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**A Dynamic Federalism
Perspective on Multinational
Multi-tiered Systems**

Patricia Popelier

Full professor University of Antwerp
Senior Fellow University of Kent

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CENTRE D'ANALYSE POLITIQUE
CONSTITUTION FÉDÉRALISME

Université du Québec à Montréal
Département de science politique
3^e étage, bureau R-3490
315, rue Sainte-Catherine Est
Montréal (Québec) H2X 3X2
Canada

capcf.uqam.ca

Dépôt légal, 3^e trimestre de 2022
Bibliothèque nationale du Québec
Bibliothèque nationale du Canada
ISSN 2562-2226

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Constitution et fédéralisme, 2022.

Direction

Alain-G. Gagnon

Professeur titulaire, Département de science politique
Directeur, CAP-CF
Université du Québec à Montréal

Édition

Gustavo Gabriel Santafé

Assistant à la coordination, CAP-CF

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Introduction

In the 20th century, federalism became popular as a way of solving the then pressing problem of enlarging governments.¹ In the 21st century, disintegrative dynamics in multinational systems have become the bigger challenge. Traditional federal theory, modelled on old-school federations created by aggregation and homogeneous in its social structure – multi-cultural at most – is not able to provide answers to this bigger challenge. It is called ‘a misfit’ for contemporary multi-tiered systems,² because it does not deal with the burning questions of national pluralism.

As a result, a new theory is arising which introduces multinational federalism as a distinctive form of political association, next to territorial federalism.³ This, however, brings the risk that different branches of federalism research are being developed separately. The research question that guides this paper is therefore how a new theory of federalism can cover all types of multi-tiered systems and at the same time deal with the challenges of multinational systems in particular.

In this paper I will confirm that multinational federal systems have specific features and dynamics (section 1). At the same time, I will argue that they should not be examined under a separate doctrine, but that multinational and homogeneous multi-tiered systems should be brought under an umbrella theory (section 2). I will then introduce dynamic federalism as such an umbrella theory (section 3) and explain how it can be useful to the study of multinational systems in particular (section 4).

1. The specifics of multinational federal systems

This paper defines multinational systems as systems in which significant groups voice important political autonomy claims for territorial entities based on linguistic, religious, cultural or ethnic identities.⁴ In these systems, linguistic, religious, cultural or ethnic differences are persistent

¹ William H. Riker, *Federalism. Origin, Operation, Significance* (Little, Brown and Company 1964)

² Alain-G. Gagnon and Arjun Tremblay, ‘Federalism and diversity: a new research agenda’, in John Kincaid (ed), *A Research Agenda for Federalism Studies* (Edward Elgar 2019) 131.

³ Alain-G. Gagnon, *The Case for Multinational Federalism* (Routledge 2010) 5; Alain-G. Gagnon, ‘Multinational federalism: challenges, shortcomings and promises’, (2021) 31 *Regional & Federal Studies*, 101.

⁴ Alfred Stepan, ‘Towards a New Comparative Politics of Federalism, Multinationalism, and Democracy: Beyond Rikerian Federalism’, in Edward L. Gibson (ed), *Federalism and Democracy in Latin America* (John Hopkins University Press 2004) 39.

markers of political identity and bases for fragmentation.⁵ This is what distinguishes these systems from mere diverse or multicultural societies.⁶

This definition already comprises two specific features that distinguish multinational federal systems from traditional models. First, fragmentation creates different dynamics from what can be observed in traditional coming-together federations.⁷ Second, federal arrangements are adopted with a specific goal, namely the management of multinational conflicts. By contrast, traditional federal systems have other purposes, sometimes formulated in a principled way (enhancing democracy or strengthening the separation of powers), sometimes more pragmatic (economic prosperity or the efficient management of large states).⁸

The fact that fragmenting federations find their origins in a pre-existing central state explains typical institutional features. For example, it explains why residual powers often lie with the central government instead of the sub-states. Or why sub-states in multinational federal systems more often lack strong subnational constitutional autonomy compared to sub-states that pre-existed the formation of the federal system.⁹ In fact, sub-states in non-multinational federations as a rule have strong subnational constituent powers, whereas sub-states with weak subnational constituent powers are usually part of multinational systems.¹⁰ This specific feature has further consequences. In a comparative study we observed that sub-states that have strong subnational constitutional autonomy are also strongly involved in central constitution-making. By contrast, weak subnational constituent powers are sometimes, but not necessarily, compensated by strong involvement at the central level.¹¹

The specific purpose of multinational federalism also leads to specific features. One is constitutional asymmetry. Non-multinational multi-tiered systems are characterized by

⁵ Sujit Choudry and Nathan Hume, 'Federalism, Devolution and Secession: From Classical to Post-conflict Federalism', in Tom Ginsburg and Rosalind Dixon, *Comparative Constitutional Law* (Cheltenham, Edward Elgar 2011) 363.

⁶ Sujit Choudry, 'Bridging comparative politics and comparative constitutional law: Constitutional design in divided societies', in S. Choudry (ed), *Constitutional design for divided societies* (Oxford, Oxford University Press, 2008) 5.

⁷ Alfred Stepan, 'Federalism and Democracy: Beyond the U.S. Model', (1999) 10 *Journal of Democracy* 20–21.

⁸ For a discussion of purposes, see John Kincaid, 'Values and Value Tradeoffs in Federalism', (1995) 25 *Publius: The Journal of Federalism* 29-44.

⁹ For empirical evidence, see Patricia Popelier, Nicholas Aroney and Giacomo Delledonne, 'Conclusion. Nine hypotheses to explain variation in subnational constitutional autonomy', in P. Popelier, G. Delledonne and N. Aroney (eds), *Routledge Handbook on subnational constitutional autonomy and constitutionalism* (Routledge 2021) 315.

¹⁰ *Ibid* 316.

¹¹ *Ibid* 318.

constitutional symmetry, whereas many (but not all) multinational multi-tiered systems are marked by constitutional asymmetry¹² – and if it is absent in their institutional design, then often it reappears in practice, with some sub-states using these powers notably more intensively than others.¹³ Also, power-sharing mechanisms permeate the entire system, combining ethnic and territorial features. Finally, the purpose of managing multinational conflicts reveals that the concerned system is a divided state. This makes multinational federal systems unstable and fragile, which, as a result, may lead to institutional solutions that differ from what is observed in traditional federations. Low social cohesion easily leads to low trust (citizens’ trust in the central government, or trust between political elites from different national groups) which in turn may either cause deadlock or escalate,¹⁴ and therefore calls for different institutional solutions – for example, a less cooperative form of federalism.

As traditional federal theory has not been able to accommodate the challenges and specific features of multinational systems that have adopted federal arrangements, ‘multinational federalism’ emerged as a specific doctrine. This, however, was done at the risk of both currents drifting apart and developing separately. In the following section I will argue why keeping both doctrines under an umbrella theory is beneficial for all parties.

2. The need for an umbrella theory

Developing a theory of multinational federalism, isolated from traditional federal theory, would bring some disadvantages for both traditional federal theory and the study of multinational federal systems. This is most clearly the case for traditional federal theory.

Cutting multinational federal systems out of this theory would mean that the theory is only useful for the limited circle of usual suspects, i.e. model federations such as the US, Australia and Germany. It would confirm the approach in federalism theory that focuses on those systems that are identified as ‘genuine’ federations based on a set of defining institutional features.¹⁵ Apart

¹² Maja Sahadžić, *Asymmetry, Multinationalism and Constitutional Law. Making Legitimacy and Stability in Multinational States* (Routledge 2020) 82-84.

¹³ See for example for Canada Alain-G. Gagnon and Jean-Denis Garon, ‘Constitutional and Non-constitutional Asymmetries in the Canada Federation: An Exploration into the Policy Fields of Immigration and Manpower Training. A Country Study on Constitutional Asymmetry in Canada’, in P. Popelier and M. Sahadžić (eds), *Constitutional Asymmetry in Multinational Federalism. Managing Multinationalism in Multi-tiered systems* (Palgrave MacMillan 2019) 77-104.

¹⁴ Choudry (n 6) at p. 5.

¹⁵ For a critical discussion of this approach, see Patricia Popelier, *Dynamic Federalism. A New Theory for Cohesion and Regional Autonomy* (Routledge 2021) 15-32.

from the fallacies in reasoning that come with this approach,¹⁶ it would risk bringing the theory to a standstill, away from where the challenges actually lie.

Either way, it would be a mistake to believe that superior ‘genuine’ model federations cannot learn from the newly emerging, complex and unstable multinational federal systems.

First of all, old model federations are not immune for the cleavages that define divided multinational states. For example, the polarization that characterizes the current state of US federalism impacts intergovernmental relations¹⁷ and turns the country into a form of distrust federalism that is very similar to what we observe in multinational federal systems.

Secondly, some old model federations must also deal with indigenous nations – the US and Australia are prominent examples. Even if they do not define the territorial demarcations of federated states, the combination of a federal system with minority group rights and forms of self-governance is something multinational federations are familiar with.¹⁸ Interestingly, the impact of empowered sub-states on indigenous self-government¹⁹ reveal multilevel dynamics that go beyond the binary approach typical of traditional federal theory, which only recognizes two levels of jurisdiction – the federal and the federated ones – as units of interest.²⁰ Multinational federal systems are less inclined to take such a binary approach, because they are often characterized by multiple types of subnational entities. In some cases, ‘co-government’, i.e. a government based on distinctive but interdependent and interrelated local, regional and central levels of government, is explicitly mentioned as a constitutional principle in the constitution.²¹

For multinational federal systems, having a separate school of thought brings the advantage that new federal forms of state, away from the shadow of model-federations, are taken seriously as an object of research. However, classifying them under one specific category, distinct from non-multinational federations, also has some disadvantages.

¹⁶ Such as circular reasoning and the cherry-picking problem, see *ibid* 20-22.

¹⁷ Greg Goelzhauser and David M. Konisky, ‘The State of American Federalism 2019-2020: Polarized and Punitive Intergovernmental Relations’ (2020) 50 *Publius: The Journal of Federalism* 311-343.

¹⁸ See e.g. Michael Breen, ‘Federalism, constitutional recognition and Indigenous Peoples: how a new identity-based state can be established in Australia’ (2020) 55 *Australian J of Pol.Sc.* 311-327.

¹⁹ See Jeff Comtassel, *Forced Federalism: Contemporary Challenges to Indigenous Nationhood* (University of Oklahoma Press 2008) 17-20.

²⁰ Yishai Blank, ‘Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance’ (2010) 37:2 *Fordham Urb. L.J.* 525.

²¹ Art. 40.1. South African Constitution.

First of all, it would be short-sighted to ascribe the same characteristics to all multinational multi-tiered systems. Some are characterized by one or a limited number of nations – e.g. Iraq or the UK – others by a multitude – e.g. Ethiopia, Nigeria or Indonesia. Some are dyadic – Belgium, and also Canada – and others are not. Autonomy claims usually come from minority nations – e.g. in Spain or Canada – but in some cases secession threats come from nations with a demographic and political majority – e.g. in Belgium. These are all characteristics that (with other contextual factors) determine the optimal institutional design for the management of multinational conflicts, which means that there is no one-size-fits-all solution for multinational federal systems. For example, the assumption that the recognition of nation-sub-states with wide autonomy combined with shared rulemaking creates trust²² may have some ground in the case of minority nations, but in a dyadic federal system such as Belgium it has had the opposite effect.²³

Secondly, despite their differences, multinational federal systems can still learn from experiences in old model federations. Even though far more institutional mechanisms are imaginable than those prescribed in a narrow approach of traditional federal theory, in the end there are some institutional choices that all multi-tiered systems will have to make, e.g. as to allocation techniques or fiscal equalization programs. Knowing the possible impact of each option, as experienced in traditional model states, may inform these choices in newly emerging multinational federal systems.

We can conclude that both multinational and non-multinational systems are best covered by a general theory of federalism that meets the condition of universality. This means that the theory does not pre-select a specific form of state that is then presented as the superior model for all, and does not fixate on specific institutional features present in a selected number of model federations. Instead, the theory should address all types of multi-tiered systems and be mindful of a wide range of possible institutional solutions. That does not prevent us from finding patterns depending on the type of state, on the social structure (multinational or not) or on other factors, but we need the complete overview precisely to determine which factors explain which patterns. The next section introduces such a general theory of federalism.

²² In this line of thought Alain-G. Gagnon 2021 (fn 3), and Ferran Requejo, *Multinational Federalism and Value Pluralism*. (Routledge 2005) 74; Requejo, Ferran. (2010). Federalism and democracy. The case of minority nations: a federalist deficit', in M. Burgess and A. Gagnon (eds), *Federal Democracies* (Routledge 2010) 290-291.

²³ Dave Sinardet and Niels Morsink, 'La confiance entre élites politiques dans les fédérations consociatives: le cas de la Belgique', in D. Karmis and F. Rocher (eds) *La Dynamique confiance/méfiance dans les démocraties multinationales* (Presses de l'Université Laval 2012) 350-353.

3. Dynamic federalism as a theory in search of the balance between cohesion and regional autonomy

A theory of dynamic federalism distinguishes between federalism, federal systems and federations. This is a trichotomy that finds its origins in traditional federal theory.²⁴ In this trichotomy, *federalism* is a value concept that refers to the very essence of a concept, irrespective of the many forms and shapes it takes throughout space and time.²⁵ *Federal systems* refer to all political organizations that are built around this core. A *federation* is one particular form of state within the broader category of federal systems. In the literature, federal systems and federations are often mixed up. To avoid confusion, I will further refer to federal systems as ‘multi-tiered systems’.

Elazar defined federal systems as political organizations built around “the constitutional diffusion of power so that the constituting elements in a federal arrangement share in the processes of common policy making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrities” – a definition that gained wide acceptance as the combination of autonomy (self-rule) and joint decision-making (shared rule).²⁶ He further identifies a range of ‘federalist’ arrangements, of which ‘federations’ are just one type. Strangely, however, the forms of state are not distinguished based on the core components of federal systems – the degree of self-rule and shared rule – but on unrelated and often vague criteria.

In a theory of dynamic federalism, the essence of federalism is defined as the search of a balance between cohesion and autonomy.²⁷ From the outset, this looks very similar to the well-known ‘self-rule and shared rule’ definition. However, self-rule and shared rule mainly refer to how autonomy is preserved, either by deciding independently (self-rule) or by impacting on central decision-making. In a dynamic theory, the core components refer to the entire system, not merely how decisions are made, and they refer to cohesion as a distinct value. The dynamic part lies in the construction of federalism as a ‘constitutionally defined and contested concept’. These components are explained in what follows.

²⁴ See Ronald Watts, *Comparing Federal Systems* (Queen’s University 2008, 3rd ed.) 8.

²⁵ In this sense Daniel Elazar, *Exploring Federalism* (University of Alabama Press, 1987 – ed. 1991) 15-16.

²⁶ *Ibid* 5-6.

²⁷ See Popelier (n 15).

Cohesion refers to the integrity of the political system by linking all tiers through mutual respect, common interest, and solidarity.²⁸ Shared rule has a cohesive dimension where it refers to joint decision-making with the purpose of integrating and transcending all (central and decentral) interests. But cohesion is also about the creation of a common public sphere, the safeguarding of common values, and instruments of inter-regional solidarity. Importantly, cohesion is not the opposite of autonomy. Making the system more cohesive does not necessarily imply making the SNEs less autonomous. And making the system more centralized does not necessarily make the system more cohesive.

The notion relates to what is called the ‘federal spirit’: the commitment to living together peacefully, in mutual recognition and respect. The literature regards this as a fundamental value and a condition for success,²⁹ but somehow it was never incorporated in the very definition of federalism. This is a deficiency especially where multinational systems are concerned. Post-conflict literature, and the two schools of thought with different recipes for accommodating ethnic groups in divided societies,³⁰ reveal that the problem of cohesion is key to the understanding of multinational systems and to finding the best way to manage multinational conflicts. By favoring an integrative, cross-community model, centripetalists believe that social cohesion can be built through a cohesive institutional model. By contrast, consociationalists argue that multinational conflicts can only be managed by guaranteed group representation, with the members of the central governing bodies remaining firmly rooted in their separate subgroup. In their view, institutional cohesion is impossible in the absence of social cohesion.

Autonomy means the ability of the sub-states to organize themselves and make their own decisions, and to secure their interests in central decision-making. It refers to self-rule, but also to shared rule where it allows the units to control central decision-making. But it is also about self-organization: the ability of sub-states to create their own governing and adjudicative bodies and to decide on the main principles that guide their operation. This dimension is the one that is most often examined, in federalism studies as well as de/centralization studies.

In federal theory, the *federal balance* is often understood as an equilibrium between centralization and decentralization, which points to the desired degree of autonomy only. Instead,



²⁸ Maja Sahadžić (n. 12) at p. 216.

²⁹ Michael Burgess, *In Search of the Federal Spirit* (Oxford University Press 2012) 322; Carl J. Friedrich, *Trends of Federalism in Theory and Practice* (Frederick A. Praeger 1968) 175-176; William Livingston, *Federalism and Constitutional Change* (Oxford University Press 1956) 316.

³⁰ For an effort to overcome this dichotomy, see Feargal Cochrane, Neophytos Loizides and Thibaud Bodson, *Mediating Power Sharing* (Routledge 2018) 2–4, 105–108.

the federal balance considered in a dynamic theory refers to the relation between cohesion and autonomy. Dynamic federalism is not a normative theory: it does not prescribe equal amounts of cohesion and autonomy as the ideal proportion. Instead, it imagines any possible proportion between the degree of cohesion and the degree of autonomy. The idea of balance is the essence of federalism, but the specific proportions are context-related, and will determine the specific form of state, as shown in figure 1.

Figure 1. Forms of State

		SUBNATIONAL AUTONOMY 		
COHESION 	High – Low: Integrationist MTS	High – Medium: Federation type 1	High – High: Federation type 2	
	Medium – Low: Consociation-based MTS	Medium – Medium: Regionalized system	Medium – High: Confederation	
	Low-Low: Deconcentrated system unitary	Low – Medium: Decentralized system	Low – High: Political Association	

Source: Popelier (2021: 74)

Figure 1 distinguishes 9 forms of states, based on the specific proportions of cohesion and autonomy, i.e. on the essential properties that define multi-tiered systems or federal systems as a political organization. This means that systems that so far have been grouped under the very heterogeneous category of ‘hybrids’, or ‘immature federations’ – multinational multi-tiered systems have often been called that way³¹ – are now categorized as forms of state in their own right. Figure 1 allows us to distinguish also between multinational federal systems. Most of these systems are probably located in the lowest or the middle row of figure 1 – low or medium cohesive. This means that the central government is either non-cohesive and dominant, or at most consociational – with the main national groups sharing powers as a way to consolidate their regional interests. This can be combined with limited subnational powers – e.g. in Italy or South Africa – or with very wide-ranging powers – e.g. in Belgium, Bosnia-Herzegovina or the European Union.

It also gives a more nuanced picture of forms of state, recognizing different types of SNEs, and establishing that the form of state may be a federation towards some SNEs, and something else towards another. The latter is the case if different types of SNEs (for example regional entities vs

³¹ See Gemma Sala, ‘Federalism Without Adjectives in Spain’, (2010) 44 *Publius: the Journal of Federalism* 109 with regards to Spain.

local entities) are compared, but also in constitutionally asymmetric systems. In particular, dynamic theory takes account of constitutional asymmetry, enabling to measure the degree of asymmetry by comparing the autonomy granted to each particular SNE.

To qualify a particular multi-tiered system, we need to measure cohesion and autonomy. To this end, 32 indexes have been developed to measure cohesion and autonomy throughout the dimensions of status, powers and fiscal arrangements.³² The indexes stay clear from scoring the presence of specific institutions; instead they are open to any institutional mechanism that fulfils their criteria. For example, the indexes do not inquire whether the central Parliament has an upper chamber. Instead, they accept any institutional mechanism – an upper chamber, representation in the lower chamber, involvement of the sub-state entity as such, or otherwise – that allows a sub-state to interfere in the central procedure, or to use a collective veto, or an individual veto. The autonomy index looks for mechanisms that give the concerned sub-state more power and the strongest voice; the cohesion index looks for mechanisms that bring all parties together for collective decisions and for solidarity mechanisms. For example, individual vetoes have a higher autonomy score compared to collective vetoes, but a lower score for cohesion.

Cohesion is sought in the overall system, whereas autonomy is measured from the perspective of individual sub-states. This allows us at the same time to measure constitutional asymmetry, which characterizes many multinational multi-tiered systems. For example, in Belgium we find medium cohesion (score = 0.58) combined with high autonomy for the Flemish Community (score = 0.84) and medium autonomy for the German-Speaking Community (score = 0.64).³³ This means that Belgium is a confederation when viewed from the Flemish standpoint, and a regionalized system for the German-speaking community. The autonomy scores allow us to define the asymmetry score: $(0.84 - 0.64) = 0.20$. Whether this is a high score or not can be assessed if we compare it with the autonomy scores of other systems.³⁴

This balance between cohesion and autonomy is *constitutionally defined*. It is decided by political actors, and then entrenched in constitutional arrangements. The original decision is political, but other factors will inevitably be of impact – the multinational structure being one of these factors, but also for example wealth, or historical factors.

³² Popelier (n 15), Chapters 4-6.

³³ Popelier (n 15) at p. 84.

³⁴ For this exercise, see the upcoming PhD of Lidia Bonifati (University of Bologna and University of Antwerp).

At the same time, the balance is *essentially contested*.³⁵ This is what the ‘dynamic’ component in the theory refers to. Changes in political preferences may eventually lead to changes in the institutional design, and even in the absence of institutional reform, to changes in the actual operation of the multi-tiered system. It is, however, important to distinguish institutional design (‘structure’ or the institutional potential) and factual operation to fully grasp the dynamics of multi-tiered system, and to examine whether and how institutions impact social structure and political practice, and *vice versa*.

Institutional changes take place through constitutional amendment – or otherwise. The system can even build in institutional ‘hubs for change’, which means that change is incorporated within the system. For example, the choice of allocation technique or the way courts are organized, all influence how the federal system will develop over time.³⁶ This way, the guardians of the *status quo*, such as courts, can at the same time act as drivers for change.³⁷ The study of dynamic federalism is therefore essentially the study of how federal systems change, and whether this change means more or less sub-state autonomy, and more or less cohesion. So far, de/centralization studies have concentrated on the first dimension, whereas the latter dimension – important especially for multinational systems – has too often been neglected.

4. Why dynamic federalism is valuable for the study of multinational multi-tiered

To explain what added value a theory of dynamic federalism has for the study of multinational multi-tiered systems, this section examines how this theory addresses the specific features of multinational systems that were pointed out in the first section of this paper.

(1) The qualification of the form of state is not based on institutional features that exclude (most) multinational multi-tiered systems

A first feature that was distinguished is linked with the devolving nature of many multinational federal systems. In a dynamic theory of federalism, the devolving or centripetal nature of a multi-tiered system is an *explaining* but not a *defining* factor. This means, for example, that the theory does not present normative claims that are linked with the coming-together nature of traditional model federations.

³⁵ See also Jenna Bednar, ‘Federalism theory: the boundary problem, robustness and dynamics’, in John Kincaid (ed), *A Research Agenda for Federalism Studies* (Edward Elgar 2019) 27.

³⁶ See Popelier (n 15) Chapter 8.

³⁷ Bednar (n 35) 33.

Hence, the theory does not prescribe that residual powers should lie with the sub-states and that they should have the power to adopt their own constitution, in order to qualify as a ‘genuine’ federal system. The indexes that have been developed to measure autonomy and cohesion are not even interested in residual powers. As Friedrich rightly pointed out, residual powers have erroneously been considered “the decisive test of ‘statehood’ for the component units”;³⁸ what matters is which policy fields can be regulated, irrespective of whether they are explicitly assigned or not.

Next, the power to adopt sub-state constitutions is included as an indicator instead of a defining feature. The score on the autonomy index varies depending on the number of constitutional aspects that can be regulated (substantially) and the type of central oversight. The cohesion index examines whether institutional mechanisms are in place to guarantee that fundamental constitutional values and principles are shared by central and sub-state constitutions. This means that a low score for subnational constitution-making can be compensated for by a high score for another indicator – the autonomy to conclude international treaties for example, in the case of Belgium. Also, self-constituent capacity is regarded as a combination of the power of sub-states to adopt their own constitutions, and to impact on central constitutions.

(2) The different purposes for creating a federal system, including the purpose of multinational conflict management, are equally valued

Multinational systems often adopt federal arrangements with the specific goal of conflict management. This has been factored into the indexes in order to measure the scope of subnational powers.³⁹ They link clusters of competences with possible purposes for creating a multi-tiered system. Core competences linked with the protection of regional identity are equally valued as, for example, core competences linked with territorial management or the strengthening of political, economic or military power on a global level.

This way, the scope of powers is not measured on the basis of the proportion of central and sub-state expenditures⁴⁰ – which is influenced by ideology, and mixes institutional potential with actual practice. Instead, it examines whether the sub-states have powers in the cluster that are linked with their purpose, and whether they also have powers in unrelated clusters. The more

³⁸ Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (Blaisdell Publishing Company 1968) 204.

³⁹ Popelier (n 15) 140-141.

⁴⁰ As, for example, Ronald L. Watts, ‘Typologies of federalism’, in J. Loughlin, J. Kincaid and W. Swenden (eds), *Routledge Handbook of Regionalism and Federalism* (Routledge 2013) 31–32.

clusters they embrace, the wider their scope of powers. This way, disintegrative dynamics can be captured as the moment when powers are transferred to sub-states beyond the set of policy domains that were linked with their purpose, and into powers that are typically situated at the central level as a means to strengthen political, economic or military power.

Moreover, dynamic federalism is not merely interested in how much autonomy the sub-states have, but also in whether the division of powers threatens cohesiveness. This is of particular importance in multinational systems characterized by low(er) social cohesion. The cohesion index distinguishes three categories of competences that help central governments to deal effectively with matters of common interest: security, economic and monetary union, and solidarity.⁴¹ Importantly, ‘scope of powers’ is a separate index from ‘extent of powers’ and the allocation of powers technique. This means that it is not essential that either the central or the subnational governments have complete and exclusive powers in these domains. Hence, the system can still be cohesive if sub-states have competences linked with social citizenship, as long as the central government also has important competences to attribute social rights and protection to citizens.

(3) Taking constitutional asymmetry seriously

In section 1 it was noticed that constitutional asymmetry is a feature that is typically linked with multinational systems. Section 3 shows how dynamic federalism enables us to measure constitutional asymmetry. This way, we can examine which types of multi-tiered systems (also within the category of multinational systems) are most inclined to adopting constitutional asymmetry, in which dimensions of the institutional architecture. Also we can assess whether constitutional asymmetry is strong or weak. We can look for variables that favor the creation of constitutional asymmetry.⁴² And we can observe how constitutional asymmetry develops and from which point on it no longer promotes stability but undermines it.

(4) Attention for power-sharing mechanisms

As mentioned, power-sharing mechanisms often permeate the federal system as a way of managing multinational conflict. This is not always factored in when studying the institutional design from a traditional point of view. This can create a distorted picture, especially if no attention is paid to power-sharing mechanisms based on identitarian features that may not coincide perfectly with, but are determinants of, territorial demarcations. For example, the

⁴¹ Popelier (n 15) 137-138.

⁴² See also Sahadzic (n 12) and the ongoing work of Lidia Bonifati.

contention that regions in Belgium do not participate in nationwide decisions⁴³ disregards the veto powers that the Dutch and French language groups have, in a system where regions and communities are largely based on the demarcation of linguistic territories.

The Belgian federal Parliament consists of a House of Representatives, consisting of directly elected representatives, and a Senate, consisting (mostly) of representatives elected in sub-state parliaments. That corresponds to the ideal image of a federal system in traditional theory. Then again, the Senate hardly has any powers in daily decision-making. However, both houses are divided in a Dutch and a French language group, that have veto powers for particular important issues. Also, the federal government does not reflect the sub-states as such, but the constitution imposes (Dutch-French) language parity in the council of ministers. The Flemish Community is a sub-state that covers the Dutch language territory combined with Dutch-speaking institutions in the bilingual Brussels territory. In turn, the French Community covers the French-speaking territory combined with French-speaking institutions in the bilingual Brussels territory. Hence, even if there is no institutional link between sub-states and language groups at the central level, the interests at stake will often coincide, and usually (at least some of) the political parties that hold powers at the sub-state level, will also be present in the central coalition.

The literature disagrees as to what constitutes the ideal institutional model for divided multinational systems. Typical for divided societies is that the constitution must forge a common political identity.⁴⁴ This presupposes that institutional cohesion does not merely reflect the degree of social cohesion, but may actually impact on social cohesion. This is where accommodationists and integrationists differ:⁴⁵ According to the former, identitarian divisions persist and social cohesion can therefore not be achieved to such an extent that it transcends the differences between groups. Accommodationists therefore prefer a consociational model, which distinguishes the sub-groups as relevant actors in power-sharing arrangements. By contrast, integrationists believe that a common public identity can be created that transcends the differences.

⁴³ Sean Mueller, 'Federalism and the politics of shared rule', in J. Kincaid (ed) *A Research Agenda for Federalism Studies* (Edward Elgar 2019) 167–168.

⁴⁴ Choudry (n 6) at p. 6.

⁴⁵ See John McGarry, Brendan O'Leary, and Richard Simeon, "Integration or accommodation? The enduring debate in conflict regulation" in *Constitutional design for divided societies*, ed. Sujit Choudhry (Oxford University Press 2008), 41.

A theory of dynamic federalism does not take sides in this dispute. Instead, it includes both competing models, not as normative devices, but as possible forms of federal systems, incorporating medium institutional cohesion (in a consociational model) or high institutional cohesion (in an integrationist model). Also, the theory leaves room for an institutional design that combines power-sharing and integrationist arrangements, which better reflects reality.⁴⁶ By examining the autonomy and cohesion score of several institutional arrangements throughout the dimensions of status, powers and fiscal arrangements, dynamic federalism nuances the dichotomy between accommodation and integration, which Choudry already found “insufficiently nuanced”.⁴⁷

This way, all multi-tiered systems can be situated in one of the nine forms of state. Constitutional arrangements can be identified as similar even if they differ in their detail – or as operating according to a different paradigm even if they have specific institutional arrangements in common. Systems can be identified as power-sharing models, integrationist models or a mixture of both. With this tool for comparison, we can examine which form is the most suitable to bring stability, under which contextual circumstances.

(5) Federal dynamics

Section 1 mentions that multinational federal systems in particular are unstable and fragile. This makes multinational system more dynamic than others. In search of stability, the constitutional framework is more rapidly adapted. Possible arrangements of constitutional asymmetry may trigger symmetrization processes. And power-sharing arrangements may reinforce regional identity which, in turn, may lead to claims for more autonomy and further constitutional reform. This means that especially for multinational multi-tiered systems it is important to examine federal dynamics, so as to observe in which direction the system develops. Traditional theory concentrates on centralizing and centralizing dynamics, whereas what really matters for divided societies is whether the dynamics are dis/integrative, i.e. whether they incorporate more or less institutional cohesion.

Important as well are developments in practice: changes in federal dynamics that are not (or not immediately) translated in the institutional framework. Specific indexes have to be created to measure how autonomous and how cohesive the central and subnational entities behave in practice, and how this impacts on the institutional framework.

⁴⁶ As Choudry (n 6) at p. 32 observes.

⁴⁷ Choudry (n 6) at p. 14.

(6) Trust

So far, dynamic federalism has concentrated on the institutional model. This provides a tool to observe institutional variation and dynamics as a first step; a second step is to examine which (institutional and) non-institutional factors explain variety in space and time.

Trust is one of those, and presumably the lack of trust is an important factor to understand federal dynamics – in divided multinational systems as much as in polarized societies, if the divide more or less coincides with subnational entities' borders. Federal trust is crucial for a multi-tiered system's survival, because even in the absence of consensus over issues, it makes sure that the different tiers rely on good intentions and the integrity of one another and are committed to maintaining the partnership.⁴⁸ Different dimensions of trust must be distinguished in this respect. One is the political trust between (central and subnational) elites. Another is social trust, i.e. citizens' trust in central vs subnational government. The first is crucial for the operation of the federal system, the second for its legitimacy, but both dimensions are also interrelated.

Nevertheless, trust has not often been thoroughly examined in relation to federal systems.⁴⁹ A theory of dynamic federalism offers more opportunities to do so, by including cohesion in the very definition of federal systems. Cohesion and trust are closely related concepts: the idea of cohesion – i.e. mutual respect, common interest and solidarity – assumes shared values and the belief that all entities will act in consideration of the general interest, as well as the specific interests of each entity alone. This, in turn, corresponds with the notions of 'integrity' and 'benevolence' that, together with ability, are considered elements of trustworthiness.⁵⁰ Trust, then, may turn out a notion that plays out differently in each of the nine forms of state.⁵¹ This is because each form of state incorporates a different degree of cohesion in relation to the degree of regional autonomy.

The question, to be examined in follow-up research, is whether trust is an important precondition in each of the nine forms of state, or only in some. And where it is important, whether the introduction or absence of cohesive instruments and autonomy in the institutional design affects

⁴⁸ Jan Erk and Alain-G. Gagnon, 'Constitutional ambiguity and federal trust: codification of federalism in Canada, Spain and Belgium', (2000) 10 *Regional & Federal Studies*, 94.

⁴⁹ For an exception, see Jack Jedwab and John Kincaid (Eds.) *Identities, Trust, and Cohesion in Federal Systems* (McGill-Queen's University Press 2018).

⁵⁰ Roger Mayer, James Davis and F. David Schoorman, 'An Integrative Model of Organizational Trust' (1995) 20 *The Academy of Management Review* 709-734.

⁵¹ For more detail, see Patricia Popelier and Peter Bursens, '(Dis)trust in federal systems', forthcoming.

the level of trust, and whether, in reverse, the level of trust affects the degree of autonomy and cohesion in the institutional design. If institutional design does affect the degree of trust, then it is worthwhile to examine how the aspects of trustworthiness (ability, benevolence and integrity) can be translated into the institutional design.

Conclusion

Multinational multi-tiered systems have specific features that traditional theory cannot cope with. For that reason, new theory-building, focused on multinational systems alone, are emerging. In this paper I have argued that an umbrella theory is needed to avoid that knowledge of and insights in the operation of multi-tiered systems drift apart. The paper introduced such a theory and highlighted how it can contribute to the understanding of both old federal models and new multinational systems.

In doing so, the paper also revealed an agenda for future research. A full understanding of how multi-tiered systems – multinational or not – operate, requires interdisciplinary research that combines an institutional and an empirical approach. Federal dynamics, in particular important for multinational systems under threat of secession – cannot be observed on the basis of institutional reforms and case law alone; what also matters is how actors and entities make use of their powers. Indicators to measure actual behavior still need to be developed. Multinational systems have to be compared with one another and with non-multinational systems to understand the impact of social structure on institutional design and *vice versa*. De/centralization studies have to be revisited to include institutional features and drivers that have too often been ignored (such as alternatives for upper chambers or the role of courts) and to examine dis/integration processes. And the dynamics between multiple levels of governance – local, regional, central and supranational – have to be researched.

What dynamic federalism in this stage offers is a tool for the qualification and screening of any multi-tiered system, for measuring constitutional asymmetry, and for observing institutional changes in the federal balance, as well as a framework for comparative research. Also in view of this challenging research agenda, we need the whole research community to join forces rather than work in a fragmented way.



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Les **Grandes conférences du Centre d'analyse politique : constitution et fédéralisme** se tiennent deux fois par an et bénéficient du soutien financier du Programme d'appui à la recherche instauré par le Secrétariat québécois aux relations canadiennes (SQRC) du Gouvernement du Québec.

Ces conférences souhaitent exposer à la fois la communauté scientifique et le grand public aux débats actuels autour des enjeux sociétaux, culturels et politiques les plus à même d'améliorer les relations intercommunautaires et de réimaginer les relations intergouvernementales sur une base plus égalitaire. Pour ce faire, cette nouvelle série de conférences donne la parole à des chercheurs et des professeurs établis dont les travaux ont ouvert de nouvelles pistes de réflexion et remis en question les cadres conceptuels et normatifs dominants.

Le Québec en tant que société distincte, en tant que région-État, nation, membre de la fédération canadienne et en tant que sujet politique sera naturellement au cœur des travaux des chercheurs mobilisés dans le cadre du présent projet scientifique.

The **Major Conferences of the Centre for Political Analysis: Constitution and Federalism** are held twice a year and receive financial support from the Secrétariat québécois aux relations canadiennes (SQRC) of the Government of Quebec's Canadian Relations Support Program.

These conferences aim to expose both the scientific community and the general public to current debates pertaining to societal, cultural and political issues with a view to improving inter-community relations and re-imagining intergovernmental relations on a more egalitarian basis. To this end, this new series of conferences gives a voice to established researchers and professors whose work has opened up new vistas for reflection and challenged the prevailing conceptual and normative frameworks.

Quebec as a distinct society, as a region-state, as a nation, as a member of the Canadian federation and as a political subject will naturally be at the heart of the work of the researchers involved in this scientific project.

Alain-G. Gagnon, Directeur



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