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978-0-521-01648-3 - Designing Federalism: A Theory of Self-Sustainable Federal Institutions

Mikhail Filippov, Peter C. Ordeshook and Olga Shvetsova

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Designing Federalism

A Theory of Self-Sustainable Federal Institutions

Because of the redistributive nature of institutions and the availability of implementable alternatives with different distributive consequences, the desire of federation members to change institutional specifics in their favor is a permanent feature of the federal political process. This is so for two reasons. First, states or their equivalents in democratic federations usually can succeed in renegotiating the rules if they feel sufficiently motivated to do so, albeit sometimes at the cost of secession and civil war. Second, in the case of a federation it is more or less clear who stands to benefit from any change in institutions, and coalitions in favor of renegotiation can be easily formed depending on the content of the proposal. Thus, the existence of an equilibrium of constitutional legitimacy at the popular and elite levels cannot be taken for granted. The authors show that the presence in the political process of agents who are “naturally committed” to the status quo institutional arrangement can suffice to coordinate voters to act as if they support existing constitutional arrangements, even if this is not the best option.

Mikhail Filippov received his Ph.D. from the California Institute of Technology in 1998 and is Assistant Professor of Political Science and a Research Fellow at the Center in Political Economy at Washington University in St. Louis, Missouri. He has published articles in *Public Choice*, *Soviet and Post-Soviet Studies*, *Constitutional Political Economy*, and other journals.

Peter C. Ordeshook earned his Ph.D. from the University of Rochester in 1969 and is currently Professor of Political Science at the California Institute of Technology. He has authored and coauthored many books including *Game Theory and Political Theory* (Cambridge, 1986), *The Balance of Power* (Cambridge, 1989), *An Introduction to Positive Political Theory*, *Lessons for Citizens of a New Democracy*, and *A Political Theory Primer*. He is a member of the Academy of Arts and Sciences.

Olga Shvetsova received her Ph.D. from the California Institute of Technology in 1995 and is a Fellow at the Micro Incentives Research Center at Duke University. She has published articles in *American Journal of Political Science*, *Law and Society Review*, *Legislative Studies Quarterly*, *Journal of Theoretical Politics*, and other journals and edited volumes.

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MIKHAIL FILIPPOV

Washington University, St. Louis

PETER C. ORDESHOOK

California Institute of Technology

OLGA SHVETSOVA

Duke University



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Preface

It is natural, when thinking of democratic federalism, to begin with the classic and most successful examples – the United States, Germany, Australia, Switzerland, Canada, India, and even the more economically underachieving ones of Brazil and Argentina – and to assume that designing a federal state is a well-understood exercise of finding a suitable balance between regional autonomy and federal authority. But focusing on such examples obscures the fact that of seven European federations of the last decade of the twentieth century (Germany, Switzerland, Belgium, Czechoslovakia, Russia, the USSR, and Yugoslavia), three (Czechoslovakia, the USSR, and Yugoslavia) no longer exist, one is hardly guaranteed to remain democratic or federal except in name only (Russia), and another (Belgium) is arguably surviving as a linguistically divided state largely by virtue of its position as the bureaucratic “capital” of a nascent federation, the European Union. Add to this the fact of the American Civil War, Canada’s struggle with Quebec separatism, the bloody conflicts that plagued the Swiss Confederation in the first half of the nineteenth century, India’s descent to virtual despotic rule under Indira Gandhi, the earlier near disappearance of meaningful Australian federalism, wholly dissolved or disrupted federations (e.g., Mali, Uganda, Cameroon, British West India, Nigeria, Pakistan, Ethiopia), and Europe’s often bumpy road to integration, and we can only conclude that the requirements of a successful design are neither trivial nor well understood.

This volume, in fact, is prefaced on the assumption (belief) that successful design, and specifically democratic design, requires something more than the mere negotiation of regional versus central authority or the establishment of a “fair” system of regional representation in the national legislature – the common foci of federal constitutional craftsmanship. Indeed, a second premise of this volume is that the institutional parameters most commonly assumed to be critical to federal success are not sufficient to implement a successful design and may not even be the ones that are of primary importance. We hasten to add that we are not about to argue that success or failure rests

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with socioeconomic circumstances. We would not deny the importance of such things as ethnic, linguistic, religious, or racial divisions; experience with democratic governance; and the maturity and efficiency of domestic markets. But if, in attempting to implement a stable federal state, we assume that only directly manipulable institutional parameters are at our disposal, then, in addition to the usual variables of federal design, we must consider seemingly tangential matters such as the authority of the federal center's chief executive; the timing of local, regional, and national elections; the bicameral character of the national legislature or appropriately designed substitutes for bicameralism; and the content of regional charters and constitutions.

Our rationale for reaching beyond even constitutional parameters lies in the fact that the essential difficulty with political design generally is that political institutions are, by their very nature, redistributive – different institutions imply different winners and losers so that in the long and short run different people will prefer different institutional arrangements. And the particular difficulty with federal design is that, in addition to those social cleavages with which a designer must often deal, by definition it establishes, coordinates, and legitimizes specific competing interests – notably those of federal subjects as well as the federal center. Add to this the requirement of citizen sovereignty in a democratic state whereby politicians are required to somehow accommodate the potentially myopic self-interest of their constituents, and federalism becomes especially problematic in terms of sustaining a stable institutional structure. Addressing the redistributive nature of design directly, by manipulating only a limited subset of institutional parameters artificially labeled “federal” is unlikely to yield an adequate result. Instead, we argue, the *uniquely* theoretically justifiable approach is to induce a principal-agent relationship between citizens and their elected representatives that is imperfect but nevertheless satisfies the requirements of democratic governance, that redirects political elite motives away from divisive bargaining even if such bargaining serves the myopic interests of those who elect them, and that encourages society generally to reward such imperfect agency. We are led then to those institutional variables that impact the entity that serves as the primary intermediary between citizens acting as voters and political elites acting as election candidates, the political party. Although various scholars note the importance of parties to the operation of federalism, we argue that a properly designed party system encourages the imperfect agency essential to federal success. Put simply, implementing a federal system that is self-sustaining requires that we cast our institutional net widely so as to address those things which impact politicians' strategies as they strive to win and maintain office in a democracy.

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Acknowledgments

The ideas for this volume began germinating among us soon after the Soviet Union's collapse in the early 1990s, when academics and politicians within its constituent parts and in the West alike began wrestling with the problems of design and implementability of new democratic orders. The task at hand concerned more than the general and abstract issues of constitutional stability and design; the goal, with Russia especially in mind, was to identify if not the exact parameters of design, then the key substantive mechanism by which choice of such parameters could influence the survival of a federal democratic regime. In the progress that we made since then, we are greatly indebted to the vast literature on the subjects of both federalism and institutional design, historical as well as contemporary. Any study of the subject begins, of course, with *The Federalist Papers*. But what other guideposts to federal design could we identify, what propositions about the sources of constitutional stability, and what additions to the practical discipline of political institutional design (political engineering) had been erected in the two hundred plus years since their authorship? Gems of insight could be found scattered throughout the literature we surveyed, but doubtlessly the most influential contemporary piece of scholarship in our thinking was William H. Riker's *Federalism*, whose words had lingered only half appreciated in the consciousness of one of us for most of an academic career but whose full meaning materialized as our collaboration proceeded.

Among the colleagues who were with us throughout the project, we want to thank Thomas Schwartz first. Much of our thinking about constitutions, constitutional stability, and dimensions of constitutional design was influenced by his suggestions, arguments, and some might even say intellectual badgering. Russian scholars Vyacheslav Nikonov and Leonid Smyrniagin in Moscow challenged us to make our theoretical models consistent with the practical concerns encountered by nascent federations.

We owe intellectual debts to a great many others: to Russell Hardin's essay on constitutions as mechanisms of political coordination, which provided the

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fundamental insight for us into the perplexing matter of constitutional stability; to George Breslauer, Carol Leonard, Thomas Remington, Phil Roeder, Brian Silver, and Steve Solnick, who shared freely their ideas, insights, and depth of expertise; to William Keech, Thomas Koenig, and Simon Hug for their detailed comments on this volume; to Randal Calvert, James Endersby, Jack Knight, Krishna Ladha, Gary Miller, and Sunita Parikh for their input into its earlier versions; to Viktor Vanberg, Leonid Polishchuk, Itai Sened, Melvin Hinich, and Stephan Voigt, who encouraged the enterprise and cheered us on. We also owe a special debt of gratitude to Norman Schofield for his continued encouragement and support and for the many discussions we have held with him both about the book's material and more generally in the context of constitutional design.

Of the various conferences that proved especially valuable wherein some of the ideas offered here were set before colleagues in preliminary form, we would like especially to note Washington University Center in Political Economy's "Constitutions, Voting and Democracy" (St. Louis, 2001) and Leonid Smyrnagin's workshop on regional constitutional design (Moscow, 1995). Our work was in part supported by the National Science Foundation (Shvetsova) and the National Council for East European and Eurasian Research (Ordeshook).

Of course, the faults of the volume are of our own making, our only excuse being that the subjects of federalism and constitutional design are of such scope and complexity that no single contribution can do all things. We ask only that readers proceed with the idea that this volume merely offers a hypothesis about parties, democracy, and federalism that, like any other in the practical science of political institutional design, can only be "tested" to the extent that it raises the salience of certain matters in the minds of those who would actually design and implement a democratic federal state.