Federalism and varieties of parliamentary democracy

– Canada and Germany compared

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Abstract

In Canada and Germany, the federal system is combined with different types of parliamentary democracy. The German election system usually generates coalition governments. The Canadian first-past-the-post system brings about one-party governments, either ruling with a majority or as minority governments. German parties integrate federal and Länder politics, whereas the Canadian party system is partly regionalized.

As a consequence, the Canadian parliamentary system strengthens the executives of federal and provincial governments, which can use their power to conclude intergovernmental agreements. However, these agreements are subject to veto power of sovereign parliaments. They either trigger opt outs of individual provinces or renegotiation of intergovernmental agreements. Joint decisions required to change the federal constitution or to manage interdependence between all provinces (climate change policy, internal trade regulation, standards of social policy) are difficult to achieve. In Germany, intergovernmental negotiations and coalition governments are closely linked, with the consequence that compatible compromises need to be settled in both arenas. Accordingly, significant policy innovation is unlikely while incremental change prevails, and the recent fragmentation of the party system can undermine intergovernmental cooperation.

Confronted by increasing needs for intergovernmental coordination in Canada and looming intergovernmental conflicts due to changes of the party system in Germany, a revision of the institutional framework of federalism should be envisaged in both federal systems.
1. The problem of democracy in federalism

For a long time, scholars regarded the U.S. and Switzerland as models for a democratic federation. In contrast, federalism and parliamentary democracy were considered as incompatible. On the one hand, the division of power between the federal and sub-national governments appeared as contradicting the principle of sovereignty, be it sovereignty of the state or of parliament (Oeter 1998: 74-87). Moreover, the increasing need for intergovernmental coordination caused the executive to dominate parliaments. On the other hand, a government responsible to parliament, supported by the majority party and challenged by opposition parties, seems to lack the necessary discretion to negotiate intergovernmental agreements. Intergovernmental relations and democracy seemed to be incompatible (Lehmbruch 1976), or "an oxymoron if there ever was one" (Simeon and Cameron 2002).

Meanwhile, comparative research has shed light on varieties of democracies (Lijphart 2012) and of types of democratic federalism (Benz and Broschek 2013; Watts 1999). These findings constitute a valuable basis for a differentiated analysis of the interplay between federalism and parliamentary democracy. As will be illustrated for the cases of Canada and Germany, we find quite different combinations of both institutional dimensions of government. They are linked in various ways. Yet as the balance of power in federal system is unstable (Riker 1964) and as changes in society are reflected in elections and party systems, we cannot assume a particular coupling of federalism and parliamentary democracy as given for all time.

For these reasons, the analysis presented in this paper is grounded on two theoretical premises. First, it is the coupling of federalism and democracy which explains how the particular combinations operate (Benz and Sonnicksen 2015). Second, federalism in general and democratic federalism in particular are dynamic institutional constellations and this dynamic nature of government deserves particular attention. It can increase tensions inherent in democratic federations, but it can also generate the elasticity of power structures which is a condition of the operation of government on its own. As I will show for Canadian and German federalism, recent changes tend to threaten the elasticity, which for a long time characterized these two cases and give reasons to think about a revival of constitutional reform.
2. Parliamentary democracy and intergovernmental relations

2.1 Canada: majority democracy and executive federalism

Canada was the first federation with a parliamentary system designed according the Westminster model, including the bicameral legislature. Three basic features characterize this kind of democratic government:

First, sovereignty is vested in the parliament. It has, so to speak, the power of the last resort. In contrast to the British system, Canada has introduced a Supreme Court with the power to determine whether a legal act violates the Charter of Rights and Freedoms. Nonetheless, the principle of parliamentary sovereignty applies towards the executive which is subject to the will of the House of Commons.

Second, the executive is accountable to parliament and depends on the support of the majority in the House of Commons. In line with the functional principle of parliamentary democracy, there is a fusion of powers between the executive headed by the prime minister and the majority party. In consequence, the prime minister occupies a preeminent position in the political system. His leadership is based on his ability to control the agenda of parliament and his symbiotic relation with his party. More so that in the German chancellor democracy (Kanzlerdemokratie; Niclauß 2015), the Canadian Prime Minister was able to concentrate executive power in his hands (Savoie 1999), and premiers of the provinces attained a comparable leadership position.

Third, members of parliament are elected according to the first-past the post system favouring clear majorities. With the increasing number of effective parties, clear majorities for one party are not guaranteed in Canada. Yet so far, parties evidently prefer minority governments instead of coalitions, and one-party governments still are the convention in Canadian politics both at the federal and the provincial level.

The power of the prime minister and its cabinet is not effectively limited by a second chamber, as it is the case in other democratic federations. The Canadian Senate has been constructed in view of the British House of Lords, although without basing membership on peerage, but rather appointment. Despite having the power to veto any legislative decision of the House of Commons, the Senate de facto works as a consultative body, an institution
which evaluates bills and provides advice (Smith 2003). At the provincial level, second chambers had existed in some provinces, but all have been meanwhile abolished. Hence bicameralism is fairly weak, particularly when compared with second chambers in other federal systems. Consequently, the Canadian parliamentary system constitutes a majority democracy with intense party competition shaping parliamentary and public debates.

While Canadians designed their democracy according to the British model, their federal constitution was inspired by the U.S. experience. They adopted the idea of a clear separation of powers, but strengthened the federal government, in particular its fiscal and economic powers, whereas responsibility for public goods and services remained to the provinces. Based on this dual federalism, the Canadian welfare state developed from the provincial level, but later had to be supported by the federal government in order to provide equal standards across the country. This was the main reason for the rise of intergovernmental relations. The intensity of coordination between federal and provincial governments increased significantly during the second half of the last century (Simeon 1972; Skogstad 2000). Prime ministers dominate the processes of coordination, supported by their members of cabinet and their administration. This fact found expression in the term ‘executive federalism’. As a normative statement, this term should point out a democratic deficit. It means that in contrast to the constitutional convention of parliamentary government, parliaments lost influence on policy-making the more it shifted towards intergovernmental relations (Brock 2003).

However, in contrast to intergovernmental policy-making in the presidential system of the U. S., Canadian executives are subject to the control of sovereign parliaments. Thus, they negotiate and decide in the ‘shadow’ of parliamentary decisions. This requires them to continuously communicate with, or anticipate the positions of their parliamentary majority groups (Hueglin 2013). While this tight coupling of executive politics to parliamentary procedures contributes to the democratic legitimacy of intergovernmental relations, it also encumbers federal-provincial agreements, which, once reached, can still repeatedly be called into question, may fail to be implemented, or have their trajectory considerably altered through opt-outs by individual provinces.

Thus the Canadian federalism is confronted with a dilemma between effectiveness of intergovernmental coordination and democratic accountability of executives, a dilemma which has been discussed for multilevel governance in general (DeBardeleben and
Hurrelmann 2009), but in particular arises in federations with parliamentary systems of
government. The conditions to cope with this dilemma vary between cooperative and dual
federalism. In the Canadian federal constitution separating powers and politics at the
different levels, federal and provincial policies are coordinated by voluntary negotiations, if
not by mutual adjustment (Painter 1991; Simeon 1972). As the Canadian Senate does not
represent interests of provinces, there is no need for the federal government to enter into
negotiations with provincial actors when it initiates a bill in parliament. Moreover, despite
the need for intergovernmental coordination of policies in many fields, both the federal and
provincial governments are free to make a policy on their own. Instead of unilateral
agreements, the federal government can conclude bilateral contracts with individual
provinces, and individual provinces can opt out from multilateral bargains. While bilateral
agreements strengthen the federal government and have been criticized as divide-and-rule
strategy alienating individual provinces, opt outs have fostered decentralization and
protected basic interests of provinces as well as contribute to the flexibility of the otherwise
tense relationship between intergovernmental relations and parliamentary democracy.

These options make Canadian federalism work despite two features of democracy
which foster competition and confrontation rather than cooperative behaviour. One is the
pressures of party competition in a parliamentary system of government, which can
generate tension at odds with the federal order (Sharman 1990). The other is the divide in
society expressed in the party system. Mediation between federal and provincial
governments proves especially difficult when regional parties place a higher value on
autonomy than on the meaningful coordination of policy. This presents a particularly
complex challenge to Canadian federalism, which has to accommodate a multinational
society. However, Canadian governments have managed a number of times to resolve the
intensified conflict between federalism and democracy by allowing for selective coordination
in the federal system. Under these conditions, multilevel "collaborative" policy-making in a
number of fields evolved (Cameron and Simeon 2002). It is also generally accepted or
acknowledged that parliaments, whether at federal or provincial level, maintain the right to
veto agreements negotiated among executives. Intergovernmental coordination becomes
more unstable as a result, though high degrees of policy coordination nonetheless have been
attained in the Canadian federal system (Bakvis and Brown 2010). More often than not,
intergovernmental coordination fails due to divergent policies pursued by provincial
governments reflecting different economic and societal conditions in their constituency (see, e.g., Bakvis and Skogstad 2012). However, with the exception of constitutional amendments (Russel 2004), this failure of coordination does not block policy-making. It leads to mutual adjustment in competition, but usually on the condition that governments nevertheless talk to each other, thus avoiding unintended effects of a race to the bottom (Harrison 2006).

This routinized intergovernmental communication excludes parliaments and raises the issue of accountability. Yet Canadian relations between the federal government and the provinces are less dominated by the bureaucracy than in other federations, and they more often than not include heads of government. These participants have to consider the will of their party in parliament and thus are subject to parliamentary control. Certainly, under the conditions of the Westminster System, prime ministers profit from their leadership position in their party and the disposition of the party to support its government. Nonetheless, intergovernmental politics is not isolated from party competition in parliament. For this reason, intergovernmental communication can be considered as an element of negotiation democracy (Hueglin 2013) which is loosely linked to parliamentary democracy. In general, this arrangement provides for momentum in the federal order that enhances not only the democratic quality of federalism, but also its adaptability (Bakvis et al. 2009; Broschek 2009; Schultze 2008).

2.2 Germany: coalition governments, council federalism and joint decision-making

In Germany, parliamentary democracy was introduced after the federation had come into being. With the unification of German Länder in 1871 to the German Reich, the confederation, which evolved over centuries, turned into a federal government. In the nation state, a directly elected parliament was introduced, but only during the first WW, the executive became dependent on the will of the parliament, before the principle of parliamentary accountability was entrenched within the Weimar constitution in 1919 (Article 54). At the same time, the constitution strengthened the power of the federal government and weakened the Länder governments. This changed with the Basic Law of the Federal Republic founded in 1949. Since then the restored federalism constituted a counterweight to the parliamentary democracy.
The parliamentary system of Germany was influenced by western democracies, yet it deviated from the British model in several respects. First, parliament is not sovereign but subject to the constitution, with the Federal Constitutional Court having the power to nullify legislative acts of the Bundestag. Second, elections to parliaments at the federal and Länder level are based on the rules of proportional representation. In consequence, one-party governments are extremely rare. As a rule, parties form coalition governments and commit the executive to adopt negotiated contracts as their programme. Although the chancellor and the prime ministers of the Länder are in a leading position, the cabinet has a stronger power than in the Westminster model of a parliamentary system. Third, while there is party competition in parliament, the need to form coalitions compensates the intensity of this competition. Moreover, the fact that there is no official opposition party and often several parties compete in their opposition to government moderates a confrontation. Thus, parliamentary politics turns out as being more pluralistic than characterized by a dualism between majority and opposition.

The German parliamentary system is in formal terms unicameral. The Federal Council (Bundesrat) is not a second parliamentary chamber, but a council representing Länder governments. Nonetheless, it participates in federal legislation with veto power if a law affects competences of the Länder. If the federal government initiates a bill in parliament, it has to anticipate the will of the Länder governments controlling the majority of votes. In case of conflicts, representatives of the federal and Länder governments negotiate on a legislative proposal. Hence, intergovernmental relations are institutionally entrenched in the German federation and tightly coupled to the parliamentary system. This pattern of joint decision-making (Scharpf 1997: 144) rules out bilateral agreements or opting out.

This type of "intragovernmental" or interlocked federalism emerged from a centuries-old practice of power sharing among governments. Its basic institution can be traced back to the Imperial Diet (Reichstag) of the Old German Empire, which after the dissolution of the Empire in 1806 survived as a council of state representatives. This type of intragovernmental vertical interlocking was continued through the institutionalization of Länder governments participating in federal legislation through the Bundesrat and into the current federal system (Steffani 1997). Moreover, the constitution requires governments to coordinate their policies in the form of joint decision making not only in legislation affecting the domain of Länder governments, but also in some areas of administration in order to
coordinate important policies. In these cases, governments are compelled to negotiate agreements as powers are shared and no government can make a policy on its own.

In consequence, the German constitution closely ties the arenas of intergovernmental politics and parliamentary democracy (Lehmbruch 2000: 27-30). Tight coupling between these arenas results from two conditions. First, in the intergovernmental arena, representatives of the federal and Länder governments have to reach agreements in negotiations with regard to tasks they are required to fulfil jointly, while they are accountable to their parliaments. Even in case of confrontation among governments affiliated to opposing parties, the institutional interlocking excludes exit options. Second, this type of federal system is tightly coupled with democratic processes, as the rules of parliamentary government oblige the negotiating executives to take into account the will of parliament. Supported by the majority faction or coalition in parliament, the executives have to follow the logic of party competition in a parliamentary system, the latter being susceptible to antagonism between rival camps of government and opposition parties. In consequence, executives are effectively bound to find support of their respective majority parties or coalitions in parliament when negotiating in federal-Länder relations. Even in administrative joint tasks, the impact of party politics cannot be ruled out, although distributive conflicts between governments or power conflicts between jurisdictions predominate in these arrangements.

This interplay of federalism and party competition is particularly manifest in legislation requiring second chamber consent. Members of the Bundesrat are first and foremost delegates of Länder governments. Consequently, they are responsible to state parliaments, or more precisely, the party majorities there, which in turn renders them politically, though not legally, bound to the consent of their respective parliamentary majorities. In contrast to representatives of the cantons in the Swiss Council of States (Ständerat), or the members of the U.S. Senate who are popularly elected and free of any mandate or instructions from a state governmental institution, members of the German Bundesrat are closely tied to politics in parliament. Hence their joint decisions in cooperative federalism can be considered as legitimated through parliamentary accountability. On the other hand, executives are also committed to party positions, which, depending on the intensity of party competition, compel them to more or less follow the interests either of their respective territorial unit’s parliamentary bodies or their party programmes. In either
case, they usually negotiate within a bargaining mode and generally have to resort to least common denominator agreements, which tend to hinder effective governance (Scharpf 1988).

Intergovernmental negotiations in administration tend to be led by the responsible minister and civil servants of the responsible department. They are more complicated in legislation, as not only the federal government but also most Länder governments are formed by coalitions. More often than not, coalitions at the Land level include parties which are in the opposition at the federal level, or they consist of parties which at the federal level adhere to the government and the opposition camp. In these cases, governments are compelled to come to an agreement in order to avoid a deadlock in legislation, but at the same time are affiliated to competing parties. Fritz W. Scharpf appropriately characterized this situation as "antagonistic cooperation" (Scharpf 1989: 132). For this reason, German federalism is threatened by the joint decision trap (Scharpf 1988). In reality though, governments are usually able to escape this trap by adjusting policies to the demands of pivotal veto players, by avoiding redistributive conflicts, or by shifting issues to the constitutional court.

3. Changing conditions

So far, I have characterized Canadian federal democracy as a case of loose coupling between parliamentary democracy and intergovernmental relations and German federalism as a tightly coupled combination of both institutional dimensions. It needs to be emphasized that this distinction relates both to the federal system and to the parliamentary system. In Canada, both are subject to the logic of political competition among collective actors, who compete with arguments on the basis of public communication, whereas in the German case, both arenas require that competing actors not only communicate but also cooperate and negotiate agreements. The concept of loose coupling describes in the Canadian case the dual communicative relationship in the parliamentary arena and in intergovernmental relations, as the concept of tight coupling refers in the German case to the institutionalized linkage of two compulsory negotiation systems, those of coalition governments depending on the support in parliament on the one hand and those of joint decision-making on the other. Moreover, the Canadian system is loosely coupled because of the strong power of the
prime ministers who are less constrained in their boundary-spanning role than representatives of governments in German federalism who act with tied hands, i.e. committed to agreements either with their coalition partners or with their counterparts in intergovernmental relations.

Generally speaking, loosely coupled arrangements provide conditions to solve the structural conflict between federalism and parliamentary democracy. They avoid an immediate interference of two incompatible logics of politics, the logic of party competition in parliament and the logic of intergovernmental negotiations. Moreover, they provide room for maneuver to adjust political processes and the relative weight of the intergovernmental or the parliamentary arena to particular situations. This adjustment is constrained in tightly coupled systems. Nonetheless, in reality both systems operate under various and changing conditions which influence the effectiveness and legitimacy of governance. Both in Canada and in Germany, significant conditions like the party system, the institutional differentiation and capacities of the executive and the effective power relations between levels have changed during the last decades.

3.1 Changing party systems

The Canadian party system has been dominated by the Conservatives and the Liberal Party since the foundation of the federation. Both constitute state-wide parties and participate in elections at the federal level. The provincial Liberal and Conservative Parties are independent from the national organization. Only the New Democratic Party (NDP) founded in 1961 participates both in general and provincial elections as an integrated party. Hence the Canadian party system adjusted to the federal organization of government and is vertically differentiated (Bakvis and Tanguay 2011).

During the first half of the 20th century, new parties emerged in Alberta (Co-operative Commonwealth Federation, CCF) and Saskatchewan (Social Credit). They supported the development of the welfare state in these provinces and thus influenced federal politics. The CCF later was replaced by the NDP, which meanwhile compete with the Liberals and the Conservatives at the federal level. Moreover, Quebec's endeavors to gain sovereignty or the status of a distinct nation in the Canadian federation were expressed by nationalist or regionalist parties. Among them, the Bloc Quebecois (BQ) succeeded to gain seats in the
federal parliament, whereas its provincial counterpart, the Party Quebecois, achieved a majority in the provincial parliament in 1976 and was reelected to form the government several times, but meanwhile lost its predominating position in Quebec. At the federal level, BQ also lost seats and its impact in party competition. Meanwhile, new provincial parties arose in Saskatchewan and Alberta, which so far did not play a role at the federal level. Nonetheless, they demonstrate the increasing dynamics in the party system and the regional divides in Canadian politics (LeDuc et al. 2010).

In this vertically and regionally differentiated party system, cross-jurisdictional linkages among parties are weak. For this reason, majority parties in individual parliaments can evaluate autonomously the policy of its executive, including its position and strategic behavior in intergovernmental relations without having to consider interests of other provinces or the federation as a whole. This way, sovereignty of parliaments is strengthened, and coupling between parliamentary and intergovernmental politics is attenuated. However, in intergovernmental policy-making, parties participate as ‘external veto-players’ (Benz 2003). They can prevent an agreement or compel the government to opt out, but they are not involved in negotiations and only react to the outcomes. With the increasing diversity of party politics at the federal and provincial level, coordinating policies between the federal and provincial government might become more complicated. On the other hand, with the exception of the NDP currently the governing party in Alberta, provincial parties do not compete with other parties in election campaigns. For these reasons, intergovernmental relations are less influenced by party competition than in the German case. Apparently, changes in the party system in Canada weaken the loose coupling between parliamentary democracy and federalism to an extent which appears problematic from a normative point of view.

A trend towards differentiation of the party system is also observable in Germany (Detterbeck 2009). However, the point of departure of recent developments differs from the Canadian case. German parties had been founded as national organizations in the late 19th century, and they remained centralized after the first and second WW. The vertical linkage between federal and Länder governments exemplified by the Bundesrat system had further reaching effects on the party system and the integration of the political system as a whole (see e.g. Detterbeck 2011; Thorlakson 2013). As a consequence, joint decision making is
influenced by party competition with the effect that confrontation threatens to produce a stalemate in policy-making.

Since German unification, the integrated and concentrated party system that shaped German politics until the early 1980s has become more incongruent between levels and more pluralist regarding the number of effective parties (Gabriel 1989). Furthermore, parties show increasing signs of organisational differentiation. While the Christion Democrats for long established a federalized party organisation, the Social Democrats and the Green party saw their Länder associations becoming more a basis for expressing regional interests. With the increasing number of effective parties and the variety of coalitions formed in the Länder, confrontation between governments representing parties from different camps has decreased. But negotiations are no less difficult, not the least since policy positions of governments are often more diverse. For the federal government, anticipating the voting of individual Länder governments in the Bundesrat turns out as risky, since the position of coalitions often are not determined from the outset. The number of potentially pivotal governments also increased. All this makes joint-decision-making on policies which are relevant for party competition all the more difficult.

3.2 Institutional differentiation in the executive

Despite the problematic effects of changes in the party system, joint decision-making in German federalism is not burdened with regular deadlocks. In an empirical study on federal-Länder cooperation and cooperation of the Länder in education policy, Benz, Detemple and Heinz (2016) found that patterns of intergovernmental relations have adjusted to Europeanization of policies and to changing economic and societal conditions. In addition, they discovered changes in the coordination modes and a significant differentiation of structures of joint decision-making. In budget policy, for instance, the new Stability Council does not aim at a harmonization of fiscal planning of federal and Länder governments, but evaluates the sustainability of annual budgets and uses ‘naming and shaming’ as a strategy to influence policies of governments. In other fields like regional policy and energy policy, powers have been shifted to administrative arenas working in the "shadow" of political decisions. By using different layers of intergovernmental relations, issues can be
depoliticized, and conflicts reduced, whereas political leaders finally legitimize decisions by formal agreements.

These dynamics can be observed in the administrative sector. In contrast, joint decision-making in legislation reveals the problems of German federalism outlined in the previous section. The Grand Coalition government is confronted with the fact that parties not supporting the federal government influence a majority of votes in the Bundesrat. Moreover, divergent interests of Länder governments no longer can be integrated by parties. Hence compromises negotiated in the coalition government are further watered down in negotiations with Länder governments. In contrast to administrative tasks, there is no way to loosen the tight coupling of federalism and parliamentary democracy in legislation, since linkage structures are founded in the constitution.

In Canada, similar dynamics of differentiation are not unlikely to unfold, but we have no empirical evidence so far. In this case, a drift of policy-making to the administration similar to what we found in Germany would further weaken the loosely coupled relation between executive federalism and parliamentary democracy. Therefore, what might improve the performance of federalism in the German case without seriously damaging democracy would have more problematic consequences in Canada. In some policy fields, civil society organizations seem to play a significant role in intergovernmental relations (Simmons 2008), and even negotiations on the reform of fiscal equalisation had been more open to experts and opinions of citizens or organized interests than corresponding processes in Germany (Lecours u. Béland 2012; Benz 2015). Yet it is an open question whether these examples indicate a change in intergovernmental politics towards a kind of participatory democracy. Regardless of the the answer, parliaments and parliamentary democracy would not gain from these changes and the risk of decoupling federalism and democracy would not be reduced.

3.3 Politics of federal change or constitutional reform

Canadian federalism revealed another development which to a lesser degree also affected German federalism. Although all attempts to amend the constitution failed, the Harper government announced an "open federalism", when it gained power in 2006. This concept aimed at emphasizing the separation of power between levels of government, at giving the
provinces more autonomy, and at reducing interventions by the federal government, e.g. via the spending power. Actually, the federal government more or less abandoned intergovernmental coordination, at least in terms of meetings of the prime ministers. To a certain degree, this strategy of the federal government moderated tensions with Quebec. Yet it left many problems in social policy and environment unsolved (Institute of Intergovernmental Relations 2006). Open federalism finally appeared as a policy of retrenchment of the state rather than an appropriate response to pressing issues in society.

The change in government in November 2015 demonstrated the other side of a federal system lacking any constitutional or institutional foundation of intergovernmental relations. The liberal Prime Minister Trudeau revived cooperation with the provinces, with an agenda primarily focusing on environmental policy. This demonstrates that the main mechanism of parliamentary democracy, elections, can leave clear marks on Canadian federalism, and it has done so also in the past. Like in the U.S., political parties in Canada have different concepts of federalism which they can implement in a highly flexible constitution. Still, the Canadian federation suffers from the constitutional dissent between Quebec and the "Rest of Canada". However, the last decades have proved the advantages of change by "non-constitutional means" (Lazar 1998). Moreover, this change has been driven less by decisions of the Supreme Court but by parliaments, prime ministers in the intergovernmental arena and, although not intendedly, the electorate. Thus federal change, by and large, remained linked to parliamentary democracy.

German federalism stands in clear contrast in this respect. After German unification, a reform of federalism has been on the agenda of politics, and in 2003, a first commission of the Bundestag and the Bundesrat started to elaborate a proposal for a constitutional amendment determined to "modernize" the federation. However, the results remained limited, even after a second commission had been established in 2007. The current Grand Coalition promised a third step of reform, which never materialized. The federal parliament with the assent of the Bundesrat finally passed constitutional amendments and thus legitimized change. Yet the results showed all signs of a compromise typical for joint decision-making. At the end, amendments found expression in detailed regulations of the allocation of powers and a new debt rule (Benz 2016: 77-86). Governments negotiated the reform without a clear concept of what modernization of federalism means. Significant elements of the constitutional reform reacted to decisions of the constitutional court, which
indicates the efforts to depoliticize negotiations. The outcome contributed to a general trend towards ‘over-constitutionalizing’ the German federal order (not unlike what Dieter Grimm observed in the EU; Grimm 2015: 469-471; Benz 2008).

The shift of conflicts from joint decision-making to the arena of constitutional policy was deemed to decentralize and separate powers. It could be interpreted as an attempt to alleviate the constraints of a tightly coupled system. The constitutional reform of German federalism, however, hardly achieved this aim. The constitutionalisation of federal politics, which strengthened the influence of the Federal Constitutional Court, finally went at the expense of parliaments.

4. Reasons for constitutional reform

Despite the problematic developments outlined for Canada and Germany, parliamentary democracy and federalism should not be considered as generally incompatible. Both cases prove that this combination works, and that a balance between effectiveness of intergovernmental coordination and democratic legitimacy through parliamentary accountability of executives is possible. This balance is a result of political processes, and cannot be fixed in constitutional rules. The concept of coupling between federalism and democracy has been introduced to cover this necessarily dynamic aspect of federal democracy (Landau 1973; Benz 2000).

Dynamics arise out of ongoing interactions of actors, of parties and executives, of political leaders and civil servants in administration, of federal and regional representatives, and of governments and private interest organizations. In these processes, power always shifts between intergovernmental and parliamentary arenas, with the effect of more imbalance or more balance between them. However, imbalance can be entrenched in institutions or reinforced by unidirectional trends. In both instances, the balance needs to be restored by constitutional reform.

In the Canadian case, there is the risk that parliaments become decoupled from intergovernmental relations, which on the other hand lack stability and effectiveness due to parliamentary vetoes. For this reason, loose coupling should be reinforced by an institutional basis. A Senate reform is probably a relevant approach to address this challenge (although unlikely in view of the constitutional amendment rules), as could be a conversion of the
Council of the Federation into a federal institution. Such an institution could provide a venue for provinces to deliberate on their common concerns and to argue with the federal government on joint policies. A consultative body can compel governments to communicate without compelling them to come to agreements or to contradict the principle of parliamentary sovereignty.

In the Germany context, the challenge is to reduce the constraints of a tightly coupled democratic federal system. A reform of the joint decision-system seems to be essential to achieve this purpose. Opt-out or experimental clauses empowering the Länder in areas of federal legislation could reduce the need to protect them by veto power in the Bundesrat (Scharpf 2009). Similar rules could make existing institutions of Joint Tasks more flexible allowing parliaments to effectively use their power to control the executive. Appropriate proposals had been issued to the reform commissions and in public hearings of experts. However, as long as a reform is focused on a separation of power, as it was the case in Germany, it misses the decisive challenge. For this reason, a first step in the right direction would be to change the concept of federalism and to cope with the problem of balancing powers not only between levels of government, but also between intergovernmental and parliamentary politics.

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