

Notebook CRS

Conference for
Federal Studies

Winter 1976
Volume 6, Number 1

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PROJECT ANNOUNCEMENTS CENTER FOR THE STUDY OF FEDERALISM

National Center for State Courts Grant

The Center for the Study of Federalism is serving as Evaluator on the National Center for State Courts' Court Planning Capabilities Project, funded by an LEAA grant of over \$300,000. The grant resulted from the finding that court systems were often underrepresented in state planning agencies dealing with the criminal justice system.

The Project enables the NCSC to provide technical assistance to state court systems in the establishment of court planning units. In addition to providing technical assistance, the NCSC will help develop planning units in six "pilot states," publish a monograph on court planning, sponsor a major conference, and hold several regional seminars. As evaluators, the Center for the Study of Federalism is providing continuing advice on all aspects of the Project and will publish a final report at the end of the grant period. It is expected that the Project and the Evaluation will have a significant bearing on how the federal government provides assistance to state court systems.

Generations and Politics Project

The Generations and Politics Project seeks to develop and empirically test hypotheses about intervals of political innovation and consolidation. To date, research has focused on linkages between national demographic cycles, and congressional policy outputs and replacement of U.S. senators. Preliminary research indicates that in these areas, there are regular and apparently similar patterns, and that these patterns share common temporal dimensions.

NEW PUBLICATIONS
OF CONFERENCE FOR FEDERAL STUDIES MEMBERS

"Federal Grants in Canada, Australia and the United States," by James A. Maxwell, originally published in volume 4, number 2 of PUBLIUS, has been included in the reprint series of the Centre for Research on Federal Financial Relations at the Australian National University.

Daniel J. Elazar and Murray Friedman, the Pennsylvania-Delaware-Maryland Regional Director of the American Jewish Committee and adjunct professor of sociology at LaSalle College, have coauthored Moving Up: Ethnic Succession in America. The Institute on Pluralism and Group Identity of the American Jewish Committee recently published this book as another in a series of works designed to clarify some of the more difficult issues relating to American ethnic relations. Copies may be purchased from the American Jewish Committee, 1502 Fox Bldg., 1612 Market St., Philadelphia, PA, 19103.

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: CFS NOTEBOOK is published by the :
: Center for the Study of Federalism, :
: Temple University, Gladfelter Hall, :
: Philadelphia, Pennsylvania, 19122. :
: :
: Editor: Daniel J. Elazar :
: :
: Production: Deborah S. Hess :
: :
: CFS NOTEBOOK, published on a quar- :
: terly basis, is distributed to mem- :
: bers of the Conference for Federal :
: Studies. :
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The Center for the Study of Federalism has recently published The Literature of Systematic Quantitative Comparison in American State Politics: An Assessment by Robert L. Savage (University of Arkansas). This piece, the eleventh in the series of Center Reports, offers a comprehensive bibliography of the literature introduced by an extensive essay.

* * * * * WE WELCOME NEWS OF MEMBERS' PUBLICATIONS, * * * * *
Please direct your announcements to Deborah S. Hess.

COMMENTS ON THE EMPIRICAL IDENTIFICATION OF FEDERAL SYSTEMS

by R. Michael Stevens

Introduction

The following outline is intended to organize the generalizations about the character of federalism which appear in both the theoretic and empirical writings on the subject. The purpose of this outline is to provide a useful tool in the comparative investigation of political systems which focus on the utilization of the federal principle.

The federal principle is discussed in contemporary federal theory as a unique mode of constructing and operating social organizations. It is the political application of this principle which results in federal, confederal and related political systems. General references to a federal principle however, are insufficient bases for the positive identification of its overt manifestation in actual governments.

The literature of federalism is both vague and contradictory as to the specific qualities which define the federal principle beyond the attributes of contracts, bargaining, coordinate membership and noncentralized decision-making. The theorists have agreed that two distinct classes of government exist which look to the federal principle as the basis of their organization: federations and confederations. Because the purpose of this outline is to aid in the classification of governments it would be appropriate to liken these to genera which are subdivided into species or specific political systems, i.e. the American federal system, the Swiss federal system. (Tentatively one can envision superior categories such as an order of noncentralized systems that would include families governments organized on the feudal principle, the principle of functional autonomy, as well as the federal principle.)

Because these two genera have been accepted as embodying the federal principle it is possible to approach the problem of definition from induction and abandon, temporarily, the obviously strained strategy of deducing further particulars from the theory of federalism. A considerable body of empirical research is available on the subject of federalism. Federations and confederations have been mapped, dissected and analyzed

to the extent that common characteristics can be attributed to the actual nature of functioning federal systems.

If these characteristics can be organized as descriptive models for federations and confederations they can serve several useful functions. First the identification of the federal principle will be somewhat more precise. Since the two models are derived from political systems acknowledged to be based upon the federal principle it follows that the common characteristics of these systems--i.e. the model--represent the manifestations of the federal principle applied to the art of government.

Second, these models will provide a fixed point, a rule, against which specific federations and confederations can be compared and analyzed. It will no longer be necessary to start from the premise that governments are federal or unitary because they identify themselves as one or the other. Equally useful will be the ability to compare acknowledged but different federal governments in terms of a definition closely linked to the theoretic definitions of federalism.

The outline below is an attempt to construct such a model from contemporary writings on federalism. The genus described is federation. Part I draws the distinction between federal principle and federalism, lists the basic characteristics of the federal principle which must be the final standard of judgement for both the model in part II and any empirical research on federalism. Lastly a brief argument is made for the standards and structure of the model itself. Part II presents the model--a list of federal characteristics divided into two types: structural and behavioral.

This outline is drawn largely from two works: Duchacek, Ivo D. Comparative Federalism: The Territorial Dimension of Politics. New York: Holt Rinehart and Winston, 1971, especially his "ten yardsticks of federalism" pp. 189-275; and Elazar, Daniel J. "Federalism" International Encyclopedia of the Social Sciences. New York: Crowell Collier and Macmillan Inc., 1968. pp. 353-367.

Also the following have been useful: Fredrich, Carl J. Trends of Federalism in Theory and Practice. New York: Frederick A. Praeger, 1968; Spekhard, Ray. "Political Contract Theory and the Federal Principle," unpublished manuscript, Graduate School of Public Affairs, State University of New York at Albany, 1972; and Wheare, K.C. Federal Government. New York: Oxford University Press, 1964.

Outline

I. Federal principle

A. Federalism and the federal principle

1. Federal principle--a general mode of social organization that strives to link people and/or institutions "by mutual consent, without the sacrifice of their individual identity" as its ideal. (Elazar 353)
 - a. The federal principle is linked to the theory of contract even if the reader chooses to trace its antecedents to an earlier period than the 17th century.
 - b. The federal principle centers on the creation, and/or maintenance of a society composed of coordinate relationships between people and/or institutions.
 - c. Such an arrangement of society based upon:
 - 1) Contracts of mutual consent which establish
 - 2) Coordinate relationships between.
 - a) Individuals
 - b) Groups
 - c) Institutionsintended secure for the individual, or whatever entity is defined as socially significant, the maximum protection of liberties through and within a framework of law. (Elazar and Speckard)
2. Federalism--a political device designed to operate according to the federal principle and to attain the conception of justice associated with it: maximizing liberty through the protection of law mutually consented to by equals.
 - a. Political organizations can be designed which incorporate the federal principle but are not intended to maximize its ends.
 - b. Political organizations can be designed on the basis of other concepts of justice but claim the federal principle as an ideal.
 - c. Political organizations which seek to maximize the federal principle differ due to circumstance--culture, history, geography, etc.--as to specific application of the principle.
 - d. Therefore no actual example of federalism is available as the only ideal model of the federal principle made manifest. Nevertheless, the intellectual need to analyze and understand this historical and numerically large class of governments, impels the research to establish criteria of comparison. These criteria can logically be derived from several bases both theoretic and empirical.

B. Basic Criteria of theory of federalism

1. Theoretic treatment of the phenomena of federalism has produced several generally agreed to characteristics which constitute a definition of the federal principle.
 - a. These can be used as criteria by which specific aspects of a federal system, or any governmental system can be measured to determine whether or not the federal principle is in fact being employed.
 - b. These same criteria offer a constant against which different government systems can be compared.
 - c. These criteria also offer a standard rooted in theory by which other measuring rods derived from empirical research can be ultimately evaluated.
 - d. These criteria derived from the definition of federal principle are:
 - 1) Contractual arrangements made by mutual consent among
 - 2) Equal parties (individuals, group, or institution) which guarantee their
 - 3) Coordinate status and
 - 4) Protect their integrity and liberty through a framework of
 - 5) Law, resulting from bargaining among the coordinate partners in the federal system.
2. Contemporary studies of the functioning of federal systems have expanded the theory of federalism from a static description of the relationships among the members of a federal system to include the dynamics of the federal process. The federal process is described as a dialectic between centripetal and centrifugal forces of the federal bargain. Therefore any empirical survey of federal systems must assess the institutional and legal arrangement of each system in terms of:
 - a. Its tending to foster union, the integration of the parts into a new political entity. The centralizing forces in the specific federal system.
 - b. Its tendency to foster noncentralization, the maintenance and/or creation of autonomy among the constituent parts. (Freidrich and Elazar)

3. In one sense a model of federal systems does exist which can be used as a source for guiding empirical surveys of other government systems. The American federal system is the prototype for contemporary definitions of federation as opposed to confederation.
 - a. It was the first political system to consciously and deliberately design a contract intended to guarantee the coordinate status of both the constituent units and the central government.
 - b. The constitution of 1789 and the subsequent Federalist Papers are the basic statement of both the theory of federalism and the implementation of the federal principle in governmental form.
 - c. The longevity of the United States of America and the relatively few formal changes in its constitution is hard evidence that the experiment was a success in the fundamental terms of system maintenance.
 - d. Finally the United States of America has been thoroughly and in some ways exhaustively mapped by several generations of observers using nearly every methodology ever applied to the study of human institutions.
 - e. It is possible to distill from these studies of this verified species of federation certain characteristics which can be used as a check test or field guide to the genus at large. No one would suggest that because the American system possesses a certain characteristic it must appear in any other system classed as federal. However the American system with its thoroughly recognized characteristics when modified through generalization and the finding from comparative studies of other acknowledged federal systems permits the development of an inductive model. This model in turn can be extremely useful in identifying those characteristics known to be associated with the application of the federal principle to the design of governmental systems. To avoid confusion in terminology and to clearly indicate the taxonomic purpose of this catalogue they will be called Characteristics of Federation. (Duchacek)

II. Characteristics of federation--the central characteristic is sharing, both formal and informal, of the public responsibilities for government in all areas of policy-making, financing and administration.

A. Structural

1. A written constitution exists which possesses the following subcharacteristics:
 - a. Involvement of the people, the general government, and the constituent units in the federal bargain.
 - b. The terms by which power is divided among participants are outlined.
 - c. The terms by which power is shared among participants are outlined.
 - d. The extraordinary process by which the power distribution can be altered is outlined.
2. General government has exclusive control over diplomacy and defense in order to exercise the powers of a nation-state vis-à-vis other nation states in the international community.
3. Constituent governments are not permitted to secede from the Union.
4. Both the general government and the constituent units possess a complete set of governing institutions; subcharacteristics:
 - a. Both planes of government may reach their citizens independently of the other plane.
 - b. The citizens can reach both planes of government without the barrier or intermediate agency of the other.
 - c. Both planes of government administer programs so as to serve the individual citizen directly.
 - d. Both planes of government possess courts.
 - e. The citizens usually elect representatives to all planes of government that serve them.
5. Both the general government and the constituent units are guaranteed effective representation in the amending process of the constitution; subcharacteristic:
 - a. Frequently serious changes in the constitutional order can only be made with the approval of dispersed majorities.

6. The constituent units are protected from the loss of their identity, territory and authority without their consent; subcharacteristics:
 - a. Constituent units are guaranteed the right to maintain their own legal systems or a system of courts that have exclusive jurisdiction over the first stages of adjudication within a common legal system.
 - b. The boundaries of the constituent units are legally permanent unless changes are agreed to by the constituent unit affected, and changes occur only in extreme situations.
 - c. Constituent units possess the sole authority to make their own constitutions subject only to any specific limitations provided in the federal constitution.

7. The constituent units are guaranteed representation in the policy-making institutions of the general government; subcharacteristics:
 - a. Usually this is accomplished by guaranteed representation in the legislature.
 - b. Frequently a bicameral legislature with one chamber being designed for "federal" representation is the means.

8. Some institution is needed to act as the federal umpire in interpreting the constitutional states of the central and constituent governments when conflicts of jurisdiction arise; subcharacteristics:
 - a. This is normally a judicial body which is an independent branch of the general government.
 - b. Normally this body follows the principle that, where federal questions are involved, the federal constitution takes precedence.

9. Political authority is distributed between the constituent units and the general government in such a way that neither is subordinate to the other. Power is diffused in a pattern of noncentralization rather than subordination among the partners in the federal bargain; subcharacteristics:
 - a. Powers may be specifically granted to the general government with the residue reserved to the constituent units. But the division must place a significant scope of political authority in both planes.
 - b. The authority to participate in exercising constitutionally affirmed powers cannot be taken away from the constituent politics without mutual consent.

- c. Constituent units are able to participate as partners in general government activities in areas constitutionally open to them because they possess effectively irrevocable powers.
 - d. Constituent units are able to act unilaterally with a high degree of autonomy in areas constitutionally open to them because they possess effectively irrevocable powers.
 - e. Constituent units are able, to a degree, to act in opposition to national policies because they possess effectively irrevocable powers.
 - f. Noncentralization is not decentralization in which powers are conditionally granted by a central government and subject to recall by unilateral central government decision.
 - g. Noncentralization is not devolution through which special grants of power are made by the central government of the subnational units and are not normally rescindable.
10. Authority is organized among the constituent units on the basis of clear and unambiguous territorial boundaries. The areal division of power in governmental systems is a fundamental difference between federalism and pluralism.

B. Behavioral

- 1. A sense of common citizenship characterizes the common identity of the citizen of the constituent units toward the federal polity; subcharacteristics:
 - a. It may be inherited and/or invented.
 - b. Geographic factors frequently foster a common citizenship. These also may be natural and/or political.
 - c. Failure to develop a sense of common citizenship seriously lessens the possibility of success for the federal bargain.
- 2. The distribution of power potential among the constituent units should not be disproportionate; subcharacteristics:
 - a. The constituent units may be fairly equal in population and wealth or
 - b. balanced geographically or numerically in their inequalities.

3. A noncentralized party system characterizes the noncentralized diffusion of power in a federal system. However other institutional and cultural factors will influence the form and degree of noncentralization; subcharacteristics:
 - a. In a separation-of-powers system such as the U.S., noncentralization is maximized to the extent that political parties are characterized by a minimal sense of responsibility to program or leadership.
 - b. Even in parliamentary systems, the requirement for party responsibility may be modified by the areal division of power among independent constitutional units and a continuing distribution of party strength among those units.
 - c. In one-party states, the existence of other forces tending toward noncentralization may operate against the tendency toward hierarchical control and organization.
 - d. Where the party system is undeveloped caudillismo often exists. In such cases, political power can be diffused through a noncentralized personal leadership system rooted in local bases.
 - e. Conversely, in totalitarian polities where highly centralized one-party systems operate within the formal framework of a federal system, the party functions to limit the real power of the constituent units.

4. A federal political culture is the ultimate base of any federal system; subcharacteristics:
 - a. Governors and governed must recognize that the maintenance of both the general government and the constituent units is vital to the preservation of the polity.
 - b. Governors and governed must show self-restraint in politics and tolerate diversity.
 - c. Governors and governed must cultivate the art of negotiation.
 - d. The mode of political decision-making must be conciliation even when the actors possess the power to act unilaterally.
 - e. Political action must be taken by the means of consensus rather than coercion.

