

Perspectivas del federalismo en Europa

What is really needed from federal studies (and for individual countries)?

Topics

1. Federalism: helpful or dangerous?
2. Recent (European) trends
3. Challenges and opportunities: what to look at?

Theses

1. Accommodation of territorial, cultural and political pluralism
2. Contemporary federalism is guarantee for diversity more than for unity
3. Asymmetry, participation, procedural solutions

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Theoretical premise

(the case against a theory of federalism and the real challenges)


- Attempts to define essential features
- Subjective and based on amphibolic assumptions
 - 3 (and ½) prototypes
 - Each rule has exceptions
- All “federations” since WWI devolutionary
- Did federalism die 100 years ago? But number of federal countries tripled in one century
- Lessons
 - No institutional, only historical explanation of federalism (link with nation state) / Institutions are tailor-made to each case
 - Challenges procedural rather than institutional, although debate mostly focuses on institutions...

Federalism: helpful or dangerous?

- World more complex – Demand for tools to accommodate diversity (territorial, social, economic, cultural, political)
- Federalism as a constitutional matrix for institutional pluralism
- Means different things to different people
 - Advantage: flexible, can broker compromises
 - Disadvantage: scapegoating (secession etc.) / see CEE (and Spain?) / Anyway ideological



Recent (European) trends

- **Aggregative federalism** stresses *unity* - „federal big bang „ – more influence of subnational units in institutional design (*more symmetric*)
 - **Devolutionary federalism** stresses *diversity* - holding together – attention to *some* territories – *more asymmetric*
 - **Trends** = continuation of respective trend (centripetal in aggregative, devolutionary in other)
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- Understanding of autonomy as differentiated rules (within certain coordination) – self rule => federalism inherently asymmetric (asymmetry rule, not exception)
 - **Pressure for more**
 - I) **asymmetry**
 - II) **participation**
 - III) **procedures**

I) Asymmetry? Which one?

- Besides historical reasons, also constitutionally different types of „asymmetry“
 - Asymmetry accessible to all – both de facto (see Finanzausgleich and Bavaria or Ireland) and de iure (ITA: Art. 116.3, SPA: competences in Ast, GER 2006)
 - Individual asymmetry (special treatment constitutionally mandated, bilateral relations, special financing) – Aland, It. „special“ Regions, Gagauzia, Greenland, etc.
- Sometimes diverging views on nature of compact
 - Belgium
 - Catalan Statute



Financial asymmetry on the rise?

Relatively isolated but “strong” cases

Scotland Act 2016

- New competences
- Tax rates, VAT and more

Italy 2014/17

- South Tyrol and new financial agreement
- Autonomy negotiations with 3 ordinary regions (Referendums)

Catalonia (?)

- Relevant financial provision of ASt unconstitutional
- Claims for independence and economic grounds

II) The challenge of participation and the federal matrix

- Pluralism and the challenge to decision-making
- Complexity of societies, plurality of actors



- (Substantial and procedural) claims for participation
- No alternative to more elaborate rules
- Federalism as matrix

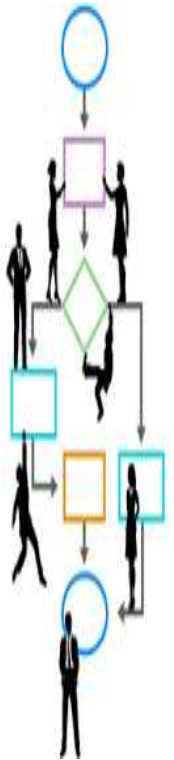
From institutional to societal pluralism

- The “dam-effect”
- Structural limits of representative and direct democracy
- Complementary forms: challenging the majority principle (though not majority rule)



III) Procedural solutions: From government to governance

- Pluralism backbone of federalism
- Claim for participation by non-institutional actors
- Federalism still institutional principle, but oldest and most experimented tool for institutional pluralism
- Federalism as government (institutional pluralism)
- Federalism as matrix for governance (societal pluralism)
- Older brother of participation
Analogy: theoretical, procedural, judicial solutions



Conclusions

- All States challenged by claims of pluralism (including territorial)
- Federalism as constitutional matrix for management of pluralism
- **Where can federalism help in providing answers?**
 - Dealing with asymmetry
 - Allowing for participation (territorial and societal)
- **How can this be done?**
 - Focus on procedural solutions (rather than institutional)
 - see debates on second chambers
 - De-ideologizing concept