

The Political Science of Federalism

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Abstract

This article highlights political science's interest in the distribution of authority between federal and state governments. The authority boundaries are studied (1) as mechanism design problems, where authority is allocated optimally to achieve social goals; (2) as problems in positive political theory, because the authority distribution creates competitive interests; (3) as an institutional design problem, where the boundaries are maintained by safeguards; and (4) as a complex adaptive system, where the boundaries evolve in response to the interaction of diverse agents. The article concludes with a suggestion that as dynamic models of constitutional evolution develop, reflecting the bottom-up process and the responsiveness to the cultural community, federal constitutional design may transform from *optimality* studies to *feasibility* studies.

KEYWORDS: distribution of authority; safeguards; positive political theory; complex adaptive systems

Federalism is a system of government characterized by semi-autonomous states in a regime with a common central government; governmental authority is allocated between levels of government (Wheare 1964, Riker 1964,

Elazar 1987, Watts 1998). As a system it is complex; it is comprised of multiple interacting governing units, each with its own preferences and decisions to make (Ostrom 1971, 1991). The interaction between these governments produces system-level properties that are not properties of any individual unit on its own (Bednar 2009). Federalism's complexity is believed to help societies reach particular goals, such as improved defense or a stronger economy, better than the alternatives of unitary governance or an alliance.

Many political scientists who study federalism focus on the boundary problem. Federalism's boundaries are not the geographical boundaries drawn between the states. Although plotting them is an important problem, another is prior: the authority boundaries defining governmental powers and obligations, drawn between the states and the national government. Research on the boundaries takes four forms: *optimal design*, or the study of federalism's potential; *positive political theory*, the study of what federalism can do, feasibly, taking the private motivations of politicians into consideration, *new institutional economics*, an extension of the positive political theory literature that focuses on institutional safeguards, endogenous to the system, that resolve the collective action problems inherent to federalism, and *complex adaptive systems*, the study of the dynamics of the federalism's boundaries as the federal union adapts and evolves.

This article is organized around these four research thrusts and describes synergies between them. It begins with a formal definition of federalism—actually, two—but both stress the division between federal and state govern-

ments. From there, each section is dedicated to reviewing an aspect of the study of federalism's boundaries. The distribution of authority is posited to affect how well a federal union achieves broad social goals such as economic growth or the protection of rights. It is a literature that considers what federalism can do, ideally, when authority is optimally allocated between federal and state governments. The optimal design literature (Section 2) tends to treat federalism as the independent variable—as a means to an end—asking how the implementation of federalism might improve social or economic outcomes in a polity. Positive political theory and new institutional economics both continue this examination but also recast the focus, to consider federalism as the dependent variable, asking first, if federalism is useful, why does it fail? And second, how is it sustained? The boundary is subject to political manipulation and competition, creating suboptimal outcomes; and Section 3 reviews positive political theory's treatment of this problem. Given the lessons of Section 3, the boundary must be safeguarded. Section 4 will describe the political science of constitutional design of federations, which draws from the new institutional economics literature. Finally, Section 5 describes the emerging studies of federalism's dynamics. The complex systems literature treats federalism as perennially evolving and focuses on the forces that cause the nature of the federal union to change. Roughly these four approaches have developed sequentially. The methodology employed within political science varies widely, and publications appear in outlets crossing disciplines, from public economics to political theory to constitutional law.

1 Defining Federalism

Federalism is a system of government where the political territory is divided up into units endowed with their own governments, and these territories, or states, are unified under a common government. Political scientists more formally define the complex intergovernmental relationship of federalism in one of two ways. One emphasizes the distribution of authority between two levels of government, and the other emphasizes the relationship between the governments and the public. In the former category, Riker's definition is commonly employed: "Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions" (1975:101). Relying on this definition, scholars write of more centralized or peripheralized federations, putting federations in a continuum of systems that embraces trade and defense alliances on the one end and on the other, in a practical sense, administrative decentralization, where lower levels make decisions about the implementation of national policy (Elazar 1994, Watts 1999a).

Under this definition, federations may be legally symmetric or asymmetric (Elazar 1987, Watts 1998, 1999b, Agranoff 1999). In the symmetric federation, each substate has the same relationship with the federal government and is endowed with the same authorities. The United States is a canonical example of a symmetric federation. In an asymmetric federation, some

substates, but not all, enjoy enhanced self-rule (Zuber 2011). Examples include Belgium (Swenden 2002), Canada (Watts 1999b), the European Union (Swendon 2004), Russia (Zuber 2011), and Spain (Agranoff 1999). Normatively, one justifies asymmetrical federalism to recognize the distinct preferences of clustered subpopulations, such as ethnically-identified states, who negotiate (formally or informally) increased authority over domains important to their identity, such as education or language (Kymlicka 1998, 2001). It is possible that these accommodations defuse tensions and boost the stability of a federation (Horowitz 2006), although historical and ideological factors may confound federalism's effectiveness (Bunce 2004).

A second definition adds another dimension: the relationship between the governments and the public. The governments at each level, national and state, have independent bases of authority; one is not composed entirely of delegates from the other; nor can one level of government revoke the authorities of another, as is the case with administrative delegation. Within a federation, governments at each level have the capacity to make laws with direct effect on the citizens within its territorial purview (*Federalist* 15, 39, Watts 1998:121). Governmental authorities are distributed between the governments and are often shared. In short, federations are characterized by (1) *geopolitical division*, (2) *independence*, and (3) *direct effect* (Bednar 2009:18–19). In being explicit about the relationship between the people and their government, the definition distinguishes a federation not only from a confederacy, but also trade associations and military alliances.

Under either definition of federalism, the line drawn between the national government and the subnational governments is critical for generating the claimed benefits of federalism. This boundary of federalism delineates the authorities assigned to the national government and those held by the subnational governments. The boundary can be thick, and most often is; federal and state governments legally and conventionally share responsibilities. The shared authorities does not imply that authority assignment is insignificant. To the contrary, the capacity and effectiveness of the federal union depends upon the assignment of these authorities as well as the ability and willingness of each level of government to respect its assignment.

In this essay we will consider how the assignment of authority is related to the posited effect of federalism, and then we will consider how that assignment is maintained. Lastly we will acknowledge the necessity and reality of evolving federal boundaries; that the assignment must adapt to changing demands without being subject to opportunistic manipulation. For this regulation we consider how institutional safeguards operating in tandem, and in concert with the decentralized political process, might build a strong but flexible federation.

2 Claims of Federalism's Potential

The literature reviewed in this section treats the purposeful adoption of federalism as a means to achieve a socially desirable end. Attempts to develop

a general theory of federalism and its potential flourished in the 1960s (eg., Wheare 1953, MacMahon 1962, McWhinney 1964, Franck 1968, Friedrich 1968). Global trends including decolonization in Africa and the growing strength of smaller nations in the United Nations turned political science's attention to regime construction. The decision to federate is inherently risky. Whether federation means greater decentralization, in transformations from unitary states, or greater centralization, when formerly independent states band together, federation presents risks to the status quo power. Perhaps because of this risk, often theories of federal origins emphasize security enhancement (*Federalist* 4, Maddox 1941, Riker 1964, Rector 2009). In addition to improved security, most benefits are economic or political (Kincaid 1995, Bednar 2009). Many goals are competing, so that sometimes we need to have tradeoffs; Kincaid (1995) suggests that federalism, with the flexibility of power-sharing, can manage these competing priorities well.

Many of the economic and political claims about federalism rely on two principles: the Tiebout Hypothesis (1956) of citizen mobility and Oates' Decentralization Theorem (1972), a prescription for subsidiarity that follows from Tiebout. Tiebout applies the theory of firm competition to government. Just as firm competition drives prices down, governments will be more efficient—deliver better services for lower taxes—when they are put in competition with one another. Voting artificially constrains citizens to a single district; entrenchment of party politics may trap the citizen into a set of unsatisfactory policies. The mobile citizen votes with her feet, locating in

a community that offers a combination of services and taxes that better suits her preferences. Competition for mobile citizens encourages governments to operate more efficiently as well as to specialize.

The Tiebout Hypothesis of beneficial intergovernmental competition leads to a principle for assignment of authority between national and subnational governments: subsidiarity. It is captured in the fiscal federalism literature as Oates' Decentralization Theorem: in the absence of cost-savings from centralization, or interjurisdictional externalities, policy should be decentralized (Oates 1972:54). Subsidiarity is politically popular in Europe and elsewhere because a principled preference for decentralization promotes local (member state) authority. While most justifications for subsidiarity are normative (Bermann 1994, Cass 1992, van Kersbergen 1994), in order for the Tiebout forces to work, policy must be decentralized, factors must be mobile, and externalities must not be problematic (Begg et al, 1993).

With these two principles—intergovernmental competition and beneficial decentralization—in hand, scholars claim that decentralized policy provision enhances governmental honesty, efficiency, and gives governments the chance to innovate, rather than adopting a common policy. These forces lead directly to a belief in efficiency, policy specialization, and a reduction in corruption (Brennan and Buchanan 1980, Tanzi 1996). Corrupt leaders will tend to be inefficient and will not survive the local competition against their more efficient, less exploitative neighbors. Decentralized states—although not necessarily all federal—do seem to exhibit less corruption (Fisman and Gatti 2002,

Bohara, Mitchell, and Mittendorff 2004) but other evidence contradicts this claim (Treisman 2000, Gerring and Thacker 2004). Cai and Treisman (2004) theorize that federalism might boost corruption if subnational governments are able to shield local firms from central taxation or regulation; in these cases, internal competition corrodes the state, rather than having the beneficial effects posited by Tiebout. Cai and Treisman illustrate their claims with examples from Russia, China, and the United States. Bohara, Mitchell, and Mittendorff (2004) suggests that the electoral mechanism is an important interacting variable: when the public is more involved in elections, the relationship between federalism and corruption becomes insignificant. Myerson (2006) offers a twist, recalling arguments made by Madison in *Federalist* 10: as politicians seek higher office they will be put in competition with one another and seek to build a reputation for honesty. Unitary governments lack this advantage, as any leader elected to succeed a corrupt leader has every incentive also to be corrupt.

As citizens settle into communities that match their own preferences, at the local level the sorting produces homogeneity, while at the regional level, communities will be heterogeneous. Subnational governments can specialize, tailoring public policy to meet local demands. When governments develop unique policies they become laboratories of democracy, as Justice Brandeis (1932) described the public policy experimentation that decentralization makes possible (Tanzi 1996, Oates 1999). When subnational governments innovate, successful solutions can diffuse to other subnational states

with similar preferences and problems (Walker 1969, Gray 1973, Case, Hines, and Rosen 1993, Shipan and Volden 2006, Volden 2006); although the evidence may be misleading (Volden, Ting, and Carpenter 2008). With sufficient learning, aggregate national welfare is improved, when compared to a centralized solution (Kollman, Miller, and Page 2000).

However beneficial, meaningful state experimentation may not be common. In a cross-national study of the development of social welfare systems, Pierson 1995 finds that the effect of federalism interacts with other variables such as the nature of the party system, reminding us that experimentation depends heavily on the capacity and competence of subnational leaders. Policy innovation implies risk, an assumption that Crémer and Palfrey (1999, 2002) rely on to show that moderates prefer centralization because centralization reduces risk. In a nuanced model assessing the likelihood that politicians assume the risk associated with innovative politics, Rose-Ackerman (1980) casts doubt on the claim that federalism would generate useful innovative projects, given the risk associated with true innovation. However, politicians may engage in low-risk “demonstration” projects. Institutional design might encourage experimentation: for example, Kollman (2003) argues that the rotating presidency of the European Union introduces fresh policy agenda each six months, so that the union explores new mixtures of policies.

Local governments also may not be more efficient; the infamous “flypaper effect” is a strong caveat against universal preference for transferring federal funds to local governments. When a government receives an unconditional

grant it can choose to keep spending at the same level and reduce taxes (that is, transfer the money to the citizens) or it can increase its spending, holding taxes at the same level. At levels much higher than predicted, the government chooses to spend the money rather than transfer it to the citizens. This effect is known as the flypaper effect: money “sticks where it hits” (Henderson 1968; Gramlich 1969; Courant, Gramlich, and Rubinfeld 1979; Inman 1979). One explanation is the voter ignorance hypothesis; either the voter does not know how much the government received in transfer (Filimon, Romer and Rosenthal 1982), or the voter keeps different mental accounts of her own privately-held money and public money (Hines and Thaler 1995). The voter ignorance hypothesis lacks empirical support, and Knight (2002, 2004) and Inman (2008) suggest that the problem is simply politics: elected politicians are eager to please their constituents by providing services, and will spend the money to boost their electoral success.

Paying close attention to the assignment of authorities, some scholars suggest that federalism promotes economic growth, a potential that Weingast identifies as market-preserving federalism (Weingast 1995, Montinola et al 1995, Qian and Weingast 1997). Centralized governments face a commitment problem: when governments are strong enough to be able to enforce contracts, they are strong enough to exploit their position of power, and can expropriate rents from the society. Federalism is a commitment mechanism: the central government maintains authority over monetary policy and contract enforcement, but fiscal policy is decentralized to the states.

One potential problem with decentralization is that the states might run up budget deficits in hopes that the federal government will bail them out. When interstate competition is potent, with high factor mobility, coupled with centralized control over monetary policy, the incentives to bail out individual states is lowered, creating a hard budget constraint and encouraging the states to practice prudent fiscal policy (Qian and Roland 1998, Wildasin 1998). The lack of corruption and pro-growth institutions encourage foreign direct investment (Jensen and McGillivray 2005). The theory has been fruitfully applied to China (Montinola et al 1995; Qian and Weingast 1996, Qian and Roland 1998, Qian and Weingast 2005), India (Parikh and Weingast 1997), Russia (Zhuravskaya 2000), the European Union (McKinnon 1995) and the United States (McKinnon 1997), but other research bears more disappointing results (Treisman 2007). Rodden 2004 warns of the complexity of decentralized government and the resulting difficulty in inferring fiscal responsibility from government finance data, and Wibbels (2000) warns that states ought not be included in federal-level monetary policy-making: with their divergent interests, states make structural adjustments more difficult because they block the adoption of effective policies.

Using the same principles of beneficial intergovernmental competition and decentralization, federalism is often claimed to improve political outcomes, such as respect for individual rights, group autonomy and preservation, and improved representation. The hypotheses themselves are structured essentially identically to the economic models. For example, rights-preserving

federalism, claiming that individual rights, from civil to property, are better protected in a federal system than a unitary system, relies on Tiebout forces. When citizens or capital can exit the system, their ability to exit reduces a sovereign's capacity to exploit them (Buchanan 1995, Inman and Rubinfeld 1997, Inman 2007). States would not violate individual rights because citizens would simply move.

Just as with economic claims based on Tiebout forces, the theory of rights-preserving federalism is limited by the extent to which voters are mobile. When mobility is obstructed, whether legally, or informally—through preferences (ethnic clustering or strong community bonds, for example)—the competitive forces that drive some of federalism's benefits will not develop. If only a categorical portion of the population is immobile—the poor, or ethnic minorities—then outcomes are even worse; governments compete for the wealthiest and are free to ignore these minority categories. Gibson 2005 and Mickey 2011 describe rights-violating states as “subnational autocracies”—places, like the racially-charged era in the American southern states, where disrespect for civil rights is so significant that one cannot consider the state to be a true democracy. Riker (1964:139–45) famously derided federalism as great if you're a racist.

The potential for states to discriminate against some citizens prompts some to suggest that rights should be provided at the national level where they might be protected by federal courts (Riker 1964, Choper 1977). Shapiro (1999) offers a challenging counterthesis: full and unique provision of rights

by the central government is an overreaction. Instead, by sharing rights-providing authority, the protection and extension of rights can benefit from the multiplicity of views expressed at state and federal levels, thus harnessing federalism's diversity in the rights arguments. It may be the best hope for the creation of new rights, such as recognition of same-sex marriages, where a skeptical national majority could learn from state experimentation.

Madison believed that federalism might rescue democracy; poor legislative representation could be improved with a hierarchy of elections as citizens gained experience with their representatives (*Federalist* 10). Ineptitude would be recognized and voted out of office in local elections, failing to advance up the political hierarchy. Experience with elections alone may be sufficient to develop democratic skills, and one advantage of federalism is that the public has more political offices to fill, and so more elections (Ordeshook and Shvetsova 1995). Democratic outcomes improve with higher participation, and participation is boosted when one's vote is likely to be pivotal, more likely to be true in smaller scale elections (Inman and Rubinfeld 1997, 2000). The more authority held by the local government, the more voters will sense it important enough to participate.

Federalism may improve electoral accountability if voters are more likely to get accurate information about their local politicians (Aidt and Dutta 2010), but other institutional factors such as electoral rules muddle the improvement (Downs 1999). Inman and Rubinfeld (2009) report initial empirical analysis of 73 matched cases (federal/unitary) suggesting that federalism,

when paired with effective democracy, protects the property, civil, and political rights of its citizens better than unitary states. Frey and Stutzer (2001) find a measurable increase in well-being from participation in direct democracy and local electoral participation.

The principles of Tiebout sorting and subsidiarity from Oates suggest that federalism would be a fine resolution to ethnic tension, and many scholars do argue for “peace-preserving federalism” (Lijphart 1977, Elazar 1987, Stepan 1999, Lustick, Miodownik, and Eidelson 2004). At the same time, by organizing political boundaries around ethnic groups, tensions are made more salient and differences are equipped with the institutional capacities to make demands that the rest of the union cannot tolerate, leading to conflict or secession (Brancati 2006, Bunce 2004, Christin and Hug 2011). Hale (2004) suggests that the problems arise when one core ethnic state is dominant, a position that Horowitz (1985) obliquely confirms with his emphasis on drawing federal boundaries to encourage cross-cutting cleavages. The debate is far from settled, and will likely need to wait until the technologies of data collection and analysis have advanced. Enlisting spatial data is critical. One promising project maps ethnic groups (Wucherpfennig et al 2011); the data have been employed to examine the coincidence of political and ethnic boundaries (Deiwiks 2010), the correlation between wealth inequality and ethnic conflict (Cederman, Gleditsch, and Weidmann 2010), and the likelihood of federal adoption (Christin and Hug 2011).

3 Competition over the Boundaries of Authority

As the optimal design literature suggests, federalism's benefits depend upon the distribution of authority between federal and state governments. For security, coordination of defense and foreign policy needed to be centralized; if states challenge that authority, for example by conducting their own treaties with foreign sovereigns, the union is not as secure. Peace-preserving federalism recommends decentralization of language rights. Market-preserving federalism says economic growth depends on the centralization of contract enforcement but the decentralization of other fiscal policy, and cautions against involving the states in the setting of monetary policy. Innovation depends on decentralization of policy authorship. And so on.

For the most part the literature in Section 2 ignored the possibility that the assignment of authority might be disregarded by the federal or state governments, that a member government might press against or even cross the authority boundary to assume authority that serves its own self-interest but contradicts the principles of the union. Such manipulation should not be surprising. As Parikh and Weingast (1997) point out, the distribution of authority is not a sterile line but instead represents the distribution of power, and power is the stuff of politics. Federalism becomes the dependent variable, and the literature uses the approach of positive political theory (PPT) to explain why federations vary in their effectiveness (see Weingast

2009 for a review of PPT applied to fiscal federalism).

Like the optimal design literature, positive political theory draws on a few key principles. It abstracts the goals described in Section 2 to social goods requiring the coordinated effort of self-interested agents—the federal and state governments (some analysis further break apart the governments into components)—and hence leans heavily on theories of collective action problems and noncooperative game theory (Ostrom 1990). Coordination—generally, heeding the boundaries of authority—requires effort or sacrifice. In circumstances of imperfect information, where each agent’s action cannot be perfectly observed prior to committing to one’s own action, there is a chance that others may not put in sufficient effort. In this case not only will joint effort fall short of the common goal, but the government is worse off because it has put in the effort. This n-person prisoner’s dilemma conception of the federal problem is common; James Madison first identified it in his diagnosis of the flaws of the Articles of Confederation, “Vices of the United States” (Madison 1999); individual states, suspicious of the good intentions of others, will be tempted toward noncompliance with the federal rules distributing authority. This principle has been used to model formally the incentive to break the rules of federalism (Jones, Sanguinetti, and Tommasi 2000, de Figueiredo and Weingast 2005). Under realistic assumptions, full compliance with the rules distributing authority cannot be obtained; opportunism is inevitable in federations (Bednar 2006, 2009). The implication of these theoretical results is potentially devastating for federalism: If states cannot trust one another,

federalism might not be attempted, even when all might benefit from it. Or, states might federate, but withhold their compliance defensively, greatly reducing the productivity, in social terms, of the union.

It is helpful to further define opportunism by the responsible government. In American political thought, it is intuitive to think of federal government overreach; it was the overwhelming concern of the anti-Federalists, and so the Federalist Papers are dedicated to assuring the public that the institutional safeguards of federalism (described at length below) are sufficient to prevent federal encroachment and commandeering (Bednar and Eskridge 1995). But we mustn't let the founding myth and the American experience cause us to neglect the full scope of the problem. States are quite capable of destructive overreach, as Madison lamented in the "Vices" (Madison 1999). De Figueiredo and Weingast (2005) describe federalism's two "fundamental dilemmas": first, resolving federalism's collective action dilemma between the states, and second, preventing the federal government from becoming a leviathan. Bednar (2009) further distinguishes opportunism by both responsible party and the target, depicting the federal problem as a triangular relationship, with federal encroachment, state burden-shifting (creation of negative spillovers), and state shirking (overreach or failure to meet its obligations to the union). Analyzing data of state compacts, Wood and Bowman (2011) find that the types of opportunism are related: even as federal encroachment and commandeering grows (Kincaid 1990), it spurs state compact creation, blurring federalism's boundaries.

Intentional noncompliance is not the only way that misaligned incentives upset federalism's capacity. The federation is complex and it is possible that the assignment of authority may be respected but create unanticipated incentives that distort the intended effect. For example, with policy decentralization comes the potential for a race to the bottom. When states are put in competition with one another—for firms, say—they undercut one another's regulatory policies in an attempt to make their state a more attractive location for business, and evidence suggests that states do act strategically, taking neighboring policies into account (Brueckner 2000, Fredricksson and Millimet 2002).

Interstate competitiveness has the potential to motivate inefficient redistributive policies. When United States welfare provision was partially decentralized in 1995, many feared that states would set their cash assistance programs at lower and lower levels to avoid being “welfare magnets” (Peterson 1995, Rom, Peterson, and Scheve 1998). But the race to the bottom has not been found in all cases where it was anticipated, and in some cases, states seem to be able to innovate despite keeping a close eye on their neighbor—or perhaps because they are watching their neighbor. While Volden 2002 suggests that evidence of state undercutting may be artifacts of inflation; with an adjusted model, he finds little evidence of undercutting, although states do hesitate to raise rates above their neighbors. Berry and Baybeck (2005) find that states adopt lotteries due to competitive pressures with their neighbors, but little evidence to support that competitive pressures drives states'

welfare policies.

Some researches find evidence that intergovernmental competition might boost regulatory and redistributive policies. Potoski 2001 finds that U.S. states regularly exceed federal environmental standards, and while this is not evidence that the states would provide adequate environmental protection in the absence of a federal baseline, it is interesting that states have challenged the EPA for the right to exceed EPA regulations. Lowry 1993 suggests that beneficial state innovation is constrained by the federalism dimensions of interstate competition and federal involvement, while Lester et al (1983) find that states with opposing partisan dominance that anticipate federal intervention prefer to develop their own policies. Rabe identifies important areas, such as greenhouse gas regulation and renewable energy requirements, where the states have been leaders in developing standards, with the federal government learning from their experimentation (Rabe 2004, 2006).

Increasingly, public policy is a product of joint action between federal and state governments (Kincaid 1990), although the phenomenon is hardly new (Elazar 1962, Grodzins 1966, Derthick 1987). As the theory of federalism develops it must take into account the joint action between federal and state governments. For example, Rodden and Rose-Ackerman (1997) criticize the original market-preserving model for assuming a dualist model of federalism; in the modern age of shared authorities, the models insistence on separate spheres, particularly where the subnational government assumes primary responsibility over its economy, is hard to imagine. Intergovernmen-

tal cooperation, between states as well as the state and national governments, is a regular feature of federalism, but banned by the model.

Problem-solving by heterogeneous teams leads to better outcomes than when the team is comprised of similar members (Page 2007). With its multiple layers and distinct subunits, the sharing of policy generation in a federation conceivably could result in superior public policies than in a unitary state—this is the principle relied upon in Shapiro’s (2009) theory of polyphonic federalism. But more often policy-making in a federation is not oriented toward problem-solving but instead is adversarial (Scharpf 1988). With evidence from grant programs, Nicholson-Crotty (2004) presents finds that the greater the congruence between federal and state goals, the more effective the program. However, absent this congruence, shared decision-making, and the norm of agreement by both state and federal levels, leads to stagnation and inefficiency, a “joint-decision trap” (Scharpf 1988) of a second-best outcome, where the existing powers are unable to agree on greater centralization or disintegration, even if that would improve net utility. It is the regret over the second-best outcome that cause Feeley and Rubin (2009) to characterize federalism as a “tragic” compromise.

The boundaries of federalism are inherently ambiguous (Bednar 2009, Ryan 2011), and that ambiguity invites opportunistic interpretation; shared jurisdictions make opportunism even easier. Blurred jurisdictions invite competition between federal and state politicians to involve themselves in policies inefficiently (Volden 2005), or to engage in credit-claiming battles that

distort electoral accountability (Pettys 2003, Bednar 2007a). Recalling the second definition of federalism in Section 1, incorporating the relationship between the people and the government, Stepan (1999) questions the democratic fairness of federalism. By prioritizing the states, federalism distorts the democratic principle of equal power per vote. In asymmetric federal systems—and here Stepan would include the United States because small states are disproportionately represented in the Senate, despite their legal equity—some states are in the position to manipulate outcomes to their own advantage. Similarly, Brancati points out that the state governments give legitimacy and organizational power to minority interests, which may try to manipulate their position to extract gains for themselves at the expense of the rest of the union. Federalism research might add important dimensionality to our understanding of pork barrel politics.

In sum, the backbone of all claims regarding federalism’s potential is the distribution of authority between the federal and state governments. If the distribution of authority matters, then violations to it alter federalism’s performance. The hazards of misaligned incentives that the positive political theory literature describes about federalism does not doom the prospects of federalism, but it does mean that scholars and constitutional designers need to pay attention to the safeguards that regulate the incentives. We turn to that literature next.

4 Safeguarding Federalism

To regulate respect for the boundaries of federalism, constitutions establish (directly or indirectly) safeguards that monitor governmental activity and respond to perceived transgressions. Like the optimal design literature and the positive political theory literature, the theory of federalism’s safeguards is built upon principles, in this case, the model of a trigger mechanism developed in new institutional economics. A trigger mechanism is an institution that compares an observed behavior against an ideal or threshold; the comparison causes the safeguard to trigger with a response. In most cases the safeguard is modeled as a “stick”; its response is negative, punishing behavior that falls short of expectations. However it is possible to model a safeguard as a “carrot”, nudging or incentivizing productive behavior, such as costly experimentation (Bednar 2011). To model a safeguard properly (whether formally or informally), one must evaluate the safeguard’s information stream (how it gathers its observation), what kinds of governmental actions it pays attention to, how it sets its threshold, and of course, the strength of its response. An effective trigger mechanism alters the payoff to transgressing federalism’s boundary, motivating compliance.

The most intuitive safeguard is a constitutional court, which judges the acceptability of governmental action against its interpretation of the federal constitution (*Federalist 78*, Johnston 1969, Bednar and Eskridge 1995, Vaubel 1996). If in its review it finds that the government’s policy violates

constitutional standards, the policy is struck and occasionally a fine is also levied. The Court may inhibit both federal and state level opportunism, although as a trigger mechanism, its punishment capacity is mild. On its own it is unlikely to prevent significant opportunism. While some suspect that the Court is less effective at umpiring federal action (eg, Riker 1964), it is possible that the Court's legitimacy grows as it reviews state action, and the public's acceptance and expectation that it will also monitor the federal government will emerge (Friedman and Delaney 2011).

The federal system need not rely on the judicial safeguards. Most federal constitutions include structural safeguards: fragmentation of federal-level decision-making and giving the states a formal voice in federal policy deliberations. When the federal government's legislative power is separated by bicameralism and checked with an executive veto, policy approval must meet multiple majorities. When states appoint delegates to the federal legislature, federal encroachment is further inhibited. The structural safeguards encourage the federal government to adhere to the boundaries of its authority (*Federalist* 51, Madison 1999:40, 41, 110; Wechsler 1954; Riker 1955; Vile 1961; Lusztig 1995; Ordeshook and Shvetsova 1997; Weingast 1998; Stepan 2001; Rossum 2001; de Figueiredo and Weingast 2005; de Figueiredo, McFaul, and Weingast 2007). Where the judicial safeguards operate *ex post*, rendering a judgment on action already taken, the structural safeguards are activated at the point of policy deliberation, before any harm is felt. Structural safeguards can only constrain the federal government; they cannot constrain the

state governments, so they would need a complementary safeguard at the state level.

Safeguards are not always specified by the constitution; they need not even be formal. The party system, defining the network that connects the political organizations backing candidates, can be an important safeguard of the authority boundary. Political parties tie politicians together. When the party fields candidates at both federal and state levels of government, there is a potential for the party organizations at each level to coordinate their efforts. When the party system is centralized, most media attention focuses on the candidates for federal office, and the candidates at the state level ride on the coattails of the federal politicians. While numerous scholars have described the connection between the party system and federalism (eg., Riker 1964, Kramer 2000), Filippov, Ordeshook, and Shvetsova (2004) specify the political safeguards of federalism best. In a decentralized party system, the local and state parties operate independently from one another. In an *integrated* party system, the party organizations at the two levels are co-dependent. By tying the welfare of politicians to the party, the politician is released from complete dependence on her constituents. In creating an imperfect agent, federalism is protected. Politicians will be less likely to seek to defy the authority boundaries to serve localized interests when their campaign finance and organization depends on the more generalized interests of the party. Analysis of Germany and Argentina confirms this effect (Tommasi et al 2000, Rodden 2006), while Diaz-Cayeros confirms it through its

absence in Mexico (2006). The integrated party system occurs infrequently: more often, party systems are focussed on national elections, with Canada and Brazil important exceptions (Samuels 1999).

The party system is responsive to the electorate. In Chhibber and Kollman's (2004) argument about the relationship between the centralization of the party system and the number of effective parties being related to level of government with fiscal authority, they find that it is not the actual control, but the voter's perception—popular beliefs—of which government has control that matters. The force driving the number of parties is the distribution of fiscal authority. The public have beliefs about federalism that affects the attention that they pay to the state or national parties. When they believe that the national political decisions matter more, they focus on those parties, and the parties at the state level align themselves to boost their chances of success.

The popular safeguards of federalism are elusive. Although many theorists have pointed to the importance of public perception in guiding and maintaining federalism, especially as a common culture develops (*Federalist* 46, Riker 1964, Ostrom 1971, Elazar 1987, Weingast 1995, Levy 2007, Bednar 2009), there exist few attempts to measure them (but see Kam and Mikos 2007 and Kincaid and Cole 2011). Erk (2008) argues that the contours of federalism evolve to fit the underlying social structure.

In addition to the judicial, structural, political, and popular safeguards, federalism's boundaries can be protected through pushback by the governments—

often the states—themselves. In federalism, most policy is co-generated, giving each level of government an opportunity to monitor one another’s actions and question potential violations (Wright 1982, Krane 2007). In years of interviews with state officials, Nugent (2009) describes the ways that states protect their interests with the federal government: they block legislation, they shape and reshape it, they lobby for funds, and they achieve flexibility in the implementation of federal programming. Even if on paper the US federation appears to be centralizing, with growing federal policy-making in domains traditionally left to the states, the states continue to exert significant authorship of policy as implemented. Ryan’s study of environmental law (2011) supports Nugent’s findings, and she argues that federal-state bargaining is sufficiently robust that the courts should limit their safeguarding activities to allow the process to function. In a plea against federal preemption, Hills (2007) praises the blurred boundaries because states press the federal government to remain honest and efficient, or they will offer an alternative. This mechanism depends on the voters being able to correctly assign responsibility for policy, which may not always be true, and politicians may exploit voter ignorance (Bednar 2007a). Wood and Bowman (2011) trace the rise of interstate compacts to federal government encroachment: the states respond to federal transgression with an offensive defense of their own.

State pushback depends on the same assumption employed by the Tiebout-based claims: mobility, or exit. States need to have an exit option in order to motivate the federal government to respect its authorities. There is a flip side

to exit options: as outside options become more attractive they reduce the ability of the group to coerce cooperative behavior, and this in turn reduces the productive capacity of the union. The loss of utility to the participating members means that the union may be less stable with moderately-attractive exit options than without (Bednar 2007b).

To be complete, a safeguard must minimize all types of opportunism, and do so without fail. No single safeguard meets this function. Most focus their attention on a specific level of government (for example, the structural safeguards only inhibit federal encroachment) and each is prone to failure by considering biased information, such as legally-circumscribed evidence in the courtroom, or mass perceptions for political or popular safeguards. Some are relatively weak—judicial safeguards, for example—while intergovernmental retaliation—the pushback from the states—has the potential to escalate out of control. A trigger mechanism requires proper calibration to be an efficient deterrent, and the judiciary may not have a sufficiently severe punishment capacity to deter major transgressions, while state pushback may be too difficult to control for everyday use.

Ideally, the boundaries of federalism are regulated by a system of complementary safeguards where each component might compensate for one another's weaknesses (Bednar 2009). Federalism gives us an opportunity to consider the advantages of diverse perspectives by improving the reliability of the safeguard's response; safeguards that "fail" for different reasons—that have different biases or sources of information—will make the system more

dependable. Safeguards that have different punishment capacities can be paired, where the more mild one deters minor transgressions and the more severe one is available in case of a more significant transgression. And safeguards are needed for each level of government. A system of safeguards that meets these criteria will be more robust.

Testing the efficacy of complementary systems is more complicated than testing single-safeguard theories. Lately a few applied theories and large-n analyses have made some headway. Voigt and Blume 2009 argue that a dummy variable representing federalism is too simplistic: it is better to reduce federalism to component institutional parts. They show that the different components have different economic effects. In Vaubel (1996)'s analysis showing that constitutional court independence is correlated with prevention of fiscal centralization, he also finds that structural safeguards are correlated. It would be interesting to know whether the structural safeguards and judicial safeguards are complementary—specifically, if the judicial safeguards are more effective when the structural safeguards are present, as recent research implies (Friedman and Delaney 2011, Grove 2010). Investigating more complex conceptions of federalism's safeguards, where each safeguard is but an imperfect component within a system, is fruit for future research.

5 Future Research: The Evolving Boundaries of Federalism

Current developments in the federalism literature follow three trends, all related to exploring the boundaries of federalism, and each having the potential to lean on a developing research thrust, complex adaptive systems. First, as described above, the complexities of federalism, in going from design to potential, require systems-level analysis. Optimal systems can be comprised of suboptimal parts (Bednar 2009, Vermeule 2009). This insight invokes the theory of complex systems, where system properties emerge that are not predictable when the analysis is confined to the linear aggregation of individual components. As we further develop the science of federal systems, to understand how the design translates into performance, as well as how it fits with the political culture, we need to continue with an examination of how multiple safeguards fit together.

Second, there is a new interest in federalism's dynamics. For the most part, the studies described in Sections 3 and 4 are built upon equilibrium analysis. The models imply that if federalism's safeguards are ideally rigged, then the system rests in equilibrium: neither side, federal or state government, crosses its allotted boundary. In some cases imperfect information or other technical deficiencies may prevent perfect stasis, but the theories do not endogenize change to the federal boundaries.

This modeling constraint is unfortunate, because the boundaries of fed-

eralism cannot be frozen. At best, they are a product of social science—an imperfect practice!—but more often, they result from political compromise. And circumstances change. Constitutional change is necessary; for federal systems to remain relevant and effective, the authority boundaries must be adjustable. Federal constitutional amendments, requiring a supermajority (often sliced several ways) of organized distinct interests, can be a challenging way to introduce meaningful change (eg Banting and Simeon 1985). But change happens anyway, most often through reinterpretation and the extension of shared authorities (Simeon 2001). The interpretation of the existing distribution of authority must be flexible.

This flexible interpretation returns us, naturally, to the system of safeguards. Different safeguards have different interpretations of where federalism's boundaries lie. In the debate and disagreement, a popular consensus might be reached (Bednar 2009). In a sense, by embracing multiple interpreters of the federal boundaries, federalism is following a trend in the legal literature on constitutional interpretation more generally, which increasingly appears interested in extrajudicial constitutional interpreters, and particularly, the interaction between the Court and public opinion (Kramer 2005, Primus 2006, Friedman 2010).

Two projections of change to the boundaries of European federal authorities are worth comparing. Erk (2008) offers a socio-structural theory of European institutions and the authority boundaries, suggesting that Europe's institutions will increasingly reflect the distinct societies that they are

designed to govern. Pierson (1996), on the other hand, offers a historical-institutionalist account of European federalism: the institutions are designed to be ever more integrative. Europe is on a path toward centralization, and the member states inevitably will lose their authority. Both theories suggest change in the boundaries of authority, but they point in distinct directions; with Erk, the society shapes the institutions, while with Pierson, the centralizing nature of the institutions overrides social tendencies.

The contradictory theories suggest a need for microanalysis to understand better the relationship between the governed population—individually and as collected into a federal culture—and the institutions of government. Change is made not just by the safeguards, but by the governments themselves. In addition to a diversity of constitutional interpreters, the boundary of federalism is continually contested as state and federal agents enact new legislation or adjust the implementation of existing statutes. Often in so doing they experiment, bumping up against the boundaries of their authority (Peterson 1995). At times a safeguard (including another governmental agent) will interpret the action to be a transgression. Opportunism is inevitable; it is a natural and unavoidable part of every federal union (Bednar 2006). The resulting disagreement can raise tensions in the federal union. Conflict can be destructive, but in pushing against and sometimes tearing down boundaries, a new federal relationship is created. The creative tension can be beneficial. As with the opportunism described in Section 2, it can also flatten a federation, rendering it a confederacy or a unitary system, elimi-

nating the complexity that makes federalism so potent. Therefore, as with the opportunism in Section 2, the experimentation and opportunism, even when mild, needs safeguarding, but if well-regulated, it could be source of beneficial change.

Recently, political scientists have revisited accounts of concurrent jurisdictions to derive explanations for changing federal boundaries, with an approach that leans much more heavily on the feasibility studies of the positive political theorists than the normative prescriptions of the earlier optimal designers. Conditional grants, with authority-sharing, is often a way that constitutional boundaries evolve (Elazar 1962, Grodzins 1962, Smiley 1963, 1970). Canadian federalism is increasingly characterized by collaboration and provincial initiatives (Cameron and Simeon 2002). Benz's account of German federalism cites the deal-making between *länder* and federal government that leads to interstate asymmetries and makes federalism a "dynamic system" (Benz 1999:56). In Colino (2009), constitutional change in Spanish federalism is a bottom-up process.

Finally, as federalism theory continues to develop, it may come back full circle to its original question: what is the optimal distribution of authority between the federal and state governments? But the approach now might draw upon the lessons from positive political theory and new institutional analysis, and the emerging application of complex systems. Rather than take a prescriptive, directed approach to mechanism design, the generation of the boundaries of federalism is organic and bottom up. It is sensitive to cultural

context and political processes. It thinks about paths of development, about nudging behaviors, and ways that systems of imperfect institutions might help to guide a society toward its goals.

In sum, concern for the distribution of authority will remain focal to the federalism literature. We will continue to want to understand how best to distribute authority in order to achieve societal goals, but the research going forward will take into account what is feasible, given the inherent tendency toward opportunism. To defend the boundaries of federalism, research on safeguards will continue, but increasingly it will recognize a broad array of safeguards, and consider how those safeguards complement one another to defend the boundaries. And finally, perhaps the most revolutionary research shift moving forward is to develop a theory of the dynamics of federalism's boundaries. Doing so means reviving the detailed understandings of intergovernmental relations that been diverted to public administration scholarship; the process of federal evolution is bottom-up, decentralized, many-actored, and responsive to cultural patterns. In moving beyond equilibrium-based theories and adopting a model of complex adaptive systems, the micro-processes leading to federal constitutional change might be soon understood. The modern science of federalism focuses on the interaction between safeguarding institutions, imperfect agents, and how those interactions shape the evolution of federalism.

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