Types of Federalism

A. Introduction

1. It is commonplace today to distinguish between federalism conceived as a normative or ideological commitment to the federal principle, ‘federal systems’ as forms of government in which the federal principle is instantiated, and a wide array of particular kinds of federal system (King 19–21; Elazar (1987) 38–64; Watts 8). Among these specific kinds, a historically significant distinction has often been drawn between ‘federations’ and ‘confederations’ (Sawer 8; Lister 1; Hueglin and Fenna (2015) 19–21; Kincaid (2011) vol. I, 4; Halberstam 578–83; Føllesdal), and federations are today frequently distinguished between those that come into being through ‘aggregation’ of a plurality of states and those that come into being through ‘devolution’ within a single state (Lenaerts; Stepan Chapter 15; Watts Chapter 3). It is also common to distinguish between ‘symmetrical’ federal systems, in which the constituent states are treated equally, and ‘asymmetrical’ arrangements, in which their constitutional status and powers are different. Asymmetrical systems can include what Daniel Elazar identified as ‘associated states’, ‘federacies’ and ‘condominiums’, which involve special asymmetrical arrangements between small states and former colonial powers (Elazar (1987) 54–58; colonialism). In addition, there is a commonplace distinction drawn between ‘coordinate’ or ‘dual’ federalism, predicated on a division of competences of the federation and the constituent states into distinct ‘spheres’ (Dicey 134–67, 476–80; Wheare Chapter 1), and ‘administrative’ federalism, predicated on a ‘sharing’ of responsibilities and a ‘cooperative’ approach to government regulation across federal, state and local levels government (Hueglin and Fenna (2015) 61–3).

2. Many of these distinctions between types of systems rest on an array of controversial ideas about the nature of the ‘state’ and the deeply contested concept of ‘sovereignty’ (Davis Chapter 3; Friedrich 8; Laski 267–8). In ‘multinational’ federations, which consist of distinct national peoples identified with particular territories within a federal state, the location and nature of sovereignty is an especially contested matter (Tierney). To identify the various kinds of federal system in a manner that is both empirically warranted and conceptually coherent necessitates a critical engagement with these complex and elusive
B. Historical Context

1. Early Federal Ideas

3. Some historical context is necessary. The term ‘federal’ is derived from a Latin root, foedus, generally translated ‘treaty’, ‘pact’ or ‘covenant’, and which in Roman Law referred to a treaty formed between Rome and one or more allied states (Berger (1991) 474). In medieval Europe, the term was applied to a wide variety of treaty-based relationships between all manner of political entities at the scale of cities, provinces, kingdoms and even empires. As late as the seventeenth century, Hugo Grotius used the term federa to designate such treaties (Grotius 263 [ii.vi.i]) and John Locke could refer to the ‘federative’ power of the commonwealth as the ‘power of war and peace, leagues and alliances, and all the transactions, with all persons and communities without the commonwealth’ (Locke para. 146). A related term, confederatio, was sometimes used to designate the league or association formed by such agreements, such as that established by the cantons of Uri, Schwyz and Unterwalden in the late thirteenth century, which formed the core of the modern federation of Switzerland (Forsyth Chapter 2; Lister Chapter 4). While grounded in a kind of agreement among independent political communities a confederation could give rise to close relationships among those communities, described as a kind of oath-bound fellowship. Even today, the Swiss federation is officially called Confoederatio Helvetica in Latin, Confédération Suisse in French and Schweizerische Eidgenossenschaft (‘oath-fellowship’) in German.

4. Another important source of federal ideas in late medieval and early modern Europe were the covenants of the Bible, especially as understood by the ‘federal’ or ‘covenant’ theology of the Reformation (Elazar (1995–1998); Elazar and Kincaid (2000); McCoy and Baker; Ostrom (1991) Chapter 3). While medieval thinkers such as Thomas Aquinas, John of Paris and Nicolas of Cues adapted Aristotelian political thought to the vast plurality of secular and religious institutions of late medieval society (Aroney (2007)), in the early seventeenth century the idea that human societies might be constituted through a succession of covenants or pacts among households, villages, towns, cities and provinces especially took hold among Calvinist political philosophers such as Johannes Althusius (Althusius (1610); von Gierke; Hueglin (1999); Riley). These ideas were highly influential in colonial America, where the foundations of local religious and political communities, and relations between such communities, were conceived in terms of the
‘covenant’ idea (Hyneman and Lutz; Lutz; Schechter; Witte Chapter 5). The Constitution of the United States of America (1788), widely regarded as establishing the first ‘modern’ federation, was in some respects an innovative adaptation of these ideas of ‘treaty’, ‘covenant’ and ‘compact’ to the circumstances of the American colonies, albeit in connection with several other important political and constitutional ideas (Bailyn 32; Wood 114–8).

2. Contemporary Federalism

5. The potential reach of the federal idea is thus very wide. It can refer to forms of human relationship conventionally thought to belong to very different domains: social and political, religious and secular, and personal and territorial (→ political philosophy of federalism). Within the disciplines of political science and law, however, the term ‘federal’ is generally understood in a restricted sense to refer to a particular form of state organization defined primarily in political, secular and territorial terms (see Schmitt Part IV). This is largely due to the rise of the → Westphalian system of nation-states from the seventeenth century and the attribution of sovereignty to such states as a matter of both international and domestic law (Cassese 48). Considered externally such sovereignty entailed the jurisdictional independence of each state from all others, while considered internally it entailed the supremacy of the governing institutions of the state over all persons and groups within its territorial jurisdiction (Bodin (1576) 1.8; Hobbes (1651) 2.18, 2.20, 2.26). In such a framework, federalism came to be understood less as a matter of ‘oath-bound’ fellowship and more as a particular expression of state sovereignty.

6. This certainly seems to have been the case when, in the late eighteenth century, the political leaders of the thirteen American states were negotiating the terms of a ‘foederal’ union, first under the Articles of Confederation of 1781 (Articles of Confederation: March 1, 1781 (US)) and later under the Constitution of 1788 (Constitution of the United States of America: June 21, 1788 (US)). At the time, the federal idea continued to draw sustenance from its social, religious and personal connotations, but the constitutional debate was conducted in largely juridical and political terms. Federations were conceived, in essence, to be founded upon agreements between sovereign states. As James Madison put it a true federation comes into being through the ‘unanimous assent of the several states that are parties to it’, each state being considered ‘a sovereign body, independent of all others, and only bound by its own voluntary act’ (Madison 243–4). Moreover, according to Madison a genuinely federal arrangement between states will preserve the fundamental principle of their sovereign equality. While the states may agree to assemble together to formulate common policies for the conduct of their internal and external affairs, each state will ordinarily insist on being equally represented in the federal council or assembly, will
preserve to itself an essential role in the implementation of federal policies, and will retain an individual veto over any proposed change to the federal arrangement (Madison 244–6).

7. The Articles of Confederation adhered to this idea of a federal union as a ‘compact between states’. However, the Constitution drafted at the convention held at Philadelphia in 1787 proposed a subtly different arrangement, which Oliver Ellsworth called ‘partly federal; partly national’ (Farrand I:468; Diamond; Ostrom (1987)). As Madison later explained a purely ‘national’ constitution, if ‘republican’ in form (republicanism), would (a) derive its authority from ‘the people’ of the nation as a whole, (b) establish governing institutions that were representative of the people, and (c) be amendable by the people (Madison 243–6). Madison argued that the proposed Constitution was entirely ‘federal’ in its foundation because it only bound those states that freely ratified it, but it was partly federal, partly national in several other respects, including the design of federal legislature, which was to consist of two chambers (bicameralism), one in which the states would be equally represented, the other in which representation would be proportionate to the population of each state. Further, the executive power of the federation was to be vested in a President chosen by an electoral college which combined both principles of representation, and the constitution could be amendable by three-quarters of states upon the initiative of two-thirds within the federal legislature, breaking with the rule of unanimity that existed under the Articles of Confederation (Madison 244–6).

8. The American Constitution thus marked a partial break with the received idea of a ‘confederation’ as exemplified in the Swiss Confoederatio Helvetica (c 1291–1848), the Hanseatic League (C13–17), the Iroquois Confederacy (C15–18), the United Provinces of the Netherlands (1581–1795) and the New England Confederation (1643–1684). From the standpoint of the late seventeenth century, each of these confederations was conceived, somewhat anachronistically, as predicated upon the sovereign equality of the constituent political communities. The United States Constitution seemed to depart from these principles, at least to the extent that it combined ‘national’ and ‘federal’ principles into a new political synthesis. In the next century, Switzerland, and later Australia, would follow a similar trajectory, substituting earlier ‘confederal’ arrangements (the Swiss Pact of 1815 and the Federal Council of Australasia of 1885) for modern ‘federal’ ones (the Swiss Constitution of 1848 and the Australian Constitution of 1901). Over a similar timeframe, Germany went through transitions that were even more complex and far-reaching, as the structures and relationships of the old Holy Roman Empire (962–1806) were successively replaced by the Confederation of the Rhine (1806), the German Bund (1815), the North German Confederation (1866), the German Empire (1871), the Weimar Republic (1919), the Third Reich (1933) and the modern Federal Republic (1949).
C. Classificatory Criteria

1. Federation and Confederation

9. The new form of federal union exemplified by countries such as the United States, Switzerland, Australia and Germany made it necessary to develop a new terminology to designate the new political form that Ellsworth and Madison had somewhat awkwardly called ‘partly national, partly federal’. Three new categories were devised. In English the terms most frequently used were ‘confederation’, ‘federation’ and ‘unitary state’, while in German the corresponding terms were Staatenbund, Bundesstaat and Staat. The distinction between these three forms of government has dominated political and legal categorizations ever since. However, the exact nature of the difference between them has been a matter of controversy.

10. On one view, the most important question is to identify the location of sovereignty. According to this approach, the conceptually most basic category is that of the ‘state’ simpliciter and the defining feature of the state is its possession of sovereignty. As such, the ordinary condition of a state is to be a ‘unitary’ political community, predicated on a single locus of sovereignty, internally and externally. On this view, what distinguishes a federation from a confederation is that in the former, sovereignty is vested in the state itself (conceived as a singular ‘federal-state’ or Bundesstaat), while in a confederation, sovereignty remains vested in each of the several constituent states (conceived as a plural ‘confederation of states’ or Staatenbund). According to this idea a federation is a special kind of state, in which governing powers are divided between levels of government, but in which sovereignty is concentrated in a unitary locus of constituent power (Jellinek 1882; Burgess 1890).

11. The first part of the difficulty with this approach concerns the essentially contested nature of the concept of sovereignty. Although the idea is widely invoked, it is subject to deep disagreement about its definition, attributes and coherence (Sarooshi). Secondly, even if a workable definition of sovereignty applicable to unitary states might be devised, it is not clear that the idea can easily be applied to modern federations. This is because federations display a variety of institutional features, some of which seem to fit the one-state theory, others of which make them look more like a plurality of states. Thus, the constitutions of the United States, Switzerland and Australia, for example, each came into being when a plurality of states agreed to establish a federal system of government among themselves (Aroney (2009); Aubert; Berger (1987)). This involved the creation of
what James Bryce called a ‘commonwealth of commonwealths’, by which he meant ‘a state which, while one, is nevertheless composed of other states even more essential to its existence than it is to theirs’ (Bryce I:12–15, 332). It is this simultaneous unity-in-plurality—or plurality-in-unity—that makes it impossible to say, decisively, whether sovereignty is vested in the ‘composite state’ or the ‘constituent states’ of modern federations. In virtually all federal constitutions, especially those that come into being through an aggregation of states, some such combination of unity and plurality is expressed in (a) the establishment of a federal legislature consisting of two chambers, one of which is representative of the plurality of constituent states, the other of which is representative of the one composite state

(→ representation of component federal units in federal systems), (b) the constitutionally entrenched distribution of legislative, executive and judicial powers between the constituent states and the composite state, such that there is a direct relationship between individual citizens and the institutions of both sets of governments (→ distribution of powers between executive and legislative in federal systems; → judicial systems in federal systems), and (c) provision that the constitution itself can only be altered through a process that depends on the agency of both the constituent states and the federation as a whole

(→ delegated powers in federal systems).

2. Aggregation and Devolution

12. When viewed in this way, the difference between federations and confederations is more subtle and complex than merely a matter of identifying the location of sovereignty. If we take federal systems that come into being through the aggregation of previously separate states as a class, so-called confederations and federations have this feature in common: they are both founded upon an agreement or what Riker called a ‘bargain’ among constituent states. This agreement may be negotiated and ratified by executive heads of government, representative legislative bodies, specially elected conventions or popular referendums, but the phenomenon of state-by-state ratification is a characteristic of them all.

13. The constitutional process by which devolutionary federations come into being is, at a certain level of analysis, fundamentally different from the process by which aggregative systems are formed. In Belgium, Spain and the United Kingdom, for example, the formal
Process of federalization or devolution occurred through the exercise of powers and procedures provided for by the national constitution of each country, whether a written constitution in the case of Belgium and Spain, or an unwritten one in the case of the United Kingdom. In all three cases, the concentrated powers of government of a formerly unitary state have been distributed among component political units. However, it is important not to exaggerate the distinction between aggregation and devolution. In Belgium, Spain and the United Kingdom, while federalization occurred in accordance with the constitutional law of the nation-state as a whole, the real political initiative came from nascent sub-state political communities (Aroney (2014); Colino; Deschouwer). Moreover, these embryonic component states corresponded, in each case, to very old regional communal and national identities, such as Catalonia and the Basque country in Spain, the Walloon and Flemish communities in Belgium, and Scotland, Northern Ireland and Wales in the United Kingdom. As such, while such systems are properly defined as devolutionary because, as a matter of formal constitutional law, they involve the transfer of governing powers from a formerly unitary state to newly recognized regional political institutions, as a matter of political reality, federalization occurred as the result of negotiations between the original unitary state and emergent leaders of the nascent sub-state political communities. There is thus a real sense in which the fundamental character of federalism remains the existence of a foedus or ‘compact’ (Davis 215–16; Beaud), even when the formal constitutional foundations of a federal system are devolutionary.

14. The distinction between formal constitutional law and substantive politics makes it possible to identify an additional, middle category of federal system that comes about through processes that involve elements of both aggregation and devolution. Several federations formed in former European colonies have this characteristic. Canada and Australia can be offered as illustrations (Aroney (2015)). On the aggregative side, both federal systems came about through a negotiated union of pre-existing, self-governing colonies. However, while the colonies were self-governing, they still remained subject, as a matter of formal and constitutional law, to the authority of the British Parliament. It was therefore necessary for their federal constitutions to be enacted into law by statutes passed by the Parliament at Westminster. Moreover, in the case of Canada, the constituent provinces of Ontario and Québec were, prior to the establishment of the modern Canadian federation in 1867, consolidated into a single colony. Accordingly, the formation of the Canadian federation involved the dis-aggregation of the old colony of Canada into the two new provinces of English-speaking Ontario and French-speaking Québec, as well as their federal aggregation with the distinct and pre-existing maritime provinces of Nova Scotia and New Brunswick. Indeed, the relative size and bargaining power of Ontario and Québec compared to the two maritime provinces gave rise to asymmetrical structures within the new federation, exemplified by the provision that while Ontario and Québec were equally represented in the federal Senate, Nova Scotia and New Brunswick received only half that representation (British North America Act (1867), Section 22). Moreover, the position of Québec as a Francophone province gave rise to special provisions in the federal constitution to enable all of the provinces, but
especially Québec, to preserve their distinct cultural and communal identities. By contrast, the Australian colonies, all of which were predominantly British in cultural composition, regarded themselves as constitutive equals when negotiating the terms of the federal constitution, and this gave rise to a federal system in which the constituent states were treated symmetrically. Federations created out of former European colonies, such as Argentina, Brazil, Mexico and Venezuela in Latin America, and Nigeria and Ethiopia in Africa, as well as the federal systems established in Germany and Austria under Allied supervision following the Second World War, also display ‘mixed’ characteristics of both aggregation and devolution: of bottom-up pressure to devolve power, and top-down control over the form that the federalized state will take.

3. Symmetry and Asymmetry

15. The distinction between symmetrical and asymmetrical federations is an important one. Indeed, as the cases discussed so far suggest, there seems to be a relationship between formally devolutionary elements in the construction of a federation and asymmetries in the treatment of the constituent political units, and vice versa in the case of aggregative federations. This is because aggregation tends to presuppose constitutive equality among the states, and when negotiating the terms of a federal constitution, the constituent states, no matter what their size, population or economic or military power, tend to insist on being treated equally in the negotiations and under the constitution being negotiated (eg Australia, Switzerland, United States). These conditions are less likely to apply in devolutionary systems, where formal constitutive authority is originally vested in institutions and political processes that belong to the unitary state as a whole. The substantive pressure to federalize is usually exerted by particular nascent sub-state political communities that happen to emerge, but such emergence is not necessarily uniform. Some sub-state communities may be more powerful or influential than others, and some may be more insistent on attaining measures of political autonomy than others. Devolutionary systems tend therefore to make special arrangements to accommodate these pressures, and these special arrangements are liable to differ among the constituent political communities. Such special arrangements may involve differential representation of component federal units in federal systems (eg Canada, Germany, India) as well as asymmetrical distribution of power between executive and legislative in federal systems (eg Malaysia, Russia, Spain, United Kingdom).

4. Uninational and Multinational

16. Federal systems may consist of states whose ethnicity, language, culture or religion
tends to be either homogenous or heterogeneous (Stepan 323–8). If these kinds of diversity exist in a manner that is spatially or territorially expressed, federalism can enable peoples of diverse nationality or cultural identity to exercise self-government while sharing a common overarching federal government. The Swiss federal system, for example, grew in size over several centuries through the gradual aggregation of new constituent cantons which differed considerably in religion (Catholic and Protestant) and language (initially German, but later French, Italian and Romansch), enabling the distinct cultural identities of the people of each canton to be preserved within an evolving federal system of government (Fleiner and Hertig). Belgium, Spain and the United Kingdom consist of a plurality of substate national peoples formerly governed under unitary systems of government but which have successfully agitated for devolution of substantial powers of self-government (Delmartino, Dumont and Van Drooghenbroeck; Moreno and Colino). In this way, binational or multinational federations may have their genesis in processes that are predominantly aggregative or devolutionary, or, as in the case of Canada, come into being through a mixture of both formative processes (Gagnon and Simeon). Formally federal constitutional arrangements may also be used as a means by which national peoples are coercively forced into a political relationship with a more powerful state, as occurred in the Union of Soviet Socialist Republics and arguably influences the nature and style of Russian federalism today (Busygina and Heinemann-Grüder). In these ways, multinational federalism can be relatively aggregative, devolutionary or coercive in nature and origin (Stepan 320–23). Federal systems, may also be predominantly unational, however, as in Austria and Germany (Bendel and Sturm), and their multiculturalism may be expressed in a manner that tends not to be correlated to territory, as in Australia, Brazil, and the United States.

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5. Coordination and Cooperation

17. The representation of the constituent states and the distribution of powers within a federation can be organized in a manner that tends to treat the federal and state governments as ‘coordinate’ institutions intended to operate in distinct spheres or as ‘cooperative’ institutions that share responsibility for the determination and implementation of government policy. Models of coordinate or ‘dual’ federalism thus conceive the federation and the states as each exercising legislative, executive and
judicial powers in a largely autonomous manner in separate fields, whereas cooperative
or ‘administrative’ federalism conceives them as performing different governmental
functions within shared fields of operation: the federal institutions enacting the relevant
legislation and the state institutions administering that legislation. Thus in the United
States, on one hand, both the federation and the states have their own distinct legislative,
executive and judicial institutions which continue to enact, administer and enforce their
own distinct bodies of law. In Germany, on the other hand, despite recent changes to the
distribution of legislative powers (Gunlicks (2012)), the Länder governments share in the
enactment of federal legislation by being directly represented in the second chamber of
the federal legislature (the Bundesrat) and they play the leading role in the
implementation and administration of those laws (Gunlicks (2003)). Although most
federations display significant degrees of overlap in responsibilities in practice (Grodzins
and Elazar (1974)), this distinction between coordinate and cooperative federalism helps
to explain important features of the Australian, American and Canadian federal systems
on one hand and Austrian, German and Swiss federalism on the other. However, the
extent to which these divergent principles of coordination and cooperation are embedded
in the constitutional law and political operation of these countries varies considerably
from one federal system to another. For example, whether the system of government
within a federation is presidential (eg Brazil, Mexico, United S


tates) or parliamentary (eg
Australia, Canada, India, Germany) influences the way in which intergovernmental
relations are organized and operate in practice (Hueglin and Fenna (2015) 242–3).

D. Systemic Characteristics

1. Location of Constituent Authority

18. Distinguishing different types of federal system is thus a complex matter. Each
federal system is a unique product of the distinct constitutional, political, cultural and
economic conditions under which it came into being and has developed over time. Some
clarity can be achieved by focusing on the location of formal constituent or constitutive
authority underlying a federal system, whether aggregative or devolutionary. But the
distinction between aggregation and devolution does not give rise to watertight
categories, even when the analysis is restricted to formal legal powers and processes.
This is because constituent authority can be distributed in many different ways, and
effective political power shapes the way in which formal legal authority is exercised in
practice. Federal constitutions are a consequence of formative processes shaped by
formal legal authority and substantive political power. They are as diverse in their
specific features and their practical working as they are in the formative conditions that
give rise to them. Classification of federal systems is thus complicated, not only by their
diversity, but also by the fact that the distinctions discussed so far (viz, federation and
confederation, aggregation and devolution, symmetry and asymmetry, coordination and
cooperation), while broadly informative, do not capture the exact empirical
characteristics of any particular federal system. Just as Ellsworth and
Madison found themselves having to classify the United States Constitution as ‘partly federal, partly national’, there is a real sense in which, today, we may need to classify certain federal systems as ‘partly aggregative, partly devolutionary’, or ‘partly symmetrical, partly asymmetrical’, and so on. The mixed character of federal systems is not only empirical but also theoretical. For, as noted earlier, the distinction between federation and confederation is not necessarily a sharp one because it rests on a determination (on the part of at least some scholars) to insist that sovereignty is located in either the federal-state or the constituent states, when the empirical features of federal constitutions belie any simple allocation of sovereignty to one set of institutions or another.

19. Still, the distinctions are useful to the extent that they help to identify the systemic effect of constitutive processes on the structure of constituted power in federal systems, particularly expressed in the representative institutions of the federation, the distribution of legislative, executive and judicial power, and the prescribed means by which the constitution can be amended (Aroney (2006); Saunders and Le Roy). The federal constitution of India, for example, was enacted by a Constituent Assembly which asserted the authority to draft and enact a constitution for and in the name of the people of India conceived as a unitary whole (Sen). While the Indian Constitution makes provision for a federal system in which self-governing powers are constitutionally granted to the constituent states, there are many features of the Indian Constitution that favour centralized power, including the capacity of the central government to amalgamate or divide the existing states and to take over their administration during proclaimed states of national emergency (history and concepts of emergency) (Bhattacharya; Majeed). The Constitution of the United States is very different in this respect. Although the United States Constitution, like the Indian Constitution, appeals to ‘We the People’ as the source from which the authority to enact the Constitution derives, the negotiations in the Convention at Philadelphia and the ratification process depended upon the consent of each constituent state (Madison 243–4). The result was a constitution that entrenches the identity and powers of the states, even though in practice the federal system has become more centralized over time (Kincaid (2012)). The American federal system is fundamentally aggregative, while the Indian federal system displays significant characteristics of devolution (even though prior to the union an important number of the constituent states did have a kind of political existence as various kinds of provinces and as princely states).

2. Continuum of Federal Systems

20. By examining closely the configuration and location of constitutive authority upon
which a federal or federal-like political system is founded, particular systems can be placed on a continuum from the most ‘purely’ aggregative to the most ‘purely’ devolutionary. Such an approach has the benefit of including not only aggregative and devolutionary ‘federations’, but also ‘confederations’ and looser treaty-based associations between independent nation-states. At the aggregative end of the spectrum are treaty-based international arrangements formed in accordance with the international law principle of the sovereign equality of states (Charter of the United Nations (1945), Art. 2 para. 1). International alliances such as the North Atlantic Treaty Organization and international organizations such as the United Nations are examples. Treaty-based associations can also develop into highly integrated political organizations, such as the European Union. Although the sovereignty and equality of the member states is a fundamental principle of the founding treaties of the European Union, the law binding the states together has been so ‘constitutionalized’ (Weiler) that the European Union can sensibly be classified as a kind of confederation or federal-like system (Elazar (2001); Wallace). Alongside the European Union lie federations such as the United States and Switzerland, both of which are profoundly aggregative in origin, but which appeal to the ‘people’ of the constituent states or cantons for their legitimacy, and which manifest even greater degrees of political integration than the European Union. At the devolutionary end of the spectrum, on the other hand, are formerly unitary political systems that have undergone varying degrees of decentralization, devolution or federalization. The constitutional systems of countries such as the Netherlands, the United Kingdom, Spain and Belgium are located, more or less, at this end of the spectrum, depending on the extent to which their systems involve degrees of administrative decentralization, legislative devolution or constitutionally-entrenched federalization.

21. Between the two poles lie numerous intermediate federal systems, in which there are elements of both aggregation and devolution. Many federations formed out of former British colonies fall into this category. From the point of view of formal British-Imperial law, each of these federations came into being as a result of enactments of the British Parliament, but from the point of view of the local populations and their political leaders, the initiative and legitimacy of the federation derived from local sources. As between Australia, Canada and India, for example, the foundations of the Australian federation displays the strongest aggregative characteristics while those of India are the most devolutionary, with Canada falling somewhere in between. In each case, the representative institutions, distribution of power and prescribed means of constitutional amendment tend to reflect the location and configuration of the effective constitutive power on which the federation was founded. Whether a federal system is in its
foundations more or less aggregative or devolutionary makes a significant difference, even though the later trajectory of the system may be in the direction of increasing centralization or decentralization as a matter of political practice and constitutional interpretation.

Select Bibliography


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