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Reforming Federal Systems: Insights from Australia, Canada, Germany and Switzerland

Jörg Broschek

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Abstract

Reform represents a distinct mode of change within federal systems that can be distinguished from passive adaptation. Through reform, political actors deliberately seek to alter parts of the federal institutional architecture so as to modify or even reverse an established historical trajectory. This study systematically explores the variety of reform patterns in federal systems by looking at instances of institutional reforms in four federations (Australia, Canada, Germany and Switzerland) since the early 1990s. It demonstrates that reform patterns exhibit interesting similarities and differences. To a great extent, these are largely contingent on the nature of problems that different types of federalism tend to produce. The study detects similarities between Australia and Canada, where federal reforms sought to strengthen mechanisms of collaboration and to address the vertical fiscal imbalance, and between Germany and Switzerland, where dis-entanglement occurred as the *leitmotiv* of federal reforms. At the same time, the study finds no systematic connection between one of the two identified reform patterns on the one hand, the sustainability of federal reforms on the other hand. While Australia and Switzerland seem to represent examples of rather sustainable reform pathways, in Canada and Germany the gap between reform rhetoric and reform impact remains large.

Résumé

La réforme représente un mode distinct de changement à l'intérieur des systèmes fédéraux qui peut être distinguée de l'adaptation passive. À travers une réforme, les acteurs politiques cherchent délibérément à altérer des parties de l'architecture institutionnelle fédérale pour modifier ou même renverser la trajectoire historique établie. Cette étude explore de façon systématique la variété des modèles de réformes dans les systèmes fédéraux par l'observation d'exemples de réformes institutionnelles dans quatre fédérations (Australie, Canada, Allemagne et Suisse) depuis le début des années 90. Elle démontre que les modèles de réformes ont des similarités et des différences intéressantes qui, dans une large mesure, sont grandement dépendantes de la nature des problèmes que tendent à produire les différents types de fédéralismes. L'étude dénote des similarités entre l'Australie et le Canada où les réformes fédérales ont cherché à renforcer les mécanismes de collaboration et à répondre au déséquilibre fiscal vertical, et entre l'Allemagne et la Suisse où le dés-enchevêtrement a été le

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leitmotiv des réformes fédérales. Dans un même temps, l'étude ne trouve aucun lien systématique entre ces deux types de réforme et leur durabilité. Alors que l'Australie et la Suisse semblent représenter des exemples d'avenues de réformes plutôt durables, au Canada et en Allemagne l'écart entre la rhétorique de la réforme et l'impact de celle-ci reste important.

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Introduction

Reform is an important pattern of change in federal systems. Internal conflicts or external developments such as the Global Financial Crisis can create challenges for federal systems that require more than (rather reactive) adaptive responses. As a result, governments, political parties and/or bureaucrats, sometimes supported by the media and the general public, often call for more deliberate and explicit action through reform.

Canada, for example, has experienced ongoing efforts to reform its federal architecture. From the large-scale attempts to overhaul its federal architecture between the 1970s and early 1990s, the so-called era of "mega-constitutional politics" (Russell 2004), to the more focused undertakings destined to fix a number of unresolved problems in the aftermath of the Charlottetown Accord in 1992, federal reform has been an persistent issue in Canadian politics. Other federations have witnessed similar developments. Since the early 1990s, Australian federalism became a target of several reform initiatives yielding a series of institutional innovations and new agreements between the Commonwealth and the states, most notably the Council of Australian Governments (1992) or the Intergovernmental Agreement on Federal Financial Relations (2008). In Germany, three major rounds of constitutional reform (1992-94, 2004-2006 and 2007-2009) were initiated to recast the relationship between the federal level and the *Länder*. Finally, Switzerland provides an interesting example for federal reform. Here, a broadly conceived federal reform, the so-called *Neue Finanzausgleich* (NFA), was launched in 1994. After an incremental, iterative process of agenda setting, guideline formulation and ratification, this reform finally became enacted in 2008, profoundly reshaping the established relationships between the federal level and the Cantons.

These illustrative examples indicate that reforms in federal systems are omnipresent. However, patterns of federal reforms display considerable variation across time and space (Broschek 2014; on a more general level: Benz and Broschek 2013). This is basically a result of the nature of problems to be addressed through reform as well as the strategic options reform advocates have at their disposal to initiate and conduct reforms in light of potential opposition. In addition, reform patterns differ in terms of their success. The formal enactment of a reform

does not necessarily imply that a federal system changes exactly in the way reform proponents had desired. While reform opponents are often not able to prevent the adoption of an institutional or policy reform, they can still attempt to obstruct or even reverse a reform outcome afterwards (Patashnik 2008). This raises the question of reform sustainability that means the capability of reforms to reconfigure political dynamics in the medium and long term.

This study compares the patterns of federal reforms in Australia, Canada, Germany and Switzerland. It takes a look at formally enacted institutional reforms that have occurred since the early 1990s to explore convergent and divergent dynamics in the four federations. The main finding suggests that reform patterns seem to resemble each other in Australia and Canada on the one hand, in Germany and Switzerland on the other hand. The reason for this can be found in substantial differences pertaining to the institutional architectures of the four federations. Federalism in Australia and Canada is historically rooted in the principle of self-rule. In both cases, federalism was primarily conceived as a method to dualistically allocate competences between the federal level and constituent units. In contrast, in Germany, and to some extent in Switzerland as well, the principle of shared-rule has evolved as a more dominant feature of the federal institutional architecture.

Both types of federations tend to produce specific pathologies, which in turn shape the nature of reforms. In Australia and Canada, institutional reforms have frequently been initiated to address problems resulting from unilateralism, program overlap and duplication. These problems typically arise when both tiers of government enjoy a great degree of freedom in the way they assume their responsibilities. In Germany and Switzerland, the main purpose of recent institutional reforms was to dis-entangle governmental tiers in order to reduce the amount of negotiation within the federation and, accordingly, to prevent lowest common denominator outcomes or even deadlock.

Furthermore, in Australia and Canada federal reforms have emerged as non-constitutional change, while in Germany and Switzerland they surfaced as constitutional change. At the same time, this study finds no systematic connection between one of the two identified reform patterns and the sustainability of federal reforms. The gap between reform rhetoric and reform

impact seems to be considerable in Canada and Germany. In contrast, Australia and Switzerland seem to represent more sustainable instances of federal reform.

Federal Architectures and Institutional Reform

The following analysis focuses on institutional reforms in federal systems, or what I call federal institutional architectures. The architecture metaphor highlights that buildings and federal systems share certain similarities. Like a house, a federal institutional architecture rests upon building blocks that connect its constituent units with the federal "roof", horizontally and vertically. Four institutional building blocks constitute the foundation of any federal architecture: the allocation of competences, fiscal federalism, the system of intergovernmental relations as well as the second chamber.

Any federal architecture combines institutional mechanisms that create self-rule and shared-rule between the federal level and constituent units. The federal principle is constituted by a dialectical tension between territorial diversity and unity. This tension finds expression in institutional rules that allow for self-rule and shared-rule (Elazar, 1987). While self-rule promotes diversity, shared-rule urges representatives from both tiers of government to cooperate so as to reach a certain level of harmonization and, ultimately, unity. Historically, however, federal systems evolve on trajectories that have variously balanced the inherent tension between diversity and unity, thus accentuating either self-rule or shared-rule. While the federal architecture in Canada and Australia has put stronger emphasis on self-rule, shared-rule is the more dominant feature in case of Germany and Switzerland (Figure 1).

Figure 1: Institutional Architectures between Self-Rule and Shared-Rule

| **Self-Rule** | ←————————————————→ | **Shared-Rule** |

Canada   Australia   Switzerland   Germany
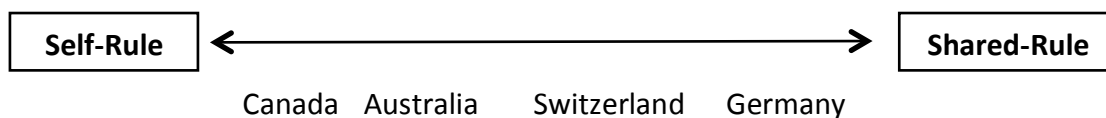
The federal state in Australia and Canada grew out of the British Empire. Federalization of former colonies in both cases was influenced through the American experience rather than the Continental European tradition of federalism. The drafters of both federal constitutions envisaged a dual allocation of competences, separately fusing legislative, executive and administrative power at each governmental tier, alongside a dual allocation of taxing authority. Considering this pervasive dualism inherent to both institutional schemes, there was no intention to institutionalize a strong system of intergovernmental relations. Shared-rule was primarily relegated to the second chamber. In formal terms at least, both the Australian and Canadian Senate were installed as rather strong institutional pillars within the federal architecture, allowing regional interests to participate in the decision-making process at the federal level.

Switzerland and Germany, on the other hand, are products of the Continental European tradition of federalism. In both cases, the federal architecture strongly tilts towards a functional division of competences (Hueglin and Fenna 2006). This feature is most obviously an evolutionary trait of German federalism. During the early years of the first federation in the German Empire (1871-1918), the newly created federal level assumed more and more competences, while the states' primary function was confined to the implementation of (largely) federal legislation. At the same time, they retained a strong role in decision-making at the federal level. This division of labor between the two tiers of government re-emerged as a defining feature of federalism after two critical junctures in 1919 and 1949 (Lehmbruch 2002; Broschek 2010). Especially in the 1950s and 1960s, shared-rule has been further reinforced through a system of joint taxation, a generous horizontal equalization scheme, the so called *Gemeinschaftsaufgaben* (constitutionalized joint tasks), a dense web of intergovernmental bodies and institutions and, finally, through an incremental extension of *Länder* participation rights through the *Bundesrat*.

The Swiss Cantons have always enjoyed much more autonomy than the German *Länder.* At the same time, however, the federal architecture also displays strong features of shared-rule. Over the course of the twentieth century, shared-rule has become even more pronounced, despite of the comparatively high degree of decentralization. In many areas, the federal level has assumed

more competences, while the Cantons were primarily concerned with the implementation of federal legislation (Vatter and Wälti 2003). Self-rule in the field of taxation, where the Cantons traditionally had much leeway, was increasingly supplemented with mechanisms strengthening shared-rule, most notably the horizontal equalization scheme (originally introduced in 1959) as well as a growing system of federal grants. Like in Germany, the Swiss federal architecture also features a dense web of horizontal and vertical intergovernmental bodies and institutions. The strong second chamber, finally, is an additional institutional device firmly entangling both tiers of government.

Self-rule and shared-rule mechanisms tend to produce distinct problems in federal systems. If a federal architecture tilts too strongly towards the self-rule pole, it lacks necessary mechanisms that would facilitate cooperation between and among governments. Shared-rule mechanisms are particularly important in light of growing interdependencies. The more collective problems demand sophisticated, well attuned responses, the more it becomes necessary to develop institutionalized patterns of coordination and cooperation among jurisdictions who exercise authority with varying spatial and functional reach. If such mechanisms are underdeveloped, duplication, overlap of jurisdictions or unilateral encroachment of other jurisdictions occur as typical pathologies in self-rule architectures. Vice versa, if a federal architecture tilts too strongly towards the shared-rule pole, it might become "trapped" in joint decision-making (Scharpf 1988). Too much, and, in particular, enforced collaboration (rather than voluntary cooperation) often tends to blur responsibilities and promotes short-sighted, opportunistic behaviour among governments. Federal architectures that are strongly anchored in shared-rule create an environment that is hostile towards innovation and learning through yardstick competition. It tends to produce lowest common denominator solutions or gets stuck in deadlock. Even worse, as Fritz Scharpf's work has shown, it is extremely difficult to escape joint-decision-traps once they are established.

Federal reforms usually seek to address such problems. On a deeper level, therefore, federal reforms aim to re-balance the configuration of self-rule and shared-rule mechanisms entailed in federal architectures (Broschek 2014). To systematically compare the variety of reform patterns found in federal systems, three questions seem to be of particular importance:

1) What is the overarching goal of federal reforms? Do reform advocates attempt to cope with pathologies originating from too much self-rule by strengthening shared-rule or the other way around?

2) How do federal reforms differ in terms of their breadth and the underlying mode? Do reform advocates target only a limited number of elements, or do they strive for a more encompassing reform of the federal architecture? Do they envisage a constitutional reform, or do they attempt to change the federal architecture by non-constitutional means?

3) Are federal reforms sustainable not? In other words, what is the overall impact of federal reforms?

Strengthening Shared-Rule through Non-Constitutional Reforms: "Collaborative Federalism" in Australia and Canada

Federalism in Australia and Canada has been suffering from a set of challenges that reveal interesting similarities.[2] First, in both federations inter-jurisdictional barriers impose considerable problems for the domestic exchange of goods, services and the mobility of citizens. Neither "negative integration", that means the gradual removal of trade barriers and other direct or indirect obstacles for the establishment of a single market, nor "positive integration", that means the harmonization of standards and infrastructures to facilitate market exchange, have been completed. In a programmatic speech given in July 1990, former Australian Prime Minister Robert Hawke laments over the "balkanization" of the Australian economy, quoting numerous examples ranging from highly skilled professionals struggling with different state licensing boards to the magnitude of hurdles involved in sending a cargo container from Sydney to Perth. The initiative "Free My Grapes" represents one recent example of how such barriers

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[2] Irrespective of important differences that pertain especially to the distinct features of the societal context of federalism.

affect all day life of Canadians. Inter-provincial restrictions for the individual purchase of wine across provincial borders still hamper the flow of domestic wine.[3]

Second, another persistent feature of reform discourses in Australia and Canada is program duplication and overlap. A dual allocation of competences does not mean that each tier of government works within neatly tailored, "watershed compartments". In practice, it is rather difficult to clearly determine the boundaries of competences. Ambiguities in the wording of constitutional provisions often lead governments to simultaneously engage in certain policy fields through competition and/or concurrency.

Third, if shared-rule mechanisms are weak, federal architectures encourage unilateral action. Unilateralism can take quite different forms and is not necessarily destructive. For example, unilateral initiatives can be an important prerequisite for benchmarking and learning, leading to adaptive innovation through yardstick competition (Benz 2012). However, it might also manifest itself in opportunistic behavior, prompting a logic of "thrust and riposte" (Braun 2000), destructive competition, encroachment of jurisdictions and burden-shifting (Bednar 2009). There is considerable evidence that Australia and Canada have both suffered from such negative forms of unilateralism. For example, the Australian states have complained about the Commonwealth's dominant position within the federation. Through an expansive use of its legislative powers and conditional grants, the Commonwealth has increasingly forced them into a rather marginalized position of service providers. In Canada, provinces have blamed Ottawa for encroaching upon areas of provincial jurisdiction by deploying the peace, order and good government clause, the powers of reservation and disallowance or, since the second half of the twentieth century, the spending power.

Finally, and often as a consequence of federal unilateralism, both federations have witnessed a discussion revolving around the so called vertical fiscal imbalance (VFI). The VFI indicates a mismatch between revenue raising capacity and program responsibilities for either governmental tier. In Australia and Canada, the states and the provinces have argued that they

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[3] McKenna, Barrie: Provincial barriers still hamper the flow of domestic wine, in: The Globe and Mail, June 30, 2013. and Free My Grapes, and imitative established by wine lovers in 2010. http://freemygrapes.ca/ [accessed April 21, 2014].

suffer from a growing VFI. Accordingly, constituent units in both federations claim that federal revenues increasingly exceed the actual need. The states and provinces consider themselves disadvantaged in light of their growing responsibilities for cost intensive services and programs, most notably those related to health, education and other social services. In effect, the growing VFI is a consequence of the dualistic architecture, which has allowed the federal government to (often unilaterally) pre-empt tax room and to offload program responsibilities.

Since the early 1990s, a series of federal reforms were initiated to address these issues. The overarching reform goal was to redirect the federal architecture towards the shared-rule pole so as to contain the multifaceted pathologies emanating from uncoordinated, unilateral action. The notion of "collaborative federalism", which emerged in the academic and public discourse that accompanied the reforms in both federations, nicely reflects the similarity of the main reform direction (Painter 2001; Cameron and Simeon 2002; Lazar 1998). Moreover, reforms were focused rather than encompassing, targeting the system of intergovernmental relations and fiscal federalism. Also, they occurred as non-constitutional change.

Australia

Collaborative federalism in Australia was initiated through several *Special Premiers' Conferences* (SPC). The first SPC was held in Brisbane in October 1990. The main purpose of the meeting was to outline a framework for a more collaborative approach and to agree on a broad reform agenda. In his opening statement, Hawke states

> "…that never has the time been so propitious – as indeed, it has never been so urgent and compelling – for a new effort, a new approach and a new spirit of co-operation. […] I cannot emphasize too strongly the need for us all to move our thinking beyond old fixed ideas of centralism or State rights – of the Commonwealth versus the States." (Hawke 1990a: 2)

He identified a broad range of issues that "cover the full range of intergovernmental relationships" such as fiscal federalism (including tied grants), micro-economic reform, duplication of services the environment and industrial relations.

The Commonwealth and the states scheduled two SPCs for 1991, the first for July and the second for November, in order to continue their discussions and, ultimately, to reach substantial decisions. Despite some setbacks, which were primarily due to the election of Paul Keating, the reform process continued. Keating, an "uncompromising centralist" (Hollander and Patapan 2007: 286), defeated Hawke in a leadership spill in the Australian Labour Party in December 1991. Yet, the Prime Minister, Premiers and Chief Ministers agreed to establish the *Council of Australian Governments* (COAG) in May 1992, a new intergovernmental forum that represents the heart of collaborative federalism in Australia (Painter 1996; 1998; 2001).

According to Martin Painter (2001) the introduction of COAG has moved intergovernmental relations in Australia towards German-style joint-decision making. This interpretation, however, somewhat stretches the point. COAG does not create an institutionalized system for compulsory negotiations but a framework for cooperation through which the states are incorporated when the federal government attempts to formulate national standards. Regardless of how one ultimately assesses COAG's role and performance within the Australian federal system, it has certainly facilitated ongoing exchange between governments (including local governments). COAG features a secretariat which is located in the Department of the Prime Minister and Cabinet. Its organizational structure has become more diversified over time, comprising standing and temporary councils.

A second reform sought to address primarily the VFI. Although Bob Hawke initially had announced that the Commonwealth was prepared to make substantial concessions to the states,[4] fiscal federalism did not occur as a major reform target. It was under the Liberal Prime Minister John Howard, who was otherwise more than reluctant to breathe life into the nascent institutions of collaborative federalism, that the states were furnished with a new revenue

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[4] In his opening statement to the first SPC, Bob Hawke (1991a: 2) announced: "The commitment I am prepared to make on the Commonwealth's behalf to work with the States towards a substantial reduction in tied grants represents a fundamental change in direction."

source, the Goods and Service Tax (GST). The *Intergovernmental Agreement on the Reform of Commonwealth-States Financial Relations*, agreed upon in 1999, was part of a larger tax reform of the liberal government (Fenna 2007). The Commonwealth transfers GST revenues completely to the states (minus a deductible to compensate for administration costs). In exchange, the states agreed to abolish a set of specified taxes. The agreement also outlines rules for the management and administration through the newly created Ministerial Council which are highly consistent with the principles of collaborative federalism. Provisions for shared-rule are entrenched in Part 3 of the agreement. Most importantly, they require unanimous support of the state and territory governments to vary the tax rate and base.

Despite this agreement, the federal government during the Howard era (1996-2007) showed little interest in promoting intergovernmental relations. This lack of engagement spurred the states' effort to strengthen horizontal linkages within the federal architecture. In 2006, states and territories created the *Council for the Australian Federation* (CAF). As an exclusive horizontal body, the CAF consists of the state and territory premiers or chief ministers and has a jointly funded secretariat to assist the chair and the council. The main purpose of the CAF is to formulate positions vis-à-vis the Commonwealth in a broad range of issues and to take a leadership role in important areas of national concern where the Commonwealth abstains from being active.

Finally, Australian federalism witnessed a revitalization of collaborative federalism under Labour premier Kevin Rudd, who succeeded Howard in 2007. This included a reactivation of COAG, whose internal structure became more diversified and committed to facilitate an ongoing reform process, as well as a new *Intergovernmental Agreement on Federal Financial Relations* (IGAFFR), signed in 2008. The IGAFFR replaces the 1999 agreement and establishes a new framework for collaboration in a wide range of policy areas. While the states are provided with more flexibility on how they spend Commonwealth transfers based on mutually agreed policy goals, both tiers of government, at the same time, commit themselves to greater accountability based on new reporting requirements. In particular, the agreement promises to improve transparency based on performance indicators and benchmarking.

Canada

In Canada, collaborative federalism emerged on the initiative of the provinces rather than the federal government. The call for reform was largely triggered by a number of unilateral decisions taken by the liberal government under Jean Chrétien since the mind 1990s. Chrétien and Finance Minister Paul Martin first introduced drastic budget cuts through their landmark 1995-96 budget. Through the unilateral and unexpected budget cuts, the federal government structurally and substantially changed the transfer system and announced a fundamental reform of *Unemployment Insurance* (UI) for 1996. The existing *Established Programs Financing* (EPF) and the *Canada Assistance Plan* (CAP) were replaced with the *Canada Health and Social Transfer* (CHST) and cut by 4.4 per cent (Government of Canada 1995: 19). As a consequence of drastically tightened eligibility criteria, UI reform in 1996 indirectly imposed further costs on the provinces as a large share of unemployed now became social assistance claimants (Boychuk 2001). Once the federal government had entered the "post-deficit era" in the late 1990s, it began to launch a number of new programs which often fell into exclusive provincial jurisdictions. These initiatives not only fostered the impression of ongoing unilateral and illegitimate transgression of constitutional boundaries, but also sparked the debate around a growing VFI.

Collaborative federalism manifested itself in a series of changes. Some of them were sectorial and policy related, like the *National Child Benefit* (NCB) of 1998, the *Health Accords* of 2000, 2003 and 2004 or several bilateral agreements between the Ottawa and individual provinces in the field of child care and early learning development. Others focused on the institutional level. These reform initiatives envisaged the creation of new rules that would more generally strengthen shared-rule within the federal architecture.

A first important step towards collaborative federalism was the *Social Union Framework Agreement* (SUFA). Despite reluctance on behalf of Ottawa to enter negotiations with the provinces, both tiers of government – with the exception of Quebec - eventually signed the SUFA in 1999. SUFA's main provisions emerged from a number of reports that had been prepared under the auspices of the Provincial/Territorial Council on Social Policy Renewal since

1996. Most notably, the provinces demanded a serious commitment of the federal government to establish a new collaborative partnership, stable and adequate federal financial support as well as an end of federal unilateralism in areas of provincial jurisdictions (Provincial/Territorial Council on Social Policy Renewal 1998: 3). In the agreement, the signatories express a willingness to work more closely together. Overall, it contains seven sections, outlining basic principles, a commitment to reduce barriers to mobility, to enhance accountability and transparency and to collaboratively resolve disputes. Section 4 and 5 are crucial because they represent an attempt to define rules for joint planning and cooperation as well as for the use of the federal spending power.

A second institutional innovation originated from an initiative launched by the newly elected liberal Quebec government under Jean Charest in 2003. Under the auspices of Benoît Pelletier the Liberal Party of Quebec (PLQ) sought to develop a new, more constructive approach to intergovernmental relations. A report released in 2001 emphasized the need for Quebec to take a leadership role in renewing Canadian federalism, primarily through "interprovincialism", that means closer horizontal ties among the provinces (Pelletier 2001). After the PLQ was able to remove the Parti Quebecois government out of office in the 2003 election, Charest turned this promise into action, initiating negotiations that ultimately led to the creation of the *Council of the Federation* in December 2003. In effect, the Council of the Federation institutionalizes the former Annual Premiers' Conference (APC) (Meekison et al. 2004). Members are the governments of the provinces and the territories. The council features an own secretariat and is supposed to meet at least two times per year. The main objectives are the development of closer ties among the provinces and to exercise leadership on national issues of importance to provinces and territories.

In addition to these efforts destined to strengthen shared-rule in the system of intergovernmental relations, fiscal federalism became a reform target. In particular, the equalization program underwent two reforms. Addressing growing provincial concerns over an expected decreasing pool sum for equalization as well as rising interprovincial conflict over the calculation of entitlements, the liberal Martin government introduced a new framework which fixed a minimum floor and modified the formula. Furthermore, the federal government made

bilateral agreements with Nova Scotia and Newfoundland which offered those two receiving provinces special provisions to deal with their increasing revenues from off-shore oil development. In 2007, the newly elected Harper government replaced this arrangement. The 2007 equalization reform broadened the standard for equalization by including all provinces rather than the "five-province-standard", further increased the pool sum and excluded resource revenues almost entirely from the calculation of entitlements (Lecours and Béland 2010; Brown 2012).

Strengthening Self-Rule through Constitutional Reforms: Dis-Entanglement in Germany and Switzerland

In many respects, major reform goals in Germany and Switzerland since the early 1990s pointed exactly in the opposite direction than those in Australia and Canada. The set of problems federal reforms in the two European federations sought to address arose largely from "too much" shared-rule. First, due to manifold requirements fostering collaboration between levels of government, federalism was largely considered as inefficient, hampering the production of adequate and rapid solutions to pressing policy problems. There was a widespread perception among political actors and the larger public that federalism is responsible for prolonged negotiations that often lead to agreements reflecting the lowest common denominator.

Second, entanglement between both tiers of government was also blamed for generating democratic deficits. Often policy outcomes could only be achieved if all (or at least a qualified majority) of governments had come to an agreement. The missing exit option in joint-decision making arrangements encourages blame avoidance for unpopular decisions. While intergovernmental decision-making generally involves negotiations behind closed doors, joint-decision making tends to exacerbate democratic deficits because it blurs political responsibilities much more than in federations resting on an institutional architecture in which self-rule looms large. As Fritz W. Scharpf has aptly put it with respect to federal politics in Germany: "No one really wants what is done, and no one will accept responsibility for it".[5]

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[5] Cited in Schultze 2003

Finally, constituent units - the German *Länder* and Swiss Cantons - lamented an ongoing decline of autonomy. In particular the functional division of competences was seen as a threat to their capacity to legislate independently. Rather, they appear to have been relegated to agencies whose main purpose is to implement federal legislation. In addition, reform advocates identified fiscal federalism as an important cause for undermining local autonomy.

Accordingly, dis-entanglement emerged as the *leitmotiv* of federal reforms in Germany and Switzerland since the early 1990s. In order to tackle perceived pathologies such as inefficiency, democratic deficits and decreasing autonomy, the federal architecture was to be redirected from the shared-rule pole towards self-rule. In both federations, reform proponents evoked the idea of subsidiarity to indicate the main direction of reform: Tasks and corresponding financial resources should be reallocated in a way that promotes autonomous fulfillment on the local level whenever possible. Unlike in Australia and Canada, reforms were carried out as constitutional change and more comprehensive. Rebalancing shared-rule and self-rule was thus envisaged as a more encompassing endeavor requiring a major institutional reconfiguration of the federal architecture.

Germany

The early 1990s mark an important turning point for German federalism. The addition of six new, structurally rather weak *Länder* after Reunification substantially amplified economic disparities and cultural diversity within the federation. This, in turn, generated frictions for federal politics, mainly caused by increasing mismatch between the socio-economic, socio-cultural and ideational foundations of federalism on the one, the inherited, highly entangled institutional architecture on the other hand (Benz 1999; Broschek 2010; Scharpf 2008; Schultze 1999). European integration further reinforced this trend as the newly emerging common market created a new incentive structure. The *Länder* were anxious about a further loss of autonomy, while the federal government aspired more leeway in negotiations at the supranational level. Furthermore, fiscally strong *Länder* demanded more legal and fiscal

resources to position themselves more autonomously in the wake of accelerating regional competition on the European scale.

The twin pressure of Reunification and Europeanization thus represent the backdrop for reform dynamics in Germany. Between 1992 and 2009, these dynamics ushered in a sequence of three constitutional reforms. The *first constitutional reform* began with the creation of a joint commission of the *Bundestag* and *Bundesrat* in 1992. The commission's mandate was to prepare an encompassing proposal for constitutional change to bring the Basic Law (*Grundgesetz*) in line with post-reunification realities. Accordingly, the federal architecture was just one reform target among others, but it represented a focal point in the debate. Among other things, the *Bundesrat's* initiative to additionally install its own commission, the *Kommission Verfassungsreform* (Commission Constitutional Reform) in 1991 and which presented its report one year later (Bundesrat 1992), highlights the significance federal reform advocates ascribed to the constitutional reform.[6]

Substantial proposals to realign the federal architecture with the principle of self-rule failed, however, largely due to resistance from the federal government and the *Bundestag*. The main achievement of the constitutional reform was to protect the *Länder* from ongoing federal usurpation of concurrent legislation. More importantly, the reform ultimately reinforced the established system of joint-decision making by significantly expanding *Länder* participation in federal decision making through the new Article 23. This new constitutional provision furnished the *Länder* with far reaching veto rights in matters subject to Europeanization.

The perceived need for a major federal reform prevailed. During the late 1990s and early 2000s, federalism was increasingly blamed for *Reformstau* (reform jam) – a notion that began to determine Germany's political agenda in the late 1990s. It expresses the inability of the political system to carry out structural adjustments that were widely perceived as inescapable. In the light of culminating economic and fiscal problems and the permanent impression of political deadlock, which was primarily ascribed to hard-going negotiations between the *Bundestag* and

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[6] An early example for how the *Länder* anticipated the prospects for a federal reform is the joint Decision of the Minister Presidents (i.e the heads of *Länder* governments) as of July 5 1990, which called for fundamental reorganization of the federal architecture in Germany.

Bundesrat (alongside other manifestations of joint-decision making), political actors from both tiers of government agreed on another attempt to reform the federal architecture. Even more than in the early 1990s, the goal of self-rule through sweeping dis-entanglement animated the reform discourse.

For many observers, the *Föderalismusreform I* (2004-2006) emerged within a window of opportunity, indicating a rather unique, deep commitment on behalf of the leading negotiators to tackle the main pathologies of German federalism. At the outset at least, the spirit of reform raised high expectations. A redirection towards self-rule was to be achieved through substantially increased *Länder* autonomy, a substantial reallocation of competences and disentanglement of financial flows between both levels of government.

Despite this overall agreement, however, the reform agenda ultimately excluded fiscal federalism. This was mainly due to concerns raised by the majority of fiscally weak *Länder*, who, like the federal government, shied away from touching the allocation of tax powers or even equalization. It was agreed though to renegotiate fiscal federalism in a separate, succeeding step – the *Föderalismureform II* (2007-2009).

The *Föderalismureform I* was the most comprehensive constitutional reform of the Basic Law since 1949. The reform had two main targets: the allocation of competences and the second chamber. First, dis-entanglement (*Entflechtung*) was to be accomplished through a major reallocation of competences. The reform abolished the framework legislation, redefined a number of concurrent matters and reassigned them between both tiers of government. In addition, the *Länder* were furnished with two different types of opting out provisions. One is rather procedural and permits *Länder* to opt out from certain implementation requirements imposed on them by the federal government, the other is material and applies to six matters falling under concurrent legislation.

Second, the reform reduced the number of bills for which the *Bundesrat* had enjoyed an absolute veto. While it is difficult to exactly determine the amount to which the reform has reduced this type of bills, the so called *Zustimmungsgesetze*, a report issued by the Research Services of the Bundestag estimates an overall decrease of *Zustimmungsgesetze* from 55,2 % to

25,8 or 51 % to 24 % - depending on the legislative session taken as a reference (Deutscher Bundestag 2006: 3).

Although the *Föderalismureform II* had initially been envisaged as a successive reform step dedicated to structurally reorder fiscal federalism, most notably the allocation of tax revenues, it failed to do so. The conservative governments of fiscally strong *Länder*, Bavaria, Baden-Württemberg and Hesse, who envisaged more self-rule through a reform equalization programme and greater tax autonomy, were unable to even put those issues on the agenda. Under the impression of the Global Financial Crisis, the federal government and the *Länder* instead settled for proposals envisaging institutional mechanisms to incrementally reduce debt and deficits on both levels of government. The reform's main achievement eventually was the introduction of a debt brake (*Schuldenbremse*). This mechanism obliges the federal government and the *Länder* to substantially reduce their debts until 2020 and to balance their budgets. In addition, it imposes very high hurdles for any new net borrowing (Deutscher Bundestag/Bundesrat 2010).

Switzerland

Despite its more decentralized nature, Swiss federalism shares certain similarities with the German case. Over the course of the twentieth century, the Swiss federal architecture has witnessed an incremental process of change that more firmly intertwined both governmental tiers. Indeed, the Cantons generally enjoy a larger scope of autonomy than the German *Länder*, both materially and procedurally. They not only hold more exclusive powers in a comparatively broad range of fields, including taxation powers, but also maintain more leeway when implementing federal legislation. However, with the expansion of the modern welfare state the federal level was able to assume more legislative competences while the Cantons retained an important role in the implementation process (Vatter and Wälti 2003; Linder 2007). Growing interdependencies are also evident in fiscal federalism. The federal level has sought to influence cantonal policy-making through incrementally expanding the system of vertical transfers. Until

the early 1990s, federal transfers amounted to more than 100 specific transfers and more than 30 different equalization payments (EFD 2007: 7).

This ongoing trend towards more shared-rule was increasingly perceived as a problem. Not surprisingly, Swiss reform discourse resembled in many respects the one in Germany. Inefficiency, democratic deficits and declining local autonomy were identified as the main pathologies generated through the established federal architecture. Like in Germany, federal reform in Switzerland – the so called *Neue Finanzausgleich* (NFA) – had as its main goal to strengthen self-rule, which was to be achieved through widespread dis-entanglement:

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

At the same time, the German and Swiss cases reveal important differences. Anticipating a difficult ratification process due to the institutions of direct and consociational democracy, the NFA was structured from the outset as a comprehensive, inclusive and iterative long-term process. The reform was officially launched in 1994, became enacted in 2004 and effective in 2008. It involved numerous hearings, the identification of problems and several rounds of negotiation. In doing so, as Dietmar Braun (2009) has argued, the reform process envisaged a procedural separation of "problem-solving" and "redistributive bargaining" sequences – a necessary condition for its ultimate success.

Another important difference between the Swiss and the German case pertains to the reform targets. While in Germany actors shied away from setting taxation and equalization on the agenda, the latter – equalization – was the Swiss reform's focal point.[7] The starting point for reforming the Swiss federal architecture was, therefore, a deliberate attempt to reorder one core component of fiscal federalism. This was then connected to deliberations on a fundamental reallocation of competences between the federal level and the Cantons in order to

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[7] *Neuer Finanzausgleich* translates into New Fiscal Equalization Regime.

restore the principle of subsidiarity or, in other words: to redirect the federal architecture from shared-rule towards self-rule.[8]

The NFA basically abolished the highly complex previous system of fiscal transfers and replaced it with two new elements. The first pillar of this system, resource equalization (*Ressourcenausgleich*), assures that all Cantons have a minimum floor of guaranteed revenues amounting to at least eighty five percent of the average revenue of all Cantons. Fiscally strong Cantons and the federal level contribute to this equalization fund, and their respective share is determined by a constitutional formula. The second pillar, specific burden compensation (*Lastenausgleich*), provides those Cantons who face an extraordinary cost intensive burden such as urban centres or mountainous regions with additional revenues (EFD 2007: 13-16).

The accompanying reallocation of competences primarily focused on a broad range of previously shared jurisdictions. The rationale behind the process of dis-entanglement and reassignment was the principle of subsidiarity. Through the NFA reform, jurisdictions calling for state-wide solutions were more explicitly tailored as federal competences while the cantonal influence was further diminished or completely abolished. For example, this was the case with the social-insurance-based pillar of the Swiss pension system (the AHV), trans-regional infrastructure or defence. Other shared responsibilities in areas such as social assistance and welfare, education or environmental policy were redesigned as exclusively cantonal jurisdictions. An important feature of dis-entanglement was to ensure that responsibilities for both the task itself and corresponding funding were consistently anchored with one governmental tier.

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[8] A third reform target was the system of intergovernmental relations. The NFA brought about several changes intended to make vertical and horizontal collaboration more efficient and, at the same time, more flexible as Cantons are now obliged to work towards jointly agreed global objectives, endowed with lump sum payments. These arrangements break with previous modes which subsidized numerous more specific measures.

Do Federal Reforms Matter? Preliminary Insights from Comparison

At least as important as the enactment of the reform itself is the question of its long-term sustainability or impact. There is no guarantee at all that an enacted reform ultimately reconfigures political dynamics in federal systems. On the contrary, it is especially in the early post-enactment period when reform opponents might try to undermine and subvert political change and redirect the federal trajectory back on the previous path. Successful reforms, therefore, rest on conditions that promote its long term sustainability. According to Patashnik (2008), the sustainability of reforms lasts on at least two conditions: a significant shift in the institutional configuration (including some form of institutional protection of reform outcomes) and positive feedback effects that need to accrue from reform innovation.

A preliminary assessment of institutional reforms in the four federations suggests that there are two rather sustainable (Australia and Switzerland) and two rather unsustainable pathways (Canada and Germany). Accordingly, each group contains a rather successful and a rather unsuccessful case of reform.

The first group (Australia and Canada) represents institutional reforms destined to strengthen shared-rule within a self-rule architecture. A preliminary assessment indicates that institutional innovations in Australia have produced some change for federal politics, while their impact in Canada was rather negligible. Neither in Australia nor in Canada have reform outcomes enjoyed an effective institutional protection, not least because they were conducted as non-constitutional change. However, the Australian case points to positive feedback with key political actors.

The spirit of collaborative federalism in Australia seems to have resonated well among important political actors in the federal arena. First, the GST has been considered, by and large, as having slightly enhanced the autonomy of the States. Parkin and Anderson (2007: 297) even coined this reform the "GST revolution", and "the single, most important reform to Commonwealth-State financial relations since the imposition of uniform national income tax in 1942".

Second, from its inception in 1992, COAG has become active in a broad palette of matters including highly sensitive areas such as education, child care, infrastructure, energy, housing, security or fiscal federalism. In 2007, after the Howard government was defeated by the Labor government under Kevin Rudd, COAG's role as the peak organization within the federal system was reinforced through a comprehensive overhaul of its organizational structure. This included, among other things, the introduction of the COAG Reform Council as an independent monitoring body and the formulation of a broadly envisaged long term reform agenda. Perhaps the most important recent achievement was the IGAFFR of 2008. This agreement indicates that the Australian federation seems to further move towards the pole of shared-rule as it established several provisions requiring unanimous agreement for changing the status quo.

The sheer number of agreements and partnerships that have emerged under the umbrella of COAG demonstrate a degree of institutionalization that is hardly conceivable in Canada, where intergovernmental relations have remained in a rather erratic state of flux since the end of the 1990s. For the brief period between 2004 and 2006, after Paul Martin had replaced Jean Chretien as Prime Minister, it seemed as if a more collaborative approach would indeed reemerge here, too. Under the heading "The Ghost of Chretien is banished", the Globe and Mail, for instance, acclaimed the Health Accord of 2004 between Ottawa and the Provinces as the "most important federal-provincial deal since the constitution came home". In addition, several bilateral agreements on the implementation of a pan-Canadian system of Early Learning and Childcare were considered to exemplify a serious commitment to revive cooperative federalism in Canada.

With the advent of the Conservative government of Stephen Harper in 2006, however, this approach came to an end. Under the label of "open federalism", Harper has been inclined to reconfigure the federal system again more in line with self-rule. This approach seems to avoid Chrétien-style unilateral initiatives in exclusively provincial jurisdictions just as it avoids any collaborative efforts with the Provinces – an approach Friendly and White (2012) have nicely coined as "no-lateralism". Notably, one of the first initiatives of the Harper government was the termination of all existing intergovernmental agreements on Early Learning and Childcare and their unilateral displacement with a direct individual federal transfer for parents, the Universal

Child Care Benefit (UCCB) in 2007. Moreover, SUFA does not appear to play any role for the conduct of intergovernmental relations anymore, if it ever had.

Efforts to strengthen horizontal ties among the Canadian Provinces have obviously been slightly more sustainable. Since its inception about 10 years ago, the COF has launched initiatives in a range of areas, spanning topics such as postsecondary education, Canada in the Global Economy, health care and, most notably, the fiscal imbalance. Over the first few years after its establishment, the CAF in Australia promised to become an even more visible and active horizontal body than the COF in Canada. Until 2010, the CAF has produced a great number of reports, declarations, frameworks, benchmarks and papers (the so called "Federalist Papers"), outperforming the output of the COF. In the meantime, however, this level activity has profoundly decreased again.

Despite their relative success, reform outcomes and achievements in Australia remain vulnerable. The recently elected Liberal government under Tony Abbott has announced to reshape Australian federalism once again. This reform attempt appears to turn back the wheel, as it is animated by the principle of self-rule. Abbott's language resembles that of Stephen Harper when he outlined the rationale for "Open Federalism":

> "We need to clarify roles and responsibilities for states and territories so that they are as far as possible, sovereign in their own sphere…The Commonwealth will continue to take a leadership role on issues of genuine national and strategic importance, but there should be less Commonwealth intervention in areas where states have primary responsibilities"[9]

The main contours of Abbotts "Reform of the Federation" will be revealed in a White Paper by the end of 2015 (Prime Minister of Australia 2014). As of June 30, 2014, the Abbott government already abolished one important institutional innovation introduced under Kevin Rudd, the COAG Reform Council.

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[9] Quoted in: Mark Kenny "Abbott launches white paper to reduce federal-state balance of power", The Sidney Morning Herald, July 2 2014.

Because they were conceived as constitutional change, reform outcomes in the second group (Germany and Switzerland) benefited from a greater degree of institutional protection than in Australia and Canada. As the post-reform dynamics in Germany reveal, however, institutional protection alone is not sufficient to make federal reforms work.

Most observers agree that notwithstanding the quantity of explicit changes carried out in Germany, the *Föderalismureform I* has not generated far reaching change for federal politics, let alone a substantial redirection of the federal architecture towards self-rule (Jeffrey 2008; Scharpf 2009). Despite its formal ratification, the constitutional reform can even be considered as a failure if measured against the ambitious goals political entrepreneurs had formulated prior to the reform. These shortcomings become even more obvious if compared to the relatively successful case of Switzerland.

In Switzerland, federal reform entailed a comprehensive reorganization of competences that was instantly linked to a major reform of fiscal relations among all governmental tiers. Neither important jurisdictions such as education, pensions or infrastructure nor the highly controversial area of fiscal federalism were excluded from the agenda. This is exactly what happened in Germany: The majority of fiscally weak *Länder* governments refused to talk about finances from the outset. In addition, only rather narrowly defined jurisdictions were ultimately re-assigned between the federal government and the *Länder*. While the *Länder* demanded major competences to increase their capacity for self-rule, the reform commission ended up splitting coherent matters into very narrowly defined, rather trivial "mini competences" (Scharpf 2008: 519), which were then assigned to either the federal or the *Land* level. As a consequence, the *Länder* received jurisdictions such as the regulation of leisure activity noise (instead of regional environmental policy), the regulation of shop closing hours (instead of regional economic policy) or the control over old-age homes (instead of regional social policy) (Scharpf 2008: 514).

Likewise, while *Länder* governments demanded a general right to opt out from those concurrent matters that had been preempted by the federal government, the reform commission approved of opting out provisions for only a limited number of rather negligible matters (such as hunting). Finally, while the reform might have accomplished a significant reduction of bills subject to

approval of the *Bundesrat*, the *Länder* executives retain a veto right in all potentially conflict-laden areas which already had been subject to deadlock in the past. Despite the quantitative reduction, therefore, the power of the *Bundesrat* essentially remains untouched.

Moreover, it is hardly discernible that those institutional innovations which eventually bear some potential for shifting Germany's long established pathway onto a new track have generated positive feedback so far. Especially under the condition of different partisan majorities in the *Bundestag* and *Bundesrat*, lowest common denominator politics or even deadlock is very likely to resurface again.[10] At the same time, *Länder* seem to be rather reluctant to use their new right to opt out from certain countrywide regulations. Until 2009, an official survey reports that there have only been two deviations in concurrent matters and three deviations from procedural regulations (Deutscher Bundestag 2009: 34f.).

In contrast, federal reform in Switzerland is widely believed to be an example for a sustainable reform path. According to Dietmar Braun (2009, 315), the NFA "…means a profound change in philosophy and practice". The Swiss reform was much more encompassing in dis-entangling material and fiscal institutional linkages between the federal level and the Cantons. Moreover, the reform process itself differed profoundly. While in Germany the reform was ultimately negotiated among the executives from both governmental tiers, in Switzerland the process incrementally evolved over a period of about ten years, with iterative sequences focusing on problem-solving and bargaining. It was also more inclusive as representatives from all governmental tiers and branches as well as society were involved. This encompassing approach to federal reform not only ensured its ratification, but seems to foster its long-term sustainability.

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[10] And indeed, after the Social Democratic Party, in combination with the Greens and the Socialists, have gained a majority of votes in the *Bundesrat* in the wake of the election in Lower Saxony in January of 2013, the leader of the opposition in the *Bundestag*, Frank-Walter Steinmeier, announced right away that the opposition would be very inclined to use their new power position (Süddeutsche Zeitung, Steinmeier will Mehrheit im Bundesrat nutzen, January 21, 2013).

Conclusion

Institutional reforms in federal systems display considerable variation. This does not mean, however, that they evolve in an erratic or even arbitrary pattern. Nor do they simply revolve around the question of centralization versus decentralization.

This study suggests to grasp federal reforms as a deliberate attempt to rebalance self-rule and shared-rule within a historically established institutional architecture. Federal systems that traditionally tilt more towards self-rule, like Australia or Canada, tend to suffer from problems such as duplication, overlap or unilateralism. Accordingly, institutional reforms often seek to foster cooperation – or shared-rule – in order to reduce such pathologies. Vice versa, federal systems that lean towards shared-rule, like Germany and Switzerland, are more prone to generate democratic deficits, inefficiencies or even deadlock. Institutional reforms then aim for strengthening self-rule through dis-entanglement.

The institutional architecture in federal systems is more than just an allocation of competences, featuring also fiscal federalism, a system of intergovernmental relations and a second chamber. Reform proponents can, therefore, envisage different elements, with important consequences for the nature of reform. Federal reforms vary in terms of their scope (focused: Australia and Canada, or encompassing: Germany and Switzerland) and mode (non-constitutional: Australia and Canada, or constitutional: Germany and Switzerland).

Finally, a broadly conceived comparison of the politics of federal reform demonstrates important differences concerning the sustainability – or impact – of reforms. Despite their formal enactment, reforms are often vulnerable as opponents attempt to roll back or deliberately ignore institutional change. Insights from comparing the four federations basically suggest that a combination of institutional mechanisms and positive feedback effects are crucial to prevent reforms from fizzling out. While the former shield institutional reform from efforts to reverse outcomes after the reform had been enacted, the latter fosters post-enactment commitment through a majority of actors. Even more promising is a proactively structured reform process itself, as it was the case in Switzerland. This requires separating sequences of

problem-solving and redistributive bargaining to facilitate adequate solutions and to minimize resistance before the reform becomes ratified.

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