

## Comparative Reflections

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The choice and design of the institutions of government is a key issue in the establishment and operation of any federation. Institutions are the mechanism through which the federal principle is given practical effect within all spheres of government. Many of the institutions of government in federal democracies are the same, or similar, to those in use in any democracy, whether federal or unitary. But, as this booklet shows, federalism and democratic institutions have an impact on each other. Federalism very often affects the way in which democratic institutions are designed, and the way in which they work in practice. And the converse also is true: institutional choice will usually have some effect on the form and operation of the federal system.

### The range of institutions

The countries covered in this booklet use a range of different institutions for the purposes of legislative and executive governance. Some have presidential systems, in which the executive is elected separately from the legislature. Others have parliamentary systems, in which the executive depends on the continuing support of a majority in the legislature. One, Switzerland, also uses a considerable measure of direct democracy, which affects the operation of institutions of representative government, encouraging the development of the consensus style of democracy that the chapter on Switzerland describes.

There are considerable variations, however, within each of the two main types of institutional design, presidential and parliamentary. These are the result of other factors: the nature of the party system, including the cohesiveness of parties and the extent to which they are organized along national, as opposed to regional lines; the electoral system and in particular its tendency to produce majoritarian as opposed to proportional outcomes; the depth and stability of the democratic culture; and the social and economic context within which the institutions exist. And another important variable is the design of the federal system itself. Factors of these kinds account for the very considerable differences between the presidential systems that operate in, say, Argentina and the United States and the comparable differences between the parliamentary systems of, say, Germany and Australia.

### The range of federal systems

At least three types of differences in federal design, affecting institutions, are reflected by the countries in this volume.

First, there is an admittedly somewhat indistinct difference between federations and what might be called quasi-federations. The latter, of which South Africa is an example, are typified by the degree of centralization and, perhaps, also by the extent of central authority to directly control governance within the constituent units. This characterization is not necessarily fixed for all time, as the examples of Canada and India show.

A second important distinction is between dual and integrated federations. The former, typically, divide powers vertically and provide for a complete (or almost complete) set of institutions within each jurisdiction. The United States is the paradigm example. The latter, of which Germany is an example, may also divide powers horizontally, leaving the administration

of most national programs to the constituent units and in turn giving them a direct voice in the national legislature.

A third distinction lies in the depth of federal culture: the extent to which federalism is, in the words of Rajeev Dhavan, considered a “gift of governance” as opposed to a mere fact of political life, which, when it stands in the way of efficiency, needs to be neutralized or minimized, often at cost to the institutions of the constituent units.

### **The interaction between federalism and institutions**

Each of the country chapters shows that the federal character of the polity affects most of the institutions of government in some way or another. The electoral units for the popular house of the national legislature, for example, are often defined by reference to the boundaries of the constituent units. The composition of the national executive is often influenced by a desire to include members from some or all of the constituent jurisdictions.

There are particular institutions, or groups of institutions, on which the impact of federalism is particularly pronounced, however.

The most obvious is the upper house, or second chamber, of the national legislature, often designed to perform a federal role of some kind. Two paradigm models are represented in these chapters. One is the German *Bundesrat*, in which the influence of the state governments on federal decision making is institutionalized. The other is the United States Senate, elected directly rather than by the state polities. South Africa represents an important variation on the former, insofar as provincial legislatures, rather than provincial governments, are represented in the National Council of the Provinces. As the South African chapter argues, it is still too early to judge the significance of this experiment with federal institutional design.

A second institution significantly affected by the fact of federalism is the administration. Some federations are designed to allow or require the administration of programs of one sphere of government by the administrations of another. As these chapters show, however, in almost all federations it is relatively common for administrative bodies in the constituent units to carry out some federal functions, whether formally or pursuant to informal arrangements, including the administration of grants in aid.

Thirdly, there is significant variation in the way in which courts are organized in federations. The logic of a dual federation is that each sphere of government has a court system of its own. Only in the United States is this logic completely realized, however. In other common law federations, the court system is integrated to a greater or lesser degree, sometimes to the point where, as in India and Canada, there is effectively a single system of courts. In civil law federations also, while the courts may have specialist functions, there are effectively single hierarchies, extending from the constituent units to the central sphere of government.

Finally, most federations have a range of (generally informal) institutions through which discussion, coordination, and cooperation between the various governments of the federation also occur. Examples include the Canadian Council of the Federation, the Swiss Conference of Cantonal Executives, and the Indian Inter-State Council. The chapters in this booklet tend to show that institutions of this kind are increasing in significance and sophistication. One question that arises is whether these institutions should be formalized in some way, in the interests of enhancing accountability, although at inevitable cost to flexibility.

### **Some consequences**

At least three important consequences of the interaction between federalism and institutions emerge from these chapters.

First, where there is a federal second chamber of the central legislature, it will affect the capacity of the legislature to reflect the will of the national majority, whether the second chamber in fact plays an effective federal role or not. Ironically, in conditions where the executive otherwise tends to dominate the legislature, a second chamber, differently constituted, will make the legislature more of an independent force. Most federations nevertheless struggle to find an acceptable balance between the powers of the two such chambers, in the interests of both democracy and governing efficiency.

Second, in most federations the symbiotic relationship between institutions as they operate in a unitary system is disturbed to some degree. The institutions most affected are courts and administrative agencies, to the extent that they answer in some ways to two or more spheres of government. Such cross-jurisdictional arrangements complicate accountability and autonomy, and thus both democracy and federalism. They do not need to be avoided for this reason, but their consequences need to be anticipated and managed.

Finally, almost all federations, with the United States as a clear exception, experience the phenomenon of executive federalism. While the detail varies to a degree, depending on the mix of institutions and forms of federalism, the common denominator is a high level of policy making by governments acting collectively, relying on executive dominance of their respective legislatures to ensure that their decisions are given effect. Many of the policy outcomes thus achieved are beneficial. There is a sense, also, in which this process merely takes the familiar reality of the executive dominance of legislatures in many democratic systems to new heights. Nevertheless, as with other cross-jurisdictional arrangements, executive federalism disturbs traditional institutional arrangements, blurring lines of accountability and making the operation of democratic processes difficult for voters to understand. Its impact is most severe on the institutions of the constituent units, thus also weakening federalism itself. Many federations presently are seeking ways to minimize or compensate for the disadvantages of executive federalism while retaining the advantages of cooperation of this kind.