CONTESTATORY FEDERALISM: 
HOW STATES (AND PROVINCES, CANTONS, AND LÄNDER) 
GET THEIR WAY WITH CENTRAL GOVERNMENTS

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The Problem

• In federal states, central government is always bigger, more populous, richer, more powerful

• In conflicts, how can subnational units (SNUs) *ever* get their way?

• Yet they do, from time to time – How??
Why Federalism?

1. Subnational demands to retain autonomy
   a. Historical: a condition of state formation (Switzerland, US, Argentina)
   b. Protect ethnic or linguistic distinctiveness (Canada, Spain, Belgium)
      • But only if distinct populations are territorially distributed

2. Obtain benefits of decentralization
   a. Enhanced satisfaction for political minorities
   b. Protection of liberty through dispersion of power (Madison)
Two Models of Federalism

1. US (sovereigntist, divided, legislative)
   - All government power is divided between the two levels; each level makes and implements its own policy within its sphere of competence
   - Examples: US, Canada, Australia, Switzerland, Argentina

2. German (integrated, administrative)
   - Federal government makes all major policy decisions
   - SNUs implement federal policy
   - And also their own policies in their own (usually limited) areas of competence
   - Examples: Germany, Austria, South Africa
The Problem of Federal Sustainability

• Federalism requires a division of powers
• That division must be permanent
• Yet federalism is unstable: risk of collapse or fragmentation
• 27 of 44 federations formed in last 200 years have failed
• How can the initial allocation of powers be stabilized?
Constitutionalism

• Habitual obedience to law by officials
• But officials may not feel bound, or may choose not to observe constitutional constraints
• Madison called these “parchment barriers”
The Equilibrium Model

• Madison’s solution: “contestatory governance”
• System is stabilized by dividing power among different power centers and putting them into competition with each other
Division of power and contestation

All Government Power

Partial Power

Partial Power

Partial Power
Constitutions and Design

• Madison: “Ambition must be made to counteract ambition”

• Produces constitutional stability:
  • Permanent struggle produces stalemate at desired equilibrium point
The Struggle

• How does it actually occur?
• What tactics do SNUs actually employ to try to get their way, at least once in a while?
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Subnational Cooperation and Harmonization

• What it accomplishes:
  • Can make *national* policy without involvement of federal government
  • More aggressively, SNUs can occupy vacant policy space by exercising power of the first mover
    • “Reverse preemption” – designed to *exclude* federal government entirely

• How accomplished
  • Formal: treaty or concordat: Austria, Argentina, Italy, Switzerland, US (with approval of Congress)
  • Informal: ministerial conferences
    • Standing or ad hoc, nationwide or regional
    • Examples: Austria (Land governors), Switzerland (Conference des Cantons), Canada (first ministers, cabinet-level, bureaucrat-level)

• Examples of reverse preemption
  • US: Uniform Commercial Code
  • Switzerland: cantons negotiating education policy to keep feds out of the field