

Pathways of Federal Reform: Australia, Canada, Germany, and Switzerland

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Applying a historical-institutionalist framework, this article systematically explores the patterns of institutional reform in four federations (Australia, Canada, Germany, and Switzerland) since the early 1990s. The article finds that the historical legacy of a federal system has an effect on the overarching reform goal (strengthening self-rule versus shared rule), as well as the scope (focused versus comprehensive) and mode (constitutional versus nonconstitutional) of reforms. Reforms in Australia and Canada were primarily concerned with pathologies such as unilateralism and duplication of competences and had as their main goal to strengthen shared rule. Reforms in Germany and Switzerland were initiated to disentangle both tiers of government by strengthening self-rule.

Federal reforms are usually analyzed and compared in terms of how they yield centralization or decentralization, how they promote efficiency in times of permanent austerity, or how they facilitate accommodation in territorially divided societies. The centralization–decentralization continuum is the most prominent analytical scale applied to gauge the effects of institutional change in federal systems. Federalism scholars variously explore how authority migrates vertically between two levels of government, leading to more centralized or decentralized federations over time (Riker 1964; Erk 2008; Erk and Koning 2010; Braun 2011; Turgeon and Wallner 2013). Another distinction refers to the nature of problems in federal systems. In order to tackle conflicts arising from deep-seated societal cleavages, group-related reforms are assumed to be prevalent in socially heterogeneous federations, whereas efficiency-related reforms seem to feature more prominently in socially homogenous federations (Banting and Simeon 1985; Schultze 1997; Braun 2008; Moreno and Colino 2010).

Although the literature has thus identified important aspects of federal reform, it remains difficult to discern more generalizable patterns from a comparative point of view. Well-established analytical scales are sometimes not sufficiently clear-cut to adequately capture empirical developments. For example, conflict accommodation and efficiency enhancement can coincide as reform goals. Efficiency concerns have recently been an important driver of reforms not only in homogenous federations

such as Australia or Germany, but also in heterogeneous federations such as Canada and Switzerland (Braun 2008). Moreover, federal reforms can simultaneously strengthen both levels of government. This makes it difficult to unambiguously classify the effect of institutional change as being either centralizing or decentralizing. Recent federal reforms in Germany and Switzerland, for instance, were destined to provide the federal and lower level governments with new jurisdictions (Braun 2009; Burkhart 2009; Scharpf 2009). In both cases, the reform outcome can hardly be depicted as a zero-sum game in which one level gained what the other had lost.

This article develops an alternative framework to analyze patterns of federal reform inspired by historical institutionalism. It does not deny the importance of existing approaches to the study of reforms in federal systems, and the framework introduced here should be conceived as complementary. In particular, the centralization–decentralization continuum is a crucial dimension to capture change in federal systems. As will be shown, however, on a deeper level federal reforms are primarily concerned with rebalancing self-rule and shared rule, regardless of whether they are rather centralized or decentralized, or whether they are socially homogenous or heterogeneous.

The starting assumption of this study is that federal systems should be characterized in terms of mechanisms of self-rule and shared rule. Both mechanisms create a permanent tension underpinning federal institutional architectures (Elazar 1987; Mueller 2014). Depending on how federal systems have historically balanced this tension, they evolve on different institutional trajectories, tilting more or less toward either pole (Broschek 2012, 2013).

Any given reform is situated within a preestablished historical path. As a consequence, more distant sources of change—like efficiency constraints in times of permanent austerity—are variously filtered by federal institutional architectures and translate into specific perceptions of challenges, reform needs, and viable solutions. Overall, path dependence has a two-fold effect: it influences the perception of problems and formulation of reform goals, and it shapes the repertoire of available strategies to alter the status quo. Accordingly, patterns of federal reform also vary in terms of their scope (focused or comprehensive) and mode (constitutional or nonconstitutional).

This study explores how historical legacies have shaped the patterns of institutional reform in Australia, Canada, Germany, and Switzerland. It suggests that it is possible to distinguish two major pathways of federal reform. Pathway I represents instances of federal reform whose main goal is to strengthen shared rule, while the main goal of reforms exemplifying Pathway II is to strengthen self-rule. The first section outlines a framework for the comparative analysis of institutional reforms in federal systems. The second section discusses methodological considerations that inform the selection of cases. Using official documents and

secondary literature, the third section then scrutinizes instances of federal reform that have occurred in the four federations since the 1990s. The final section puts these observations together and compares convergent and divergent trends between and among the cases on a more general level.

Reforming Federal Systems

A growing body of literature emphasizes the dynamic evolution of federal systems (Filippov, Ordeshook, and Shvetsova 2004; Galligan 2008; Erk 2008; Bednar 2009; Behnke and Benz 2009; Broschek 2012; Fenna 2012; Broschek 2013; Benz and Broschek 2013; Turgeon and Wallner 2013). The notion of dynamics captures the time-dependent behavior of federal systems, indicating that their historical development simultaneously comprises patterns of continuity and change. Change within continuity surfaces in two ways (Galligan 2008; Behnke and Benz 2009; Benz and Colino 2011; Fenna 2012; Benz and Broschek 2013). On the one hand, federal systems have a capacity to adapt. Adaptation is a rather passive and implicit form of change. It unfolds through the reinterpretation of institutional rules (e.g., judicial review) or drift, which is the changing impact of an institution due to shifts in the environment within which it operates. On the other hand, political actors can more actively pursue institutional change through federal reform. Reform is a deliberate and planned attempt to alter existing elements of a political system. Unlike adaptation, active reform requires explicit change to the wording of a rule. This may involve attaching a new institutional element to the existing framework (institutional layering) or substituting one institution with another (institutional displacement).¹

In federal systems, reforms are adopted to change the institutional architecture that vertically and horizontally connects territorially defined levels of government (the federal level and the constituent units).² The institutional architecture of federal systems displays considerable variation. The reason for this variation is that federal systems differ profoundly in the way they balance unity and territorial diversity, a fundamental tension essentially permeating all federal systems (Elazar 1987: 12). This tension finds expression in institutional linkages between both levels of government that variously promote shared rule and self-rule (Broschek 2012, 2013; Mueller 2014).

Self-rule and shared rule can be thought of as the two end points of a continuum. Empirically, where federal systems are situated along this continuum depends on the nature of the institutional linkages between the constituent units and the federal government.

Within an ideal-type, undistorted institutional context of self-rule actors from each governmental tier can make decisions entirely autonomously within the scope of their respective boundaries. Any constraints beyond constitutional limits emerge

indirectly from decisions made by other governments (e.g., negative externalities, competition). This is reflected in a dual allocation of competences and taxing powers, no (or only rudimentary) provisions for revenue harmonization, a weakly institutionalized system of intergovernmental relations, and a weak second chamber. Within an ideal-type context of shared rule, all actions are jointly carried out between the constituent units and the federal government. This institutional configuration instantly creates strong interdependencies. It requires actors from both levels to closely collaborate because authority is distributed through functions rather than jurisdictions (the federal level has the authority to legislate in most matters, whereas the main responsibility of the constituent units is to implement federal legislation). Revenues are allocated through a system of joint taxation and comprehensive mechanisms for territorial redistribution. Finally, shared rule is created through a strongly institutionalized system of intergovernmental relations and a strong second chamber that allows constituent units to participate in federal legislation (table 1).

Institutional variation among federal systems essentially is a historical outcome. Historical institutionalism suggests that institutional alignments that have occurred during the formative period of a federal system often become perpetuated due to path dependence (Broschek 2012). The institutional architecture of federal systems is remarkably stable once it has become established. However, within these path-dependent boundaries, institutional reforms can contribute to recalibrate the balance between self-rule and shared rule.

Gaining new insights into the varieties of reform patterns in federal systems thus requires looking at how a reform initiative is situated within a larger historical trajectory. Accordingly, it is possible to conceptualize federal reforms as historically contextualized processes—or pathways—which can be compared in at least two dimensions: the overarching reform goals, as well as the scope and mode of institutional change.

First, reforms differ in terms of their *overarching goal*. Political parties or governments promote a reform of the federal architecture as they are dissatisfied with the status quo. Time, therefore, matters. The previously established institutional pathway shapes the overarching goal of federal reforms because reform proponents want to redirect the institutional architecture away from its historical foundations (Falleti 2013). Accordingly, reform advocates are likely to call for reforms aiming to strengthen self-rule in federal systems that have historically been tilting toward the shared rule pole. Vice versa, if self-rule has loomed large within a federal system, reform advocates are more likely to demand reform measures that would strengthen shared rule.

Second, pathways of federal reform differ in terms of their *scope and mode*. In some cases, reform proponents aim for a comprehensive overhaul, simultaneously targeting all main components of a federal institutional architecture. In other

Table 1 The institutional architecture of federal systems

	Self-rule	Shared rule
<i>Allocation of competences</i>	<ul style="list-style-type: none">• Dual: jurisdictions are assigned exclusively between the federal level and constituent units	<ul style="list-style-type: none">• Functional: federal level legislates, constituent units implement legislation
<i>Fiscal federalism</i>	<ul style="list-style-type: none">• dual allocation of taxing powers• no or limited system of equalization• unconditional grants	<ul style="list-style-type: none">• system of joint taxation• comprehensive system of vertical and/or horizontal equalization• conditional grants
<i>System of intergovernmental relations</i>	<ul style="list-style-type: none">• weakly institutionalized• dominant interaction: unilateralism and/or cooperation	<ul style="list-style-type: none">• strongly institutionalized• dominant interaction: collaboration and joint decision-making
<i>Second chamber</i>	<ul style="list-style-type: none">• weak	<ul style="list-style-type: none">• strong

instances, the scope is more focused. Variation often depends on the envisaged reform mode, that is whether reforms are carried out as constitutional or nonconstitutional change. Constitutional change is a more ambitious mode of reform. It usually encounters high thresholds and is more difficult to accomplish. However, if it is possible to overcome this threshold, there might be more leeway for encompassing solutions as resistance from reform opponents is largely absorbed.

Timing and path dependence also shape the scope and mode of change. Path dependence reproduces federal architectures that are more or less conducive to institutional change (Broschek 2012, 2013). Accordingly, actors who push for institutional change confront different degrees of constraints rooted in the deeper historical trajectory. Depending on how reform advocates and reform opponents are institutionally situated within the path-dependent federal architecture, they are variously furnished with institutional resources such as fiscal means and the legal authority to innovate or to veto proposed changes. If institutional hurdles are rather prohibitive for constitutional change, reform proponents are likely to switch to a nonconstitutional track. This, in turn, is likely to generate a more limited scope of federal reform. In addition, path dependence might also direct reform

proponents toward a nonconstitutional route because it reflects a well-established tradition. Alternatively, the constitutional route might be chosen as it is widely believed to be the appropriate means to solve institutional problems within a federation.

Case Selection

The usual vantage point to gauge differences and similarities among federations is the centralization–decentralization continuum. Considering measures such as the scope of jurisdictions assigned to either the federal level or constituent units, revenue-raising capacities or the share of expenditures, Australia and Germany tend to cluster on the centralized end (Australia more so than Germany), and Switzerland and Canada on the decentralized pole (Thorlakson 2003; Watts 2008). Another and often related analytical distinction refers to the social characteristics of federal systems. In homogenous federations, center–periphery conflicts are only minimal and superimposed through functional cleavages. In contrast, heterogeneous federations display pronounced territorially defined cleavages that reflect the ongoing prevalence of center–periphery conflicts. This approach arrives at a similar grouping of the four federations. While Australia and Germany fall into the category of homogenous federations, Canada and Switzerland can be classified as heterogeneous federations.³

The self-rule–shared rule continuum, which serves as the main yardstick to trace patterns of federal reform in this study, results in a different pairing. The federal architectures in Australia and Canada have historically leaned toward the self-rule pole.⁴ Both federations traditionally rest on a dual allocation of competences, separately fusing legislative, executive, and administrative power at each governmental tier. Also, both constitutional frameworks historically provided for a dual allocation of taxing authority. Moreover, there was no intention to institutionalize a strong system of intergovernmental relations. The second chamber, at least in formal terms, turned out to be quite powerful in both federations. However, due to its lack of democratic legitimacy, the Canadian Senate has rarely exercised its veto power since the early twentieth century.

Switzerland and Germany, in contrast, represent architectures that lean more toward the shared rule pole. Both tend to provide for a functional division of competences. This is most obvious in Germany. While the federal level, for the most part, is responsible for legislation, the primary function of the *Länder* is to implement. The original scheme of dual taxation was replaced with a system of joint taxation through two constitutional reforms in 1954 and 1969. In addition, a generous system of horizontal equalization and the so-called *Gemeinschaftsaufgaben* (joint tasks) were introduced, further entrenching shared rule as a constitutional principle. Along with the growing web of intergovernmental bodies and the

increasing influence of *Länder* executives in federal legislation through the *Bundesrat*, German federalism today represents almost an ideal-type for the strongest form of intergovernmental collaboration, that is joint-decision making.

In Switzerland, self-rule through local autonomy is still of great importance. However, institutional change has pushed the federation incrementally toward the shared rule pole during the twentieth century. While the federal level has assumed more competences, cantons retained an important function through implementation. In addition to the emerging functional distribution of competences, a densely institutionalized web of horizontal and vertical arrangements and bodies (most notably the inter-cantonal concordats and different intergovernmental conferences) and the horizontal equalization scheme (originally introduced in 1959) indicate this trend. Finally, the strong second chamber, the *Ständerat*, reinforces shared rule.

The following analysis examines federal reforms that have occurred within these two types of federations since the early 1990s. Individual instances of reform within each federation represent the cases in this study. It looks at how these reform instances have unfolded in each federation, and compares the underlying goals and patterns of institutional change. Changes that qualify as adaptation rather than reform, as well as reforms whose main focus is policy content are not considered.⁵ Also, reforms that formally failed are excluded, like the Meech Lake and Charlottetown Accords in Canada.

All cases are located within a temporally homogenous unit. This means that, on a general level, similar imperatives drove the reform agenda. For the last two decades or so, efficiency, accountability, and the reduction of debt and deficits have been the major concerns in most federal systems (Braun 2008). Situating the cases within these temporal boundaries contributes to contextualize analytically equivalent processes (Falleti 2013: 141). This is important to trace how the historical legacy of a federation is responsible for translating similar sources of change into discrete reform patterns.

Scrutinizing Federal Reform Trajectories

Table 2 provides an overview of the case studies. Overall, the main finding of this study is that it is possible to distinguish two basic pathways of federal reform, which differ in terms of the underlying reform goals and the patterns of institutional change. Pathway I represents instances of federal reform in Australia and Canada. By and large, these reforms were designated to redirect a “self-rule architecture” toward shared rule. Federal reforms that have occurred under Pathway II were deliberately destined to strengthen self-rule. This pathway has been the dominant pattern in Germany and Switzerland. In addition, the two pathways vary with respect to the scope and mode of institutional change. While Pathway I

Table 2 Two pathways of federal reform

Pathway I: "From Self-Rule towards Shared Rule"			Pathway II: "From Shared Rule towards Self-Rule"		
Reform instances	Australia	Canada	Germany	Switzerland	
	● Council of Australian Governments (COAG) 1992	● Canada Health and Social Transfer (CHST) 1995	● Constitutional Reform 1992–1994	● Neue Finanzausgleich (NFA) 1994–2008	
	● Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations 1999	● Social Union Framework Agreement (SUFA) 1999	● Föderalismus reform I 2004–2006		
		● Council of the Federation (COF) 2003	● Föderalismus reform II 2007–2009		
	● Council of the Australian Federation (CAF) 2006	● Equalization Reforms 2004/2005 and 2007			
	● Intergovernmental Agreement on Federal Financial Relations 2008				
Goals	● <i>Shared rule</i> : collaborative federalism; secondary goal: vertical fiscal imbalance	● <i>Shared rule</i> : collaborative federalism; secondary goal: vertical fiscal imbalance	● <i>Self-rule</i> : disentanglement	● <i>Self-rule</i> : disentanglement	
Scope and mode	● <i>Focused scope</i> : intergovernmental relations, fiscal federalism	● <i>Focused scope</i> : intergovernmental relations, fiscal federalism	● <i>Comprehensive scope</i> : allocation of competences, fiscal federalism, second chamber	● <i>Comprehensive scope</i> : allocation of competences, fiscal federalism, intergovernmental relations	
	● <i>Mode</i> : nonconstitutional	● <i>Mode</i> : nonconstitutional	● <i>Mode</i> : constitutional	● <i>Mode</i> : constitutional	

comprises a larger number of more focused reforms that were carried out as nonconstitutional change, Pathway II consists of a limited number of encompassing reforms that were carried out as constitutional change.

Instances of Federal Reforms

Pathway I is exemplified in a series of reforms that were conducted in Australia and Canada between 1992 and 2008; Pathway II is illustrated by Germany and Switzerland.

Pathway I: Australia and Canada. In Australia, the sequence of reform consists of four elements. On the initiative of the federal government, the Commonwealth, the Premiers, and First Ministers agreed to establish the Council of Australian Governments (COAG) chaired by the Prime Minister, and including state and territory premiers and the president of the Local Government Association. A second institutional innovation was the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations signed in 1999 that led to the introduction of the Goods and Services Tax (GST). As part of the national government's larger tax reform agenda (ANTS—A New Tax System), the GST affords the states a new and growing revenue source (Fenna 2007). While the federal level is responsible for levying the GST, its revenue flows completely to the states (minus administrative costs).

The third element of the reform process was the creation of the Council for the Australian Federation (CAF) in 2006. Perceiving itself as “catalyst for action” (CAF 2008), the CAF is an exclusively horizontal body consisting of the State and Territories Premiers or First Ministers.

Finally, under the auspices of COAG, the national government and the states signed the Intergovernmental Agreement on Federal Financial Relations in 2008. This Agreement replaces the 1999 framework, further enhancing the fiscal autonomy of the states. Simultaneously, it establishes a revised framework for intergovernmental collaboration.

In Canada, the sequence of reforms was mainly triggered through the unilateral and unexpected introduction of the Canada Health and Social Transfer (CHST) in 1995. Through the CHST, the Liberal government under Jean Chretien confronted the provinces with drastic and unheralded budget cuts. The CHST allowed Ottawa to successfully balance its budget within a comparatively brief time frame, largely at the expense of the provinces. After having successfully addressed the federal deficit in 1997, Ottawa began to unilaterally launch a broad palette of new programs in areas often residing within provincial jurisdictions (McIntosh 2004).

The provinces responded by calling on the federal government to enter in negotiations about a more collaborative approach in the intergovernmental arena and to tackle what they perceived as a vertical fiscal imbalance. The post-CHST

reform process culminated in a series of intergovernmental agreements which were, for the most part, sector specific like the Health Care Accords of 2000 and 2004 or the National Child Benefit of 1998.

Two more encompassing institutional innovations, however, have been considered at the heart of collaborative federalism: The Social Union Framework Agreement (SUFA) of 1999 and the Council of the Federation (COF), founded in 2003. Finally, the federal government implemented substantial changes in the equalization program between 2004 and 2007. These reforms were destined to settle an ongoing dispute over the question how provincial revenues from natural resources would affect their equalization entitlements.

Pathway II: Germany and Switzerland. Four instances of federal reform in Germany and Switzerland during the period from 1992 until 2009 represent Pathway II. In Germany, a constitutional reform in response to reunification was enacted in 1994. Although the language of disentanglement dominated this reform, it did not bring about substantial changes to the procedural dynamics of the federal system (Schultze 1999; Laufer and Münch 2010). As the need to reform the federal system was felt more strongly in the late 1990s and early 2000s, the *Bundestag* and the *Bundesrat* set up a joint committee on the modernization of the federal system in 2003. This second round of constitutional reform, the so-called *Föderalismusreform I* (2004–2006), emerged as a more serious attempt to overhaul Germany's federal system through a sweeping effort of disentanglement. Fiscal federalism, however, was deliberately excluded. The federal government and the *Länder* agreed to resolve that latter issue in a separate step through the so-called *Föderalismusreform II* (2007–2009).

In Switzerland, one major constitutional reform has unfolded over an extended period between 1994 and 2008, the so-called *Neue Finanzausgleich* (NFA—New Fiscal Equalization Scheme). To some extent, this constitutional reform can be regarded as a continuation of earlier attempts to disentangle relationships between the federal level and the cantons since the 1970s, which had turned out to be only modestly successful, at best (Freiburghaus 2012). The reform ultimately became enacted in 2004 and effective in 2008. While equalization soon emerged as the focal point of the reform process it was, in fact, much more comprehensive. The NFA envisaged not only a fundamental reform of existing fiscal relations, but also a structural reallocation of competences and a reconfiguration of the system of intergovernmental relations.

Reform Goals

Various observers began to use the phrase of “collaborative federalism” to designate the main direction of reform processes in Australia and Canada during the 1990s (Lazar 1998; Painter 1998; Cameron and Simeon 2002). This expression

clearly indicates the main goal of federal reforms in both federations: the desire to strengthen shared rule. The reform goals underlying federal reform in Germany and Switzerland enhanced self-rule.

Pathway 1: Australia and Canada. In Australia, the sequence of reforms began in the 1990s on the initiative of the Labor governments of Robert Hawke and Paul Keating. Federal reform was part of a more comprehensive agenda that was largely concerned with economic modernization through privatization, deregulation, and public sector reform in accordance with the new public management philosophy. Interestingly though, corresponding federal reforms did not envisage decentralization. Rather, the national government's initiative was a deliberate attempt to cope with problems that had their roots in the deeper historical legacy of Australian federalism. In his famous speech entitled "Towards a Closer Partnership," delivered at National Press Club in 1990, Bob Hawke identified the "balkanization" of the national economy and the duplication of services as the main problems (Hawke 1990: 4ff.). These problems were to be addressed through a closer partnership with the states.

The Hawke initiative resonated well with the agenda of several state premiers, who—with the exception of New South Wales—were affiliated with the Labor Party. They were not only committed to a similar reform agenda, but also welcomed Hawke's step as an opportunity to renegotiate the highly centralized revenue allocation (Galligan 1995; Painter 1998). The states framed the need to reform the established revenue scheme in terms of a vertical fiscal imbalance, arguing that the federal level's share of all revenues is unjustifiably high in relation to corresponding program responsibilities. This pattern has persisted since the early 1990s: The states have continuously reacted to the national government's ongoing call for more collaboration and the development of national standards with demands for more fiscal autonomy.

At first glance, the context from which federal reforms in Canada have emerged since the 1990s reveals several differences. Most notably, the sequence of reform grew out from a broadly envisaged, but largely unsuccessful, process of constitutional change. The defeat of the Charlottetown Accord in 1992⁶ brought to an end the era of "mega-constitutional politics," leaving many pressing problems unresolved (Russell 2004). Also, unlike in Australia, the initiative for federal reform since the mid-1990s came from the provinces rather than the federal government. Yet, behind the surface of these idiosyncrasies, the Canadian reform trajectory reveals striking similarities with the Australian case.

As in Australia, the rhetoric of collaborative federalism was employed to curb the high degree of unilateralism and uncoordinated policy-making within the federation. The provinces demanded effective mechanisms that would better protect them from unilateral encroachments in the future. Reforms, therefore, were seen as a necessary response to the unilateral reconfiguration of existing transfers and

programs since 1995. An option paper released in 1997 presented a proposal for the implementation of key mechanisms to establish ground rules for intergovernmental cooperation, dispute settlement mechanisms, a new approach for the use of the federal spending power, and agreements to promote coordination and joint action on an ongoing basis (Provincial/Territorial Council on Social Policy Renewal 1997). The SUFA of 1999 clearly reflects this rhetoric of collaborative federalism. It seeks to restore the relationship between both tiers of government based on “mutual respect” and a “willingness to work more closely together” (Government of Canada, Governments of the Provinces and Territories 1999).

Pathway II: Germany and Switzerland. Since the late 1980s, there was a growing perception among German politicians, media commentators, and the public that joint-decision making between the federal government and the *Länder* was no longer viable. This new discourse dynamic was reinforced by the twin pressures of reunification and European integration. Early evidence for the changing discourse can be found in several position papers issued by the *Länder*, like the “10 Münchener Thesen zur Europapolitik” [10 Propositions on European Integration Policy] (1987) or the “Eckpunkte der *Länder* für die bundesstaatliche Ordnung im vereinigten Deutschland” [The *Länder*’s Parameters for the Federal Order in a Reunited Germany] (Schultze 1999: 181–6; Laufer and Münch 2010: 108–13). In addition, since the mid-1990s fiscally strong *Länder* governments like *Baden-Württemberg* and *Bavaria* began to target main components of fiscal federalism as they were no longer willing to accept the highly redistributive nature of the horizontal equalization scheme. They also demanded a transfer of competences that would allow them to act more autonomously within the European common market. These demands were echoed within the larger public debate (Schultze 1999; Ziblatt 2002; Scharpf 2009). A variety of actors ranging from think tanks, the media, liberal and conservative politicians, business organizations and former president Roman Herzog identified joint decision-making as a key cause of Germany’s poor economic performance.⁷

Disentanglement emerged as the *leitmotiv* of all three reforms since the 1990s. This reflects a fundamental change from previous reforms. All constitutional reforms between 1949 and 1990 were basically concerned with deepening cooperation and joint-decision making. The three constitutional reforms after 1990s were primarily initiated to reverse these earlier developments, and to escape the resulting joint-decision traps (Schultze 1999; Burkhart 2009; Scharpf 2009). The *leitmotiv* of disentanglement is most explicitly formulated in the mandate underlying the *Föderalismusreform I*. According to the mandate,

[t]he Commission develops proposals for the modernization of the federal system in Germany in order to improve the capacity of the federal level and the *Länder* to act and to decide, to more clearly assign political

responsibilities and to enhance the practicability and efficiency of the exercise of each level's tasks... (Deutscher Bundestag 2003: 1, author translation).

The impulse for a new attempt at reforming the federal architecture in Switzerland originated from the federal council, the *Bundesrat*. However, building on this initiative, it was the *Konferenz der Kantonalen Finanzdirektorinnen und Finanzdirektoren* (FDK, Conference of Cantonal Finance Directors) who prepared the road map for an iterative reform process (Fivaz and Ladner 2005; Freiburghaus 2012). Although the reform package in Switzerland included new provisions that were deliberately designed to foster horizontal cooperation in selected areas, the NFA generally seeks to recast the Swiss federal architecture in a way that allows both governmental tiers to act more independently of each other, moving it back toward the self-rule pole. The language underlying this reform obviously bears resemblance to the German case:

The NFA invigorates the principle of subsidiarity. Wherever possible, tasks, competences and fiscal flows between the federal level and the cantons were dis-entangled. The goal was to strengthen state and fiscal capacities of the federal level and the cantons (EFD 2007: 6, author translation).

The Scope and Mode of Change

The breadth and scope of the reforms also differs between the two pathways. Pathway I reforms are narrow and focused while Pathway II reforms are more comprehensive and constitutional.

Pathway I: Australia and Canada. In both federations, reform advocates primarily targeted the system of intergovernmental relations and fiscal federalism. Institutional change in the field of intergovernmental relations occurred primarily through layering. The COAG and the CAF in Australia, just as the SUFA and the COF in Canada, represent institutional innovations that were attached to the established federal setting. As well, reforms in both federations were carried out as nonconstitutional change.

COAG has established a new framework for intergovernmental relations in Australia. As the peak intergovernmental forum, COAG's main purpose is to "...initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments" (COAG Reform Council 2010: 69). Although COAG is not an institution, or an intergovernmental organization, in a more narrowly defined sense,⁸ it has developed a growing institutional infrastructure over time. COAG features a secretariat located in the Department of the Prime Minister and Cabinet and exhibits a diversified structure comprising different types of ministerial councils. COAG meetings are usually held between two or four times a year,

supplemented with meetings of the thirteen Standing Councils, three Select Councils as well as the so-called five legislative and governance fora.⁹ In addition, COAG has created the COAG Reform Council, whose main purpose is to support COAG's reform agenda through regular meetings and reports (COAG Reform Council 2012).

The SUFA, in contrast, was established as a framework agreement on the initiative of the provinces. Quebec, however, did not sign the agreement because that provincial government considered it as an insufficient mechanism. The most controversial provisions are found in Sections 4 and 5, which define procedural rules for the conduct of social policies. In Section 4, both governmental tiers commit themselves to joint planning, partnerships, and consultation if they seek to change the course of policy in the future. In Section 5, SUFA specifies rules about how the federal government can make use of its spending power. These rules do not preclude unilateral action *per se*, but require the federal government to give notice and, if applicable, consult the provinces of plans to introduce any changes. In case of shared-cost programs, SUFA even obliges the federal government to abstain from introducing new programs without the consent of a majority of provinces.

The Australian CAF (2008) and the Canadian COF (2003) represent another interesting similarity. Both institutions claim to play a central role in the reconstruction of a more collaborative federal system, especially through an intensification of horizontal cooperation, and to exercise a leadership role in defining national priorities (COF 2003; CAF 2008). The CAF features an own secretariat and presents itself as a joint effort of the states to coordinate their agenda and to formulate joint positions vis-à-vis the national government in a broad range of issues. In addition, the CAF considers itself as instrumental to take a leadership role in important areas of national concern where the Commonwealth abstains from being active. In a similar vein and, spurred by the unilateralism of the federal government in the second half of the 1990s, the COF signifies an attempt to better institutionalize interprovincial cooperation (COF 2003).

Finally, Australia and Canada have witnessed an intense discussion revolving around the vertical fiscal imbalance between the federal level and the constituent units. In Australia, the states were able to negotiate an important modification of the established system of revenue allocation in 1999, leading to the introduction of the GST. Building on these previous achievements, the Rudd government was able to sign a new agreement with the states in 2008, the Intergovernmental Agreement on Federal Financial Relations.

Both agreements basically afford the states with more fiscal autonomy, but simultaneously tie these concessions to a more elaborate framework for collaboration. According to Part 3 of the 1999 agreement, future changes to the GST tax base and tax rate require unanimous support of the State and Territory

governments (Commonwealth of Australia, the States and the Territories 1999). In a similar vein, the 2008 agreement seeks to provide a “robust foundation for collaboration on policy development and service delivery and facilitate the implementation of economic and social reforms in areas of national importance” (Commonwealth of Australia, the States and the Territories 2009: 1). It entails the so-called National Agreements, which identify mutually agreed objectives (including performance benchmarks) that might be associated with specific purpose payments. The National Agreements envisage a more functional division of labor in which the Commonwealth and the states collaboratively define national goals, while the states conduct their implementation through service delivery.

The federal governments under Jean Chretien (1993–2003) and Paul Martin (2003–2006) in Canada were reluctant to accept the provincial claim concerning the vertical fiscal imbalance. However, both demonstrated a willingness to address provincial grievances by incrementally increasing funding for selected programs such as health care, most notably through the two health accords. Yet, just as the second health care accord was struck in 2004, it became superseded with a new intergovernmental conflict over the equalization program. Again, the provinces pushed for reform, mainly driven by two kinds of concerns.¹⁰ First, they expected the pool sum for equalization to decrease. Second, the inclusion of revenues from natural resources into the calculation of equalization entitlements spurred conflicts between resource-rich provinces and the federal government, as well as between receiving and nonreceiving provinces (Lecours and Beland 2010). The Martin government attempted to solve this issue with a new framework for equalization, which was announced in the fall of 2004. This framework included a guaranteed minimum floor for equalization per year, and a modified formula which determined annual entitlements on a per capita basis.

Overall, these changes made the program less dependent on the contingencies of provincial revenue development. In addition, Paul Martin struck side deals with the receiving, but resource-rich provinces Newfoundland and Nova Scotia in 2005. Just two years later, the conservative Harper government revamped equalization again by replacing the newly entrenched fixed funding rates with a new formula based on the revenues of all provinces. The new formula excluded provincial revenues from natural resources almost entirely from the calculation.

Pathway II: Germany and Switzerland. In these countries, federal reforms were broad in scope. Unlike in Australia and Canada, reform advocates also chose the constitutional route. In Germany, the process unfolded through three discrete constitutional reforms, targeting the allocation of competences, fiscal federalism and the second chamber, the *Bundesrat*. The NFA in Switzerland envisaged a comprehensive constitutional reform of three institutional linkages: the allocation of competences, fiscal federalism as well as the system of intergovernmental relations. Finally, while institutional layering was a dominant pattern of change in

Australia and Canada, in Germany and Switzerland constitutional change resembled more institutional displacement. In both cases, many constitutional provisions were substituted with new ones.

The first constitutional reform in Germany between 1992 and 1994 implied only minor changes for the federal system. In particular, joint decision-making was not reduced at all (Schultze 1999). Despite this disillusionment, many observers initially regarded the *Föderalismusreform I* (2004–2006) as a more promising reform attempt. Disentanglement was to be achieved in two ways. First, the federal government had a strong interest in relaxing *Länder* influence in federal legislation through the *Bundesrat*. It therefore demanded a significant reduction in the number of bills subject to approval by the *Bundesrat*. The *Länder*, in turn, asked for a transfer of competences from the federal level. In general, there was widespread agreement among most involved actors on the necessity of this reform direction.

In purely quantitative terms, the reform package included the most comprehensive constitutional reform since 1949.¹¹ The capacity of both governmental tiers to act more independently was to be enhanced through three elements. First, the federal level was to be relieved from *Länder* influence in legislation, most notably through a reformulation of article 84 Basic Law. In the past, this constitutional provision was given a wide interpretation, allowing the *Länder* to gain a veto right on a growing number of areas falling into federal legislation. Second, the *Länder* were compensated in exchange with a right to opt out whenever the federal government decided to impose procedural rules on how federal law is to be implemented. In addition, the reform introduced opting out provisions in six areas falling into concurrent legislation. Finally, for the most part negotiations were concerned with the reshuffling of competences between both governmental tiers. Concurrent matters were reviewed, to some extent reformulated and then reassigned to either level as exclusive jurisdictions. In addition, the former framework legislation was abolished and converted into either concurrent or exclusive jurisdictions.

The institutional foundations of fiscal federalism remained largely untouched. It was agreed that these issues would be renegotiated under the umbrella of the *Föderalismusreform II*. Despite this agreement, equalization or taxation ultimately did not find their way on the reform agenda in 2007 either. This was largely due to ongoing resistance stemming from the majority of fiscally weak *Länder* governments. In the wake of the Global Financial Crisis of 2008, the deliberations soon began to revolve around the question of how excessive debts and deficits within the federation could be curbed through a modified incentive structure. The reform commission finally agreed on the introduction of a debt brake and specified a schedule on how existing debts and deficits will be incrementally reduced until 2020.¹² In addition, the reform replaced the former financial planning council (*Finanzplanungsrat*) with the stability council (*Stabilitätsrat*). While the

composition of both bodies remained largely unchanged, the latter has an extended mandate for the definition of parameters and the surveillance of budgets on both governmental tiers.

Unlike in Germany, the NFA inherently tied the reallocation of competences to fiscal federalism. Under the umbrella of the previous scheme originally enacted in 1959, the federal government hosted a complex of more than 100 specific transfers and more than thirty equalization payments (EFD 2007, 7). The NFA reform replaced this hardly manageable system with a new equalization scheme. The new system entails two instruments. Resource equalization (*Ressourcenausgleich*) constitutes the first pillar, fed by contributions from fiscally strong cantons and the federal level. Resource equalization assures that all cantons are furnished with guaranteed revenues amounting to at least 85 percent of the average revenue of all cantons. As a second pillar, specific burden equalization (*Lastenausgleich*), compensates individual cantons further for extraordinary expenditures stemming from topographic or socio-demographic challenges in certain mountainous regions and city cantons (EFD 2007: 13–16).

Simultaneously, the NFA in Switzerland envisaged a far-reaching restructuring of competences. Jurisdictions that had been collaboratively performed by the federal level and the cantons were disentangled and reallocated between both governmental tiers. From twenty previously shared jurisdictions, seven migrated exclusively to the federal level. Cantons were furnished with exclusive competences in areas such as education, regional infrastructure, or social assistance. Within the framework of the remaining seventeen shared jurisdictions, the so-called *Verbundaufgaben*, the former multitude of specific purpose subsidies was bundled and fused into several packages of global or general transfers. The federal level still reserves for itself the right to set the basic medium or long-term strategic goals within these areas, while the cantons are guaranteed to retain considerable discretion over the implementation process (EFD 2007: 17–25).

The reform also introduced a new instrument to enhance inter-cantonal cooperation in dedicated areas. The NFA specifies nine cantonal jurisdictions which are assumed to have either strong externalities or are of trans-cantonal relevance (e.g. transport and traffic, prisons and corrections, research and development). Within these areas, cantons are now obliged to cooperate and can even be enforced to do so by the Federal Assembly. In fact, this element of the NFA is somewhat inconsistent with the general reform direction. Fostering the institutionalization of horizontal cooperation beyond the scope of the concordats certainly means to move intergovernmental relations one step further toward shared rule. However, aside from this, the rationale for the NFA was exactly the opposite. Reforming the equalization scheme was not only meant to reduce inequalities among the cantons, but also to furnish them with a level of own source revenues that would allow them to fulfill their responsibilities more autonomously. In a similar vein, the

reallocation of competences was clearly directed toward disentanglement, in accordance with the principle of subsidiarity.

Discussion and Conclusion

Institutional legacies can profoundly shape the patterns of federal reforms. Path dependence situates reform proponents and opponents within an institutional environment that is rooted in earlier developments. Demands for change are filtered and translated into distinct reform patterns. On the level of reform goals, pathways of federal reform vary in terms of how proponents of change seek to recalibrate self-rule and shared rule. On the level of institutional change, pathways of federal reform differ with respect to the scope and mode of change. This analysis provides considerable evidence that the self-rule/shared rule continuum is a valuable analytical scale for the comparative analysis of federal reforms.

Figure 1 traces the reform trajectories in the four federations used for this study. The figure depicts the direction of federal reforms in a highly stylized fashion. The *x*-axis locates the four federations on the self-rule/shared rule continuum, while the *y*-axis indicates the centralization/decentralization continuum. The purpose of this figure is illustrative. The relative position of the four federations is based on a rough estimate that considers the main components of a federal institutional architecture as defined in table 1: the allocation of competences, fiscal federalism, the system of intergovernmental relations, and the relative strength of the second chamber.

The figure indicates that reforms have nowhere culminated in a major overhaul of the basic foundation of an established federal architecture. Rather, they have largely remained within the confines of the preestablished institutional path. Within these path-dependent boundaries, reform patterns reveal both convergent and divergent trends.

First, a general convergent trend among all four federations relates to their relative movement during the period under consideration. The emerging picture reveals an interesting commonality among them which pertains to the reform direction on the *x*-axis. The overall concern of federal reforms was to reposition individual federations primarily along the self-rule/shared rule continuum. To varying degrees, and starting from different endpoints, all federations seem to have been moving away from their original position on the *x*-axis to converge toward a middle position.¹³

Second, the historical legacy appears to shape individual reform patterns as it affects the nature of perceived problems and challenges. In short, the two self-rule federations responded to problems of unilateralism and duplication overlap by putting in place mechanisms of shared rule. In contrast, federal reforms in the two federations exemplifying Pathway II, Germany and Switzerland, were driven by

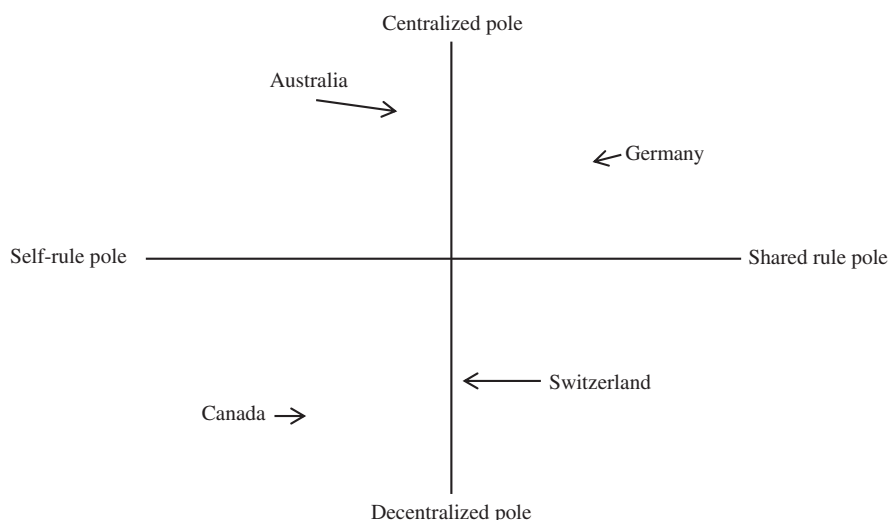


Figure 1 Reform trajectories in time.

problems originating from too much shared rule. Accordingly, reform advocates sought to disentangle institutional linkages between governmental tiers, to provide each with more leeway for autonomous action and, ultimately, to move the federal architecture toward the self-rule pole.

Third, the historical legacy of a federation also influences the scope and mode of federal reform. In Australia and Canada, reform proponents deliberately refrained from taking the constitutional route. They envisaged change on a less encompassing scale, targeting two institutional linkages: the system of intergovernmental relations and fiscal federalism. On the one hand, this can be explained with specific circumstances. In particular, constitutional change in Canada was not a realistic option in the aftermath of mega-constitutional politics and the defeat of the Charlottetown Accord in 1992 (Lazar 1998). As for Australia, the referendum poses a high institutional hurdle for constitutional amendment. On the other hand, nonconstitutional renewal has always been a common practice of institutional reform in Westminster democracies and is, therefore, a historically consistent pattern. Another similarity between both cases pertains to the ordering of events, which unfolded in a reactive sequence (Mahoney 2000). In a chain of reaction and counterreaction, reform proponents began to push for change of the system of intergovernmental relations to foster collaboration, before fiscal federalism emerged as a second reform target to fix the fiscal imbalance. Finally, institutional innovations in the intergovernmental arena—COAG and the CAF in Australia, SUFA and the COF in Canada—were “layered” on the existing federal architecture.

In Switzerland and Germany, in contrast, federal reforms were carried out on the constitutional level and broader in scope. The main target of reform in this pathway was the allocation of competences. In Germany, the allocation of competences was inherently tied to a reform of the second chamber, while in Switzerland it was linked to fiscal federalism. The constitutional mode of reform is consistent with historical patterns in both federations because the means for nonconstitutional change are more limited than in Westminster democracies. Accordingly, political actors have always been prone to fix major problems through constitutional amendment.

Finally, the enactment of a reform does not guarantee its long-term success (Filippov, Ordeshook, and Shvetsova 2004; de Figueiredo and Weingast 2005; Patashnik 2008). Although it was beyond the scope of this study to include a thorough analysis of the medium or even long-term reform implications, variation in length of the arrows in figure 1 attempt to indicate that instances of federal reforms in the four federations differ in terms of their sustainability. A preliminary assessment of the literature and documents¹⁴ suggests that it is not possible to identify a clear-cut relationship between reform pathway and “success.” While there seems to be evidence that in Switzerland and Australia the spirit of reform has positively resonated with important actors in the intergovernmental arena and, therefore, altered the way the federal system operates, post-reform developments in Canada and Germany have lead many observers to cast doubt on the sustainability of these reforms.

In Germany, *Länder* governments have rarely used their new rights to opt out. Instead, they still heavily rely on the *Bundesrat* to influence federal legislation. In Canada, Prime Minister Stephen Harper has returned to a more “classical” approach under the umbrella of “open federalism.” This approach is clearly inspired by self-rule, as the federal government seeks to reduce interactions between Ottawa and the provinces wherever possible. Finally, even in Australia, where a more collaborative spirit seemed to have gained a foothold, recent developments suggest a possible reversal of important reform outcomes. Under the auspices of the newly elected government under Tony Abbott, the National Commission of Audit has released far-reaching proposals that are reminiscent of Stephen Harper’s “open federalism” approach. Chapter 6 of the report includes recommendations that would realign the federal architecture more with self-rule. Among other things, the report emphasizes the urgent need to rationalize the roles and responsibilities of each governmental level, to further reduce the vertical fiscal imbalance, and to cut the number of intergovernmental agreements. In addition, the COAG Reform Council has been abolished effective on June 30, 2014. The future of the CAF is uncertain as well. The CAF has just reinforced its mission statement in 2013, but has become far less active in recent years.

Overall, these findings have important implications for further research. While the patterns of reform examined in this study display interesting regularities which are assumed to relate to the deeper historical legacy of a given federation, this is not to suggest a deterministic relationship. Moreover, reforms represent only one component of federal dynamics. In this respect, a closer investigation of the interaction between institutional reform and institutional adaptation seems promising. In a similar vein, more research is needed to understand the conditions that foster positive feedback effects after a federal reform has been enacted and, in doing so, contribute to its long-term survival.

Notes

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- 1 Broschek (2013) builds on Mahoney and Thelen's (2010) theory of gradual institutional change to distinguish patterns of institutional change in federal systems.
- 2 The following analysis, therefore, focuses on the institutional reform *of* federalism and excludes programmatic or policy reforms *within* federal systems.
- 3 In particular, scholars deploying a sociological theory of federalism assume a strong correlation between the social characteristics and the degree of centralization or decentralization, respectively (Erk 2008; Erk and Koning 2010).
- 4 This characterization of the four federations primarily builds on Lori Thorlakson's comparative analysis (2003) and on Hueglin and Fenna (2006). For a similar assignment see Obinger, Castles, and Leibfried (2005) and Broschek (2009).
- 5 While the Social Union Framework Agreement in Canada established provisions primarily concerned with procedural governance of social policy, it was nevertheless an institutional reform as it was destined to clarify roles and responsibilities between Ottawa and the provinces.
- 6 The Charlottetown Accord represents the last attempt to fix a number of fundamental, unsettled disputes within the Canadian federation through an encompassing constitutional reform. Most notably, it included provisions for a changed allocation of competences between Ottawa and the provinces, a reformed Senate, Aboriginal self-government, and a reformed amending formula. The Accord was defeated in a referendum held in October 1992.
- 7 This is well exemplified in the cover story of Germany's leading weekly newsmagazine *Der Spiegel* from September 21, 2002, entitled *Die Blockierte Republik* [The Deadlocked Republic].
- 8 I am grateful to Alan Fenna for pointing this out to me.
- 9 According to COAG's web site, see <https://www.coag.gov.au/node/41> (accessed January 16, 2014).
- 10 The dynamics of the politics of equalization in Canada are both fascinating and complex. For a detailed analysis, see the recent work by André Lecours and Daniel Béland (2010).

- 11 For a detailed discussion of the reform, see Scharpf (2009), chapter 3 and Burkhart (2009). Furthermore, for a detailed enumeration of all changed articles, see Deutscher Bundestag (2006a).
- 12 For a detailed documentation of the reform and the deliberations, see Deutscher Bundestag/Bundesrat (2010).
- 13 I am grateful to Reviewer 2 for pointing this out.
- 14 See on Australia (COAG Reform Council (2010, 2012); Commonwealth of Australia (2014), Galligan (2008); KPMG (2011); Menzies (2012); Parkin and Anderson (2007); on Canada Bickerton (2010); McIntosh (2004); Simmons and Graefe (2013); on Germany Benz (2008); Burkhart (2009); Deutscher Bundestag (2006b; 2009); Scharpf (2009); on Switzerland Braun (2009); Freiburghaus (2012); Wettstein (2002).

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