

Federalism as an Institutional Doctrine

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Federalism is, minimally, a method of allocating final decision-making authority over subjects (e.g., crime, healthcare, immigration) in a governance unit (e.g., country). Faced with questions of the form 'who can decide what when,' federal bodies, like the U.S.A., Canada, Australia, and Germany, provide at least two entities (federal governments, provinces, cities, etc.) with final decision-making 'powers' over at least one subject. No other entity is morally permitted to directly interfere (substitute decisions, fine, etc.) with the authority's decision-making regarding those subject(s). This is distinct from the unitary or centralized governance of, e.g., France and Israel whereby one central entity possesses all final decision-making authority.¹ Beyond these basics, the meaning of and criteria for evaluating claims about federalism remain contested in law and political science.² The broader debates are then oft-ignored in mainstream political philosophy, resulting in conceptual confusion with important practical results discussed below.³

The following argues for adopting an 'institutional' approach to federalism, rather than more common 'ideological' approaches.⁴ A long tradition equates federalism with the U.S. Founding Fathers' institutional proposals (Publius 1788/1987). Yet, partly due to empirical developments, the dominant account outside philosophy now holds that federalism is a normative doctrine promoting a secure political organization combining "shared[-]rule and self-rule" and separates this federal "idea" from institutional forms that may realize it (Elazar 1987; Watts 2008). Philosophers often begin by accepting this ideological approach (Silva 2022).⁵ Patricia Popelier (2021: 33) even suggests "all" scholars view this combination as federalism's "normative core." But philosophical strictures and practical realities demand a more circumscribed approach. The

¹ These examples are in comparative texts below, including those with more expansive views (e.g., Watts 2008). Compare Lev (2019) on the federal/unitary binary. Federalism does not always seek to provide a distinct approach to 'separation' of powers issues (regarding executive/legislative/judicial powers) but *may* require judicial review.

² See below. For space's sake, I often provide exemplary, rather than exhaustive, citation(s) for claims throughout.

³ Rawlsian political philosophy initially assumed a unitary state (1971). New philosophical works in the early 2000s (e.g., Gagnon/Tully 2001; Kymlicka 2001; Weinstock 2001; Requejo 2005, 2013; Karmis/Norman 2005; Norman 2006) followed the resurgence of interest in federalism in the 1980s/1990s. Important volumes appeared since (e.g., Requejo/Caminal 2012; Fleming/Levy 2014). Political theorists contribute to philosophy and federalism studies (Bellamy 1996; Tushnet 1996; Levy 2007, etc.). However, analytic political philosophy and federalism still rarely intersect in mainstream venues. Federalism scholarship rarely appears in *Ethics*, *Philosophy and Public Affairs*, *Journal of Political Philosophy*, or this journal. One work of pure political theory appeared in *Publius* in 2016-2020. A recent philosophy of federalism collection only included two contemporary works (Heidemann/Stoppenbrink 2016). Many great theoretical works that discuss federalism focus on minority rights, not federalism simpliciter (Requejo 1999; King 2005; De Schutter 2011). Popelier (2021: 3) suggests legal scholars too must catch up to political scientists. She, Tierney (2022), and Larsen (2022) are shifting this trend. Even their excellent 'theoretical' work does not engage in-depth with contemporary philosophers like Føllesdal or Weinstock.

⁴ Silva (2022)'s reference work uses this language. I build on that schematic discussion, which echoes King (1982).

⁵ Following Silva (2022), 'ideological' here means 'defined by commitment to an idea' and is non-pejorative. This differs slightly from King (1982). King would describe a thick institutional view in the sense below as ideological.

dominant ideological approach is too broad to be a distinct normative doctrine or cannot even apply to many paradigmatic federal bodies. Institutional approaches defining federalism by advocacy for the adoption of federations (defined below) for authority allocation are preferable.

To establish this, I first detail and defend criteria for evaluating philosophical accounts of federalism. I then elaborate the distinction between ideological and institutional approaches and apply the criteria to the dominant ideological approach and a new specification of an institutional approach inspired by Kenneth Wheare (1946/1953: 11)'s classic, oft-critiqued account. I thereby demonstrate that ideological accounts fail to fulfill many normative adequacy criteria for a philosophical account of federalism and one can articulate a more action-guiding institutional account that avoids common critiques. I finally explain how this exemplary application grounds a broader case for institutional approaches to federalism and address pressing objections. The result is deceptively radical as it weakens a decades-old stark contrast between 'federalism' and 'federation.' The broader arguments challenge several orthodox positions in the study of federalism. However, the balance of reasons supports an institutional approach to federalism.

My arguments are conceptual and normative. I aim to clarify the concept of federalism in a way that maintains it as a distinct, action-guiding contribution to moral ontology. Rather than offer an alternative to leading accounts of why one *should* adopt federalism (Bellamy 1996; Norman 2006; Levy 2007), I identify and specify the institutional normative concept they may support. I do not seek to defend all federations over other forms of governance. I instead demonstrate that advocacy for that institutional form is a normative doctrine one justifiably adopt, albeit one with fewer necessary conceptual commitments than many claim. The concept is sufficiently distinct and compelling to warrant closer scrutiny even if it does not best fit the 'federalism' description. The concept matters, not the word. Findings below nonetheless explain why one would adopt the institutional concept I identify, why it deserves the label 'federalism,' and other commitments a federalist should make. They thereby provide ample guidance for ongoing debates about the merits of *federalism* vis-à-vis other systems. The argument for institutionalism succeeds even if my specification proves problematic. If even *that* fails, the analysis at least identifies burdens ideological accounts must meet and demonstrates that the dominant example does not meet them. The following thus requires new paths in philosophical work on federalism on any reading.

Conceptual Desiderata

Existing practices and scholarship provide criteria for judging theories of federalism. A complete theory should be descriptively adequate. It should also serve federalism's professed normative functions, including guiding authority allocation within countries and judicial interpretation. It should do so in a way that is distinct, normatively-compelling, and explains its relationship to adjacent concepts. It should thereby assist the development of comparative law and politics and

philosophical analysis of related concepts, like democracy. These are plausible conceptual desiderata even if no theory fulfills them all and can be evaluative criteria for comparing views.

(1) Descriptive Adequacy

A theory of federalism should minimally explain paradigmatic uses of the term ‘federalism.’ It should explain why Australia, Germany, et al. are federal and France, Israel, et al. are not. It should also explain relevant history. ‘Federalism’ derives from the Latin ‘foedus’ (alliance/covenant). ‘Confederation’ (defined below) has the same origin (Karmis/Norman 2005: 5-6).⁶ Historically, ‘confederalism’ was used like ‘federalism’ is today. Paradigmatic federations like Canada were called confederations. But the U.S. Founding Fathers sought a new form of government in which both levels were accountable to distinct populations, and each possessed distinct powers (Diamond 1974). They are widely-recognized as producing the “original version of a radically new type of government” (Karmis/Norman 2005: 6), which inspired and influenced other federations, likely beginning with Canada in 1867. ‘Federalism’ eventually came to (most often) refer to advocacy for that U.S.A.-inspired governance model,⁷ usually denoting advocacy for the institutional form of the federation.⁸ Federations are characterized by two or more entities who are each accountable to distinct electorates, are not subordinate to each other, and possess final decision-making authority over at least one subject (Norman 2006; Watts 2008; Bednar 2009). An adequate account should explain historical connections between federalism and confederalism and the U.S. Founding Fathers’ articulation of a new approach to governance.

A plausible theory should also account for more recent distinctions between self-avowedly federal modes of governance. Cooperative federalism whereby “in most areas, decision-making and implementation require action by both levels of government and thus their integration” (Palermo/Kössler 2017: 46) is exemplary. It developed in contrast to traditional dual federalism, which provides each federal entity with at least one exclusive (traditionally non-overlapping) domain of authority in which the entity can act as it sees fit (*id.*).⁹ Other key distinctions contrast parliamentary and presidential or monarchical and republican systems (Hueglin/Fenna 2015: xiii). Still another contrasts coming-together federalism, whereby entities combine into a body with some shared powers, and holding-together federalism, whereby a unitary body divides powers among sub-units to maintain a now-federal body (Stepan 1999; Breen 2018).

⁶ See Davis (1978)’s classic history. Elazar 1987: 5 suggests the concept is Biblical but grants the etymology.

⁷ Influence stories require nuance. Smith (1988) is a classic on American influence on Canada. Another tradition understandably takes the E.U. as paradigmatic. Larsen (2022) recently provided a strong E.U.-based account.

⁸ Those who critique U.S.-based models, like Tierney (2022), grant this.

⁹ Cooperative federalism is sometimes called “coordinate” federalism and/or contrasted with “competitive federalism” where cooperative federalism requires that entities work toward some common goals and competitive federalism permits subunits maximize their outcomes even contrary to others. “Dual federalism” is also contrasted with “administrative federalism.” See Hueglin/Fenna (2015); Palermo/Kössler (2017).

Reasonable people disagree about whether, when, and how philosophers should address each development. However, a theory should explain why people plausibly describe things as federal even if it does not qualify them as such. For instance, if many stakeholders are correct, federalism also describes configurations of regional bodies like the E.U. (Elazar 1987; Watts 2008; Føllesdal 2003/2018; Larsen 2022) and even places like the U.K., where one level of government has ultimate authority over all decisions but ‘devolves’ some powers (Laffin/Thomas 1999; Dardanelli/Kincaid 2016; Tierney 2022). Whether all these bodies share enough features to fit under *any* banner remains unclear, but a theory should ideally explain why many consider the E.U. as paradigmatically federal and why that view has some plausibility.¹⁰

The same is true of debates concerning whether confederations like Belgium or consociations like the Netherlands are federal. In confederations, multiple levels of government possess powers, but a weak central government lacks a distinct political identity and is composed of representatives from other levels (Watts 2001: 25). In consociations, multiple groups share powers in a central institution (Lijphart 1977). These could be species of or competitors to federalism (*cf.* Watts 2008; Hueglin/Fenna 2015). A theory should provide guidance on whether these qualify as federal. Any negative results should explain why many view them as federal.

(2) Conceptual Mapping

A theory should also explain federalism’s relationship to nearby concepts. Theorists further debate whether there are inherent principles of federalism all federal bodies do or should recognize. Some hold that federalism is necessarily cooperative and requires ‘loyalty’ between federal and provincial governments – and thus regular consultation and submitting disputes to third-party arbiters (Gamper 2010; Gaudreault-DesBiens 2014). Others claim that federalism entails a commitment to subsidiarity, the principle under which decision-making powers should rest at the most local level capable of addressing an issue (Hueglin/Fenna 2015:3). However, federalism and subsidiarity are sometimes posited as rival principles for allocating authority (e.g., Barber 2018). Many similarly debate whether federalism is consistent with or a rival to democracy (compare Kelemen 2006; Hueglin 2019; Abizadeh 2021). These are good faith debates. Substantive positions thus cannot indicate theoretical adequacy. Theories should instead engage with these nearby concepts and explain if and why federalism is distinct from each.

(3) Functional Roles

A compelling theory will also provide plausible guidance on how to solve federalism’s intended normative roles. It should thus help guide decisions about whether and how to allocate final decision-making authority over discrete subjects within a governance unit. It need not fully

¹⁰ Some view federalism as offering/reflecting a theory of *the state* (e.g., Tierney 2022) such that any application thereof to the E.U. must explain its ‘state-like’ features.

explain who can have which powers when. But it should explain what makes authority allocation models federal and, ideally, provide means of deciding which of these are preferable. It should also assist judges in federal countries tasked with interpreting texts specifying entities' powers. Federalism is a constitutional concept (e.g., Tierney 2022) and commonly thought to structure how constitutions should be interpreted. Jurisprudential recognition of a "principle of federalism" (e.g., *Reference Re Secession of Quebec*, [1998] 2 SCR 217) makes this role more acute. Federalism is supposed to guide judicial interpretation of at least some constitutions.

Guidance here should be precise enough to edify and help resolve disputes. A lack of clarity on and competing understandings of the meaning of 'federalism' famously led to an impasse in historical negotiations between West African states seeking a 'federal' union more likely to further its historically-colonized potential members' aims (Getachew 2019). A theory that makes federalism distinct from alternatives and meets common usage minimizes such risks.

If federalism is to play these roles, it should do so in a way that is distinct and normatively compelling. Federalism should be distinguishable from alternative means of allocating authority, interpreting constitutions, or fulfilling other key normative functions. There should then be reason to consider the distinct federal approach a valid option for addressing underlying concerns. A theory should generate a distinct answer to questions concerning which forms of governance qualify as 'federal' and explain why states (such as those in West Africa above) may want to adopt one. This does not mean there must be one unique justification for federalism or federalism must provide the best means of fulfilling these functions. However, if federalism is a concept worth discussing, it should provide a plausible alternative to other governance modes.

(4) Fruitfulness

Finally, an account of federalism should help generate knowledge. If an account properly engages with issues concerning authority, democracy, etc., it will further philosophical understanding. An account should also provide a subject for more empirical analysis that can guide authority allocation. Allocations impact persons' vital interests. Consider evidence suggesting diffuse authority over healthcare undermines health outcomes (Michener 2018). A theory of federalism should (ideally) permit scholars to compare federal and non-federal and different kinds of federal allocations to better understand federalism's empirical dimensions.

Institutionalism and Ideology

While theories of federalism permit many distinctions, Daniel Elazar (1987)'s distinction between 'federalism' and 'federations' marks a breaking point in federalism studies. Subsequent work distinguishes a federal 'idea' and a federal institutional form. Even the institutionalist Wheare's followers, like Ronald Watts (2008), use this federal idea as a framing device. It

remains the starting point for most philosophical analyses. I accordingly present and then evaluate stylized versions of leading institutional and ideological approaches to federalism.

i. Institutional Federalism

Institutional federalism states that ‘federalism’ refers to particular forms of governance and advocacy for the adoption of a particular institutional form. Wheare’s coordinate federalism describing federalism as advocacy for “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent” is a classic example. This echoes the U.S. Founding Fathers’ advocacy for their proposed form of governance (e.g., Publius 1788/1987).¹¹ Something is federal iff it has a set of distinct institutional features. Federalism denotes advocacy for adopting those institutional features.

Institutionalists debate which features qualify as federal but classic institutional approaches, including Wheare, coalesce around advocacy for the institutional form of the federation. Elazar (1987: 7) defines a federation as “as a polity compounded of strong constituent entities and a strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in exercise of those powers.” Elazar himself recognizes other federal forms, not only including confederations and consociations, but also unions and leagues (e.g., the E.U.) and forms of devolution in which a central government has final authority but provides it to lower-level governments on a revocable basis, as in the U.K. But institutionalists like Wheare wish to maintain distinctions between federalism and other forms. They thus view consociationalism, confederalism, and (especially) devolution as alternatives to federalism.¹²

Thin institutional approaches ensure further commitments follow directly from a basic federal form. Thick(er) conceptions, by contrast, suggest something qualifies as federal iff it also adopts commitments external to the form as such, like a commitment to democracy. Views under which something qualifies as federal iff multiple levels of governance each possess distinct domains of authority are thin. If, e.g., judicial review is an implication of the federal form, rather than a constitutive element of federalism, the view remains thin.¹³ But the view is thick if the very concept includes judicial review, particular democratic decision-making procedures, etc.¹⁴

ii. Ideological Federalism

¹¹ Note, however, questions about whether their proposal fits this ideal below.

¹² One could also adopt an institutional approach advocating for, e.g., confederations. This lacks precedent.

¹³ Watts (2008: 9) lists other features that may be part of the form, including ‘umpires’ and collaborative bodies. Hicks (1978: 4-5, 11) adds many more institutional requirements, including particular democratic institutions.

¹⁴ This distinction builds on Hueglin (2019)’s call to examine federalism on its own terms. Per Hueglin, one must resolve questions about the relationship between federalism and democracy by attending to federalism’s basic features. Whether federalism and democracy are consistent cannot be resolved by definitional fiat rendering them so.

Ideological approaches define federalism in terms of a commitment to particular normative ideals and institutions needed to instantiate those ideals. They seek a unique federal ‘idea’ and do not equate the idea with any institutional form. Most suggest it reconciles or balances competing ideals. On Elazar (1987: 5)’s dominant conception, federalism combines “self-rule and shared-rule.” But federalism is also said to reconcile or balance “unity and diversity” (Poirier 2015); “autonomy ... [and] participation” (Fleiner/Gaudreault-DesBiens 2013); “constitutional pluralism and union” (Tierney 2022) and group and individual identities (Hueglin/Fenna 2015).

The federal idea can have institutional implications but the idea is analytically prior. Elazar (1987), for one, states that his idea entails that authority be distributed among parties in ways that will maintain their integrity and this requires ongoing “negotiation” between parties. His vision of federalism requires different levels of governance, distinct authority wielders, and fora for ongoing negotiations. Elazar considered this consistent with many institutional forms. Many ideological theorists more broadly view ‘federalism’ as a continuum, which is itself often-framed in terms of degrees of centralization.¹⁵ Yet unitary governance also fits on a centralization continuum. While Elazar was happy to include unitary states with some decentralization among ‘federal’ entities, this risks federalism’s distinctiveness and scholars debate whether, e.g., a league whereby independent bodies share a secretariat for joint projects is plausibly federal.¹⁶

iii. Clarifying the Distinction

Any combination of shared- and self-rule should involve different actors having final decision-making authority in unique spheres.¹⁷ However, ideological views, unlike standard/traditional institutional views, consider federations as sufficient but unnecessary for federal governance. Even if, in turn, plausible institutional views should devise institutional requirements capable of rendering confederations federal,¹⁸ the continuum of federal options is narrower on standard institutional accounts, clearly barring leagues, unions, etc. Institutional and ideological views also have different methods and prioritize different phenomena. Both begin by observing purportedly federal practices. Institutionalists prioritize identifying particular federal features over explaining all purportedly federal phenomena. They lean intensional, not extensional.¹⁹ They also make institutional form prior to normative commitments external to form. Ideological approaches, by contrast, make the federal idea prior to any institutions that instantiate it. Even when competing approaches reach overlapping conclusions, then, they do so by different paths.

¹⁵ Popelier (2021) discusses degrees of federalism. Continuums appear in several texts (e.g., Watts 2008, Hueglin/Fenna 2015). This is distinct from any degrees of permitted institutional variation from an ideal in Wheare.

¹⁶ Beyond Elazar, Hueglin/Fenna (2015: 20)’s sovereignty centralization chart also includes unitary states.

¹⁷ [redacted] proposed this phrasing. Watts (2008: 1) also initially views Elazar’s distinction as one identifying forms of ‘federations.’ Yet distinctions between federalism as an idea or normative doctrine, general forms of federal governance, and federations as a particular form are now standard.

¹⁸ See note 12.

¹⁹ I thank [redacted] for this point but the approaches do not perfectly conform to this distinction.

The Case for/Limits of Ideological Federalism

Applying our conceptual desiderata suggests ideological approaches are less plausible and institutional ones less problematic than many suggest. Both face issues along some evaluative dimension. But the strongest case for ideological federalism is weaker than many suppose and the balance of reasons support a form of institutionalism. At minimum, this application suggests the dominant ideological view is problematic and sets burdens for developing stronger examples. I spend considerable time contrasting approaches when specifying ideological federalism's strengths and weaknesses here. This helps streamline presentation of institutional views below.

(1) Descriptive Adequacy

Ideological views are inspired by and purport to remedy institutionalism's apparent descriptive inadequacies. Political changes and the development of comparative federalism as a scholarly discipline challenged institutional approaches by identifying explanatory burdens many struggled to meet. Wheare, William Riker (1964), and other earlier institutionalists took the U.S.A. as their paradigm case. But even early findings in comparative federalism challenged its use as *the* exemplar of federalism. Holding-together federalism, for example, challenged U.S.A.-based 'covenant'/'bargain' theories on which federalism is an agreement of sovereign nations to share power in a new country and contributed to healthy skepticism about U.S.A.-centric approaches.²⁰ Some contemporary comparative federalists describe the U.S.A. as an exceptional case that is only interesting in contrast to *more* paradigmatic examples (Hueglin/Fenna 2015: xiii).

New purportedly federal institutional arrangements from the 1980s on, including European integration, then raised questions about whether *any* necessary or sufficient features link all federal phenomena. No historical institutional view accounted for all the distinctions above. Where some (e.g., Diamond 1973: 134-136) worry that even the U.S.A. cannot fit the idealized understanding of a federation— 'state' governments originally selected federal senators, creating overlapping voter bases —institutional federalism risks abstracting from *any* real federal forms.

Increasing cooperative federalism especially challenged traditional institutionalist views. While many distinctions above focus on which entities could possess powers and plausibly fit within more traditional institutional approaches, the dual-cooperative distinction focused on what entities can do with their powers. Federal governance appears increasingly cooperative in recent decades. Courts in some paradigm cases adopted cooperative federalist principles despite formally dualist constitutional documents.²¹ Institutional approaches committed to strict domains of authority held by entities with distinct constituencies struggle to account for this development.

²⁰ But see Elazar/Kincaid (2000)'s nuanced discussions of covenants.

²¹ On waxing and waning approaches to cooperation in North America, see Kincaid (1990); Gaudreault-DesBiens/Poirier (2017).

Motivated partly by perceived needs for a more “dynamic” (Popelier 2021) non-U.S.A.-based approach that can recognize institutional variety, ideological approaches admit many more forms of governance into the federal register. If they succeed in providing a normative doctrine that accounts for this variety, they should soften worries that theories of federalism do not model real-world institutions (e.g., Levy 2007; Tierney 2022). The long-dominant ideological approach building on Elazar initially appears particularly descriptively acute. Its constitutive ‘self-rule + shared-rule’ equation permits many variations, including cooperative and holding-together federalisms. Proponents can recognize ‘the federation’ as a distinct institutional form but place a wider range of normative phenomena and institutions combining shared- and self-rule, often including confederations, under one ‘federalist’ banner (Føllesdal 2003/2018; Aroney/Kincaid 2017; Burgess 2013; Hueglin/Fenna 2015). This further accounts for historical continuities between confederalist and federalist thought and the unique development furthered by the U.S. Founding Fathers without making one institutional form uniquely federal. It thereby explains contemporary distinctions while accounting for key developments in the history of federalism: Federalism relates to phenomena like confederalism and consociationalism even if U.S.-style federations were unique developments. Fine-grained comparisons of anything fitting basic ‘shared-rule + self-rule’ schema also permits one to adapt one’s theory and institutional options based on new developments, further bolstering that ideological approach’s explanatory value.

(2) Conceptual Mapping

Ideological approaches do not, however, provide as clear guidance on how federalism relates to other nearby concepts. Proponents of ideological views disagree on whether federal governance entails commitments to loyalty, subsidiarity, democracy, etc. Ideological federalism as such does not provide a clear method for adjudicating these debates. This is partly because the ideological concept itself admits multiple interpretations, some of which are much thicker than others. ‘Shared-rule’ is, for instance, read as equivalent to a loyalty principle and as a much weaker commitment to some common locus of decision-making.²² Similar ambiguities in how to understand ideological views raise a host of issues. Further questions about how ideological conceptions of federalism relate to nearby concepts arise when specifying issues below.

(3) Functional Roles

Ideological views struggle to serve federalism’s intended functional roles. Most notably, if federalism is to guide authority allocation, meaningful contrasts and comparisons between advocacy for institutional forms placing all formal powers in a central government, for those providing federal and state government with distinct domains of authority, and for those making central governance subordinate to provincial powers should be possible. This is not clearly

²² Cf., e.g., Gaudreault-DesBiens (2014); Tierney (2022)

possible on dominant ideological views, as Elazar already made clear. If comparative scholars address those concerns (a point to which I return below), political actors may be unable to do so (as the West African example above demonstrated). That is at least partly due to underlying scholarship not sufficiently delineating a distinct federal form parties could discuss. The issue reoccurs in philosophical work: distinguishing federalism and confederalism does not bar use of tools from either tradition. Yet failure to distinguish them can lead to confederalist commitments being imported into federal theories absent sufficient argument (also producing interpretative problems below). Federalism and subsidiarity should not, e.g., be consistent by definitional fiat.

The dominant ideological account is too capacious to be useful or must be specified in ways that limit its purported application. If federalism merely refers to various forms of decentralization across a spectrum, it adds nothing to moral ontology. Indeed, if it merely requires some hitherto unspecified combination of different loci of powers, a “federalism beyond federations” (Requejo/Nagel 2011) in which federalism is understood only in terms of decentralization and asymmetric distribution of powers remains open. French ‘federalism’ becomes a conceptual possibility simply by virtue of France’s attempts to appease Corsican nationalists with severely limited decision-making powers subject to substitution by decisions in Paris (*id.*). Such ‘federalism’ is no longer meaningfully distinct even from federalism’s classic comparators.

The ‘self-rule + shared-rule’ equation alone says little about the combination or balance of the kinds of rule states may, let alone should, adopt. It is largely silent on when and how particular powers should be allocated to particular groups. Appeals to the need to combine shared- and self-rule cannot, e.g., determine whether and when healthcare policy should be set by federal or provincial governments (McKay/Danis 2016) or if ‘national’ minorities should have special powers to set health or other social policies not available to other groups (Seymour 2000). Adding principles to the concept may not resolve anything and has explanatory costs. To wit, making subsidiarity a necessary component of the shared- and self-rule combination could equally justify rule at provincial, municipal, or neighbourhood levels (Young 2005, Weinstock 2014; Hirschl 2020). Non-recognition of constitutional powers for cities or subsidiarity in many paradigmatically ‘federal’ states, like the U.S.A. and Canada, then appears curious at best.²³

Action-guiding accounts must instead appeal to and justify particular combinations and forms of shared- and self-rule. Some justifications are contradictory. Necessary choices between them again limit application. Federalism admits many purported justifications, from efficiency (Tiebout 1956) and innovation (Rose-Ackerman 1980; Tarr 2001) to self-determination (Young 2005; Norman 2006) and pluralism (Poirier 2015) to autonomy and cohesion (Popelier 2021).²⁴

²³ Both sometimes use subsidiarity-like principles (Føllesdal/Muñiz Fraticelli 2015; Hirschl 2020). Neither explicitly adopts subsidiarity.

²⁴ Other options include combining the benefits of small and large governance (Diamond 1973), promoting democracy, citizenship, and/or liberty (Weinstock 2001); protecting minority interests (Kymlicka 2001; Young

Each could claim to be ‘*the*’ federal idea, raising more questions about our equation.²⁵ If they merely justify the idea, each still admits multiple interpretations with differing implications.

Choices between them undermine ideological approaches’ motivating capaciousness and leave the normative work to other principles that say little about what makes something federal. Consider appeals to self-determination (Norman 2006) and efficiency (Tiebout 1956). Self-determination-based allocations are not obviously the most efficient ones. Other justifications explicitly permit inefficiencies (e.g., Levy 2007). The dominant ideological equation does not help us choose between competing values in a conception or between efficiency-based and non-efficiency variants. This undermines federalism’s ability to guide institutional design or constitutional interpretation. It further suggests that if a federal idea is meaningful, this is only due to its ability to fulfill other ends. However, if one is interested in other ends, relevant comparisons should concern competing institutional forms that may fulfill them. Federalism as an institutional doctrine provides better contrasts for such comparisons.

Focusing on any single idea raises the same problems. Consider self-determination again. Self-determination’s value is commonly invoked in attempts to justify federal arrangements (Weinstock 2001: 76-79). Yet self-determination-based approaches to federalism offer divergent institutional implications. Wayne Norman (2006: 6) only requires that minority ‘nations’ have a “substantial realm of self-determination” within federal states. I.M. Young (2005: 147-149)’s account of self-determination “as non-domination” entails a ‘federalism = self-rule + shared-rule’ equation that itself required asymmetrical federalism under which some entities have more powers than others and substantial powers for neighbourhoods. Choices regarding which self-determination-based account is genuinely ‘federal’ again limit ‘the’ federal idea’s application.

Despite purported descriptive benefits of viewing federalism as a combination of shared- and self-rule, then, that dominant ‘idea’ risks becoming expansive enough to give up on a unique concept or limiting federalism in ways that do not capture even paradigmatically federal phenomena, undermining the view’s original impetus. Federalism risks becoming a doctrine whereby different entities have different powers (which too easily collapses into other governance models in practice) or a narrower view characterized by principles that do not apply in all paradigmatically federal bodies. If one wishes to maintain distinct federal solutions to authority allocation problems, one can compare institutional forms using more fine-grained values to identify ideal power-sharing arrangements. This ‘idea’ of federalism then becomes normatively inert. One is better off comparing institutional forms of allocating authority.

2005; Abizadeh 2021; etc.); fostering self-determination for sub-state national groups (Young 2005; Norman 2006); and protecting against excess central power and its potential devolution into tyranny (Levy 2007).

²⁵ Again, other *combinations* are also possible. King (1982: ch 5) lists ‘balancing’ views beyond those above.

Labels for particular institutional forms ease discourse on the forms' relative merits. Labelling a subset or even single instance 'federal' and calling advocacy therefor 'federalism' is advisable where it maintains federalism as a unique normative doctrine. However, that returns to an institutional approach. The output will uniquely solve our problem and can ground comparative inquiry one can meaningfully describe as federal. But federalism will no longer be ideological.

Even positing justifications for or issues with a mere mix of shared- and self-rule is difficult. Note concerns that appeals to efficiency can motivate actors to deviate from the formal divisions of powers that are supposed to instantiate the combination of shared- and self-rule (Bednar 2009) or that democratic arguments for federalism collapse into appeal to efficiency (viz., local governments can do this better) and yet make efficiency difficult in practice (Weinstock 2001: 76-77). Or consider that federal institutions may not actually foster pluralism (Karmis/Norman 2005: 5, 8-13). Assessing these worries is easier where a shared form clearly identifies genuinely federal bodies, which simply combining shared- and self-rule alone cannot provide. While assuming commitments other principles (e.g., subsidiarity) may provide shared bases for comparative distinctions, it begs normative questions of what federalism should require and again renders paradigmatically federal bodies that do not adopt them into non-federal ones.

Problems recur at the level of constitutional interpretation. If federalism only requires some shared- and self-rule, few interpretive limits follow. Absent clear principles common to the U.S.A., Canada, the E.U., Switzerland, etc., federalism likely cannot produce *any* limitations. If federalism is to properly guide legal interpretation, distinctions between federal and non-federal bodies must maintain common standards at least most paradigmatic federal states can and do constitutionally recognize. If all federal bodies must commit to set principles, they should possess similar features and produce similar results. Any mere federal form may not provide one principle common even to all federations. It is even more difficult to identify a principle common to all federal forms if it must be cooperative. I am unaware of principles that do not beg questions by building other normative commitments that paradigmatically federal states do not accept, like purported cooperation requirements absent in North American constitutional texts.²⁶ And requiring that e.g., Canadian courts appeal to e.g., E.U. principles by philosophical fiat seems odd given myriad institutional differences between the country and the regional body.²⁷

Ideological federalism's broad application ultimately stems from an imprecise definition with no distinct purpose. Attempts to specify it come with many problems that leave federalism unable to serve its basic function(s). Other concepts, like democracy or secularism, also clearly admit institutional variety.²⁸ And accounting for a wider variety of seemingly relevant phenomena is

²⁶ Note 23 notwithstanding, both have formally dualist constitutional texts judicial principles cannot supersede.

²⁷ Kantian unions of states (Riley 1979) are often translated as 'federations.' Advocacy therefor fits some historical uses of 'federalism.' Yet only the present view is likely to resolve relevant domestic authority allocation issues. Mikalsen (2011) confirms Kant's international focus. Nicolaidis (2020) surveys conflicting uses of Kant in the E.U.

²⁸ E.g., Maclure/Taylor (2011) (on secularism).

often desirable.²⁹ However, the dominant ideological approach either applies too widely to serve federalism's intended functions or must be specified in ways that give up on its motivating capaciousness. It thus faces explanatory and normative objections otherwise compelling broad definitions of comparable normative concepts, like democracy or secularism, do not.

'The federal idea' cannot justify capacious views of federalism's institutional forms without sacrificing federalism's unique normative functions or descriptive adequacy. Narrower ideas or institutions circumscribe federalism more than those distinguishing federal ideas and institutions would desire. Overlapping consensus on the need for some shared- and self-rule may exist. The precise combination remains elusive. And common appeals to the need to divide powers likely demonstrate the generality of the problem of allocating authority within countries, not a solution thereto. 'Balancing' shared- and self-rule thus limits federal institutional forms on any schema. Similar conclusions are likely to follow when balancing other ideals with varied interpretations.

(4) Fruitfulness

While one may contend that dissolves into a traditional debate concerning the relative value of broad descriptive adequacy,³⁰ ideological views' functional and normative great costs do not present the only issues here. Attending to reasons one may desire a broad definition presents another. Ideological views are, in short, unnecessary for fruitful empirical and philosophical inquiry. There is thus little reason to accept ideological views' functional and normative costs.

Attending to a broad range of phenomena under a single federal banner can be fruitful. Doing so helped produce many useful empirical findings (Watts 2008; Aroney/Kincaid 2017; Palermo/Kössler 2017; Kincaid 2019), including authority allocation-related findings concerning courts' impact on how powers are exercised (Aroney/Kincaid 2017) and the impact of fiscal authority allocation decisions on secession risks (Sorens 2016), absent precise articulation of federalism's institutional requirements. Capacious ideological views could permit philosophers of federalism to use earlier analytic tools without facing claims they are importing ideas from another field. This is plausibly desirable. After all, rediscovery of confederalist political theory and its potential value in modern 'federal' states (Hueglin 2003) and examinations of related principles, like subsidiarity, led many to believe focusing only on basic institutional features can miss normative commitments that should be part of good federal practices, like subsidiarity.

Yet one need not adopt a broad view of federalism's potential forms to generate important empirical insights and the dominant ideological view's action-guidingness again comes at the expense of its motivating descriptive breadth. Institutional capaciousness is simply unnecessary for generative important comparative insights. One can compare whether federations or

²⁹ Indeed, I raised this point when discussing why ideological approaches seem compelling.

³⁰ Davis (1978) notes a push and pull between these goals in twentieth-century theories of federalism.

consociations (or whether more centralized governance in either) produce better health outcomes while distinguishing federalism and consociationalism. This is advisable given problems above.

Results above even query whether institutional approaches can sustain comparative federalism. One cannot compare federalism and other ‘isms’ if the former’s institutional forms are uncircumscribed. Comparing the relative decentralization of authority across governance units is, in turn, an interesting project. But one cannot provide a distinct normative role for federalism if comparative federalism can meaningfully analyze France. And the lack of common features across all purportedly federal bodies makes it difficult to determine which are useful comparators. While searching for necessary and sufficient features of federalism may prove quixotic (Popelier 2021), the lack of clear boundaries for ideological federalisms makes it difficult to identify federal bodies, let alone compare them to non-federal ones. As Preston King (1982: 72-73) noted long ago, discussing federalism requires *some* basic definitional core. Broad ideological views are accordingly problematic. But narrower ones also raise empirical worries.

This minimally suggests philosophers should stop adopting the dominant ideological approach. A more plausible ideological view must specify the content of federalism’s constitutive ‘idea’ in a way that maintains a distinct action-guiding concept without giving up motivating explanatoriness. Other ideological views likely face similar issues. It is, for instance, notable that appeals to ‘unity’ and ‘diversity’ often produce different results when they are further specified. Consider Tierney (2022) and Hueglin and Fenna (2015)’s competing views on whether this combination permits asymmetrical federalism. Rather than detail this further, however, I now propose returning to an institutional approach. Any plausible view faces some issues above. However, institutionalism faces fewer challenges and presents greater benefits than critics admit.

A New (Old) Institutionalism

Using ‘federalism’ to describe governance characterized by a combination of ‘rule’ in the form of a set list of formal final decision-making powers for central powers and ‘rule’ in distinct formal final decision-making powers for non-central units could save the term in a manner consistent with use post-1788. It also avoids many challenges with past approaches. I thus propose a thin institutional account of federalism inspired by, but distinct from, Wheare’s classic. If it proves undesirable all-things-considered, it still helps motivate institutionalism generally.

On this proposal, federalism is advocacy for adopting the federation. Consistent with the institutional Wheare and rival ideological Elazar (along with most of their followers, like Watts 2008), federations here require at least two levels of government, each of which has distinct domains of final decision-making authority, does not rely on the other to implement its authority, and is accountable to a public not completely overlapping with that of another level of

government. There must be a constitutional division of powers and at least two entities must be able to wield powers independent of each other while being accountable to distinct entities.³¹

The U.S.A., Canada, and Australia are paradigmatic. Federal and provincial (though not municipal) governments in those countries each have distinct constitutional authority over particular subjects. While powers may overlap in particular cases, each level of government can only validly act in a domain to the extent it is within their defined area of constitutional jurisdiction. It is, e.g., possible that insurance promotion within banks can be considered part of a federal banking power and a provincial insurance power. However, federal and provincial governments can each only regulate aspects of insurance promotion within their defined powers. If a law fundamentally concerns banking, only the federal government can pass it. If conflicts between valid federal and provincial laws arise, country-specific rules resolve the conflicts.³²

Each government should also be accountable to distinct constituencies. Elections for members of each should be (at least largely) distinct. The federal government should have members from each province, but members should not only be members of provincial legislatures. Provinces, for example, should have representatives in the federal government. Some representatives could also serve in the provincial one. But personnel should be non-identical and roles should not collapse. This is necessary to safeguard distinct decision-making and accountability loci. If the same persons fulfill most roles at both levels, the possibility of distinctiveness minimizes. There should also be means for a province to make decisions alone. Provincial ‘rule’ should not rely only on representation within a body that also maintains members from other constituent units.

This thin conception does not require features from other definitions of federations or federalism. It does not require negotiations to resolve issues, as Elazar (1987) proposes, or that federations result from pre-existing groups contracting in ways that maintain their status in new constitutional arrangements (contra *id.*; Tierney 2022). This already suggests without proving that federalism itself does not entail a loyalty requirement. Multiple entities must have distinct domains of authority. The concept of federalism itself is agnostic on whether they must work together to do so or when. If a requirement exists, it must follow from the nature of the constitutive institutional form: loyalty requirement proponents must explain how it is necessary for federations to exist. The same is true of subsidiarity. Likewise, the concept of federalism does not require many features frequently correlating with it, be they commitments to democracy or judicial review. The federal form may entail each. However, *the concept* does not include them.

This view shares Wheare’s commitments to federations as the defining form of federal governance and federalism as a normative doctrine promoting adoption of that form. It adopts Whearean understandings of the federal form as requiring multiple decision-makers with final

³¹ Compare, however, the definition in King (1982: 77).

³² The example here builds on cases in Wright (2015).

authority and the independence of their decision-making bodies such that, e.g., the federal government is not just a collection of representatives of provincial governments and provincial governments do not rely on representation in a centralized body for much of their authority. Following Wheare, it further commits to distinct domains of authority in which governments are free to make decisions absent direct interference and views the U.S.A as *a* paradigm case.

The proposal is nonetheless distinct from and helps avoid common criticisms of Wheare and thicker institutional models. Popelier (2021), for example, critiques federation-focused institutional views for their undermotivated commitments to democracy and the superiority of American-style federations, failing to account for non-democratic federations like the U.S.S.R or the normative desirability of German or Swiss governance.³³ Tierney (2022), in turn, criticizes institutional theorists for taking the U.S.A. as exemplary and thereby failing to account for federalism's distinct constitutional commitments to cultural diversity. Wheare particularly admittedly only counts the U.S.A., Switzerland, Australia, and Canada as other clear cases of federal governance (1946/1953: 22). While some of his limitations were the result of historical circumstance, like the then-nascent status of the Indian constitution (47), discussing Germany as quasi-federal (26-27) appears curious. However, even Wheare's more egregious descriptive issues problems do not undermine the value of his institutionalist project. Closer attention to cases he dismisses suggests nuances in federal form, rather than the need to go beyond institutionalism. Popelier and Tierney's concerns are not inherent to institutional federalism and do not apply here. The proposed view does not, e.g., consider the U.S.A alone as exemplary of federalism, suggest federations generally are categorically normatively superior to other forms of governance, entail strong commitments to democracy, or rely on cultural homogeneity.³⁴

Applying our desiderata to this view demonstrates that many empirical issues with institutional views are not inherent to institutionalism and some form of institutional federalism, if not the present one, offers much stronger prospects for fulfilling other desiderata for a complete theory.

(1) Descriptive Adequacy

Descriptively, this more restrictive institutional definition of federalism is not clearly problematic. Consociations, leagues, unions, and likely confederations no longer qualify as 'federal.' But Germany does. And the view admits institutional variety, even permitting much more than is currently observed in existing federations. The basic institutional form is, e.g., consistent with much greater municipal governance than observed in most forms of contemporary states. One need not view every element of American federalism as exemplary to recognize that its exclusive spheres of decision-making authority exemplify an original approach

³³ Popelier (2021) presents a compelling matrix highlighting options for combining features to identify federal bodies but also considers the appropriate balance to be 'essentially contested.' Her view proposes an alternative to both approaches above (though Popelier sometimes self-identifies as an 'institutionalist' in another sense).

³⁴ I also do not, e.g., accept that there can only be two levels of government in federal states (Davis 1978: 168).

to authority allocation. And institutional approaches do not describe the U.S.A. alone. A.C. Stepan (1999)'s call to move "beyond the U.S. model" includes Canada, India, and Spain as examples of asymmetrical and holding-together federalism. They are federations with the basic institutional features above. While Stepan includes the harder Belgian case too, all circumscribed theories admit borderline cases. Institutional approaches are no worse here. The proposed institutional view is, for instance, initially agnostic on issues like whether federal states should be parliamentary or presidential or whether federal 'divisions of powers' must be symmetrical across units. Indeed, many distinctions among categories of federalism focus on differences between kinds of federations, like Canada and India's parliamentary models.

Institutional approaches more broadly could, admittedly, struggle to explain moves toward cooperative federalism but permit some cooperative practices. They need not require broad spheres of exclusive jurisdiction or bar overlapping spheres of jurisdiction. Recall the banking/insurance example above. Federations need a rule on what to do when exclusive competences overlap in their application, but can delineate boundaries for each actor's authority, salvaging dualism. Paradigms like Canada already take this tack: federal and provincial governments each have areas of exclusive competence, need not work together to fulfill common ends, and can legislate without interference from the other within their areas of jurisdiction, but overlapping jurisdiction remains possible and federal law trumps in any case of true conflict.³⁵

The proposed view may not explain all historical uses of 'federalism' but is consistent with the most common uses. It also beneficially highlights why the American experience is so important in the history of federalism: the U.S. Founding Fathers introduced a new normative doctrine committed to a particular institutional form that inspired developments elsewhere. So-understood, federalism is historically continuous with but eventually departs from confederalism. Reading confederalist thinkers to understand federalism is then apt if one recognizes where the modes of thought depart. The philosophers' toolkit can accordingly remain well-stocked with confederal tools, so long as philosophers recognize that tools are only fit for some purposes.

(2) Conceptual Mapping

One can also understand how federalism so-defined may relate to adjacent concepts. The view further provides means for judging claims about federalism's additional features. Results can then explain correlations between federalism and other theoretical/institutional commitments.

The proposed basic federal form alone does not, e.g., prohibit adopting loyalty, subsidiarity, or further democratic commitments. However, the proposal establishes further burdens for connecting federalism to those commitments. If the concepts fit together, those designing federal

³⁵ *Alberta v Moloney*, 2015 SCC 51.

institutions may adopt them. Loyalty or subsidiarity may, for example, be useful principles for ensuring efficient governance within a federation even if they are unnecessary for federal rule.

If, in turn, any principle or further institutional commitment is necessary for realizing the federal form, federal constitutions should adopt it. Judicial review is again exemplary: federalism proponents and critics alike believe it is necessary to ensure entities act within their constitutionally-defined powers.³⁶ But when judges interpret a federal constitution, they should appeal to principles in the constitutional text or that necessarily follow from the institutional form. Loyalty, subsidiarity, etc. are not uniformly adopted across all federations, let alone all forms of federal government. The principles do not follow from the distinct federal form alone. Judges thus should not invoke them as ‘principles of federalism’ if they are not in federal texts.

(3) Functional Roles

This begins pointing toward how the proposed institutional fulfills other theoretical desiderata better than ideological accounts. The proposal is a distinct, action-guiding contribution to moral ontology. It specifically distinguishes federalism from other forms of rule, not only including unitary governance but also other forms of decentralization, like devolution. It thereby offers a target for fruitful comparative and philosophical analysis. There are, moreover, good reasons to support this federal view. At minimum, it warrants further independent philosophical analysis.

Viewing federalism as a doctrine advocating the institutional form of the federation maintains federalism as a distinct concept that provides a unique solution to authority allocation problems. Requiring unique spheres in which different actors possess final decision-making authority is distinct from other solutions. The solution’s underlying normative doctrine is admittedly minimalist. The institutionalist concept does not, e.g., require commitments to loyalty, subsidiarity, democracy, or asymmetrical power distributions. Some suggest focusing on institutional features avoids any important normative work.³⁷ But even the thin conception on offer has normative dimensions. As noted above, it plausibly requires some judicial review and maintenance of distinct spheres of authority in judicial interpretation: While cooperation is possible, judges must ensure all actors act within their competences even when cooperating.³⁸

The minimalist normative commitments within the *concept* of federalism is a feature of the proposal, not a bug. Federalism can be justified and may have numerous additional commitments. Yet the thin conception covers more paradigmatically federal states and maintains federalism as a distinct phenomenon admitting ‘good’ (e.g., perhaps Germany or Australia) and ‘bad’ (e.g., the U.S.A. during Jim Crow, the U.S.S.R.) cases. It also provides a means of

³⁶ Compare, e.g., Dicey 1885/1959; Delaney 2022.

³⁷ E.g., Neumann (1955/2005) says federalism lacks inherent value(s). Tierney distinguishes institutional and normative views.

³⁸ This is discussed at greater length in [redacted] and reflects commitments in Bednar 2009.

analyzing what makes just federations just. It would, e.g., be unsurprising if federalism and democracy are severable on this view: many considered the U.S.S.R. paradigmatically federal and undemocratic. Yet democratic considerations could best justify federalism (Abizadeh 2021).

Federalism's action-guidingness still requires attending to its justifications. However, institutionalism is no worse than its rivals in this way and permits more honest scrutiny of the doctrine and its implications. The proposed approach admittedly requires distinguishing what federalism is from normative arguments that may fully justify it. However, this permits more nuanced takes on federalism's relationship and interactions with its purported justifications. If several apply, this may limit federalism's implications for constitutional interpretation; there may not be principles required in all federal bodies. Yet that concern is speculative and, nothing here entails that federalism lacks inherent value(s).³⁹ Institutionalism only entails that any such values 'inhere' in an institutional form. Narrower conceptions, like the institutional proposal on offer, are more likely to identify principles all federal bodies at least purport to adopt, helping establish perceived basic commitments and potentially guiding constitutional interpretation. Limiting bodies that could be federal increases the chances that common principles apply in each. It also makes it more likely that comparative inquiry will provide action-guiding principles all federal states can use when designing institutions and interpreting federalism provisions in constitutions.

Purported federal ends may favour adopting federations. One would need multiple books to adequately examine classic arguments for federalism, but many were designed to justify federations. Basic outlines suggest they present a defeasible case for the thin conception on offer. I discussed self-determination above. Democratic arguments, in turn, require both fora in which all persons affected by a decision can impact it and fora in which those specially affected have more influence. This arguably support a constitutional division of powers whereby distinct demoi each have reserved powers.⁴⁰ Federations also protect distinct domains of more local decision-making authority where policy experiments can occur and groups can pursue regional desires autonomously. Sketches of these considerations cannot, of course, uniquely support adopting federations.⁴¹ But the basic normative considerations behind federalism provide compelling reasons to adopt federations. Whether the reasons support the distinct concept is important. Indeed, even if reasons purporting to justify federalism cannot justify federations, institutional approaches still sketch arguments for adopting federation one can scrutinize.

Even failure to identify strong additional normative requirements of federalism would beneficially allow options for realizing federal ideals and thus the variation in distinctions above. Federalism would remain a unique concept due to its unique output, the federation, and have clear normative and practical implications. One can compare states that accept those implications

³⁹ Compare note 37.

⁴⁰ See also [redacted].

⁴¹ See e.g., Levy 2007.

and those that do not. Institutional federalism still may not be justifiable even on its own terms. Confederations, for example, may better fulfill federalism's purported justificatory ends. But one should expect this of any meaningfully action-guiding theory of federalism. This account provides a clear subject of inquiry one can attempt to justify and subject to comparative analysis. Where federalism purports to be a normative doctrine that can solve particular problems, adopting a narrow view that allows us to compare it with alternative approaches is desirable.

(4) Fruitfulness

The proposed view also promises to help identify further insights. As is now well-established, it offers a distinct subject for comparative inquiry. That subject has been fruitfully compared with other forms of governance. More fine-grained distinctions between views should help minimize confusion in empirical inquiry. The proposal also presents intriguing questions about federalism's institutional components and relationships with other concepts and methods for judging claims about each. Applying the methods should further philosophical understanding.

Once one has identified federalism as a distinct approach to authority allocation, one can, again, compare federal choices with those for unitary governance and other institutional forms, like confederations and consociations. This process should produce the same kinds of insights as comparative federalism, like findings about the impact of decentralization on access to social goods, while maintaining our ability to delineate and compare federal and non-federal authority allocations. Consider, e.g., questions about whether federalism or confederalism most efficiently matches citizen policy preferences. One can examine whether federalism is, in fact, justified by its ability to serve this end on restrictive, federation-focused views of the genuinely federal.

Institutionalism of any kind leaves questions unanswered but my proposal highlights how one can develop fruitful research programs on institutional federalism. Institutional approaches, including the present proposal, may not, e.g., answer every important question about which powers which entities can/should possess. However, they provide a clear, distinct definition of federalism that can serve as the basis of more complete theories. Choices about how to justify federations and authority allocations within federations remain necessary. Institutional approaches to federalism can guide debates on such allocations: any theory of *federalism* must explain why at least two entities should have exclusive final decision-making authority within a governance unit and why they should be independent and accountable to distinct electorates.

Plausible, reasonably complete theories of federalism must further identify who can possess it when and why. Yet one cannot fault a concept for not specifying all its conceptions. Institutional approaches at least provide a stable concept that admits multiple conceptions that could fit use of the term and unique solutions to the authority allocation problem(s) federalism aims to solve. Ideological views fail to do even this much, leading to conceptual confusion. Scrutiny of

institutionalism's possible justification can then help complete institutional views. My institutional view, in other words, can combine with other plausible normative views in a complete theory. On plausible institutional approaches, normative views committed to autonomy, democracy, etc. remain important for justifying federations and can guide authority allocation decisions within them. But institutionalism as such may be consistent with numerous allocations. They require at least two independent entities that each possess at least one final decision-making power in a unit. Which one fits best is an important subject for further inquiry.

Critics could, of course, contend that criticizing ideological approaches for failing to fully specify which entities can possess which powers when is unfair if institutional approaches also provide incomplete authority allocation guidance. Yet institutionalism alone circumscribes federal forms of authority allocation and distinguishes them from even paradigmatically non-federal forms. If 'federalism' as such cannot explain who should possess power over, e.g., healthcare policy on any approach, institutional approaches alone provide a clear framework in which those decisions can be made consistent with decision-making in paradigm cases like Australia and distinct from frameworks in cases like Israel. Comparing decisions in countries that use the framework and examining principles (e.g., autonomy) that may justify adopting it then helps specify authority allocation options available to federal countries. Options will be more limited than on broader ideological understandings of federalism as 'self-rule + shared-rule.' Yet that equation did not provide an action-guiding framework for analyzing claims above and required additional normative content that also limits options more than advocates desire.

Conclusion

The preceding suggests one can construct a non-ad hoc institutional account of federalism that meets many desiderata of a complete theory and avoids the most common empirical challenges to other institutional approaches, including Wheare's account. Viewing federalism as a doctrine advocating the institutional form of the federation can, in short, maintain federalism as a distinct, plausibly justifiable concept that provides a unique solution to authority allocation problems, permits comparative inquiry, and explains (at least many) important historical developments. It does so in ways that can also serve other normative roles, like guiding judicial interpretation. While the idea matters regardless of its name, the concept is plausibly described as 'federalism.'

Simply outlining this option for how to address important issues and contrasting it with its dominant ideological rival adds to our philosophical and political ontology and points to a more general case for institutionalism. If one does not find my particular view fully compelling, the manner in which it meets many burdens for a compelling theory of federalism supports adopting *some* institutional approach. It further supports moving away from the dominant ideological view(s). At minimum, the forgoing demonstrates how one could construct a plausible institutional approach. There is no longer sufficient reason to assume institutional approaches

must be empirically problematic or normatively inert. The quest for a distinct federal form and normatively compelling concept supporting its adoption need not be quixotic. If the distinct concept does not fit one's preferred use of the word 'federalism,' scholars should still analyze it independently from other forms of decentralization. But calling it federalism now appears apt.

The forgoing identified how a thin institutional approach can avoid common empirical critiques. It first demonstrated that no form of institutionalism, including one focused on federations, must take the U.S.A. as its only paradigmatic case. If one finds the choices above too narrow, admitting further examples could provide a still stronger institutional view so long as all paradigm cases shared basic features distinct from other forms of governance. The forgoing then demonstrated that a core set of features found in the U.S.A. and other paradigms still permit great variety. The particular proposal admittedly did not account for all purportedly federal theories and practices. But it demonstrated that institutional accounts could have broader descriptive value than many expect. Where appeals to descriptive adequacy helped motivate distinguishing 'the' federal idea and institutions and ideological accounts had to abandon institutional capaciousness to be action-guiding, the case for institutionalism seems strong. Where problems remain, they largely point toward details more complete views must address.

Any worries that institutionalism makes federalism a mere idealization prove too much. Institutional approaches describe an ideal type. Federal practice in most countries no longer requires *strict* divisions of powers. Overlapping areas of jurisdiction in which two entities can act under different powers are common in many federations such that a federal government can pass a public health law under a criminal law power and a provincial one can pass a public health law under a hospital regulation power. Institutional approaches committed to strict sovereignty within domains risk mere stipulation and may not account for real practices. Per Neumann (1955/2006: 207), even "superficial" study reveals no "element common to all ... [federal states] except a juristic one ... [whereby citizens are] subject to two jurisdictions." However, even the juristic conception meaningfully applies to paradigmatic federations. Such application provides benefits above even where paradigms imperfectly fit the institutionalist ideal in practice. And ideological conceptions have the same problems identifying non-trivial common features in all bodies, so idealization arguments threaten to make any form of 'federalism' imaginary or trivial. If one wants to abandon the search for necessary and sufficient conditions for federalism on idealization grounds, one should recall that even conditions that do not perfectly mirror real-world challenges can serve normative functions above and ideological theories are no better here.

Further pressing objections cannot defeat this general case for institutional federalism. For instance, many forms of institutionalism permit problematic outcomes absent external commitments to other values. Philosophers traditionally avoided federalism partly due to the legacy of Jim Crow.⁴² Federalism has admittedly been used as a screen for injustice. Absent

⁴² See, e.g., Forrester (2019).

additional normative commitments, one may understandably worry that federalism will prove unjustifiable. If human rights norms avoided Jim Crow-like outcomes, other problems could remain. Institutionalism may not, e.g., preclude inequities across sub-units within a country and country-wide solidarity-undermining competition between sub-units. Yet any conception deserving the name ‘federalism’ will permit *some* wrongs. Justifications for federalism can limit bad outcomes; state stability norms may, e.g., preclude divisions of powers fostering secession. But federalism divides sovereignty. A meaningful version with broad descriptive adequacy will likely provide someone with powers to decide badly. Equal opportunities across states are, e.g., desirable. But potential inequalities are a cost of federalism. One should not expand concepts beyond recognition to avoid problems, like inequality, when one can address the causes head-on.

Descriptively, in turn, if institutional approaches cannot describe all purportedly federal states as ‘federal,’ they still provide meaningful guidance on how to identify them and capture more developments, like configurations providing for municipal authority, than some suppose. Not being able to describe confederations as ‘federal’ may be unintuitive, but the balance of reasons supports it. Commitments to exclusive spheres of jurisdiction may, e.g., struggle to describe the E.U. as federal. However, this result makes sense. Members claim to maintain complete sovereignty and the E.U. operates differently than countries such that E.U. law could be considered international. This raises questions about why the U.N. is not federal ideological thinkers do not answer. Moreover, even those who view the E.U. as (con)federal recognize its incomplete federalization (Hueglin/Fenna 2015: xiii-xiv). One should not *assume* the E.U. is federal. The strongest accounts of federalism that would capture it above raise several problems. Giving up on institutional approaches just to cover the E.U. thus appears undermotivated.

Finally, the need for further work to see if conceptions of federalism using other possible justificatory principles are desirable should not lead us to abandon the concept of federalism as advocacy for a unique institutional solution, federations. A concept, once again, need not explain all its possible conceptions. Problems only arise when a concept cannot coherently explain what falls underneath it. Ideological approaches either fail to set a limit or set it too narrowly to fulfill their aims. Institutional approaches at least provide clear, plausible criteria for what counts as ‘federal.’ Where they also better serve federalism’s intended functions and do not face as many empirical problems as many believe, returning to some institutional approach is warranted.

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