

# Reform, Adjustment and Historical Evolution Understanding Dynamics of Federal Systems

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Paper presented at the 82<sup>nd</sup> Annual Conference of the Canadian Political Science Association,  
panel B6 (b): Comparative Federalism I

## Abstract

Federalism makes decisions difficult due to competition between governments or due to institutional veto points. The resulting tendencies towards conflict and stalemate affect normal policy-making, but also constitutional reforms which often fail or are constrained by path-dependency of institutions. On the other hand, federal systems generate dynamics that either allow adjustments to changing conditions or cause instability of a federal order. Both "endogenous" dynamics and constitutional reform contribute to historical evolution of federal systems.

To understand how federal systems work and how they manage to persist despite inherent tensions it is essential to consider these dynamics. So far, theories of federalism focus either on historical development, on deliberate change by constitutional reform or on the incremental dynamics of politics. However, it is interrelations between these three modes of change that matters. constitutional change and endogenous adjustment in ongoing politics regularly shape only particular dimensions of federal systems. As a result, incompatible structures may co-exist, but serious structural tensions can trigger change in different dimensions. Which one of these alternatives occurs depends on actors in governments and parliaments. Interested in maintaining the performance of the federal system and their power, they determine whether problems of incompatible structures are coped with by patterns of governance or by constitutional reform. Historical evolution results from particular linkages of the different lines of structural change and from shifts between deliberate and endogenous change, but history sets basic conditions for constitutional and incremental change.

With such a broader perspective, the paper outlines an analytical framework for comparative federalism and intends to contribute to developing theories of federal dynamics.

## 1. Introduction

Federal systems express political bargains creating compound structures. In democratic federations they combine governments and bureaucracies on different levels, thus constituting multiple checks and balance in a structure differentiated along territorial and functional lines. Regarding this complexity, theorists have always spelled out the challenges of governance in federal systems (Tocqueville 1835 [1987]: 239) and the problem of keeping the balance of powers (Riker 1964). Others have considered federalism as process, determined to continuously accommodate unity and diversity (Friedrich 1968).

Usually, when scholars characterized federalism as dynamic they either intended to describe reality or referred to problematic consequences and made recommendations on how to cope with dynamics. Rarely have scholars provided a theory explaining the mechanisms causing dynamics or revealing the driving forces. William Livingston, e.g., regarded federalism as a constitutional framework continuously affected by change in society (Livingston 1956). But he never clearly explained how social change caused federal dynamics. William Riker was the first to suggest an approach which revealed causal mechanisms (Riker 1964). He saw federal systems determined by a power game among coalitions of rational actors. This approach was recently revived in rational-choice theories on federalism (Filippov et al. 2004). In a different way, dynamics of federalism has been accounted for in historical approaches elaborated to understand the evolution and change of institutions (Broschek 2010).

Both approaches have their strength and limits. By focusing on micro-processes of interaction and decision-making, rational-choice theories can identify motivations, preferences and powers of actors to advance or prevent change in federal systems. However, they often neglect particular patterns of interaction or institutional constraints. Moreover, they can explain decisions and outcomes of specific processes, but do not cover developments over a longer time span. Historical institutionalism explains politics in time, i.e. takes into account historical situations and long-term developments. Moreover, it puts emphasis on the effect of institutions. But while this approach may produce good analytical descriptions of historical processes, it tends to overestimate institutional constraints. Thus explanation refers more to continuity than to change (Mahoney and Thelen 2010: 6). Finally, both approaches also draw attention on internal structures and processes and disregard the influence of society.

In the following section I outline an analytical approach linking actor-centred explanation and historical institutionalism. The framework should also include the impact of social changes on dynamics of federal institution and politics. Certainly, it is not my intention simply to include all potentially relevant variables. The framework should not aim at a comprehensive explanation of historical, society-based and political changes in federalism. Rather it should guide theory building on specific cases of federalism in order to better understand how a federal system works, why it works and how it can be stabilised and adjusted to changing conditions. The aim is to identify developments in societies, institution and politics related to federal structures, which may support and mutually reinforce each other or interfere and cause conflicts and tensions. As a consequence, dynamics of federalism should not be taken as linear trend in one direction or another, but as a complex process driven by different trends, concerning different dimensions, combining to different sequences with effects differing

in time. I will illustrate the applicability of the framework with a case study on German federalism.

## 2. Federalism as contradictory institutionalisation

According to the standard definition, federalism is a way of organising politics, which divides power between governments and implies shared rule for common purposes. This definition emphasizes the territorial dimension of a constitution, the vertical allocation of power to different levels and the autonomous or shared application of powers by governments. It does not include the internal organisation of governments forming a federal system. This latter dimension (or institutional “layer”; (Streeck and Thelen 2005) is in particular relevant in democratic federations. As the founders of the American federal constitution had clearly acknowledged, federalism adds an “intergovernmental” dimension of dividing powers in a compound republic where inside a government power is constrained by a division between legislative, executive and judiciary institutions. Not only intergovernmental structures, but also intra-governmental patterns of democracy vary to a considerable extent.

Federalism requires balancing centralisation and decentralisation of powers as well as autonomy and shared rule. Constitutional decisions on the structure of a federation reflect a political “bargain” (Riker 1964), which has to accommodate conflicting interests and can be guided, but not determined by normative reasons. As a rule, decisions on decentralisation and centralisation often are ambivalent in democratic federations. Democracy stipulates equality among individual citizens, but it also requires rights of territorially organised groups. Therefore, democratic federations are confronted with a “a continual tension between persons and places” (Kincaid 2002). The principle of equality of citizens vested with individual rights tends to require uniform decisions and supports centralisation of power in federal systems. Hence liberal democracy apparently is in conflict with federalism implying decentralisation and autonomy of lower level governments. However, citizens’ participation in democratic processes and the protection of minorities can be improved by decentralisation of power. In a similar vein, political structuring of interests may interfere with the allocation of power in federal systems. Societies dominated by class conflicts or functional differentiation of interests tend to cause centralisation of power whereas they contradict the existence of a decentralised federation.

In addition, the organisation of democracy not only increases the complexity of institutions in federal systems, it also creates a “contradictory potential of institutions” (Onoma 2010: 65). A democratic government is founded on sharing of power between citizens and their representatives in public offices. Rules of democracy allocate powers to executive and legislative institutions and limit powers by law interpreted by court decision in case of dispute. They create a differentiated structure of powers to set the public agenda, to make laws and to implement them by actors who are accountable to citizens. The territorial division of power by a federal constitution can interfere with the “intra-governmental” allocation of powers in democracy, e.g., by limiting the power of legislatures and extending the power of executives or courts. Tensions vary with the particular patterns of democracy and federalism, but cannot be avoided by constitutional design.

Beyond that, and also linked to the problem of democracy in federalism, there is also a tension between shared rule and autonomy of governments. Autonomy enables groups to pursue their particular common goals, while it reduces the chance to deal with problems requiring coordination across boundaries of jurisdictions and between levels. Shared rule, on the other hand, increases transaction costs in policy-making, depending on the particular pattern of multilevel governance. It also constraints governments' ability to pursue the will of their citizens, while autonomy constitutes a "demos-enabling" federalism (Stepan 1999).

It could be assumed that in the long term, evolution of federalism decreases these tensions, when the allocation of powers, the intergovernmental organisation and patterns of intragovernmental democracy are mutually adjusted. However, as historical institutionalism explains, these tensions persist for two reasons. First, institutional components of federal systems are often created at different times under different historical "legacies". Even in "constitutional moments" (Ackerman 1991), when all components are formed or amended at the same time, decisions on federalism and democratic institutions are influenced by different historical backgrounds and by ideas developed in different contexts. For these reasons, we cannot expect a coherent institutional design of compound political systems. Rather federal constitutions institutionalize compromises on rules and the allocation of power among different sets of actors. These compromises often establish conflicting mechanisms of collective action.

Second, the inertia of the different institutional component of democratic federalism varies. The relevance of shared rule and autonomy usually is determined by constitutional law, but the effective organisation of intergovernmental relations is continuously adjusted according to functional needs of coordination and according to interests of executives and other actors to cooperate (Bolleyer 2009). Dynamics of the allocation of powers is limited by constitutional rules, too. To a certain extent, the degree of centralisation of decentralisation can be adjusted in normal policy-making, but effective change requires constitutional amendments, i.e. a re-negotiation of the federal compact. By linking different powers in a package deal, conflicts on a redistribution of powers can be moderated and turned into a positive sum-game. In contrast, patterns of democracy are rather stable since they are based on a particular combination of political structuring of societies and an institutional division of powers. As a consequence, any change of these structures turns out as a zero-sum game.

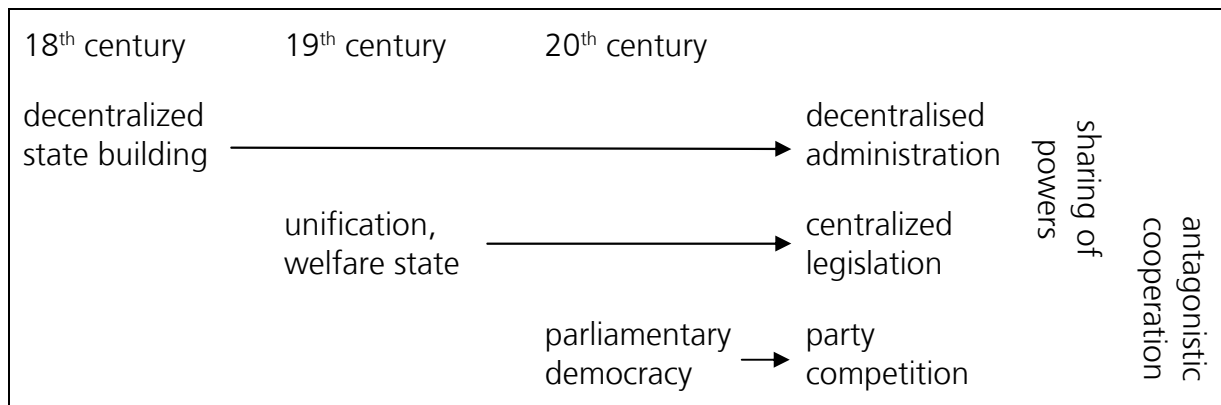
Given the asynchrony of historical development and the varying inertia of institutions in democratic federalism, "politics in time" (Pierson 2004), i.e. the sequence of change in the individual components has a decisive impact on the structure, the operation and the dynamics of federalism (Broschek 2010). It makes a difference whether territorial structures of a political system and the inter-level allocation of power had been in place before processes of democratisation commenced, or whether patterns of democracy have been determined before the evolution of federalism. The first sequence shaped federalism in continental Europe, even in states like Belgium and Spain where territorial structures can be traced back to a longer history and only have been revived by democratisation. The second sequence evolved in federal systems which emerged in the former British Commonwealth (U.S., Australia, Canada).

The relevance of asynchrony and institutional inertia can be illustrated by a brief summary of the evolution of German federalism. After the decline of the feudal order, the territory of what later became Germany was part of the central European “city belt” (Rokkan 1999), where predominating cities and principalities successfully impeded efforts to centralise a sovereign power. When during the 19<sup>th</sup> century the German nation state was created, this was a unification of established states with a fully developed administration. Unification was not only driven by nationalist ideas, but also by attempts of conservative political elites to manage class conflicts by welfare provisions. These policies required a centralisation of legislative powers in order to raise fiscal resources by contributions of employers and employees. As the powerful state governments were unwilling to surrender their power to a federation, unification did not turn over administrative decentralisation. As a compromise of the federal bargain (Ziblatt 2006), the states (*Länder*) kept executive powers including rights to implement federal laws and achieved veto rights in federal legislation. Based on a balance of power, this functional division of competences and shared rule has in principle persisted until the present.

Democratisation started during the 19<sup>th</sup> century in Germany, but it was not before the Weimar Republic established after World War I that a parliamentary system came into existence in federal and *Länder* governments. During this period, territorial political structuring receded and the political cleavages of the industrialisation area deepened. After World War II, parliamentary democracy was re-established on existing political structures. While regionalist or religious differentiations faded away, the fundamental left-right cleavage, which formed in the age of industrialisation, shaped the party system. As a consequence, the participation of lower level governments in federal legislation has been influenced by cross-cutting party politics. Since the 1970s, German voters have tended to strengthen the opposition in the federal parliament. Therefore confrontation between parties has superimposed federal-*Länder*-cooperation in legislation and has turned intergovernmental negotiations into an “antagonistic cooperation” (Scharpf 1989).

At the end of this sequential development, German federalism appeared as a political system which is driven by three conflicting mechanisms: First, democratisation in Germany has created a highly centralized organisation of political interests, while significant executive powers of the state remained in the realm of the *Länder* (Katzenstein 1987). Second, as a result of the functional division of power between central legislation and decentralised administration, many policies require joint decision-making of federal and *Länder* governments. Third, actors involved in joint decisions often de facto represent political parties competing for votes at both levels of government in an antagonistic relation (Lehmbruch 2000). In a nutshell, German federalism aims at a high degree of coordination in compulsory intergovernmental negotiations among competitive actors.

Table 1: Evolution of German federalism



Germany may constitute an extreme case of contradictory institutionalisation of a democratic federalism. However, other federal systems reveal similar conflicts entrenched in structures. They are reflected in the rise of intergovernmental cooperation limiting the autonomy of governments, in the evolution of “executive federalism”, in the notorious instability of a constitutional allocation of powers and “authority migration” (Bednar 2004), or in fiscal imbalances in decentralised federations. If territories are divided along linguistic and cultural lines, democratization fostered decentralisation and autonomy, while the evolution of the welfare state caused centralization and sharing of powers between levels. Conflicts inherent in federalism are a source of ongoing dynamics in policy-making. They compel actors to cope with contradictory “rule systems” and allow political entrepreneurs to strategically modify rules (Sheingate 2010). This aspect has been extensively dealt with in studies on multilevel governance and policy-making (Benz 2009). Beyond these endogenous forces immanent in contradictory institutions, dynamics of federal systems is driven by social developments and institutional (constitutional) politics, as I will explain in the next two sections. It is the interplay between these mechanisms of change that explains how federalism operates and develops.

### 3. The impact of social change: exit/entry, loyalty and voice

Since a long time, sociological theories of state and federalism have emphasised the relevance of social change for explaining the institutions and operation of government. Theories following a Marxist tradition have regarded the state as dependent from resources of economic actors. Some scholars have applied this theoretical concept to the study of federalism (e.g. Stevenson 2004: 72-92). As research on fiscal federalism shows, there is some truth in this argument. However, economic institutionalism would consider governments as capable to shape economic processes thus contradicting the assumption that economy determines federalism. Other theories of federalism focus on the impact of culture and social cleavages in societies (e.g. Erk 2008; Livingston 1956). Again there have been ongoing disputes between proponents of a state-centred and a society centred view of federalism on the direction of causality (Cairns 1977; Smiley 1984; Thorlakson 2003). Moreover, proponents of a society-centred view are confronted with the problem to decide on a theory explaining the structure and

dynamics of society. In this context, they have to cope with the fact that some theories of society have declared territorial differentiation as obsolete.

Whereas rational choice theories disregard the impact of society on politics, most sociological theories refer to macro-level developments in societies and state structures. Thus, regardless of how they perceive and explain social change, they lack a clear understanding of the mechanisms linking federalism and society. In order to remedy this deficit, I follow a line of reasoning introduced by Stefano Bartolini (Bartolini 2005) to explain territorial restructuring in Europe. By combining an action-centred view with a historical perspective on political structuring, this approach allows us to understand how structural developments in societies influence political institutions by processes of collective action.

Following Albert Hirschman, Bartolini defined three modes of action: exit/entry, loyalty and voice. Exit/entry (or mobility of actors) relates to territorial boundaries set by political systems, and is driven by attempts of actors to exploit opportunities or reduce constraints, either by independent activities in an "anarchic field" (Scharpf 1997: 98) or by competition in the market. Loyalty concerns relationship of individuals to a group or political leaders representing a group, which they develop due to their willingness to identify with others and to achieve common goods. Resulting from mutual adjustments of individual norms and values and from communication among members of a group, loyalty is mainly supported by a joint vernacular or by affiliation to a religion, even though individual decisions are not determined by these factors. Voice is expressed by actors who wish to pursue their interests in collective action. For this purpose, actors have to organise, to negotiate on a common interest and to select leaders who act for them in political processes.

The structure of a federal system is affected by each of these three mechanisms of collective action: Increasing mobility determines the scope of interdependent societal activities and, as a consequence, of problems governments have to deal with, but it also leads to inequality between territories. On the one hand, exit from and entry into a territory may cause external effects that cannot be managed by decentralised powers in small territories. Even the opportunity of actors to move or to relocate capital across boundaries of jurisdictions creates interdependence. On the other hand, mobility regularly affects regions in different ways and causes fiscal imbalances in federal systems. Economic activities come together in regional clusters of production, which strengthen the role of decentralised governments. But some regions profit and other suffer from territorial reallocation of investments. Region with economic dynamics attract young people leaving behind an aging population in less attractive rural areas. Depending on the particular conditions, the effects of exit and entry justify centralisation and decentralisation of powers. In any case, the contrasting shifts in boundaries of social spaces often call for an intergovernmental management of interdependence, if not a reorganisation of territories.

Closely connected to processes of exit and entry across territorial boundaries are changes in loyalties. For political systems, group loyalty is a basic condition for general support, which is essential for legitimising redistributive decisions. The increasing mobility across political borders in a globalized society can reinforce or weaken particular identities of groups, depending on whether it results in social plurality in a particular territory or whether it reinforces homogeneity and gives rise to defensive

nationalism. Which effect prevails is determined by different conditions, in particular the responsiveness of political leaders to loyalty claims. As a consequence, processes of changing loyalty can either support demands for uniform policies in a federal system or can give impulses towards multinational federalism.

Finally, voice has effects on federal structures via the party system which reflects political cleavages in a society. In order to gain elections, parties tend to focus on policies which are salient in elections. Therefore, they allocate organisational resources onto the level where relevant powers are wielded (Chhibber and Kollman 2004). But parties also stand for particular collective goals of social groups and reflect social cleavages. If they organise class conflicts or functional differentiation, their structures cut across territorial differentiation in federalism. Parties can also organise interests of groups living in a specific region. More often than not we find party systems which combine state-wide and regional parties (Hepburn 2009). Social change altering the relative strength of the parties can lead to a shift towards one of these types of parties, with considerable impact on politics in federal systems.

*Table 2: Impact on societal change on federalism*

<i>type of individual action</i>	<i>collective action</i>		<i>federal structure</i>
	<i>driving force</i>	<i>mechanism of collective action</i>	<i>impact on federal systems</i>
<b>exit/entry</b>	constraints/ opportunities	anarchy; competition	<b>scope of problems, boundary transformation, fiscal balance</b>
<b>loyalty</b>	identity	mutual adjustment, communication	<b>territorial or multinational federalism</b>
<b>voice</b>	interests	negotiation, leadership	<b>political cleavages, party system</b>

So far, the analytical framework identifies mechanisms linking society and federalism in an abstract way. In order to take into account spatial and temporal variations, we have to include effects resulting from institutional constraints and from historical legacies. Institutions define in particular territorial boundaries including their closure or permeability, they set rules acknowledging distinct groups as “nations” and preventing or enabling groups to pursue particular aims and interests, and they establish rules of election and decision-making in democratic processes which influence the chances of parties to gain power and, as a consequence, the evolution of party systems.

Institutions create path-dependency, but so do mechanisms of social change. Actors moving between places and jurisdiction influence economic and social structures which determine future processes of exit and entry: Firms form clusters of production, which generate growth; declining regional economies induce firms to change their location to



stronger regions; rural or peripheral areas suffer from outmigration of younger people leaving an aging population behind. Loyalty creates even more stable social structures due to the persistence of communities which are held together by language, beliefs and values. These communities are reinforced by entries of persons who identify with distinct groups, while they discourage other individuals from searching access. Political structuring is determined by existing organisation of parties and associations, which more often than not profit from support by governments or institutional rules. This way, cleavages in societies are "frozen" in party systems.

There is no need to analyse in greater detail the factors and mechanisms linking federalism and society. However, it is important to note is that their interaction does not lead to coherent development of federal systems but causes contradictory structures. The increasing territorial scope of problems governments are confronted with goes along with regional differentiation of economies and societies, requiring at the same time centralisation and decentralisation of powers. Open societies become more pluralistic in terms of values, citizens develop multiple identities, and they communicate to an increasing extend across boundaries of nations and groups. But these changes lead to defensive reactions by nations and regional communities trying to defend their distinct character. Together, both processes tend to generate an asymmetric multinationalism. While governments have to seek for coordinated policies in larger areas, often reaching beyond boundaries of existing regional or national jurisdictions, regional nationalism surfaces in some regions where communities claim minority rights or autonomy. Asymmetries are also visible in party systems structured both along functional and territorial lines.

These contradictory trends and asymmetries are even observable in Germany, usually labelled as "unitary federalism". The historical sequences of institutional evolution outlined above created uniformity despite decentralisation. Changes in territorial boundaries during the history of federalism, immigration after World War II, an open economy integrated in the European common market, the decline of cultural cleavages that had been caused by the reformation and the peace treaties of the 16<sup>th</sup> and 17<sup>th</sup> century, and the freezing of a centralised party system during the first decades of the West German federal republic contributed to this pattern of federalism.

However, economic imbalances between regions increased due to a double shift in territorial boundaries, one caused by European integration and the other by German unification. Increased economic mobility in the European common market reinforced developments of regional economic clusters. Instead of the federal government, Länder governments became competitors for investors. As a consequence, fiscal imbalances and economic disparities have been much more felt by lower-level governments, not the least since German unification created an economically divided territory.

Despite the East-West divide and the impact of new economic regionalism, we have no indications of a rise of regional nationalism in Germany. However, economic imbalances found expression in a change of the party system since a new left party emerged in the East German *Länder*. The "Linke", as this party is called, now extended to the West and is being integrated in the centralized party system. In this context, an often overlooked asymmetry of the German party system has gained in importance for policy-making and institutional change in federalism. With territorial cleavages re-emerging the regional Christian-Social Union in Bavaria (CSU) became more assertive in claiming the interests

of regions. At the federal level, this party formed a regular coalition with the Christian Democrats (CDU) and contributed to the dominant position of the conservatives. The treaty signed between both parties gives the Bavarian CSU a veto power in important policy fields, in particular in constitutional issues. While this power of a regional party remained unnoticed for a long time, the CSU has used it in order to pursue interests of Bavaria against the federal government during the last decade. This reveals an asymmetry in the German party system, which, despite weak regional loyalties, resembles structures that emerged in other federal systems. Moreover, with the confrontation of the two big parties turned into cooperation in a more fragmented five party system, regional differentiation is more clearly expressed in party competition, coalition strategies and results of elections.

It was not by chance that the Bavarian CSU acted as a vanguard for decentralisation and regional autonomy in debates on the federal constitution (Ziblatt 2002) which finally led to constitutional reforms in 2006 and 2009. However, the federal government supported a reform, too, when it realised that an unreliable coalition of *Länder* governments hampered major reforms in fiscal and social policies.

During the last decades, other states reformed their federal constitutions, too, or introduced elements of federalism. Many of these reforms have been induced by social changes which reinforced contradictory effects of existing institutions. However, we should not assume a unidirectional causality. Mechanisms of federal dynamics described so far evolve parallel to institutional reform, and reform and evolution interact in different ways constituting varying patterns of change.

#### **4. Institutional change: reform and evolution**

Multi-dimensional institutions and social change first and foremost affect governance in multilevel polities. To a certain extent, actors can manage conflicting effects resulting from different rule systems in a "compound republic" and from shifts in scope of activities, loyalties and political structuring. In the long run, these efforts generate patterns of policy-making adjusted to particular institutional constellations.

For German federalism, Fritz W. Scharpf and his research team (Scharpf et al. 1976; see also Scharpf 2009) discovered patterns of federal-*Länder* negotiation which allow to come to agreements despite the constellation of antagonistic cooperation in joint decision-making. Usually, governments avoid redistributive decisions and far-reaching policy changes in order to avoid unmanageable conflicts. They prepare decisions in informal negotiations, often by including experts, thus de-politicising policy-making (Kropp 2009; Wachendorfer-Schmidt 2003). De-politicized cooperation allows governments to avoid the dilemma, that they are held responsible for policies in party competition but that, according to institutional rules, responsibility is shared. Another typical pattern to circumvent this dilemma is to go to courts or define disputed issues as a matter of constitutional amendment. In both cases, policies are shifted to arenas beyond intergovernmental or party politics.

By moderating conflicts entrenched in institutions, these patterns of governance make a federal system work. However, they regularly cause incremental drifts of structures by shifting powers to the executives, to experts or to the courts. As described above, structural drifts can also occur due to social changes. These changes have immediate

repercussions on politics and policy-making, even though they may vary in different sectors and on different levels. They affect the territorial framing of policies, resources and patterns of conflict. Confronted with these changes, the complexity of federal systems may jeopardise governance by deadlocks, but differentiated institutions also facilitate flexible adjustment due to the existence of redundant structures (Landau 1973). Functional division of powers between central legislation and decentralised implementation, sharing of power by voluntary negotiations or cooperation in the shadow of hierarchy, and consociational democracy presumably extend the capacities for adaptation of federal structures, whereas separation of policies between levels, compulsory cooperation in joint decision-making or democracy with dualist party competition seems to reduce flexibility. Regardless of these variations (which have to be investigated in comparative research), multiple levels and multiple layers, in principle, create ambivalent conditions for governance: They are vulnerable to uncontrolled drifts in authority, but also provide positive conditions for flexible adjustment.

Nonetheless, federal systems not only change incrementally. It is the potential institutionalisation of contradictions which from time to time calls for explicit institutional change, a revision of forms (i.e. a reform), which more often not requires to amend the constitution. Analytically, institutional or constitutional change should not be defined as radical change and contrasted to gradual change. Most constitutional amendments have limited structural effects, even if we also find substantial reforms. Moreover, it is often difficult to differ between normal legislation and constitutional amendment if we consider the formal hierarchy of law. However, institutional reform requires an explicit modification in the frame of reference of policy-making based on a clear distinction of policies and rules determining policy-making, or between governance and meta-governance. If actors refer to this frame and shift decisions to the meta-order, they set an agenda for institutional politics and explicitly negotiate on rules and a reallocation of powers.

Usually, institutional reforms are called for if pragmatic solutions in policy-making fail or prove to be insufficient. When and why such a situation occurs depends on different factors. Regardless of the particular causes, reforms only come on the agenda if powerful actors criticise the existing institutions and succeed in modifying the frame of reference. Thus, the shift from evolution to reform is contingent, i.e. neither determined by previous structural configurations nor by social developments or events. Reforms occur under different circumstances, the only necessary factor being the existence of actors able and willing to set the agenda.

In view of the complexity of federal institutions and the ongoing change in the social context, agendas of institutional reforms necessarily are selective. Therefore, in the flow of evolution, reforms never address all institutional dimensions, but only partial elements of federal systems. One reason for this selectivity is the relative autonomy of the institutional layers which had evolved in different historical contexts. Regardless of mutual influences of rules determining the allocation of powers, the extent of shared rule and the type of democracy, each component of a federal system follows its own logic of change. Second, society develops incrementally, and its effects on federal structures do not become immediately visible, but unfold during the operation of a federal system (Erk 2008: 9). As mentioned above, these effects may not concern all institutional dimensions and they can bring about contradictory challenges. Third, the agenda of a reform is negotiated by governments and/or parties in parliament. Usually,

those actors making first proposals determine the point of departure and the frame of reference of reform processes. They exploit their agenda-power defined by institutions and situations in order to pursue their own interests rather than to achieve a common goal or to react to objective needs for change.

Agendas are not fixed during the reform process. They are extended or reduced, depending on the structure of negotiations and the impact of external events. Again actors' interests are the main forces driving this dynamics. In addition, institutional constraints and evolution on normal policy-making contribute to this. To which extend and in which direction agendas expand or contract, is mainly dependent on how negotiations on institutional reform and normal policy-making interfere. If reform negotiations proceed in arenas clearly separated from arenas of normal intergovernmental relations or party politics, it is probable that the agenda remains stable. If these arenas overlap and reform negotiations are influenced by policy-specific interests of actors or particular situations, agendas can be overloaded with particular issues or narrowed down to what is achievable given veto powers and selective attention of actors involved.

Recent constitutional reform in German federalism illustrates the dynamics of the agenda under the condition that reform and evolution of politics in federalism are closely connected. To negotiate the reform, federal and *Länder* governments convened to set up a special joint committee of the federal parliament and the *Bundesrat*. What appeared as a new arena separating constitutional negotiations from normal legislation de-facto established the usually informal patterns of federal-*Länder* negotiations and reflected the power structures between parties in parliament. The structure was designed to represent all veto players in negotiations on an amendment proposal and to reduce the risk of failure in ratification. However, as a result, coalitions of *Länder* governments and party coalitions tried to pursue their interests in bargaining processes. Moreover, experts from bureaucracies had considerable influence on negotiations and introduced their particular issues. This structure has caused agenda change in two directions: On the one hand, the agenda was extended to particular policy issues due to the influence of policy specialists of the federal government. On the other hand, those proposals which did not find agreement in the party coalitions or the coalition of the *Länder* governments had been removed from the agenda. Therefore, neither a territorial reorganisation of the *Länder*, nor major changes in taxation power and in fiscal equalisation had been dealt with (Benz 2008; Scharpf 2009).

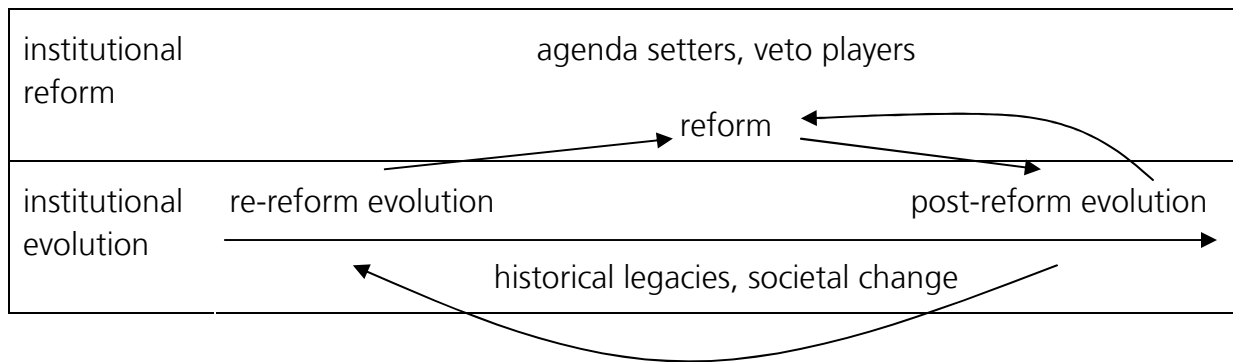
Independent of the type of a federal system, negotiations on institutional change have to include all governments. Moreover, as no government can alter the form of federal institutions by autonomous decisions, change requires unanimous or nearly unanimous agreements among all governments. We find only rare cases where the federal government can change the federal constitution against the explicit will of lower-level governments. Thus the structure of governance in institutional policy corresponds to the model of "joint decision-making" (Scharpf 1997: 143), i.e. multilateral compulsory negotiations in the shadow of intra-governmental democratic politics. Considering the fact that institutional reforms imply a redistribution of power and resources, we have all reasons to expect at best marginal change, if not deadlock. Reform policies seem to likely end in the joint-decision trap (Scharpf 1988).

Nevertheless, in reality we find surprisingly high rates of constitutional change in most federations (Lorenz 2008: 26-27). During the last decades, we even observe a number of significant reforms (Behnke and Benz 2009). Presumably, the differentiation between arenas of normal politics and institutional politics are a decisive factor to explain this result. It is not only the development of reform agendas, but also the mode of negotiations which is affected by this differentiation. If, as was the case in Germany, actors negotiating on institutional reforms act in the same context as they negotiate on day-to-day political conflicts, they tend to bargaining behaviour and convene, if at all, at the lowest common denominator. If negotiations on institutions take place in an arena shielded against interests and conflicts in the particular situation, actors are more likely to focus on institutional rules, to search for solutions of general governance problems and to cooperate in the "arguing" mode.

Reform proposals which find support in negotiations can be voted down by veto players in the ratification process. This outcome is more likely to occur if actors elaborating a proposal have no power to control ratification. But even failed reforms have an impact on the dynamics of federalism. On the one hand, negotiated agreements among parties and governments may be implemented by "implicit constitutional change" (Voigt 1999: 145-176), as can be observed, e.g., in Canadian federalism. On the other hand, proposals which are not implemented in a reform usually re-emerge on the agenda of later reforms. Therefore, institutional reforms never constitute singular processes which succeed or fail, they combine to a sequence of success and failure, and changes accumulate over time. Moreover, rules which have been practices for a long time may finally be set on the agenda of an institutional reform and be formally implemented. Therefore, reforms are also embedded in a sequence of informal and formal change (Héritier 2007) of implicit and explicit constitutional change (Behnke and Benz 2009). Again we find examples for both sequences in German reform of federalism. The right of *Länder* to deviate from federal legislation, which was introduced by the 2006 constitutional amendment, although to a limited extend, can be traced back to a proposal made during constitutional negotiations in the 1970s, which ended without a result. The rules on participation of *Länder* governments in EU legislation, entrenched in the constitution in 1994 and revised in 2009, had been practiced based on intergovernmental agreements or laws before.

To sum up: Institutional reforms and institutional evolution are distinct, but interrelated modes of change. In federal systems, reforms have to be negotiated in joint-decision making. Institutions, defining who has the power to set the agenda and who has veto power, have decisive impacts on the way institutional problems are framed and on negotiation behaviour of actors. Moreover, while reform politics implies a change in pattern of policy-making and in the definition of governance problems, they are influenced by ongoing policy-making and institutional evolution. Arena differentiation can contribute to a certain separation of reform and evolution, without ruling out mutual influence. In the long run, both modes of change combine to sequences of reform and evolution, which explain how federal systems change.

Table 3: Institutional reform and evolution



These sequences are embedded in historical legacies of institutions and in processes of social change, described in the previous sections. While institutional reform, i.e. agenda-setting, negotiations and ratification are determined by interests of actors and institutional rules of decision making, the complex setting of federal institutions and society mainly have an impact on the dynamics of institutional evolution. This evolution changes the conditions of a reform, which often builds on previously failed reform attempts or long-lasting discussions on institutional problems. Continuity of institutional politics and policy-making often goes hand in hand with discontinuity of conditions.

We have to consider the changing institutional and social background, if we try to explain recent reform of German federalism. The agenda defined by federal and *Länder* governments under particular pressure from governments of the rich *Länder*, including in particular the Bavarian government, took up concepts of decentralisation and separation of powers. Since the 1970s, debates on a reform of the federal system had been centred on these demands. However, after the turn of the century, institutional and social conditions of German federalism have changed, as outlined above. Meanwhile, considerable territorial conflicts had to be coped with. Furthermore, the restructured party system reduced the impact of confrontation of governments affiliated to different parties, but also weakened the cross-cutting function of party politics which more than ever in the history of the Federal Republic reflected regional interests. Last but not least, European integration and globalisation contributed to increasing interdependence between levels of governments, in particular in fiscal policy, which made demands for a separation of powers difficult to implement without additional search for improved modes of intergovernmental coordination. Under the pressure of the economic crisis, the second reform commission was compelled to focus on the coordination of federal and *Länder* budgets with the result, that instead of a decentralised fiscal federalism, a constitutional amendment reinforced joint-decision making in fiscal policies of the federal and the *Länder* governments. The first reform excluded redistributive issues of fiscal federalism and intergovernmental coordination with the consequence that constitutional amendments did not amount to significant and lasting change.

In a nutshell: Constitutional reform of Germany federalism suffered from a dual problem: On the one hand, negotiations of reform proposals had been burdened by bargaining as is usual in joint decision-making and by particular interests of policy specialists. On the other hand, actors did not sufficiently reflect changing conditions of

federalism when designing the agenda and the reform proposals. They responded to these changes more coincidentally in a situation of crisis. Thus rather than constitutional reform, the shape of federalism in Germany has been influenced more by institutional evolution.

## 5. Conclusion

The approach outlined in this paper to understand federal dynamics aims at linking historical perspectives on institutional evolution and social change with an actor-centred perspective on constitutional reform. Although I have started with the historical approaches, the intention of this approach is more related to analyse current dynamics in the interplay of institutional reform and evolution caused by ongoing policy-making. Therefore, in conclusion, I sum up my argument in a reverse order.

In order to explicitly change their constitutions by reform, federal systems are confronted with the problems to manage redistributive conflicts on power and resources in patterns of joint decision-making. The result these processes bring about is mainly influenced by decision rules defining agenda setters and veto players, and by the organisation of the negotiation process. While decision rules are given, negotiations can be structured in different ways, thus giving actors discretion to create more or less independent arenas for institutional reform. To explain reform processes and their immediate result, these variables (conflicts of interest, agenda- and veto power, patterns of negotiation) suggested by actor-centred institutionalism are sufficient.

In order to understand dynamics of federalism, we have to go beyond this analytical framework and include historical institutionalism and sociological approaches. In a historical perspective, federalism appears as a complex political system institutionalising contradictory rule systems. Different institutional "layers" evolved in different historical contexts, and the particular form of a federal system is determined by the sequence of development. The impact of social change can be explained by an approach focussing on mechanisms linking actions with structure. For federal structures, exit and entry of societal actors, the evolution of loyalties to communities and the organisation of social interests seem to constitute the most relevant mechanisms explaining the change or effectiveness of territorial boundaries, the identification of citizens within smaller or larger communities, and the relevance of territorial, functional or social structures of conflicts, i.e. factors which to a considerable extent determine federal structures and their operation.

Given the complexity of institutions and the interests of actors in institutional politics, reform agendas and results of institutional reforms are always selective. They never transform the federal system on the whole, which develops due to internal tensions and social processes. Moreover, reforms never succeed or fail in total. Therefore, each reform builds on earlier discussions, proposals or partial changes. These sequences of reform are embedded in ongoing institutional evolution and are influenced by them in different ways. It is this interplay, the sequential shifts between reform and evolution, which links politics of change with historical and social conditions.

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