expect to have the greatest degree of political engagement? Why? What’s the evidence?

Minorities are often discriminated against by a democratic majority. The institutions of federalism, most prominently state/provincial governments, have often allowed, if not actively promoted, such discrimination. What other federal institutions might successfully overturn this explicit discrimination by states in the exercise of democratic rights?

Topic 8

For what societies might democratic federalism be the most attractive form of governance? Specifically, what attributes of society – including geography,

ethnic backgrounds, and religious preferences of citizens, and society's distribution of talents and initial wealth – would be most conducive to the likely success of a federal democracy?

READINGS FOR STUDENTS

Core Texts

- Dahl, Robert (1998), *On Democracy*, New Haven, CT: Yale University Press (hereafter, *On Democracy*).
- Hamilton, Alexander, James Madison, and John Jay (1982), *The Federalist Papers*, edited by Garry Wills, New York: Bantam Books (hereafter, *Federalist Papers*).
- Inman, Robert and Daniel Rubinfeld (2020), *Democratic Federalism: The Economics, Politics, and Law of Federal Governance*, Princeton, NJ: Princeton University Press (hereafter, *Democratic Federalism*).

Topics 1 and 2

What do we mean by democratic governance? Federal governance?

- On Democracy*, chapters 2, 4, 5.
Federalist Papers, Nos. 9, 10, 51.
Democratic Federalism, chapter 1.
The Constitution of the United States, Articles 1–4; Amendment X.
The Constitution of the Republic of South Africa, chapters 1–3 (optional: chapter 6).

Topics 3 and 4

Do we need to be federal to be democratic? Democratic to be federal?

- On Democracy*, chapters 8, 11 (pp. 120–21), 12.
Democratic Federalism, chapters 3 (pp. 75–85), 9 (European Union), 10 (Mandela's federal democracy).
 Biden, Joseph and Leslie Gelb (2006), "Unity through autonomy in Iraq," *New York Times*, May 1, p. A19.
 Myerson, R. (2006), "Federalism and the incentives for success of democracy," *Quarterly Journal of Political Science*, 1 (1), 3–23.

Topic 5

Is federalism right for economic growth and economic efficiency?

Federalist Papers, Nos. 15, 21, 30.

Democratic Federalism, chapters 2 (pp. 37–63), 3 (pp. 75–93), 4 (pp. 99–123), 5 (pp. 139–69).

Blanchard, O. and A. Shleifer (2001), “Federalism with and without political centralization: China vs. Russia,” *IMF Staff Papers*, **48** (Special Issue), 171–9.

Topic 6

Is federalism right for economic fairness?

Federalist Papers, Nos. 10, 51.

Democratic Federalism, chapters 2 (pp. 67–73), 4 (pp. 132–6), 5 (pp. 169–74).

Murray, S., W. Evans, and R. Schwab (1998), “Education finance reform and the distribution of education resources,” *American Economic Review*, **88** (4), 789–812.

Topic 7

Is federalism right for participatory governance?

Federalist Papers, Nos. 10, 51.

Democratic Federalism, chapters 2 (pp. 67–73), 3 (pp. 93–7), 4 (pp. 99–123), 5 (pp. 169–74).

Valelly, Richard (2004), *The Two Reconstructions: The Struggle for Black Enfranchisement*, Chicago, IL: University of Chicago Press, chapters 1, 10.

Topic 8

All things considered, do you favor federal governance?

Democratic Federalism, chapter 11: epilogue.

Crnobrnja, Mihailo (2002), “Yugoslavia,” in Ann L. Griffiths (ed.), *Handbook of Federal Countries, 2002*, Montreal and Kingston: McGill-Queen’s University Press, pp. 372–86.

TEST/EXAMINATION QUESTIONS

1. The US Constitution is often held up as the template for how to design the rules for democratic governance. President Joseph Biden felt so in his *New York Times* opinion article advocating a US-style federal constitution for what he hoped would be a well-functioning democratic Iraq.

What are the central institutional features of such a constitution? Do you agree these features will always lead to a successful and stable democracy? Why or why not?

2. It has been argued that the US Congress is dysfunctional as an institution to promote the efficient allocation of national tax dollars – specifically, legislative overspending on local public goods. A similar critique has been leveled against the federal legislatures in Argentina, Brazil, and even the parliament of the European Union. In each case, national legislative representatives are elected from local (district, state, or province) jurisdictions.

Why might locally elected national representatives lead to inefficient overspending by the national legislature? Is the national election of a national legislature the only answer, or can you suggest alternative reforms that might still allow for the benefit of local representation but control the legislature's proclivity to over-spend?

3. One critique of majority-rule democratic governance is that all national policies, including those to promote economic fairness and equal opportunity, tend to favor the voter from “the middle” – known as the median voter. For example, while the US system of social security and health insurance for older citizens does help lower-income elderly citizens, those from the middle- and upper-income classes also qualify for significant benefits.

Why is that? Could targeted policies that only help the poor (for example, food or housing subsidies) ever be approved in a unitary (national) democracy with policies chosen by a nationally elected legislature or in a federal democracy with policy chosen by locally elected representatives? Why?

4. One important aim of a democracy is to ensure all citizens have a voice when deciding government policies. One virtue of democratic federalism, it is argued, is that much of what government decides is done so by local or state/provincial governments. Such governments are argued to be “closer to the people.”

Exactly what does that mean, and do you agree? If not, how would you assign government responsibility for setting policy (taxes, spending, regulations) to facilitate citizen participation? Cite evidence in support of your allocation of policy responsibilities across levels of government.

Table 13.1 Metric scoring

Country	Geography	Ethnic diversity	Resource distribution
A	40	20	20
B	80	90	65
C	60	70	60

Notes: Geography: 100 = “flat,” 0 = “extremely mountainous”; Ethnic/religious diversity: 100 = “uniform and tolerant,” 0 = “diverse and intolerant”; Natural resource and/or skill distribution: 100 = “nearly uniform,” 0 = “high disparities.”

5. Democratic federalism may not be right for every society. Any country’s best choice of a democratic constitution is likely to depend on how citizens feel about government intervention into their private choices, the likelihood of cooperation between citizens over tough decisions, citizen endowments of skills and resources before government policies are decided, and perhaps even the geography of the country. Table 13.1 gives the “details” for three countries, each considering the adoption of a democratic constitution. There are three choices:
- i. Unitary Democracy: All policies decided by a nationally elected president and nationally elected legislature.
 - ii. Federal Democracy: Policy responsibility allocated to state/provincial or national governments. National policies decided by a co-equal nationally elected president and locally elected national legislature.
 - iii. Confederal Democracy: Politically independent, locally elected, and co-equal state/provincial governments, where each government is allowed to sign agreements with other governments, if all participating governments agree.

Table 13.1 gives scores for three countries (A, B, C), described by a 0–100 “metric” measured along each of the three dimensions likely to be important to how well the national government might manage citizens’ interests. Given the underlying facts for each country as to its geography, ethnic diversity, and resource distribution, select one of the three constitutions – Unitary, Federal, Confederal – for each country and explain why you prefer that constitution.

IMPORTANT: Before selecting your preferred constitution for each country, be very clear as to what your goals are for the design of a democratic constitution – that is, what’s important? You may not be able to reach the very best outcomes for each country with your preferred constitution. If not, then trade-offs among your goals may be necessary. There will be no “right” or “wrong” in how you balance your goals, but you must be clear as to what your goals are and how your choice of each country’s constitution struck your preferred balance.

POINTS FOR EVALUATION

Undergraduates should be able to describe the institutions of governance that define a federal democracy. Then, given those institutions, the student should have a clear understanding of the benefits and costs of a federal democracy against each of three possible societal objectives: (1) economic efficiency; (2) economic fairness; and (3) open and inclusive political participation.

Graduate students in professional or PhD programs should show the same mastery of institutional structure as required of undergraduates, plus an understanding of how policies are decided and implemented for the three societal objectives – efficiency, equity, participation – with an eye towards implementable reforms when those objectives are not now achieved.

SUGGESTIONS FOR FURTHER READING

Each text below offers valuable supplemental reading to the course's main texts, *Federalist Papers* and *Democratic Federalism*. Bednar's text is particularly valuable for the study of the political and legal foundations for federal democracies. The Burgess and Gagnon book presents country cases and essays on aspects of federalism and democracy. Oates' book is the foundational text for the economic analysis of federalism. Rakove's book is a readable, often exciting, historical record of the passage of the US Constitution and the content of the Founding Fathers' debates over the benefits and costs of federal governance. Rodden's book provides a deep understanding for how federal governance might lead to an abuse of the national treasury as feared by Alexander Hamilton. Treisman's text turns a skeptical eye on the claims that federal political institutions are necessary to achieve all the promised goals of democratic federalism. Perhaps a unitary state organized as a hierarchy of decentralized administrative agencies can achieve the same ends at lower cost and with less rancor.

Bednar, Jenna (2009), *The Robust Federation: Principles of Design*, New York: Cambridge University Press.

Burgess, Michael and Alain-G. Gagnon (eds.) (2010), *Federal Democracies*, London: Routledge.

Oates, Wallace (1972), *Fiscal Federalism*, New York: Harcourt, Brace, Jovanovich.

Rakove, Jack (1996), *Original Meanings: Politics and Ideas in the Making of the Constitution*, New York: Alfred A. Knopf [particularly chapter 7: "Federalism"].

Rodden, Jonathan (2006), *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism*, New York: Cambridge University Press.

Treisman, Daniel (2007), *The Architecture of Government: Rethinking Political Decentralization*, New York: Cambridge University Press.

14. Multinational, multicultural, intercultural, and plurinational federalism

Arjun Tremblay and Alain-G. Gagnon

EXPLANATION OF THE FEDERALISM MODELS

Multinational, multicultural, intercultural, and plurinational federalism provide conceptual and institutional blueprints for dividing powers in deeply diverse countries having one or more territorially concentrated peoples. Although these federalism models share a key similarity (i.e., their applicability to deeply diverse countries), each has its own *raison d'être*, focuses on different types of diversity, and advances its own institutional arrangement meant to recognize diversity and preserve unity.

Multinational federalism is a response to the American federal model, which has long been the blueprint for the division of powers in liberal democracies. Multinational federalists highlight four key limitations to the American model.

1. The American model only recognizes the existence of a single *demos*, or people, within the boundaries of the federal state. However, some federal states are *multinational*. They comprise multiple *demoi*, one of which is a majority and some of which are territorially concentrated minorities. These minorities were forcibly incorporated into the state yet still see themselves as a political subject (i.e., as forming a *demos*). By contrast to the majority *demos*, their languages, religions, customs, and/or traditions are at risk of disappearing because they lack sufficient institutional protections by the federal arrangement. Such minority *demoi* include the Québécois in Canada, the Catalans and Basques in Spain, the Swedish-speaking minority of the Åland islands in Finland, the Madheshi people in Nepal, and the Tigrayans in Ethiopia.
2. The American model of federalism embraces institutional symmetry. All constituent units of the federation have the same legal and jurisdictional competencies. Consequently, this institutional arrangement offers no

special rights or protections to constituent units comprising a territorially concentrated minority.

3. The American model gives primacy to protecting individual rights and is intended to mitigate the effects of factionalism. Hence, this model resists claims to enshrine group-differentiated rights, such as the right to self-government and the right to special representation in the national government, which may be needed to preserve the languages, religions, customs, and/or traditions of territorially concentrated minorities.
4. The American model of federalism and its resulting institutions 'would seem to hold greater historical interest than contemporary attraction for other democracies' (Stepan 1999, 32). This is because American federalism has three idiosyncratic features. It is: 'coming-together' because the American federation originated as a pact between autonomous political units, 'demos-constraining' in that it seeks to constrain the power of the federal order of government, and institutionally symmetrical. By contrast, the division of powers is more frequently used to 'hold together' federal states with one or several forcibly incorporated territorially concentrated minorities. Furthermore, multinational federations are 'demos-enabling' in that their constitutions provide constituent units with greater policy-making authority and more proportional representation in the federation's legislature. Multinational federations are also institutionally asymmetrical and provide different legal and jurisdictional competencies and group-differentiated rights to some constituent units, notably to minority *demoi* that see themselves as a distinct political subject.

Multicultural federalism is sometimes articulated as a critique of, or alternative to, multinational federalism. Multicultural federalists argue that multinational federalism:

1. Places too much emphasis on recognizing territorially concentrated minority nations and, in so doing, is unconcerned with the fate of non-territorial diversity and the protection of linguistic, religious, and ethnic minorities that have no homeland.
2. Over-prioritizes protecting the group-differentiated rights of territorially concentrated minority *demoi* vis-à-vis national governments and thus is willing to sacrifice the full protection of individual rights within minority *demoi* and their homelands.
3. Institutionalizes permanent conflict between majority and minority *demoi* and downplays state-building, promoting national unity, and empowering non-territorially based identities.

In brief, multicultural federalism aims to 'hold together' a deeply diverse federation by recognizing non-territorially concentrated diversity alongside

the division of powers between federal and substate orders of government. Its institutionalization is meant to counterbalance the power of minority *demos* – whose competencies are located at the substate level – by empowering local governments. A key example of a multicultural federal institution is India's Panchayat system. This system constitutionally protects local self-government rights, which empower local governing bodies 'to prepare and to implement schemes for economic development and social justice' (Tremblay 2005, 211) and which are meant to ensure the full protection of individual rights of minorities within minority *demos*. Compared to multinational federalists, multicultural federalists do not advocate the enshrinement of institutional asymmetry; they contend that a minority *demos*'s numerical preponderance already ensures significant decision-making power within their respective territories as well as a high degree of informal autonomy from the federal order of government.

The evolving discussion on *interculturalism* provides another way of recognizing diversity in a federal state. Interculturalism is meant to be implemented within minority *demos* alongside the enshrinement of multinational federalism. Interculturalists also advocate the protection of individual rights and group rights within minority *demos*. However, by contrast to multiculturalists, interculturalists promote active citizenship and continuous dialogue between minority *demos* and non-territorial minorities. The aim of coupling multinational federalism with interculturalism is to ensure that an asymmetrical division of powers does not disempower or curtail the rights of non-territorial minorities. The objective is to ensure that all minorities in a deeply diverse country exercise full citizenship rights.

Intercultural federalism is a relative newcomer to federalism theory and is in an evolutionary stage. Intercultural federalism is rooted in three normative principles: dignity, moderation, and hospitality. Protecting the rights of territorially concentrated *demos* preserves the dignity of this distinct political subject and moderates the power of national majorities; the principle of hospitality empowers minorities within minority *demos* to challenge internal hegemonies and to assert their own identities. Intercultural federalists advocate both institutional asymmetry and measures (such as public funding of minority cultural, linguistic, and ethnic organizations) to promote and enhance non-territorialized minority civil society.

Plurinational federalism is often used interchangeably with multinational federalism. However, plurinational federalism is also specifically advanced by Indigenous legal scholars as an alternative to Canada's current federal model,

which has some asymmetrical institutional features but lacks a commitment to multinationalism. Plurinational federalists argue that the Canadian federation:

1. Has privileged settler-colonial peoples but excluded the ‘more than 630 First Nations communities in Canada, which represent more than 50 nations and 50 Indigenous languages’ (Morales and Nichols 2018, 4).
2. Embodies a ‘thick’ conception of Crown Sovereignty that nullifies Indigenous legal traditions and Indigenous claims to ancestral lands.
3. Vests jurisdictional authority primarily in the federal and provincial governments and affords Indigenous nations powers traditionally reserved for municipal governments.
4. Fails to recognize Indigenous sovereignty and the right of Indigenous peoples to self-determination.

Developing a plurinational federation would require two key developments. First, Canada would have to implement the 2007 United Nations Declaration on the Rights of Indigenous Peoples and develop domestically a nation-to-nation framework for relations between the Indigenous, French, English, and Acadian nations. Second, it would entail legislation that ‘recognizes the inherent nature of Indigenous self-determination in specific jurisdictional fields ... such as child welfare, education, governance, economic development, environmental protection, administration of justice, intellectual and cultural property’ (Morales and Nichols 2018, x). Building a plurinational federation would not require ‘the dismantling or destruction of a constitutional order, but a change in how we see and understand it’ (Morales and Nichols 2018, 22). Plurinational federalism emphasizes reconciliation between Indigenous and settler peoples and recognizes coexisting intersections between several types of legal systems and traditions within the federal state.

REASONS TO STUDY MULTINATIONAL, MULTICULTURAL, INTERCULTURAL, AND PLURINATIONAL FEDERALISM

An important reason is that the multinational, multicultural, intercultural, and plurinational models of federalism serve as both reminders of and gateways to the critically important and wide-ranging scholarship on diversity in modern polities. Not so long ago, scholars viewed national, cultural, religious, linguistic, and other forms of diversity as antithetical to democratic consolidation. Only since the latter half of the twentieth century has this longstanding assumption been consistently challenged both normatively and empirically. This has led to the emergence of a rich and continually developing scholarship that, among other things, highlights the existence of a multiplicity of cultures

and identities within the same polity, points to the innate human need for recognition, and articulates a range of institutions designed to enrich democratic practices and deepen fellow feeling without resorting to assimilation or exclusion. Discussions on multinational, multicultural, intercultural, and plurinational federalism are connected to this scholarship, which includes scholarship on minority nationalism, multiculturalism, Indigenous politics, the politics of gender, sexuality, and race, just as they are embedded in federalism scholarship. Consequently, learning about multinational, multicultural, intercultural, and plurinational federalism allows students to also learn about the politics of diversity.

The study of multinational, multicultural, intercultural, and plurinational federalism also opens new comparative horizons. Most students of federalism will likely be familiar with American federalism. To be sure, American federalism has a rich history and intellectual tradition and, rightfully so, occupies a central place in scholarly discussions on the division of powers. But it is not the only federal tradition. Studying multinational federalism introduces students to the Swiss tradition of federalism. This tradition developed between the thirteenth and nineteenth centuries and provides the theoretical foundations for contemporary discussions on asymmetrical federalism and on 'holding together' deeply diverse multinational and multiethnic polities. Likewise, studying multicultural federalism exposes students to an intellectual tradition and institutional blueprint that originates mainly in Canada and is rooted in a very different understanding of national identity (i.e., the cultural mosaic) than the one implicitly embraced in the American federal tradition (i.e., the melting pot). The study of intercultural federalism introduces students to a scholarship that emanates primarily from the Québécois minority *demos* and critiques multiculturalism's demobilizing effects on minority *demoi*. Studying plurinational federalism allows students to learn about different legal traditions and the intersection between domestic and international law. Overall, discussions stemming from analyses of multinational, multicultural, intercultural, and plurinational federalism introduce students to the politics, histories, institutions, and complex societies of countries such as Switzerland, Nigeria, Canada, India, Belgium, Afghanistan, Ethiopia, and Spain.

Multinational, multicultural, intercultural, and plurinational federalism are also important because they expose unsolved puzzles. For example, scholars are trying to figure out why, despite an emerging consensus that deeply diverse polities should move 'beyond the US model', there are very few concrete institutional manifestations of multinational federalism and that, when it does occur, the recognition of multinationalism is symbolic rather than formal. Scholars are also questioning whether it is possible to recognize and accommodate non-territorial diversity given the resurgence of mono-national political movements, the electoral successes of right-wing populists (many

of whom run on an explicitly anti-diversity platform), and the shuttering of borders during the Covid-19 global pandemic, which deprived polities of one of their main sources of diversity: immigration. Scholars have also noted that although intercultural federalism might offer the best of both worlds for territorially concentrated minorities and non-territorial minorities, each group has incentives to advocate models (multinational federalism for territorially concentrated minorities and multicultural federalism for non-territorially concentrated minorities) that increase their power at the expense of the other. In brief, students can actively contribute to addressing these puzzles and, in so doing, engage with real-world issues and concerns.

HOW THESE FEDERALISM MODELS FIT INTO FEDERALISM RESEARCH AND STUDY

The study of multinational, multicultural, intercultural, and plurinational federalism relates to the general understanding of federalism as the embodiment of unity and diversity. However, each model relates to one specific facet of this understanding. Multinational federalism is a theoretical and institutional blueprint for dividing powers that stems from Swiss federalism, which is meant primarily as a means to recognize and empower territorially concentrated minority *demoi*. Therefore, multinational federalism tends to be viewed more as an instrument for protecting diversity within a federation. Multicultural federalism is a theoretical and institutional blueprint for the division of powers that is linked primarily to a Canadian intellectual tradition that views the recognition of non-territorial identities as a way of forging a national identity. Furthermore, multiculturalism, as a national public policy in Canada, was first deployed to enshrine a cross-polity civic culture and to curtail the mobilization of a territorially concentrated minority *demos* (the Québécois). Multicultural federalism is often viewed as a way of ensuring national unity in a deeply diverse federation. Intercultural federalism is advanced as a way to reconcile the differences between multinational and multicultural federalism and protect both facets of the federal covenant. By contrast, plurinational federalism demonstrates that diversity can be a limiting concept if it does not recognize Indigenous peoples and Indigenous world views.

The study of multinational federalism, multicultural federalism, intercultural federalism, and plurinational federalism also entails an analytical focus on different orders of government in a federation. When studying multinational federalism, the focus tends to be on the interactions between state and inter-state jurisdictions and on the distribution of competencies between federal and substate orders of government. The study of multicultural federalism tends to explore the empowerment of local governments and municipalities. Intercultural federalism focuses on the interactions between

state and inter-state jurisdictions as well as on the distribution of competencies between federal, substate, and local orders of government. Studying plurinational federalism requires attention to both domestic orders of government and supranational legal orders.

LEARNING OBJECTIVES

Students examining multinational, multicultural, intercultural, and plurinational federalism will:

- Improve their knowledge about different models of federalism and learn about the conceptual and institutional features of multinational, multicultural, intercultural, and plurinational federalism. They will also learn how to differentiate American federalism from multinational, multicultural, intercultural, and plurinational federalism;
- Better understand the different normative and empirical explanations and justifications for adopting any of the five models of federalism (i.e., American, multinational, multicultural, intercultural, and plurinational federalism);
- Further develop their analytical skills by learning how to identify the institutional and symbolic presence and absence (in a deeply diverse country) of multinational federalism, multicultural federalism, intercultural federalism, or plurinational federalism;
- Increase their ability to recognize and acknowledge complexity by exploring the American and Swiss federal traditions, studying the emerging scholarship on interculturalism and Indigenous legal theories, examining differing conceptualizations of national belonging (i.e., the cultural mosaic and the melting pot), and addressing both individual rights and group-differentiated rights in the context of liberal democracy;
- Enrich their capacity to synthesize by drawing connections between multinational, multicultural, intercultural, and plurinational federalism, on the one hand, and the politics of diversity in the twenty-first century, on the other;
- Deploy their research and puzzle-solving skills by exploring the obstacles to and opportunities for developing diversity-oriented models of federalism today;
- Stimulate their critical and evaluative capacities by discerning which political contexts might need and are best suited for American, multinational, multicultural, intercultural, or plurinational federalism.

HOW TO STRUCTURE AND TEACH THESE FEDERALISM MODELS

Perhaps the most rewarding exercise for students of federalism consists in examining both theoretical and normative considerations as well as their concrete application. Studying multinational, multicultural, intercultural, and plurinational federalism allows students to do both at the same time.

The above sections provided a roadmap for instructors to engage theoretical and normative considerations related to multinational, multicultural, intercultural, and plurinational federalism. This section shows how instructors can translate this engagement into an exploration of multinational, multicultural, intercultural, and plurinational federalism's application in complex political settings.

We suggest that instructors engage students in simulations of institutional design or re-design in a deeply diverse country. Students should imagine they have been given the opportunity to implement federal arrangements in a country with a majority *demos*, territorially concentrated *demoi*, and expressions of non-territorial diversity. More specifically, this deeply diverse country has thirteen constituent units. In four of these constituent units, there is a numerically preponderant territorially concentrated *demos* that, at one point in history, was forcibly incorporated into the state (one comprises a settler-colonial minority *demos*; the other three comprise an Indigenous *demos*). This deeply diverse country comprises several non-numerically preponderant Indigenous peoples. It is also open to immigration and, as a result, has diversified along cultural, linguistic, and religious lines across all thirteen constituent units.

Using this complex political setting, instructors can conduct two simulations.

Simulation 1

For this simulation, we suggest narrowing the focus to exploring the design or re-design of the legislative branch's Upper Chamber in the previously described deeply diverse country (i.e., 13 constituent units, 4 territorially concentrated *demoi*, diversity resulting from immigration, Indigenous peoples). This key federal institution is the most important example of institutional symmetry in the American tradition of federalism; therefore, students will likely assume that the United States Senate is an ideal template or recommended design for an Upper Chamber. Consequently, exploring its design or re-design in a complex political setting provides a compelling challenge and thought-puzzle for students.

Students should be divided into four groups in order to cover a wide range of possibilities of institutional design or re-design suitable for a deeply diverse country. Groups will be assigned one of the following scenarios:

1. The adoption and implementation of a symmetrical Upper Chamber in accordance with American federalism and without any indication of special representation and/or group-differentiated rights for the four territorially concentrated minority *demoi*.
2. The design or re-design of the Upper Chamber in accordance with a multinational federal approach and the Swiss tradition of federalism. The Upper Chamber would therefore embody asymmetry and provide special representation and/or group-differentiated rights to the country's four territorially concentrated minority *demoi*.
3. The design or re-design of the Upper Chamber in accordance with a multicultural federal approach. The Upper Chamber, in this scenario, would be of symmetrical design (i.e., providing no special representation and/or group-differentiated rights to territorially concentrated *demoi*); however, members of the Upper Chamber would be selected through 'sortition' (i.e., a lottery of eligible citizens). Forbes (2019, 216) argues that sortition will effectively produce 'ethnoculturally balanced representation' in the Upper Chamber.
4. The design or re-design of the Upper Chamber in accordance with a plurinational federal approach. This scenario is based on recommended Senate reform in Canada to promote reconciliation with Indigenous peoples. Manning (2020, 12–15) argues that: (1) the 105-seat Senate be re-designed to add 24 seats for Indigenous peoples (First Nations, Inuit, Métis, and non-Status, non-treaty Indigenous peoples living off-reserve), which is equivalent to the 24-seat representation already afforded each of Canada's four major 'regions' (Ontario, Québec, the Maritimes, and Western Canada) and (2) a double majority of the Senate as a whole and of Indigenous senators be required to pass any legislation affecting Indigenous peoples.

Each group should be given 20–30 minutes to discuss the benefits of and possible challenges associated with their scenario drawing from assigned readings and class discussions. Following this inter-group discussion, a representative from each group will present a five-minute brief for the entire class summarizing their group's main conclusions.

Simulation 2

Here, students will explore the obstacles to and opportunities for a transition from symmetrical federalism to a diversity-oriented federalism model in a deeply diverse country. Students will again be divided into four groups. At the outset of the simulation, students will be informed that the previously described deeply diverse country (13 constituent units, 4 territorially concentrated *demoi*, diversity resulting from immigration) is currently under a federal arrangement inspired by American federalism and does not represent or reflect diversity in national-level political institutions. Set against this backdrop, one group will explore the possibility of a transition to multinational federalism, another group will explore the possibility of a transition to multicultural federalism, a third group will explore the possibility of a transition to intercultural federalism, and a fourth group will explore the possibility of a transition to plurinational federalism.

Each group should be given 20–30 minutes to address the following questions, drawing from assigned readings and class discussions:

1. What factors could prevent or impede a transition away from the current institutional arrangement to a multinational, multicultural, intercultural, and/or plurinational federalism?
2. What factors could facilitate or accelerate a transition away from the current institutional arrangement to a multinational, multicultural, intercultural, and/or plurinational federalism?

Following an inter-group discussion, a representative from each group will present a five-minute brief for the entire class summarizing their group's main conclusions.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Which model of federalism is most suitable for a deeply diverse democracy?
2. What are the strengths and limitations of multinational, multicultural, intercultural, and plurinational federalism?
3. What are the major obstacles to developing multinational, multicultural, intercultural, and plurinational federalism? Can they be overcome? How should they be overcome? What will be gained from developing multinational, multicultural, intercultural, and/or plurinational federalism?
4. Under what conditions are multinational, multicultural, intercultural, and/or plurinational federalism most likely to be adopted?

5. How can deeply diverse societies recognize, accommodate, and empower both multinational and polyethnic (i.e., resulting from immigration) diversity?
6. How essential are democratic values for implementing and sustaining multinational, multicultural, intercultural, and/or plurinational federalism?

READINGS FOR STUDENTS

- Burgess, Michael (2006), *Comparative Federalism: Theory and Practice*, New York: Routledge.
- Forbes, Hugh Donald (2019), 'Culturally open governance', in Hugh Donald Forbes (ed.), *Multiculturalism in Canada: Constructing a Model Multiculture with Multicultural Values*, Cham: Palgrave Macmillan, pp. 199–225.
- Gagnon, Alain-G. (2010), *The Case for Multinational Federalism: Beyond the All-Encompassing Nation*, London: Routledge.
- Gagnon, Alain-G. and Arjun Tremblay (2019), 'Federalism and diversity: a new research agenda', in John Kincaid (ed.), *A Research Agenda for Federalism Studies*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 129–39.
- Manning, S. (2020), 'The Canadian Senate: an institution of reconciliation?', *Journal of Canadian Studies*, **54** (1), 1–24.
- Morales, Sarah and Joshua Nichols (2018), *Reconciliation beyond the Box: The UN Declaration and Plurinational Federalism in Canada*, Waterloo, ON: Centre for International Governance Innovation.
- Seymour, Michel and Alain-G. Gagnon (eds.) (2012), *Multinational Federalism: Problems and Prospects*, Basingstoke: Palgrave Macmillan.
- Stepan, A. (1999), 'Federalism and democracy: beyond the US model', *Journal of Democracy*, **10** (4), 19–34.
- Tillin, L. (2007), 'United in diversity? Asymmetry in Indian federalism', *Publius: The Journal of Federalism*, **37** (1), 45–67.
- Tremblay, Reeta (2005), 'Afghanistan: multicultural federalism as a means to achieve democracy, representation and stability', in Sid Noel (ed.), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*, Montreal and Kingston: McGill-Queen's University Press, pp. 198–214.

TEST/EXAMINATION QUESTIONS

1. Why is the American model of federalism of limited applicability in the twenty-first century?
2. What are the key institutional features of multinational, multicultural, intercultural, and plurinational federations?
3. Under what conditions should a democracy adopt multicultural federalism?
4. To which order of government (substate and/or local) should power be devolved in a deeply diverse democracy? Should power devolution depend on the type of diversity present (territorially concentrated and/or non-territorially concentrated)?
5. Should the United States also move 'beyond the US model of federalism'?

6. Is bicameralism¹ useful for developing public policies that are in synchrony with the needs of cultural communities and minority nations?

POINTS FOR EVALUATION

A key point of evaluation is gauging a student's ability to understand, compare, and contrast the two main traditions of federalism: one based on a territorial understanding of the polity that presumes the existence of a mono-national political setting (i.e., American federalism) and another that adheres to a more complex definition of the polity, where deep diversity is not only accepted but also viewed as a key component of state-building strategies (i.e., Swiss federalism). Students should also be evaluated on their ability to describe and discuss the normative underpinnings and institutional designs of the five models of federalism: American, multinational, multicultural, intercultural, and plurinational.

A student should be able to demonstrate an understanding that there are several ways to entrench and enshrine unity and diversity in a federal state. A successful student will also learn that diversity and democracy are not antithetic and that state-building projects can threaten, and have threatened, the survival of identities, languages, cultures, religions, and profoundly democratic forms of belonging. A student will be able to question the motivations of state actors in complex political settings who continue to advocate the American model of federalism despite its limited applicability and mono-national features. Perhaps most importantly, a successful student will be better able to understand the aspirations and political claims of minority *demoi* and non-territorial minority groups.

SUGGESTIONS FOR FURTHER READING

- Benz, Arthur and Jörg Broschek (eds.) (2013), *Federal Dynamics: Continuity, Change and the Varieties of Federalism*, Oxford: Oxford University Press.
- Burgess, Michael and Alain-G. Gagnon (eds.) (2010), *Federal Democracies*, London and New York: Routledge.
- Fenwick, Tracy and Andrew Banfield (eds.) (2021), *Beyond Autonomy: Practical and Theoretical Challenges to 21st Century Federalism*, Boston/Leiden: Brill/Nijhoff.
- Gagnon, Alain-G. and Michael Burgess (eds.) (2018), *Revisiting Unity and Diversity in Federal Countries: Changing Concepts, Reform Proposals and New Institutional Realities*, Boston/Leiden: Brill/Nijhoff.
- Gagnon, Alain-G. and Johanne Poirier (eds.) (2020), *Canadian Federalism and its Future*, Montreal and Kingston: McGill-Queen's University Press.
- Gagnon, Alain-G. and Arjun Tremblay (eds.) (2020), *Federalism and National Diversity in the 21st Century*, Cham: Palgrave Macmillan.
- Kincaid, John (2020), 'Origins and consequences of American multicultural federalism: constitutional patriotism, territorial neutrality, and national polarization', in

- Alain-G. Gagnon and Arjun Tremblay (eds.), *Federalism and National Diversity in the 21st Century*, Cham: Palgrave Macmillan, pp. 107–30.
- Nichols, Joshua (2020), *A Reconciliation without Recollection? An Investigation of the Foundations of Aboriginal Law in Canada*, Toronto: University of Toronto Press.
- Requejo, Ferran and Klaus-Jürgen Nagel (eds.) (2011), *Federalism beyond Federations: Asymmetry and Processes of Resymmetrisation in Europe*, Farnham: Ashgate.
- Tarr, G. Alan, Robert F. Williams, and Josef Marko (eds.) (2004), *Federalism, Subnational Constitutions, and Minority Rights*, Westport, CT: Praeger.

NOTE

1. Bicameralism: A legislature that is formed by two chambers, a Lower Chamber that represents all citizens and an Upper Chamber that represents the regions, political communities, linguistic groups, or member states of the political system.

15. Federalism and conflict resolution: mixed success?

Soeren Keil

EXPLANATION OF FEDERALISM AND CONFLICT RESOLUTION

Federalism is often studied as a form of democratic government where powers are divided between a national government and regional (and local) governments. Based on the experience of such classic federations as the United States, Australia and Switzerland, federalism has often been studied through the lens of the division of powers, as a tool to support democratic decision-making and as a way to ensure decisions are made as close as possible to the citizens (referred to as subsidiarity). What has been, for a long time, neglected, is the increasing use of federalism as a tool of conflict resolution.

The reasons for this are manifold. While traditional federations, with the exception of Canada, are mainly mono-ethnic (i.e. relatively homogenous demographically), their evolution, despite the conflicts linked to their federalization (e.g. the Swiss federation emerged from a civil war in 1847, and Germany's most recent federal system was implemented after World War II), has not been studied through the lens of federalism as a conflict resolution tool. Moreover, peace (i.e. the absence of violent conflict and presence of a commitment to the peaceful solution of any conflicts) has long been seen as a *conditio sine qua non* for the creation and survival of any federal system.

However, in recent years, many federal systems have emerged from violent conflicts. Here, peace is not a precondition but an objective, an overall aim for implementing a federal political system (Burgess 2012). Some examples for this trend include Bosnia and Herzegovina (1995), Ethiopia (1995), Nigeria (1997), Sudan (2005), Iraq (2005) and Nepal (2015). In these countries, violent conflict involving different ethnic, religious, cultural, linguistic and political groups was often mixed with regime change, especially a transition from authoritarianism to democratic rule. This transition set off important questions about the state, such as: Who should be included? Should the rights of different groups be protected, and if so, how? How can institutional arrangements

provide justice for past marginalization and oppression? In the absence of the ability of many groups to seek independence in a world where territorial integrity remains a key principle of international law, federal solutions ensuring not only democratic decision-making but also self-governing rights for different communities became an often-thought solution to these pressing issues. In the study of federalism and conflict resolution, therefore, questions are being asked about the conditions under which federalism can contribute to a peaceful solution of a violent conflict, as well as questions related to the functionality of any agreed-upon arrangement.

The study of federalism and conflict resolution moves away from some of the major assumptions of traditional federalism scholarship by asking how federalism can hold countries together in the face of secessionist demands from certain groups (Stepan 1999), how federalism as an offer for a peace-settlement can change the dynamics of the conflict and open the door for negotiations amongst a variety of actors (Brancati 2009), and which elements of federalism, including different territorial arrangements, provide the most incentives for a peaceful solution to violent conflict (Anderson 2017). Moreover, while federalism studies traditionally focus on the management of different degrees of social, cultural and economic diversity, federalism and conflict resolution studies examine the mechanisms that might end violent conflict, that is, the tools of conflict resolution beyond federalism that are needed to implement a peaceful solution. Unlike literature on classic federations, case studies examining federalism and conflict resolution often look at federalism as one element of a peace process, but link it to other elements, including other institutional provisions such as traditional consociational power-sharing, the role of external actors in peace mediation and implementation, and the linking of federalism to democratization, institutional reforms and the ability to overcome some of the results of the violent conflict, for example through refugee return, re-building and economic recovery. In this context, it is important to highlight that the ability of federal solutions to contribute to the peaceful resolution of previously violent conflicts is mixed. While examples such as Bosnia and Nepal might highlight successes, South Sudan, Ethiopia and failed federal negotiations in countries such as Myanmar show that federalism as a conflict resolution instrument is not a panacea. Yet, studying and aiming to understand the conditions of its successful use as a conflict resolution tool, as well as its failure to pacify conflicts in numerous cases, allows for a better understanding not just of the conditions needed for peaceful change but also wider questions about federal theory and its ability to transform war-torn and post-authoritarian societies.

REASONS TO STUDY FEDERALISM AND CONFLICT RESOLUTION

The study of federalism as a conflict resolution tool is interesting and insightful for three main reasons.

First, contemporary federal systems emerge and function distinct from the classic federations of the United States, Canada, Germany, Switzerland and Australia. Instead, their origins in violent conflict and the different perspective of how they have been adopted, often as part of peace negotiations – as in Bosnia and Herzegovina and Sudan – raises important questions that go beyond our traditional understanding of the emergence and operation of federal states. For example, the questions that Riker (1964) asked about the reasons and conditions for the emergence of federal states, using the United States as an example, do not apply when looking at countries such as Iraq, Ethiopia or Nepal. Instead of asking why these countries federalized and how party preferences affected the federal design, contemporary federations are heavily influenced by legacies of authoritarianism, ongoing conflicts, demands for secession, and the involvement of international actors both as peace mediators and as midwives to federal solutions.

This highlights the second reason why studying federalism and conflict resolution is worthwhile. Unlike the traditional study of classic federations, combining federalism and conflict resolution goes beyond ‘domestic’ politics and combines conflict studies, international negotiation and mediation, and comparative politics. This requires also a wider methodological and conceptual framework – something that has been challenging for most scholars. In order to understand the conditions under which federalism can contribute to a peaceful solution to violent conflict, one has to understand when peace emerges in conflict. One has to study conflict resolution and management in more detail. Likewise, most conflicts in which federal solutions emerge as an option are not traditional civil wars in one country; they often involve external actors, either directly (e.g. neighboring countries) or indirectly (e.g. the United Nations as a body supporting peace negotiations). Understanding the role of these external actors and their influence on the federal debate is often vital, and requires further study of mediation and negotiation, as well as techniques from foreign-policy analysis. In short, if one is looking for a wider understanding of the domestic–international relation of federal solutions to conflict, and wants to expand their methodological and theoretical framework, then studying federalism and conflict resolution is a good way to achieve this.

Third, the examination of federalism and conflict resolution opens the door to many new case studies that are underrepresented in federalism scholarship. Much scholarly ink has been spilt examining federalism in the United States

and Germany, but only a handful of good works exist on the federal debate to overcome conflict in Cameroon (Johnson 1970), for example. The federal systems of Switzerland and Canada have been studied to their last detail, whilst similar research on federal structures in Ethiopia, Iraq and Nepal is only beginning. The study of federalism and conflict resolution is vital to understanding not only these new federations and how they work, but also what potential federalism might have in other, ongoing conflicts worldwide.

HOW FEDERALISM AND CONFLICT RESOLUTION FITS INTO FEDERALISM RESEARCH AND STUDY

The study of federalism and conflict resolution both challenges the mainstream federalism literature and adds to it. It contributes to it by raising important questions about the emergence of federal states, going beyond the traditional assumptions made by scholars such as Riker (1964), Stepan (1999), Watts (2008) and Ziblatt (2008). While the focus on actors remains vital, external actors become much more important, and the priorities of groups shift as well, because they are engaged in violent confrontation.

The study of federalism as a conflict resolution tool augments and challenges existing scholarship because fundamental federal questions, such as on the design of self-rule (i.e. autonomy) provisions and shared rule institutions need to be studied not just in the light of the creation of a new federal system, but also for their ability to contribute to conflict resolution and peace-building. Hence, new issues might emerge, such as in the design of self-rule – who should have control over the security services? This is often vital in a post-conflict society. The question of which autonomy arrangements should be put in place and how shared rule provisions should be designed is also relevant for other areas, including questions over taxation, income from natural resources, language rights, and veto rights for specific groups. These issues have been vital in the discussions, and aftermath, of the federal solutions for Bosnia and Herzegovina, Iraq, Sudan and Nepal, and remain vital for countries discussing federalism as a solution to ongoing conflicts, such as Cameroon, Syria, the Philippines, Myanmar, Moldova, and Ukraine (before Russia's 2022 invasion).

LEARNING OBJECTIVES

There are three types of learning objectives related to the study of federalism and conflict resolution. The first focuses on the normative relationship between federalism as a theory of self-rule and shared rule (Elazar 1987) and conflict resolution. Here, an important debate of conflict studies can be linked to ongoing discussions in the federalism literature, namely, should we talk

about conflict resolution or conflict management? In the federalism discourse, there is also an ongoing debate about federalism's contribution either to the solution or the management of societal diversity through federal structures (Smith 1995). The normative nuances help to focus on the question of identity and diversity, and federal structures' ability to transform violent confrontation into a peaceful political confrontation in the appropriate political arenas through its emphasis on self-rule and autonomy on one side, and shared rule and compromise-seeking on the other.

A second learning objective focuses on the conditions under which federalism can help end violent conflict. Here, the debate about what federalism and what conflict resolution are (objective 1) is taken further to ask how federalism and its practical institutional provisions can shift priorities and options for actors in a violent conflict so that a chance for a peaceful solution might emerge. Building on the traditional focus of 'federal bargaining', students can be sensitized to the complex nature of such bargaining in the context of violent conflict, the role of external mediators and negotiators, and the need to look at the outcome specifically through the lens of security, as this is often vital in post-conflict societies.

The final learning outcome focuses on understanding a variety of case studies where federalism has been used as a conflict resolution tool. The aim is to familiarize students with the more theoretical discussions from learning objectives 1 and 2 to demonstrate how they have been applied in numerous cases. There is, for example, literature on the use of federalism in Bosnia and Herzegovina (Keil 2013), Iraq (Shakir 2017), Nepal and related discussions in Myanmar and Sri Lanka (Breen 2018). Based on this, students can apply the theoretical ideas on federalism and conflict resolution to concrete examples by discussing the federal bargaining and peace processes in the specific cases and by analyzing the resulting federal structures and their functionality in the post-conflict period.

HOW TO STRUCTURE AND TEACH FEDERALISM AND CONFLICT RESOLUTION

Similar to other topics discussed in this book, federalism and conflict resolution can be treated as a cross-cutting theme, touching on a variety of issues discussed in the wider federalism literature. Due to space limitations, the focus here will be on three main areas.

1. **Federalism and Conflict Resolution: Theoretical Perspectives**

Students can be introduced to specific theoretical issues through the existing federalism literature and research on federalism and conflict resolution

and management. The theoretical discussion can focus on the usefulness of self-rule and shared rule provisions in situations of violent conflict, and how they may affect the position of the conflicting groups and parties. Moreover, based on existing research, particularly Canada, lessons from conflict management in multinational societies can be used and discussed in the context of emerging federal states. For example, the framework of Liberal Nationalism (Kymlicka 2001; Tamir 1997) can help highlight how the normative agenda of federalism and its focus on unity in diversity can contribute to peaceful relations in diverse societies where different groups have different perspectives on the common state.

2. Federalism and Conflict Resolution: Empirical Challenges

In a second part of the teaching sessions, students can be encouraged to think about the normative discussions from part 1, and what they would mean for a variety of institutional arrangements. Key questions to consider include: How can antagonized groups work together? And under what conditions can federalism and other institutional mechanisms contribute to social peace in divided post-conflict societies? These questions allow for a stronger focus on institutional mechanisms (i.e. the concrete design of self-rule and shared rule provisions in post-conflict societies). It is vital in this part of the curriculum to go beyond a simple focus on traditional federal institutions such as autonomy provisions and second chambers, and expand to include other forms of power-sharing such as consociationalism. Evidence from most post-conflict federations suggests that federalism is likely to contribute to peace if it is connected to other institutional mechanisms that ensure inclusion, provide groups with veto powers and enhance the need for consensual decision-making. Therefore, students should learn about links between different forms of power-sharing and federalism, as well as the impact and design of arrangements, such as electoral rules, in post-conflict federal systems. This provides an understanding of how federalism is one instrument amongst many, which need to link together to ensure violent conflict is transformed into positive peaceful interactions.

3. Federalism and Conflict Resolution: Case Studies

A variety of case studies can be chosen to study federalism as a conflict resolution tool. If educators are interested in a geographic spread, Bosnia and Herzegovina, Sudan, Iraq and Nepal offer good cases in which federalism was used to end violent conflict. It is important to distinguish between countries that have adopted federal systems in response to violent conflict and regime change, and countries in which federalism is still discussed and debated as

a potential solution to end ongoing conflicts. In the second category, cases such as Cameroon, South Sudan, Syria, Ukraine, the Philippines and Colombia can be mentioned. It is important to highlight in the study of these cases not only the conditions under which federalism was (or was not) adopted, but also to examine how these federal systems operate; that is, what challenges does federalism as a tool of conflict resolution pose in the post-conflict implementation phase? Important lessons can be learned about the functionality of these systems, especially when looking at Bosnia and Herzegovina and Iraq.

In a final session, students could be asked if the combination of federalism and conflict resolution changes the meaning and understanding of federalism more generally. In other words, especially advanced students in postgraduate classes can be motivated to engage with the theoretical implications of the emergence of new federal models for our traditional understanding of federalism.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Can federalism contribute to conflict resolution? Why or why not?
2. Why is it so difficult to apply federalism as a tool of conflict resolution in countries such as Myanmar, the Philippines and Syria?
3. What are the normative and the empirical challenges in the application of federalism as a form of conflict resolution in societies characterized by violent conflict?
4. Why does federalism work as a tool of conflict resolution in some cases but not in others?
5. To what extent can the application of federalism as a tool of conflict resolution in Bosnia and Herzegovina and Iraq be considered successful?
6. Select any country in which federalism has either been applied as a tool of conflict resolution or is discussed as a potential solution to an ongoing conflict. What are the main issues related to the federal debate? What implementation problems can you identify or foresee?
7. Has the evolution of new federal models in the post-Cold War era substantially altered our understanding of federalism in theory and practice? Why or why not?

READINGS FOR STUDENTS

Introductory Texts

Anderson, P. and S. Keil (2017), 'Federalism: a tool for conflict resolution?', *50 Shades of Federalism* online, available at: <http://50shadesoffederalism.com/federalism-conflict/federalism-tool-conflict-resolution/>.

- Keil, Soeren (2019), 'Federalism as a tool of conflict resolution', in John Kincaid (ed.), *A Research Agenda for Federalism Studies*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 151–61.
- Keil, Soeren and Paul Anderson (2018), 'Decentralization as a tool of conflict resolution', in Klaus Detterbeck and Eve Hepburn (eds), *Handbook of Territorial Politics*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 89–106.

Specialized and More Advanced Texts

- Anderson, Liam D. (2017), *Federal Solutions to Ethnic Problems – Accommodating Diversity*, London and New York: Routledge.
- Brancati, Dawn (2009), *Peace by Design: Managing Intrastate Conflict through Decentralization*, Oxford and New York: Oxford University Press.
- Keil, Soeren and Sabine Kropp (eds) (2022), *Emerging Federal Structures in the Post-Cold War Era*, Cham: Palgrave Macmillan.

TEST/EXAMINATION QUESTIONS

Undergraduate Level

1. Can federalism be used as a tool of conflict resolution? Why or why not?
2. What is 'new' about emerging federal systems in the post-Cold War period?
3. Select any two examples in which federalism has been used or discussed as a tool of conflict resolution and compare and contrast the position of the proponents and opponents of federalism in the two cases.
4. Conflict resolution is not about federalism but about security. Security, however, is about federal arrangements in practice. Discuss this statement with reference to relevant cases.
5. Select any case in which federalism has been discussed or implemented as a tool of conflict resolution and highlight the evolution of the federal debate, the adoption or rejection of federalism and its contribution or failure to contribute to peace-building.

Postgraduate Level

1. Are we witnessing the emergence of a new federal tradition in the post-Cold War era? Why or why not?
2. Why is it wrong to blame the failure of post-conflict transformation in Iraq on the federal system alone?
3. To what extent are external actors now a key element of the federal bargaining in conflict-torn societies? Discuss with reference to at least two examples.

4. Assess the linkages and challenges of the processes of democratization and federalization. Where do you see interconnections, where do you see potential conflicts?
5. Could federalism be the solution to world peace as promoted by Immanuel Kant (Riley 1979) and others (Elazar 1994)? Why or why not?

POINTS FOR EVALUATION

The overall aim for evaluators should be to sensitize students to the evolution of new federal models that have come out of violent conflict and in which traditional discussions on self-rule and shared rule are overshadowed by the desire to maintain peace and make each group feel safe. The three learning objectives above highlight how to teach this. Students should first be introduced to theoretical linkages between federalism and conflict resolution, before a focus on institutional design choices and case studies allows evaluators to deepen these discussions. Evaluators are free to select a variety of case studies; some are mentioned in this contribution, but others could be added easily. These might include federal models not traditionally associated with conflict resolution, such as the European Union.

To assess the first and the second objective, evaluators should ensure that students are aware of the theoretical implications and the complex institutional choices in situations in which a federal discourse is part of a wider peace process. Moreover, students should show an awareness of the changing dynamics during the federal bargaining and the challenges of implementing federal arrangements in post-conflict states.

In relation to the third objective, evaluators should ensure that students understand the role of federalism in the peace negotiations and discussions in a variety of cases including some without a successful implementation or agreement on federalism (such as Myanmar, Syria, Cameroon and Ukraine). There are three main issues related to this learning objective. First, students should be able to apply the theoretical and empirical discussions to specific case studies and highlight how these are reflected in the cases. Second, students should be able to demonstrate how the federal bargaining has changed, identify the main actors and their main positions (including on federalism), and how these dynamics evolved once the federal system was implemented. Finally, students should be able to link the discussions on federalism and federal institutions in emerging federal systems back to wider discussions on federal theory, and to appreciate how these new models pose a challenge for our traditional understanding of federalism.

SUGGESTIONS FOR FURTHER READING

More Advanced General Readings

- Scholte, Felix (2020), *Peace Through Self-Determination – Success and Failure of Territorial Autonomy*, Cham: Palgrave Macmillan.
- Walsh, Dawn (2018), *Territorial Self-Government as a Conflict Management Tool*, Cham: Palgrave Macmillan.

Selections for Case-study Discussions

- Aasland, Aadne and Sabine Kropp (eds) (2021), *The Accommodation of Regional and Ethno-cultural Diversity in Ukraine*, Basingstoke: Palgrave Macmillan.
- Belser, E. M. (2020), 'A failure of state transformation rather than a failure of federalism? The case of Iraq', *Ethnopolitics*, **19** (4), 383–401.
- Breen, Michael G. (2018), *The Road to Federalism in Nepal, Myanmar and Sri Lanka – Finding the Middle Ground*, Abingdon: Routledge.
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- Keil, Soeren (2013), *Multinational Federalism in Bosnia and Herzegovina*, Abingdon and Farnham: Ashgate.
- Shakir, Farah (2017), *The Iraqi Federation – Origin, Operation, Significance*, Basingstoke: Routledge.

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- Elazar, Daniel J. (1987), *Exploring Federalism*, Tuscaloosa: University of Alabama Press.
- Elazar, Daniel J. (1994), *Federalism and the Way to Peace*, Kingston: Institute of Intergovernmental Relations, Queen's University.
- Johnson, Willard R. (1970), *The Cameroon Federation: Political Integration in a Fragmentary Society*, Princeton, NJ: Princeton University Press.
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16. Asymmetric vs. symmetric federalism: equity vs. equality

Maja Sahadžić

EXPLANATION OF ASYMMETRIC VS. SYMMETRIC FEDERALISM

It was only after the Second World War that federalism became popularized in academic studies (Stevens 1977). Until then, a federal system, as a form of state organization, was considered simply an (undesirable) alternative for a unitary state (Watts 1994). Nevertheless, federal principles have slowly gained momentum concerning the formation of new states, greater security, and administrative management, among other values. Nearly half of the world's population now lives in some form of federal system (Hueglin 2013).

At first, academic discussion focused on what we now call symmetric federalism. Traditionally, a federal state is envisaged as a form of state organization comprised of two or more uniform component units (states, republics, provinces, entities, regions, cantons, communities) that have equal relationships with each other and the federal government (Halberstam 2012; Kincaid 2005; Watts 1997). Some examples include the so-called model federations of Germany and the United States of America. Symmetry(zation) is the main quality of the traditional federal system due to its integrative and centralizing potential (Palermo 2009). This is because traditional federal systems are not necessarily designed to protect diversity. They are usually established around the processes of nation-building (Requejo 2011) as it is believed that these serve as integrative and centralizing forces. In other words, the concept of symmetric federalism is designed to safeguard the cohesion of federal systems through the equal and uniform status of the component units and national identification.

The concept of asymmetric federalism was introduced by Tarlton (1965) to describe the differences in the relationships between (some) component units and the central government in federal systems. However, it gained importance only later. The concept was avoided because asymmetry was considered a disintegrating factor (Palermo 2009). Meanwhile, internal disputes have pro-

liferated, and fragmenting trends have started affecting traditional symmetric state designs not necessarily designed to accommodate diversity. To relieve tensions, federal but also quasi-federal, regionalized, and even unitary systems such as Belgium, Canada, China, Indonesia, Iraq, Italy, Russia, Spain, and the United Kingdom have resorted to asymmetric solutions to hold the systems together (Fossas 2001).

Asymmetries appear in two forms. (1) Political or *de facto* asymmetries are differences among component units and between component units and the federation authorities¹ based on ethnic, religious, linguistic, cultural, political, social, and economic factors that reflect the size of the population, the size of the territory, wealth, and the party system of the component units (Sahadžić 2020; Burgess and Gress 1999). (2) Constitutional or *de jure* asymmetries are political asymmetries that are embedded in constitutional and legal texts and, as such, produce differences in *status* (through recognition, representation, participation, veto in the federation institutions), *distribution of powers* (through allocation, specific types, opt-in and opt-out), and *fiscal autonomy* (through raising taxes and revenues, discretion on rates and bases, reliance on transfers) (Sahadžić 2020; Burgess 2009). For example, three of nine judges on Canada's Supreme Court are from Quebec; Indonesia's province of Aceh is authorized to apply Islamic Law; and the Basque Country and Navarre have different fiscal agreements than Spain's other autonomous communities. Importantly, the asymmetric status indicates the power of the unit to define its position within the system, enabling, at the same time, the system to hold together.

The primary force behind asymmetries is identity differences that seek accommodation. Different nationality, ethnic, racial, linguistic, and religious groups attempt to preserve their identity by demanding accommodation of their individuality. An example is the three language communities in Belgium (Flemish, French, and German). Identity itself, however, is not enough. To produce asymmetric constitutional solutions, identity has to be reinforced by one or more salient factors such as wealth, power ratio, absence of vertical power management or one-party dominance, separatism, and historical reasons (Sahadžić 2020). For example, the special autonomy region of South Tyrol in Italy has primarily used the historical Gruber–De Gasperi Agreement and economic development to preserve its special status.

However, the asymmetric accommodation of differences is not without consequences. Legitimacy disputes may arise if the system suffers from the lack of proper participation and representation of component units and groups, if the asymmetric division of powers influences the responsiveness of the system and accountability, and the like. Also, the stability of the system may be threatened if (too much) asymmetry provokes competition, overpowering, or centralizing forces and if asymmetries compromise trust and coordination.

To maintain the balance of an asymmetric system, asymmetries, legitimacy, and stability have to be in balance.

REASONS TO STUDY (A)SYMMETRIC FEDERALISM

While political asymmetries are widespread, constitutional asymmetries appear exclusively in systems burdened with identity differences (Sahadžić 2020). Territorially embedded identities tend to seek important political and institutional autonomy within the system. They even tend to put forward autonomy claims aimed at setting up new states (Stepan 2004). Also, the federation authorities have tended to trigger symmetrization processes in return.

In the past, insisting on symmetry to maintain internal arrangements seemingly led to maximalist claims such as self-determination and secession. In contrast, constitutional asymmetry has been increasingly recognized as a federal device for conflict accommodation. Its essence could be summed up as treating comparable situations alike and different situations differently (Weller 2011). As such, constitutional asymmetries allow for *bargaining flexibility* and *adaptive solutions* (Sahadžić 2020). This is because constitutional asymmetries do not come in neat packages.

As such, constitutional asymmetries offer an alternative to maximalist claims because they allow for continuous and incremental interventions in the power arrangement. This is linked to the three mechanisms that constitutional asymmetries encompass: (1) continuous renegotiation, (2) differing pace of negotiations, and (3) non-permanence. In other words, it means more options and variations when bargaining about the design of institutions and processes. Asymmetric constitutional solutions are (re)negotiated over time, meaning they allow for continuous renegotiation. They can also be negotiated at a different pace. Finally, they are not necessarily permanent but rather transitional or even sequential.

The application of constitutional asymmetries has obvious potential in conflict accommodation. However, asymmetry might mean more complexity and fragmentation. Although asymmetries invoke complexity, complexity seemingly acts as a cushion as complex relations disperse tension through the system (Bauböck 2001). Further fragmentation, however, requires some intervention. Softening the effects of fragmentation to hold the system together requires finding the right balance between centralization and decentralization, unity and diversity, shared rule and self-rule, and so on. It seems that a lack of balance is caused by the absence of available safeguards (Sahadžić 2020). Importantly, safeguards link to factors that underline constitutional asymmetries such as wealth or political environment. On one hand, the success of constitutional asymmetries is linked to the consistent economic development of the component units that disables high discrepancies in wealth among

them – which lowers the competition. On the other hand, success is linked to political mobilization that is not based purely on identity or loyalty, which increases cooperation.

HOW (A)SYMMETRIC FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

Federal studies have always been skeptical towards constitutional asymmetry as a federal device. The existence of constitutional asymmetry has been considered an exception (Tarlton 1965). Because of that, traditional federal studies did not invest in researching and developing the concept. They have remained interested mainly in basics, such as the definition of asymmetry (Hombrado 2011) even when the concept increasingly challenged traditional federal theory on symmetry.

Although different situations need to be treated differently, federalism and the concept of constitutional asymmetries have many vantage points. (1) Both federalism and constitutional asymmetries simultaneously require integration and devolution to preserve unity, although this also enables diversity. (2) A shift from traditional studies in federalism showed that contemporary systems with federal arrangements do not display traditional power-sharing or power-dividing principles. They strive to combine elements of shared rule and self-rule. However, contemporary federalism studies show that merging shared rule and self-rule in asymmetric systems is far from ideal, and it happens in its own way. For example, Belgium, Spain, and the United Kingdom have underdeveloped elements of shared rule by avoiding allocating shared powers. In some states, self-rule can vary as second chambers do not exist, such as in China and Iraq, or it does not serve the usual purpose, such as in Bosnia and Herzegovina, Italy, and Spain. (3) Also, research in federalism has long advocated for loyalty, arguing that it overarches diversity and hence provides for the sustainability of the system. In contemporary terms, the problem has been that different identities express their loyalty to several entities. While favoring one loyalty over another stimulates fragmentation, contemporary studies in federalism turn to other concepts that can preserve and strengthen ties between identities and territories reflected in the constitutional design such as solidarity.

LEARNING OBJECTIVES

Setting learning objectives includes considerations about (1) whether the course is a core or elective course and (2) whether the course serves undergraduate or postgraduate students.

Either way, this course endeavors to help each student accomplish, *inter alia*, the following learning objectives. Students will:

- Gain an understanding of the difference between traditional and contemporary federalism studies. This will serve as a basis for further understanding the difference between symmetric and asymmetric federalism.
- Be able to identify features of symmetric federalism, enabling them to discuss their applicability in a contemporary context.
- Be able to identify features of asymmetric federalism and, based on their examinations, be able to track down the types of systems that experience asymmetries.
- Gain knowledge of the forms (political and constitutional) and types of constitutional asymmetries (differences in status, the allocation of powers, and fiscal autonomy). This will enable them to contextualize these (especially comparatively) when discussing fundamental questions regarding institutions and procedures in asymmetric systems, especially federal principles.
- Be able to identify the primary factor (identity differences) and congruent factors (wealth, power ratio, absence of vertical power management or one-party dominance, separatism, and historical reasons) of constitutional asymmetries. This will enable them to debate the reasons behind asymmetric constitutional solutions.
- Be able to consider the advantages and disadvantages of the concept of asymmetric federalism. This will allow them to take a nuanced position concerning shortcomings linked to legitimacy and stability.
- Be able to identify and discuss how asymmetric arrangements affect constitutional engineering, such as the link to unity and diversity and to power-sharing and power-dividing. This will allow students to discuss potential safeguards against constitutional asymmetries.
- Gain up-to-date knowledge on constitutional asymmetry as a federal device in conflict accommodation. This will allow them to identify in which areas it converges and diverges with existing concepts, such as unity and diversity, power-sharing and power-dividing, and in which areas it introduces new concepts, such as solidarity.

HOW TO STRUCTURE AND TEACH (A)SYMMETRIC FEDERALISM

Introduce students to a theoretical framework about the evolution of (a) symmetric federalism. Bring forward two points: symmetry in a traditional federal system as a starting point and asymmetry in contemporary systems with federal arrangements as a turning point. *Conduct an exercise:* Split stu-

dents into groups and task them with providing examples of the model federal states and systems with asymmetric federal arrangements. Based on the input provided by students, the lecturer should make a list of two types of systems. At the end of the course, based on the course contents discussed during the semester, the lecturer and students should revise the list together to see whether they would make any changes on the list.

Define asymmetry and forms of asymmetry. Summarize the types of asymmetries, especially constitutional asymmetries. Link the dimensions of political and constitutional asymmetries. Explore with students how variations in size of territory and population, identity, wealth, and political parties translate into differentiated status, powers, and fiscal autonomy. *Conduct a simulation:* Split students into groups with specific roles in restructuring a state subject to autonomy claims. At the end of the simulation, outline the specificities in institutions and procedures caused by the application of constitutional asymmetry in conflict accommodation.

Introduce students to the discussion of whether there is a higher frequency of constitutional asymmetry in systems with differences in identity than in those that are not. Based on the available empirical analyses, explain identity as a primary factor of constitutional asymmetry and explore congruent features of constitutional asymmetries such as wealth, power ratio, absence of vertical power management or one-party dominance, separatism, and historical reasons in general and per type. *Conduct an in-class assignment:* Split students into groups and give them the results of empirical analyses. Ask them to analyze the factors with which identity interacts when triggering constitutional asymmetry.

Present students with a conceptual approach to legitimacy and stability. Detect and define concepts such as representation, participation, responsiveness, accountability, the quality of the governance processes, trust, coordination, and adaptiveness. Together with students, explore the ways of consolidating the notions into overarching principles to explain whether constitutional asymmetries are a threat or requirement for legitimacy and stability. *Conduct in class-discussions:* Split students into two groups. Give one group a handout and ask them to compare legitimacy in symmetric and asymmetric systems. Give another group a handout and ask them to discuss the differences in the understanding of stability in traditional and contemporary studies of federalism especially taking into consideration the differences between symmetry and asymmetry. Compare and make conclusions about the evolution and consequences for the institutional and procedural design.

Discuss how constitutional asymmetry interacts with unity and diversity. Especially tackle whether diverse identities need to be institutionalized to preserve unity. Further, discuss how constitutional asymmetry affects power-sharing (such as veto and proportionality) and power-dividing (such

as multiple majorities and checks and balances). Especially consider whether these are balanced. Finally, explore how constitutional asymmetry affects the abandoning of the concept of loyalty and upholds the introduction of other concepts such as solidarity. Recalling the discussion on legitimacy and stability, outline a list of advantages and disadvantages of the application of constitutional asymmetries. *Conduct an exercise:* Split students into two groups. Give them a hypothetical case study based on the abovementioned. Ask students to identify potential safeguards against constitutional asymmetries.

To nuance the teaching for postgraduate students and students in a core course, add an *in-class activity*: After the first several classes, divide students into groups and ask each group to briefly report on a country study per class. For each class, a different group examines a system with federal arrangements and reports on asymmetric institutional and procedural arrangements. To further enable a comparative approach, invite guest speakers who are experts in the field.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. How relevant is symmetric federalism nowadays considering its features?
2. If asymmetric federal arrangements appear not only in federal systems but also in quasi-federal, regionalized, and unitary systems, are federalism studies the right field to discuss constitutional asymmetries?
3. Discuss the factors that lead to asymmetric arrangements, reasons behind their occurrence, and their consequences in the system.
4. Identify examples of states with asymmetric arrangements. Is there an ideal case that could be used as an example for comparison?
5. Discuss the usefulness of asymmetric federalism in conflict accommodation.

What issues arise in the application of constitutional asymmetries in institutions and procedures and how can they be improved?

6. If asymmetric federalism is an alternative to maximal claims, what could be alternatives to asymmetric arrangements?
7. Constitutional asymmetries may provoke some detrimental effects on legitimacy and stability. Does that mean they should be reconsidered as a federal device in conflict accommodation?
8. An asymmetric environment affects constitutional engineering. What needs to be improved, asymmetric environment or constitutional engineering to provide for balance?
9. Discuss areas of convergence and divergence between constitutional asymmetries and existing issues in federalism such as unity and diversity,

power-sharing and power-dividing. Then discuss areas in which constitutional asymmetries provoke introducing new concepts such as solidarity in dealing with theoretical and practical issues in federalism. Does this imply new tensions on the horizon or simply adjustments?

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TEST/EXAMINATION QUESTIONS

Questions for undergraduate students and students taking the course as an elective:

1. Identify and briefly describe the main differences between symmetric and asymmetric federalism.
2. Distinguish between the primary and congruent factors of constitutional asymmetries.
3. Briefly describe the types of constitutional asymmetries.
4. What are the main advantages of asymmetric federalism?
5. What are the main disadvantages of asymmetric federalism?

Questions for postgraduate students and students taking the course as a core course:

1. Discuss the traditional and contemporary federal theory concerning the models of symmetric and asymmetric federalism. Explain, accordingly, the evolution of theoretical and practical issues regarding the forms of state organization.
2. Contextualize the primary factor of constitutional asymmetry concerning conflict accommodation.
3. How do the types of constitutional asymmetries determine asymmetric arrangements?
4. In which way do constitutional asymmetries reflect on constitutional engineering and cause drawbacks for legitimacy and stability?
5. Discuss potential complementary or alternative federal device/safeguards constitutional asymmetries. Would/should they be applicable in symmetric as much as in asymmetric systems?

POINTS FOR EVALUATION

Setting points for evaluation should involve considerations about (1) whether the course is core or elective and (2) whether the course is aimed at undergraduate or postgraduate students to nuance the evaluation. Undergraduate students and students who take the course as an elective should be encouraged to follow typical trends in the field of (a)symmetric federalism. Postgraduate students and students who take the course as a core, however, should be expected to refine their approach by advancing comparative, deductive, or policy, aspects in the field, and providing comprehensive feedback.

An instructor should encourage students to contribute effectively to in-class discussions to evaluate the student's understanding of the course material.

To test the ability of students to identify and understand features of (a) symmetric systems, an instructor should design a group assignment. A group would choose two systems to evaluate from the proposed lists. The group would then receive a document with checkboxes to investigate the presence of differences in status, powers, and fiscal autonomy. Further nuance would include a table to provide additional feedback.

Each student should be expected to write an essay and prepare a presentation based on their essay. This is envisaged as an opportunity to test the analytical capacity of situating specific issues such as the causes, consequences, and effect, pros and cons of asymmetries, the interaction of asymmetries with concepts such as unity in diversity and power-sharing in a more general but still theoretical and practical framework of federalism. Students should provide mutual feedback on their essays and presentations. The lecturer should con-

sider either nuancing this part or replacing this part with several *quizzes* and a *final exam* to better evaluate undergraduate students and students who take this course as an elective.

SUGGESTIONS FOR FURTHER READING

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NOTE

1. The term 'federation authorities' refers to the highest level of government in any form of state organization. This is especially considering that asymmetries appear not only in federal but also in quasi-federal, regionalized, and even unitary systems.

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17. Secession in federal systems: voice versus exit

Eva Maria Belser and Robin Beglinger

EXPLANATION OF SECESSION

Secessionist movements are on the rise globally (Fazal 2018). From political tensions to violence and civil war, many of the numerous conflicts of our time are rooted in and can be explained by secessionist claims. Given the frequency and intensity of these struggles, it may seem paradoxical that the creation of new states by secession is regulated only sparsely and quite ambiguously in international law. This paradox can be explained by the very nature of international law, a law essentially defined by states, which have little interest in allowing regions or communities to question the territorial integrity of states. The sparsity and ambiguity of secession rules in international law should not be mistaken for an absence of regulation. By mentioning the principle of self-determination of peoples in its first article, the United Nations Charter seems to provide a powerful argument for secession. To this day, however, the bearing of this principle and especially its relation to the principle of territorial integrity remains unclear. Consequently, international law still has great difficulty defining the holder of the right, namely, the ‘peoples’, and distinguishing their right to external self-determination, namely, secession, from their right to internal self-determination within a state.

Apart from international law, many states deal with self-determination matters in their national legal order. For the same reasons as stated above, constitutions rarely address self-determination in its external dimension; if they do, they mostly ban secession by insisting on the unity and indivisibility of the country and its territory. Numerous constitutions, however, address internal self-determination by granting autonomy – a limited right to self-determination – to one or several territories or communities. Further, some constitutional systems allow territories (e.g., districts or communes) under specific conditions to secede from one subnational unit (e.g., a state, province or canton) and join another unit or become a subnational unit of its own.

The modern concepts of secessionism and the collective right to self-determination date back to the American Declaration of Independence of 1776 and to the French Revolution of 1789, and have been multifaceted and ambivalent from the beginning. By arguing that the British Crown violated fundamental individual and political rights ('no taxation without representation'), the thirteen American colonies declared their secession from the British Empire and thus gained independence. By contrast, self-determination was used to justify (colonial) expansion in the French case. The – oftentimes fraudulently asserted – consent of the people served as a justification to annex territories such as Avignon, Belgium, the Palatinate and the Swiss Confederation from 1790 onwards.

The principle of self-determination gained further momentum during and after World War I, which saw large multi-ethnic empires such as the Austria-Hungarian and Ottoman empires split into independent states. In 1920, the legal nature of the right to self-determination was formally discussed for the first time. In a now famous 1921 case, the League of Nations denied a right to secession from Finland to the Åland Islands but left open a backdoor to secession should a state fail to effectively protect a minority on its territory. This argument of secession as a remedy of last resort, which had been used by the American colonies in 1776, can be seen as a blueprint for the further development of the topic and dominates the doctrine in international law until today.

Secessionism and self-determination played a particularly important role during decolonization. The General Assembly of the United Nations (UN) passed several resolutions which emphasized that 'all peoples' have the right to self-determination. It must, however, be noted that according to the resolutions as well as the preliminary discussions in the assembly, this principle was only meant to apply to narrowly defined colonies, namely, territories separated by oceans from the colonizing state, dubbed 'saltwater colonialism'. For political reasons, states were and are hesitant to recognize a right to external self-determination and ultimately to secession to other groups of people. Even saltwater colonies were typically once only allowed to make use of their right to self-determination within arbitrarily drawn colonial borders most often cross-cutting the settlement areas of nations and peoples.

With the adoption of the two UN human rights covenants in 1966, the concept of self-determination has become more human-rights oriented. Both covenants guarantee self-determination as a fundamental human right in their first article. Again, due mainly to a lack of consensus among states, the bearing of this right remains unclear outside of the colonial context. On the one hand, there are unresolved controversies about the right-holder, the 'peoples', and the difference between peoples, populations of a given state, and minorities. Ethnic, religious and linguistic minorities, according to the covenant, have the rights to enjoy their own culture, profess their own religion, and use their own

language, but not to self-determination. On the other hand, there are no undisputed answers to the question of what the right to self-determination implies, whether and when it allows for secession, and whether and when it corresponds to a right to internal self-determination in the form of an autonomy regime.

The absence of clear legal rules on secession constitutes a great problem for transnational governance. As there are no reliable legal venues to debate the right to self-determination and adjudicate controversial cases, there is a risk of conflict escalation. Such risk is increased because secession for most groups is only available as a last-resort remedy. Leaving secessionism mostly in the realm of power politics and emotions creates incentives to strengthen one's bargaining power by using violence, for example, and/or demanding interferences by kindred states. Instead of being solved, political tensions about the right to self-determination often lead to long, violent or frozen conflicts.

REASONS TO STUDY SECESSION

Separatism is a global phenomenon. Around the world, groups of people invoke their right to self-determination and ask for more autonomy (including federalization or decentralization of the state), claim independence (secession) or (re-)unification with a kindred state (irredentism). Even though colonization seems a topic of the past, secession claims have not diminished; secessionist movements are on the rise in both the so-called developed and so-called developing world. Understanding how these claims came to be and what their legal and political grounds are helps greatly in understanding many of the political and military conflicts of today's world.

For a long time, secessionist movements seemed to exist mainly in new and fragile states. Secessionism was often seen as a reaction to the neglect and marginalization of regions and communities or as a consequence of exclusive and sometimes violent national assimilation policies. National minorities with their own territory developed an appetite for their own state when they were, or felt, excluded from power, resources, opportunities and national identities. Nowadays, the majority of states, including well-established liberal democracies, are confronted with more or less virulent separatist movements. New states, such as Kosovo and South Sudan, come into being and are recognized by some states but not by others. Additionally, there is an increasing number of territories with a controversial status, such as Crimea, Taiwan, Jammu and Kashmir, Golan Heights, and Transnistria.

Furthermore, students of secessionism have much to gain methodologically from this field of law. Given that the legal justification of secessionist claims remains ambiguous and unclear outside of colonial contexts, the study of secessionism and self-determination is an excellent exercise in the thorough analysis of case studies. It also illustrates one of the great challenges that inter-

national law faces today: while international law is no longer only applicable to inter-state relations, it is still established almost exclusively through such inter-state relations. The increasing number of violent secessionist movements – and their root causes, such as the oppression of groups – also raises crucial questions related to prohibition of interference and the conflicting duty to protect against systematic and severe human rights violations.

HOW SECESSION FITS INTO FEDERALISM RESEARCH AND STUDY

Federalism can be understood as an implementation of the right to internal self-determination. Federal systems can prevent or accommodate claims to external self-determination by granting autonomy within the state. The idea is that most communities do not develop an appetite for their own state when their main claims to self-determination are answered. Federal systems thus often guarantee rights to self-rule in policy fields most crucial for the identity and well-being of peoples or minorities: culture, language, religion, education, and sometimes development. They also provide mechanisms to communities and territories to have a relevant impact on decisions made at the center and to strengthen unity in diversity by shared rule. In such a way, federal systems allow policies of common interest, such as security, international relations, and economic and social development, to be dealt with in common. How exactly power is divided and shared, how much autonomy a subnational unit is granted and how much (counter-majoritarian) influence it has on joint decisions will affect whether the population of the unit agrees to remain part of the state or if it claims external self-determination and thus full independence.

While the first federations, such as the United States and Switzerland, came into being through the partial unification of formerly independent units ('aggregative federalism'), most of today's federations were born as reactions to separatism. Formerly unitary states at some point decided to devolve powers to subnational units, to strengthen their participation in the making of national rules, and to accept them as equal partners in a federal covenant ('devolutionary federalism'). Examples of the latter include Belgium, Ethiopia, Nepal, and numerous federal or regional systems granting autonomy, such as the special regimes for the Basque Country, Greenland, Mindanao, Sabah and Sarawak, South Tyrol, and Zanzibar.

However, federalizing or decentralizing a country to prevent secession remains controversial. Politicians and scholars refer to the 'paradox of federalism' (Erk and Anderson 2009) to point to the risk of self-rule exacerbating divisions within a country, strengthening differences between groups and allowing regions to institutionally and financially prepare for independence.

Following the logic of this paradox, granting autonomy legitimizes the secessionist claims that federalism tries to ultimately invalidate.

Still, secessionist movements seem to be more virulent and violent in unitary states not granting autonomy. The idea of using federalism as a peaceful reaction to secessionism is that it allows communities and regions to govern themselves and to have a fair access to power and resources while remaining part of a larger unit. Such a strategy of federalization makes sense from an international law perspective as well. If groups are considered peoples with a right to external self-determination in situations of outright oppression (secession as last resort), granting self-rule and a right to participate in the making of shared rule delegitimizes secessionist claims and reduces the likelihood of new states to be recognized by others.

LEARNING OBJECTIVES

- Students familiarize themselves with the controversies characterizing the internationally guaranteed right of peoples to self-determination.
- They know about the challenges of defining ‘peoples’ and ‘minorities’ and determining their rights under international law.
- They understand different constitutional approaches to external and internal self-determination.
- Students are aware of the complex interlinkages between secessionism, federalism and other forms of vertical power-sharing.
- They can distinguish different forms of separatism and grasp their complex links to federalism and internal self-determination.
- They know a number of case studies and are able to understand the controversies surrounding them.
- They can argue about the right to secession and assess the legal and political values of arguments.

HOW TO STRUCTURE AND TEACH SECESSIONISM

To present secessionism, teachers will have to rely on a wide range of sources. Given that the legal justification of claims for secession remains ambiguous in many contexts, case studies are important. By analyzing different situations in which claims for secession are being voiced, students can understand the variety of their nature and the reasons for the ambiguity in this field of law.

The judgment of the Supreme Court of Canada regarding the secession of Quebec constitutes a good starting point for analyzing the role of judicial actors. In this important 1998 case, the Supreme Court examined the existence of a unilateral right to secession of the Province of Quebec under Canadian constitutional law as well as under international law. It held that Quebec could

not secede unilaterally, but that the federal government would be obliged to negotiate secession if a clear majority of Quebecers supported a clear question on secession. By contrast, the Spanish Constitutional Court rejected the right of Catalonia to hold an independence referendum and firmly sided with the national government in the political crisis. Another relevant text to introduce discussions about the right to secession is the Advisory Opinion delivered by the International Court of Justice in 2010 in order to answer the following question raised by the UN General Assembly: Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law? A special focus should be put on other recent independence referenda, their legality, their legitimacy, and their effects. In addition to Quebec and Catalonia, Scotland and Kurdistan are interesting cases.

Other case studies may take the constitution of states faced with secession claims as a starting point. Ethiopia's Constitution provides an interesting and rather unique example by stipulating in its Article 39 para. 1: 'Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession'. Para. 4 of Article 39 prescribes in detail how this right is exercised. This constitutional approach to secession can be contrasted with constitutions silent on the issue and the numerous constitutions prohibiting secession. As an example, Article 238 para. 1 (last sentence) of the Constitution of Ecuador may be discussed: 'Under no circumstances shall the exercise of autonomy allow for secession from the national territory'. Other interesting constitutions to examine are those of Liechtenstein, St. Kitts and Nevis, Sudan, and Uzbekistan, as well as Afghanistan, Bhutan, Bolivia and Myanmar.

When there is a right to secession based on international and national law or when regional communities claim a right to self-determination irrespective of such right, independence referenda usually follow. Because the right-holder is the people, the people must decide. However, what democratic secession should look like is far from clear. Should there be a qualified majority requirement ensuring that a region clearly aspires to independence and does not simply follow a political mood, or should a simple majority suffice to avoid a status quo bias? Questions like these are highly controversial and should provide for interesting classroom discussions. Another question to which no definite answer has been found is whether special participation quorum requirements guarantee that the decision to secede is broadly shared by the population and is not an elite project, or whether such turnout requirements incentivize manipulation, ethnic mobilization or fraud.

Closely linked to these normative issues is whether a right to self-determination can be claimed once or repetitively. While some hold the view that the questioning of international borders should be a one-time event and any deci-

sion final, others claim that the right to self-determination does not cease to exist when it has been used in a failed referendum. When there is an agreement between actors that an independence referendum can be held in a region, such an agreement usually attempts to settle a territorial conflict 'once and for all'. As the Scotland case and many others illustrate, such hopes are not always fulfilled. Famously, France, in an agreement of 1988, granted New Caledonia the right to hold three independence referenda. It is, however, important to note that even in such a situation, the secession of last resort under international law most likely cannot be forfeited.

A presentation on secession should not only include recent case studies but also the historical evolution of the right to self-determination of peoples. The American Declaration of Independence of 1776, for instance, hints already at the controversies surrounding the topic to this day by establishing a right to secession as a remedy of last resort:

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

The report presented to the League of Nations concerning the secession of the Åland Islands is another case worth discussing.

Furthermore, the right to self-determination and secession should be discussed in the context of decolonization. Here, the legal justification of secession loses much of its ambiguity. Attention should, however, be drawn to the fact that the generally accepted definition of colonialism in this context is a narrow one ('saltwater colonialism') and that the extension of an unambiguous right to external self-determination faces many difficulties. Case studies of decolonization to consider are Algeria, Cambodia, Democratic Republic of the Congo (DRC), Ghana, Namibia, Sri Lanka and Tanzania as well as Bermuda, Hong Kong and New Caledonia. In the context of decolonization, the making of new states such as Eritrea, Singapore and South Sudan are also worth considering.

In the same vein, it can be useful to consider countries that have come into being based on consent or other forms of agreement. Interesting examples include Montenegro, Palau, Timor-Leste and Slovakia. These examples should then be contrasted with claims and events which have not resulted in new countries but rather in persistent or frozen conflicts.

Finally, a link can be made between secessionism and federalism. Federal systems worth examining are Canada, India, Nepal and Nigeria. By comparing

legal orders that successfully prevented or accommodated claims for secession through federalization with less successful nations, students will be able to grasp what is at stake when discussing federal ideas and minority rights. Federations and other federal systems with autonomy regimes can hence be contrasted with regions and communities whose separatist claims have not been answered, been crushed, or are still lingering. Regions worth considering are Abkhazia in Georgia, Biafra in Nigeria, Casamance in Senegal, Bougainville in Papua New Guinea, Catalonia in Spain, Darfur in Sudan, Kabylia in Algeria, Katanga in the DRC, Nagorno-Karabakh in Azerbaijan, Patagonia in Argentina, Rakine State in Myanmar, South Brazil and Brazil, South Yemen and Yemen, Tigray region in Ethiopia, Wallmapu in Chile, and Western Sahara in Morocco.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Should all peoples or all minorities have a general right to secession under international law? Discuss and present arguments *pro* and *contra*.
2. Assuming there is a right to secession under international and national law, what majority in an independence referendum should be required for secession? Is a simple majority sufficient, or should a qualified majority agree to secede?
3. Discuss the relation between secessionism and federalism. How does one influence the other?
4. Does federalism accommodate or exacerbate ethnic divisions? Discuss using examples.
5. How can constitutions deal with secession? How can actors and procedures be defined?
6. Some argue that providing a right to secession serves as a guarantee for fair treatment of territorial minorities. Others argue that a right to secession can be used as a political instrument to obtain unfair benefits from the central government. Discuss the value of both arguments and take a position.
7. Some legal systems ban secessionist speech and secessionist parties. According to Article 10 para. 2 of the European Convention on Human Rights, for instance, the exercise of free speech may be subject to restrictions necessary in the interests of territorial integrity. Discuss the legitimacy and the effects of such human rights restrictions.
8. In what situations are unilateral secessions legitimate? Argue and discuss examples.
9. Give examples of countries that dealt successfully with secession claims. What are the similarities and differences between their approaches?

10. Are there secessionist claims in your country? If yes, could a federal system deal with them? If such a system is already in place, how does it influence the secessionist claims? If no, why not? Develop.

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TEST/EXAMINATION QUESTIONS

1. Explain the commonalities and differences between internal and external self-determination and the interconnections between the two concepts.
2. Discuss the origins of the right to self-determination of peoples and the controversies characterizing the right until today.
3. If colonized peoples have a right to self-determination, how could or should colonization be defined?
4. Should national minorities suffering from severe and systematic human rights violations be considered peoples having a right to secede?
5. Choose a country faced with secessionist claims and analyze the legal justification of these claims under international law.

6. Give an example of a federal system that dealt successfully with claims for secession and name reasons for this success.

POINTS FOR EVALUATION

To evaluate whether students have reached the learning objectives, teachers can rely on a wide range of examination types. Apart from traditional classroom exams, oral presentations and research papers in which students analyze a case study are particularly well suited. Another viable option is to let students write an essay about one of the controversial topics surrounding secessionism, allowing them to develop their own positions and ideas.

Given the particularities and challenges faced in this field of law, the primary objective of instruction should be to equip students with the necessary tools for their own analysis of case studies. After having followed the instruction, a successful student, when confronted with a case not discussed in class, is therefore able to put into context claims for secession and to assess their legal grounds. To evaluate this capability, more open-ended tasks like writing a research paper present themselves.

To reach the primary objective of independent analysis of case studies, students need to be familiar with the history of secession and the right to self-determination, the controversies surrounding these topics as well as the different contexts in which they apply. To assess whether students reach these objectives, more traditional examination types such as a written exam should work.

SUGGESTIONS FOR FURTHER READING

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18. Social policymaking in federal systems: can equity and diversity coexist?

Andrew Karch

EXPLANATION OF SOCIAL POLICYMAKING IN FEDERAL SYSTEMS

Is federalism an obstacle to a strong and egalitarian welfare state? The answer to this deceptively simple question depends on factors, including policy design, that tend to be overlooked in comparative federalism research (Greer and Elliott 2019). Nevertheless, it is often presumed that adoption of generous social policies is incompatible with – or at least significantly more challenging in – federal systems. Prominent both in comparative research and in studies of individual countries, this presumption offers a fruitful starting point for studying social policymaking in federal systems.

Comparative analyses of social policymaking often begin with the apparent correlation between decentralization and lower expenditures on welfare programs (Huber, Ragin, and Stephens 1993). Countries are usually labeled as federal or unitary, centralized or decentralized. Even scholars who acknowledge that ‘centralization and decentralization are obviously matters of degree’ contend that ‘it is not difficult in practice to classify most countries according to the simple centralized–decentralized dichotomy’ (Lijphart 2012, 177). This tradition characterizes federalism as a component of a decentralized political system, one in which the division of political authority makes it challenging to amend the status quo and establish expansive social programs. In sum, it asserts that federal systems – by dispersing political authority across orders of government – will be associated with less expansive welfare.

Similarly, theories focusing on the internal dynamics of federal systems often posit that constituent units are constrained in their ability to adopt generous social policies. One prominent framework suggests that the mobility of businesses and individuals fosters competition between constituent governments. Like firms, constituent governments strive to offer a desirable

level of taxes and benefits as they ‘sell’ their locations to businesses and individuals. This competition involves efforts to entice desirable actors to locate within a constituent unit while repelling those viewed as undesirable. Its logic suggests that constituent governments will not offer generous social policies. Instead, they will ‘race to the bottom’ to avoid becoming ‘welfare magnets’ that draw low-income families to their jurisdictions (Peterson and Rom 1990). This market-driven framework suggests that constituent governments will focus on economic development rather than redistribution (Peterson 1995).

The presumption that federalism is incompatible with robust social policies might be a fruitful starting point for the study of social policymaking in federal systems, but it is certainly not a satisfying place to end the discussion. Empirical studies complicate this tidy narrative in at least two ways. First, federal countries vary widely in their approaches to welfare-state spending. A recent study of education, healthcare, unemployment benefits, disability policies, active labor market measures, and pensions in eleven democratic countries with federal systems identifies extensive variation in welfare programs (Greer and Elliott 2019). Countries with similar constitutional structures, at least along the federal dimension, have adopted robust and diverse approaches to such policy objectives as redistribution and poverty alleviation. This policy variation calls for investigation and explanation.

Second, constituent governments in federal systems exhibit striking differences in their social policies. These differences are more pronounced in some federal systems than in others. In Canada, for example, Québec tends to take a stronger and more independent stand on general government policies, producing social policies distinct from other provinces. Analogous variation exists among the U.S. states and has been traced to factors such as partisan control, ideological context, demographic characteristics like race, and institutional features such as legislative professionalism. The structural constraints under which constituent governments operate do not foreclose the possibility of social policy activity. In fact, the possibility of policy variation among constituent units is often portrayed as one advantage of federalism.

REASONS TO STUDY SOCIAL POLICYMAKING IN FEDERAL SYSTEMS

Lasswell (1936) famously defined politics as who gets what, when, and how. Social policymaking – with its impact on the distribution of societal resources, health outcomes, and other critical phenomena – can lift individuals out of poverty, facilitate or hinder equality of opportunity, and provide a variety of services. Its importance does not depend on the existence of federalism, but the preceding section suggests that the dynamics of social policymaking in federal

systems bring a distinctive set of questions to the fore. These questions invoke broader debates about the general benefits and drawbacks of federalism.

The study of social policymaking touches on several issues of institutional design that have normative consequences. First, it allows us to assess one purported benefit of a federal system: the ability of constituent governments to customize policy templates. Sometimes they can adjust a policy template to local political conditions, responding to local constituencies in ways that national officials presumably cannot. Social policy variation might be normatively desirable if it reflects the distinctive views of different constituent units. It may suggest that these units are robust democracies. In addition, social policies adapted to fit conditions in individual jurisdictions might be more effective. Thus, the study of social policymaking invokes themes of responsiveness and efficiency, especially when the focus is on different policy approaches within a federal system. Second, the study of social policymaking showcases how constituent units can serve as laboratories of social experimentation. The ability to devise, implement, and assess novel public policies is an oft-cited benefit of federalism. Innovative programs that achieve their substantive or political objectives can diffuse to other constituent jurisdictions or even percolate upward to the federal government (Karch 2007).

Issues of responsiveness, efficiency, and experimentation implicitly highlight differences within individual countries. Bestowing policy autonomy on constituent governments therefore seems to require accepting the variation and accompanying diversity that might result. In other words, the study of social policymaking highlights a potential trade-off between decentralization and equal treatment under a single national law. This trade-off raises a fundamental normative question: What kinds of diversity are desirable in a federal system, and what kinds of diversity might be viewed as inequalities or inequities? In federal systems, individuals' geographic locations often shape both their access to and experience of healthcare, education, welfare, and other social policies. Who is eligible for these programs? How generous are they? The answers can vary dramatically for individuals living in different constituent units of the same country. As a result, the study of social policymaking illuminates foundational questions about the meaning of community membership (Mettler 1998). T. H. Marshall developed the notion of social citizenship, which requires society to abate unmerited inequalities, provide a basic level of social well-being and economic security, and offer access to healthcare and basic education. Concerns about inequality are especially salient in federal countries characterized by religious, linguistic, racial, or other forms of diversity. Students who examine the dynamics of social policymaking in federal systems will therefore be exposed to issues of representation, government performance, and citizenship that are central to many scholarly disciplines.

HOW SOCIAL POLICYMAKING FITS INTO FEDERALISM RESEARCH AND STUDY

The study of social policymaking also invokes a key theme long central to federalism research. The preceding section emphasized variation within individual federal systems, but cross-national comparisons among federal systems are also revealing (Greer and Elliott 2019). Federalism is a broad term that encompasses tremendous institutional variation. As previous chapters of this volume have shown, federal systems vary in their degree of legislative, administrative, and fiscal decentralization, the manner through which constituent governments achieve representation, and the number of constituent jurisdictions. Canadian federalism, for example, is highly decentralized and permits extensive policy variation among provinces. In contrast, German federalism is distinguished by its ‘administrative’ approach in which the federal government assumes most lawmaking authority and the *Länder* are responsible for most implementation (Fenna 2020). German federalism is also characterized by a ‘uniformity of living conditions’ principle that promotes policy uniformity. Provisions for fiscal equalization, which provide poorer constituent units with sufficient revenue to provide at least a national average level of public services for their citizens, exist in virtually all federations except the United States and are especially important. The ultimate impact of social policies reflects these and other institutional differences. Thus, the study of social policy demonstrates the limitations of drawing a binary distinction between unitary and federal systems and highlights the necessity of acknowledging the ways in which federal systems differ from one another.

The dynamics of social policymaking also illustrate the significance of intergovernmental relations, especially the interactions between the federal and constituent governments. In a federal system, the administrative and political success of national policy initiatives often depends on their reception among constituent unit officials. Recalcitrant constituent governments can hinder implementation, preventing national social programs from achieving their objectives. In addition, they represent a potential political constituency or stakeholder group. Whether their position is one of support, indifference, or opposition, their political engagement affects whether national policies will endure or wither on the vine (Karch and Rose 2019). These post-enactment developments also highlight the political impact of institutional design. Whereas venues for collective action among constituent governments are institutionalized in Switzerland (Wasserfallen 2015), the Council of Australian Governments has no formal basis in statute and is not an institution ‘in any meaningful sense’ (Phillimore and Fenna 2017, 602). Thus, the nature of federal institutions has both an administrative and a political effect.

LEARNING OBJECTIVES

The study of social policymaking in federal systems allows instructors to pursue various general and specific learning objectives. It invokes long-standing debates about the benefits and drawbacks of federalism and decentralization. By gaining familiarity with, and participating in, these debates, undergraduate students can develop their general academic and critical thinking skills. Instructors can press them to articulate arguments, identify the observable implications of those arguments, and use relevant evidence to assess their validity and those of opposing views. These skills can be developed through oral presentations and in writing assignments. Exposure to canonical theories of federalism and social policymaking, such as the market-driven framework described earlier, provide another opportunity to apply these skills.

Additionally, advanced undergraduate students and graduate students will gain specific knowledge about federalism and its implications. They will develop an appreciation of the many ways in which social policy objectives can be pursued and how federalism makes certain policy approaches more or less likely. Students in comparative courses will gain a better understanding of the importance of institutional design by comparing federal systems to unitary systems and to one another. This comparative exercise can also be extended to different policy areas, as students learn about different components of the welfare state such as pensions, education, and active labor market policies. It can also be extended over time, especially in courses that focus on a single federal system and its evolution. Policymaking is an iterative process; in federal systems, that means that the proper balance of authority between the federal and constituent governments can be subject to constant debate and renegotiation. In-depth examinations of specific policy areas will highlight this theme.

HOW TO STRUCTURE AND TEACH SOCIAL POLICYMAKING IN FEDERAL SYSTEMS

There are many ways to structure and teach social policymaking in federal systems. The most appropriate strategy may depend on the content of the course in which the topic will be addressed. Instructors teaching courses on social policy, public administration, or the politics of the welfare state are likely to embrace a different approach than their peers who teach courses on comparative federalism. Similarly, instructors whose courses focus on the dynamics of a single federal system – such as Australia or the United States – or on a single domain – such as income support or healthcare policy – may emphasize slightly different themes. These divergent emphases are unavoi-

able. However, all instructors can and should introduce social policymaking by referring to the conventional assumption that federalism is an obstacle to the creation of a strong and egalitarian welfare state. This discussion can begin by highlighting both the purported correlation between federalism and lower spending on social policy programs and the structural constraints under which constituent units operate in federal systems. The work of Tiebout (1956) provides an accessible introduction to the market-based logic behind the structural constraints. Subsequent class discussions can probe the strengths and limitations of this conventional assumption. For example, interjurisdictional mobility might be limited for poor individuals in multinational federations because of language barriers or other institutional hurdles.

In courses on comparative federalism or individual federal systems, social policymaking offers an opportunity to discuss the potential benefits and drawbacks of federalism. These long-standing debates can be addressed in several ways. A course with a unit on social policymaking in federal systems can devote class sessions to different policy domains. It is essential for instructors to provide concrete information about historical and contemporary developments in each domain, partly because these details can establish the necessary foundation to conduct small-group discussions that turn to broader, perennial questions. Are national mandates, or more provocatively ‘one size fits all’ solutions, desirable in this policy domain? Why or why not? What are the potential benefits of allowing constituent units to develop their own solutions to this societal problem? If the devolution of policymaking authority to constituent units produces major differences based on geography, would such diversity raise equity concerns? These types of questions are an especially good fit for undergraduate courses, where students are less likely to be familiar with these issues and potential trade-offs.

In courses on individual federal systems, the preceding questions can be linked to policy tools like intergovernmental grants. Conditional intergovernmental grants play a prominent role in Australia and the United States, for example, and there is a long-standing debate in American politics about the relative benefits of block and categorical grants. Small-group discussions can introduce students to this debate, as can comparisons of prominent social policies such as Temporary Assistance for Needy Families (TANF) and Medicaid in the United States. In small-group discussions, students can be asked to imagine themselves as members of Congress who are weighing the merits of block and categorical grants. Different groups can surreptitiously be assigned different subject areas, generating a broader discussion about the conditions under which devolution is most desirable.

Broader debates about federalism remain relevant in graduate seminars, but they can play a less prominent role. Instead, the study of social policymaking can illustrate emerging themes in contemporary federalism research. Recent

cross-national analyses suggest that the specifics of federal arrangements, not the mere existence of federalism, shape the impact of the welfare state (Greer and Elliott 2019). In other words, institutional design matters. Treating all federal systems as equivalent to one another obscures critical variation that affects the policy outcomes of interest to scholars and students. Additionally, constituent units are not only the site of social policymaking. Constituent unit officials are also important stakeholders whose political mobilization can reinforce or undermine national programs. Specific programmatic provisions, such as those related to financial generosity and constituent unit autonomy, shape their responses to national social policy initiatives (Karch and Rose 2019). However, institutional design might shape their ability to engage in collective action. Differences in legislative organization and the powers of second chambers, fiscal arrangements, and other institutional factors might shape both how policies are designed and their political reception. Graduate seminars offer a good venue in which to assess whether and how differences in institutional design affect social policymaking, intergovernmental relations, political dynamics, and programmatic outcomes.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. What does the term ‘welfare magnet’ mean in the United States? What are the implications of this idea for social policymaking?
2. Some scholars of federalism categorize public policies as developmental or redistributive. Which category is most appropriate for education policy? Why?
3. How might economic competition constrain social policymaking by constituent units? Provide an illustrative example.
4. Pensions are a central component of the welfare state. In federal systems, the delivery and finance of pensions tends to be centralized (in contrast to the patterns for education). Why do you think that is the case?
5. The *Cambridge Dictionary* defines citizenship as ‘the state of being a member of a particular country and having rights because of it’. What are some of the political, civil, and social rights that you associate with citizenship? Is a federal system conducive to the protection of these rights?
6. Some observers contend that constituent governments are ‘closer to the people’ than the federation government. What sort of evidence could you use to evaluate this claim? In other words, what will constituent unit social policies ‘look like’ if this argument is valid?
7. Can constituent governments effectively serve as laboratories of social policy experimentation? Provide an example of an innovative constituent unit program that achieved its substantive or political objectives.

8. Identify at least three ways in which federal systems differ from one another in terms of institutional design and explain how these differences affect social policymaking.
9. When national lawmakers consider social policy reform, constituent unit officials actively monitor these discussions and attempt to influence them. Provide an illustration of this dynamic, identifying the factors that explain constituent unit officials' support, indifference, or opposition to the proposed change.

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TEST/EXAMINATION QUESTIONS

1. Why is federalism usually portrayed as incompatible with a strong and egalitarian welfare state? Do you agree with this conventional portrayal?
2. Choose a federal system. Describe how federalism affects social policymaking in two of the following areas: education, healthcare, or income support. Be sure to discuss both the vertical relationship between the constituent units and the federal government and the horizontal relationships constituent units have with each other.
3. According to political scientist Paul E. Peterson, one 'price of federalism' is inequality. What does he mean? Drawing on examples from at least

- three policy areas, explain how the rights and privileges associated with community membership depend on geography. Is this geographic variation problematic? Why or why not?
4. Choose one of the following policy areas: education, healthcare, or income support. Imagine that you are a member of the national assembly who is considering a new program in that area and must decide on how much discretion to provide constituent governments in its implementation. What would you recommend? Why? Would your recommendation change if you were working on a different policy area?
 5. In 1932, Supreme Court Justice Louis Brandeis referred to the U.S. states as ‘laboratories of democracy’. What does this metaphor mean? In your opinion, are constituent governments well-suited to serve as policy laboratories in the twenty-first century? Your answer should describe the institutional capabilities of constituent governments, recent innovations in at least three policy areas, and the advantages and disadvantages of shifting policymaking responsibility to the federal government.

POINTS FOR EVALUATION

Instructors’ evaluative criteria will depend on the level and content of their courses. Both undergraduate and graduate students can be expected to have mastered the basic concepts and arguments outlined in this chapter. They should be able to articulate why scholars theorize that federalism will be associated with less generous and egalitarian welfare states; they should also be able to identify and explain the competitive pressures that purportedly constrain constituent units from adopting expansive social policies. After studying social policymaking in federal systems, all students should be able to evaluate these theoretical frameworks, explaining whether and why they find them compelling. Moreover, they should also be able to link their assessments of these frameworks to broader issues of representation, government performance, and citizenship in federal systems.

Students in different types of courses will bring different forms of evidence to bear on the issues outlined in the preceding paragraph. Courses on comparative federalism, especially graduate courses, facilitate analyses of institutional design that emphasize whether and how specific federal arrangements influence both social policymaking and the political dynamics surrounding existing programs. Courses on individual policy areas, such as education or healthcare, facilitate similar comparisons across different federal systems. Finally, courses on specific countries with federal systems facilitate comparisons across time and policy areas. Welfare state programs can and do evolve, and sometimes these changes have profound implications for the distribution of responsibilities among governments. In the United States, the 1996 creation of TANF is

one prominent example. Whatever the specific focus of their course, students should be able to explain how the institution of federalism shapes the politics of social policymaking in a variety of contexts.

SUGGESTIONS FOR FURTHER READING

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19. Applying a gender lens to federal systems

Jill Vickers

EXPLANATION OF GENDER IN FEDERAL SYSTEMS

This chapter introduces gender/federalism research. Because it applies a *gender lens* to the many themes in the other chapters, it differs from them. Until recently, most ‘mainstream’ federalism research ignored non-territorial forms of diversity such as gender (as well as race, sexuality, and the like). Feminist political scientists who developed the gender lens, moreover, ignored federalism until those living in federations realized that the policy reforms needed to advance gender equality often required activism at both levels of government (i.e., the late 1970s). Initially, they followed their intuition that federal institutions are gendered, that is, experienced differently by women and men. But research confirmed their intuition and the impact of real-world events on women’s participation in newly founded or restructured federations, in democratization in formerly authoritarian federations, and in the federalization of previously unitary states (e.g., Belgium).

Watts (1999) estimated that about 40 percent of the world’s population experienced formal federalism. Two decades later, it is likely that half the world’s women experience some form of multilevel governance (MLG), making it important to understand how gender and federalism interact. However, rather than treating federalism as a system, many gender/federalism researchers disaggregate it into multiple arenas or *federal arrangements* (Vickers 2011) composed of institutions, practices and legitimizing ideas. To promote the reforms needed to achieve women’s equality, gender researchers identified *obstacles* produced by federal arrangements as well as *federalism advantages*, notably opportunities for activism, such as venue shopping (i.e., shifting between orders of government to find the most sympathetic).

In countries with unitary governments, feminist activists largely ignored anything to do with the state, focusing on cultural change instead. But in federations, they were more likely to realize the need to engage with state institutions by identifying both the obstacles and opportunities posed by those

institutions. In Australia (e.g., from the 1980s), equality-seekers engaged with the state through 'women's machineries', aka *women's policy agencies* (WPA), first created by governments to attract women voters (Sawer 1996). But in federations with ongoing constitutional restructuring, such as Canada, WPAs were less successful. Comparing federations reveals the obstacles posed by MLG to successful policy reforms and to potential federalism advantages.

How is a gender lens applied? Some gender/federalism research compares women's participation in political parties, policymaking and outcomes in unitary versus federal states (e.g., Chappell and Curtin 2013; Franceshet and Piscopo 2013). More often, comparisons are within and/or between federations (e.g., about the effects of constitutional restructuring on women's organizing and participation and of gendered activism on federal arrangements). In 1972, for example, the U.S. women's movement got Congress to pass an Equal Rights Amendment (ERA) to the U.S. Constitution, but anti-feminists blocked ratification in enough states to defeat it. Nonetheless, there are now ERAs in 26 state constitutions. Despite the ERA's failure in the United States, Swiss women – the last in Europe to win the vote – gained a very effective federal ERA in 1981. Moreover, English-Canadian feminists led a coalition to win gender rights in Canada's Charter of Rights and Freedoms (1982). This created space for later coalitions to win rights for other non-territorial populations. But the deterioration of women's rights in Russia after the 1991 breakup (Chandler 2010), and in Yugoslavia, made many feminists hostile to federalism.

The vertical divisions of power that characterize MLG create multiple arenas within which gender regimes interact with federal arrangements (Chappell 2002). Gendered frameworks treat federalism as dynamic unlike some 'mainstream' research which considers it static. Gender scholars explore how federal arrangements affect and are affected by women's organizing, participation and representation. Some (Banaszak and Weldon 2011) studied how informal institutions interact especially with democratization, also drawing insights from research about federations in the global South. Weissert (2020, xv) explains: 'most [mainstream] federalism literature doesn't deal with decolonization and democratization or ... [with] military or authoritarian governance [which] ... is important ... as ... federations in the global south experience both'. While some Western mainstream researchers (e.g., Burgess 2006) insist that the only true federations are liberal democracies, in federations with authoritarian regimes that subsequently democratized (e.g., Argentina and Nigeria) MLG facilitated democratization as in Mexico. This expands mainstream research's scope to include federations in the global South and fosters more dynamic concepts of federalism and the issues that shape federalization.

REASONS TO STUDY THE GENDER LENS ON FEDERALISM

Why gender scholars and equality-seekers choose this topic is clear. Women often experience federal arrangements differently than men, although territorial (e.g., ethnicity) and non-territorial factors (e.g., race and class) have effects too. But MLG helps create political opportunity structures (POS) that may result in positive outcomes for women. The potential effects of constitutional restructuring led many gender scholars to explore: ‘why should women care about federalism?’ Some undertook considerable research to identify the obstacles (aka veto points) that MLG may pose for equality-seekers. To advance reforms, women’s movements mobilized around a set of policy issues often decided by different orders of government: sexual and reproductive freedom/partner choice; access to contraception and safe abortion; bodily security, especially protection from violence, such as rape and battering; social benefits, such as maternity and parental leave; childcare; family law reform; and descriptive representation (i.e., getting more women elected). Gender/federalism researchers also study the innovations developed by women’s movements (e.g., WPAs, quotas, feminist economics and gender budgeting).

Significantly, gender/federalism research has revealed issues of importance to mainstream researchers. Gender/federalism research highlights change because policy reforms are needed to advance gender equality. Weissert (2020) explains that when viewed through a gender lens, federalism has a dynamic nature. This makes gendered research innovative because traditionally mainstream research treated federalism as *static*. This alone is a valuable contribution. Further, in some countries, gendered research is ‘pushing federalism beyond territory’ (Rubenstein 2020, 194) by including non-territorial forms of diversity. In the United States, for instance, research about race in federations has a long history (e.g., Riker 1964), but the intersectional approaches employed by some gender/federalism scholars help conceptualize how federal arrangements interact with both territorial and non-territorial forms. Adding new ways of understanding diversity could transform federalism studies.

A third reason for choosing this topic is valuable research about new strategies women’s movements developed to exploit the POS created by MLG, such as WPAs and quotas to increase women’s descriptive representation. Of particular importance are the outcomes when a gender lens is applied to aspects of fiscal federalism (e.g., feminist economics, gender budgeting and equalization). Research shows that gender/federalism interactions constitute a two-way street (Chappell 2002). That is, in addition to identifying how federal arrangements affect struggles for gender-equality rights, it shows how such struggles affect women’s political mobilization and participation, espe-

cially as women are at least half the population in every federation. Studying 99 democracies, Stockmer and Tremblay (2015, 605) found that the average percentage of women legislators in federations exceeded that in unitary democracies by four percent. They attribute this to federations having mandatory quotas (32.5 percent vs 16.6 percent in unitary states) and to women being first elected in federations 13 years on average earlier than in unitary states (1944 vs 1957). But their focus was on central legislatures, mainly because regional data are scarce. Nonetheless, existing data show that in some federations, more women are elected to regional legislatures despite the absence of regional quotas. In 2006, Mariani (2008, 287) found more women in 44 U.S. state legislatures than in their congressional delegations. Mackay (2010) found that devolving powers to regional assemblies in quasi-federations (e.g., U.K. and Spain) helped increase women's presence, although institutional newness also contributed to the increase.

HOW GENDER FITS INTO FEDERALISM RESEARCH AND STUDY

Some gendered research fits easily into the mainstream, for example, gendered studies about how constitutional arrangements and restructuring affect women's citizenship, agency and participation, and the effects of de/centralization on social policies and programs. But even themes that fit in may take a different viewpoint. For instance, gendered research takes the perspectives of *policy-takers*, while mainstream research usually takes the perspectives of *policy-makers*. This results in different assessments of the effects of de/centralization. There also are themes that may fit in when they are more developed but which have different emphases. For example, the gender lens adds to studies of conflict management research about the capacity or willingness of security services to protect women and girls from violence (Dayil and Vickers 2020). An important gendered theme is fiscal federalism, notably the effects of purportedly gender-blind economic analysis and de/centralization, gendered problems of definition and measurement, women's concerns about equalization and gender budgeting.

Some themes may never fit into mainstream studies. For instance, gender scholars will always consider policies relating to women's equality *a matter of rights* as sanctioned by international treaties and, so, the responsibility of central governments, regardless of constitutional arrangements. This will make them oppose such federalist doctrines as 'localism' (i.e., the conviction that these matters are moral issues that local communities should regulate rather than rights). Evidence also shows that 'the public/private divide' is embedded in or superimposed on constitutional divisions of power, which most mainstream scholars ignore.

Some gender scholars theorize that ‘when nations choose federations ... [they] often allocate “private matters” to the regional entities’ (Baines and Rubio-Marin 2005, 12). But Irving (2008, 68) established that, while ‘the scope of “the national” has enlarged over time’, ‘the traditional female spheres of education, health, welfare ... are far less commonly represented, ... in the constitutional class of “the national”’. Further, mainstream theorist Ronald Watts (2005, 330) showed that the effects of a public/private divide in federations are evident in the assignment of ‘outside’ powers associated with men (defense, security, external relations) to central governments with ‘inside’ matters traditionally associated with women assigned to regional or local governments. This is largely obscured to mainstream researchers by de facto power-sharing and neo-liberal ‘down-loading’ and ‘off-loading’ to the private sphere.

LEARNING OBJECTIVES

There are two types of learning objectives in studying gender/federalism research. One is for students to learn to identify implicit and explicit gender biases and to address them by incorporating insights drawn from the gender/federalism field. One approach is helping students understand that research is a human activity that too often universalizes the experiences and ideas of the dominant actors, while excluding those of political outsiders (e.g., women). The founders of Western liberal-democratic federations were men, although in Australia white women tried to influence the ‘heads of power’ (Irving 1996) and most women won the federal vote on founding (1901/02). But in the global South, women participated in founding some federations, such as India, and in democratizing previously authoritarian federations. Exploring this brief history will help students understand that both implicit and explicit gender biases exist within the power-sharing bargains in federal constitutions and in mainstream federalism studies.

The second learning objective is to help students understand what it means to claim that federal arrangements are gendered and why it matters. Women and men often experience federal arrangements and federalization differently, in part because more men were political insiders able to exploit federalism’s advantages. They were ‘founding fathers’ who struck the federal bargains or colonial officials who imposed federalization. Both majority and minority culture women were usually outsiders. Students also should understand *why gender bias is usually invisible* (i.e., why mainstream concepts and frameworks appear gender neutral). They also should explore how discursive devices like the public/private divide that are embedded in, or superimposed on, constitutional divisions of power render ‘women’s work’ invisible. Students also need to understand that women of a minority culture often experience federal

arrangements differently than their majority culture counterparts, provided their nation has its own regional governments. This also shows that using a gender lens helps reveal the dynamics between central governments' shared powers and the independent powers of state or provincial governments.

HOW TO STRUCTURE AND TEACH GENDER AND FEDERALISM

Gender/federalism research explores almost all the topics studied in mainstream research. But because of space restrictions, this section focuses on four examples.

1. **How Constitutional Arrangements and Restructuring Affect Women's Citizenship and Agency**

Introduce students to comparative studies of how constitutional arrangements differ across and within old Western federations. Women's struggles for the vote, for example, differed between and within federations, and where federalization preceded democratization, its fragmentation limited women's organization to local arenas. An exception was Australia where activists mobilized against federalism before the founding. In the 1890s, New South Wales suffrage leader, Rose Scott, claimed federation would reduce women's power over 'intimate matters' by centralizing men's power (Irving 1996, 99). While women temperance supporters wanted state governments to regulate liquor and opium, other Australian feminists wanted marriage and divorce centrally regulated to ensure a single marital regime. Feminists cited well-known problems Americans experienced because divorce is subject to state control.

2. **The Effects of De/Centralization on Policies to Advance Gender Equality**

Explore with students the extensive research about how de/centralization affects policies that promote gender equality, such as access to safe abortion and childcare and protection from violence. Because the effects vary, trace with students what comparative studies show about LGBTQ rights, for instance. The principle of subsidiarity holds that because local and regional governments are closer to citizens, they are more responsive and accountable, and that decentralization creates laboratories for policy experimentation, from which innovations can be diffused to other regional states and/or the central government. But many feminists consider that as policy-takers, women need centralization to get the same rights and services wherever they live. In multinational federations, however, feminist nationalists often support decen-

tralization, as in Quebec, provided their nation has its own, gender-friendly government.

Comparing the same-sex marriage campaigns in Canada and the United States, Smith (2010, 107) initially concluded that ‘allocation of jurisdiction over LGBTQ rights to the central government facilitate[d] the success of the LGBTQ movement’. But her later comparisons (2020) identified other factors, particularly the existence of a constitutional rights document and a robust senior court. Even after courts rule and legislatures pass laws, however, reforms must be implemented, but regional governments control of service provision (e.g., marriage, divorce, and abortion) may trump the effects of judicial or legislative centralization (White 2014; 2020). Regarding the effects of decentralization on fiscal equalization, there is also ‘evidence that power at the local level [in India] is more concentrated, ... elitist and applied more ruthlessly against the poor than at the centre’ (Griffin 1981, 224). Also, decentralization can increase corruption and reduce accountability (Rose-Ackerman 1997). Have students consider how and why the effects of decentralization on gender reforms may vary across federations.

3. Modernization, Gender and Territorial Politics

‘Under the influence of a modernist paradigm’, territory was replaced by function as the key ‘principle of social and political organization’ (Keating 2008, 60). Explore with students how this separated federalism studies from mainstream political science, which assumes the unitary nation state is the proper container for modern politics (i.e., methodological nationalism). They should also note how gender/federalism researchers conceptualize gender as both a territorial and non-territorial form of diversity. Also help them understand the gendered effects of each federation’s age and if federalization preceded democratization. In long-established federations, conflict management is usually institutionalized; in newer, more diverse federations (e.g., Nigeria), the state often lacks the capacity to manage such conflict. But women’s main concern is if central, regional, and/or local security services can and will protect them against violence.

4. Fiscal Federalism

Using a gender lens to analyze fiscal federalism began with studies of women’s work; for example, in *If Women Counted* (1988), Waring showed that standard economic measures like GDP ignore women’s unpaid work, which the discursive construct of the public/private divide renders invisible. Students could view Waring’s 2020 Ted talk *The Unpaid Work that GDP Ignores* on YouTube (<https://www.youtube.com/watch?v=BrnZMrjsf6w>). Other aspects resulting

in a gender-lens illumination include: gender budgeting, gendered analyses of equalization programs, and the gender bias used in most measures of fiscal analyses. Gender-sensitive budgeting began in Australia during the 1980s and was developed and spread by United Nations agencies. In ‘determining gender equity in fiscal federalism’, Chakraborty (2010) explored the effects of gender bias in equalization. While, in many federations, central governments have authority to raise the most revenue, state or provincial governments are responsible for most of the (costly) welfare and service responsibilities. A gender lens lets feminists explore intergovernmental transfer systems developed to redress this imbalance and the problem of unfunded mandates.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. What does the claim that ‘federalism is gendered’ mean? Do you agree with it?
2. How can we establish if federalism is good or bad for women? Define multilevel governance and ‘good’ and ‘bad’ in your discussion or essay.
3. How might the federalization of formerly unitary states (e.g., Belgium) affect women’s organizing, participation and representation?
4. How do federal arrangements affect the legislating and implementing of policies to promote gender equality? Consider several specific policies in your discussion or essay.
5. Why is constitutional restructuring so central to gender/federalism research? Consider both citizenship and the distributions of powers in your discussion or essay.
6. Why do Chappell (2002) and Vickers (2011) maintain that interactions between gender and federalism constitute a two-way street? Consider how feminist activism can affect federal arrangements in your discussion or essay.
7. Is decentralization good or bad for women’s efforts to achieve gender equality? Address both legislative and administrative decentralization in your discussion or essay.
8. Identify three ways gender analysis is challenging mainstream research on fiscal federalism.
9. Using a gender lens, explain how federalization and democratization interact in several federations.
10. Discuss how the discursive construct of the public/private divide affects federalism arrangements and constitutional restructuring. How does it affect mainstream federalism research?

READINGS FOR STUDENTS

- Chappell, L. and J. Curtin (2013), 'Does federalism matter? Evaluating state architecture and family and domestic violence policy in Australia and New Zealand', *Publius: The Journal of Federalism*, **43** (1), 24–43.
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TEST/EXAMINATION QUESTIONS

1. Identify three main differences between mainstream and gendered federalism research.
2. Briefly define five of the following concepts: federal arrangements, federalization, gender bias, multilevel governance (MLG), territorial diversity, political opportunity structures, democratization, federalism advantages, venue shopping. Explain the significance of two of them in depth.
3. How might including gendered research about federations in the global South expand the boundaries of mainstream federalism research? Make sure you explain what makes them different from research in old Western federations.

4. ‘Most federalism literature doesn’t deal with decolonization and democratization or ... military or authoritarian governance [which] ... is important ... as ... federations in the global south experience both’ (Weissert 2020, xv). Discuss.
5. Briefly define five of the following concepts: unpaid labor, gender lens, intergovernmental transfers, gender budgeting, subsidiarity, unfunded mandates and ‘policy-takers’. Illustrate how two of them are significant for gendering fiscal federalism.

POINTS FOR EVALUATION

Instructors should assess students’ abilities as shown in their discussions, assignments and tests in relation to the learning objectives. One is to help students learn to identify implicit and explicit gender biases in mainstream federalism research. Assess how well students understand why gender (or race) biases constrain mainstream federalism research and why it matters. One way to determine if this objective is being achieved is to assess students’ use of a gender lens in discussions, assignments and tests. Senior students should be developing their own gender lens, drawing from the rich gender/federalism literature and applying it to mainstream federalism concepts and research.

The second objective was for students to learn what the claim that ‘federalism is gendered’ means and why it matters. Test for their ability to identify how many women and men experience federal arrangements and federalization differently. Students also should be able to explain why gender bias is usually invisible (i.e., how e.g., mainstream concepts seem gender neutral because the public/private divide is embedded in, or superimposed on, constitutional divisions of power). Senior students should also be able to explain how gender/federalism scholars are challenging mainstream fiscal federalism.

SUGGESTIONS FOR FURTHER READING

- Chappell, Louise (2002), *Gendering Government: Feminist Engagement with the State in Australia and Canada*, Vancouver: University of British Columbia Press.
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20. Indigenous peoples and federalism: in or out?

Martin Papillon

EXPLANATION OF INDIGENOUS PEOPLES AND FEDERALISM

According to the United Nations Permanent Forum on Indigenous Issues, more than 470 million indigenous people live in 90 countries across the world (UNPFII 2010). Many of those countries are federations. While culturally diverse (they speak more than 4,000 languages), indigenous peoples of the Americas, Africa and Asia share a struggle to maintain their distinctive identities, political systems, and unique relationship with their ancestral lands. Indigenous peoples also have in common an experience with colonialism in its diverse forms, from forced displacements due to pressures from extractive industries, such as mining or hydro-development, to overt discrimination and political violence perpetrated by states that have long sought to assimilate them.

Although they continue to face tremendous challenges, indigenous peoples have shown remarkable resilience. Today, their rights are recognized in a growing number of national constitutions and laws, as well as international legal instruments. Adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 was a key milestone. Although not legally binding, UNDRIP carries considerable moral weight, thanks to its broad support (only four countries voted against it, Australia, Canada, New Zealand and the United States, all of which have since expressed support). Most significantly, UNDRIP establishes the status of indigenous peoples as peoples, in the international sense, with the corresponding right to self-determination (Article 3). Although Article 46 of UNDRIP qualifies this right by reaffirming the territorial integrity of existing states, the principle that indigenous peoples should be free to control their lands, protect their cultures and maintain their pre-existing self-governing institutions is now well established (Lightfoot 2016).

Where does federalism fit in this picture? First, there are sizeable indigenous populations in several federations, including major settler federations such as the United States, Australia, Canada, Brazil, Mexico, and Argentina. Federations in Africa and Asia, including India, also host important indigenous populations. How are federal systems adapting to indigenous self-determination claims? Are federations more, or less, hospitable to such demands than unitary states? After all, federalism, as a system of territorial self-rule and shared rule, should in theory facilitate indigenous peoples' internal self-determination.

Federations have significant variations in the protection of indigenous peoples. Some variations can be traced to historical legacies predating the federal regime; others concern the constitutional division of powers and the protection level afforded to indigenous rights in the constitution. High courts also play a critical role in shaping the nature of relationships between indigenous nations and federal systems. In the United States, for example, indigenous peoples do not benefit from specific constitutional protection. Tribal governments are considered under the plenary power of Congress. However, the U.S. Supreme Court also recognized their status as 'domestic dependent nations' with (limited) residual sovereignty on their tribal lands. While the federal government did not hesitate to limit this residual sovereignty over the years (Pommersheim 2015), the courts have recognized tribal authority in several cases, including in key areas of state jurisdiction such as the administration of justice and criminal law (for a recent example, see *McGirt v. Oklahoma*, 2020). The federal government also adopted measures that have considerably strengthened tribal self-government in recent decades, leading to 'federal-like' intergovernmental relations with both federal and state governments.

Canada has no equivalent recognition of residual sovereignty. That said, 'Aboriginal and treaty rights' have been recognized in the constitution since 1982, affording indigenous peoples a relatively strong safeguard for their rights. Like in the United States, Canada's Supreme Court was instrumental in substantiating these rights, although it has been more reluctant to recognize self-governing powers for indigenous nations. Instead, indigenous autonomy is negotiated through constitutionally protected treaties that created a unique form of 'nested' federalism in parts of Northern Canada (Wilson et al. 2020; Papillon 2020). Whether the Canadian model of treaty-protected self-government affords more autonomy to indigenous nations than the American model of residual sovereignty is debatable, especially given that Canada's federal government is more reluctant than its U.S. counterpart to exercise its constitutional authority to limit provincial encroachment on indigenous lands (Borrows 2016).

The difference is perhaps more striking with Australia, where indigenous peoples were left to the constituent states to deal with in the original federal

constitution. While subsequent court decisions and constitutional amendments gave the Commonwealth government some authority to protect indigenous lands and well-being, their self-government rights remain quite limited (Saunders 2000). In Latin America, indigenous peoples benefit from stronger protection and local autonomy in non-federal Bolivia, where they are demographically the majority, than in federal countries like Brazil and Mexico where constituent states have used their constitutional prerogative to limit indigenous land rights and local autonomy. With some exceptions, courts have not played as prominent a role as in the United States and Canada in shaping indigenous status and rights in Latin American federations. In short, there is no clear pattern suggesting federations are more accommodating to indigenous peoples.

There are important obstacles to recognizing indigenous peoples in federal systems. Federal regimes diffuse sovereignty territorially, but once established, they also create multiple veto points for constituent governments that make it difficult to achieve any realignment of jurisdictions. Indigenous peoples were, for the most part, explicitly excluded from the initial division of powers in existing federations. This exclusion complicates both the recognition of their own self-governing authority as well as their participation in institutions of shared rule at the federal level. Non-federal states like New Zealand (which guarantees seats in Parliament) and the Nordic countries in Europe (which have distinctive elected chambers for the Sami) arguably have stronger mechanisms of indigenous representation in national institutions.

Federalism also empowers regional elites, often to the detriment of local minorities, including indigenous peoples (Riker 1964). The American Supreme Court once described states as the 'deadliest enemies of Indian Tribes' (*United States v. Kagama*, 1886), notably because they tend to favor an expansion of their jurisdiction on indigenous lands for the purpose of economic development. Similar dynamics can be observed in federations around the world, where indigenous peoples rely on federal authorities and the courts to protect them against local or regional interest. The division of powers characteristic of federal systems can also contribute to poor accountability for the comparatively dismal living conditions of indigenous communities. In Canada, for example, social programs such as healthcare and education are provincial jurisdictions. However, the federal government is responsible for these programs in First Nations communities. This creates blurred accountability lines and funding discrepancies that reinforce the well-being gap with other Canadians (Papillon 2020). Similar patterns can be observed in Australia, for example.

While federations may not be more hospitable to indigenous peoples, it is important to distinguish actual federal systems and their specific mode of territorial organization with federalism as a general principle of shared and divided sovereignty. There are a host of highly innovative federal-type

arrangements that have emerged around the world in response to indigenous peoples' challenges to unmediated state sovereignty, from tribal assertion of sovereignty in the United States (Bruyneel 2007) and treaty-based federalism in Northern Canada (Wilson et al. 2020; Papillon 2020) to the bicultural and binational model emerging in New Zealand through the revitalization of the treaty of Waitangi, or Greenland's unique federacy with Denmark (Johansson 2016). These models depart from classical federalism and provide ample evidence for the flexibility of federalism as an organizing principle for deeply pluralistic societies.

REASONS TO STUDY INDIGENOUS PEOPLES AND FEDERALISM

Indigenous peoples are amongst the world's most vulnerable minorities. They are also present in most large federations. However, their rights and status vary significantly across federations. It is important to study and compare the origins, constitutional foundations, and evolution of indigenous–state relations in different federations, first to underscore the diversity of institutional models of incorporation, and second to show how these models continue to shape how indigenous peoples and states conceive their relations today.

A second reason to study indigenous peoples as part of a federalism curriculum is more prospective in nature. How can we best accommodate indigenous claims, considering the complex institutional structure federations create? While the federal principle seems like a logical fit with indigenous demands for greater autonomy without full independence, inclusion in existing federal systems as a constituent unit is not necessarily a workable solution for indigenous peoples. In addition to institutional constraints mentioned previously, the indigenous populations are generally too culturally diverse and territorially dispersed to create the equivalent of indigenous states or provinces. For example, there are 50 states and 574 federally recognized Indian nations in the United States, and more than 630 First Nations communities in Canada. There are, of course, exceptions. The Navajo reservation (70,999 square kilometers) could conceivably become a full-fledged American state, except that the sovereign Hopi nation's reservation (6,558 square kilometers) lies within Navajo territory. The Inuit are the majority population in Nunavut, a territory with powers similar to Canadian provinces (although fiscally much more dependent on the federal government). But in general, a simple extension of existing federal structures is not workable for indigenous peoples because they are neither state or provincial governments nor local governments. Instead of 'wanting in' to existing federal systems, indigenous peoples generally 'want out' through specific asymmetrical arrangements that protect and affirm their

inherent sovereignty, traditional governance systems, and relations to the land (Borrows 2016; Deloria 1988).

Studying established or emerging indigenous self-governance models in the United States, Canada or Greenland, for example, allow us to compare these models, assess their workability and better understand their potential (and limits) for addressing indigenous self-determination claims beyond classical federalism. How are territorial sovereignty and political membership redesigned in these models? What kinds of powers are allocated to indigenous governments? What kinds of institutions of shared rule are developed? How are jurisdictional conflicts arbitrated? What about intergovernmental relations and fiscal relations between indigenous governments and federal as well as sub-federal units? As we can see, all the classic questions we ask when studying federalism also apply to relations between indigenous governments and states, federal or not.

The study of indigenous peoples' own legal traditions and political systems can also teach us about federalism. Some indigenous nations, including the Haudenosaunee in Northeastern United States and Canada, have political traditions of shared sovereignty that resemble what we call federalism today (Williams 1997). Indeed, some observers contend that the Haudenosaunee confederacy influenced the founders of American federalism (Johansen 1982), although this view is highly contested (e.g., Payne 1996). The study of indigenous constitutional traditions and conceptions of federalism exposes us to a whole new set of political philosophies, legal and political traditions, and possibilities for rethinking democratic constitutionalism (Borrows 2016; Williams 1997).

HOW INDIGENOUS PEOPLES FIT INTO FEDERALISM RESEARCH AND STUDY

The study of federalism is not traditionally associated with indigenous peoples, but their political struggle for self-determination simultaneously questions the limits of federations as a system for accommodating diversity and mobilizes some of the key concepts associated with federalism.

First, the institutional configuration of federal systems can be considered an 'independent variable' that facilitates or hinders how states respond to indigenous autonomy claims. Second, and reversing the equation, we can also study indigenous-state relations and the emerging institutions governing these relations through a federalism lens. The distribution of powers and its evolution over time, the allocation of fiscal resources, conflict-resolution mechanisms, the role of courts, intergovernmental relations and representation in shared rule institutions are all relevant questions when looking at relations between indigenous and non-indigenous governments.

The study of indigenous self-government also perfectly illustrates the difference between federations, as a specific institutional model, and federalism as a set of principles and values. While a classic federation may not be the most adequate model for indigenous peoples, federalism as a general organizing principle is critical to rethinking how they relate to existing states, federal or not.

LEARNING OBJECTIVES

Several learning objectives can be achieved, depending on the level of study. The following are basic guidelines. Students should

- Learn about the unique history, cultural specificity, and resilience of indigenous peoples in the face of colonial expansion and assimilation policies in their own countries and/or in multiple countries;
- Become familiar with some of the key demands indigenous peoples have in terms of cultural protection, land ownership and self-government;
- Be able to explain how federalism, as a general principle for organizing pluralistic societies, can contribute to accommodating these demands;
- Be able to identify some of the institutional obstacles indigenous peoples face in federal systems;
- In more advanced courses, identify key national and international legal instruments protecting indigenous rights, including UNDRIP, and, depending on the level, critically assess their value;
- Be able to discuss some of the examples of federal-like institutions that have emerged to establish some (limited) levels of self-rule and shared rule for indigenous peoples.

HOW TO STRUCTURE AND TEACH INDIGENOUS PEOPLES AND FEDERALISM

Teaching indigenous peoples and federalism should start with a discussion of indigenous peoples themselves, who they are, where they live, what their histories are and, especially, their struggle to maintain their cultures and distinctive political systems. It should also pay attention to colonial policies and their ongoing impacts on indigenous peoples and their lands.

There are numerous resources, but a good starting point is the Indigenous Working Group on Indigenous Affairs website (<https://www.iwgia.org/en/>). It offers country profiles, annual reports on the state of indigenous peoples and their rights as well as topic-specific resources in English and Spanish. The Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples, two United Nations bodies

promoting indigenous rights have very comprehensive websites in multiple languages. Several national and international NGOs provide country-specific information about the status and rights of indigenous peoples, including Amnesty International and OXFAM.

One effective way of introducing the topic to students of all levels is to present a documentary or a film about indigenous peoples and their struggles for lands. There are documentaries on many recent conflicts over land and water rights in Canada, the United States, Australia and the global South. Better yet, invite an indigenous person to speak to your class.

Also consider having students read the United Nations Declaration on the Rights of Indigenous Peoples and discuss its content with students. Focus on political and land rights, which are the most salient in a course on federalism. Students can discuss what the right to self-determination in UNDRIP entails and how it can be implemented. Another highly topical aspect of UNDRIP is the participation of indigenous peoples in land and resources management (Article 32).

After looking at global standards, consider the situation in your country (if relevant) or comparatively. What kinds of policies were historically adopted to limit indigenous peoples' political autonomy or to assimilate them into the majority population? Are indigenous peoples recognized in the constitution today, and does that recognition make a difference? What rights do they have and, most important, how are these rights interpreted by the courts over time? What kinds of political institutions and autonomy do they benefit? If indigenous peoples benefit from some level of political autonomy, how are intergovernmental relations organized?

Once students have a general idea of the reality of indigenous peoples, their status, rights and governance, you can look at the specific obstacles indigenous peoples face in federal systems, given institutional constraints and demographic realities.

A final section could move beyond federal systems and focus on the federal principle as a solution to indigenous claims. Consider looking at case studies of self-rule and shared rule mechanisms that are being developed around the world in federal and non-federal systems. The self-determination model of American Indian tribes, modern treaties in Northern Canada, the federacy model of Greenland, the non-territorial plurinational model of Bolivia, the Treaty of Waitangi in New Zealand and the Sami parliaments in Norway, Sweden and Finland are well-documented examples. If time allows, also consider looking at indigenous federalist traditions. The Two-Row Wampum and the Haudenosaunee confederacy are well-documented examples (e.g., Fenton 2005), but there are many more.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

Some questions can bring students to discuss the overall realities of indigenous peoples:

1. Discuss some of the common struggles indigenous peoples face around the world and why it is important to protect their rights.
2. Discuss the various strategies that states (federal or not) have used to dislodge indigenous peoples from their lands and assimilate them into the majority society.
3. What is the right to self-determination and what are the obstacles for implementing this right?
4. Explain why federalism is both an obstacle and a response to indigenous peoples' claims.
5. Indigenous peoples also have federal traditions. Identify one such tradition and compare it to contemporary forms of federalism.

Some questions can also focus on specific countries or cases:

6. Indigenous tribes in the United States are considered 'domestic dependent nations'. What does that mean and how does it affect their status and relationships with American federalism?
7. In Canada, some indigenous nations negotiated extensive self-government agreements through treaties. Discuss how these treaties reshape Canadian federalism.
8. Indigenous peoples in Australia face challenges in asserting their territorial rights and political autonomy. Why is that so?

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TEST/EXAMINATION QUESTIONS

1. Explain why indigenous peoples seek greater self-rule on their traditional lands.
2. What is the right to self-determination and how can it be implemented in the context of indigenous peoples living in federations?
3. In most federations with an indigenous population, the latter were excluded from the original federal compact. Explain why and discuss the consequences of this exclusion.
4. Explain why federalism is both an obstacle and a response to indigenous peoples' claims.
5. Instead of 'wanting in' to existing federal systems, indigenous peoples generally 'want out' through specific asymmetrical arrangements that protect and affirm their inherent sovereignty. Discuss this affirmation and its implications for federalism thought.

POINTS FOR EVALUATION

Students should be able to identify the defining elements that distinguish indigenous peoples from other minorities, most significantly the cultural relationship to the land. They also should be able to discuss historical and contemporary forms of colonialism and how it still structures relations between indigenous peoples and settler federal states.

Students should also be able to discuss some of the key elements of the emerging international indigenous rights regime and understand the meaning and scope of the right to self-determination as defined in UNDRIP. They should be able to describe if and how the status and rights of indigenous peoples are protected in their own country or comparatively. They should also be able to identify the kind of institutional and political mechanisms that have emerged in response to indigenous peoples' autonomy claims.

In more advanced classes, they should be able to discuss some of the obstacles indigenous peoples face in existing federal systems. Students should be able to distinguish between obstacles linked to self-rule and shared rule. They should also be able to make the distinction between federal systems and the federal principle as a foundation for implementing indigenous self-determination claims.

In more advanced classes, students should also be able to discuss notions of legal pluralism and indigenous legal and political traditions, notably federal traditions like the Two-Row Wampum.

SUGGESTIONS FOR FURTHER READING

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21. Germany: cooperation and executive dominance

Nathalie Behnke

EXPLANATION OF GERMAN FEDERALISM

Germany is one of the world's oldest federal systems, formed of 16 highly autonomous constituent units, called Länder. While German federalism was established in its current form in 1949, its origins date back to the early nineteenth century (Lehmbruch 2019), and perhaps even to the Middle Ages (Hueglin 2002) when the predecessors of today's Länder, numerous fiefdoms and kingdoms, formed contract-based unions. In various typologies, today's federal system is described as coming-together federalism (Stepan 1999), administrative federalism (Behnke and Kropp 2020; Hueglin and Fenna 2015), cooperative federalism (Hesse 1987) or intrastate federalism (Broschek 2012).

German federalism's most prominent features are the dominant role of Land executives, the second chamber according to the council model (Bundesrat), and its cooperative nature together with a strong normative premise for leveling regional differences and securing equivalent living conditions.

Dominance of Subnational Executives

The power distribution between orders of government in Germany is organized mainly according to political functions. The federal government legislates; the Land governments administrate. Instead of creating separate spheres of influence by dividing policy sectors, this power distribution constrains the tiers of government to cooperate closely (Behnke and Kropp 2020; Mueller and Fenna 2022). Vertically, therefore, shared rule prevails over self-rule. Horizontally, the functional division of power weakens regional parliaments because policy implementation is primarily an executive task, and the list of matters lying in the exclusive legislative power of the Länder is short (mainly education, culture and police). Land parliaments, called Landtage, struggle for more influence, all the more so as their power is progressively undermined by authority migration to the European Union (Auel and Große Hüttmann 2015).

While the Länder are formally responsible for administering the laws and implementing policies, they delegate administration to local governments. Local governments enjoy a high and constitutionally guaranteed autonomy (Article 28 Basic Law); yet they are formally administrative units of the Länder. Also, they have no legal right of participation in higher level legislation. Consequently, they form local government associations to lobby higher level governments. This vertical communication is highly functional in channeling information about local needs and implementation problems to policymakers, again illustrating the system's pattern of sharing rule.

Bundesrat Model

The most obvious expression of functional power-sharing and executive dominance is the Bundesrat. As a federal chamber, it is not composed of elected representatives of the Länder but of members of the Land governments. Hence, Bundesrat members can directly influence federal legislation based on their practical implementation experience (Souris and Müller 2020). The Bundesrat votes on every piece of federal legislation with gradual veto rights (Article 50 Basic Law). In matters concerning Land finances, personnel or organization autonomy, the Bundesrat must approve with an absolute majority. In all other matters, it can veto bills with an absolute majority.¹ Party politics play an important role in the Bundesrat, as the composition of the second chamber is a function of electoral results and coalition building in the 16 Länder (Hegele 2017; Stecker 2016).

Cooperative Intergovernmental Relations

The cooperative nature of German federalism is also discernible in its dense network of institutions and processes of intergovernmental relations. Most prominent are the intergovernmental councils. Eighteen sectoral intergovernmental councils and one peak intergovernmental council (called minister presidents' conference) coordinate policymaking among the Land governments. Federal ministers are typically invited to secure vertical communication, but they have no privileged rights (Hegele and Behnke 2017). Another set of institutions was formed to coordinate the so-called 'joint tasks' (Gemeinschaftsaufgaben according to Articles 91a–e Basic Law). These are policies in jurisdictions that require intense horizontal and vertical coordination due to their external effects and joint financing structure. Examples are the improvement of regional economic structures, funding of universities and research infrastructures and the development of shared standards in information technology. While commitments agreed upon in intergovernmental

councils are voluntary, decisions taken in the institutions of joint tasks are compulsory (Scharpf 1988).

Equivalent Living Conditions, Reforms and Problems

While federalism typically seeks to accommodate diversity in unity, German federalism has shown little acquiescence for differences. The normative premise of securing equivalent living conditions across the territory is constitutionally enshrined and serves as a powerful guiding principle (Articles 72 and 106 Basic Law). Intense coordination of policymaking is one consequence of this normative premise, another is fiscal equalization. A complex system of vertical allocation of joint taxes, of redistributive horizontal allocation of taxes according to needs indicators and of unconditional grants from higher to lower governments aims at endowing all territorial government units with the financial resources needed to fulfill the tasks assigned to them. Even the poorest Länder receive no less than 90 percent of the average of resources of all Länder. Equalization levels are similarly high for local governments (Buettner 2008). The high level of fiscal equalization, dominance of federal (uniform) legislation and close coordination in implementation lead some observers to classify (or criticize) Germany as ‘unitary’ federalism (Benz and Broschek 2013).

Unitarization has increased since the early 2000s despite several federal reforms aimed at disentangling the interlinked decision processes, tasks and finances (Behnke and Kropp 2018). A major challenge for the coming decades is to secure the action capability, flexibility and adaptability of Germany’s federal structures and processes. While the coordination capacities and a broad consensus for the policies chosen are one of Germany’s strengths, the dense and highly bureaucratized network of actors, decision processes and potential veto points – not to mention the frictions from its overlap with party politics – hinder swift decisions and sweeping reforms. Most recently, the Covid-19 pandemic fundamentally challenged those capacities.

REASONS TO STUDY GERMAN FEDERALISM

When studying comparative federalism, Germany is a relevant case in several respects.

First, it is the most prominent case of cooperative federalism and thus illustrative for studies on how intergovernmental relations work. Among institutions of shared rule, the Bundesrat is a most peculiar second chamber representing the sub-state governments and strongly influencing federal legislation. The Bundesrat was also the model for the European Council, the second executive decision-making body of the European Union beside the Commission. In

the European Council, the heads of governments of EU member states meet and co-decide on European legislation.

Second, Germany's historical development makes it worth studying. Originally formed by a voluntary union of formerly independent kingdoms, it is a case of coming-together federalism. The federal architecture survived such major historical upheavals as the first and second world wars with their concomitant constitutional resets. It thus provides an example of a federal architecture that proved sufficiently successful (especially in curbing power aspirations of the central government) to survive wars, revolutions and dictatorship; it conserved its basic features and yet adapted flexibly to modern exigencies.

Third, federalism seems to be intimately linked to the German-speaking peoples in the heart of Europe. The three neighboring traditional federal countries in Europe, Germany, Austria and Switzerland, are predominantly German-speaking. These federal systems display many similarities, although the degree of subnational autonomy varies (Dardanelli et al. 2019; Hooghe et al. 2016). Germany's Länder display the highest aggregate values of regional authority, followed by the Swiss cantons and Austria's Länder.

HOW GERMAN FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

The theoretically relevant aspects of German federalism are the executive-administrative preponderance in the vertical and horizontal power distribution; the strong emphasis on shared rule in policymaking, policy implementation and financial relations; and the strikingly low level of diversity.

Although, comparatively, the Länder may appear weaker than constituent units in other federations because Land parliaments possess very limited legislative and tax-levying powers, the real strength of the Länder lies in their ability to co-decide on federal legislation by their veto power in the Bundesrat and to interpret it in executive regulation, thereby shaping policy implementation (Behnke 2020). Also, vertical networks of public officials pre-negotiate policymaking and coordinate policy implementation largely without political control (Behnke 2019). This analysis begs questions for the democratic legitimacy of decisions taken in the federal system and for the right balance between federal and democratic principles (Benz and Sonnicksen 2017).

Shared rule as Land co-decision rights in federal policymaking is strongly institutionalized (Mueller 2014). The Bundesrat votes not only on general legislation, but also on tax levels and distribution quota. Joint tasks are planned, decided and financed in commissions jointly staffed by federal and Land representatives. According to Article 23 Basic Law, in some matters, Land representatives represent the German position in European rule-making. Even

the local government associations have received permanent hearing rights in the process of drafting bills in federal ministries. This high level of shared rule and joint decision-making results in a consensual political culture; yet (particularly in combination with coalition governments in almost all of the 17 governments), it also contributes to diffusing accountability for political results and creates incentives for blame-shifting.

Ethnic, linguistic or cultural differences play a minor role. Further, living standards, financial resources, interpretation of rulings and standards of policymaking are largely harmonized across the territory. The federal government has the right to exercise legislative powers originally lying with the Länder if it deems it necessary to secure equivalent living conditions across Germany. The Länder may deviate from federal rulings only insofar as their basic 'loyalty to the federal government' (Bundestreue) is not questioned. If they deviate, the federal government has the right to force them back into a common line (Bundeszwang). Where the Länder are not compelled to act uniformly, they harmonize their policies by voluntary horizontal coordination. The high degree of unity thus begs the question of what federalism is needed for, if not to accommodate diversity in unity, and whether or to what extent federalism is a cultural heritage (Livingston 1952) in the minds of the people (Scheller 2018).

LEARNING OBJECTIVES

Students should learn the following from Germany as a case study of federalism.

Undergraduates should

- Know the basic constitutional and institutional features of federal power distribution (e.g., the distinction between concurrent and exclusive legislative powers; the set-up and role of the Bundesrat; the notion and practice of joint tasks; and the basic structure of Germany's fiscal equalization);
- Know how intergovernmental relations work in practice (institutions, actors and processes);
- Understand the cooperative and unitary nature of German federalism as its unique feature.

Additionally, postgraduates should

- Know the historical foundations and development of German federalism and trace the origins of certain characteristic features historically;
- Situate Germany in a comparative perspective using any typology (e.g., inter- vs. intragovernmental (Broschek 2012); competitive vs. cooperative

- (Kincaid 1990); coming together vs. holding together (Stepan 1999); or dual vs. administrative (Mueller and Fenna 2022) along various criteria;
- Understand the broad lines of how party politics interact with decision-making in intergovernmental bodies such as the Bundesrat or the minister presidents' conference;
 - Discuss the merits and pitfalls of the German system with regard to democratic quality vs. decision-making efficiency.

HOW TO STRUCTURE AND TEACH GERMAN FEDERALISM

German federalism is complex. It is challenging to reduce complexity to such a degree that students can learn and understand its basic features and rationales in just one class. Thus, a modular structure might be best, allowing instructors to add or omit topics according to the specific interest or speed of a class.

Begin class by situating the German federal case comparatively, using the categories of introductory texts such as Watts (2008) or Hueglin and Fenna (2015). Studying the German case is not a value in itself; the value added comes from analyzing what is typical, distinctive or different in the institutions and workings of German federalism compared to other federal systems.

Undergraduates should focus mainly on historical, constitutional and institutional features, beginning with a reconstruction of the historical evolution. Then detail the constitutional power distribution in line with the concomitant articles in the Basic Law: legislative powers (Articles 70–74), executive powers (Articles 83–5), and distribution of tasks and finances (Articles 104a–107).

The next block focuses on intergovernmental relations and joint decision-making. Two sessions should focus on the Bundesrat, the core institution of intergovernmental relations, because it is central to understanding the logic of German federalism. The first session introduces the basic institutional features such as composition, working mode (session cycle, committee system and coordination with the Land governments), voting procedure and results of plenary meetings. For undergraduates, this may be sufficient. At the graduate level, the second session could focus on the interplay of party politics and Bundesrat decision-making in the committees and the plenary. After the Bundesrat, one session should focus on intergovernmental councils, and one on the joint tasks, as they are uniquely German. For undergraduates, give a final session on constitutional development over the past 20 years, linked to a selective discussion on current trends and problems.

In graduate courses, condense the introductory and institutional sessions and delve more deeply into politics and policy. Several sessions might concentrate on party politics, an empirical policy example (e.g., education, police, or, if

more current topics are sought, refugee reception or infection protection) or on recent reforms and current debates. Federalism reforms have been a recurrent topic over the past 20 years with three constitutional reforms and a number of adaptations below the constitutional level. Analysis of those reforms gives rise to a number of relevant analytic and up-to-date empirical questions such as the right balance between stability and flexibility; the necessity or usefulness of further centralization of powers; and the necessity and usefulness of ever tighter interlinkage of powers and decision processes, to name a few.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

Undergraduates

1. Compare the Bundesrat with the U.S. Senate in terms of composition, federal representation, co-legislation powers and role of party politics.
2. Which legislative powers do the German Länder have according to the Basic Law? Discuss the implications of the terms of concurrent legislation for the power distribution between the federal and constituent governments.
3. What does it mean to say that Germany is a system of ‘administrative federalism’?
4. How is shared rule institutionalized in Germany’s federal system?

Graduate Students

1. If asked to design a second chamber for an ethnically divided country, would you recommend a Council or a Senate model? Explain.
2. The Länder rank comparatively high on the Regional Authority Index (indicate the current ranking). Yet they are rather weak in terms of autonomous legislative and fiscal powers. Explain this seeming paradox.
3. Discuss why joint tasks were introduced in the German system. Where do you see advantages for policymaking; where do you see problems?
4. Voluntary horizontal coordination is important in German federalism. Give an example of how such coordination is organized in practice. Explain specifically which actors are involved and how the coordination process is structured.

READINGS FOR STUDENTS

Most of the relevant and recent research is published in German. No acceptable English textbook or introduction to German federalism is currently available. Consequently, one must assemble various pieces, mainly from three kinds of

sources: (a) textbooks and edited volumes on comparative federalism with good chapters on Germany; (b) research literature in journals highlighting individual aspects of Germany's federal system; and (c) online resources on academic websites.

Textbooks and Edited Volumes

- Behnke, Nathalie and Sabine Kropp (2020), 'Administrative federalism', in Sabine Kuhlmann, Isabella Proeller, Dieter Schimanke and Jan Ziekow (eds), *Public Administration in Germany: Institutions, Reforms, Governance*, Basingstoke: Palgrave, pp. 35–51. [This open-access volume contains the best currently available information on the German administrative system in English.]
- Hueglin, Thomas and Alan Fenna (2015), *Comparative Federalism*, 2nd edn., Toronto: University of Toronto Press. [This is one of the best sources on the German case.]
- Lhotta, Roland and Julia von Blumenthal (2015), 'Intergovernmental relations in the Federal Republic of Germany: complex co-operation and party politics', in Johanne Poirier, Cheryl Saunders and John Kincaid (eds.), *Intergovernmental Relations in Federal Systems*, Oxford: Oxford University Press, pp. 206–38.

Research Literature on Aspects of German Federalism

- Auel, K. (2014), 'Intergovernmental relations in German federalism: cooperative federalism, party politics and territorial conflicts', *Comparative European Politics*, **12** (4–5), 422–43.
- Finke, P., M. Müller, A. Souris and R. Sturm (2020), 'Representation of partisan, territorial, and institutional interests in second chambers: evidence from the German Bundesrat and its committees', *Publius: The Journal of Federalism*, **50** (2), 213–36.
- Hegele, Y. and N. Behnke (2017), 'Horizontal coordination in cooperative federalism: the purpose of ministerial conferences in Germany', *Regional & Federal Studies*, **27** (5), 529–48.
- Kaiser, A. and S. Vogel (2018), 'Dynamic de/centralization in Germany, 1949–2010', *Publius: The Journal of Federalism*, **49** (1), 84–111.
- Stecker, C. (2016), 'The effects of federalism reform on the legislative process in Germany', *Regional & Federal Studies*, **26** (5), 603–24.

Online Resources

A brief, accessible overview is given by Roland Sturm at the '50 shades of federalism' website: <http://50shadesoffederalism.com/case-studies/cooperative-federalism-dominant-role-consensus-german-federalism/>.

Online resources containing up-to-date discussions are the IACL Blog Symposium on 70 years of the German Basic Law: <https://blog-iacl-aidc.org/70-years-of-the-german-basic-law/>; and various entries on German federalism at www.verfassungsblog.de ('on matters constitutional').

TEST/EXAMINATION QUESTIONS

Undergraduate Questions

1. After World War II, Allied forces opted jointly with German politicians for a re-establishment of a federal structure. Give two examples of institutional features of modern German federalism rooted in the nineteenth-century templates.
2. The Bundesrat is a role model for the 'council' model of second chambers. Discuss the most important features in which it differs from a senate model.
3. German federalism is often denoted as 'executive' or 'administrative' federalism. Which aspects of the federal distribution of powers justify this notion?
4. In German federal legislation, we distinguish matters of 'concurrent' from matters of 'exclusive' legislation. What does concurrent legislation mean in theory? How has it evolved in practice?

Graduate Questions

1. In German federalism, 'shared rule' is mainly realized in the Bundesrat. Discuss whether the Länder are influential in legislation or not compared to other federal countries. Explain.
2. Germany has been criticized as being a 'unitary federal state'. Discuss this judgment in light of the constitutional provisions in the German Basic Law and give two empirical examples of unifying trends or processes.
3. 'Joint tasks' are unique to German federalism and archetypical of its cooperative nature. How does policymaking in the fields of joint tasks happen in practice? Which other cooperative institutions or processes exist in German federalism?
4. Since the early 1990s, Germany's party system has become more fractionalized and regionalized. Discuss how this increasing fractionalization and regionalization impacts decision-making in the Bundesrat.

POINTS FOR EVALUATION

Evaluation of achievements must be adapted to the level of the students. Essays and written or oral exams are the best tools for evaluation, as students are incentivized to actively formulate and argue their opinion.

For undergraduates, students should be able to describe basic constitutional, institutional and procedural features of German federalism. They should

be able to put them in a comparative context with other federations and use analytical concepts (e.g., subnational authority, shared rule, or cooperative federalism) in their elaboration.

At the graduate level, a focus on learning success would be more analytical, with an emphasis on in-depth knowledge. Students should be able to reason why certain institutional solutions might have been chosen, and what alternatives might look like or which implications they have. They can discuss features of the federal system under normative aspects such as democratic legitimacy, minority representation or equitable distribution. Graduate students are also able to independently work with advanced texts. A starting point for an exam essay might be an excerpt from an empirical study, and students could be asked to put the assumptions and findings in context.

SUGGESTIONS FOR FURTHER READING

Type of Federalism in Comparative or Historical Perspective

- Benz, A. (2016), 'Gradual constitutional change and federal dynamics – German federalism reform in historical perspective', *Regional & Federal Studies*, **26** (5), 707–28.
- Broschek, J. (2010), 'Federalism and political change: Canada and Germany in historical-institutionalist perspective', *Canadian Journal of Political Science*, **43** (1), 1–24.
- Thelen, Kathleen and Sebastian Karcher (2013), 'Resilience and change in federal institutions: the case of the German Federal Council', in Arthur Benz and Jörg Broschek (eds.), *Federal Dynamic Continuity, Change, and the Varieties of Federalism*, Oxford: Oxford University Press, pp. 117–39.

Institutions of Power Distribution and Processes of Intergovernmental Negotiation

- Behnke, Nathalie (2020), 'Administrative autonomy of the Länder over seven decades of the Basic Law', in Felix Knüpling, Mario Kölling, Sabine Kropp and Henrik Scheller (eds.), *Reformbaustelle Bundesstaat*, Wiesbaden: Springer, pp. 187–202.
- Hegele, Y. (2017), 'Multidimensional interests in horizontal intergovernmental coordination: the case of the German Bundesrat', *Publius: The Journal of Federalism*, **48** (2), 244–68.
- Reutter, Werner (2021), *The German Länder: An Introduction*, Wiesbaden: Springer.

Party Politics in German Federalism

- Detterbeck, K. (2016), 'Party inertia amid federal change? Stability and adaptation in German parties', *German Politics*, **25** (2), 265–85.
- Stecker, C. (2015), 'Parties on the chain of federalism: position-taking and multi-level party competition in Germany', *West European Politics*, **38** (6), 1305–26.

Constitutional Evolution and Change

- Behnke, Nathalie and Sabine Kropp (eds.) (2018), *Ten Years of Federalism Reform in Germany: Dynamics and Effects of Institutional Development*, Abingdon: Routledge.
- Benz, A. and J. Sonnicksen (2018), 'Advancing backwards: why institutional reform of German federalism reinforced joint decision-making', *Publius: The Journal of Federalism*, 48 (1), 134–59.

NOTE

1. A brief introduction to the federal power distribution and role of the Bundesrat in legislation is provided by the Bundesrat at https://www.bundesrat.de/SharedDocs/downloads/DE/publikationen/Bundesrat-und-Bundesstaat-EN.pdf?__blob=publicationFile&v=1 (accessed March 14, 2022).

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- Auel, Katrin and Martin Große Hüttmann (2015), 'A life in the shadow? Regional parliaments in the EU', in Gabriele Abels and Annegret Eppler (eds.), *Subnational Parliaments in the EU Multi-Level Parliamentary System: Taking Stock of the Post-Lisbon Era*, Innsbruck: Studienverlag, pp. 339–50.
- Behnke, Nathalie (2019), 'How bureaucratic networks make intergovernmental relations work – a mechanism perspective', in Nathalie Behnke, Jorg Broschek and Jared Sonnicksen (eds.), *Configurations, Dynamics and Mechanisms of Multilevel Governance*, Basingstoke: Palgrave Macmillan, pp. 41–59.
- Benz, Arthur and Jorg Broschek (2013), 'Germany: federalism under unitary pressure', in John Loughlin, John Kincaid and Wilfried Swenden (eds.), *Routledge Handbook of Regionalism and Federalism*, London: Routledge, pp. 223–34.
- Benz, A. and J. Sonnicksen (2017), 'Patterns of federal democracy: tensions, friction, or balance between two government dimensions', *European Political Science Review*, 9 (1), 3–25.
- Broschek, J. (2012), 'Historical institutionalism and the varieties of federalism in Germany and Canada', *Publius: The Journal of Federalism*, 42 (4), 662–87.
- Buettner, Thiess (2008), 'Fiscal equalization in Germany', in Nuria Bosch and Jose Durán (eds.), *Fiscal Federalism and Political Decentralization: Lessons from Spain, Germany, and Canada*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 137–46.
- Dardanelli, P., J. Kincaid, A. Fenna, A. Kaiser, A. Lecours and A. K. Singh (2019), 'Conceptualizing, measuring, and mapping state structures', *Publius: The Journal of Federalism*, 49 (1), 1–29.
- Hesse, J. J. (1987), 'The federal republic of Germany: from co-operative federalism to joint policy-making', *West European Politics*, 10 (4), 70–87.
- Hooghe, Liesbet, Gary Marks, Arjan Schakel, Sandra Chapman Osterkat, Sara Niedzwiecki and Sarah Shair-Rosenfield (2016), *Measuring Regional Authority: A Postfunctionalist Theory of Governance, Vol. 1*, New York: Oxford University Press.

- Hueglin, Thomas (2002), 'Althusian federalism for a post-Westphalian world', in Stephen Brooks (ed.), *The Challenge of Cultural Pluralism*, Westport, CT: Praeger Publications, pp. 105–17.
- Kincaid, J. (1990), 'From cooperative to coercive federalism', *The ANNALS of the American Academy of Political and Social Science*, **509** (1), 139–52.
- Lehmbruch, Gerhard (2019), 'Sub-federal state-building and the origins of federalism: a comparison of Austria, Germany, and Switzerland', in Nathalie Behnke, Jorg Broschek and Jared Sonnicksen (eds.), *Configurations, Dynamics and Mechanisms of Multilevel Governance*, Basingstoke: Palgrave Macmillan, pp. 369–85.
- Livingston, W. S. (1952), 'A note on the nature of federalism', *Political Science Quarterly*, **67** (1), 81–95.
- Mueller, S. (2014), 'Shared rule in federal political systems: conceptual lessons from subnational Switzerland', *Publius: The Journal of Federalism*, **44** (1), 82–108.
- Mueller, S. and A. Fenna (2022), 'Dual versus administrative federalism: origins and evolution of two models', *Publius: The Journal of Federalism*, **52** (4), 525–52.
- Scharpf, F. W. (1988), 'The joint-decision trap: lessons from German federalism and European integration', *Public Administration*, **66** (3), 239–78.
- Scheller, Henrik (2018), 'German federalism: on the way to a “cooperative federalism”?', in Jack Jedwab and John Kincaid (eds.), *Identities, Trust, and Cohesion in Federal Systems: Public Perspectives*, Montréal and Kingston: McGill-Queen's University Press, pp. 257–79.
- Souris, A. and M. M. Müller (2020), 'Partisan voting in the German Bundesrat: the case of its Finance Committee', *German Politics*, **31** (3), 440–58.
- Stepan, A. (1999), 'Federalism and democracy: beyond the U.S. model', *Journal of Democracy*, **10** (4), 19–34.
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22. Indian federalism: centralism amidst diversity

Louise Tillin

EXPLANATION OF INDIAN FEDERALISM

This chapter introduces the unique model of federalism adopted by India in its 1950 Constitution. India's flexible and adaptable form of federalism has enabled innovative approaches to the accommodation of diversity, without which it is unlikely India would have held together as a country or consolidated as a democracy. Yet the constitution, promulgated after independence from British colonial rule and in the aftermath of the partition of India and Pakistan, also enshrined a centralized model of federalism. This was designed to act as a bulwark for nation building and embed democracy (Khosla 2020; Tillin 2017) and also enable centralized economic and social planning (Tillin 2021). The centralizing aspects of India's federal model have been critiqued for enabling central over-reach and intervention in the affairs of states in ways that compromise the idea of a federal bargain.

India is a parliamentary federal system with 28 states and nine centrally administered 'union territories' of varying sizes. It has directly elected legislative assemblies in the states and in the larger union territories. These state legislative assemblies form an electoral college to elect members of parliament to a second chamber at the Center – the *Rajya Sabha* – or Council of States. States are (loosely) represented on the basis of their population in the *Rajya Sabha*, which has fewer powers than the directly elected lower house of parliament, the *Lok Sabha* (House of the People). While it can initiate legislation and debate on matters of public interest, the *Rajya Sabha* is not able to veto budget legislation. Due to the lower house's numerical superiority, the *Rajya Sabha* cannot prevail in situations where a joint session of parliament is called to resolve a dispute between the two houses. Under the 73rd and 74th amendments to the Constitution passed in 1992, India also provided for direct elections to a third order of government at the local level – in *panchayats* in rural areas and municipalities in urban areas.

At the heart of Indian federalism lies what B. R. Ambedkar, the chair of the drafting committee of the Constituent Assembly, described as a commitment to a 'dual polity' in which the Center and the states each have sovereign powers in fields that are delineated in the constitution. This model of federalism was intended to enshrine a form of power-sharing protected by a written constitution and with the existence of an independent Supreme Court to adjudicate disputes. It left space for the operation of regional autonomy – except in times of emergency when the Constitution granted the central government exceptional powers to intervene in state affairs.

Even in normal times, the Indian model of federalism grants the central government clearly defined prerogatives to intervene in the affairs of states, with a large domain of shared center-state jurisdiction, and residuary powers granted to the Center. Article 3 of the Constitution allows the central government to redraw the boundaries of the federation's constituent units without the approval of the state legislatures concerned. Other parts of the Constitution allow the central Parliament to legislate on matters on the Constitution's State list where they relate to international treaties, in circumstances of national emergency, or on other matters of 'national interest' if directed to do so by the *Rajya Sabha*. The Supreme Court has usually ruled in favor of the central government in cases that dispute interpretations of the central and state lists, or the application of residual powers (Singh 2016). Under Article 356, a provision much abused for political reasons until the mid-1990s, the central government has the right to declare President's Rule in a state where the state government cannot govern 'in accordance with the provisions of the Constitution'.

This approach to federalism appeared to turn on its head core tenets of earlier federal models, most notably American federalism. Forged in very different circumstances, American federalism enshrined the rights of federating states at its heart, circumscribing the powers of the federal government and leaving residual powers with the states. Because of the weak protections for an independent sphere of state authority, Wheare characterized Indian federalism as a 'quasi' form of federalism (Wheare 1963).

The actual sphere of regional autonomy in Indian federalism increased as a result of the linguistic reorganization of India's states in the 1950s, which granted major language communities states of their own. A series of other smaller episodes of state creation continued to demonstrate the possibility of adapting the territorial structure of India's federal system in response to regional demands. Parallel processes of economic liberalization and political regionalization from the 1980s onwards increased the centrality and autonomy of states in political and economic life, as the role of the Congress Party as the dominant all-India party waned. Regional parties reshaped states' political landscapes, and national coalition government between regional and all-India parties became the norm between 1998 and 2014. The Supreme Court's ruling

in the 1994 *SR Bommai v. Union of India* judgment about the use of Article 356 also placed restrictions on the ability of central governments to abuse President's Rule. However, these trends of deeper regionalization have been challenged by the rise to power of the Hindu nationalist Bharatiya Janata Party (BJP), which won a majority of seats in India's national parliamentary elections in 2014 and 2019.

REASONS TO STUDY INDIAN FEDERALISM

India is the world's most populous federal system. If roughly 40 percent of the world's population lives in a federal system, almost one in two of them live in India. But it is not only in terms of sheer size that Indian federalism is important. The design and evolution of India's federalism are important for students of comparative federalism for two crucial reasons.

First, India's approach to federal design diverged markedly from the design of federalism in older federations such as the United States and Canada. India's constitution designers deliberately created a more centralized form of federalism in which interdependence between the central government and states was integral to the federal model. They learned from the experiences of older federal systems and sought to avoid the pitfalls they identified in those models.

Second, over time, India has evolved a robust form of multi-ethnic federalism that has been reasonably effective in accommodating the country's very substantial linguistic diversity. It has also designed a series of asymmetric arrangements responding to regional demands, often by territorially concentrated tribal groups that have at times pursued secession. Although the resilience of its multi-ethnic federalism has been tested in a period of resurgent majoritarian and Hindu nationalist politics, India remains a crucial case for understanding the potential of federalism to accommodate diversity.

Understanding how federalism has shaped the context in which India has confronted the challenges of democratization, economic development, social policy design and implementation are central to obtaining a full grasp of the potential – and problems – of federalism as a structure of multi-level governance in complex, multi-ethnic, developing country democracies.

HOW INDIAN FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

At one level, almost all questions of interest to students of federalism can be explored via the case study of Indian federalism, be they questions of institutional design, democracy, ethnic federalism and conflict resolution, the design and operation of social policy, or the representation and recognition of indige-

nous peoples. I will highlight two important dimensions in which India may be used in teaching to discuss or debate wider theoretical or practical dimensions.

First, India represents a distinctive model of federal origins and should push students to think beyond the ‘U.S. model’ which has been so influential in the study of comparative federalism historically. India is an example of what Stepan (1999) described as a ‘holding together’ as opposed to ‘coming together’ model of federalism in which previously independent sovereign territories come together to pool their sovereignty. India also offers comparison with other countries that adopted federalism in the context of transitions from British colonialism, most notably perhaps Nigeria but also Canada and Australia.

Second, Indian federalism is an important case for theories of federalism and ethnic conflict regulation. A certain pessimism about the durability of federalism in multi-ethnic settings has shaped some of the comparative literature, especially informed by the experience of state breakdowns in the former Union of Soviet Socialist Republics and Yugoslavia (Bunce 1999; Roeder 2009). By contrast, India has been characterized as having a robust form of multi-ethnic federalism that has played a major role in accommodating diversity and avoiding or settling conflicts (Adeney 2007; Stepan, Linz and Yadav 2011; Manor 1998; Arora and Verney 1995). For instance, Stepan, Linz and Yadav (2011, 1) used India to define a category of ‘state-nations’ which have used federalism to accommodate deep cultural diversity, of a kind which is ‘territorially based and politically articulated by significant groups that, in the name of nationalism and self-determination, advance claims of independence’. Yet some political scientists have also argued that India does not have the protections for minorities characteristic of full ‘pluralist’ federations because centralized aspects of India’s Constitution can appear like forms of devolution by the central government rather than an equal bargain between national or ethnic communities, protected against unilateral retrenchment (McGarry and O’Leary 2011). The annulment of the autonomous status of India’s only Muslim-majority state, Jammu and Kashmir, and its bifurcation into two centrally ruled ‘Union Territories’ in 2019, is an example of how the flexibility inherent in the centralized constitution can be used to unilaterally challenge protections for minority communities (on challenges to multi-ethnic federalism in contemporary India, see Adeney and Bhattacharyya 2018). India thus offers an important case through which to examine the potential and the limits of federalism as a mode of achieving ‘unity in diversity’.

LEARNING OBJECTIVES

The learning objectives will vary according to whether India is used as a case study running throughout a wider course on federalism, or is taught within

a single session in which multiple dimensions of its federal system are covered in a comprehensive fashion.

The following are some general objectives that could be tailored according to the format of the course:

- Develop an understanding of how the historical context in which Indian federalism was adopted in the aftermath of British colonialism shaped its federal design.
- Explore the distinctive features of India's federal design, including the Constitution's centralized provisions.
- Analyze how Indian federalism has changed since 1950, particularly as a result of the reorganization of internal state borders.
- Understand the design and functioning of asymmetry in Indian federalism including autonomy provisions for indigenous peoples through the Fifth and Sixth Schedules and autonomous councils.
- Explore how the design and practice of federalism has influenced approaches to key public policy challenges. For instance, how has federalism impacted the design of India's welfare state; the approach to climate change policy; or the dynamism of India's economy in different periods?

HOW TO STRUCTURE AND TEACH INDIAN FEDERALISM

As above, the approach to structuring the topic depends on whether you decide to treat India as a single case study taught as one topic, or whether you use material from India to illustrate a range of topics related to federalism. Ideally, you might choose to do both, as part of a commitment to decentering the dominance of North American and European federalisms to theory development in the field.

If you choose this option, a session on the origins of federalism might include the case study of India as a paradigmatic example of a 'holding together' model of federal origins, to contrast with other arguments about the origins of federalism in North America or Europe. This could include engagement with speeches from India's Constituent Assembly as source material, including the concluding speech by B. R. Ambedkar on November 25, 1949 in which he set out the distinctive features of Indian federalism, as distinct from the United States (https://www.constitutionofindia.net/constitution_assembly_debates/volume/11/1949-11-25).

Students should consider factors such as why India adopted federalism and the reasons for the particular kind of federal model the Constituent Assembly developed. This might include the impact of partition, the impact of the nationalist movement on the articulation of the nation, the introduction of full

universal suffrage, and the advent of national economic planning on the federal design (see, *inter alia*, Khosla 2020; Tillin 2021). They might also consider the implications of the constitutional design of federalism. How do the elements of centralism affect the balance between self-rule and shared rule in the Indian context? What safeguards are there for regional autonomy? How did the architects of the Constitution anticipate these questions?

A session on ethnic federalism and conflict regulation could explore the implications of (re)drawing state boundaries along linguistic lines and experimentation with asymmetric federalism as a means of regulating ethnic conflict in India. It might also consider the limits of federalism as a mode of accommodating and protecting minority rights in India, especially for religious minorities. Questions to consider include: what has driven processes of internal reorganization, and what impact has reorganization had on the accommodation of diversity and resolution of ethnic conflict? What kinds of asymmetry have been embraced as part of the Indian federal model, and why? How robust are they?

As discussed in the objectives section, India might also be a lens through which to explore how the design and practice of federalism has influenced approaches to key public policy challenges – for instance, how has federalism impacted the design of India’s welfare state and reduction of poverty, the approach to climate change policy, or the dynamism of the Indian economy?

Some public policy questions can lend themselves to role-playing simulations in the classroom. For instance, a week on federalism and climate change could involve students role-playing the negotiation of a solution to Delhi’s air pollution crisis in the context of its position within India’s multi-level governance structure. How does the semi-autonomous National Capital Territory (NCT) of Delhi galvanize a policy response to air pollution, including the downstream consequences of stubble burning in neighboring agricultural states? Students could be divided into three groups representing the central government, Delhi NCT, and the neighboring agricultural states of Punjab and Haryana. Each group would be tasked with formulating a proposed policy response that takes on board the intergovernmental distribution of policy responsibilities and competencies; the political incentives of each order of government; and potential mechanisms for intergovernmental coordination. They could then present these at an ‘intergovernmental conference’ and explore potential areas of common ground. Such an exercise would allow students to grasp first-hand the challenges of collective action around environmental policy in federal settings such as India’s (Ciecierska-Holmes et al. 2019 offers useful background reading).

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Why did India's Constituent Assembly opt for a federal form of government?
2. What is distinctive about India's model of federal design, and how could you explain the choice for a centralized model?
3. Has federalism helped to reduce ethnic conflict in India? Consider the accommodation of different kinds of identities – especially linguistic, religious, and indigeneity.
4. How has party system change since the 1950s shaped the operation of Indian federalism?
5. Did political and economic decentralization in India in the 1990s and 2000s help support economic growth? Do arguments about 'market-preserving federalism' make sense in the Indian context?
6. Does federalism exacerbate inequality?
7. What explains the degree of subnational unevenness in the implementation of social policy? To what extent do questions such as political ideology, state capacity, center-state political alignment help explain the inequality we see across Indian states?
8. Has India's centralized model of federalism helped to resolve collective action problems in the field of environmental policymaking? If not, why not?

READINGS FOR STUDENTS

- Adeney, Katharine (2007), *Federalism and Ethnic Conflict Regulation in India and Pakistan*, New York: Palgrave Macmillan.
- Adeney, K. and H. Bhattacharyya (2018), 'Current challenges to multinational federalism in India', *Regional & Federal Studies*, **28** (4), 409–25.
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- Tillin, Louise (2016), 'Asymmetric federalism', in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds.), *Oxford Handbook of the Indian Constitution*, Oxford: Oxford University Press, pp. 540–59.
- Tillin, Louise (2019), *Indian Federalism*, New Delhi: Oxford University Press.

TEST/EXAMINATION QUESTIONS

1. What impact did partition have on India's approach to designing federalism?
2. What institutional mechanisms has India designed to accommodate and recognize ethnic diversity? How successful have these been?
3. How have changes in India's party system affected the operation of federalism?
4. Does federalism exacerbate inequality? Discuss with reference to either (a) rates of economic growth or (b) rates of poverty reduction in India.
5. How does federalism affect India's response to major public policy challenges of the twenty-first century such as climate change?

POINTS FOR EVALUATION

Students should be able to identify the distinctive features of Indian federalism and the ways in which the case of India challenges the centrality of Western cases in the study of comparative federalism. They should be able to identify the ways in which the history of decolonization and partition shaped the context in which federalism was adopted in India, and how it influenced choices about the design of federalism.

Students should then be able to assess how federalism has operated in practice in a number of domains such as the accommodation of diversity; the performance of the economy; and the response to climate change. They should be able to identify intervening variables that have influenced the operation of federalism in India such as the changing dynamics of the party system.

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23. Nigeria: a model of federalist ethnic conflict management or federalist illusion?

Rotimi T. Suberu

EXPLANATION OF NIGERIAN FEDERALISM

Nigeria is among the deeply divided societies that have invoked federalism to accommodate large populations with strong, territorially based cultural diversities, extensive territories, and democratic aspirations. With an estimated 220 million people in 2021, Nigeria is the world's fourth most populous federation (after India, the United States, and Pakistan). Given its annual population growth rate of 2.5 percent, Nigeria is projected to become the third most populous country by 2050. Located in West Africa with a landmass of 924,000 square kilometers, Nigeria includes three major ethnic groups (the Muslim Hausa-Fulani in the north, Christian Igbo in the southeast, and religiously bicomunal Yoruba in the southwest); hundreds of smaller ethno-linguistic communities (the so-called ethnic minorities accounting collectively for about one-third of Nigeria's population); and approximately equal numbers of Muslims and Christians, making Nigeria the largest such country in the world.

British colonialists established Nigeria as a three-region federation in 1954 in a bid to hold the country's diverse peoples together. Built around Nigeria's three major ethnicities, the federation contained a blatant structural imbalance: 53.5 percent of the population and 79 percent of the territory are in the northern region. Following the late decolonization period (1954–59), the federation underwent various redesigns during the First Republic (1960–66), military rule (1966–99, short-lived Second Republic, 1979–83, abortive Third Republic, 1992–93), and civilian rule since 1999. Today, Nigeria consists of 36 states and the federal capital territory of Abuja, 774 constitutionally designated local government areas, and six quasi-official geopolitical zones: Northwest, Northeast, and Northcentral zones in the more populous, predominantly Muslim, landlocked, and poorer northern half of the country, and the

Southwest, Southeast, and South-South (Niger Delta) zones in the less populous, predominantly Christian, coastal, and oil-rich south.

Although Nigeria's First Republic saw the excision of the Mid-West region from the Western Region in 1963, the transformation of the federation took place primarily under military rule. The soldiers dissolved the country's four regions into 12 states on the eve of Nigeria's catastrophic civil war (1967–70) in a bid to undermine Igbo-led secessionists in the Eastern Region. Subsequent reorganizations of the federation by the soldiers increased the number of states to 19 in 1976, 21 in 1987, 30 in 1991, and 36 in 1996. Aside from fracturing large secessionist ethnic regions into weaker and smaller subunits, the creation of states fragmented the populations of each of the three major ethnicities across multiple states, while satisfying the statehood aspirations of several minority communities.

Led predominantly by officers of Northern origin, and acting primarily through unilateral decree-laws (rather than procedurally rigorous constitutional amendments), the soldiers implemented numerous centralizing reforms. They enhanced federal government control and redistribution of expanding oil rents, increased the center's functions vis-à-vis the states, reorganized and recognized localities as a third order of federalism, and replaced Nigeria's British colonial parliamentary heritage with an American-style presidential system.

The military's re-engineering of the federation was contentious. Celebrated by some as a remarkable architecture for containing the centrifugal pressures inherent in Nigeria's diversities, multi-unit federalism was condemned by others as a hyper-centralized and dysfunctional federal façade that fostered ethnic contention, democratic instability, and developmental failure. While avoiding a recurrence of national civil war, the reorganized federation witnessed spectacular electoral corruption, economic mismanagement and impoverishment, social discontent, communal and criminal violence, and a vicious Islamist insurgency in the Northeast.

Especially following the restoration of civilian rule in 1999, vociferous agitations emerged for a more participatory, inclusive, and democratic process of constitutional restructuring, and a federalism that is truly decentralized, conflict-reducing, democracy-preserving, and development-enhancing. Successive alterations to the 1999 Constitution left Nigeria's centralized multi-state federal system intact, however, thereby underscoring the system's resilience and ingenuity.

REASONS FOR STUDYING NIGERIAN FEDERALISM

Along with several other post-World War II federations (including India, Spain, Belgium, Ethiopia, and South Africa), Nigeria represents a model of federal innovation that differs from the prototype of federation-building

pioneered by such countries as the United States, Switzerland, Canada, and Australia. Nigeria's federation did not originate from the coming together of previously sovereign polities. Instead, it evolved from the disaggregation of unitary institutions of colonial administration. Among other ramifications, building federalism from the top down can produce intense contention over the demarcation of internal federal boundaries, a relatively centralized inter-governmental distribution of powers and resources, a concomitant fragility of classic counter-majoritarian and potentially counter-centralist institutions (such as the judiciary and bicameralism), persistent centrifugal agitations against the national center, and a resort to authoritarian coercion to contain ethno-political contentiousness.

The cohabitation of federalism and authoritarianism represents another important aspect of Nigeria's governance. Federalism is liberal democracy's territorial corollary because core democratic practices (including free and fair political participation and competition, and a robust rule of law) guarantee the credibility of the federalist division of power. Yet, conditions for robust democratic multiparty competition may not always exist in countries where federalism or territorial decentralization is pivotal to national survival. Indeed, in Nigeria, the most innovative federalist reforms have occurred under military rule. Nigeria, therefore, represents an important case study of the fate of federalism under illiberal, non-democratic conditions.

Another incongruous condition of Nigerian federalism is the country's economic underdevelopment and natural resource dependence. Robust federal systems combine political with fiscal decentralizations, including extensive revenue-raising and expenditure powers for subnational governments. But developing countries like Nigeria have more centralized political economies, and less robust conditions for fiscal decentralization, than Western industrialized democracies. In over three-quarters of Nigeria's states, federal revenue transfers provide more than 80 percent of total finances, while states' own tax revenues typically cannot cover personnel costs (Adams 2016, 1–2).

Nigeria's heavy dependence on oil revenues complicates the political economy of its federalism. Petroleum exports increased from 26 percent of total exports and 7 percent of public revenues in 1965 to 93 percent of exports and 82 percent of government revenues by 1974 (Lewis 2009, 56). Consequently, the country's intergovernmental relations revolve around centrally redistributed oil rents. In Nigeria's irregular oil-centric federalism, states readily acquiesce to the center's erosion of their autonomous tax powers in return for expanded federal revenue transfers, while large ethnic groups vigorously compete to be carved up and parceled out into multiple federally funded subunits in order to enhance sectional access to the center's financial largesse and economic patronage.

At the same time, federal oil revenue distributions to subnational governments are constitutionally mandated and statutorily guaranteed unconditional transfers. Nigerian states enjoy a remarkable amount of expenditure autonomy without possessing commensurate revenue-raising capacities. This system gives central rulers the resources to curtail centrifugal ethno-secessionist pressures, but it also promotes fiscal irresponsibility while unleashing politically destabilizing and economically unproductive inter-ethnic and inter-unit struggles for federal patronage. Nigeria, in essence, illustrates the paradoxes and pathologies of federalism in economically underdeveloped contexts.

Nigeria is also important for federal studies because it has experimented with two radically different forms of federal design. The country offers an important illustration of the relative impacts on ethnic conflict management of having a federation with a few ethnically dominated constituent units versus a federal system with multiple, ethnically crosscutting states. Nigeria is a paradigmatic quasi-experimental case for analyzing federalism's conflict-regulation effects (Horowitz 2000).

HOW NIGERIAN FEDERALISM FITS INTO FEDERALISM RESEARCH AND STUDY

Nigeria can provide answers to questions that have puzzled students of ethnic federalism: Does federalism exacerbate or mitigate ethnic conflicts? Can federalism reduce ethnic antagonism and secessionism, and preserve the territorial integrity of a multi-ethnic country by endowing ethnic groups with a measure of self-rule over emotionally sensitive or culturally symbolic subjects like education, language policy, and religion? Alternatively, might federalist decentralization give prospective secessionists the institutional and symbolic resources to advance separatism? Can federalism promote a healthy or balanced coexistence of national and subnational loyalties?

Nigeria's experience suggests that the design, number and relative size of federal subunits matters for ethno-political outcomes. Nigeria's initial federal design of three or four unequal regions fueled disintegrative ethnic conflict and secessionism by encouraging the capture of federal power by a super-dominant region, reifying major ethnic identities, and disempowering smaller ethnic communities. Nigeria's reorganization into a federation with a multiplicity of smaller regional states, none of which is overwhelmingly dominant vis-à-vis the other units, coincided with the consolidation of federal government authority, evolution of Nigerian national identity, development of greater inter-communal tolerance, and evaporation of credible or viable ethno-secessionist movements. Nigeria's multi-unit federalism stimulated ethnically inclusive, consociation-style practices for reflecting the country's 'federal character' (or spread of ethno-territorial diversity) in the election,

composition, or conduct of public institutions. However, institutionalizing the federal character principle as a norm for the equal federal representation, accommodation, and patronization of indigenes of constituent Nigerian states fuels son-of-the-soil discrimination against non-indigenes (Nigerians resident in states in which they have no ancestral or primordial ties). Appreciating such complex effects of federal designs on ethnic outcomes should be an important objective in studying federalism.

LEARNING OBJECTIVES

These objectives involve the origins, evolution, design, performance, reform, and future of Nigeria's federalism. In addition, students should be able to contextualize Nigeria's federal experience within a comparative perspective.

- Federal foundations: Students should be aware of the actors (mainly British colonial officials and rising Nigerian leaders) and motivations behind Nigeria's formation as a 'holding together' federation in 1954.
- Evolution of the federation: Students should appreciate major milestones in the development of Nigerian federalism. Given the coincidence of military rule with a fundamental redesign of the federation, students should be able to analyze the nature and impact of Nigeria's so-called 'military federalism' (Elaigwu 2005, 11).
- Institutional designs and ethno-political performance of the federal system: Students should appreciate the dramatically different designs and performance (or effects on ethnic conflict management) of Nigeria's regionalist federal system (1954–66) and multi-state federal structure (1967 to date).
- Reform and future of Nigerian federalism: Vigorous debates about reforming Nigerian federalism persist. Students should be able to assess the relative merits and demerits of contending perspectives for improving or stabilizing the federation.
- Comparative perspectives: Students should be able to discuss the origins, evolution, design, performance, and reform of Nigerian federalism in light of comparable or contrasting experiences in other federations.

Consistent with these learning objectives, the topic of Nigerian federalism will be presented around five subtopics as discussed below.

HOW TO STRUCTURE AND TEACH NIGERIAN FEDERALISM

Historical Origins

Although a prime example of 'holding together' federalism, the Nigerian federation was not entirely free of elements of 'coming together' and coercive 'putting together' federation-formation (Stepan 1999). From the second half of the nineteenth century to the early twentieth century, British imperialists arbitrarily corralled various peoples into the geographic entity they eventually called Nigeria. Furthermore, Britain's amalgamation of its colonial possessions in northern and southern Nigeria into a decentralized unitary state in 1914 preceded the federalization of the country in 1954, thereby confirming the thesis that 'before any given system emerged as a holding together federation in the first place, it most likely had come together at a much earlier point in time to form the unity from which power is now being devolved' (Halberstam 2012, 583).

Nigeria's federalization in 1954 reflected a compromise between British colonial officials and leaders of Nigeria's three major ethno-nationalist parties: the Igbo-led National Council of Nigerian Citizens (NCNC), the Hausa-Fulani-dominated Northern People's Congress (NPC), and the Yoruba-led Action Group (AG). Maintaining Nigeria as Africa's biggest country held enormous diplomatic attraction for Britain. Furthermore, the multiplicity and inherent fluidity of Nigerian ethnic, regional and religious identities rendered the dissolution of Nigeria into separate countries a problematic option for the British.

As Nigeria's foremost nationalist party, the NCNC expected to lead a united Nigeria. But the NPC and AG were less enthusiastic about Nigerian unity. With its base in the educationally and socio-economically underdeveloped north, the NPC feared domination by the more modernized south. It canvassed separatism or confederation, but ultimately embraced federalization due to British support for retaining the north as a single autonomous and majoritarian region. Federalization was also acceptable to the NPC because holding Nigeria together would ensure continued economic subsidization of the economically underdeveloped north by the more developed south. With its base in the relatively wealthy, cocoa-producing, Western Region, the AG entertained secession but accepted a federal arrangement as a credible vehicle of ethno-regional security. Federalism, therefore, emerged as a middle ground between centripetal forces pushing for Nigeria's unification and centrifugal pressures calling for a confederation or the establishment of separate countries.

Military Federalism

Was military rule a milestone or millstone for the development of Nigerian federalism? On the one hand, after flirting briefly and infamously with unitary government under Decree 34 of May 1966, the soldiers not only maintained Nigeria's federal character but also reconfigured the country into a more structurally balanced, flexible, integrative, and sustainable federation of multiple states. On the other hand, several military practices violated federalist principles of constitutionalism and subnational autonomy. The more problematic of such practices included the proliferation of fiscally dependent and indolent states, the suspension of judicial review of military decree-laws, the center's appropriation of many responsibilities and resources of the old regions, and the broad subordination of Nigeria's federal system to the unified military command structure through the appointment (and constant reassignment) of relatively junior military officers as state governors or administrators. Many scholars, policymakers, and practitioners bemoan the military's role in redesigning Nigeria from a non-centralized regional federalism into a unitary polity in federalist disguise.

Assessing Two Different Federalist Designs

Comparing Nigeria's original system of regional federalism and its current multi-state federal design is complicated by their different structural and institutional contexts. The ethno-regional federal system involved a British parliamentary system, was dominated by large regional parties, endowed the regions with extensive constitutional powers (including authority to have separate subnational constitutions, establish quasi-diplomatic offices in London, and maintain local police offices), and collapsed in 1967 before centrally collected oil revenues became a dominant source of public finance in the country. The multi-state structure, however, coincided with the shift to a strong executive presidential system, ethnic party bans, constitutionally subordinated states, and an oil-centric political economy.

A balanced assessment would highlight the merits and demerits of both federal designs, while underscoring the superior record of multi-state federalism in avoiding a recurrence of the ethno-secessionist warfare that upended Nigeria's regional federalism. With only a few ethnic-majority-controlled regions, one of which was more powerful than the rest combined, regional federalism fostered ethnic insecurity, mobilization, and secessionism, while depriving the federation of the structural flexibility and fluidity that might have developed from a truly multi-unit federal system. On a positive note, regional federalism promoted the constitutional autonomy of large regions to make independent political and economic choices, while fostering a healthy compe-

tition among the regions as they sought to respond to the socio-economic needs of their constituents.

By crosscutting the boundaries of major ethnicities and activating sub-ethnic cleavages within these large groups, by establishing several ethnic minority-controlled units, and by avoiding flagrant inequalities in the power of the federal subunits, the system of multiple (12–36) states reduced the incentives for ethno-regional polarization, while expanding opportunities for inter-group cooperation and national integration. Thus, potentially disintegrative conflicts, such as the expansion of Islamic Sharia law in Muslim northern states, or the revival of the separatist movement for an independent country of Biafra among Christian Igbos, have produced less polarizing, destabilizing, or destructive outcomes nationally because they are diffused and defused across multiple states rather than consolidated and mobilized within large ethno-regional bastions.

While averting a recurrence of civil war, however, Nigeria's multi-state federalism remained chronically contentious. The intersection of Nigeria's faith-based, ethno-linguistic, and regional cleavages often gives an explosive religious coloration to inter-group competition for power and resources, including presidential elections, claims to subnational indigeneness, pastoralist–farmer clashes, and group autonomy (or separatist) agitations. Multi-unit federalism engendered numerous localized ethno-religious conflicts, intense sectional competition for control of the center's vastly expanded powers and resources, economically unviable and dysfunctional subunits, and vociferous agitations for federal reform.

Reforming Nigerian Federalism

Two broad perspectives dominate ongoing debates about federal reform. An existential perspective that is popular in southern Nigeria seeks a foundational and comprehensive restructuring of the federation, including restoring a modified version of Nigeria's defunct parliamentary regional federalism and/or convoking an extraordinary constitutional convention (or sovereign national conference of ethnic nationalities and civic associations) to promote a truly decentralized or confederal federation.

A more broadly supported alternative endorses modest and incremental change through legislative supplementation, judicial intervention, the constitutional alteration formula written into the 1999 Constitution (involving the approval of national and state legislative supermajorities), and informal ethno-political bargains. During the period after 1999, these mechanisms enhanced federal allocations of oil revenues to state governments, improved the integrity of electoral administration and competition, and facilitated rotation of the powerful federal presidency among ethno-regional and religious

constituencies. Further reforms could emulate the comparative model of market-preserving federalism by altering revenue-sharing practices (currently involving the redistribution of about half of national revenues to subnational state and local units predominantly on the basis of relative population and equality of those units) in order to incentivize more economically self-sufficient, accountable, and dynamic state and local governments.

Nigerian Federation in Comparative Perspective

India, in particular, shares with Nigeria a British colonial legacy, a foundation of holding together federalism, a huge and extraordinarily diverse population, extensive poverty, and transformative experiences with state reorganizations. Given Nigeria's experience of civil war, adaptation of the American presidential model, and partial implementation of anti-ethnic federalism (via fragmenting major ethnicities into multiple subunits), a comparison of federalism in Nigeria and the United States would not be out of place, despite fundamental differences in their origins, age, and socio-economic contexts. Read the chapters on India and the United States in this volume for potential points of comparison between these federations and Nigeria.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Which of the following concepts adequately describes the formation of the Nigerian federation: 'coming together', 'holding together', or 'putting together'?
2. Was federalism a British imposition, or was it the voluntary choice of Nigeria's leaders?
3. Were there more viable alternatives than federalism (e.g., a unitary system, confederation, or creation of separate countries) for the leaders of the various Nigerian peoples as they negotiated independence from Britain in the 1950s?
4. What were the major structural flaws in Nigeria's system of regional federalism as it was instituted in 1954? Did the system contain any redeeming features?
5. Critically assess military rule's contribution to the development of Nigerian federalism. Was military rule compatible or incompatible with federalism in Nigeria?
6. How would you assess the performance of Nigeria's reorganized federal structure of multiple constituent states as a conflict-regulation tool?
7. How would you respond to the criticism that Nigerian federalism today is a façade, illusion, or unitary body in federalist garb?

8. Assess the merits and demerits of some of the ideas that have been canvassed for improving Nigerian federalism.
9. If you were asked to advise a panel working to reform Nigeria's federal system, what advice would you proffer, and why?
10. How would you compare Nigeria's federal experience with federalism in any other country with which you are familiar?

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TEST/EXAMINATION QUESTIONS

1. Describe the major factors that shaped the formation and evolution of Nigerian federalism.
2. What are the major challenges confronting federalism in contemporary Nigeria?
3. Attempt a comparative analysis of the merits and demerits of Nigeria's two experiments with federalism, namely, the system of ethno-regional federalism (1954–66) and the multi-state federal system (1967 to date).
4. Based on Nigeria's experience, critically evaluate the proposition that federalism is a prudent and credible mechanism for managing or mitigating ethnic conflicts.
5. What important lessons or insights can the study of federalism in Nigeria contribute to the comparative field of federalism research?

POINTS FOR EVALUATION

A student of Nigerian federalism should appreciate the different modes of federation-building, including the distinction between bottom-up ('coming together') and top-down ('holding together') federalization. The student should demonstrate an understanding of the complexity and multiplicity of centripetal and centrifugal motivations behind the establishment of Nigeria's federation during negotiations between British colonialists and Nigerian nationalists in the 1950s.

An appreciation of continuity and change in the design and effectiveness of Nigerian federalism would be a successful learning outcome. The student should recognize the merits and demerits of federalism for Nigeria's managing persistent ethnic tensions, while appreciating key transformations in Nigeria's federal structures (including realignments in the boundaries, number, size, responsibilities, and resources of constituent units) and scale of ethnic and religious conflict.

Along with showing a nuanced understanding of variations in the design and effectiveness of Nigerian federalism, the student should appreciate the multiple challenges (and opportunities) of federal practice in Nigeria, while demonstrating an ability to relate the country's experience to comparable or contrasting developments in other federations.

SUGGESTIONS FOR FURTHER READING

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24. Switzerland: real federalism at work

Rahel Freiburghaus and Adrian Vatter

EXPLANATION OF SWISS FEDERALISM

While the Swiss may be famous for their watches, chocolate, scenic mountains, and banks, they are also well known for their distinct political system that unites federalism, direct democracy, and consociationalism. These three intertwined political institutions serve one overarching purpose: to involve as many people as possible in policymaking (power-sharing). Each of the four official language groups (German, French, Italian, and Romansh) should have their say. The people living in the Alps should express their views on an equal footing with the growing, cosmopolitan, three-quarters-majority in urban areas. Each of Switzerland's 26 constituent units (cantons) should have the same constitutionally enshrined 'access points' at the federal level, although six cantons contribute half a cantonal vote only and delegate only one instead of two Councilors of States each. Finally, both Protestants and Catholics sit at the table; as do the growing number of non-Christians and residents with no religious affiliation.

Landlocked at the confluence of Western, Central, and Southern Europe, Switzerland often presents as a 'paradigmatic case of political integration' (Deutsch 1976). The country is seen as 'one of the few examples of real federalism in the world' (Lane 2001, 7); admired as a federal model (Vatter 2018); and it serves as inspiration for a 'possible solution to conflict' (Linder and Mueller 2021) in multicultural societies worldwide.

For non-Swiss, it may be tempting to portray Switzerland as an island of bliss, where democratic stability prevails and the people are economically well-off. To be sure, the country has seen no military invasion for over 224 years, and it was not formally dragged into the world wars that devastated Europe. However, '*Sonderfall* rhetoric' that think of Switzerland as an 'exceptional country' that is 'more prosperous, more harmonious, more democratic, more self reliant, more able to solve its problems and more moral than most other states' (Church and Head 2015, 227) overlook two essential points.

First, *Sonderfall* rhetoric is usually blind to Switzerland's checkered history. Starting in the late medieval period, the Old Confederacy (late thirteenth

century to 1798) faced, throughout the centuries, numerous threats of dissolution. The Swiss Reformation, which began in 1523, questioned the very existence of the loose, confederal ‘league’. Two of its 13 original members were split amid the confessional divide. Multiple inter-cantonal religious wars followed (*Kappeler Kriege*) because each canton usually declared the opposing religion illegal. The only nationwide institution, the Swiss Diet (*Tagsatzung*), barely functioned, as the unanimity requirement posed a major hurdle, and the most important (pre-)decisions were taken at the newly founded separate Protestant and Catholic diets. Later, when the European powers negotiated the post-Napoleonic order at the 1815 Congress of Vienna, the cantons’ discordant, undetermined representatives could not decide on the Swiss Confederation’s future either. It was the foreign powers’ preference for a neutral buffer state in the heart of Europe over common borders of France with Austria–Habsburg that guaranteed Switzerland’s place in history. Finally, when aspiring liberals set to establish a modern federation in the 1830s and 1840s, the Gordian knot could only be undone by a short, yet, in its legacy, long-lasting civil war (the 1847 *Sonderbund* war). Still, in 1848, six rejected the new Federal Constitution in a ballot. They were forced to join the federation – henceforth named Swiss Confederation (*Confoederatio Helvetica*) – against their will.

This short outline of Switzerland’s history lays bare the stark contrast to what often is assumed: the survival of this small country in the center of a belligerent continent is all but obvious. Accordingly, political integration and a distinct, inclusive political system with three pillars – federalism, direct democracy, and consociationalism – was not something the Swiss embraced on principle. Rather, it was the only feasible option to manufacture peace and democratic stability against the odds of a plural, deeply fragmented society.

Second, exaggerating *Sonderfall* rhetoric is dangerous because it misses the huge potential and many possibilities Switzerland has as an object of study. The Swiss experience can be related to broader debates in comparative politics and federalism. Hence, this chapter invites international students and teachers to engage with Switzerland as ‘a case of’ rather than a ‘deviant or special case’. It allows them to appreciate the specific and current answers Switzerland offers to major questions raised by wider federalism research – and sensitize students and teachers to the many challenges facing Swiss federalism (Freiburghaus and Mueller 2023).

REASONS FOR STUDYING SWITZERLAND

Why should we care about such a small country with only 8.7 million inhabitants, spread over a mere 41,285 square kilometers that further divides its small population into 26 cantons and some 2,100 municipalities differing widely in size, from the canton of Zurich with over 1.5 million inhabitants to the

canton of Appenzell Inner-Rhodes with just 16,000? One answer would refer to Switzerland's distinct political system – one that accommodates diversity with allegedly great success. This answer is backed by literature that interprets Switzerland's historical development as an 'organic', 'bottom-up' nation state eventually manufacturing democratic stability despite its plurilingual and multicultural society. For example, Rokkan (1974, xi) called Switzerland a 'microcosm of Europe' due to its cultural, religious, and regional diversity. He and other scholars have recommended that anyone wishing to understand European politics should study Switzerland (e.g., Church and Dardanelli 2005; Linder and Mueller 2021). This advice is relevant today, given the multifaceted challenges to European Union integration. Many insights can be gained from the workings of Swiss federalism, namely, the realization of an equilibrium between centrifugal and centripetal forces, unity and particularity, as well as between constituent units and 'the center'. Similarly, Switzerland should interest anyone pondering peaceful visions for conflict-ridden or post-conflict societies. The disintegration of the Eastern Bloc, a new wave of regionalization, virulent minority conflicts, and the emergence of regionalist, openly secessionist parties, triggered a burgeoning debate on alternatives to the (supposedly) homogeneous, symmetric nation state. This debate has brought Switzerland to the fore once more. Here, neither the 'nationality principle' nor the 'language principle' amounted to the quasi-natural ground of the modern multicultural federation. This was illustrated by Renan (1882, 20): 'The will of Switzerland to be united, in spite of the diversity of her dialects, is a fact of far greater importance than a similitude often obtained by various vexatious measures.'

It is safe to conclude that Switzerland, as a possible solution to conflict in multicultural societies, is a 'federation of particular interest', although 'small in terms of population and area' (Watts 2008, 32). However, we encourage international students and teachers not to content themselves with appraisal and dangerous *Sonderfall* rhetoric. Despite the many advantages and accommodation mechanisms that make Switzerland appear a success, 'there remains room for improvement' (Linder and Mueller 2021, 4; cf. Freiburghaus and Mueller 2023). If the country can offer a model of political integration, it also offers insights into precursors of inevitable tensions that might arise – and how they could be lessened. One lesson from the Swiss case is that 'finding the right institutional structure takes time and will never be finished once and for all' (Linder and Mueller 2021, 4).

HOW THE SWISS CASE FITS INTO FEDERALISM RESEARCH AND STUDY

The Swiss case study speaks to two major theoretical debates in federalism research.

Shared Rule: What It is Conceptually and How It Works in Practice

Together with ‘self-rule’, ‘shared rule’ is one of the two defining aspects of federalism (e.g., Elazar 1987). However, albeit equally important, shared rule can be seen as the neglected twin of self-rule. One main reason why scholars have devoted less attention to shared rule is the conceptual ambiguity that comes with it (Mueller 2019). While the most recent literature tends to equate it with subnational influence in federal policymaking (e.g., Hooghe et al. 2016), it is still highly contested whether ‘only institutions classify as shared rule or also procedures’ (Behnke 2018, 36). Studying Switzerland as a case of shared rule helps clarify shared rule’s conceptual and empirical scope. The Swiss federation features ‘classical’ vertical institutions (e.g., bicameralism) but the cantons also use a myriad of more procedural ‘new, informal channels’ (Vatter 2018, 247). They started lobbying the federal level by, for example, using the regional media, participating in a long-standing, dense network of regional, nationwide, policy-specific, and/or generalist intergovernmental councils, and hiring professional PR agents (Freiburghaus et al. 2021; cf. Freiburghaus forthcoming). Hence, Switzerland offers insights into how constituent units flexibly combine traditional vertical institutions and subnational lobbying in order to, among other things, fend off central encroachment into subnational areas of power and/or seek policy rewards.

Federal Dynamics: How Federations Emerge and Develop Over Time

Federal systems develop by simultaneously exhibiting continuity and change. Accordingly, the study of federalism necessitates the study of federal dynamics (e.g., Benz and Broschek 2013; Broschek et al. 2018). Being the world’s second oldest federation, Switzerland is an enormously rich and ‘unique case study’ (Vatter et al. 2020, 973) to explore how federations emerge and develop. At the surface, the institutional architecture of Swiss federalism looks stable. Taking a closer look, however, there has been a wide-ranging process of legislative centralization. At the same time, the cantons have retained considerable administrative and, especially, fiscal autonomy (Dardanelli and Mueller 2019). Tracing the Swiss federation over time thus offers lessons on how federal systems deal with such contradictory forces. Moreover, long-term

analyses of the Swiss case provide empirical answers on whether landmark federal reforms such as the 2004/08 revision of the national fiscal equalization scheme and the division of tasks between the federation and the cantons really make a difference (e.g., Wasserfallen 2015; Mueller and Vatter 2017).

LEARNING OBJECTIVES

Students will:

- Become familiar with timeless classics, key literature, and recent scholarship on Swiss federalism, enabling them to study Switzerland as ‘a case of’ rather than a ‘deviant’ or ‘special case’ by relating the Swiss experience to broader comparative politics debates.
- Become aware of the availability and usability of the many (often public-funded), user-friendly, and free-of-charge online platforms and comprehensive datasets from which comprehensive, up-to-date information on Swiss federalism can be retrieved.
- Learn to critically evaluate the many challenges of Swiss federalism regarding its territorial structure, its processes, and the political dynamics it is embedded in by drawing on general, well-established terminology borrowed from federal theory and/or comparative federalism (e.g., ‘self-rule’ and ‘shared rule’).
- Be enabled to propose, elaborate, and present potential, well-grounded solutions for Swiss federalism that address the real-world need for reform.
- Develop a critical understanding of how, and to what extent, a comprehensive academic assessment of Swiss federalism is often complicated by still prevalent, often exaggerated *Sonderfall* rhetoric that is blind to the many challenges facing Swiss federalism (and the broader Swiss political system).

HOW TO STRUCTURE AND TEACH SWISS FEDERALISM

Teaching Switzerland as an important case is most effective by drawing on core principles of experimental (or hands-on) education, practiced through problem- and/or project-based learning (PBL; e.g., Dewey 1938; Wood 2003). We suggest imparting knowledge on Swiss federalism through the analytical and inherently coupled lenses of ‘need for reform’ and ‘reform ideas’ (or policy briefs) anchored in real-world problems. Letting students explore the challenges and potential solutions for Swiss federalism helps avoid the fallacy of *Sonderfall* rhetoric. We encourage teachers to assist, guide, and coach students in cooperative teams, and focus on three phases of learning.

In a first *preparatory phase*, teachers should present the Swiss federal system at a glance. A helpful resource is the annually updated brochure ‘The Swiss Confederation – A Brief Guide’, issued by the Swiss federal authorities. It can be freely downloaded or installed as an app on tablets and smartphones in English and Switzerland’s four official languages. It contains a concise history of Switzerland and essential information about the workings of the Swiss political system in general, and about the functioning of Swiss federalism in particular. Moreover, Swiss federal authorities offer a ready-to-use master program through which students can work independently on the topics covered by the brochure. A version with solutions is provided for teachers. Again, the master program is available in English and can be downloaded free of charge. (All teaching resources can be freely downloaded at <https://www.bk.admin.ch/bk/en/home/dokumentation/the-swiss-confederation--a-brief-guide.html>. Teachers may check for annual updates.)

In-person lectures as well as remote explanatory videos (e.g., tutorials) or podcasts are fruitful methods to introduce first-year students to the basics step-by-step. Teaching in this phase should focus on the following: How did modern Switzerland transition from the loose, Old Confederacy into a modern federation founded in 1848? What are the vertical institutions of Swiss federalism foreseen by the 1848 Federal Constitutions and to what extent do they differ from ‘shared rule’ found elsewhere? Which horizontal institutions developed over time, meant to facilitate and/or foster intergovernmental cooperation? What are the essential principles of Swiss federalism (e.g., far-reaching autonomy of, and equality between, the cantons, their rights to participate in federal decision-making, their veto powers, and their duty to cooperate)?

Once students are familiar with the basics of Swiss federalism, they should read (some of) the essential readings listed below focusing on the major challenges confronting Swiss federalism nowadays. If only a few of these readings are assigned, they should be selected to cover timeless classics as well as recent scholarship. To facilitate the understanding of students and interaction between peers, the required readings may be discussed using online social learning platforms (e.g., *Perusall*).

Phase two consists of *group work*, the hallmark of PBL. During this phase, groups of three to five students should develop a comprehensive written and/or oral product (e.g., a short report, an interactive presentation) that addresses one major challenge of Swiss federalism and proposes possible solutions. The first, and possibly most crucial, phase is to collaboratively identify the major challenge to Swiss federalism they want to tackle (based on the readings). Once the challenge has been identified, students move into the second PBL step: information gathering. Students need to collect relevant information to explain, argue, and outline their major challenge for Swiss federalism. Besides schol-

arly literature, they may explore the many (often public-funded), user-friendly, and free-of-charge online platforms. For example, e-newspaperarchives.ch provides access to an unparalleled collection of some 70 million fully digitalized newspaper articles. While the platform offers English-language menu tabs, the digitalized newspaper articles are only available in the four official languages. Still, keyword searches (e.g., ‘Föderalismus’, ‘fédéralisme’, ‘federalismo’) and online translation tools will enable students to gain relevant information. The official webpages of the 26 cantons also provide valuable insights.

Students particularly interested in the current challenges of the 26 cantons’ unique political systems can delve into the openly available dataset ‘Patterns of Democracy in the Swiss Cantons’ (Vatter et al. 2020b), which comprises annual panel data on the political institutions of all 26 cantons from 1979 to 2018 and covers aspects like cantonal electoral systems, direct democracy, as well as parliamentary and governmental elections. In the same manner, students need to obtain information on two to four potential solutions – reform ideas that directly address the identified challenge.

The final PBL phase is a joint closing session involving a (*public*) *project presentation*. Students need to state the ‘need for reform’ and their ‘reform ideas’ clearly, convincingly, and by using presentation technology to an expert public. ‘World cafés’ (i.e., structured conversational processes for knowledge sharing) are particularly suitable for hosting and organizing the closing session. While peers might critically discuss (or even rate) their fellows’ performance, we encourage teachers to reach out to Swiss cantonal politicians, staff of intergovernmental councils, and/or early career researchers at Swiss universities. The Swiss are usually friendly, open-minded, and (quite) fluent in English – and it is relatively easy to get in touch with people who might be ready to (remotely) join the class.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

In order to facilitate lively, engaging in-class discussions, stimulating essays, and/or research papers, students might consider three types of questions:

1. *A normative question:* Almost 30 percent of the roughly 8.7 million people living in Switzerland have no political rights at the national level. They are neither entitled to vote in country-wide elections and/or referenda nor allowed to sponsor ballots. Switzerland is thus a two-tier democracy that excludes, for example, non-Swiss residents, minors under 18 years old, and severely physically and mentally disabled people. How should Swiss federalism support, foster, and further develop democracy from below?
2. *A hypothetical question:* The 1848 Federal Constitution incorporated key elements of the 1787/89 U.S. Constitution such as the separation of

- powers and the bicameral system (Vatter et al., 2020). Imagine the Swiss founding fathers were inspired by your own country's federal architecture instead. How differently do you think the long-term transformation of Swiss federalism would have looked like? And why?
3. *An empirical question*: Switzerland's 'federal model' (Vatter 2018) keeps inspiring scholars and practitioners alike, attracting wide interest from within as well as outside its borders. Self-perceptions and external assessments do, however, often diverge. To what extent, and in what respect, are the challenges of Swiss federalism assessed differently by scholars who work and live in Switzerland and by foreign experts?

READINGS FOR STUDENTS

- Church, Clive H. and Randolph C. Head (2015), *A Concise History of Switzerland*, 4th edn., Cambridge: Cambridge University Press.
- Dardanelli, P. and S. Mueller (2019), 'Dynamic de/centralization in Switzerland, 1848–2010', *Publius: The Journal of Federalism*, **49** (1), 138–65.
- Freiburghaus, Rahel and Sean Mueller (2023), 'Switzerland *quo vadis?* Current challenges and potential solutions for Swiss politics', in Patrick Emmenegger, Flavia Fossati, Silja Häusermann, Yannis Papadopoulos and Adrian Vatter (eds.), *Oxford Handbook of Swiss Politics*, Oxford: Oxford University Press, pp. n/a.
- Freiburghaus, Rahel, Sean Mueller and Adrian Vatter (2021), 'Switzerland: overnight centralization in one of the world's most federal countries', in Rupak Chattopadhyay, Felix Knüpling, Diana Chebenova, Liam Whittington and Phillip Gonzalez (eds.), *Federalism and the Response to COVID-19: A Comparative Analysis*, New York: Routledge, pp. 217–28.
- Linder, Wolf and Sean Mueller (2021), *Swiss Democracy: Possible Solutions to Conflict in Multi-Cultural Societies*, 4th edn., Cham: Springer International Publishing.
- Mueller, Sean and Adrian Vatter (2020), 'Switzerland (Swiss confederation): governing with 26 cantons, 4 languages and frequent referendums', in Ann Griffiths, Rupak Chattopadhyay, John Light and Carl Stieren (eds.), *The Forum of Federations Handbook of Federal Countries 2020*, Cham: Palgrave Macmillan, pp. 341–52.
- Vatter, Adrian (2018), *Swiss Federalism: The Transformation of a Federal Model*, London and New York: Routledge.
- Vatter, Adrian (2023), 'Cantons', in Patrick Emmenegger, Flavia Fossati, Silja Häusermann, Yannis Papadopoulos and Adrian Vatter (eds.), *Oxford Handbook of Swiss Politics*, Oxford: Oxford University Press, pp. n/a.
- Vatter, Adrian (2023), 'Federalism', in Patrick Emmenegger, Flavia Fossati, Silja Häusermann, Yannis Papadopoulos and Adrian Vatter (eds.), *Oxford Handbook of Swiss Politics*, Oxford: Oxford University Press, pp. n/a.
- Vatter, A., R. Freiburghaus and A. Arens (2020), 'Coming a long way: Switzerland's transformation from a majoritarian to a consensus democracy (1848–2018)', *Democratization*, **27** (6), 970–89.

TEST/EXAMINATION QUESTIONS

The following exam questions may be considered for undergraduate students:

1. Why do people often conceive of Switzerland as a '*Sonderfall*' (special case)? Critically reflect on why such notions and rhetoric are potentially dangerous.
2. What vertical and horizontal institutions of Swiss federalism are constitutionally enshrined in the 1848 Federal Constitution? Enumerate them and explain how they are linked to the functioning and workings of the Swiss federal system.

For postgraduate students, the following questions may be suitable:

1. Which essential principles of Swiss federalism are the most challenged nowadays? Why?
2. To what extent can the vertical institutions of Swiss federalism (not) be seen as true reflections of shared rule, meant to ensure cantonal participation in federal decision-making?
3. Leading Swiss news outlets and politicians often speculate about the future of Swiss federalism (i.e., asking whether Switzerland will still be a federal country in, say, 50 years). (See, for example, the Federal Office of Justice [2017], 'Wird die Schweiz in 50 Jahren immer noch föderalistisch sein?', <https://www.bj.admin.ch/bj/de/home/aktuell/news/2017/2017-05-08.html> or the 'federalism section' in the *Neue Zürcher Zeitung*, <https://www.nzz.ch/schweiz/foederalismus>.)
4. Present two arguments why there are grounds to believe in Swiss federalism's longevity. The arguments should draw on relevant insights from federal theory (e.g., regarding federal dynamics and adaptability).

POINTS FOR EVALUATION

Students might be evaluated based on a portfolio comprising:

- *Literature review on the challenges of Swiss federalism*: Does the literature review draw on a comprehensive basis of autonomously researched information, retrieved from the many (often public-funded), user-friendly, and free Swiss online platforms? Does the review systematize rather than merely summarize the gathered literature?
- *(Public) presentation (e.g., 'World café' methodology)*: Does the content of the presentation address the interests and/or needs of the expert or non-academic audience? Does the presentation follow a logical sequence and a semi-formal, natural-sounding presentation style that is both techni-

cal and accessible? Does the presenter fully use linking expressions and software navigation techniques to guide the audience through the presentation content? Do the slides demonstrate effective use of text, graphics, tables, and whitespace?

SUGGESTIONS FOR FURTHER READING

- Cappelletti, F., M. Fischer and P. Sciarini (2014), ‘“Let’s talk cash”: cantons’ interests and the reform of Swiss federalism’, *Regional & Federal Studies*, **24** (1), 1–20.
- Church, Clive H. (2004), *The Politics and Government of Switzerland*, Basingstoke: Palgrave.
- Church, Clive H. (2016), *Political Change in Switzerland: From Stability to Uncertainty*, London: Routledge.
- Füglister, K. and F. Wasserfallen (2014), ‘Swiss federalism in a changing environment’, *Comparative European Politics*, **12** (4/5), 404–21.
- Linder, W. and A. Vatter (2001), ‘Institutions and outcomes of Swiss federalism: the role of the cantons in Swiss politics’, *West European Politics*, **24** (2), 95–122.
- Mueller, Sean (2021), ‘The politics of compromise: institutions and actors of power-sharing in Switzerland’, in Soeren Keil and Allison McCulloch (eds.), *Power-Sharing in Europe: Past Practice, Present Cases, and Future Directions*, Cham: Springer International Publishing, pp. 67–87.
- Mueller, Sean and Adrian Vatter (2017), ‘Federalism and decentralisation in Switzerland’, in Ferdinand Karlhofer and Günther Pallaver (eds.), *Federal Power-Sharing in Europe*, Baden-Baden: Nomos, pp. 39–63.
- Vatter, A. (2005), ‘The transformation of access and veto points in Swiss federalism’, *Regional & Federal Studies*, **15** (1), 1–18.
- Wasserfallen, F. (2015), ‘The cooperative capacity of Swiss federalism’, *Swiss Political Science Review*, **21** (4), 538–55.

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- Benz, Arthur and Jörg Broschek (eds.) (2013), *Federal Dynamics: Continuity, Change, and the Varieties of Federalism*, Oxford: Oxford University Press.
- Broschek, J., B. Petersohn and S. Toubeau (2018), ‘Territorial politics and institutional change: a comparative-historical analysis’, *Publius: The Journal of Federalism*, **48** (1), 1–25.
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- Deutsch, Karl (1976), *Die Schweiz als paradigmatischer Fall politischer Integration*, Bern: Haupt.
- Dewey, John (1938), *Experience and Education*, New York: Collier Books.
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- Freiburghaus, Rachel (forthcoming). 'Subnational Lobbying in Switzerland', Ph.D. thesis, University of Bern.
- Hooghe, Liesbet, Gary Marks, Arjan H. Schakel, Sandra Chapman Osterkat, Sara Niedzwiecki and Sarah Shair-Rosenfield (2016), *Measuring Regional Authority*, Oxford: Oxford University Press.
- Lane, J.-E. (2001), 'Introduction: Switzerland – key institutions and behavioral outcomes', *West European Politics*, **24** (2), 1–18.
- Mueller, Sean (2019), 'Federalism and the politics of shared rule', in John Kincaid (ed.), *A Research Agenda for Federalism Studies*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, pp. 162–74.
- Renan, Ernest (1882). *Qu'est-ce qu'une nation ?*, Paris: Calmann Lévy.
- Rokkan, Stein (1974), 'Foreword', in Jurg Steiner (ed.), *Gewaltlose Politik und kulturelle Vielfalt: Hypothesen entwickelt am Beispiel der Schweiz*, Chapel Hill: University of North Carolina Press, pp. xi–xii.
- Watts, Ronald L. (2008), *Comparing Federal Systems*, 3rd edn., Montréal and Kingston: McGill-Queen's University Press.
- Wood, D. F. (2003), 'Problem-based learning', *British Medical Journal*, **326** (7384), 328–30.

25. Federalism in the United States: dualism with a splash of coercion

J. Wesley Leckrone

EXPLANATION OF AMERICAN FEDERALISM

The American federal system is composed of one general and 50 state governments. Although not mentioned in the US Constitution, 90,075 local governments (51,533 general purpose and 38,542 special purpose) play roles in the federal partnership. The United States has had two constitutions. The Articles of Confederation (ratified in 1781) provided for a weak general government, which proved untenable. The US Constitution (ratified in 1788) sought to rectify the Articles' problems by creating an energetic general government with the power to unite the interests of the nation, while preserving the states' autonomy to act in their own spheres. This resulted in the world's first modern federal system.

The US Constitution was designed to create a system of governments strong enough to respond to the needs of the people, while also preserving individual liberty. It incorporated several institutional characteristics to achieve this: separation of powers, checks and balances, representative democracy, an extended (i.e., geographically large) republic, and federalism (Lutz 1990). As James Madison argued in *Federalist* 51:

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 people. The different governments will control each other; at the same time that each will be controlled by itself. (Madison 1990, 332)

The American system is generally considered a model of dual federalism. The US Constitution delegates powers to the federal government, implicitly allows for some concurrent federal and state powers, and reserves all undelegated powers to the states under the Tenth Amendment of 1791. The powers delegated to the federal government are primarily enumerated in Article 1, Section 8. The rest are reserved to the states under the Tenth Amendment, which

states: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The Constitution's design appears to create a template for the division of responsibilities. In practice, however, the division is more fluid.

The Constitution does not create a neatly divided set of powers for the general and constituent governments. Elazar argued that the 'federalism of the Constitution was crystal clear, just as the division and sharing of powers was left ambiguous' (1987b, 41). There are implicit concurrent powers such as the power to tax and make policy on criminal justice and social welfare that create overlapping spheres of authority. Several clauses have allowed the federal government to expand its power, often into traditional state and local domains. Article 1, Section 8, Clause 18 of the Constitution gives the federal government the power '[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.' This clause, sometimes called the 'elastic clause', gives Congress the power to make laws related to its enumerated powers, but also has served as a tool to expand the size and scope of the federal government. The power to regulate interstate commerce was included in the Constitution to help grow the national economy and prevent trade battles among the states. Particularly since the Great Depression, this power has been used to enlarge the scope of government regulation, for example in intrastate activities related to manufacturing and civil rights. The 'supremacy clause' gives precedent to the federal Constitution, treaties and laws, in areas of their competencies, when they conflict with state laws. The Supreme Court has also broadly interpreted the Fourteenth Amendment (1868) to apply many of the protections in the US Bill of Rights to state and local governments, thus standardizing many rights that had been areas of dual federalism. Further, after the Sixteenth Amendment (1913) implemented a national income tax, the federal government has had the fiscal resources to increase its spending and distribute grants-in-aid to state and local governments.

The power-distribution ambiguity has resulted in a dynamic federalism that has developed over more than 230 years. For the most part, the history has been one of gradual centralization that is often portrayed as linear, moving from dual federalism in 1789 to cooperative federalism beginning in the 1930s, to coercive federalism since the 1960s (Walker 1995). 'Periodizing' federalism can be used as a heuristic tool to introduce students to American federalism. However, as Kincaid (2017) showed in his historical examination of de/centralization in the United States, the reality is more complicated. Studying 22 policy issues from 1790 to 2010, he found that the federal system has moved from almost exclusive state authority to predominantly federal authority. This has been much more evident legislatively than administratively, as

states still administer many programs, but with restrictions set by the federal government. Further, the pace of centralization varies by issue, so there is not one all-encompassing definitive periodization of American federalism. Having said that, coercive federalism has predominated since the late 1960s (Kincaid 1990). This is signified by the national government's increased regulations, mandates, grant conditions, and pre-emptions of state and local authority, which have placed it squarely in the driver's seat. While Congress has been a driving force in centralization, the federal courts have also played a role in nationalizing rights and policy (Somin 2017).

There is still a wide range of policy matters where dual and cooperative federalism predominate. For example, since the mid-1990s, marijuana regulation has lurched toward dual federalism as many states have legalized medical and/or recreational marijuana even though it is illegal under the federal Controlled Substances Act (1970). The federal government has been unwilling to use its enforcement agents to stop the sale of cannabis. At the same time, it cannot force, or commandeer, state and local officials to enforce federal law. Consequently, as of early 2022, 37 states had legalized medical marijuana and 18 had legalized recreational marijuana. Alternatively, while many federal grants are tailored to narrow policy purposes, there is a high degree of bureaucratic cooperation between Washington and state and local governments because much of the policy implementation is not done by federal employees (Kincaid and Leckrone 2020). In recent years, the federal government has provided state-specific flexibility by negotiating waivers that allow deviation from a few national standards if state implementation achieves the federal objective (Frohnen 2016). In sum, the operation of American federalism is a blend of conflict and cooperation between the federal, state and local governments.

REASONS TO STUDY AMERICAN FEDERALISM

Americans invented modern federalism. Since the Articles of Confederation (1781), federalism has been fundamental to the operation of American government for more than 240 years. As a consequence of innovation and longevity, Elazar claimed '[m]ost other modern federal systems have borrowed heavily from the American model. Some have borrowed the federal structure and then not lived up to the intent; others have adopted elements of both and then developed in their own direction' (1987a, 41–2). The American model is worth studying to understand its effects on subsequent iterations of federalism worldwide.

The longevity of American federalism also provides an excellent case study of how constitutional principles evolve over time. The United States began as a primarily dual system but has gone through periods of cooperative and

coercive federalism. The trend has been toward centralization. However, there are elements of dual, cooperative and coercive federalism in various areas of public policy and administration throughout the system. This complexity is worth exploring.

Finally, formal mechanisms to protect constituent government interests against intrusions by the general government often do not work. These include procedural safeguards (e.g., state representation in the US Senate, the Electoral College, and the constitutional amendment process), as well judicial safeguards where the federal court system could use the Tenth Amendment to bar federal action. Consequently, the United States offers an interesting case study in how constituent governments use informal, extra-constitutional means to achieve policy objectives and preserve autonomy. These include intergovernmental lobbying, policy innovation when federal government does not act, non-compliance with certain federal orders, and lawsuits.

HOW THE AMERICAN CASE FITS INTO FEDERALISM RESEARCH AND STUDY

The United States was the first modern federation. As such, it has been among the most widely examined case studies in the federalism literature, to the point where Stepan (1999) claimed scholars need to move beyond the American model. Among studies examining the origins of federations, the United States is a prime example of ‘coming together’ federalism. The philosophy undergirding American federalism has been used as a model for other nations, with *The Federalist* serving as a guide. When studying the division of powers in a federation, the United States is often held up as a model of dual federalism, where each order of government exercises legislative, executive and judicial authority over its policy spheres. Consequently, it is compared to countries with administrative federalism, where different orders are assigned separate roles in legislation and implementation. Research on federal dynamics uses the United States as a model of a federation that has centralizing tendencies, as opposed to those that are decentralizing via devolution. In sum, American federalism has been an integral part of just about every aspect of federalism research and study.

LEARNING OBJECTIVES

Core concepts for students involve the complexity and dynamism of American federalism. After engaging the case study, students should be able to:

- Differentiate between the constitutional powers delegated to the federal government, those concurrent to the federal and state governments, and

those reserved to the states. Students should also understand that portions of the Constitution, such as the supremacy and commerce clauses and Bill of Rights (by way of the Fourteenth Amendment), allow the federal government to intrude into areas traditionally reserved to the states.

- Explain how American federalism has evolved over various periods since adoption of the Constitution in 1788 and that the predominant trend has been centralization.
- Understand that while the American system is often described as dualist, it is a complex mix of dual, cooperative and coercive federalism depending on the policy domain.
- Realize that the federal judiciary rarely limits the federal government's power. They should understand the informal mechanisms that state and local governments use to protect themselves in the federal partnership, particularly intergovernmental lobbying.
- Understand how the structures and operation of American federalism differ from one or more other federal countries.

HOW TO STRUCTURE AND TEACH AMERICAN FEDERALISM

Any discussion of American federalism should begin with a brief overview of the allocation of powers under the US Constitution. The instructor should then proceed to the following three pedagogical exercises to help students achieve the learning objectives. The first focuses on understanding the historical development of American federalism through the creation of a federalism timeline; the second helps students explore the complex web of competencies throughout individual policy issues in the American federal system; the final creates a case study of how state and local officials attempt to preserve their powers in the federal system and achieve their policy objectives.

In the first exercise, students should construct and explain a timeline of American federalism. The Center for the Study of Federalism (CSF) has outlined major constitutional and policy events related to federalism from 1754 to the present at <https://federalism.org/resources/federalism-timeline/>. Many of the events are linked to entries in the free online *Federalism in America: An Encyclopedia* (<https://encyclopedia.federalism.org/>), where students can begin their research on events. Instructors should create a collaborative document on their institution's learning management system or a free platform such as Google Docs. Place instructions on how to approach the activity at the beginning of the timeline and then divide it into the following periods based on Walker (1995) and Kincaid (2017): (1) Colonial/Formational Years: 1754–89; (2) Early Dual Federalism: 1789–1860; (3) Dualism with a Twist: 1861–1930; (4) Cooperative Federalism: 1931–late 1960s; (5)

Coercive Federalism: late 1960s–present. The instructors should then populate the timeline with the desired number of events drawn from the CSF timeline and assign individual students or groups to research each one. Students or groups should then write a one-to-two-paragraph summary of the event and its importance to American federalism. There should also be an oral presentation of approximately five minutes for each topic. Depending on the time the instructor can dedicate to this activity, the presentation can be done in class or uploaded to a video platform and linked to the class timeline document. It is important to stress that this timeline approach is a good heuristic tool to introduce students to the broad development of American federalism. However, instructors should be careful to highlight to students that history is rarely that neat. Kincaid (2019) can be used as a way to elaborate on this messiness.

The second exercise is designed to show the dynamism and complexity of policy competencies in the US federal system. There are two approaches depending on the level of students in the course. Both are best suited to a written paper. Lower level undergraduates should examine intergovernmental behavior during the Covid-19 pandemic. Students can use two open-access texts examining federalism and Covid-19 (Chattopadhyay et al. 2022; Steytler 2022) for background material. Students should read one of two discussions of how federalism affected the American governmental reaction to the pandemic (Kincaid and Leckrone 2022a; 2022b). They should then focus their paper on examining the roles that the federal, state and local governments played in various policy areas. How did the division of powers affect the ability of each to act? What part did intergovernmental relations play in the (lack of) coordination among governments? What part did politics and partisanship play in the US reaction to Covid-19? Students can then compare and contrast federalism's effects on this issue in the United States with one of the many other country case studies in either book. Upper level undergraduates and graduate students should take on a more challenging paper. Dardanelli et al. (2019) created a de/centralization dataset examining centralization or decentralization of 22 policy issues across six federations (Australia, Canada, Germany, India, Switzerland and the United States). First, the US case should be used in comparative perspective. Ask students to read the US chapter and then compare to one (or more for graduate students) of the other five case studies. Students should compare the levels of legislative and administrative de/centralization in the various policies areas for the countries. Are there commonalities? Differences? Were the same policies dynamic or static in both countries? Finally, evaluate commonalities and differences of the two countries based on a/symmetrical application of policy, the form of de/centralization, and the instruments of de/centralization. A second section of the paper should examine one of the 22 policy issues in the US chapter. Each issue is ranked on a 1–7 scale, with 1 being the most centralized and 7 the least. In order to show the complexities

of policy competencies in the United States, students should pick a case that is rated between 3 and 5. They should then examine state and federal activities in the policy sphere. A good place to start research on the issue would be the *Federalism in America: An Encyclopedia* or recent issues of *Publius: The Journal of Federalism's* 'Annual Review of American Federalism'.

The final exercise examines how state and local governments use intergovernmental lobbying (IGL) to voice their agendas before the federal government. The top state and local lobbying organizations are collectively known as the 'Big Seven': National Governors Association (NGA), National Conference of State Legislatures (NCSL), Council of State Governments (CSG), National Association of Counties (NACO), United States Conference of Mayors (USCM), National League of Cities (NLC), and International City/County Management Association (ICMA). An in-class group exercise can be used to understand the background and policy priorities of these groups. Break the class into groups of three to five students. Assign each group one pair of IGL groups to examine and compare. This would either be two state groups, two local groups, or one state and one local group.¹ Students would then research each group's purpose, services provided, and advocacy agendas. Then have them compare the advocacy agendas of their two groups for similarities and differences. Ask groups to report their findings, and the class can discuss differences in approaches to issues of federalism based on which type of government official they represent. Differences should be particularly acute between the state and local officials. Graduate classes should supplement this activity with a review of recent IGL literature (Jensen 2018) and individual IGL cases studies in different policy areas such as elections (Palazzolo and McCarthy 2005), federalism legislation (Dinan 2004), healthcare (Dinan 2011), tax policy (Leckrone 2019), and transportation (Marbach and Leckrone 2002).

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. Do the exclusive, concurrent, and reserved powers mentioned in the US Constitution have any relevance to the actual operation of American federalism?
2. After looking through the Timeline of American Federalism, discuss how historical events such as the Civil War, Industrial Revolution, Great Depression, Civil Rights Movement, Cold War, and post-9/11 War on Terrorism contributed to the increased centralization in the American federal system. If students have read the case study on Covid-19 and American federalism, ask them why the pandemic, which had the potential to increase centralization, did not lead to significant changes in the balance of federal and state power.

3. Drawing from the Covid-19 case study or the policy area examined in conjunction with the de/centralization articles from *Publius*, how do the federal, state and local governments interact? How much overlap, cooperation, coercion and resistance occurs? Compare across the case studies done by different students.
4. What are the primary priorities on the advocacy agendas of intergovernmental lobbying groups? Are they interested in maintaining dual federalism? Or is their focus on procuring as much money from the federal government, with the maximum amount of freedom to spend it as they see fit? Are there differences in how the state and local groups want to see federalism operationalized? What does all this tell us about the nature of American federalism?
5. How has recent party polarization affected American federalism and intergovernmental relations?

READINGS FOR STUDENTS

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TEST/EXAMINATION QUESTIONS

1. The US Constitution delegates certain exclusive powers to the federal government, allows for concurrent exercise by both the federal and state governments in other cases, and reserves the rest to the states. Explain which policies fall into these three categories. What provisions of the Constitution allow the federal government to enter traditionally state-centered spheres of activity?
2. Given the degree of centralization in American federal history, does the United States still have a system of dual federalism? Why or why not?
3. What formal and informal mechanisms are available for state and local governments to try to preserve autonomy in the face of federal intrusions on their powers? Evaluate the utility of these mechanisms.
4. Using the United States' reaction to Covid-19, explain the complicated nature of overlapping competencies in the American federal system. What factors can help or inhibit a national response to a pressing problem like a pandemic given these overlapping competencies?

POINTS FOR EVALUATION

The course design for teaching American federalism minimizes lecturing and focuses primarily on students doing their own research and then discussing it in either small groups or the whole class. Each finalized project should be graded for content, accuracy, analysis and willingness to participate in class discussions. However, as a high-impact pedagogical practice, class discussion is most effective at helping students reinforce what they have learned from their research while at the same time expanding their knowledge and synthesizing information from other students. Consequently, the three teaching exercises are designed to help students expand their breadth of understanding of historical events related to American federalism, understand that different issues result in different intergovernmental politics, place the American system within the context of comparative federalism, and understand the priorities of state and local governments when they lobby the federal government. To assess student learning on these points, two-to-three-page reaction papers should be assigned for each activity asking students for their takeaways from the class discussion and how the discussion contributed to their larger understanding of American federalism.

SUGGESTIONS FOR FURTHER READING

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NOTE

1. CSG and ICMA should be excluded from the exercise because they generally do not engage in active advocacy. This would leave ten pairings: state groups (NGA/NCSL), local groups (NACO/NLC, NACO/USCM, NLC/USCM), and one state/local group (NGA/NACO, NGA/NLC, NGA/USCM, NCSL/NACO, NCSL/NLC, or NCSL/USCM).

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