



# FEDERAL DEMOCRACY AND THE CHALLENGES OF POLITICAL POLARIZATION

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# 1. FEDERAL DEMOCRACIES BETWEEN PROMISES AND PITFALLS

The second half of the 20<sup>th</sup> century saw an expansion of democracy and federalism around the world. Scholars observed a second and third wave of democratization after the Second World War and the collapse of communist regimes.<sup>1</sup> Some expected a fourth wave following the Arab spring<sup>2</sup>, driven in part by the digitalization of communication. Indeed, more and more people have demanded freedom, human rights and participation in politics. However, democratization has also revealed deep divides in societies, and rising conflicts are threatening democracy. Against this background, federalism has been expected to stabilize government in divided societies and to accommodate claims of national minorities. Democratization has fostered federalization as it has allowed citizens in formerly dominated communities to gain greater autonomy. In turn, federalism has supported democracy by constraining the concentration of power within governments. Thus, federalism and democracy promise to advance and stabilize each other, and federal democracy seems an ideal political system in a liberal and pluralist society.<sup>3</sup>

Instead of witnessing a worldwide “federalist revolution”<sup>4</sup> and continued democratization, we have reasons to be more skeptical about the future of federalism and democracy. There is no doubt that organizing government according to the principle of federalism is encouraged by the process of “glocalization” -- that is the greater mobility of people, goods and capital and the increasing scope of social, ecological and security problems, as well as by the growing relevance of local and regional contexts for economic, social and cultural development. There is also no doubt that only democracy guarantees that political power is exercised in accordance with the will of the people. However, federalism has not fulfilled all its promises, and a number of federations have failed.<sup>5</sup> Likewise, democracy seems in decay.<sup>6</sup>

Many developments and conditions can cause a crisis or failure of democracy and federalism. Political polarization is certainly among the most significant symptoms. In a well-functioning democracy, decision-making procedures and the execution of power are accepted by an overwhelming majority, even those who voted for opposition parties or do not agree with certain decisions. Legislative acts and the use of authority to implement them generally do not lead to arbitrary discrimination or domination, and those responsible for them justify their actions in public discourse.<sup>7</sup> Federalism can be stabilized if conflicts over how power and resources are divided are resolved by agreements among federal and sub-federal governments or settled by a constitutional court, and if the external effects of the execution of powers that cross jurisdictional boundaries or fiscal disparities are coped with in a fair manner.<sup>8</sup> Political polarization indicates that these prerequisites no longer apply, and it threatens to undermine the basic consensus on norms, rules and procedures of democracy and federalism.

Political polarization is part of a wider “social phenomenon in which a population divides into belligerent groups with rigidly opposed beliefs and identities that inhibit cooperation and undermine pursuit of a common good”.<sup>9</sup> Under these conditions, politics tends toward a confrontation of extreme

positions taken by governments, parties, interest groups, the media or protest movements. Federal democracies are currently challenged by two types of political polarization, some of which have their roots in a long history. One is caused by the cleavage between distinct communities in a society. The other concerns party politics. The first has been discussed in the literature on federalism, the second in studies on democracy. In federal democracies, either type of polarization has implications for the operation of the political system.

The interplay and tensions between politics within democratic governments and in the federal system can reinforce polarization. Hence, to cope with polarized conflicts or to avoid them, the linkage of federal and democratic institutions and processes matters a good deal. In the following section, this argument will be elaborated. First, federal democracy will be explained as a political system combining divergent institutions, incongruent spaces of political action and processes of politics and policymaking interfering with each other. Inherent in this combination is the tension between the autonomy of democratic governments and intergovernmental coordination addressed to interdependent problems or the external effects of policies. The ensuing section explains the causes and consequences of polarization in federal democracies. The final section outlines how the risk of failure of federal democracies can be reduced.

## 2. COMPLEMENTARY FUNCTIONS, DIVERGENT INSTITUTIONS AND INHERENT TENSIONS

Popular understandings of federalism and democracy provide ample reasons to advocate federal democracy as a political system. However, they often emphasize values and make the case for an ideal that does not meet the complexity of real politics. For instance, it is claimed that federalism should limit governmental power in order to protect the liberty of citizens and effectively govern a society and/or to balance unity and diversity. However, such descriptions of the principle of federalism do not tell us anything about how these contradicting requirements should be fulfilled without creating deadlocks and causing frustration. Democracy is praised for guaranteeing liberty, providing opportunities to participate in politics and allowing citizens to elect office-holders. Yet this concept does not explain how decisions, which as usual in politics are not beneficial for all, can be legitimized; nor does it point to a mechanism that encourages elected office-holders to pursue the public interest instead of their private interests.

Defining federalism and democracy in a more realistic perspective without neglecting their purpose and without reducing the standard of normative evaluation leads us to concepts that appear to be incompatible. A realistic definition needs to outline rules and procedures that guarantee that values such as liberty, unity and diversity, equality and governance according to the will of people are achievable under the real conditions of contemporary political systems. These conditions include a society, consisting of diverse individuals, groups (communities) and organizations. Social interactions are structured by functional or territorial differentiation, but at the same time reveal interdependence, dynamics and conflicts, and entail uncertainties and unexpected challenges. Governments reflect the complexity of society in an organization, which divides interdependent functions and powers and is integrated by patterns of governance and processes of policymaking. Taking into account these real conditions does not imply that the standard of normative evaluation of federalism and democracy is downgraded. This analytical perspective nevertheless reveals that rules and processes designed to put into practice the principles of democracy and federalism do not harmonize in all respects. On the contrary, federal democracies generate tensions by combining divergent institutions and rules.

Under the conditions of modern societies, democracy means governance by representatives who are accountable to citizens. Indeed, accountability is a core mechanism of democratic governance. It makes sure that actors who govern for the people execute their power in accordance with liberty, equality and the public interest. This mechanism is based on free and meaningful elections among candidates standing for competing parties with alternative public policy programs. But more important are the limits on power delegation provided by regular elections. They compel holders of political authority to justify their policies and allow citizens to hold their representatives accountable after evaluating policy performance through public deliberation. Governance by representatives, party competition, periodic elections and public deliberation constitute the essential procedures of democracy. Other institutions and processes, such as those ensuring the rule of law, free media and

various forms of citizen participation, establish necessary conditions for the appropriate operation of the democratic process.<sup>10</sup>

Two further conditions for democracy are particularly relevant in the context of federal systems. One is the “congruence of authority patterns”<sup>11</sup>, that is the scope of authority of government and the authority resting in the community of citizens.<sup>12</sup> Equality of participation in political processes in which citizens select and hold office-holders to account is only guaranteed if all who are subject to power and affected by decisions are entitled to participate in elections and public deliberation. Therefore, the scope of powers should be confined to a jurisdiction that includes “the people” for which representatives govern. This principle of the congruence of power and people is difficult to accomplish if governments fulfil multiple purposes affecting different social communities. However, territorial borders prevent the domination of people excluded from democratic processes and limit the power of a government to a space where affected citizens reside. Hence, as a form of government, democracy has to be organized in a territory.

The second condition of democracy is the autonomy of governments, in the sense of self-rule. Citizens can hold their representatives accountable only for decisions for which the representatives are responsible. When justifying their policies or decisions, elected office-holders have to claim that they have autonomously decided in this or that way. Of course, governments often shift the blame to other governments or private actors when they explain why problems exist or persist. To vindicate failure, they might also point out external constraints, deficits in fiscal capacities or lack of knowledge. This does not prevent them from being responsible for their decisions or non-decisions, although it may influence the responses of opposition parties or voters. If democracy means that people govern their affairs in their own right, governments acting for them need be autonomous.

A federal constitution divides powers between governments within a political system. In principle, the federal government should be responsible for general issues for the whole federation, whereas the governments of member states should deal with specific issues.<sup>13</sup> This division of tasks increases the probability that citizens affected by a government’s decision can also participate in overseeing the government; or, to put it another way, that the congruence principle applies. People in smaller territories can decide on regional or local matters specific to their community, whereas decisions that concern all the people of the federation remain with the federal government. In terms of the economic theory of federalism: given that the need for public services and the costs to provide them vary from region to region, government decisions reflect people’s preferences more closely in a federation than in a unitary system.

Although public policies can be categorized as more local, more regional or more national, most of them have impacts on more than one level or external effects outside the jurisdictions where they are made. Therefore, a polity designed according to the principle of federalism organizes the diverse but interdependent tasks of governments. Although federalism is characterized by a division of powers, its essential aim is to coordinate the policies of different governments. Coordination can occur in various ways, depending on how powers are allocated to the federal, regional and local levels, including whether

they are shared among governments or separated. In contemporary federations, public policies regularly span the boundaries of the different jurisdictions and orders of government.

Therefore, autonomy is not a characteristic feature of federal systems and is not directly implied by the principle of federalism. On the contrary, federalism aims at the “coming together” or “holding together” of governments and communities of citizens.<sup>14</sup> In either case, this entails coordinating policymaking by cooperation or mutual adjustment within a constitutional framework that defines powers and establishes procedures to solve conflicts. In a federal democracy, the challenge is to coordinate the policies of governments while preserving their autonomy.

Autonomy and managing interdependence are different, though complementary, functions of a federal democracy. They are fulfilled through various institutions that establish distinct processes of politics and policymaking. In democracy, these processes are organized in a territory; federalism links governments of different territories. Policies for which a democratic government is solely responsible, are executed in relations between them in a federal system. Democratic politics includes various actors in the executive and parliamentary arenas; federalism functions through intergovernmental processes predominated by executives. In a democracy, majority decisions are legitimized, whereas federalism aims at agreement or mutual adjustment. In brief: the boundaries, structures of authority, actor constellations and modes of policymaking differ in democracy and federalism. Their divergence is a source of conflicts on its own, and therefore, tensions are inherent in federal democracies.

These tensions form the background of the continuing debates about democratic deficits and the conflict between effectiveness and legitimacy in federations. It should to be noted, however, that no political system, at least none guaranteeing legitimate governance, and no institution, can avoid some kind of tensions. They materialize as an inevitable consequence of differentiation and integration. Although federal democracies are characterized by divergent institutions and connected processes producing conflicting effects, tensions per se are not the problem of federal democracies. Rather it is the way they are dealt with that affects policymaking and the effectiveness of governance, causes legitimacy deficits or even threatens the stability of the political system. Tensions drive politics and challenge actors to search for a balance of divergent interests.

The outcome of these processes and efforts depends on institutional constraints, the intensity of political conflicts and the strategies of political actors. By observing the resulting dynamics and practices, we can find out and explain, how federal democracies really work. If, however, one assumes that the complementarity of functions harmonizes processes in federalism and democracy, one would overlook the risks of policy failure, democratic deficits or imbalances. Likewise, reforms intended to isolate democratic and intergovernmental processes by a dual separation of powers cannot prevent tensions between democratic politics and intergovernmental relations and are likely to intensify conflicts. Such tensions can cause frictions within the political system, lead to polarization and threaten the stability of both federalism and democracy, as will be explained in the following section.

## 3. THE IMPACT OF POLARIZATION

Polarization is not a new phenomenon, but it has become more prevalent in western democracies during recent decades. It has been explained mostly by societal changes. Scholars have identified economic disparities, religious fundamentalism and communication via social media as the strongest drivers of confrontation in politics. They have paid less attention to institutional causes of polarization. Indeed, the effects of institutions on structuring conflicts and political behavior is not clear. In democracies, the party system reflects the degree of polarization, but it is a matter of dispute whether or to what extent the former is shaped by electoral systems or societal cleavages. The division of powers in a federation is continuously contested by federal and member-state governments, but it helps protect minorities and accommodate distinct societies. These ambivalences are reflected in scholarly discussions about the particular conditions that make a federal democracy succeed or fail.<sup>15</sup> In this context, there is hardly any doubt that mismanagement of the inevitable tensions inherent in federal democracies are a potential source of polarization.

### 3.1 PARTY POLARIZATION AND DIVISIONS IN INTERGOVERNMENTAL POLITICS

Party competition is the essence of democracy. Polarization between two party camps affects the quality of public debates and risks alienating citizens from their representatives in parliament and government. Yet it does not necessarily undermine the effectiveness of governance, provided decisions are made by a majority vote – the decision rule that generally applies in legislatures. Parliamentary governments, where the executive can rely on a majority, can make policies despite confrontation with opposition parties. However, in parliaments elected according to a proportional system, antagonisms between parties can make the formation of a coalition government difficult. In presidential systems, divided government can run into deadlocks if party politics is polarized, which may lead to the president making excessive use of executive powers.

In federal democracies, party polarization extends to intergovernmental relations and thus can have serious consequences on the effectiveness and legitimacy of governance. In the 1970s, Germany went through such a period when the opposition party in parliament threatened to block federal legislation in the second chamber, the *Bundesrat*, where it controlled a majority of the votes. The intensified tension between party competition and power sharing between federal and *Länder* governments over legislation and executive tasks requiring joint decisions obstructed reforms proposed by the incumbent coalition government.<sup>16</sup> Although deadlock did not result, party confrontation undermined the effectiveness of federal-*Länder* cooperation<sup>17</sup> and gave rise to informal negotiations among executives on federal legislation<sup>18</sup>.

The United States, with its dualist party system, has seen rising polarization since the 1990s. During periods of divided government, the risk of policy deadlocks increased due to presidential vetoes against legislation passed by Congress, Senate vetoes against bills passed by the House of Representatives or the denial of budgetary appropriations by Congress. Concurrent powers provided opportunities to

circumvent policy gridlock at the federal level, because the state governments could step in and make policies on their own. States could also respond to policy changes by the President, as some of them did after President Trump revised the climate policy of his predecessor Obama. However, polarization also divided state representatives in intergovernmental negotiations.<sup>19</sup> In addition, state governments led by the Republican party undermined the implementation of the health care reform initiated by the Obama administration.<sup>20</sup> Through regulation, waivers from regulation and federal grants, the federal executive privileged state governments led by Republicans -- a strategy that only intensified party polarization.

As mentioned, the division of power between the federal and regional or local governments is a permanent source of conflicts. In principle, disputes about which level of government should be responsible can be resolved by intergovernmental agreements or court decisions. The former often leads to compromises on power sharing, while the latter specifies the interpretation of constitutional law. Party polarization can intensify this conflict.

The distribution of power has consequences for how a task is accomplished and affects the substance of a policy. Therefore, political aims determine whether a power should be centralized or decentralized, or executed by shared rule or self-rule. Welfare programs intended to provide an equal minimal standard of living for all citizens require centralized policies. A social democratic party will therefore tend to demand centralization of the relevant responsibilities. In contrast, a liberal conception of federalism favours decentralized taxation and public services, combined with uniform regulation of a free market economy by the central government. Social democrats prefer shared rule, in contrast to neo-liberals who advocate self-rule.<sup>21</sup>

Political polarization within a federal democracy can thwart or complicate both democratic decisions and intergovernmental agreements. Polarizing parties tend to raise fundamental issues and may define policy conflicts as matters of constitutional law. Opposition parties may use this strategy to prevent a majority government from accomplishing its agenda. In federations, they can claim that a government exceeds its powers and call the constitutional court or require an amendment of the constitution. Neither way promises to moderate conflicts. Court decisions can intensify a confrontation among parties and lead to a contestation of the existing federal constitution, as we can observe in Spain<sup>22</sup>. Under the condition of political polarization, a reform of the federal system is likely to fail, as happened in Austria in 2005<sup>23</sup>.

### 3.2 REGIONALISM AND MINORITY NATIONALISM

Federalism can also become a source of polarization which, via a change in the party system, can affect democratic politics. This occurs when the usual conflicts between federal and regional governments, such as over which government is responsible for a policy or bears the costs of joint tasks, turn into conflicts about values, rights or identities. Value conflicts often concern the religious or cultural orientations of communities, some of which may constitute a minority nation in a part of the country that is dominated by the majority nation. Likewise, rights of communities can be a matter of dispute in a federal system -- for instance, the right to participate in political processes and public deliberation on an equal basis, including the right to communicate in a community's language. Particular communities

can also demand the right to participate in the adoption of federal legislation or to make laws on their own.<sup>24</sup> In this context, antagonistic claims, even when justified by substantive arguments, are likely to polarize politics.

This kind of polarization directly concerns the federal system, that is the relations between the federal government and particular member states or minority communities seeking the status of a self-governing nation. Such conflicts do not necessarily lead to deadlock in policymaking. Representatives of regions often introduce values, rights and identities as reasons to endorse their legitimate interests in federal systems concerning power or fiscal resources. Democracy allows the expression of particular values and claims, and the division of power in a federal system can be revised in order to support the claims of regional or minority communities.

However, identity claims and calls for the protection of values or rights can mobilize nationalist movements and give rise to regionalist parties.<sup>25</sup> Many federal systems have gone through periods of polarization of territorial politics, some of which led to violence or even to the break-up of the country. In other cases, the federal government responded with repression and suspended or abolished democracy. Even where the federal government and regional governments have found a *modus vivendi*, which is usually achieved by enhancing regional authority,<sup>26</sup> polarization caused by regional nationalism may continue to menace the stability of a federation.<sup>27</sup>

More often than not, communities mobilize against the federal government because they feel disadvantaged in public policies of the central government or in interregional competition for investments and the distributive impacts of market processes. The regionalism of the disadvantaged contrasts with the regionalism of prosperous regions, where the wealthy and middle-income groups often argue against redistributive effects of federal policies. These interest-related complaints overlap with social-democratic or neo-liberal ideologies and the related concepts of federalism. However, they can also be justified by historical legacies. Due to the path dependence of economic development, disadvantages may be traced back to discrimination, repression or exclusion of particular communities in the past. These grievances often result from the politics of autocratic central governments and may have come to the fore during the process of democratization.

However, even under democratic governments that emerged in former colonies, minority communities often suffered from repression, if not expulsion, or racist discrimination. Federalism provided ways to mitigate such conflict by granting communities rights of self-rule in a territory, although in the case of Indigenous communities this never compensated for the loss of land and cultural practices. However, federal structures also sometimes contributed to the preservation of discrimination. Civil rights legislation and policies to compensate injustice against Indigenous peoples or to address their land claims sometimes met with resistance by the governments of constituent states and thus led to division in federations.

## 4. COPING WITH TENSIONS: INSTITUTIONAL CONDITIONS, PARTY SYSTEMS AND BALANCING DEMOCRACY AND FEDERALISM

Polarization is not inherent in federal democracies, but the tensions between federalism and democracy can intensify conflicts and turn policy disputes into matters of constitutional politics. Furthermore, tensions are difficult to manage in a federal democracy if polarization prevents compromises and flexible variations of patterns of interaction. For these reasons, coping with tensions is a fundamental prerequisite both for making federal democracy work and for safeguarding the multidimensional balance of power.

Comparative research has revealed that institutions and patterns of interactions can widen or constrain actors' room to manoeuvre to cope with tensions.<sup>28</sup> In this context, structures and processes linking federalism and democracy play a most important role.

### 4.1 LINKING FEDERALISM AND DEMOCRACY

To discern different types of linkages, the concept of coupling has proved appropriate.<sup>29</sup> It describes how elements in a social or technical system are linked yet preserve some degree of autonomy. In federal democracies, coupling covers the extent to which politics within democratic institutions and processes determines policy coordination between levels of government or the other way around. For instance, federalism and democracy are tightly coupled if constitutional rules require joint decisions among governments and if party politics not only strictly define the aims and room to negotiate, but also shape the behavior of executives in intergovernmental relations. Under these conditions, coordination processes in the federal system generally proceed as bargaining, if they do not fail due to confrontation. Likewise, party competition can make policymakers focus on domestic politics and neglect the external effects of their policies on other jurisdictions.

Tight coupling constrains democratic self-rule and accountability if executive politics predominate in decisions within governments, if parliaments cannot discuss or oversee intergovernmental agreements or if interjurisdictional competition among governments compels them to adopt a fiscal policy determined by market forces. Tight coupling implies that federal democracy is “out of balance”<sup>30</sup>. It can be dominated either by party competition and the power of veto players in parliaments, or executive bargaining, intergovernmental competition or mutual adjustment in relations between federal, regional and local governments. Imbalance escalates if processes within democratic governments and intergovernmental processes paralyze each other.

Tightly coupled structures typically exist in parliamentary democracies, where the head of a government is elected by the parliament and the political executive depends on the support of a majority in parliament. While the executive usually can rely on their party or a coalition of parties holding

the majority of votes, its policy is scrutinized by opposition groups. In majority democracies, the power of the executive is stronger than in so called consensus democracies as the head of government controls the majority group, which is normally inclined to accept policies initiated by the cabinet. Nonetheless, competition with the opposition for public support induces the executive and majority party to govern for the people of the particular jurisdiction. By comparison, the influence of parties in parliament on the executive is stronger if governments are formed by coalitions of parties. In majority democracies, single-party governments afford the executive more leeway, even if the party in parliament has no majority and the executive has to seek issue-specific support for a policy by other parties in parliament.

Institutions and processes of federalism intensify tight coupling if governments share powers and are compelled to coordinate their policy through intergovernmental agreements. Such “joint decisions” of federal and member-state governments can be required by constitutional or legal rules, by accepted norms of cooperation recognized as constitutional conventions or by the inevitable mutual dependence of governments.<sup>31</sup> In Germany, constitutional rules provide for the participation of the *Länder* governments in federal legislation via the *Bundesrat*. They also oblige the federal and *Länder* governments to cooperate on certain matters of public administration, the so-called “joint tasks.” In most federations, constitutional amendments, at least those concerning federalism, have to be endorsed by intergovernmental agreements or ratified by a certain number of parliaments of the federation and member states. Fiscal equalization exemplifies joint-decision making. Rules to distribute revenues are passed as a federal law, but the legislation often results from intergovernmental negotiations that usually aim at unanimous agreement.

German federalism is characterized by processes of joint-decision making which, if not due to constitutional law, are based on constitutional conventions. Unanimity is the acknowledged decision rule in intergovernmental negotiations even in cases where decisions could be made by a qualified majority. The German constitution combines this kind of cooperative federalism with parliamentary systems at the federal and *Länder* level. Parliaments are elected according to proportional representation, and elections usually result in coalition governments. As Gerhard Lehbruch<sup>32</sup> and Fritz Scharpf<sup>33</sup> have shown in their studies, this kind of federalism can be threatened by deadlock during periods of strong party polarization, as was the case during the 1970s. Since then, German federalism has been continuously debated and reformed. As reforms required constitutional amendments and therefore joint decisions of the federal parliament and a qualified majority of *Länder* votes in the *Bundesrat*, none of them led to substantial changes of the federal system. Stability has been achieved by changed practices by which federal and *Länder* governments worked around the constraints of a tightly coupled federal democracy.<sup>34</sup>

In view of the problems that joint-decision making causes for governments subject to the rules of parliamentary democracy, separation of powers seems to be a better option. Scholars have often considered the U.S. as the showcase for this type of federal democracy. Separation of power does indeed avoid the tight coupling of institutions and processes of democracy and federalism. However, it also separates democracy from intergovernmental policymaking. Elected political executives are accountable to citizens, not to parliaments, but citizens lack the instruments to scrutinize and control executive policymaking. Elections have no immediate, and at best a weak, impact on policymaking on

specific issues. For this reason, the U.S. federal system is dominated by the executive, and probably more so than in parliamentary systems.<sup>35</sup> As the division of powers does not rule out overlapping responsibilities or policy interdependence between levels of governments, intergovernmental policymaking cannot be avoided.

If combined with decentralization, the separation of power can reduce the need for coordination between the federal and state governments, with policies being coordinated by interjurisdictional competition that compels or induces member state governments to adjust their policies to those of other governments. As can be observed in the U.S., governments can either compete for attracting mobile tax-payers or engage in performance contests in order to gain loyalty and support of their citizens. Tax competition compels governments to participate in a market-like process that is determined by economic interests, those of tax-payers and those of the executive; the democratic process within governments is strongly focused on these interests. The second mode of “yardstick” competition is driven by a comparative evaluation in search of best practices in selected policy fields, which motivates governments to solve problems or provide services of high quality, in line with the expectations of legislatures. The problem is, that without institutionalized patterns of intergovernmental coordination, the first mode of competition which limits autonomy of democratic government trumps the second one.

The deficits of U.S. federalism and democracy are well known. As the federal government does not need the assent of state governments to pass laws, the latter can make their voice heard in federal politics only through intergovernmental lobbying. The U.S. Constitution intends that state and local interests be expressed by members of Congress. As long as parties were organized at the state level, this was indeed the case, more so in the House of Representatives than in the Senate, which since 1913 has been directly elected. The “nationalization” of party politics dissociated the federal and state legislatures.

Congress has never served as a venue for managing interdependence between levels of government. Instead, informal intergovernmental negotiations in the implementation of regulative and distributive federal policies and mutual adjustment by competition among states emerged. Coordination in policy sectors is dominated by “technocrats”, as Samuel Beer<sup>36</sup> labelled officials who are not accountable to a legislature representing the people. Rather, they are accountable to the directly elected president of the U.S. or the governor of their state. These political leaders represent territorial interests as “topocrats”<sup>37</sup>, but mostly act for their political parties. In consequence, the polarization of party politics obstructs intergovernmental relations and divides state governments in their efforts to promote their interests against the federal government. Under these conditions, intergovernmental agreements cannot guarantee effective coordination of policies and managing interdependence, and competition and confrontation undermine the balance of power within the American federal democracy.<sup>38</sup>

Germany and the U.S. represent contrasting cases of a tightly coupled and a disconnected federal democracy. Other federations have loosely coupled structures. For example, the highly decentralized Swiss federation has developed unique processes designed to find a consensus in the shadow of majority decisions by referendum. Parties in parliaments, federal and cantonal executives and

representative of civil society organizations negotiate agreements in order to prevent or, in cases of constitutional amendments, to influence the outcome of a popular vote<sup>39</sup>, but none is compelled to acquiesce. Cantons voluntarily engage in horizontal cooperation to deal with external effects of public policies or private investments and to defend their powers against centralization. But in the last resort, parliaments and citizens decide.

Loosely coupled structures can also emerge in federations with parliamentary governments and even more so in those with “semi-parliamentary governments”<sup>40</sup>. In Australia, majority and opposition parties (including some minor parties represented in the Senate) are motivated to negotiate agreements so that bills can pass both houses of parliament. Intergovernmental cooperation evolved in Australia due to fiscal imbalance and the decentralization of public services. Although not established in the constitution, cooperation seems to require joint decisions, and policymaking is prone to deadlocks due to redistributive conflicts among governments. In reality, conflicts can be managed by pragmatic interplay between legislative and intergovernmental policy making,<sup>41</sup> and pragmatic politics in executive federalism has moderated party polarization despite a de facto two-party system.

None of the different patterns of democracy and federalism is immune from the risk of getting out of balance. Imbalance can result from the domination of executives coordinating policies through intergovernmental relations, the insistence of parliaments or majority parties to maintain their autonomy against interjurisdictional coordination or from frictions caused by a mutual interference of executive federalism and party confrontation. All other conditions being equal, executive or party domination and frictions are more likely if structures and processes in federalism and democracy are tightly interconnected or if powers are separated between executives and parliaments or federal and member state governments. Loosely coupled system cannot preclude imbalances, but their inherent flexibility makes them resilient because actors find various ways to restore balance or prevent vicious cycles of domination and frictions. Federalism and democracy are loosely coupled if they are linked by processes rather than by binding rules. These processes evolve in the context of institutions or constitutional rules that provide more or less constraining or enabling conditions. In this context, Alfred Stepan has distinguished “demos-enabling” and “demos-constraining” types of federalism.<sup>42</sup> The former advances the autonomy of member state governments; the latter reinforces inter-institutional and intergovernmental checks and balance. However, in all these different patterns of federal democracy, modes of interaction and processes can be modified. Therefore, even in cases of tight coupling of federalism and democracy, executive domination can be attenuated or gridlocks in policymaking dissolved. Usually, appropriate changes of processes do not require constitutional amendment. Actors nevertheless have to understand the tensions within federal democracies, their causes and potential effects.

## 4.2 PARLIAMENTARY OVERSIGHT OF EXECUTIVE GOVERNANCE: CONDITIONAL AUTONOMY

It goes without saying that intergovernmental coordination of policies often strengthens the executive or causes accountability deficits. In response to this imbalance, there are often calls to empower parliaments or to enable citizens to participate in intergovernmental processes or express

their voice through referendums. These proposals seem plausible as they promise better oversight over executive policymaking and greater autonomy for democratic governments. Yet they do not reduce tensions within intergovernmental politics and can even thwart effective coordination.

Beyond the traditional involvement of organized stakeholders, citizen participation in intergovernmental policymaking can be realized through round tables and processes of deliberative democracy such as citizens panels. The effective influence of citizens in these processes is, however, limited, in contrast to private interest intermediation, which privileges well-organized and powerful groups.<sup>43</sup>

Nonetheless, citizen or stakeholder participation can complement representative democracy. Participants do not necessarily speak for the people of a jurisdiction and instead focus on policy-specific issues. Participation is focused on policies, not territories. It can also help create additional linkages between governments and thus complement executive power. By improving information, by introducing new ideas or by reducing a bias towards organized interests, citizen participation can contribute to improve the quality of decisions. Irrespective of the mode of selection or the purposes of their inclusion, participants in intergovernmental policymaking are not accountable to the people or their representatives in a parliament. The responsibility for binding decisions remains with elected representatives. Processes of interest intermediation and consultative bodies that include experts or citizens can nevertheless serve as channels of communication and policy deliberation across the boundaries of jurisdictions. They can constitute “weak ties” between governments in a loosely coupled federal democracy.

In order to counter executive domination in a federal system, strengthening the power of parliaments seems to be the appropriate way to restore a balance, not the least as the democratic deficit caused by executive federalism results from insufficient parliamentary oversight in the first place. In consequence, democratic governments get more clout within the federal system. Yet this strategy comes with high costs for effective governance. In intergovernmental negotiations, agreements are difficult to achieve if representatives of the executive are tied to positions set by their parliaments. Party competition is also more likely to influence negotiations and may lead to confrontation between executives. As a consequence, interdependence between policies cutting across boundaries of jurisdictions cannot be coped with by coordination and instead cause action and reaction. This mode of uncoordinated mutual adjustment favors powerful governments capable to implement their policy and exploit the first mover advantage. It can also provoke a tit-for-tat behavior of governments, the outcome of which is difficult to control.

One might conclude that the autonomy of democratic governments needs to be limited in a federal system and that federalism is necessarily “demos constraining” due to the need for intergovernmental coordination. Yet balancing autonomy and coordination does not entail such a consequence. Instead, federalism requires that autonomous democratic governments take into account the autonomy of other governments. This “conditional autonomy” allows each government to act within its jurisdiction provided it takes into account the right of other governments also to govern autonomously. Put another way, the autonomy of democratic governing is not necessarily constrained by institutions of federalism,

but the federal principle involves that government decisions reflect the federal context of divided and interdependent powers and take into consideration the autonomy, responsibilities and public interest of other governments.

Executives acting for a government are induced to take into account other governments by intergovernmental negotiations or processes encouraging mutual recognition. In contrast, the policy orientations of members of parliament are determined by party competition, coalition politics and interest intermediation. Polarization of politics reinforces their focus on “domestic” issues and interests. If members of parliament participate in arenas linking governments their views might change and polarization may be moderated. Integrated party systems and inter-parliamentary relations can constitute such arenas.

Party systems organize basic political conflicts in a society, but they also adjust to institutions of government.<sup>44</sup> In federations, they can be territorially divided or integrated. Scholars have argued that integrated party systems help stabilize a federal system against over-centralization or disintegration.<sup>45</sup> They can also safeguard a federal democracy against domination, frictions or gridlock. If parties are active at different levels of a federation, if their state-wide organization is divided into regional and local divisions and if there is a continuous exchange between these divisions, they can serve as channels of communication between members of parliaments on intergovernmental issues. Through this communication, parliamentarians learn about the policy preferences prevailing in other governments and reflect them in their own preferences. Thus informed, they are more likely to support the executive in finding agreements or abstain from confrontation.

Communicative intergovernmental linkages can also be encouraged through interparliamentary relations. They can emerge informally through contacts between individual members of parliament or institutionalized -- for instance in the form of joint parliamentary committees or regular meetings of parliamentary committees or party groups<sup>46</sup>. The frequency of such meetings will be limited in practice, but institutionalized relations can still generate ongoing contacts through personal networks.

These intergovernmental linkages by citizen participation, communication between parties or among members of parliaments merely complement patterns of coordination among executives. Even interparliamentary institutions cannot claim authority for joint decisions as this would contradict the function of parliaments to autonomously make policies for their citizens. In federalism, the power to coordinate policymaking across jurisdictions, or what John Locke aptly called the “federative power”<sup>47</sup>, rests with the executive. Obviously, empowering parliaments vis-à-vis the executive can increase rather than reduce polarization. On the other hand, citizens participation in intergovernmental policymaking or communicative processes within integrated parties or inter-parliamentary relations depend on the commitment of actors and are at risk to dissolve if politics is polarized. Therefore, reforms of federal democracy are often overestimated. They alone cannot solve the dilemma between autonomy and interdependence or guarantee a balance within a federal democracy. More important are modes of governance in a federal system that preserve the autonomy of governments as much as possible without reducing the effectiveness of coordination.

### 4.3 DEMOCRACY-PRESERVING FEDERALISM

Ideally, government decisions that reflect the concerns of other governments would be sufficient to manage interdependence through processes of mutual adjustment. In reality this is not the case. First, democratic governments face a problem of information about external effects, particularly because party competition draws attention to the public interests defined within a particular jurisdiction – whether the whole country or a regional or local community. Second, decisions conforming to the principle of conditional autonomy do not harmonize policies. Consideration of other governments' preferences or policies does not preclude conflict; it only raises awareness of conflicts. Therefore, there is still a need for intergovernmental coordination in which executives play a leading role. While communicative processes linking parliaments or parties in a federal system support processes to cope with interdependence, intergovernmental coordination nevertheless can constrain the autonomy of democratic governments. However, patterns of coordination vary according to their constraining effects. Accordingly, federalism more or less preserves the democracy and autonomy of governments.

As outlined above, both power separation between levels and joint-decisions through intergovernmental accords tend to undermine the democratic accountability of executives. If powers are shared and executed in formal procedures, intergovernmental policymaking might be transparent, but parliaments have hardly any chance to intervene. If powers are separated, governments can decide autonomously, but in order to manage interdependence, executives engage in informal interactions that elude parliamentary scrutiny and control. Alternatively, governments can act unilaterally, thus compelling other governments to adjust their policies to external effects. Unilateralism means domination, and if contested it tends to increase polarization, which in turn can destabilize a federal system.

Democracy-preserving forms of intergovernmental coordination in federal systems avoid domination within and among governments. They encourage the balancing of coordination and government autonomy. Balancing does not, however, constitute an equilibrium. Rather, it designates a process that fluctuates between different options, a process in which unjustified domination can occur but can be checked. This process materializes in a sequence of politics and policymaking in different “arenas,” that is actor constellations and interactions that evolve in the context of institutions. Patterns of interactions and modes of coordination can vary during this process, which may also allow for feedback effects between the different arenas. It ultimately leads to an outcome in the form of a binding decision, but this decision neither reflects nor reinforces a power structure.

There are good reasons to coordinate policies across levels of government by negotiations. In order to make these negotiations transparent for parliaments and citizens, some kind of institutionalization is appropriate. Institutional rules can provide for joint decisions, and consensus can discourage the dominance of one government over another. But in order to prevent executive dominance and to allow autonomous decisions of governments in democratic processes, joint decisions should include the right of individual governments to opt out from a coordinated policy. This may be required by its parliaments or an obligation to hold a referendum in the jurisdiction concerned. In consequence, the process of joint decision-making ends with an accord that limits coordination to those jurisdictions involved in the

agreement. A government that does not participate has to cope with the consequences and may adjust its policy to the joint decision. But this adjustment is voluntary and results from an autonomous decision.

By introducing this type of governance in a heterogeneous federation, Canadian federal and provincial governments successfully moderated the polarization that, during the 1980s and 1990s, almost led to Quebec's secession. Tensions between the principle of parliamentary sovereignty and intergovernmental relations explain the volatility of governance between unilateralism and intergovernmentalism in Canada.<sup>48</sup> Tensions intensified when provinces with 'distinct societies' (Quebec) or specific economic interests (Alberta) sought greater autonomy within the federation. As one way of achieving this, governments agreed on the right of individual provinces to opt out from intergovernmental agreements, usually with a proviso that their own policies or programs be consistent with the goals or objectives established in an intergovernmental agreement.

In the European Union, the need to settle disagreements between member states has led to a differentiated integration, either in the form of enhanced cooperation of a group of member states that allows other states to opt in, or through opt-outs of individual member states from European law or intergovernmental agreements.<sup>49</sup> The first approach, has also been used in horizontal federalism in Switzerland.<sup>50</sup> It starts with an agreement reached by a group of governments. This group is open to incremental enlargement by the voluntary entry of other governments. This Swiss practice of joint-decision making with a right to opt out is initiated by the federal government for policies that in principle affect all the cantons, but in different ways or to different degrees. Canton governments can leave the agreement if this is rejected by a parliamentary decision or a referendum.

Certainly, these modes of coordination are not commendable for all policies. Opting out can constitute an arbitrary action on the part of a government that refuses to make the necessary contributions to solving problems within the federation. Moreover, it comes with a risk that the territorial differentiation of policy coordination intensifies polarization. Both consequences are avoided by another democracy-preserving process of coordination: It is based on functional differentiation between levels of governments, which is typical of modern federations. Regardless of the original division of powers, the evolution of these federations tends toward centralizing legislative functions and decentralising implementation, or, to put it in another way, centralizing strategic and decentralizing operational tasks. These functions are interdependent per se, and consequently the need for coordination between levels of governments increases, but such coordination can help preserve the autonomy of member state governments.

In this context, one pattern of coordination is exemplified by a common practice in American federalism. In this case, the federal government has extended its legislative and spending powers to manage interdependence through central regulation, but it often waives implementation on the part of individual states.<sup>51</sup> "Waivers" can be justified to respond to the differentiated preferences of governments expressed in democratic processes or to stimulate policy innovations that can be transferred later into intergovernmental agreements if they prove successful and are widely accepted.

However, waivers can also be used to penalize state governments for not complying with federal policies. This kind of a “punitive federalism”<sup>52</sup> is likely to occur in polarized federal democracies.

The second mode of linking strategic and operational functions aims at “productive experimentation”<sup>53</sup>. Federal governments can use contests for best practices (“yardstick competition”<sup>54</sup>) based on benchmarking<sup>55</sup> to coordinate decentralized policies across jurisdictions. This process is initiated by the federal government or through intergovernmental agreements that define standards for policies. Comparative evaluations and the “blaming and shaming” of governments that deviate from standards should stimulate discussions in parliaments and the public. It should also motivate governments to consider external effects in policymaking and thus encourage a conditional use of autonomy.<sup>56</sup> However, if used as a mechanism to control and direct decentralized policies towards compliance with central decisions, yardstick competition can turn into technocratic governance. Therefore, it is important that this mode of coordination operates by information, public discourses and justifications of policies in a process linking democracy and intergovernmental relations, and not by central control.

It needs to be emphasized that, beyond territorial and functional differentiation, these modes of intergovernmental coordination are also characterized by temporal differentiation, as they proceed in sequences and ongoing adjustments of policies and power structures. Sequences and feedback are essential since no democracy-preserving pattern of coordinated governance is immune from domination by executives or experts. However, in contrast to joint-decision making, enforced adjustment in tax competition or regulation by federal law, these patterns preserve the autonomy of parliaments and democratic politics because they encourage the mobilization of countervailing power. If member state governments have the right to deviate from a central regulation, opt out from a joint decision or opt in later, parliaments have realistic opportunities to intervene, when they scrutinise executives and call them to account. Executive can avoid commitments in intergovernmental negotiations, when they cannot rely on a safe majority in parliament or on sufficient support by affected interest groups or the general public.

Waivers and yardstick competition can over time help harmonize policies by mutual adjustment, policy transfer and policy learning. The sequential process of balancing a federal democracy does not proceed in one direction, be it centralization or decentralization, separation or sharing of power, integration or disintegration, or autonomy or intergovernmental coordination. The process is driven by feedback effects, when democratic governance response to interdependence among jurisdiction of a federation and intergovernmental coordination is adjusted to decisions in democratic governments. Therefore, it is not the power of parliaments, citizen participation, institutionalization or the constitutional regulation of intergovernmental coordination that is essential for a federal democracy, but the combination of appropriate modes of governance that allow for balancing coordination in a federal system and democracy within governments.

This combination consists of primary modes that guarantee effectiveness of governance and secondary modes serving as safeguards for democracy. The sequential process starting from primary modes contributes to balancing the requirements of democracy and federalism (see Table).

**TABLE: DEMOCRACY-PRESERVING PATTERNS OF MULTILEVEL GOVERNANCE**

Patterns of intergovernmental coordination	Basic modes of coordination		
	Mutual adjustment	Negotiation	Central regulation
Joint decision making with exit option	◇	⊗	
Cooperation of the willing (with entry options)	◇	⊗	
Central regulation with right to deviate (waivers)	◇	◇	⊗
Governance by standards, benchmarking, yardstick competition	⊗	◇	◇

⊗: primary mode; ◇ secondary mode

Source: Adjusted and translated from Benz, note 28, 312.

#### 4.4 FISCAL BALANCE AND EQUALIZATION

Democracy presumes the equality of citizens, federalism the equality of member states (or *demoi*) within an overarching community (*demoi*). A republican concept of democracy suggests that equality should be complemented by distributive justice regarding the allocation of welfare. Accordingly, advanced democracies have established some kind of welfare regime to prevent unacceptable social disparities among citizens. In federal democracies, fiscal equalization aims at avoiding economic disparities among territories, which may result in unequal provision of public goods and services to citizens or a domination of wealthy over poor governments.

As a matter for the whole federation, the federal government should be responsible for fiscal equalization. However, its decisions on equalization make distinctions among member states and modify their fiscal resources. Whether the federal government provides grants for special purposes or general revenues, it affects the fiscal autonomy of member-state governments. The latter have an interest in participating in politics of fiscal equalization irrespective of a constitutional assignment of authority or institutional rules of policymaking. For good reasons, they are regularly included in intergovernmental negotiations, and federal governments usually try to reach an agreement with all member state governments.<sup>57</sup>

However, the particular institutional conditions of a federal democracy complicate joint decisions on fiscal redistribution. In intergovernmental negotiations, executives of member states advocate the interests of their government, although they may consider norms of distributive justice. By driving a hard bargain in the interest of their governments, they comply with one of the procedural norms of democratic legitimacy, namely to pursue the will of their people. Distributive bargaining can end in package deals or compromises, but these outcomes normally are insufficient for those suffering from fiscal imbalance.<sup>58</sup> Net payers can credibly threaten a decision on equalization with their veto. Opting-

out of individual governments from contributing to fiscal equalization is unacceptable. Yet if all governments have a voice in negotiations, a real consensus is difficult to achieve.

In reality, the existence of fiscal equalization in federal democracies proves that redistributive policies are feasible even under the difficult conditions of joint decision-making. Studies point out that three basic procedural rules are essential to achieve intergovernmental agreements that come close to distributive justice. First, decisions on principles justifying the distribution of revenues have to be determined in processes separated from the decisions that apply these principles to define the benefits or contributions of individual governments.<sup>59</sup> Second, decisions on the principles of distributive justice have to be taken behind a ‘veil of ignorance’ about the outcome of redistribution.<sup>60</sup> Third, the reallocation of burdens and benefits has to be regularly revised and adjusted to changing conditions affecting the revenues and expenditures of governments or the ideas of distributive justice. The iteration of negotiations increases the willingness of governments to reach a joint decision, and regular evaluation of fiscal equalization supports parliamentary scrutiny. The first procedural rule suggests a sequential organization of policymaking. A veil of ignorance is more difficult to implement, but its intent can be realized if an independent, impartial advisory council serves as an “external agenda setter, which has no stake of its own in a distributional conflict”.<sup>61</sup> Continuous monitoring of fiscal equalization and the evolution of disparities can be assigned to a special committee and regular meetings of federal and member state governments.

The case of fiscal equalization in Australia demonstrates how these rules can be applied in practice. A federal law established the basic principle for allocating the funds. The Commonwealth Grants Commission, a council of independent experts with public sector experience, transforms this principle into eligibility criteria and calculates the transfers to each state and territory. The Commission’s proposal has to be endorsed by the Council of Australian Governments, which was transformed into the National Cabinet in 2020. Finally, the distribution of funds is subject to a review every three years.<sup>62</sup> Despite frequent disputes, fiscal equalization is largely accepted and has significantly reduced fiscal imbalance in the Australian federation.

## 5. CONCLUSION

Federal democracies divide political power between levels of government; they divide democracy by constituting a *demos* and multiple *demoi*. Democratic governance means self-rule of a *demos* by elected office-holders who are accountable to citizens, along with congruence between the jurisdiction of a government and the *demos*. Autonomy and territorial boundaries of political authority are therefore essential prerequisites of democratic legitimacy. Federalism implies a particular division of powers, but effective governance in a federal system requires the coordinated execution of divided powers in order to fulfil complex tasks. Due to the territorial diversity and functional interdependence of societies, public tasks and policies span the levels and jurisdictions that structure a federal democracy. If democracy establishes self-rule, federalism functions through various patterns of intergovernmental politics in which executives deal with interdependence. Executives are legitimized by democratic processes, and in most cases their decisions resulting from intergovernmental negotiations, mutual adjustments or compliance with central regulation are endorsed by a majority in a parliament or of citizens within the jurisdiction. Yet the institutional divergence of federalism and democracy, the incongruent scopes of authority, and different structures and actor constellations are constant sources of tension.

Compared to unitary or autocratic governments, federal democracies significantly increase institutional complexity. While this improves opportunities to participate in politics and oversee governments as well as government responsiveness to social problems, it also raises the challenge of coping with tensions. To meet this challenge, actors have to balance the impacts of democratic politics on coordination in the federal system and the other way around. Balancing is possible if neither democratic politics nor intergovernmental coordination determine how a federal democracy is governed -- that is if institutions and processes in democratic governments and in the federal system are loosely coupled.

In times of political polarization, tensions can turn into frictions and arbitrary domination of a party, the executive or a government. Polarization in party politics arises in democratic processes, but it can translate into confrontation between executives in intergovernmental relations or into incompatible ideas of federalism that impede accepted interpretations or amendments of the constitution. Polarization resulting from regionalism or minority nationalism causes division within federalism, but it also affects democracy if identity politics prevails. Irrespective of its causes, polarization intensifies tensions between the processes of federalism and democracy. The processes of tightly coupled federal democracies are particular prone to this tendency and therefore may reinforce polarization. In any case, they provide unfavorable conditions for reducing polarization or coping with its consequences.

Managing tensions between democratic processes and politics in a federal system is essential to make a federal democracy work, in particular in times of political polarization. Democratic self-rule has to reflect the autonomy of other governments, which does not mean constraining the *demos* or *demoi* by central regulation or joint decisions but supporting mutual recognition of externalities and interdependence through channels of communication. Likewise, intergovernmental coordination has to be responsive and adaptable to the will of people as expressed through democratic processes. Modes

of governance that aim at communication and persuasion, voluntary agreements and differentiated and adjustable coordination constitute essential elements of a democracy-preserving federalism.

Overall, the challenge of governing in a federal democracy is to balance conditional autonomy and flexible coordination. Empowering parliaments or citizen participation can constitute elements in such a process of balancing, but more important are patterns of intergovernmental relations that prevent the domination of one government over another. The balancing of authority relations must be combined with transfers through fiscal equalization.

Comparative research on federal democracies has described various practical elements of democracy-preserving federalism, as well as processes to loosely connect democratic governments. We cannot derive a one-size-fits-all configuration from this research, one that could be recommended for all types of institution in federal democracies and adjusted to different political, economic and social conditions. But the search for practical solutions for specific federations has to start with an appropriate understanding of federal democracy, including its complexity, complications and dynamics.

# ENDNOTES

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- <sup>12</sup> Harry Eckstein (above n. 11, 283) has formulated this principle as follows: "High performance by a government requires congruence between its authority pattern and the authority patterns of other social units in the society." "Other social units" refers to collectivities, including the people as the community of equal citizens holding authority in elections. Congruence does not mean identity in the geometrical sense, but similarity. It has been disputed that democracy necessarily has to be organized in a territory (Anna Meine, 'Democracy and Territory: A Necessary Link?' 2021 24(6) *Critical Review of International Social and Political Philosophy* 797-820), as jurisdictions can also be defined in functional terms or by membership. However, if we consider the democratic legitimacy of governments, there is no alternative to a territorial organization. This implies, that the people are not identified as a "nation" or by ethnic or cultural traits, but by formal membership in a territorially organized community of citizens.
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