

Critical Junctures, Path Dependence and the Varieties of Federalism

Abstract:

This paper starts from the assumption that federal systems exhibit diverging rather than converging developmental paths. It first introduces a typological framework of federal systems that allows to systematically map varying federal configurations and to gauge possible directions of change. Seeking to link historical institutionalism and comparative federalism, the paper then probes the value of the critical juncture and path dependence concepts for tracing different federal trajectories. It is argued that both concepts are useful for explaining how federal systems emerge from contingent origins and how they broadly evolve over time. Path dependence, however, does not necessarily mean stickiness or even stasis as federal systems contain within themselves different institutional capacities to translate pressure for change into distinct patterns of readjustment or even redirection. Historical dynamics in federal systems can thus only be properly understood as dual processes of path dependent reproduction and incremental adaption.

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When the socialist CCF came to power in Saskatchewan in 1944, the Douglas government transformed the poorest province in the federation into a pioneering laboratory. Within a comparatively short time frame, the CCF government fundamentally changed the machinery of government, created a professional public service and introduced highly innovative policies in areas such as regional economic policy, agricultural policy, health, education and welfare. In doing so, the CCF government not only created a lasting legacy for the province, but also for Canadian politics and society as a whole (Johnson, 2004). Such province-building initiatives are by no means solely confined to the case of Saskatchewan. The Lesage government of Quebec or the Lougheed government of Alberta, among others, provide for other prominent examples. They all have in common that provincial governments exploit institutional resources on the provincial level so as to implement their reform strategies. In contrast, rather than tackling reform issues at the level of constituent units, *Länder* governments in Germany usually turn to the federal level whenever they want to launch political change. Election campaigns on the *Land* level, for example, are usually preoccupied with issues that are ultimately legislated on the federal level. It is a persistent pattern in German politics that *Länder* attempt to more firmly entrench their right to have a say in federal legislation instead of developing capacities to act independently within their own sphere of governance. Moreover, even when the preferences of fiscally strong *Länder* governments changed in the 1990s and they sought to increase their autonomy, they were not able to do so. They found themselves caught in the “joint-decision trap” (Scharpf, 1988) from which they were unable to escape unilaterally.

Obviously, constituent units (and the same holds for federal governments) differ in the way they respond to demands for political change. In some cases, entrepreneurial agents inclined to alter the status quo find themselves in an institutional environment that allows them to make use of exit options so as to further enhance autonomy and expand their capacities to act rather independently from each other. In other cases, such an exit option is not available. Entrepreneurial agents are then forced to rely on voice-channels and negotiate whether and how change can be pursued. In this paper I argue that the way how institutions are constructed historically is crucial for our understanding how federal systems variously respond to pressures for change. Federal systems locate territorially defined actors in differently institutionalized authority relationships that are always already in place. Entrepreneurial agents inclined to alter the status quo are thus confronted with preexisting institutional arrangements that shape and confine the aims to which they aspire and the repertoire of strategies they might employ. Whereas in some cases entrepreneurial agents encounter “enabling” institutional arrangements that are conducive to deploy strategies for far reaching change, in other cases institutions predominantly feature “constraining” properties proving more advantageous for the interests of status quo defending actors.

In order to uncover how federal systems are constructed historically, the paper builds on a historical-institutionalist framework. Historical institutionalism is frequently associated with the notion of path dependence. And indeed, the critical juncture and path dependence concepts can be valuable in order to illustrate how federal systems emerge from a set of contingent initial conditions and how certain institutional and ideational features then become subject to a logic of self-reinforcement. Path dependence, therefore, can play a crucial role in the process of constructing a federal order. Yet, beneath the level of a path dependent core, federal orders variously exhibit patterns of incremental change that can have important consequences for their long term evolution. Moreover, depending on how they juxtapose constraining and enabling institutional properties, federal orders are likely to foster either more subtle patterns of incremental change like layering and drift or, alternatively, more straightforward patterns like displacement or conversion. Overall, as I argue in this paper, historical dynamics in federal systems can only be properly understood as dual processes of path dependent reproduction and incremental adaption.

Because change in federal systems is a highly complex process, affecting different elements and taking various directions, the first section begins with addressing conceptual issues. Building on the multiple orders framework as advanced by Karen Orren and Stephen Skowronek, among others, it demonstrates how federalism can be conceptualized as a multilayered order. This grasp allows to specify what dimension or element of federalism might become subject to change (or not), and what direction change in federal systems is to take about. In the second part, I sketch how the critical juncture and path dependence framework can contribute to explain the origins as well as the formation of the basic institutional and ideational features of federal systems. As a contingent outcome that is reproduced through self-reinforcement, federal systems evolve along different historical trajectories, providing that certain features become amplified while others might get irreversibly lost over time. Depending on how they emerge historically by juxtaposing constraining and enabling institutional elements, they shape the repertoire of strategies available to entrepreneurial agents at later points in time. The third part of the paper illustrates how this can foster the occurrence of distinct patterns of gradual or “within path” change.

1. Tracing Change in Federal Systems: Dimensions and Directions

Federal systems are complex and multi-dimensional entities (Burgess, 2006; Hueglin and Fenna, 2006). Systematically exploring the varieties of federal systems and the way they historically emerge on different trajectories thus requires clarifying two questions: First, what dimension of federalism is about to change? Second, what direction is change to take about on each layer?

1.1 Dimensions of Change: Federalism as a “Multi-layered” Order

Tracing change within the varieties of federalism requires specifying what dimension or “layer” of a federal order is subject to change. Grasping the political world in terms of a multi-layered order is an approach frequently applied in the literature on American Political Development (APD). This particular current within historical institutionalism suggests to analytically decompose the unit of analysis into different ordering and contextual layers when examining continuity and change over time (Falleti and Lynch, 2009; Falleti, 2010; Orren and Skowronek, 2004).

When we think of federal systems as multi-layered political orders, three distinct layers seem to be of particular importance. First of all, federal systems manifest themselves in an institutional framework that allocates power resources between and among territorially defined political units. The allocation of competencies, the system of intergovernmental relations and institutional mechanisms providing that constituent units are represented on the federal level all variously establish authority relationships between the federal level and the constituent units. Federal systems, second, cannot properly be understood as long as they remain analytically detached from cognitive or normative ideas. Because they place territorial power holders in position of authority at the expense of others, institutionalized authority relationships in federal systems depend on corresponding normative frameworks or shared cultural understandings that organize political discourse and legitimate their distributive consequences. Finally, federal systems are created as a response to fundamental conflicts and problems within the larger context of society. Federal institutional arrangements and their corresponding ideational frameworks co-evolve and interact within a societal context that is often characterized through the prevalence of territorially defined cleavages (Livingston, 1956; Erk, 2008).

Conceptualizing federalism through this analytical lens allows us to develop a more fine-grained analytical picture of what exactly changes in the evolution of federal systems and

what does not. Change in federal systems at any given point in time does usually not affect the systems as whole. Rather, certain institutional elements like the allocation of competences or the system of intergovernmental relations become a target by entrepreneurial agents from time to time. We can sometimes also observe changes in the discourse within the federal arena as new ideas are introduced without corresponding alterations in the institutional setting. Moreover, conceiving federal systems as multi-layered orders reminds us that ordering layers do not necessarily co-evolve equilibrated and synchronous over time. Rather, layers within federal orders can stem from different historical origins, processing at their own pace and entailing an inner logic that might sometimes be incompatible. For example, in Canada the principle of parliamentary supremacy, in a sense, “migrated” from the imperial parliament to the House of Commons in 1867 where it frequently collided with the division of powers that was established to protect provincial autonomy (Laforest, 2007: 56). The juxtaposition of both conflicting institutional logics often generated frictions and has been an important endogenous source of change within the federal order. A federal order can therefore only be regarded as stable if the allocation of power entailed in its institutional matrix is accepted by most political actors or, in other words: when institutional and ideational layers complement each other and fit together. If this is not the case, mismatch and frictions among those layers will generate pressures for change.

1.2 Directions of Change: Contrasting Different Federal Logics

Change within federal systems is always destined to take a certain direction that departs from the existing status quo. The varieties of federalism can be tracked down by systematically determining contrasting logics each layer within a federal order might display.

a) The Contextual Layer: The Macro-historical Setting

We might often find the rather distant or exogenous causes for change in the societal context a federal order is embedded into. Historically, federal systems have emerged as an integral part of what Stein Rokkan has called political structuring (Bartolini, 2004; 2005; Fabbrini, 2004; Flora et al, 1999). Political structuring responded to large scale processes of spatial reconfiguration consisting of the establishment of a new territorial centre through the redrawing of boundaries and the foreclosure of exit options for resources and actors (centre formation) and the development of loyalty structures within the boundaries of the state providing for system maintenance. At least in Western Europe, centre formation has been a highly centralizing endeavor. Territorially defined cleavages between the centre and the peripheries usually lost relevance and became increasingly superimposed by functional cleavages. As a consequence, a unitary political structure emerged as one defining feature of most states in Europe. However, where territorially defined cleavages remained salient, political structuring had not only to be responsive to functional interest representation and socio-political cleavages, but also to the needs and claims of the peripheral political elite. In those rare cases, territorial claims eventually found their way into the arena of constitutional politics. Spatial reconfiguration was, therefore, incomplete as internal boundaries were not entirely removed. In this sense, constituent units and federal elements within constitutions appear as institutional remnants from the pre- or early modern era of territorial fragmentation.

From this macro-historical angle, change in federal systems is largely a function of shifting cleavage structures (see also Erk, 2008; Livingston, 1956). Stefano Bartolini, for example, hints at the changing nature of centre-periphery relations in order to explain the current resurgence of territorial politics in Europe (Bartolini, 2004; 2005). The increasing permeability of boundaries within the European Union has triggered a process of territorial re-differentiation. Territorial movements often find themselves in a new opportunity structure which allows them to effectively challenge the historically established system of functional interest representation within many nation-states (Jeffrey and Wincott, 2010; Keating, 2008).

Moreover, the process of European integration itself can be conceived as an attempt to create a new political centre on the supranational level. Even though this newly emerging political centre has remained comparatively weak so far, it has brought about important consequences for citizenship rights and constitutional politics that can hardly be captured within the conventional analytical dichotomy between intergovernmentalism and supranationalism (Bartolini, 2005; Fabbrini, 2005; Ferrera, 2005; Hueglin and Fenna, 2006; Nicolaidis and Howse, 2001). Taking these insights a little further, one can argue that the shifting societal context and the re-emergence of territorial politics in Europe gave way to critical junctures that opened up new possibilities for the federalization of many unitary states like Belgium, Spain or Italy as well as the European Union.

Change in the contextual layer, therefore, manifests itself in shifting cleavage structures. Where functional cleavages superimpose territorially defined cleavages, change is likely to be directed towards centralization. However, if territorially defined cleavages are strong or regain significance, peripheral actors are likely to demand reforms aiming to federalize a unitary state or to increase the scope of autonomy on the level of constituent units in federal systems.

b) The Ideational Layer: Stabilizing and Destabilizing Historically Constructed Authority Relationships

Shifting cleavage and loyalty structures do not find their way automatically into the political arena. To become endogenous sources of change, such exogenous pressures need to be articulated by political actors. While their strategies ultimately target the institutional framework which distributes power resources, political actors working within and outside an institutional setting also employ the power of ideas in order to justify or challenge established authority relationships.

First, ideas provide agents with an interpretative framework that can play a decisive role in the identification of problems and the normative construction of reform imperatives (Beland, 2009; Blyth, 2002). In federal orders, such reform imperatives can basically be framed with reference to efficiency-oriented or inclusion-oriented goals (Banting and Simeon, 1985; Schultze, 1997). Efficiency-oriented reforms are particularly prevalent in federations where territorially defined cleavages are rather weak like in Austria, Australia or Germany. This type of constitutional reform aims to make federal institutions more efficient by reallocating competences or (dis-)entangling the system of intergovernmental relations. Inclusion-oriented reforms, in contrast, emerge as a response to claims of national minorities in federal systems. Such reforms are typical for multi-national and territorially divided federations like Canada or Belgium.

Second, institutional stability is highly dependent on compliance (Mahoney and Thelen, 2010: 10). In this respect, ideas can serve more actively as ideological “weapons” (Blyth, 2002: 39) introduced into the public discourse by entrepreneurial agents in order to mobilize support, to construct a need for reform and, ultimately, to erode the legitimacy of the historically established order. In Canada, for example, provincial governments promulgated two variants of the so called “compact theory” in order to discredit the highly centralized constitutional scheme of the British North America Act in the decades succeeding Confederation in 1867. According to the compact theory, Confederation was to be understood as either a compact of formerly independent and equal provinces or as a compact between the English Canadian and French Canadian “nations”. Even though the compact theory was in fact a “myth”, it soon emerged as a powerful constitutional idea that had a lasting impact on the development of Canada’s constitutional order (Russell, 2004).

Finally, formal and informal rules laid out in an institutional framework are always ambiguous, vague and subject to multiple interpretations (Sheingate, 2007: 18). As Peter Russell (2004: 34) has put it, “The language of the constitution is inescapably general and

latent with ambiguous possibilities”. In this respect, ideas can become an important resource for entrepreneurial agents to engage alternative claims about the meaning and scope of constitutional provisions.

The way federalism is represented in political discourse as a cognitive or normative idea can thus be subject to change over time. Basically, the direction of change on the ideational layer in federal orders can switch between (often competing) ideas emphasizing either the need for autonomy and territorial diversity or, in contrast, for rather uniform solutions and similar living conditions throughout the federation.

c) The Institutional Layer: Federal Orders as Configurations of Inter- and Intra-Institutional Elements

At the heart of a federal order lies its institutional framework. It can best be conceived of as a historically constructed institutional matrix of authority relationships, comprising formal rules and informal routines that distribute material and non-material resources among different power holders. Like all institutional arrangements, a federal institutional matrix displays constraining and enabling properties. Empirically, however, federal systems differ in the way they exhibit such properties, with important consequences for the prospects of political change. Some federal orders might establish institutional settings that are highly conducive to adaptive change as they tend to favour political actors who are inclined to alter the status quo while others foster its preservation.

The degree of institutional rigidity of a federal order depends to a large extent on how power is either *shared* or *distributed* among the individual power holders created by the constitution. Intra-institutional arrangements allocate power resources within an institutional scheme among several power holders. Within a given institutional entity, they jointly participate in and share the exercise of power. In contrast, inter-institutional arrangements distribute power resources rather independently among individual power holders. While they remain interdependent as inter-institutional settings yield an indirect controlling effect, such settings are less constraining since individual power holders can operate within their sphere of authority without the danger of direct interference from another.¹

Intra- and inter-institutional elements variously permeate federal orders. Each institutional element of a federal order can thus be contrasted along an intra- and inter-institutional pole (Table 1). Depending on what kind of institutional relationship among territorial units is established, institutional elements can provide an integrated (or functional) allocation of competences and financial resources or a dualistic and exclusive allocation; they might display a strong second chamber and a system of joint decision-making or a weak second chamber and a weakly institutionalized system of intergovernmental relations; the role of the supreme court can be rather weak and dependent on the influence of either governmental tier or strong and independent; and, finally, constitutional amendment procedures can require the consent of constituent units and/or “the people” – either represented by parliament or directly qua referendum – or, alternatively, be achieved unilaterally. In sum, whereas intra-institutional elements foster shared-rule as they operate as institutional channels that are particularly conducive to voice-strategies and the creation of veto-points, inter-institutional elements, in contrast, put an emphasis on self-rule and open up space for exit-strategies.

¹ The distinction between inter- and intra-organ controls was introduced by Karl Loewenstein (1957). The basic idea, however, can be traced back to Montesquieu who has distinguished between the “separation des pouvoirs” and the “distribution des pouvoirs” (see also Lange, 1980).

Table 1: Intra- and Inter-Institutional Elements

	<i>Intra-Institutional</i>	<i>Inter-Institutional</i>
<i>Allocation of competences</i>	functional and integrated	dualistic and exclusive
<i>Allocation of financial resources</i>	integrated	dualistic and exclusive
<i>Representation of constituent units on the federal level</i>	strong second chamber joint decision-making	weak second chamber weakly institutionalized system of intergovernmental relations
<i>Role of the supreme court</i>	rather weak and dependent	strong and independent
<i>Amendment procedures</i>	approval of citizens via parliament, referendum and/or constituent units	unilateral

The configuration of intra- and inter-institutional elements within federal orders is a historically contingent outcome, carried over from the past and subject to adjustment over time. As will be argued in the next section, specifying how federal orders are constructed through the juxtaposition of intra- and inter-institutional elements helps determining how they are institutionally preset in order to respond to demands for change. This can contribute to reveal the institutional “grammar” of federal constitutional orders, corresponding patterns of expectable change and, ultimately, their transformative capacity.

2. Critical Junctures and Path Dependent Dynamics

The critical junctures and path dependence framework can help to explain why and how a federal order emerges as a contingent outcome from a set of initial conditions and how certain elements become then amplified due to self-reinforcing processes. Most basically, a path dependent sequence is analytically divided into three temporal “slices”: a period of initial conditions, the critical juncture and a subsequent period of self-reinforcement (Mahoney, 2000). Under a given set of initial conditions, a comparatively broad range of options is available to alter the status quo. As long as there is no selection from this menu, far reaching change comprising a variety of possible directions is to be expected. With the arrival of a critical juncture, however, this state of historical openness comes to an end. The critical juncture mediates between the menu of choices initially available and the long term historical outcome since it provides that one option, which is stochastically related to these initial conditions, is selected and, then, stably reproduced while other options are no longer viable alternatives.

Reconstructing the path dependent evolution of a federal order can not only contribute to understand what set of alternatives had used to be “thinkable” to actors during previous points in time and how this set has narrowed over time. Moreover, it brings to the fore how a federal order is constructed historically in a way that, depending on the degree of institutional rigidity it embodies, fosters or hampers certain patterns of incremental (or “within path”) patterns of change.

2.1 Critical Junctures

As a contingent outcome of a critical juncture, a federal order responds to fundamental problems within the realm of society. Specifying how federal orders emerge within this framework requires to begin with a closer look at shifting context conditions in the macro-historical setting. Major shifts in the configuration of functional and territorial cleavages within society can become “generative” and create comparatively brief historical periods during which structural constraints are significantly relaxed (Capoccia and Kelemen, 2007; Collier and Collier, 1991). This generative cleavage manifests itself in a brief sequence of

reaction (e.g. the centre aspiring a unitary state) and counterreaction (e.g. peripheral units seeking to prevent their subordination). Depending on the distinct relationship between economic, cultural and politico-bureaucratic centres within a geographic area where integrative dynamics are at work, a critical juncture might set the path for political restructuring along federal lines (Bartolini, 2004; Fabbrini, 2004; Flora et al., 1999).

In the context of the Westphalian system, a federal organization of the state became a viable alternative only under certain circumstances. In continental and territorially expanding societies like Canada and the United States the federal option was not only fostered by the fact that cultural, economic and territorially defined cleavages interpenetrated each other in various ways. Moreover, efforts to establish a strong centre were also hampered by their geographical extension and dependence on immigrants. Both conditions made it almost impossible to build a territorially integrated political system through boundary drawing and the foreclosure of exit (and entry) options (Fabbrini 2004).

In contrast, the macro-historical literature on modern state-building has stressed the declining significance of territorially defined cleavages in most parts of Europe as exit options could more easily be foreclosed and functional cleavages became paramount. Here, only some critical junctures like in Switzerland, Germany, or Italy entailed the federal trajectory as one contingent solution among others. However, territorial cleavages did not necessarily disappear entirely. Shifting cleavage structures and boundary redrawing in the wake of European integration appear to have triggered processes of political restructuring that entail new opportunities for (re-)introducing federal elements into unitary political systems. This is the case, for example, in Great Britain or Italy. In Belgium and Spain federalization has even been successfully accomplished. Since the early 1990s, moreover, the European Union has become more federal in nature and might emerge as a new type of supranational “coming together” federal order, bearing resemblance to certain features of American, German and Canadian federalism (Fabbrini, 2004; Hueglin and Fenna, 2006; Kelemen, 2004; Nicolaidis and Howse, 2001).

The reconfiguration of the macro-historical setting during the second half of the twentieth century has thus generated a historical situation highly conducive to the emergence of critical junctures in unitary states and on the supranational level that might set the path for political restructuring along federal lines. Heightened contingency accompanying a critical juncture implies, however, that a federal order is not a necessary outcome since there are always multiple pathways available for realization, including the preservation of the status quo (Capoccia and Kelemen, 2007: 352). As Daniel Ziblatt has emphasized in his comparative study on the origins of state-building in Germany and Italy, wanting federalism is not enough: “...one clear lesson of this book is that the *effects* of federalism cannot explain its *origins*” (Ziblatt, 2006: 12, italics in original). State-formation cannot only generate a unitary state as it was the case in Italy during the nineteenth century, it might also be subject to setbacks or fail. Whether or not a critical juncture translates into a federal outcome is therefore contingent upon mechanisms of production which are responsible for the selection of one option when the period of initial conditions turns into the critical juncture (Collier and Collier, 1991). As for the institutional layer, military or infrastructural capacities of would-be constituent units seem to be an important prerequisite for a federal outcome during a critical juncture (Riker, 1964; Ziblatt, 2006). This is true for coming together federations which came into being during the eighteenth and nineteenth century. Because of these mechanisms of production, the political center has refrained from conquest and has instead offered the federal bargain to peripheral constituent units. In case of the so called “holding together” federal constitutional orders which have become more prevalent in recent decades, the power of territorial minorities and their credible threat to separate appears to be an important condition for the transformation of a unitary order into a federal one (Stepan, 1999).

2.2 Path dependent Reproduction

While the literature on the origins of federal systems has so far concentrated itself primarily on the discussion why a federal outcome emerges from a critical juncture rather than a unitary state, it is equally important to move beyond the federal-unitary dichotomy. In this respect, the critical junctures and path dependence framework can contribute to shed light on the question what type of federalism crystallizes out over time. To be consistent with the idea of historical causation, it is necessary to trace how mechanisms of reproduction, which provide for long term amplification of an adopted outcome, take over the burden of explanation (Mahoney, 2000; Pierson, 2004). In short: Whereas mechanisms of production generate institutional change during a critical juncture, mechanisms of reproduction are self-reinforcing and can account for the stabilization of certain features of a federal order over the course of time.

According to James Mahoney (2000: 521), a power-based mechanism reproduces a contingent outcome because its rules and distributional consequences are conducive to the consolidation of a power structure which favors certain societal or political groups at the expense of others. Since it is the institutional layer which allocates power resources among territorial units, this type of mechanism can illuminate why federal orders empirically cluster either more along an inter- or intra-institutional setting. Both institutional elements offer distinct opportunities for political actors to promote their interests and, thus, produce incentives that more firmly entrench these institutional features of a federal order over time. They generate increasing returns for those working within the institutions and simultaneously raise the costs of those trying to change them. As a consequence, inter- or intra-institutional elements are likely to become ratcheted in: a group of supporters will carry on maintaining and promoting the “locked-in” federal outcome.

It is therefore important to look at the institutional and ideational alignments that happen early in a historical sequence in order to determine how the varieties of federalism emerge from different historical origins. Canada and Germany provide for instructive examples of how power-based mechanisms foster the path dependent evolution of diverging institutional and ideational foundations of a federal order. After a federal solution had been adopted in Canada and Germany in 1867 and 1871, for a relatively brief period the direction of each federal pathway remained an open question. Over the course of time and due to self-reinforcing dynamics, however, both federal orders aligned themselves with different institutional and ideational logics. Whereas intra-institutional elements and unitarianism have evolved as defining features of the federal order in Germany, intra-institutional elements experienced a loss of significance in Canada. Here, inter-institutional elements turned out to be more conducive to the interests of territorial actors from both tiers of government.

In Germany, the option to create a federal order more inter-institutional in nature slowly got lost in the decades after 1871 even though a rather dualistic allocation of political authority was carried over from the German Confederation (1815-1866) into the early days of the German Empire. Apart from such dualistic provisions in jurisdictions such as social welfare, education, cultural and railway policies, inter-institutional elements surfaced most visibly in the area of fiscal federalism. Unlike in Canada, the constitution provided for a highly decentralized allocation of taxing powers. While the federal government had only access to tariffs and certain indirect taxes, the states had pre-empted exclusive jurisdiction over direct taxes (Nipperdey, 1986: 82). Bavaria and Württemberg were even able to wrest asymmetrical provisions from the constitutional compromise, granting them more autonomy than other states in areas such as taxing, postal services and railway policy (Winkler 2002, 209). Yet power-based mechanisms of reproduction engendered that such dualistic elements soon lost relevance whereas intra-institutional channels, most notably the functional allocation of competences and a strong second chamber consisting of state governments, surfaced as defining features of the federal order. Obviously, the distributional consequences of this

institutional setting proved to be well suited for the consolidation of executive and bureaucratic actors' interests on the state level within the newly established federal order. The *Bundesrat* provided that state executives and their bureaucracies were able to sustain an important role within the federation. Notwithstanding Prussia's hegemonic position within the Reich, the legislative process was still dependent on the consent of a majority of the states in the *Bundesrat*. Moreover, given the dominance of bureaucracies on the state level, the states also maintained considerable leeway over the implementation process. This institutional outcome even re-appeared after new critical junctures in 1919, 1949 and 1990 had opened up new developmental pathways (Broschek, 2010; Lehbruch, 2002).

Canadian federalism took a different pathway. Here, too, developments that took place early in the historical sequence mattered. The sequence of events reflected a pattern scholars such as Falleti and Page have called "reactive" or "balancing" (Falleti, 2010: 16ff.; Page, 2006: 97; see also: Bennett and Elman, 2006: 258; Falleti, 2010: 16ff.). What becomes amplified in a balancing or reactive sequence is not so much the actual outcome of a critical juncture but reactions against it. A historical outcome thus generates negative feedback effects which yield counterreactions destined to reverse the status quo. This "second" outcome of a critical juncture is then pushed forward and stably reproduced over time.

In order to mitigate or even repudiate the distributive consequences of the highly centralized federal order that had been established with the BNA Act, entrepreneurial agents could basically employ two institutional mechanisms. On the one hand, the senate and, more importantly, the federal cabinet served as intra-institutional channels as they provided that regional interests had their hand in federal legislation. Especially the delegates from Canada East, the conservative Bleus, and Nova Scotia placed their hopes on the ability of their ministers to make use of these institutional elements in order to protect their interests. On the other hand, the inter-institutional division of powers was destined for protecting provincial autonomy by clearly demarcating an exclusive sphere of governance. While French Canadian Bleus increasingly experienced intra-institutional provisions, most notably the cabinet, inappropriate for the protection of their interests, early exponents of the provincial rights movement such as Oliver Mowat of Ontario demonstrated how to effectively counteract the federal government's attempts to narrow the scope of provincial autonomy. Unlike representatives from Quebec, Mowat never relied on intra-institutional channels but instead successfully exploited the potential the division of powers offered to him and got engaged in an early form of what later became labelled as province-building (Armstrong, 1981; Vipond, 1985). After politicians from Quebec had repeatedly experienced the lack of responsiveness of the federal cabinet in protecting the interests of French Canadians outside Quebec as it was the case, for example, with the New Brunswick School Act or the execution of Louis Riel, they too adapted their strategy from intra-institutional "voice" to inter-institutional "exit". This shift was further reinforced with the rise of the Liberal Party in Quebec in the second half of the 1890s. William Morton (1980: 217f.) has made this point quite clearly: "Most of all it [the rise of the Liberal Party in Quebec] forced on Quebec the choice between reliance on the national government for defence of minority rights ... or a reliance on the self-government of Quebec to preserve the French language and Roman Catholic schools in that province, if need be alone."

While it was not foreseeable at all what direction Canadian federalism would take immediately after Confederation, power-based mechanisms of reproduction, accruing particularly to provincial governments, can thus help to understand not only why inter-institutional elements were amplified but also why the federation became increasingly decentralized.

3. Patterns of Gradual Change

Path dependence can serve as a valuable point of entry into the exploration why different varieties of federalism emerge over time. Due to early “lock-in” and self-reinforcement, federal orders variously juxtapose inter- and intra-institutional elements. There are extreme cases like Canada and Germany which represent almost prototypically two contrasting principles of federalism. In other cases, institutional elements underpinning the federal order are more intermingled and less bold. In the United States and Australia, for example, the inter-institutional logic underlying the dualistic division of powers interferes with a strong second chamber. Even more vexing is the case of Switzerland where both institutional logics simultaneously permeate the allocation of competences. Mechanisms of reproduction can nevertheless be powerful analytical tools in order to investigate how and why distinct federal orders evolve along different trajectories and rest on different institutional and ideational foundations.

And yet, as has been emphasized in the historical-institutionalist literature more recently, stability and change are two sides of the same coin (Orren and Skowronek, 2004). Institutionalized authority relationships always contain the conditions for both order and disorder. Tracing federal dynamics exclusively within the framework of critical junctures and path dependence is therefore only part of the story. Given their distributive consequences, the persistence of institutions often requires active maintenance efforts against entrepreneurial agents who are inclined to alter the historically established status quo. Hence, even in the absence of formative events, choice points can occur with great regularity within a given historically constructed, path dependent trajectory.

James Mahoney and Kathleen Thelen (2010) have recently introduced a theory of gradual change that holds much promise for analyzing how federal orders evolve incrementally over time. They suggest distinguishing four types of gradual institutional change (Mahoney and Thelen, 2010: 16):

1. Displacement: the removal of existing rules and the introduction of new ones
2. Layering: the introduction of new rules on top of or alongside existing ones
3. Drift: the changed impact of existing rules due to shifts in the environment
4. Conversion: the changed enactment of existing rules due to their strategic development

All four types of gradual change can play an important role in the evolution of federal orders over time. The four types of gradual change rest, however, on different prerequisites. Displacement and conversion are more bold and straightforward patterns of change which are more difficult to achieve than subtle patterns like layering and drift. This raises the question how the prevalence of distinct types of gradual change within a given federal order can be causally linked to factors that make their occurrence plausible.

The four types of gradual change rest, however, on different prerequisites. Displacement and conversion are more bold and straightforward patterns of change which are more difficult to achieve than subtle patterns like layering and drift. This raises the question how the prevalence of distinct types of gradual change within a given federal order can be causally linked to factors that make their occurrence plausible. As argued above, both status quo defending actors and entrepreneurial agents always operate in a pre-established institutional setting that shapes their prospects of success. Hence, from a historical institutionalist point of view, change always relates to the historical heritage of a federal order. When it comes to amplify an already existing meta-path and resistance is low, it does not appear to be a serious problem deploying the whole repertoire of gradual change strategies. Irrespective of the degree of rigidity the targeted institutional channel exhibits, we are likely to observe all patterns of gradual change identified by Mahoney and Thelen as long as the direction of change does not contradict the overall trajectory. However, efforts to

reverse a given path are usually far more difficult to achieve because entrepreneurial agents are confronted with already established institutional settings that often protect the interests of status quo defending actors. The occurrence of distinct patterns of gradual change, then, is more contingent upon the institutional environment which shapes the set of strategies available to both entrepreneurial agents and status quo defending actors (Mahoney and Thelen, 2010; Sheingate, 2007). If entrepreneurial agents therefore attempt to bring about change within constraining intra-institutional settings, they are likely to be confined to employ layering and drift rather than displacement and conversion.

3.1 Displacement and Conversion

As Mahoney and Thelen point out, displacement does not necessarily involve abrupt and radical shift, but can also take shape in a more gradual fashion. This is the case if new institutions are introduced and compete with pre-existing ones until they are slowly suspended. Slowly federalizing countries sometimes follow this pattern of gradual change. For example, rather than being a contingent outcome of a critical juncture, in Belgium federal elements have been incrementally introduced into the constitutional order. The gradual constitutionalization of federalism began with the first constitutional reform in 1970 which led to the creation of the three cultural communities (French, Flemish and German) and the decentralization of certain specified jurisdictions. This devolutionary dynamic within a unitary state became further amplified in the wake of two succeeding constitutional reforms in 1980 and 1988 when additional competences were transferred to the communities and the Walloon, Flemish and Brussels Capital regions were created. It took, however, until 1993 before these earlier reforms ultimately culminated in the formal transformation of a unitary state into a federation (Berge and Grasse, 2003; Deschouwer, 2009). An important feature signifying the extent of shifting authority relationships within the constitutional order before and after 1993 is the locus of residual jurisdiction. Prior to 1993, the institutional scheme had provided that devolved powers to communities and regions were specified and residual jurisdictions were left with the central government. With the introduction of the federal order in 1993, authority over residual jurisdiction migrated to the constituent units whereas the powers of the federal government were enumerated (Watts, 2008, 44).

In the Belgian case, displacement was rendered possible as it fostered the amplification of a historical trajectory whose roots had been laid much earlier. If displacement and conversion are engaged by entrepreneurial agents in order to reverse the established status quo, inter-institutional settings are highly conducive to effectively launch such strategies. First, if compared with the functional allocation of powers, a dualistic division of competences provides more scope for the strategic redeployment of a given set of rules due to the ambiguity it entails. This is a typical example for what Adam Sheingate refers to as increased institutional complexity. As Sheingate (2007: 15) notes, where complexity increases, "...it becomes more difficult to differentiate where the boundaries of system components end and others begin." The dualistic allocation of competences is therefore particularly well suited for entrepreneurial redefinition whenever jurisdictions are not clearly specified. In Canada, for example, the federal government and the provinces both engaged alternative claims about the meaning and scope of constitutional provisions entailed in the British North America Act immediately after Confederation (Vipond, 1985). Strong and independent supreme courts can play an important role for conversion as they have the power to determine how such provisions are to be enacted. In the United States, Australia and the European Union Supreme Courts have taken advantage of such institutional ambiguities in order to significantly expand the scope of action of the (supra)national tier (Thorlakson, 2006: 148).

Second, as resources are rather independently distributed among individual power holders, entrepreneurial actors have more scope for unilateral action. Opting out provisions or

the Notwithstanding Clause provide typical examples for displacement in federal orders. Both depend on the availability of exit options which are usually foreclosed in intra-institutional settings. Section 33 of the Charter of Rights and Freedoms in Canada allows a government, whether federal or provincial, to exempt any of its legislation from certain Charter clauses for a five year (yet renewable) period. Similarly, opting out has enabled provinces, most notably Quebec, to withdraw from country-wide federal initiatives and to replace them with parallel programs of their own design (Bakvis et al., 2009: 172; Cairns, 1992: 72). Also, the possibility to unilaterally use the prerogative powers of the federal parliament in Canada as well as the capacity of the provinces to effectively exploit the division of powers to expand their scope of authority were crucial prerequisites to bring about more bold patterns of gradual change in the federal order. Conversion enabled the federal government to re-invent the principle of parliamentary supremacy in various ways in order to counteract province-building strategies. During the first decades, the federal government frequently applied provisions such as the powers of reservation and disallowance as well as the peace order and good government clause in order to intrude into provincial jurisdictions. While these earlier incarnations of parliamentary supremacy lost relevance during the early twentieth century, they were substituted by the federal spending power which has emerged as the most important power resource of the federal government until this day.

Sometimes both patterns of gradual change can even interact with each other. For example, in order to eliminate its huge budgetary deficit, the federal government in Canada unilaterally (and unexpectedly for most observers) replaced the existing transfer system to the provinces in 1995 with a new one. The arrangement that had originally been negotiated in collaboration with the provinces in the late 1970s, the Established Programs Financing (EPF), was substituted with the Canada Health and Social Transfer (CHST). The unilateral introduction of the CHST has unfolded a large impact on the federal dynamic (Bakvis et al., 2009: 151ff.). With the introduction of the CHST, transfers to the provinces were not only cut dramatically. The federal government also abolished the escalator that had previously determined the annual growth rate in the EPF. In a reaction to this unilateral and order-shattering move, the provinces responded with several initiatives to create new or re-establish already existing intergovernmental arrangements as it was the case with the Council of the Federation. Displacement, therefore, went hand in hand with institutional conversion.

3.2 Drift and Layering

In institutional arrangements where the degree of rigidity is rather high, layering and drift are likely to emerge as typical patterns of gradual change. Both types are more subtle and less bold forms of historical change. For that reason, their transformative impact might not be immediately obvious to both entrepreneurial agents and status quo defending actors.

Status quo defending actors are often the main beneficiaries of drift. In order to prevent drift from happening, political actors must deliberately and actively adapt an institution to a changing environment. If this is not the case, an institution loses its intended impact. The changing impact of second chambers due to shifting contextual conditions is a good example for institutional drift within federal orders. The Swiss *Ständerat*, for example, was created in order to protect the Catholic-conservative and rural cantons who were defeated by the liberal-radical, Protestant and more industrialized cantons during the civil war between 1847 and 1848. As a consequence of demographic change and resulting shifts in the cleavage structure, these old minorities were replaced with new ones like immigrants, lifestyle communities and so forth. However, since these groups lack a clear territorial base, the established institutional order hardly acknowledges their demands for representation. On the contrary, as Papadopoulos (2002) has argued, the *Ständerat* has transformed itself from an important device of minority protection to an institution that today generates majority overrepresentation as it privileges a coalition of small cantons whose interests are already well

represented through other institutional channels. The changing role of the Canadian Senate too is a consequence of institutional drift. As political actors had failed to adapt the appointment mechanism in accordance with the requirements of democratic governance early in the historical sequence, the Senate today cannot make use of its strong legislative powers as this would raise serious legitimacy problems. In both cases, the Swiss *Ständerat* and the Canadian Senate, status quo defending actors have thus been favored by institutional drift.

In contrast, layering is the preferred strategy of entrepreneurial agents under the condition of strong institutional constraints. As Mahoney and Thelen (2010: 20) point out, “while powerful veto players can protect the old institutions, they cannot necessarily prevent the addition of new elements”. This makes layering an applicable strategy in intra-institutional settings where entrepreneurial agents are often dependent on the approval of status quo defending actors whenever they want to change the status quo. Layering is, for example, a frequently observed pattern in the Germany’s federal order. Due to layering, important inter-institutional provisions that the Allies imposed on the drafters of the Basic Law have never unfolded any impact on the operation of the federal system. While the *Bundesrat* was still comparatively weak in the early years, the allocation of competences and financial resources was organized, at least formally, along a dualistic (or concurrent) logic. Layering allowed political and bureaucratic actors finding ways to effectively bypass and circumvent such provisions that had been imposed on them against the will of the majority of representatives in the Parliamentary Council. In doing so, they re-established the federal order in a manner that rendered formal inter-institutional arrangements obsolete. The introduction of the so called joint tasks in the constitutional reform of 1969 exhibited a layering pattern. The joint tasks (Art. 91 Basic Law) were added in order to make certain jurisdictions of the *Länder* subject to joint planning and cost-sharing (Scharpf, 2009). Adding the joint tasks on top of the existing allocation of competences was an crucial element for the incremental transformation of the formal institutional arrangement. More recently, fiscally strong *Länder* sought to increase their autonomy employing layering. They advocated an unconditional right to opt out from matters occupied by the federal level in the area of concurrent legislation in the constitutional reform between 2004 and 2006. While they ended up achieving far less than they had hoped for, entrenching this opting out clause applying to some limited matters is a typical pattern of layering that might have important consequences in the long term – provided that *Länder* governments make use of these new rules (Scharpf, 2008).

4. Conclusion

This paper has argued that if we want to know how federal systems respond to demands for change, we need to reveal how they are constructed historically. As has been shown, historical institutionalism provides us with valuable analytical tools that can contribute to explore how federal systems evolve along different trajectories and variously respond to demands for change. In this respect, the notion of path dependence, which has been a central concern of recent historical-institutionalist analysis, captures only certain facets of historical change. It is therefore necessary to engage more deeply with an analysis of temporality in politics and, in particular, with the question how political institutions register and yield different patterns of change. Historical dynamics in federal orders always unfold as dual processes of path dependent reproduction and gradual change.

Critical junctures and path dependence can be valuable tools in order to unveil how federal orders emerge as a contingent outcome and how distinct elements become “locked in” and subject to self-reinforcement. Path dependence is an important reason for *why* we can often observe different varieties of federal evolution rather than overarching convergent trends. This, in turn, has important consequences for the question *how* federalism evolves

dynamically in and over time. Path dependent processes of reproduction are thus always connected to distinct patterns of gradual adaptation over time.

Depending on how they juxtapose inter- and intra-institutional mechanisms, federal orders vary in the way they are historically preset in order to respond to demands for change. Frictions among institutional and ideational layers, therefore, do not automatically translate into far reaching change, taking arbitrarily any directions possible. Intra-institutional settings where rigidity is high tend to advantage status quo defending actors and provide entrepreneurial agents with a rather narrowly confined repertoire of strategies to pursue their goals. In contrast, less constraining institutional environments considerably expand the repertoire of strategies available to entrepreneurial agents.

To be sure, this is not to say that adaptive change does not take place at all in institutional arrangements where the degree of institutional rigidity is high. Even under the condition of high institutional rigidity there are ways and means to incrementally alter the historically established status quo. Less bold patterns of gradual change like layering can contribute to leverage institutional rigidities in the long run. This calls not only for a closer investigation how such gradual patterns of change exactly relate to distinct institutional properties. Moreover, a deeper analysis how the sequencing of such gradual patterns itself affects federal dynamics, that means, how layering can, for example, establish conditions for displacement or conversion, might be as well a worthwhile endeavor.

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