Explaining Federalism

State, society and congruence in
Austria, Belgium, Canada,
Germany and Switzerland
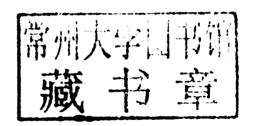
Jan Erk

Explaining Federalism

State, society and congruence in
Austria, Belgium, Canada, Germany and
Switzerland

Jan Erk

Routledge
Taylor & Francis Group

LONDON AND NEW YORK

Explaining Federalism

This book is a study that deals with the theoretical and empirical questions of federalism in the context of five case studies (Austria, Belgium, Canada, Germany and Switzerland). The central argument is that in the long run the political institutions of federalism adapt to achieve congruence with the underlying social structure. This change could be in the centralist direction reflecting ethno-linguistic homogeneity, or in decentralist terms corresponding to ethno-linguistic heterogeneity.

In terms of the relationship between institutions and society, federalism presents a unique opportunity for students of comparative politics. Federalism is both a societal and an institutional phenomenon, and thus presents an area where the two can be studied together. As an institutional phenomenon, federalism denotes the constitutional configuration of the political system. However, this formal division of political power between the center and substate units is just one side of the picture, as federalism is also a societal phenomenon. In this case one could have a federal society where societal differences like ethnicity, language and class tend to be territorially-based, or one could have a non-federal society where differences are nationwide and not territorially concentrated. It is the relationship between the institutional and the societal where the most thought-provoking theoretical questions can be found, and it is this logic of congruence that is employed here in order to explain the course of broad changes in the federal systems of the industrialized West.

Explaining Federalism will be of interest to students and scholars of federalism, comparative government, comparative institutional analysis and comparative public policy.

Jan Erk is Assistant Professor of Comparative Politics at the University of Leiden, the Netherlands.

Routledge series in federal studies
ISSN 1363–5670

Series Editor: Michael Burgess
Centre for Federal Studies, University of Kent, UK
Formerly edited by John Loughlin
Cardiff University, UK

This series brings together some of the foremost academics and theorists to examine the timely subject of regional and federal studies, which since the mid-1980s have become key questions in political analysis and practice.

To the memory of my father

Summary

Explaining Federalism is a study that deals with the theoretical and empirical questions of federalism in the context of five case studies (Austria, Belgium, Canada, Germany and Switzerland). The central argument is that in the long run the political institutions of federalism adapt to achieve congruence with the underlying the underlying social structure. This change could be in the centralist direction reflecting ethno-linguistic homogeneity, or in decentralist terms corresponding to ethno-linguistic heterogeneity. In this context, the book does two things:

1 Substantively, it fills a gap in the comparative federalism literature by analyzing the patterns of change and continuity in five federal systems of the industrial West. This is done by an in-depth empirical examination of the case studies through a single framework of analysis.
2 Theoretically, the manuscript contributes to a core debate in comparative politics. Here the aim is to show the shortcomings of new-institutionalist approaches in explaining change, and to highlight the usefulness of society-based approaches in studying change and continuity in comparative politics.

In terms of the relationship between institutions and society, federalism presents a unique opportunity for students of comparative politics. Federalism is both a societal and an institutional phenomenon, and thus presents an area where the two can be studied together. As an institutional phenomenon, federalism denotes the constitutional/institutional configuration of the political system. This formal division of political power between the center and substate units is one side of the picture. But federalism is also a societal phenomenon; one could have a federal society where societal differences like ethnicity, language, and class tend to be territorially based, or one could have a non-federal society where differences are nationwide and not territorially concentrated. It is the relationship between the institutional and the societal where the most thought-provoking theoretical questions can be found.

What is of interest in this manuscript is the long-run equilibrium between social structures and political institutions. In this context, the logic of congruence between society and institutions is employed in order to explain the course

of broad changes in the federal systems of the industrialized West. Empirical evidence shows that political institutions change in order to reach a better fit with the society. Pressures in homogeneous societies are in the centralist direction; in heterogeneous societies they go the other way.

The case studies are a model of structured focused comparison, presented with a clear focus on the variables and causal chains of interest to the analysis. Evidence from these suggests that a society-based perspective presents a more reliable way to identify the political patterns in federal systems. In all the cases, institutions have changed towards congruence with the ethno-linguistic structure rather than the other way around. Not only do the empirical chapters display the role played by the underlying societal set-up in shaping the uncodified workings of federal systems; they also aim to explain why in many cases institutions proved to be malleable rather than sticky.

Preface

> [E]ach instance of a federalism ancient and modern is imbedded in a set of unique local institutions, which themselves must be appreciated and understood. To acquire the information about history, the sensitivity to culture, and the linguistic competence to examine all these societies is more than any isolated scholar can do.
>
> *William H. Riker*[1]

Good thing is that I was not isolated. Friends and colleagues in Austria, Belgium, Canada, Germany and Switzerland made sure that research and writing was not a completely solitary experience – although it certainly felt that way on a number of occasions. But Riker is right: archival research on original language sources was quite taxing, and I was only examining five such societies in which federalism was imbedded. At the same time, the fortunate by-product of field research was that I got to spend considerable time in the countries under focus. I would like to express my thanks to Murat Lütem and Idil Lütem in Bad Godesberg, Kaan Orbay and Neval Orbay in Vienna, Matthias Behnke in Geneva and Julien Descombes in Zurich for their hospitality and friendship. Colleagues in Austria, Belgium, Canada, Germany and Switzerland kindly gave me their time, answered my questions, directed me to material, and read parts of the manuscript. I thank Anna Gamper, Peter Bußjäger, Anton Pelinka and Wolfgang C. Müller in Austria; Matteo Gianni and Frédéric Varone in Switzerland; Guido von Raskaj, Niels Lange, Steffen Schneider and Christine Strähle in Germany; Geert Bouckaert, Wilfried Dewachter, Guido Dierickx, Philippe Van Parijs, André-Paul Frognier, Sophie Weerts and David Robichaud in Belgium; David R. Cameron, Steve White, Raffaele Iacovino, Jeffrey Osweiler, Brian Greene, Hudson Meadwell, Peter Moore, François Rocher, Jocelyn Maclure and Mark Brawley in Canada; Imke Harbers, Robbert Schuller, Roelof Smit and Maria Spirova here in the Netherlands. Two colleagues deserve special mention: Alain-G. Gagnon had an important impact on my thinking on federalism during my doctoral studies, and I was fortunate to work with another leading federalism scholar, Richard Simeon, during my post-doctoral research. I thank them both for their support and encouragement over the years. While I acknowledge their

role in this book, I should also mention that I am solely responsible for all faults and inaccuracies that might have been overlooked.

Efficiency during the writing stage depends on certain intangible qualities of the work environment. In this respect, I should thank the petulant and elusive beauty of the city of Montréal, whose very problems only add to her indelible charm. Mother Nature has not given her a beautiful climate, but has surely endowed her with beautiful people. Her many twenty-four-hour cafés deserve much credit for the café allongé and nicotine induced creative breakthroughs. It would have probably been more appropriate if I had been writing post-modern poetry rather than a macro-social deductive inquiry into educational policy and mass media regulation in federal systems, but I guess none of the patrons realized. Despite her merciless winter, Montréal is undoubtedly a queen of a city and I owe her a lot for an atmosphere conducive for academic work.

During the writing of this book my father passed away. As a retired academic he was still carrying out research and publishing, albeit in the completely different field of cardiovascular surgery. I dedicate this book to his memory.

Jan Erk
Leiden, The Netherlands

Contents

1   Federalism and congruence

Introduction

This book aims to do two things, one substantive and one theoretical. The first objective is to contribute to the comparative federalism literature by analyzing the patterns of change and continuity in five federal systems of the industrial West. This will be done by an in-depth empirical examination of Austria, Belgium, Canada, Germany and Switzerland through a single framework of analysis. There is much to be learned about federalism by studying these five cases together. In addition to the study of federalism, the book seeks to contribute to the theoretical debate in comparative politics in general. Here the aim is to show the shortcomings of new institutionalist approaches in explaining change, and to highlight the usefulness of society-based approaches in studying change and continuity in comparative politics.

The study of federalism is a field that has not yet been at the core of the theoretical debates in comparative politics. In fact, it has been noted that federalism is often studied in country-specific terms with little systematic comparison.[1] The field tends to produce works of prescriptive nature instead of theory-driven analyses.[2] Yet, in terms of the relationship between institutions and society, federalism presents a unique opportunity for students of comparative politics. Federalism is both a societal and an institutional phenomenon, and thus presents an area where the two can be studied together. As an institutional phenomenon, federalism denotes the constitutional/institutional configuration of the political system. This formal division of political power between the center and substate units is one side of the picture. However, federalism is also a societal phenomenon; one could have a federal society where societal differences like ethnicity, language and class tend to be territorially-based, or one could have a non-federal society where differences are nationwide and not territorially concentrated. It is the relationship between the institutional and the societal where the most theoretically interesting questions lie. What is of interest in this study is the long-run equilibrium between social structures and political institutions. In this context, the logic of congruence between society and institutions is employed in order to explain the course of broad changes in federal systems in the industrialized West. The basic argument is that political institutions change in order to be

congruent with the society. Such explicit theoretical objectives can help bring a field hitherto dominated by prescriptive concerns into the core of comparative politics.

As the empirical chapters on Austria, Belgium, Canada, Germany and Switzerland show, political institutions in these countries have gradually changed to reach a better fit with the ethno-linguistic social structure. Before its recent federalization, Belgium was a unitary state. However, a Belgian "nation" did not emerge to fit the unitary political institutions; these institutions changed to reflect the underlying ethno-linguistic divisions instead. Federal institutions also do not neatly correspond to the Swiss federal society. The federal constitution did not create twenty-six distinct societies for each canton, but the two large constituent communities in the form of Swiss Romand and Swiss German have continued to exist – together with the smaller Ticinesi and Rhaeto-Romance. In Canada, on the other hand, a federal structure based on ten provinces did not eliminate the Québec vs the rest of Canada social divide. In Canada and Switzerland there has been mid-range institutional change in the direction of congruence, but, more importantly, in both cases the federal system tends to bypass the federal constitution and works asymmetrically based on the constituent linguistic/cultural communities. That is to say, the constitutional symmetry between the French-speaking province of Québec and the other nine provinces of Canada is coupled with an asymmetry in the workings of Canadian federalism where Québec's behavior is markedly different from the other English-speaking provinces. Similarly, the constitutional symmetry among Swiss cantons coexists with Swiss-German and Swiss-Romand communities that transcend cantonal boundaries in the workings of federalism. The German case similarly indicates institutional change while the social structure remained constant. The Federal Republic of Germany started with substate competences and an accompanying degree of diversity in public policies in 1949, but it has since moved in the centralist direction. Austrian federalism has followed a parallel path towards nationwide politics. Both cases exhibit the centralizing tendencies that accompany ethno-linguistic homogeneity. Altogether, the case studies suggest that a society-based perspective presents a more reliable way to identify the political patterns in federal systems. In all the cases, institutions have changed towards congruence with the ethno-linguistic structure rather than the other way around. Not only do the following chapters display the role played by the underlying societal set-up in shaping the uncodified workings of federal systems; they also aim to explain why in many cases institutions proved to be malleable rather than sticky.

State, society and federalism

The term "federalism" originates from the Latin word *foedus*, i.e. compact. Historically, the term represented a political compact between groups which had come together in an association. The sixteenth-century German Calvinist thinker Johannes Althusius is the most important intellectual forebear of federalism theory.[3] Althusius' thinking centered on the notion of shared sovereignty in a

contractual union, *pactum foederis*, between the constituent political entities.[4] In the following century, a confederal compact based on such contractual ideas was formed between the provinces of the Low Countries. Elsewhere, three Alpine communities had already established such a union in the thirteenth century that eventually became the Swiss Confederation. Confederal arrangements, however, lacked a strong political center. It was the stronger federal union amongst the former British colonies in North America that gave the center direct political authority for the first time. A federal constitution combining the compact theory of federalism with the republican principle of democratic legitimacy had replaced the earlier confederal union between the thirteen American colonies in 1787.[5] In the following century, federalism was used as a tool towards German unification.[6] Around the same time, Austrians were experimenting with federal arrangements to keep their multinational empire together.[7] Despite these various uses to which federalism was put, it was generally considered as a transitory arrangement or a "second best" option in the path towards political existence.

Until the end of World War II, federalism was still seen as a lesser substitute to unitary state. In the late nineteenth century, British constitutional theorist A.V. Dicey wrote about the federalization of the British Empire as an inferior alternative to the unity of the Westminster model.[8] Following the Great Depression of 1933, the weakness of the United States government in face of the magnitude of macro-economic problems was attributed to the divided political order of federalism. In his provocatively entitled *The Obsolescence of Federalism*, British Labour politician and political historian Harold Laski argued that federalism produced weak governments, which were in turn incapable of dealing with the big questions of industrialization and mass democracy of the twentieth century.[9] According to Ronald Watts, prior to 1945 federalism was treated with benign contempt as an incomplete national government or a transitional model of political organization.[10] However, since World War II, federalism has come to be accepted as a potential way to manage diverse societies and as a way to combat remote, undemocratic and ineffective central governments. Correspondingly, a literature dealing with the theoretical and empirical questions of federalism has emerged.

Theories of federalism share the descriptive lowest common denominator of a political structure where authority is divided among two or more levels of government, but the common theoretical premises do not extend much beyond that. Until the 1950s the study of federalism was the study of federal constitutions. In fact, the very origins of comparative federalism lie in the field of comparative constitutional studies where a formal legal analysis is employed. The constitutional division of competences between the center and the substate units (provinces, states, cantons, Länder) remained the main focus of comparative federalism for long time. The most influential work within this tradition has been that of K.C. Wheare.[11] Wheare's legalistic analysis, which defined federalism as a form of governance where the orders of government are coordinate and independent, has often been quoted as the authoritative definition of a federal system. But there has been a parallel approach employing a society-based

perspective. The most important voice of this persuasion has been a French thinker more widely known for his anarchist ideas, Pierre-Joseph Proudhon.

Pierre-Joseph Proudhon's *Du principe fédératif* is one of the earliest examples of sociological federalism.[12] Proudhon saw social and economic diversity as the reason for adopting federal political institutions, rather than seeing these institutions as the cause of diversity. Some of the intellectual descendants of Proudhon's idea of federalism can be found within the political economy approach to federalism.[13] According to this perspective, the socio-economic differences between regions influence the workings of a federal system. The leading advocate of the sociological approach to federalism is, though, William Livingston. According to Livingston, the focus of federalism studies had to be on societal factors rather than formal institutions. This idea was reflected in the notion of "federal society," i.e. a social structure with territorially based diversity. Livingston believed that such a federal society was the *raison d'être* for federalism. This approach was diametrically opposed to the dominant institutional/constitutional perspective in the study of federalism. Livingston argued that:[14]

> Institutional devices, both in form and function, are only the surface manifestations of the deeper federal quality of the society that lies beneath the surface. The essence of federalism lies not in the institutional or constitutional structure but in the society itself.

For Livingston, a federal society was one with territorially-based diversity; he was not very specific about what constituted diversity and, by extension, what it meant for a society to be federal or not. A number of students of federalism took up the notion of federal society and expanded on Livingston's insight. For example, Michael Stein elaborated on the definition of a federal society: "Where a society is constituted of territorially based communities which are clearly differentiated by language and ethnicity, then one can find a federal society."[15] Stein believed that factors such as religion, geography and economics reinforced the territorially based ethno-linguistic differences, but it was the ethno-linguistic patterns that were fundamental. Another student of federalism, Donald Smiley, preferred the term "federal nation" in his work: "A federal nation is one in which the most politically salient aspects of human differentiation, identification and conflict are related to specific territories."[16] The federal society argument was also taken up by Charles D. Tarlton in order to build a dichotomy between symmetrical and asymmetrical federalism: "following Livingston, an asymmetrical federal government is one in which political institutions correspond to the real social 'federalism' beneath them."[17] Symmetrical federalism, on the other hand, denoted a political order where the federal demarcations were drawn independently of the underlying social structure. This distinction runs parallel to one made by Aaron Wildavsky between "structural" and "social" federalism.[18] According to Wildavsky, social federalism is where economic, ethnic and religious diversities correspond to political boundaries. Structural federalism, on the

other hand, refers to a federal institutional structure designed to decentralize political power regardless of the societal make-up. More recently, some scholars have made a similar distinction between "territorial" and "multinational" federal systems.[19] However, such approaches to federalism that take into account the social structure remain a minority in a field dominated by the institutionalist perspectives.

The study of federalism has long been a study of institutions, so the recent move in comparative politics towards new institutionalism has cemented intellectual continuity in federalism studies.[20] New institutionalist approaches, however, are somewhat different from the old tradition of institutionalist analysis in federalism. The focus of new institutionalism is predominantly comparative, and institutions are seen as an intermediate layer constraining and influencing politics. This is different from the earlier studies, which focused only on constitutions. New institutionalist works tend to take the federal structure as the independent variable and seek to explain its role in shaping society and politics. Richard Simeon describes this perspective in the following terms:[21]

> Institutions are not simply the outgrowth or products of the environment and they are not just dependent variables in the political system. They can be seen as independent forces, which have some effects of their own: once established they themselves come to shape and influence the environment.

Emphasis is now more on the institutional arrangements that shape political strategies and distribute political power. The new institutionalist logic suggests that political actors try to take advantage of the available channels for political activity, and actors are gradually socialized into the institutions as they form their preferences within these rule-bound settings.[22] Interests, therefore, come to be nested in prevailing institutional arrangements. As a result, institutions socialize political actors into the existing structure in such a way that prevailing institutional arrangements are reproduced over time. However, it is this very notion of continuity that appears problematic in the five cases under focus in this study.

As the following empirical chapters demonstrate, federal institutions have not ensured their continuity by providing rule-bound settings to political actors in Austria, Belgium, Canada, Germany and Switzerland. In fact, in many instances formal institutions were changed or bypassed. For example in the Belgian case, political institutions gradually changed in the direction towards a congruence with the constituent Francophone and Flemish cultural/linguistic communities. In Germany, similarly, there has been more change than continuity. An institutionalist logic would expect the federal division of responsibilities established in 1949 to lead to the development of substate interest group mobilization at the Länder level. However, the German federal system has not socialized the German nation into a federal society. In the end, German society has not changed; institutions have. What is common in both cases is the relative ease with which new institutions have been created while existing institutions were changed or bypassed. Due to its emphasis on continuity, new institutionalism