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Hanns Bühler (Hrsg.)

FEDERALISM IN ASIA AND EUROPE
The Wildbad Kreuth Federalism Days 2013

How to establish and organize co-operation
between national and sub-national levels of government

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Impressum

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Preface

Ursula Männle

For Bavarians, federalism is not just an abstract constitutional principle. It is a part of the practicalities of life and an attitude to political and social challenges that is deeply anchored in our awareness. The Free State of Bavaria, the Christian Social Union (CSU) and the Hanns Seidel Foundation are unique examples for the ability of a federal system to successfully accommodate national and sub-national interests and identities. In Bavaria we associate our sovereignty with loyalty to the German federation and the European Union. We are passionate federalists from conviction. The former Bavarian Minister-President Franz Josef Strauss summed up our political self-perception in a nutshell when he said:

"Bavaria is our home, Germany our fatherland and Europe our future."

Despite repeatedly being subject to discussion, federalism has remained a basic element in the political system of Germany and the foundation for a peaceful existence of nations in Europe since World War II for almost seventy years. Ultimately arguments in favour of federalism prove to be advantages for each individual citizen.

Hence, it comes as no surprise that Hanns Seidel Foundation promotes federal and decentralised structures within Germany and in more than 60 countries worldwide, executing more than 100 projects. To flank our activities in our partner countries each year Hanns Seidel Foundation invites politicians, civil servants and scholars from Asia and Europe to share federal experiences within the Wildbad Kreuth Federalism Days.

"How to establish and organize co-operation between national and sub-national levels of government?" was the title of the Wildbad Kreuth Federalism Days in 2013. It was chosen wisely since mechanisms of cooperation between the different levels of government are crucial for the stability of many countries. Still too often, parallels are being drawn between federalism, autonomy and secession. More than 50 decision makers from Asia and Europe came together to discuss and share their experiences and current political developments in their countries.

Federalism is – more than any other political system– under continuous construction with perpetual negotiation and refining. In Germany, the federal structures are being currently critically reviewed. After the modernisation of the fiscal equalisation system in 2009 – which did not meet the expectations of the states – the attention turns to the year 2019 – where a substantial redrawing of federal rules and procedures could be realised. The need for such a change arises from the present fiscal equalisation system which cements the economic conditions of underperforming states. With evolving federal laws, such as a debt limit for states, the federal system has to evolve and adapt alike.

Federalism and cooperation mechanisms between national and sub-national levels of government can therefore not be invented on a drawing board. They have to grow from the bottom up and respect national contexts, traditions and the national balance of powers. A pre-condition for a functioning federalism is the respect of the centre for a certain degree of regional autonomy. The right to it and the need for efficient and effective governance imply that rules must be established in order to organize a fruitful cooperation between the different levels of government.

It is, however, impossible to avoid conflicts of interest. We all know that balancing power and sharing money is a difficult task anywhere in the world. The current discussion in Europe, Germany and Bavaria proves this clearly.

The major question is how to organize procedures and mechanisms which lead to results that can guarantee a long-term stability of federations. Even in ethnically divided states, regional autonomy and cooperation are no enemies. However, the respect for regional autonomy does not remove the duty of sub-national units to accept limits and to be prepared to work for political compromises.

The second Wildbad Kreuth Federalism Days focused on three fields of cooperation: “competences”, “public finance” and “conflict resolution”. The publication at hand features a selection of valuable contributions generated during the three-day conference. It provides an in-depth analysis on the standing and stage of development of federalism in Asia and Europe and gives practical recommendations on how cooperation between national and sub-national levels of government can be established.

Federalism in Asia and Europe

Introduction

Volker Lennart Plän

Although it contains conciliating potential in historically diverse nations, federalism – or just aspects of it – regularly faces rejection or even resentment. In autocratic regimes, federalism may be equated with loss of power, whereas sub-national units might be discontent with their subordination to national unity. The latter is a frequent problem in ethnically or linguistically diverse countries, but has also far-reaching political implications within the European Union. In recent years, growing mistrust has weakened the Union, fostered populist movements in its member countries, and resulted in separatist campaigns in Spain and Scotland. While these secessionist movements proceeded peacefully and democratically, the case of Eastern Ukraine shows growing need for solidarity, security and assuaging mechanisms in Europe.

Despite the recent developments, Professor Georg Milbradt sees the European Union on its way towards becoming a federation itself. In his contribution to this book, he shows that the path towards decentralisation has grown naturally within European countries. Institutionalised respect towards its diversity could even prevent nations from splitting up. Following Milbradt's argumentation, the concept of devolution is not the reason behind but more the remedy against secessionism in Europe.

Based on the case of the European Union, Professor Roland Sturm shows the importance of the principle of subsidiarity. He introduces to the different types of federalism and argues that granting political decision-making power to lower administrative levels is more than mere sharing of responsibility: it adds to political procedures' efficiency and enhances democratic legitimacy. The guiding principle of subsidiarity can thus strengthen sub-national governments, decrease secessionist aspirations and allows a central government to concentrate on universal political domains such as foreign or defence policies.

Professor Klaus-Jürgen Nagel from the University of Barcelona comparatively explains devolution procedures, their origin and current status in various federal and non-federal countries – the United States of America and Canada, Germany and Switzerland, Spain and the UK – by providing background to the concepts of decentralisation, federalism and subsidiarity. Notably his discussion on the United Kingdom and Spain provides valuable background information on the current developments in these countries.

A problem especially faced by younger federations is the inherently controversial issue of conflict resolution: it contains potential for new conflicts, as granted power and responsibilities might create imbalances between sub-national units. In Pakistan, officially a federalist republic ever since 1973, the political leadership achieved major changes with the 18th Constitutional Amendment. In the mid-term, it might lead from a still largely centralised system to a federal state. The political implications are presented in this book by Professor Syed Jaffar Ahmed from the University of Karachi. He

compares Pakistan's historic political development with the new challenges arising from the 18th amendment granting a historical amount of power to Pakistan's provinces.

The issue of power- and responsibility sharing arises not only in the initial political process: in established federations, the distribution of fiscal revenue is a reoccurring issue between the federal government and the states. Fiscal equalisation - besides playing a vital role as a conciliating force between sub-national units - is a general mechanism which exists in every federation to balance out economic disparities. This mechanism is on regular trial in Germany, where the fiscal reallocation system is subject to dispute between the *Länder*.

Dr Henrik Scheller from the University of Potsdam introduces to different ways of fiscal equalisation: vertical and horizontal equalisation or co-financing of the tasks of sub-national regions by the centre, exemplified with the – complicated – German mechanism: a combination of both vertical and horizontal equalisation. He argues that any mechanism in place had to be altered and adapted to changes in the economic environment among sub-national states – as it was the case in Germany several times.

India, an established federation with the fewest federal sub-units per capita worldwide, has introduced a mechanism for fiscal equalisation, too. The country faces constant pressure to adapt its structures to the rapid changes in economic development and demographic change. It presently passes through a new phase of federalisation, implying major adjustments to the repartition of state territory. In its unique system, India makes combined use of various

approaches to tackle economic imbalances between states, while an independent Finance Commission gives recommendations on procedures and changes. The case of fiscal equalisation, its necessity and the work of the commission is presented by Dr Pinaki Chakraborty, Economic Adviser to the 14th Finance Commission and Professor at the National Institute of Public Finance & Policy in New Delhi.

A different picture of India is painted by Dr Andreas Heinemann-Grüder of the University of Bonn: while Indian federalism has proven its ability to adapt to the changes the country is continuously undergoing, it is prone to a number of political constraints, preventing stable administration and real socio-economic development. Heinemann-Grüder reasons that these constraints are of social, religious and financial origin, and are therefore difficult to overcome. Despite its shortcomings, it becomes evident that federalism is the right way to unify India's diversity.

The abovementioned, prevailing concern in many countries towards power-sharing can be refuted by several historic examples – most recently the case of the Philippines: It shows how federalism can guarantee peaceful means of conflict resolution between the centre and periphery of a state. The signing of a peace agreement in January 2014 was followed by an informal but efficient strategy of conflict resolution: national meetings of regional representatives with ministers or government representatives. At the Second Wildbad Kreuth Federalism Days, representatives of both the Philippine government and the Moro Islamic Liberation Front of Mindanao (MILF) were present. Both parties were and are involved in the

honourable yet difficult negotiation process that resulted in the Bangsamoro Framework Agreement. After decades of armed conflict, this agreement, signed on October 7th 2012, paved the way for the 2014 peace agreement and for the creation of the new Muslim autonomous sub-division called "Bangsamoro", warranting enduring peace in the Philippines. In their contribution to this book Robert M. Alonto and Mohager Iqbal from MILF provide detailed background information to the framework and to the implications of both autonomy and waiving of nationhood for the Philippines and the islands of Bangsamoro.

Each country has to find its own ways to overcome ethnical and religious conflicts. Especially for young democracies, these can prove to be main obstacles to development processes. Conflict resolution implies balancing regional demands with national unity in the mutual interest of the regions and the centre. Hence, other Southeast Asian countries such as Myanmar – home to numerous ethnicities – are following the developments in the Philippines with interest.

In the last chapter, Haji Mohammad Adeel, Chairman of the Standing Committee on Foreign Affairs of the Pakistan Senate, provides the political view on conflict resolution in a federation. He traces back the development of today's federal system in his country, illustrating how political upheavals have delayed progress. Adeel further explains how the political gauntlet has shaped and eventually refined Pakistan's federalism.

All contributions in this book highlight the unique obstacles any country has to overcome in creating balance within its borders.

Despite the challenges it faces during establishment and in later stages, (such as loss of sovereignty of central government and problems of equitable resource-allocation) there is still a common understanding that only with federalism these challenges can be overcome in the long run. In fact, the contributions provide extensive arguments as to why and how secessionist movements as mentioned at the outset could be prevented.

Virtues and Preconditions of Modern Federalism

Georg Milbradt

Introduction

Federalism and the decentralization of state functions are beginning to attract increasing worldwide interest, as is the German federalism model. In Germany, the Free States of Bavaria and Saxony have an almost uninterrupted 1000-year history either as independent states, at a time when a German central government did not exist, or as territorial states within a larger German nation state. Only during the 12 years of Nazi rule and – in the case of Saxony – during the period in which the East Germany was governed by a communist dictatorship, did Germany have a purely centrally controlled structure of governance. Federal institutions did not exist during these periods. In view of this long heritage, both Bavaria and Saxony are, in their own ways, representatives as well as protagonists of German federalism. In the case of Bavaria, we also have a very strong regional party, the CSU, which plays an important role at the national level.

The interest in federalism and in decentralization was not as great a few decades ago as it is today. Federal states were in a distinct

minority, even when some of the largest nations – such as the USA, India, Brazil, and Mexico – utilized a federal governance structure. The former Soviet Union was a federation only on paper – in reality a highly centralized party dictatorship prevailed.

If anything the increasing economic and social challenges of the modern world led, initially, to greater centralization. Dictatorships by nature reject ideas of decentralization and autonomy, as the centralization of power is essential to their survival. However, even democratic countries initially adopted centralization in order to implement the principles of equality and justice. Differences, irrespective of whether they were linguistic, ethnic, or cultural, were disregarded in the quest to create a homogenous nation. An excellent example of this form of development is France after the French Revolution. A number of countries in Europe and across the world adopted the French model in the 19th and the 20th century. Aspirations for autonomy and the desire for the preservation of cultural identities within a nation state are sometimes justifiably, yet often unjustly, viewed as a step towards the final objective of secession and separation.

Only two federations existed in Europe after World War II: The Federal Republic of Germany and Switzerland. One could perhaps also add Austria to this group, though it was and remains a highly centralized federal country. All other nations were predominantly centrally organized entities. Any semblance of autonomy existed only at the local level. Among EU nations, the German model was a constitutional outlier for a long time. Since systems with a greater degree of autonomy and decentralization require a higher degree of

consensus during policy-making processes, more time is often needed for deliberation resulting in slower decision making. This is often viewed as a disadvantage.

Today, however, there is a completely different picture in Europe: the European Union is on its way to becoming a federal state – in my opinion the only development which will enable a quantum leap in the quest for greater integration. In the context of relations with each other, Europeans have realized that their diversity in terms of history, language, culture and mindset is important, and that any attempt towards extensive homogenization would have been ultimately damaging. It would have torn apart Europe and could hardly have been tolerated by its people and citizens.

Today, we cherish our plurality. Europeans neither want to create a new nation similar to somewhere like the USA, nor do they wish to be simply a "melting pot". Rather, they would like Europe to be a continent of diversity. Thus, the motto of the USA "E pluribus unum"- "One out of many" cannot be applied to Europe. Accordingly, the EU has adopted as its motto "In varietate concordia" – "United in diversity".

Making use of the blessing of diversity

In the area of environmental protection great importance is now justly accorded to biodiversity - an international convention has been established to protect the environment. A similar convention should also be signed for peoples and nations. The view held earlier by certain politicians that a European political entity can be created only when individual nation states have been marginalized has

proved erroneous. As was the case in the past, the essential necessary democratic legitimacy is derived through the nation state. This will remain so in the foreseeable future.

Many European countries are also inclined to move towards greater autonomy and decentralization: in Belgium a federation has developed, while in Spain the regions enjoy far-reaching autonomy to the extent that the nation has almost reached the level of a federation. Furthermore, traditionally unitary states such as Great Britain, Italy, France, and most recently Poland, have decentralized to a significant extent. The question of autonomy and greater decentralization naturally does not arise for the smaller countries of Europe, save as a possible solution to help address ethnic, cultural, or linguistic minority issues.

In other regions of the world, too, there is increasing interest in regional autonomy and decentralization. The Forum of Federations intends to promote the exchange of global experiences in federalism and actively promotes further interest in this concept. The Forum was created by the Canadian government and is a product of the reconciliation between Canadians of British and French origin. Only through this reconciliation was Canada able to achieve stability as a federal state, and prevent a breakaway by the French-speaking province of Quebec.

The Canadian way demonstrates that a federation based on reconciliation and mutual respect does not lead to partition and secession, but is a means to hold a country together. It was, therefore, natural for Canada to project federalism internationally

with a Canadian trademark, and collaborate actively with other federations with similar interests. Thus, Switzerland and Germany in Europe, India and Pakistan in Asia, Ethiopia and South Africa in Africa, Mexico and Brazil in Latin America, as well as the nation of Australia, gradually became members of the Forum of Federations.

Our aim is to facilitate the exchange of lessons and experiences in relevant areas, such as constitutional reforms in federal countries and their institutional design, and to initiate discussions on concrete policy matters such as fiscal federalism, public security, or regional development, thus providing knowledge, motivation and encouragement for further improving governance systems. I am sure you would agree that it is not necessary to reinvent the wheel; one can definitely learn from others, perhaps more so from the avoidable mistakes rather than from their 'good practices'. However, it is not simply about copying models and exporting them to other countries. That does not work.

Each country must find its own way, as context is crucial and circumstances are very different everywhere. Therefore, there is no “one size fits all”-solution for federal nations, or for countries that are considering greater regional autonomy and decentralization. The Forum of Federation’s work to facilitate the exchange of experience and knowledge between nations can help only in framing the right questions, and cannot provide definitive answers. Each nation must work out the most appropriate solution for itself.

Benefits for all sides

So which issues are currently taking center stage in the contemporary discussion on federalism and regional autonomy? As per my observations, there are three broad issues:

1. Democracy and civil participation
2. Ethnic, cultural, and religious differences
3. Greater quality of action through subnational competition.

Citizens all over the world are becoming more emancipated and self-confident: they want to be in charge of their own destiny and participate in decisions that determine what happens in their country. Elections and referendums facilitate this aspiration. Issues of national importance should be decided at the highest level, but citizens are also interested in the configuration of their immediate surroundings – especially when the country as a whole is large in size as well as heterogeneous in structure, and the central government is perceived to be situated too far away to have a proper perspective on regional issues. For the routine of everyday life, immediate living conditions are often more important than national policies.

The smaller the unit of government that participates in the democratic process, the greater the influence of an individual citizen and, thus, the greater the mutual understanding of problems and issues, as well as of the circumstances critical to decision-making. Therefore, decentralization can promote democracy and civil participation, and consequently, the identification of the citizens with the nation itself. Usually, stronger democracy and regional autonomy go hand in hand.

A number of countries around the world feature not only wide economic and social disparities, but also wide religious, ethnic, linguistic, and cultural diversity. In such cases, a federal or decentralized structure with rights to autonomy for the constituent units of the federation can help to resolve or alleviate complex challenges that arise from different types of diversity. It is essential that the autonomy granted to subnational units includes competences that are necessary for fostering local or regional identities, such as education and language policy.

If one acknowledges and respects differences among regions or amongst linguistic, ethnic, and religious groups, and if autonomy is granted on this basis, it can enhance these groups' perception of ownership of the country and their role as an integral part of that nation, rather than them viewing the state as an alien entity. One cannot, especially in a democracy, compel loyalty to a state in the long term. Loyalty should be, and has to be, voluntary. It is the reward one receives for the respect and recognition accorded to those who are in a minority. The resolution of minority issues can be particularly challenging for young democracies. On the one hand the citizens are not yet fully familiar with democratic processes, and on the other the conflicts – muted or dormant during a preceding dictatorship – may (re)surface in a newly established democratic system and potentially endanger it. In such circumstances federalization may present a solution.

The third vital aspect, especially in the case of developed nations, is to use federalism to encourage competition among subnational entities in order to achieve better public services, just as in a market

economy. Federalism makes variations in solutions possible within the same country. There is nothing wrong with this at all. Rather, it is a goal that should be consciously strived for because conditions and preferences in different parts of the same country may be diverse, and therefore a customized solution which better responds to regional or local needs is far more desirable than a standardized one.

A market economy, in a way, also has the ability to protect minority interests, as it can satisfy the needs or requirements of small groups through demand and supply principles using niche manufacturing and marketing. The dominance of the concept of simple majority in decision-making in national matters means that no such protection is initially available, as all decisions are based on the will of the majority on the national level. Often, however, political majority and minority are spatially very unevenly distributed, so that regional autonomy can better account for minority needs and preferences.

Pure majority rule has another important disadvantage: it can lead to the misuse of power, which in turn can lead to the degeneration of democracy. Hence, all modern democracies contain elements of the division of powers, as well as of checks and balances to prevent an unrestrained exercise of power by the majority: for example, the separation of executive and legislative powers; and the power of the judiciary. Federal structures offer another way of protecting minorities. Political groups who are in opposition at the national level may win elections and achieve the majority at regional levels, providing them the opportunity to form governments there. This is another form of power sharing since it ensures restrictions on the abuse of power by one dominant party. However, one must ensure

that the national and regional governments, if governed by different parties, do not blockade one another, thereby rendering the federal state impotent. There must be a clear separation of competences.

Regional autonomy can also improve the qualifications and competence of the political class: if the current national opposition party wins the next election and forms the new government, the new governing party may be in a position in which their politicians already have executive experience at regional level. In addition, politicians with executive experience at the national level might be recruited as premiers or ministers at the subnational level.

In more mature democracies in particular, there is an additional aspect to be considered: democracy encourages a political contest of ideas and solutions. This competitive element is often reflected at the national level of governance. When a solution proves to be ineffective, the ruling party may be removed from office in the next election, offering the opposition party the opportunity to implement its own solution. A federal system has the advantage of allowing simultaneous implementation of different solutions and an improved ability to compare successes and failures. This aspect enables an intensification of the political contest and reduces purely ideological confrontations.

Harnessing plurality

However, even if diversity is acknowledged and promoted, it is important that social and economic disparities do not become so great that they transform into injustice. Furthermore, autonomy itself may lead to varying results, even with a level-playing field. Variety is

the underlying impetus for federalism. But how large can these differences grow without tearing the national solidarity apart or leading to gross injustice?

The essential task in every federation is to strike the right balance between promoting diversity on the one hand and solidarity on the other in order to ensure that the majority of the citizens accept decentralization and autonomy. If a political system is perceived by its citizens to be unjust, it will not be endorsed in the long run and its legitimacy will be called into question. However, not every inequality or every undesirable development should be used as a justification by the federal government to intervene in the affairs of the subnational units. In a democracy, adverse developments and wrong decisions should, first and foremost, be corrected through the democratic process (elections and referendums) and not through interventions by the federal government. Autonomy and responsibility are two sides of the same coin.

Therefore, the citizens of a self-governing region should accept responsibility for the mistakes of their regional government, since they themselves have elected the government. If the federal government, or the other subnational units, intervene immediately on the basis (or pretext) of solidarity and compensate for the errors, the democratic feedback process will be prevented from taking its due course, It might lead subnational governments to act irresponsibly, because they know they are ultimately not liable and the subnational unit will be bailed-out by others.

Where do the boundaries lie? What is the extent of diversity that we are ready to accept? What level of competition is meaningful in a federal system? What level of solidarity is essential? What are the rules that should govern competition in a federal setup? These questions should be asked and must be answered by each federation. The solutions lie between the poles of autonomy and solidarity, and are linked to each country's conception of justice and equality and the willingness to accept wider disparities.

Democracy and Federalism as Principles of State Organisation

Roland Sturm

Why federalism?

Federalism is more than a tool of governance. In its substance it is a principle of state organisation. In federal states this principle finds expression in constitutional, but also societal arrangements. Federalism is closely connected with values of political participation in democracies. Federal solutions vary and reflect national traditions and experiences as well as pragmatic compromises, and they allow a wide range of types of political representation. Federalism research has identified the two pillars of "self rule" and "shared rule" (Daniel J. Elazar) for the relationship between the central government and the states/regions/provinces. In addition, the principle of subsidiarity is an important guide to power-sharing in federations. It embodies the idea that lower levels of governments should do the things they do best. This reduces political pressure on the central government. The latter tends to have command over matters which afford central control and leadership – such as foreign and economic policies.

In contrast to decentralization, federalism carries a democratic message. It provides power and institutional identities not (only) because this increases the problem-solving capacity of the state, but also because this enhances democracy. Respect for sub-state nationalism, regionalism or ethnic identities facilitates national integration and helps to legitimize policy decisions of the centre. The involvement of local and regional elites in the decision-making process improves the knowledge base of central governments. It also reduces the cost of policy implementation. Policy implementation becomes more reliable, less controversial and uses up fewer public resources. There is also the hope that bottom up-control of public finances reduces mismanagement and corruption.

The decision for a meaningful federalism and against a mere decentralization of ethnically or otherwise divided states may help to reduce internal conflict, because federalism implies an effort to create an alliance of partners with common goals, and it intends to avoid the marginalization of certain groups in a society. Democracy is the logical corollary of federalism, because without the representation of interests in a society the gains from a federal organization of the state cannot be secured. How to organize a federal state is therefore not only a technical problem, though many decisions have to be made which are strongly influenced by questions of efficiency and effectiveness. It is first of all a decision for partnership, for democratic representation,

for a peaceful way to solve conflicts and for national unity which respects diversity.

Types of federalism

Traditionally, the distinction between types of federalism refers to the degree of autonomy sub-national units have vis-a-vis the centre. A federal arrangement which is dominated in the policy-making process by the centre, because of the centre's superior rights and resources, is called unitary federalism. Whereas a federal arrangement which is based on the separation of powers with a full set of institutions (government, parliament, constitutional court, judiciary, administration) for both the centre and the sub-national units is called dual federalism. Both extremes only exist as a thought experiment. Every unitary federalism (such as Austria or Germany and to some extent Australia, India and South Africa) has elements of autonomy, and every dual federalism has elements of co-operation (e.g. Canada, United States, Belgium, Ethiopia).

The typology based on the elements of dual and unitary federalism can be further refined by adding the dimension of intergovernmental relations. How do the centre and the sub-national units work together? In competitive federalisms the sub-national units avoid involvement with the centre. They compete with the other sub-national units for investments, tax income, the best policy solutions and international recognition. In co-operative federalisms we find joined decision-making by the centre and the sub-national units, the sharing of resources and of administrative capacities. Interlocking federalisms intensify co-operation. They have developed

institutional mechanisms of co-operation which create mutual dependency of the centre and sub-national units. In Germany, for example, the *Länder* are financially dependent on the federal government, and the federal government needs the *Land* administrations to implement federal law.[i]

Recently César Colino[ii] has suggested a typology of federal arrangements which identifies four different types: "balance federalism", "unitary federalism", "segmented federalism", and "accommodation federalism". Colino strongly emphasises the conditions under which federalisms come into existence: "Balance federalism" finds its justification in the fact that it brings together formerly (semi-) sovereign political communities or states. Federalism is in this case a form of "constitutional pact" which has to find a balance between integration and the wish of the formerly independent units to retain a high degree of their autonomy also in federalism. Colino mentions the examples of the US, Australia, Switzerland, and Brazil. Australia and Brazil may be cases one can argue about. "Unitary federalism" has its origins, according to Colino, in a previously centralist state. These states tend to stress consensus and co-operation when they federalize and they trust well-organized intergovernmental relations. In this group of federal states belong, Colino argues, Germany, Austria, South Africa and Spain. The last two examples are, however, less clear-cut cases for different reasons.

"Segmented federalisms" exist "where two or more different cultural communities coexist, one of which may even represent a majority" [iii] in a given country. Colino only mentions the cases of Canada, Belgium or Switzerland. But of greater interest in this context are multi-ethnic countries in general. One needs to stress here more than Colino does that in segmented federalism we find a negotiated order with central institutions that may be contested and which have to perform well to gain legitimacy. Peaceful integration has as precondition a minimal consensus on a common purpose shared by all ethnic groups. Political stability depends on "agreements between the leaders of the culturally different communities".[iv]

One can argue, as Colino seems to imply, that only dual federalism is possible in segmented federations. As empirical evidence proves, reality is much more diverse. Petra Zimmermann-Steinhart has shown that, for example, the right to self-determination in segmented federalisms can be interpreted to very different degrees. In Ethiopian federalism "Nations, Nationalities and Peoples are granted an unconditional right to self-determination which is expressed through the option to form their own regional states (Article 47 [2,3] ETHConst) or to secede from the Ethiopian polity (Article 39 [4] ETHConst). Comparing the powers for state border rearrangements, the Ethiopian Constitution is far more decentralized and protective than, for instance, the Indian Constitution [...]. While the Indian states have also been organized on ethnic base lines, neither states nor ethnic groups are granted a right of secession. Moreover secession is explicitly excluded. The power to reorganize the States of the Union is given to the Federal Parliament which can

decide unilaterally after consultation with these entities (Article 3 Indian Constitution)".[v] In other respects, too, Indian federalism, although no doubt ethnically "segmented", is far more centralized than Colino's category of "segmented" federalism implies (e.g. finance, public administration). The centralizing elements in Indian federalism, as Subrata K. Mitra argues, dilute its potential and transform it even into a kind of "unitary system".[vi]

Federalism certainly has a role in peaceful conflict-resolution in segmented federalisms.[vii] One should, however, not expect the same kind of stability as in unitary or balance federalisms. Especially in Africa, Asia and Latin America where federalism was a post-colonial phenomenon, political power struggles of liberation movements and coalitions of modernizers have seen the power-sharing core of federalism as unnecessary detour in the process of economic and social development. The new elites regularly underestimated the negative effects of one party rule, dictatorships and centralization for the very goals they wanted to reach. Segmented Federalisms have a greater potential for the integration of societies than unitary states ruled by the centre, because they connect efficiency goals with the advantages of political participation.

The last type of federalism Colino mentions is "accommodation federalism". It refers to the federalization of mostly homogenous nation-states that have decided to acknowledge the viability of regional demands for self-government. Cases are Spain, Belgium, Canada or Britain. Table 1 summarizes Colino's typology and the

properties he ascribes to different kinds of federalism. The similarities between balance and segmented federalism on the one hand and unitary and accommodation federalism on the other are striking and reflect the traditional dichotomy of unitary and dual federalism.

Table 1: Four types of federalism

	Balance	Unitary	Segmented	Accommodation
Constitutional design	Inter-state	Intra-state	Inter-state	Inter-state
Intergovernmental structures	Independent	Inter-dependent	Independent	Interdependent
Intergovernmental decision rules	Partnership	Hierarchical	Partnership	Hierarchical
Interaction and joint decision styles	Competitive/ Collaborative	Collabo-rative	Competitive	Competitive/ Collaborative
Governmental actors' strategies	Self assertive	Solidarity-oriented	Self-assertive	Self-assertive/ solidarity-oriented
Conflict lines and intergovernmental coalitions	Party/ territory-oriented	Party-oriented	Territory-oriented	Territory/ party-oriented

Source: Colino 2013, p. 60.

Federal representation

Federal representation in democracies has two important elements. One is the federalization of party competition, and the other is the presence of sub-national units in federal institutions, especially Second Chambers. Party competition, if it ignores the regional dimension of politics, is a driving force for the de-federalization of a polity. Meaningful federal representation needs the support of society and its political representatives. A "federation without federalists" can exist,[viii] but it reduces federalism to institutional routines, because federalism is no longer seen as a tool for political representation.

That party competition may restrain federal representation, is only one possible consequence of the role of parties in democracies. Party competition can also strengthen federal representation.[ix] Federalism can, for example, give rise to regional or ethnic parties which have no ambition to compete nation-wide. These non-state-wide parties (NSWP) improve the quality of democratic representation and contribute to the legitimacy of regionalized policy-making. They may also serve as the voice of a national or regional minority. Party politics is therefore in extreme cases an alternative to regional warfare whenever the "voice" federalism gives to regional political movements convinces them to exchange the ballot for the bullet. The crucial advantage regional representation in federalism has compared to national representation, is that for regional representation the threshold for NSWPs is usually much lower.

A low threshold is also an opportunity structure for new parties – be they regional or national. Sub-national units serve as laboratories for formerly "disenfranchised" segments of the electorate. Voters experiment with new representatives, which in some federations are in the long run gaining ground in national politics. This only happens, however, if the sub-national and national party systems are connected. If a region has no or seeks no national role neither institutionally nor politically, its party competition is disconnected from the centre. In Canada, for example, dual federalism is not only dual with regard to its institutional setting, but also with regard to the separation of national and sub-national party systems.

If, however, there is an institutional route for regional parties into the national parliament, party political success in a sub-national unit is an important step forward. A regional party may either turn into a state-wide party, a NSWP becomes a SWP. Or the NSWP uses the national parliament as a stage for the political demands a section of the society or a sub-national unit may have. In some cases NSWPs are needed in the national parliament for political majorities either as coalition partner or as parliamentary support outside government. In both cases this gives NSWPs a blackmail potential when it comes to parliamentary decisions which affect the sub-national unit they represent.

Traditional SWPs, too, do not remain unaffected by successes of NSWPs. They try to accommodate regional demands, and sometimes this means "more federalism", i.e. more meaningful rights and more

decentralization.[x] SWPs are in a difficult situation when they face regional demands. They want to avoid to lose support nation-wide, because they are seen as being too forthcoming to special (regional) demands. But they also want their regional party organizations to compete with NSWPs on an equal footing and win seats at elections. The strategy SWPs prefer to meet this challenge is the regionalization of SWPs both with regard to their organisational capacities and with regard to the topics and priorities of their party manifestos. For India, for example, it was argued that Congress reacted to regionalist pressure and operates since the 1960s as "Congress System [...] in which it could successfully absorb the demands of parties of pressure (not always, but often, regionalist parties like the Tamil DMK or the Punjabi Akali Dal) [...] As a result, the Congress leadership gave up its ideological resistance to linguistic federalism and implemented a constitutional reform to that effect."[xi] Since the 1990s, Congress has learned that it cannot win power if it does not look for partners among the NSWPs. Congress forms pre-electoral alliances and works with seat-sharing arrangements with NSWPs.

Table 2: Party competition and federal representation

	State-wide parties (SWPs)	Non state-wide parties (NSWPs)
De-federalization	No regional profile	No NSWP
Representation	Regionalization of SWP	Representation in national and/or sub-national Parliaments
Secession	Attack on ethnic and regional demands	Lack of consensus and acceptance of federalism

Source: The Author

A second important element of federal representation is the presence of sub-national units in federal institutions, especially Second Chambers.[xii] It is surprising, how much regional representation in Second Chambers has been pushed into the background by party politics everywhere in the world. Where regional representatives are elected either directly to Second Chambers, as in the United States or Switzerland, or by sub-national parliaments as (predominantly) in India or as in Austria, the territorial character of regional representation suffers enormously. In Westminster systems it has from the start been very difficult to reconcile the idea of parliamentary sovereignty and territorial sovereignty and representation. In the Canadian case the compromise was to appoint territorial representatives for the Canadian Senate. They were appointed by office-holders legitimized by Parliament, namely the prime ministers. This avoids the party politicization of the Second Chamber only at first sight, however. When a new party comes into power, the new Prime Minister, now from another party, uses her or his appointment powers in favour of his or her own party. Former unitary states which have turned into federations or quasi-federations often have retained unreformed Second Chambers (Spain) or have started to reform them only after a lengthy time-period (Belgium[xiii]).

In some federations traditionalism on a territorial base has to be reconciled with party political representation of sub-national units. The South African constitution created a “Council of Traditional Leaders” in an advisory role, elected by the provincial Houses of

Traditional Leaders. Ethiopian federalism has even made ethnicity its underlying organizational principle. The Second Chamber, the House of the Federations, is in its composition not based on territory, but on nations, nationalities and peoples. "Each ethnic group has the right to be represented by at least one representative in this chamber. One additional member shall be elected for each million population by either the regional parliaments or the concerned population directly."[xiv]

In very few countries elements of territoriality survive in the Second Chambers. In Russia the constitution of the Yeltsin years had tried to institutionalize a territorial dimension of the Second Chamber, the Federation Council. It stipulated that each member of the federation had two representatives on the Federation Council: the respective heads of the regional legislative and executive branches. Vladimir Putin's reforms have separated representation and office, which has opened up regional representation for party politics and/or for Putin's influence on the choice of representatives. The German "Bundesrat" is rather unique, because it works in an institutional framework which guarantees a certain degree of regional interest representation which cannot be totally sidelined by party politics.[xv] Members of the *Bundesrat* are politicians from regional governments who have to answer to their regional parliaments. They have no free mandate, *Länder* votes are block votes of all representatives of a Land. And *Land* governments decide how this block vote is cast, not the single member of the *Bundesrat*. In this respect the *Bundesrat* is no modern parliament with secret voting by individual MPs, it is

quite clearly a chamber in which territories speak, not individuals. The territories have one voice and where their interests are affected even a veto in federal legislation. This is a much better and above all a much more effective way to represent territorial interests than the political routines we find in Second Chambers which are dominated by party politics. The *Bundesrat* model does not avoid party politics, but in contrast for example to the United States ("National Governors' Association") or Austria ("Landeshauptmännerversammlung") it does not force regional heads of government to work in lobby organizations whenever they want to bring territorial interests to public attention. Such lobby organizations neither have the legitimation, institutional strength or political power the *Bundesrat* has.

Territories that have no interest in national politics – especially those in a multi-ethnic state – seem also to have a limited interest in membership in such a state. Territorial representation on the national level creates a sense of belonging, a feeling that territorial units, even if they are fairly small, find respect. If regions keep their distance to the state they belong to, it is certainly easier for secessionists, for example the Scottish nationalists, to argue that the only relevant territory that counts is their own region. The same effect can be created by another extreme, i.e. the exclusion of a territory from national politics, especially if this means discrimination by the centre. Federalism research has so far invested a lot in the topic of intergovernmental relations. It has neglected, however, the consequences of insufficient regional representation in national

institutions. In Canada up to the present, the constitutional settlement which ignored the demands of Québec for greater national involvement (reform of the Canadian Senate, the Constitutional Court) has led to grievances in this territory.[xvi]

Table 3: Second Chambers and federal representation (some examples)

Country	Election	Representation
USA	Direct (general elections)	Party politics
Germany	Regional governments ex officio-members	Territory/ party politics
Canada	Appointed members	Party politics
Ethiopia	Indirect (by regional states)	Ethnicity
Austria	Indirect (regional parliaments)	Party politics
India	Indirect (regional parliaments) and appointments	Party politics
Belgium (reform)	Indirect (regional parliaments) and co-opted members (according to result of national election)	Party politics

Source: The Author

Lessons for the organization of federalism

What we can learn from the experience of existing federations is certainly respect for the history and the special circumstances of federal arrangements. Still, it is possible to summarize some of the findings in a more general way:

a) Federalism and democracy are twins. There is no functioning federal state which is not a democracy.
b) Federalism in multi-ethnic societies only works if there is a minimal consensus on a common purpose shared by all ethnic groups. Federalism certainly has a role in peaceful conflict-resolution.
c) Representation with regard to party competition can be secured best by the regionalization of SWPs and the representation of NSWPs in national and/or sub-national parliaments.
d) Representation with regard to territory can be secured best by the *Bundesrat* model for Second Chambers.

i See ROLAND STURM: Föderalismus, 2nd ed., Baden-Baden 2010.
ii CÉSAR COLINO: Varieties of federalism and propensities for change, in: Arthur Benz/ Jörg Broschek (Eds): Federal Dynamics. Continuity, Change & the Varieties of Federalism, Oxford 2013, pp. 48-69.
iii COLINO 2013, p. 58.
iv COLINO 2013, p.58. Colino seems to follow Arend Lijphart's consociationalism hypothesis here (Democracy in Plural Societies. A Comparative Exploration, Yale 1977).
v PETRA ZIMMERMANN-STEINHART: Federalism in Africa: Ethiopia as an Example for a Paradigm Shift, in: Klaus Brummer/ Heinrich Pehle (Eds.): Analysen nationaler und supranationaler Politik. Festschrift für Roland Sturm, Opladen etc. 2013, pp. 282f.
vi SUBRATA K. MITRA: The nation, state, and the federal process in India, in: Ute Wachendorfer-Schmidt (Ed.): Federalism and Political Performance, London 2000, p. 43.

vii See ANDREAS HEINEMANN-GRÜDER: Föderalismus als Konfliktregelung, Bonn (= Forschung DSF Nr. 21) 2009. Dawn Brancati: Can Federalism Stabilize Iraq?, in: The Washington Quarterly, Vol. 27, Nr. 2, 2004, pp. 7-21. Alain-G. Gagnon: The Case for Multinational Federalism. Beyond the All-encompassing Nation, London 2009. Andreas Heinemann-Grüder: Föderalismus als Konfliktregelung. Russland, Indien, Nigeria und Spanien im Vergleich, Leverkusen 2011.

viii In greater detail on this problem: ROLAND STURM: Der deutsche Föderalismus – nur noch ein Ärgernis?, in: Alexander Gallus/ Thomas Schubert/ Tom Thieme (Eds.): Deutsche Kontroversen. Festschrift für Eckhard Jesse, Baden-Baden 2013, pp. 297-308.

ix See for many others: LORI THORLAKSON: Patterns of party integration, influence and autonomy in seven federations, in: Party Politics 15(2), 2009, pp. 157-177.

x See for example: SONIA ALONSO: Challenging the State: Devolution and the Battle for Partisan Credibility. A Comparison of Belgium, Italy, Spain and the United Kingdom, Oxford 2012. WILFRIED SWENDEN/ SIMON TOUBEAU: Mainstream parties and territorial dynamics in the UK, Spain, and India, in: Arthur Benz/ Jörg Broschek (Eds): Federal Dynamics. Continuity, Change & the Varieties of Federalism, Oxford 2013, pp. 249-273.

xi SWENDEN/TOUBEAU 2013, p. 261.

xii ROLAND STURM 2010, pp. 82ff.

xiii MATTHIAS CHARDON: Die Überwindung der belgischen Krise? Regierungsbildung nach 540 Tagen, in: Europäisches Zentrum für Föderalismus-Forschung Tübingen (Ed.): Jahrbuch des Föderalismus 2012, Baden-Baden 2012, p. 285

xiv ZIMMERMANN-STEINHART 2013, p. 283.

xv ROLAND STURM: Zur Reform des Bundesrates. Lehren eines internationalen Vergleiches der Zweiten Kammern, in: Aus Politik und Zeitgeschichte B 29-30, 2003, p. 24. In greater detail: Roland Sturm: Der Bundesrat im Grundgesetz: falsch konstruiert oder falsch verstanden?, in: Europäisches Zentrum für Föderalismus-Forschung Tübingen (Ed.): Jahrbuch des Föderalismus 2009, Baden-Baden 2009, pp. 137-148.

xvi See for example: FRANÇOIS ROCHER: Die Dynamik der Beziehungen Québec-Kanada oder die Verneinung des Föderalismusideals, in: Alain G. Gagnon/ Roland Sturm (Eds.): Föderalismus als Verfassungsrealität. Deutschland und Kanada im Vergleich, Baden-Baden 2011, pp. 39-68.

A Comparative View on Power Sharing in Federations – some Examples of Typical Arrangements

Klaus-Jürgen Nagel

1. Introduction

"Federal" comes from Latin "foedus", meaning pact. According to the classical definition by Elazar, "federal" means to "combine self rule and shared rule".[i] In a federation, a particular form of a federal agreement, we find separate member states united in a more comprehensive political system, the federal state or federation, and each unit maintains its constitutionally guaranteed integrity. Each member state and the federation government possess powers delegated to it by the respective "demos" (people) through a constitution. Each state is dealing directly with its respective citizens, without need of ratification by the other level. The constitution of the federation establishes which powers fall into each realm. In a federation, both member state and the federal state usually have legislative, administrative, juridical and financing powers, although they may be distributed in very different ways.

The USA were the first federation in history. However, there also exists a European tradition of federalism as social philosophy, which is much older. The German Calvinist Johannes Althusius (1557–

1638) developed a theory of politics as the art to associate and the polity as a "consociatio consociationum", opposed to the idea of sovereignty that had been developed by Jean Bodin (1529–1596).[ii] Althusius' bottom-up self-organisation of society can be seen as following the principle of subsidiarity: the higher tier only shall have the powers that the lower ones are unable to take over.[iii] An ideal federal system inspired by Althusius therefore should be multi-tiered. In American-style federations, however, sovereignty is strictly divided between two tiers, and the municipal level usually falls under the sovereignty of the member states.

Our selection includes four cases of federations[iv] and two non-federal countries with important self ruling powers (autonomy) for some or all regions. The case of the USA serves as example for an (at least initial) *dual* federalism, while Germany stands for *cooperative* federalism. Both Germany and the USA are *mononational* federations. In pluricultural and plurilingual Switzerland we find a combination of federalism and *consociationalism* to accommodate all important religious and linguistic communities. In all three cases all member states have basically the same powers. This is different in plurinational Canada, where one of the member states is a nation, while others are not. Canada serves as an example of an *asymmetric* distribution of powers. Finally, we will discuss two *non-federal* countries. In Spain and the United Kingdom, regions have received important self ruling powers from the centre, but no important share in the overall ruling of the state. In both cases, we find a degree of asymmetrical treatment for minority nations. These nations are recognised as such in the UK, but not in Spain. In the UK, only some regions enjoy autonomy, with different sets of powers. In Spain, with

the time, the whole territory has been organised into Autonomous Communities (AC), and asymmetries of competences, initially very strong, have been reduced, in order to give nationalities and other regions similar powers.

The purpose of this selection is to present some models of competence allocation, insisting on the respective opportunity structures, and highlighting some of the problems of efficiency, democracy and minority accommodation that may be inherent to each model.

2. The USA

The framers of the American Constitution were living in a dysfunctional confederation. They defended more unity and a stronger central government to have, as Madison put it, more protection against factionalism, particularly against the often oppressive tyranny of interests or passions (religions) that we so often find in small communities.[v] In this liberal view, federalism provides an additional separation of powers, to protect against the tyranny of the majority. The purpose was to protect pluralism, but not to protect particular minorities of religion, nation or race. In ratifying the new federal constitution, established states ceded part of their powers to the new federal level. With the words of the Tenth Amendment of the Bill of Rights (1791): "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". All competences were initially meant to be exclusive. All three branches of governing an issue should be on the same tier, and the responsible

unit had to pay the whole cost out of its own budget. All states, small or big, gave away the same competences, and were equally represented in the senate. The strongly asymmetrical setup of the federal capital, Washington, in a district that even today is not represented in the Senate (and in the House only by a non-voting member), was justified by not giving any particular state the advantage of housing the capital.[vi] The second important case of asymmetry we find today is Puerto Rico, not a member state, and therefore without representation in the Senate and without vote in the House, but "compensating" this lesser share in the ruling of the federation by a higher level of autonomy (and lesser federal taxes).

Powers given to the central government include the 18 enumerated powers in Art. I sect. 8 of the constitution; the capacity to collect taxes, pay debts, provide for common defence and general welfare, as well as to regulate commerce with foreign countries, interstate commerce, and with Indians. Madison wrote in "Federalist" 45:[vii] "The powers delegated … to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." Congress was empowered constitutionally to make all laws concerning these powers as well, and the later expansion of federal powers developed on the clauses on interstate commerce and the capacity to tax and spend freely. The Supreme Court often had to decide whether these powers were exclusive, or concurrent with states powers. When found to be concurrent, sentences often held that the exercise of these competences by the federal government pre-empted state norms and precluded state regulation. Federal money, federal coordination and supervision weakened the dual character of American federalism, and this in

spite of the absence of any general monitoring or supervision rights in the Constitution.[viii]

During the 19th and 20th century, US society has become much more democratic. Kincaid[ix]: "Paradoxically, the democratisation of the United States has substantially nationalised the political system and weakened federalism without dismantling any of the constitutional institutions of federalism". The Civil War settled the question of the federal or confederal character of the USA. The 14th amendment secured citizen's rights against the state governments, too. Equal protection of all US citizens later allowed federal legislation on minority protection, affirmative actions, school desegregation etc. Direct election of senators in 1913 was the first step to fight senate elections on national issues, too.[x] The same year, another amendment allowed the federation to levy an income tax. From now on, the federation could use the power of the purse to influence state policies, as there is nothing in the constitution prohibiting it to spend on state issues. The setting up of social security systems from the New Deal to "Obamacare", and the Supreme Court, in spite of its periodical changes, acted as centralising elements. Federal money now even influences police protection and education, that is, core policy fields of the states, although most of it is spent on social welfare and health care issues. US federalism became not only more cooperative: there are even authors talking of coercion,[xi] and states complain because of insufficient money, encroachment on their own tax basis, unfunded mandates, pre-emption statutes, and cross-over-sanctions. "9/11" and the question of homeland security have, as so often happens in federal systems, further reduced autonomy of member states.

Debates still include the old questions on how the interstate commerce clause and the general welfare clause should be interpreted. The Supreme Court (and not the pacts between states and federal government) very often decides who can do what. Current problems include the question of municipal administration. Big cities are often in need of federal money, but as a two tier sovereignty dividing federation, there is no constitutional role for the cities on the federal level. "Bridging the state" by federal programs and money is an often used practise particularly when the Democrats govern, as they use to have more votes in big cities. Metropolitan areas like New York include territory of different states, while states are often governed from small town capitals (Albany in the case of NY State). State governors have increased their internal power by reforms of many state constitutions. But they – the born defenders of state prerogatives – have no share in the governing of the federation as this is reserved to the elected senators. In the US, governors try to compensate by individual or collective lobbying. In other federations, similar arrangements have lead to irresponsible behaviour of state governors.

US federalism is still diversity protecting. In moral issues (death penalty, homosexual marriage, abortion, drug issues etc.), on questions of direct democracy (popular initiatives, referendums, recall, etc.) differences between the US states are surprising. What is left of dual federalism makes these differences possible. However, US federalism never was set up to defend or perpetuate specific religious or national communities. No territory was accepted as a state before having a white-Anglo-Saxon-protestant majority, although Hawaii (adding up Japanese Americans and autochthonous

people) and New Mexico (Catholic Hispanics) now qualify. The DC is the only territory with a Black majority, and it is not recognised as a state. According to Kymlicka, US style federalism, with all diversity between the states, may make things worse for territorial minorities not dominating in any state.[xii] Indian affairs where and still are a conflict issue between the Federation and the states: States are prohibited by federal law to tax reservation Indians or extend their juridical power over them.

US federalism dual style may experience times of conflict as well as times of cooperative behaviour. This may even happen at the same time, in different fields. US dual federalism has always been related to the existence of two national parties, both bottom up structured and without a coherent ideology or program. Both had their power base at the state level. Loosing this feature may contribute to changes in the reality of exercising competences which may lead us far away from the dual federalism of the US constitution.

3. Germany

The first German nation-state, the empire founded in 1871, was federal because it could not be anything else. Entrenched states joined under Prussian influence. Federalism was not directly connected to sovereignty of the people and to democracy like in the US case, and from the start, the bureaucracies of the member states remained strong. The democratic Weimar republic was far less federal than the empire. But after the totalitarian experience of the Nazis, the framers of the West German constitution returned to federalism. Under influence of the Allies and for inner as well as

exterior reasons, no new strong central state should be created. New states were set up, most of them with new, artificial frontiers. The plurality protecting effect of federalism (religions, moral values, different political orientations and culture) was esteemed, but there were no specific ethnic or national differences to be protected by it.

Strongly anchored citizen's rights and the federal commitment to assure equal (later: equivalent) living conditions in the whole of the federal territory proved to be strong, unifying elements from the start, though residual power still lies with the member states: "The *Länder* shall have the right to legislate insofar as [the] Basic Law does not confer legislative power on the Federation" (GERMAN CONSTITUTION, Art.70(1)). However, a small list of exclusive competences and a large list of concurrent competences easily to be used by the Federation have conferred legislative power basically to the federation; on the other hand, administration remained with the *Länder*. This made cooperation necessary and proper from the very start. A strong second chamber assured shared rule by the member states governments. *Länder* executives are therefore included into the responsibility for federal issues. As party political majorities of the two chambers are usually different, de facto grand coalitions for lawmaking have become one of the basic features of Germany's cooperative and negotiated federalism. Where cooperation between the two tiers does not apply (for example, schools), voluntary horizontal cooperation between the member states takes place. The municipal level, however, is not fully included in the cooperation. Municipal statutes depend on each member state.

Legislative power is practically in the hand of the federation. It has exclusive power on foreign affairs, defence, citizenship, currency…. It has concurrent legislative power on civil and criminal law, associations, labour law… The federation can make use of other concurrent powers (business law, road traffic, food law…) only when there is a necessity; for example, to guarantee equivalent living conditions in the whole federal territory – but this may easily be claimed – particularly as the Constitutional Tribunal saw this as a political question not to be judged by the Court. In all these issues, the member states can theoretically still legislate, but only insofar federal law has not (yet) been established, which today rarely is the case. In all these issues, the second chamber has either a temporary or (today more often) absolute veto. In reality, member state legislation is reduced to culture, schools and education, policing, and local administration. The strength of the member state lies in implementing laws, federal ones included. Most federal laws are implemented by member state agencies and officers. Member states do this mostly in their own right and responsibility. A typical field is taxes: legislation for nearly all taxes is federal, but the collecting agencies are those of the member states; most of the collected money is then shared by the two levels according to different distribution formulas for each tax. There are only very few matters where the federation has commissioned the member states with administering federal law, and where, therefore, the implementing *Länder* are supervised by the federation. Lower and middle courts are the responsibility of the member states, while the highest court of appeal is always a federal one. German cooperative federalism therefore offers a totally different image than dual US federalism.

While in the US, at least initially, each policy field was in the hand of one level or the other, in Germany, functions are divided, but fields are shared.

Under pressure by an ever more unified society and with increasingly national parties, the federal government has won new competences. The process of European integration lead Germany to pass *Länder* competences to Brussels, where the *Länder* do not have a significant share in decision making, while the federation has. Member states were "compensated" for their losses in self-rule by an increased role in shared rule. When the unification of Germany brought new *Länder* into the federation, some of them without much consciousness to be "states", and all depending on federal money, critique against creeping centralisation and an excess of cooperation became louder, in particular in the South of Germany, where a return to a more competitive federalism is claimed. At the same time, the federal government was weary of the heavy influence of the *Länder* governments in the *Bundesrat*. These tendencies let to a reform of German federalism disentangling some competences. However, these reforms have widely excluded the main problem of fiscal equalisation.

Current debates include the question of territorial reform (uniting some of the *Länder* for reasons of efficiency), fiscal equalisation and debts. Cooperative federalism German style has negative effects: if decisions are negotiated between the partners behind closed doors, transparency suffers and the citizen no longer knows who is accountable for what. If competition between national parties always ends in a de facto grand coalition, while at the same time

competition between different member states is hindered by the national strategies of the federal parties, Germany's capacity for innovation suffers. If features of federalism like minority protection are no longer felt to be its basic justifying elements, the acceptance of federalism depends more on its capacity to provide effective solutions. On the other hand, the stabilising function of cooperative federalism is still highly valued, and federalism is also part of a very successful constitution. It may still be capable to provide a compromise between those member states that feel they can act alone inside the European space, and those that need federal help in order to provide their services.

Germany has few non-state wide parties – the only relevant one now, the Bavarian CSU, in the Berlin parliament, joins the CDU to form one parliamentary group. Internally, almost all parties and civil society organisations mirror, more or less, the federal structure of Germany. In Germany, there are no national or ethnic minorities of importance. Internal and external migrations, the European Union, the years of the cold war, all these and other factors have weakened territorial religious monopolies and dialects. Particularly in the north and east of Germany, autonomy of the *Länder* in education is increasingly seen as a hindrance for mobility. Pressure for more uniformity may increase in those policy fields where the *Länder* enjoy most autonomy (schools, culture, and police).

4. Switzerland

Swiss national history starts in 1291 when three small cantons of inner Switzerland swore an oath for common defence

(*Eidgenossenschaft*, the German word that still appears in the official denomination of the country, is usually translated as Confederation in Romanic languages or English). Swiss independence, upon condition of neutrality, was finally officially recognised by the Treaty of Westphalia in 1648. After a short civil war, the Confederation was converted into a Federation by the constitution of 1848 while maintaining its denomination. The American style federation of 1848 was a compromise between unitarian liberals striving for Swiss national unity and a common market, and confederal conservatives. Each canton had and still has its particular constitution and a particular "we" feeling. In order to maintain cantonal as well as religious identities and language communities, territorial federalism was established to protect these diversities; and the federal institutions were set up to function in a consociational way. The Swiss seven person executive, for example, is elected by both Chambers of parliament in a common session; quotas of party, language, religion, cantonal precedence – and, now, also gender – are respected. The small federal bureaucracy still features language quotas. Swiss federalism unites small "republics" whose identity is protected (perpetuating religious and linguistic identities) in an overall shared rule characterised by consociational features and procedures.

The constitution of 1848 has been revised in 1874 and substituted by a new one in 1999. The main principles however were maintained. The residual competence lies with the cantons. However, more legislative than executive powers have been delegated to the Federation, and cooperation has become necessary and common practise. The federal government is characterised by shared rule

(particularly through a second chamber, an elected senate) and consociation. In spite of their de facto differences in size, population, and income, all cantons have the same powers, and the only relevant *de iure* asymmetry is the fact that some of them, often called half-cantons, have only one senator while all others have two. As Switzerland is a very old political system, with its roots in pre-nation-state times, elements of Althusian federalism have survived. Some cantons appear federations of their municipalities. A Swiss is a citizen of his/her municipality, canton and federation, and all three levels have a say in naturalisation of immigrants. The subsidiarity principle is relevant to understand the logic of distribution of competences among territorial levels and between the state and the society and its corporations. Coordination often takes place by pacting, in addition to the constitutional provisions. Communities may prevail upon individuals (for example in language rights), and political federalism and consociationalism is completed by a corporative structure of societal interest representation.

While the framers of the US constitution saw federalism as a device against the tyranny of the majority, in Switzerland, existing religious and linguistic diversities had to be protected. Important legislative powers were transferred to the federal government by the constitution, but they are often earmarked with reserves protecting interested cantons.[xiii] Cultural issues had to remain with the cantons. They establish their own official language (most of them only one), while the federation has three official working languages. Cantons also retain autonomy to decide on the relationship between church(es) and state, and we find secularised, protestant, and Roman catholic cantons as well as some biconfessional cantons giving

churches public status or not. Education systems differ accordingly. While the legislative powers on federal security, the army, the currency, the common Swiss market and foreign relations were passed to the federation, interior security is still provided by cantonal police forces, complemented by local police in some cities. In issues where legislation is federal and implementation cantonal, the duty of mutual support is constitutionally entrenched and established practise. Cooperation is also necessary in case of secession claims. The Swiss is one of the few constitutions addressing this problem. Secession claims have to be answered by cascades of referenda on the municipal and the cantonal level and would need consent of the federation and the majority of cantons.

In financial issues, however, Swiss federalism is far less cooperative and more competitive. Taxation is a concurrent matter, and this means in Switzerland that all three levels, municipalities included, may raise personal income taxes. Cantons live mainly from direct taxes, the federation from VAT. One sixth of the federal income tax has to be redistributed for equalisation, however.

In Switzerland, too, federal power allocation has been affected by new necessities. Consociational arrangements had to be adapted to include new parties. They are questioned for their lack of transparency and accountability by populist parties that use the direct democratic elements of Switzerland to try to change the character of democracy. Corporatist procedures have been constitutionalised. Federal competences have increased either by amendment or constitutional revision; in both cases they have been agreed upon by the majority of the Swiss and the cantonal

populations. The federation however still has no general spending power; there is no provision for equalising living conditions, and none for providing equality of opportunities or results. On issues like foreign relations, the cantons have won participation rights, individually or collectively, and cantons are entitled to conclude international treaties with the ratification of the federation. To sum up, there is a tendency for somewhat more centralisation (in issues of one army, one market, one civil law, one commercial law),[xiv] compensated to a degree by more participation rights. European Integration is taking place all around the frontiers of Switzerland, and the tendency to strengthen the executive branches in the federation as well as in the cantons is part of the Swiss response.

Maintaining such a diverse country unified was made easier by the cross-cutting of societal cleavages. The lines that divide protestant and catholic, German speaking and non-German speaking, rich and poor Switzerland do not coincide. On each policy field, different alliances between the different sectors of the Swiss population surge up. This prevented Switzerland to fall apart. At the same time, neutrality and economic growth made secessions unattractive for any given part of the Swiss population. Some of these factors that helped Swiss unity may have become weaker during the last years, spurring a new debate about federalism. For the first time, in essential issues (relations with the EU, immigration), the main language communities of Switzerland maintain opposite opinions. Direct democracy and sovereignty of small units may be endangered by globalisation and by relations to a European Union where states rule.

Swiss civil society and parties are organised on cantonal lines, while language communities grow in importance and will perhaps become more divisive in the future. The big parties have either religious or social-economic backgrounds, they are plurilingual, and they are organised bottom up in a way that permits their cantonal organisations to pursue their respective, often different interests. In general, parties are less relevant in a country of direct democracy, on one hand, and of powerful corporatist interest groups, on the other. Federalism is older than parties in Switzerland, and new parties have been integrated (if successful) into the Swiss system of consociational democracy.

5. Canada

Canada is the first case of a federation with a Westminster type parliamentary system in history. The federation was founded in 1867 in the context of British imperial decentralisation, and the British idea of parliamentary sovereignty[xv] was combined with the territorial dispersion of power. This seemed an improper combination, as majority rule is a basic feature of a Westminster style parliamentary system, while federalism is an element of consensual democracy, at least on the federal level. A responsible government British style established an intimate link of executive and legislative powers, and the result was an executive federalism, as "provinces" (member states) and the federation both have copied the British parliament.

Canada is one of the World's most decentralised federations now; however, this was not always so. The initial setup of the Constitution was dual federalism. But the residual clause in Canada favours the

central government – competences not mentioned in the constitution are federal. This was not compensated by a strong Senate – the upper house represents the member states, but the senators are appointed according to the proposition of the prime minister. Canada was the first federation in history to feature substantial asymmetrical elements.[xvi] While France insists on equality of the rights of citizens, the US on equality between the rights of the member states, in Canada, it was at least possible to interpret the Constitution in a third way, too: particularly in Quebec, it is often considered to be a pact between two founding Nations (Quebec on one hand and (today) nine provinces on the other), and these two pacting partners should in spite of their different size enjoy equal consideration. Asymmetric features are to be found in the distribution of competences, but also in different representation in the Senate, a Quebec quota for the judges of the Constitutional Court, and the power of the different member states in the amendment process.

According to the Constitution, the states have reserved powers, education, licenses, property sales, hospitals, local government, company laws, and – very important – public land, while the federation can declare war and peace, maintains the military forces, negotiates treaties, issues money and regulates banks, interstate and foreign trade, as well as navigation and shipping, passes criminal laws, and is responsible for the relations with the Indians and their reservations. We also find some concurrent powers (to levy taxes, borrow money, immigration, agriculture). The lower courts are in the realm of the member states, while the higher ones are federal, breaking with the idea of dual federalism. The federation may

establish all sorts of taxes, the member states may levy direct and property taxes. In fact, most provinces agreed to leave the administration of the taxes to the federal agency that collects the income and corporate taxes. Policing is in fact a shared power, the Royal Canadian Mounted Police enforces federal laws; however, all but three member states contract the enforcement of provincial laws to the RCMP. The remaining three states maintain state police forces. Municipal police, where existing, works under state law. These examples already hint to some of the asymmetries of the division of powers in Canada. These asymmetries gave way to a lot of new terminology. Immigration is now a concurrent competence with federal *paramountcy*, the pension scheme is concurrent, but with state paramountcy. In health care, since 2004, provinces may *opt out* of the federal scheme. While in some areas opting out means to get a *tax abatement* (federal money normally spent for the purpose is handed down to the opting out state), but this is not so in all areas of opts out. We might try to distinguish between asymmetries already anchored in the 1867 constitution (the Civil Code in Quebec, language in Quebec and bilingual New Brunswick, some natural resources in some of the new states), by later amendments, or in programming and by special agreements (Quebec participates in the selection of immigrants), or by granting special veto rights. A look into the Constitution does not really tell us who does what in Canada: it has a long history of increasing decentralisation of competences – while at the same time, asymmetry has increased, too, stopping however short of a recognition Quebec as a specific society under the constitution might be.

Canada started as a bipolar federation of two strong and two weak member states, but more states adhered to the federation afterwards. There is a long trend from dual to more cooperative federalism (bypassing sometimes the weak senate, using agreements between the strong executives, and the united premiers often acting as partner of the federal government in negotiating programmes). The federation is not prohibited to spend outside the area of its competences. Yet in Canada, this also works vice versa. And several of the initially unimportant powers of the provinces have increased salience now (energy, public lands, resources…). With a constitution difficult to amend, courts play a role in sorting out the competences, and they contributed to correction of the initially centralist division of powers, restricting the federal ones. There are some heavy "weapons" of federal predominance in the constitution (disallowance of provincial legislation or reservation of powers by the federation); these articles are nevertheless "dead letters" now.[xvii] While delegation of a power is not possible under the constitution, the courts permitted to delegate its administration, making way for a good deal of cooperative federalism. In the process of consolidating the welfare state, the provinces had the powers, but the federation more money. In the end, the states got a say in many programmes. After Quebec's "quite revolution" and with the founding of the nationalist Partit Québecois, constitutional change or – alternatively – secession were asked for. However, none of the far-reaching projects of constitutional reform could be passed in the end. On the other hand, Quebec separatists lost two referendums on sovereignty in 1980 and 1995; and in 1982, they had to swallow the introduction of a Charter of Rights into the Constitution. This strengthened the

notion of equality of individual rights of all Canadians against the notion of collective rights of the founding nations, in detriment to the interpretation of federalism widely hold in Quebec. While all this happened, the trend went in the direction of more shared competences and particularly shared welfare state administration, but with increased possibilities of opting in and opting out, respectively, of programmes. If such rules apply, every province has the formal possibility to opt, however, it is understood that normally only Quebec will make use of this. Small, poor states like those of the Atlantic shore may not have in fact real "options".

In current Canadian debates, the issue of asymmetry is still very much present. With the charter of rights, the constitution has moved toward protecting equality of individuals; while states in the affluent West insist on equality of states, and Quebeckers (and the First Nations) may argue equality of rights of nations (or at least of the members of those communities), and therefore asymmetrical treatment. The case for asymmetric federalism is argued against (Quebec) separatists and against the defenders of symmetrical federalism US style (in the West). When some want more federal powers and others more self rule, why not try to accommodate both? Three approaches of arguing asymmetry can be distinguished.[xviii] According to a communitarian approach, communities are worth of constitutional protection in their own right. A liberal "type II" approach insists on the argument that individuals can only be equal citizens when they have equal opportunities to live their way of life, and that means that the communities that provided them with their ideas of a good life enjoy equal protection, even if this in consequence means asymmetrical treatment, as some will be less

numerous or powerful than others. Asymmetric federalism is meant to set communities of asymmetric size and power on the same level. Finally, a republican approach defends public debate to be of better quality when there is a common language, and the costs for language change can not always be charged on the members of the minority. A main point of the adversaries of asymmetry is that more self rule for some should fairly be balanced by less influence in parliament (that is, in shared rule); members representing states with additional powers delegated to them should not have a vote in parliament when it rules on these matters for the rest of the member states. This however would be difficult to administer under parliamentary government, where an executive needs a majority (without it the government probably will fall), and under conditions of compensated asymmetry the government may lack majority in some issues while having it in others. Aboriginal rights are conflictive, too: since 1982, when those rights were anchored in the constitution, they have been interpreted extensively by the courts. Interests of aboriginal people often conflict with provincial jurisdiction over public lands and resources. Treaty federalism – between aboriginals and the federal and provincial levels – is used to solve these conflicts, yet the federation may be in this situation part and judge of the problem. Language laws have also been conflictive. Federal law rules the co-official use of English and French in the federal service; however, Quebec has used its competences for privileging the use of French, and outlawing "English only" in some areas, requiring immigrants to send their children to French language schools etc., arguing that national survival is depending on it. New Brunswick and the new territory of Nunavut are constitutionally bilingual. A further, very

substantive debate is on whether the right of secession should be anchored in the constitution, either to make it lawful (and thereby peaceful and negotiable in due process), or to discourage it and render it practically impossible. The constitutional court holds that in case of a clear vote on a clear question on secession, a province would have a right to negotiate secession with the federal government. Reform proposals include territorial reorganisation (uniting the Atlantic provinces) and/or establishing bipolar federalism, eventually as the federation of Quebec on one hand with the rest of Canada on the other, this second partner being itself a federation of provinces. Nevertheless, after several failed intents to amend the constitution in the 1980s and 90s, changes only have happened in a piecemeal way. The boom of oil rich Alberta brings the management of energy related resources into the debate, while manufacture's interests are defended by Ontario, forestry by British Columbia, while the poorer Atlantic provinces face problems to finance their tasks and are more dependent on the spending power of the federal programs and on financial equalisation. Municipal government is of increasing importance as most Canadians now live in cities and multicultural policies cost money; but municipal government is a creature of provincial government and without direct access to the federation and its funding. International treaties are under jurisdiction of the federal government, yet their implementation may depend on the provinces, and Courts ruled that this implies a participation of the states in international relations when their competences are at stake. However, there is discussion on how to administer this, stopping short of the Belgian doctrine of *in foro interno, in foro externo*.

In Canada, federal and provincial parties are also distinct from one another. The political class is fragmented (for example, careers rarely pass from one level to the other), which strengthens federal-provincial diplomacy – the usual way to bring changes into a system marked by a rigid constitution. This is criticised as "federalism behind closed doors" or as "elite accommodation".

6. United Kingdom

The United Kingdom of Great Britain and Northern Ireland is no federation. As the name indicates, it is a Union of Crowns, or of differently administered realms. The history of this kingdom began before the age of the Nation-state, and it arguably never became one. England conquered Wales during the Middle Ages, but the English and the Scottish Parliaments were only united at the beginning of the 18th century. However, Scotland always was administered differently in some affairs (with a justice system of its own that still exists), and a Ministry for Wales (inside the central government) was also established after the Second World War. Ireland, de facto often treated as a colony, also had institutions fused with the British ones at the beginning of the 19th century. After Irish independence and in the course of the follow-up Irish civil war, Ulster was maintained as British territory, with its own autonomy and Parliament from 1922 until suspension in 1972. After the IRA ceasefire in 1994 and the Good Friday Agreement of 1998, Northern Ireland received autonomy again, now with a consociational setup for its executive and legislative powers, including a conditioned right to secede. Scotland and Wales got a chance to receive asymmetrical autonomy in 1979, but both referenda failed, in Scotland only by lack of

quorum. After the long years of conservative government (Prime Ministers Thatcher and Mayor), during which Scotland and Wales, voting Labour, increasingly felt and denounced a lack of legitimacy of British rule, Tony Blair's Labour administration celebrated referenda on autonomy (devolution) again in 1997. This time, the autonomists won and both territories received (very different) degrees of autonomy. After a recent agreement between the Scottish and the British government, Scotland will vote on its independence in 2014.

Devolution has been brought forward after popular nationalist movements in Scotland and – to a lesser degree – in Wales claimed autonomy, and some state-wide parties included this in their platforms. Attempts to establish devolution in parts of England where abandoned when a referendum on this question failed in North East England; England still has no devolved authorities. Britain has never experienced centralisation *à la française*. It has been an empire where different administrations with different powers have always been used and the recognition of "nationhood" at least to Scotland never was much of a problem (the symbols of all minority nations with the exception of Wales have been present in British symbolism). Devolution therefore could be accepted easier by the English public. The United Kingdom follows the tradition of vesting sovereignty in parliament and not in a people or Nation. This further paved the way for devolution. However, this also means that autonomy is not protected by any written constitution.

This lack of guarantee of the (at least in the Scottish and Northern Irish cases) high levels of devolved powers is one of the main

differences between a federation and the "devolution" state. Another but related one is the lack of any share in the rule of the British state for the devolved territories as such. As to the devolved powers, they are considerable: in Scotland, they were established in the first place as "dual", yet cooperation had to be intensified afterwards to guarantee proper functioning of the system. This had to take place through bilateral negotiations and agreements. Regarding Wales, its competences mostly lie in secondary legislation and administration of central state laws, so cooperation was necessary from the start. Financial issues also have to be agreed upon in bilateral ways.

While no complete re-symmetrisation of the system has been tried for,[xix] in England, from time to time, there are complaints against too much autonomy being devolved to the territories, or claims for receiving autonomy, too. But these have always been minority positions. Wales with less devolved powers than Scotland has tried several times to get upgraded, with limited success.

Current debates include 1) the possibility of Scottish (and in the long run Northern Irish) secession (a sovereignty question as in the Scottish case autonomy only hinges on simple majorities in Westminster), 2) the Wales upgrade, and 3) to a lesser degree, the West Lothian Question: the democratic problem whether for example the Scottish MPs should abstain when the Westminster Parliament rules on English issues in matters that have been devolved to Scotland, as Scottish citizens decide these matters by voting for their autonomous legislative, where English voters therefore do not have any influence.

Devolution has only become reality because of the increasing pressure of Scottish and to a much lesser degree of Welsh civil societies, including party systems of their own, with a (now governing) strong SNP in Scotland and a less powerful, but sometimes co-governing Plaid Cymru in Wales. In Northern Ireland, where all parties are NSWP (non-state wide parties), the reestablishment of autonomy, however, included an agreement of armed branches of each side taking part in the conflict as well as of the governments of the UK and the Republic of Ireland. This also explains why Scotland may struggle for independence, and why the British Labour Party stands for autonomy (it would face strong difficulties to get elected in England alone), while the Welsh independence movement is far weaker. In Northern Ireland, secession, if it ever takes place, would probably not lead to independence, but to an inclusion of the territory into the Irish Republic.

7. Spain

The Spanish State of Autonomies has sometimes been classified as federal. The whole territory of Spain is divided into Autonomous Communities (AC). Executive and legislative powers exist on two levels, and the AC enjoy a high level of competences and spend a high percentage of all public money. But even authors that compare Spain to federal systems also notice the differences, and then talk of an “Estado federo-regional” (Trujillo), a ”quasi-federal state” (Saenz de Burnaga), “incomplete federalism” (Grau), a ”regional state”

(Requejo), ”imperfect federalism” (Moreno), or “unfulfilled federalism” (Máiz). Some see Spain on the way ”toward federal democracy” (Agranoff) or use question marks to assert their problems with a classification; examples include “Federalism in the Making?” (Moreno) or ”Federation in the Making?” (Guibernau).[xx]

The Spanish Constitution hails from 1978 and was written during Spain’s peaceful transition from Franco’s dictatorship to liberal democracy. Transition was in fact an elite pact between reformist Francoists and the opposition that renounced a total break or revolution. This means that during the setting up of the Constitution *poderes fácticos* like the military were scrutinising the process. To renounce the “f-word” (federal, federalism) was also a political necessity. However, the problem with Spain’s federal character reaches far beyond the absence of the word in the Constitution. The framers of the Constitution had contradicting objectives when setting out the principles of Spain’s territorial organisation. On one hand, elites wanted more efficiency. On the other, the opposition put democracy on the agenda, meaning participation, transparency and accountability. Finally, minority nations, in the first place the Basques and the Catalans, claimed to be recognised and accommodated after long years of repression and resistance. The Constitution still left the option to grant autonomy only to some parts of the Spanish territory. It normally speaks of “regions”, but in one place of “nationalities and regions”, without defining the difference. The only Nation with capital letters in the constitution is Spain.

The initial minimal denominator was decentralisation; to grant autonomy to some territories of Spain on demand, but not sovereignty. There is only one State in Spain, and AC are no "member states" – their institutions are part of the Spanish government. The constitution permits to prepare tailor-made statutes of autonomy (organic laws of the central government, no member state constitutions) for territories on demand. But transversal and residual powers had to remain with the centre. Granting autonomy by statute does not include any shared rule at the centre. The weak second chamber is no chamber of the AC. Three quarters of the senators represent the 50 provinces of the central state. A province is a territorial unit protected by the constitution, whose frontiers cannot be changed by any AC. The AC do not have any influence on the choosing of the judges of the Constitutional Tribunal. And they do not have the possibility to organise a fully-fledged referendum, as their population is not considered to be a *demos* in its own right. On the other hand, the AC can be sure that powers delegated by the centre via statute (organic law) cannot be withdrawn unilaterally. This is not the case if additional competences are transferred by a normal law; these may easily be recovered. Normally, basic legislation in all issues is retained by the state. In issues of concurrent legislation the state sets the main rules, which are then developed by laws of the respective AC. Basic laws, in practice, however, can be quite detailed. Shared rule (legislation in one hand, execution in the other) is reduced to few issues. In many fields, the State did not retire its whole bureaucracy when transferring a competence to an AC. The result was some doubling of services. At least initially, the State of Autonomies was highly asymmetric. Some

of these *de iure* asymmetries were already anchored in the Constitution and are therefore difficult to remove or to re-symmetrise. In the first place, the particular fiscal regimes of the Basque Country and of Navarre that grant these AC tax collecting systems of their own, having to pay only quotas to maintain the central services, quotas negotiated in advance. The Canary Islands have also obtained some fiscal particularities due to their geographical situation. Bilingual AC have a constitutional right to care for their particular languages declaring them co-official, but only inside their territory. Some particularities of civil right, the permission to establish particular island governments, and – for uniprovincial AC – the possibility to pool provincial and AC competences in one government may also be considered as constitutionally entrenched *de iure* asymmetries. Others, like the initial possibility to grant autonomy to some parts of the State while not to others, the "fast track" and the "slow track" accesses to autonomy, all these have become dead letters of the constitution by now. Differences between the texts of the Statutes still exist, but by reforms or delegations on one hand, organic laws of homogenising character on the other, and sentences of the Constitutional Court into the bargain, material autonomy outside the entrenched asymmetries of the Constitution is far less asymmetric than it was years ago. The initial "openness" of the Constitution has disappeared, and according to many observers, the doors for more asymmetry have been closed now, as the sentence of the Constitutional Tribunal on the Catalan statute of autonomy in 2010 has shown. The adversaries of considering Spain federal highlight that the AC have no share at all in the process of amending the Constitution. As AC are not

considered to possess any State character of their own in Spain, they have no judiciary power, and as they have no sovereignty, the state still rules over municipalities and provinces by Constitution and law. With the above-mentioned exception of the Basque Country and Navarre, the AC have nearly no tax collecting powers, and while they in fact spend a high percentage of the public money, they have nearly no influence on their own income. The powers of each AC are fixed in its particular statute of autonomy. As this is an organic law of the State, its text is set up by the Spanish parliament, when a region has delivered a proposal. The final text has to be ratified by the regional parliament, and, in some cases, by the population of the respective AC. The constitution lists two classes of powers, those that can be delegated by statute (Art. 148 and 149) and those that can not. If a power is transferred to an AC, this is understood notwithstanding the general principles established by the Constitution (the responsibility of the State to guarantee the equality of all citizens in exercising their rights, the coordination of the economy, and general finance). In reality, nowadays, all powers that can be delegated have been transferred to all AC. In addition, some of the competences reserved to the central state may be delegated to some or to all AC. Basic legislation by the state and developing legislation by the AC is the rule in most competence fields (health, schools and education, environment, local administration, media etc.). Shared competences with the central state legislating and the AC executing are more rarely to be found (merchant law, labour relations, copyright standards…). The constitutional doctrine does not include a central spending power (practise may be somewhat

different)[xxi] and no implied powers (the transfer of powers works top down in Spain).

The initial flexibility of the Spanish Constitution made *de iure* and *de facto* decentralisation (as well asymmetry) dependent on the political will of the actors. Asymmetric decentralisation predominated until 1981. From 1981 to 1992, the whole territory was finally divided into AC ("coffee for all"), and competences were distributed compensating asymmetries after a pact between the two main parties, accompanied by some measure of recentralisation by basic laws. During the years 1993 to 2000, a new round of decentralisation including some asymmetry took place, when the two Spain-wide parties lacked parliamentary majority and were depending on agreements with non-state-wide parties. When in 2000 the conservative PP obtained absolute majority, recentralisation using organic laws that compete with the statutes took place. Some of these laws were negotiated with the Spanish opposition (the socialist PSOE). Under PSOE minority government (2004—2011), initial steps towards more asymmetry (particularly the draft of a new Catalan statute) were afterwards resymmetrised (the watering down of the Catalan statute in the Spanish Parliament, the upgrading of other AC statutes pacted with the PP, the sentences of the Constitutional Court, particularly the one against the Catalan statute as a result of a suit presented by PP and some PSOE-politicians). Since 2011 the PP enjoys an absolute majority which is used for resymmetrisation by Organic Laws and other devices (e.g. credit control). As consequence, claims for a referendum on independence are increasing in Catalonia.

Currently, the State of Autonomies is under heavy fire from different directions. Hopes that this new form would be the most adequate way to achieve efficiency, democracy and accommodate minorities have faded down, while at the same time the correspondent idea of a Europe of the Regions where the member states would simultaneously lose powers to Brussels as well as to the regions, also is suffering a crisis. While the percentage of Spaniards that consider the State of Autonomies a waste of money and resources, as well as lacking transparency and accountability, is growing steadily (although still far from forming a majority), in Catalonia, after the failure of the pact for a new statute in 2010, independentism is on the rise, and according to different polls a majority of the population would vote for Catalan independence if a referendum on the issue would be allowed by the Spanish government. Return to centralism is only called for by minorities . Symmetric federalism German style is to be found in the rapidly growing UPyD – Union for Progress and Democracy – party and particularly in the PSOE (the socialist workers party) platforms but it has never been put into effect by PSOE governments and is even rejected by part of the Catalan branch of the party, standing for a somewhat asymmetric federalism. It would not satisfy minority nationalists, as it would be a unifying device. Asymmetric federalism including wide range recognition of national rights seemed a real possibility during a long time, but the closing of the constitutional text by central actors including the Constitutional Court has disencouraged this hope. Referenda on secession, allowed in Scotland and in Quebec, will not be permitted in Spain, at least according to the often repeated standpoint of the current Spanish government.

The Spanish civil society has only partially organised itself according to the territorial boundaries of the Spanish State of Autonomies, with the exception of historic nations like Catalonia and the Basque Country. So have political parties. Non-state-wide ones are particularly strong in Catalonia, the Basque Country and also on the Canary Islands. In these AC they are strong enough to govern quite often, with or without allies. When the seats of those parties can switch the balance in the central parliament, chances to receive more autonomy, for their respective units or for all AC, use to be highest. In such situations, the governing SWP that negotiates support by a NSWP is usually accused to accept "nationalist blackmailing" by the other SWP. Periods of absolute majorities in central government on the other hand are characterised by re-symmetrising tendencies. Such processes may include homogenising decentralisation and/or direct recentralisation.

8. Final remarks

Decentralisation and federalisation are different logics of adjudicating competences. Federalisation always implies a degree of shared rule at the centre. Decentralisation may hand down even more autonomy than federalisation, but it does not provide the decentralised units with state character; therefore, usually, only legislative and executive, but not judiciary powers are transferred. Decentralised units also may feel to lack security against encroachment by central authority. As they have no share in federal rule, there may be an incentive to look for their particular welfare, but not as much for the federal one.

Cooperative, consensus orientated arrangements may have stabilising effects, though they may also lack mobility and capacity of innovation as well as transparency and accountability. Dual federalism, more competitive and often more transparent, however, may also end up encouraging irresponsible behaviour. In practise, dual federalism is not easy to establish or maintain, particularly if new challenges arrive, income structures change, or when member states are too small to assume all three powers of the competences they have, or where for other reasons vertical or horizontal cooperation becomes necessary.

Federations and strongly decentralised states usually retain the same competences, like defence or foreign relations, although this may lead to conflict if, for example, international agreements or treaties are used by the federation or central state to undermine the exercise of relevant autonomous competences. Unrestricted basic legislation and the power of the purse are often used to encroach upon decentralised and member states competences.

Decentralisation and federalisation processes may obey different societal challenges; efficiency, democracy, international security, to name a few. These challenges may pose different priorities for different actors, and they may also be contradicting among themselves. An essential additional challenge are claims of diversity recognition and accommodation, particularly claims by minority nations. Both federalism and decentralisation have been recommended to face such challenges avoiding separatism. Nevertheless, symmetrical federalism or decentralisation may also work as instruments of majority nation-building and national

homogenisation (for example by outvoting minorities in the first as well as in the second chamber). Party political diversity may be managed more positively in a symmetric federation or in a decentralised state allowing the opposition to govern in at least some member state or territory and thereby preparing for general government and selecting an elite of leaders. It may be more easy to adapt to new economic circumstances when there is more than one centre, and different economical interests may be allowed to predominate on the territory. National minorities and minority nations will not be accommodated easily by symmetrical arrangements. "Coffee for all" decentralisation and symmetrical federalism treat all units equally and this may even enhance majority rule. This is not to say that there are no instruments available to cope with problems of deep diversity. Established rights to secede, additional consociational democracy in the ruling of the centre or federation, an asymmetrical distribution of competences, opting ins and outs, or other *de iure* asymmetries like veto rights for minorities in some issues essential to them (for example, language or religion) may result positive in accommodating such minorities, in particular, where the cleavage lines are cross cutting and the organisation of civil society and the structure of the party system are supportive.

[i] ELAZAR, D.: Exploring Federalism, Tuscaloosa 1987, p. 5.

[ii] See KOCH, B.: Johannes Althusius: Between Secular Federalism and the Religious State, in: Ward, A./Ward, L. (eds.): The Ashgate Research Companion to Federalism, Fanham et al. 2009, p. 75-90.

[iii] The subsidiarity principle should guide the adjudication of powers to the tiers. The exact definition of the principle is conflictive. Shall the upper level only take over when the lower one is strictly unable to do the job, or when it is more efficient?

[iv] An overview on their respective distribution of competences is provided by MAJEED,A./WATTS, R.L./BROWN, D.M.: Distribution of Powers and Responsibilities in Federal Countries, Montreal et al. 2006.

[v] See MADISON, J./Hamilton, A./Jay, J.: The Federalist Papers. Ed. Isaac Kramnick, London et al. 1987.

[vi] See NAGEL, K.-J. (ed.): The Problem of the Capital City. New research on federal capitals and their territory, Barcelona 2013.

[vii] MADISON, op. cit..

[viii] See KATZ, E.: USA, in: Majeed,A./Watts, R.L./Brown, D.M.: Distribution of Powers and Responsibilities in Federal Countries, Montreal et al. 2006, p. 316.

[ix] KINCAID, J. in: Majeed,A./Watts, R.L./Brown, D.M.: Distribution of Powers and Responsibilities in Federal Countries, Montreal et al. 2006, p. 138.

[x] State control over the districting for the House elections is still important, though somewhat limited by supreme court decisions.

[xi] For example, ZIMMERMANN, J.: Contemporary American Federalism. The growth of national power, Leicester 1992.

[xii] KYMLICKA, W.: Federalism, Nationalism, and Multiculturalism, in: Karmis, D./Norman, W.(eds.). Theories of Federalism, New York 2005, p. 274.

[xiii] See FLEINER, T.: Recent developments of Swiss federalism, Publius 32, 2002, 2, p. 97-123.

[xiv] FLEINER, T.: Switzerland, in: Majeed,A./Watts, R.L./Brown, D.M.: Distribution of Powers and Responsibilities in Federal Countries, Montreal et al. 2006, p. 267.

[xv] In American tradition, sovereignty lies with the people, on both levels in the federation; in German tradition, with the federal state; in British tradition, in Parliament.

[xvi] See KÖSSLER, K.: Multinationaler Föderalismus in Theorie und Praxis, Baden-Baden 2012, p. 135.

[xvii] SIMEON, R./PAPILLON: Canada, in: Majeed,A./Watts, R.L./Brown, D.M.: Distribution of Powers and Responsibilities in Federal Countries, Montreal et al. 2006, p. 101.

[xviii] Following GAGNON, A.-G.: The moral foundations of asymmetrical federalism: a normative exploration of the case of Quebec and Canada, in: Gagnon, Alain-G./Tully, James (eds.): Multinational Democracies, Cambridge 2001, p. 319-337.

[xix] For a comparative view on resymmetrization processes, see **REQUEJO, F./NAGEL**,K.-J. (eds.): Federalism Beyond Federations. Asymmetry and Processes of Resymmetrisation in Europe, Abingdon 2011.

[xx] See **NAGEL**, K.-J.: Spanien – Auf dem Weg zur Föderation?, in: Dieringer, J./Sturm, R. (eds.): Regional Governance in EU-Staaten, Opladen/Farmington Hills 2010, p. 149-170.

[xxi] See **ARGULLOL, E./BERNARDÍ**, X.: Spain, in: Majeed,A./Watts, R.L./Brown, D.M.: Distribution of Powers and Responsabilities in Federal Countries, Montreal et al. 2006, p. 250.

Pakistan's Reformed Federalism: Progress and Obstacles in Sharing Responsibilities between Political Centre and Provinces

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Abstract

Pakistan had decided to adopt a federal form of government even before its coming into being in 1947. Thereafter, the country has experimented with three constitutions, a couple of interim constitutions, and has undergone four military rules as well. All along these years, the country always proclaimed itself as a federation even though the federal status of the constitutions and other arrangements – which were adopted in place of a regular constitution – varied quite significantly. After the failure of the 1956 and 1962 constitutions, the constitution of 1973 was adopted. It was characteristically different from the previous two ones. It was way ahead of the earlier ones in terms of its federal provisions. However, there was still big room for improvement in order to make it more federal. The 18th Constitutional Amendment served this purpose. It would not be an exaggeration if one claims that the amendment has transformed Pakistan's federalism from organic or cooperative federalism to coordinate federalism. So far, the age of the amendment is too small and it would be too early to say as to what it

has achieved. This paper seeks to look into the progress made so far, and the challenges and obstacles the new federal arrangement has been facing since the adoption of the Amendment in 2010.

Introduction

The year 2010 will go down as an important year in the history of Pakistan's constitutional development as in this year the parliament of the country adopted the 18th Amendment, which allowed a major departure from the previous federal structure of the country. The degree of devolution allowed through this amendment was quite meaningful and significant, so that one may describe it as Pakistan's first major dissociation from the centralized structure put in place during the colonial period and maintained to a great extent by the successive constitutional models. The coordinate federalism that has been introduced in Pakistan is likely to take roots and demonstrate its social and political merits over a period of time. Constitutional changes can be made relatively easily (though in the case of Pakistan, even this proved quite difficult), but it takes time to implement them in true spirit. The 18th Amendment has taken certain bold steps and has also ventured to disturb quite a significant number of groups and bodies who had flourished in a very centralized system. For the success of the Amendment a host of obstacles will have to be overcome. These obstacles may come in the form of the technical difficulties which are generally a part of any shift in the structural arrangement, or may arise during the course of implementation of the new set of provisions. The obstacles may also

come from the vested interests of the previous system. Despite this, as it appears, the new system is holding ground and has begun to take roots. The provinces have shown substantial inclination in running the new system with extended domain of provincial autonomy. They have denounced, through their performance, the apprehension that the provinces lacked capacity and would not be able to handle the big arena of functions and responsibilities devolved to them through the Amendment.

Federalism and Pakistan: A Conceptual Perspective

Federalism has been defined as a principle through which culturally and politically diverse societies harmonize their political interests under a single constitutional framework. K.C. Wheare, one of the earlier exponents of the federal form of government, provided a good explanation of the principle that operates in a federal system. He opined that, 'by the federal principle I mean the method of dividing powers, so that the general and regional governments are each, within a sphere, co-ordinate and independent'.[i] The federal principle operates in different federal systems in different manner. Therefore, the federal systems can be classified differently according to the level of the accommodation of the federal principle in them. G.F. Sawer has constructed a typology[ii] according to which the incorporation of the federal principle can take three forms with respect to the nature of the relationship between the federal government and the federating units. According to his nomenclature, these are organic, cooperative, and coordinate federalisms. The organic federation has a powerful centre with very weak units. In the

cooperative federation both the centre and the regions or units cooperate with each other while in the coordinate federalism the federal and unit governments relate to each other on equal footing without interference of one into the domain of the other.

The notion of independence and autonomy of the provinces has been a central issue of the political and federal discourse in Pakistan since the creation of the country. Perhaps no other issue would have generated that much of political heat and debate and would have affected the political development of the country as had the issue of a rightful and viable federal bargain between the centre and the provinces. In fact, Pakistan suffered a lot in its 65-year history due to its inability of evolving into a viable federal system. The country lost half of it in 1971 when the former East Pakistan got separated, and became independent as Bangladesh. Comprising 54 per cent of the country's population, East Pakistan always longed for maximum provincial autonomy which was denied to it by the successive Pakistani governments between 1947 and 1971. The demand for autonomy was also made by other provinces in the past. The 1973 constitution did respond to some of these demands and had the federal provisions provided in the constitution being implemented in letter and spirit, it would have served as a good beginning. The constitution provided a fairly good format of inter-governmental relations which could be further enhanced and expanded in due course of time. But, unfortunately, the 1973 constitution was not allowed to operate independently and in a democratic environment. It was suspended by a military ruler in 1977, and was restored only partially in 1985, when the parliament was maneuvered to accept a number of changes in the basic document supportive of the then

military ruler, General Zia-ul-Haq. This was done through the 8th Constitutional Amendment.

The constitution's original shape was restored to a great extent by a civilian regime in 1997 through the 13th Constitutional Amendment. But, again, the constitution was interfered with by another military ruler, General Pervaiz Musharraf, who took over in 1999. Constitution's parliamentary character was again reverted back to the federal form through the 17th Amendment. It was only through the 18th Amendment that the original 1973 constitution was restored. Not only this, the amendment brought in a number of clauses which made it more decentralized, allowing a fairly good sphere of operation to the provinces.

Pakistan's relationship with federalism is a matter of life and death for the country. There are at least four things which provide the rationale for adopting federalism in Pakistan. First, the idea of autonomous provinces was not only central to the political struggle in Pakistan it was also the cornerstone of the movement for the creation of the country. The All India Muslim League, and the founder of Pakistan, Quaid-i-Azam Mohammad Ali Jinnah, had begun their political struggle in the beginning of the 20th century in united India for seeking maximum political space for the Muslim community. The articulation of their demand was embodied in what was designated as the Two Nation Theory. The theory was a political device for the realization of affirmative action for the underprivileged Muslim community which had the apprehension that after the end of the colonial rule and in a political environment of representative institutions, they would be rendered ineffective and under-privileged

as a permanent minority if they were not allowed a reasonably better share in the affairs of statecraft. Once the efforts of Jinnah in bringing his counter-parts at the Indian National Congress to appreciate his position failed, the possibility of working out a constitutional and political settlement eroded. With this the partition of India became inevitable.

Second, the manner in which partition took place and Pakistan was carved out of united India, also gave credence to the importance of federalism in the case of Pakistan. Though the Partition was demanded on the principle of Two Nation Theory, in practical terms it was not the entire Muslim diaspora of India which constituted Pakistan. Rather, the theory had to be reduced and defined in territorial terms with the result that the Muslim majority provinces alone were accepted to constitute a separate Muslim state. Not only this, the Muslim majority provinces were asked, through their legislatures, a referendum or else, if they wanted to bring about a separate federation. This they did and that is how the federation of Pakistan became a reality. Therefore, the modalities of the creation of the country made federalism the basis of Pakistan.

Third, Muslim League had always been of the view that once Pakistan was created, it would be organized as a federation. Jinnah, repeatedly made clear that Pakistan would be a federation after fashion of Australia and Canada. In his struggle prior to independence, he had always shown keen interest in and a profound commitment to the idea of provincial autonomy. Furthermore, he was of the opinion that the federating units should have the same quantum of autonomy irrespective of their size.

Fourth, Pakistan comprised regions which had their receptive cultural heritage, languages, literature, folklore and arts. Although they also had common features, they were thoroughly embedded in their cultures which are very dear to them. The cultural mosaic of Pakistan, and the diversities which it enjoyed, demanded a political system that could respond favourably to the cultural and ethnic identities through accommodating them in the system. This could be done only in a federal form of government which would allow the regions to have their autonomous spheres of functioning and responding to their people's desires, along with providing a central government which represented unity in diversity.

Pakistan's Political Development

Contrary to the expectations and the vision of the founding fathers, Pakistan, right from the beginning, took to a political course loaded with mistakes of grave nature. Instead of allowing democracy to take roots in the country, the ruling elite coming from the institutions of bureaucracy and military and their political affiliates established authoritarian centralized rule in the country. In its history of 65 years military directly ruled the country for almost half of the period. Even during the phases when civilian dispensations were allowed they seldom had any significant autonomy to operate. As a result of this, the integration of the people belonging to different regions could not take place. This integration would have been possible only through a political process where people belonging to various provinces could have the feeling of having power over their destiny. A system denying participation to the people may not provide

channels ensuring their unity. During the military regimes the idea of Pakistani nationhood suffered the most.

The course of constitutional development has already been referred to. In the first place, the first two constitutions, and to some extent the third one as well, imbibed the spirit of centralization as upheld in the Government of India Act 1935. Then, whatever federal provisions were provided in the constitution they were tried to be nullified in practice by the authoritarian regimes. However, after much bewilderment, the political class realized that unless they overcame their mutual contradictions, they would have to suffer continuously at the hands of the military rules. Pakistan's decade of 1988–1999 saw two governments each of Pakistan People's Party and Muslim League (Nawaz). Coming from two quite different backgrounds and representing different political heritages, these governments under Benazir Bhutto and Mian Nawaz Sharif remained at loggerheads and left no stone unturned in letting the other down. Eventually, military took over and General Pervaiz Musharraf forced both leaders to move into exile. This provided them the opportunity to reflect on the past, try to identify their weaknesses and attempt to find possible means to compromise on certain issues. On 14 May 2006, a Charter of Democracy was signed between Benazir Bhutto and Nawaz Sharif. Later, other opposition parties of Pakistan also joined them in London in a roundtable conference where agreement was reached on the restoration of democracy and the pivotal issues being faced by the country. In February 2008, elections were held in the country and the Peoples Party emerged as the single largest party. It formed a coalition government with PML(N) and other parties. The PML(N) later left the coalition, however, it continued to

cooperate with the PPP and other parties on the subject of constitutional reforms. The popular leader of the PPP, Ms Benazir Bhutto had been assassinated on 27 December 2007, prior to the election of 2008. The new PPP regime was led by Prime Minister Yousuf Raza Gilani while Benazir's spouse, Asif Zardari, emerged as the main leader of the party. In August 2008, he was elected as the President of the country.

The new government took to the road of constitutional reform on 28 March 2009 when President Zardari, while speaking to the joint session of the parliament, asked the speaker of the National Assembly to constitute a committee of both houses—National Assembly and the Senate—to suggest reforms in the constitution. The National Assembly passed a resolution in this respect for the creation of an All Parties Special Committee on 10 April 2009. The Committee comprised 27 members (who were later reduced to 26). The Committee held 77 meetings and suggested a package of constitutional reforms affecting at least 97 articles of the constitution. It was signed on 21 March 2010, and was later approved by both the houses of the parliament.

The Federal Scheme of the 18th Amendment

The 18th Amendment has changed the federal scheme of the constitution of 1973 quite substantially. The impact of the amendment can be seen in two major areas.

1. Provinces' relations with the centre

The 18th Amendment is in fact a paradigm shift in the centre-provinces relationship. Here, seven points deserve to be mentioned.

i. There are two areas where one can see the convergence of two levels of governments: a) the correlation of parliament and provincial assemblies. The constitution ensures that the provincial assemblies would serve as the electoral college for the upper house of the parliament, i.e. the Senate. Now that with the 18th Amendment the number of the members of the Senate has been raised to 104, one can say that the provinces' role in shaping a house of the parliament has been enhanced; b) the president's powers to appoint governors of the provinces have been re-defined. Earlier the president did so in 'consultation' with the prime minister, now he does so on the 'advice' of the prime minister. And, since the prime minister draws strength from the parliament, his enhanced role in the appointment of a provincial governor may be taken as the establishment of an indirect relationship between the parliament and a province.

ii. The 18th Amendment has changed the nature of the administrative relations between the federation and the provinces. a) Article 144 of the constitution provided for the power of the parliament to legislate for one or more provinces by consent, on a matter not mentioned in the federal list. The 18th Amendment added to it the possibility of amendment or repeal of such an act of the parliament by the provincial assembly; b) Similarly, Article 147 speaks about the power of the provinces to entrust functions to the federation on matters to which the executive authority of the provinces extends. Now the

18th Amendment adds 'provided that the provincial government shall get the functions so entrusted ratified by provincial assembly within 60 days.'iii

iii. The distribution of the legislative powers between the centre and provinces has also been drastically altered. In this respect, the most significant step taken by the 18th Amendment has been the abolition of the Concurrent Legislative List and enhancement of the role of the Council of Common Interests (CCI). The original 1973 constitution provided for two legislative lists—federal and concurrent. While on the subjects enumerated in the Federal List only the federal parliament had the competence to legislate, on the subjects of the latter, both the central as well as the provincial governments were entitled to legislate but prevalence was provided to the federal legislation. As a result of the abolition of the Concurrent List: a) certain subjects of the concurrent list have been transferred to Part II of the Federal List which comes under the competence of the CCI; b) few subjects in Part I of the Federal List have been shifted to the Part II of the same list. This means that these will now be seen by the CCI. Among the subjects which have come under the purview of CCI through this are National Planning and National Economy, Coordination including planning and coordination of scientific and technological research; c) There has also been an addition in the Federal List. This deals with International Treaties, Conventions and Agreements, and International Arbitration; d) a number of Concurrent List's subjects now do not occur in either Part I or Part II of the Federal List. These have become Residuary Subjects, and have come under the competence of the provinces. Consequently, the ministries which looked after matters related to the Concurrent List or

removed subjects of the Federal List, have been abolished. Such ministries number seventeen. Moreover, as a result of all the shifting from the Federal List and the abolition of the Concurrent List, the provincial responsibilities have increased. These responsibilities number at least 34, which is an ample area of extended scope.

iv. As a result of the 18th Amendment, the abolition of the Concurrent List, the shifting of few subjects to the Part II of the Federal List, and other alterations, the Council of Common Interests has become a very important body. Furthermore, certain other clauses have increased the council's significance in the federal structure of Pakistan. For example, it is now extended with the prime minister as its chairman. Three members of the federal government complete the federal representation. The chief ministers of the four provinces are also members of the CCI. This means that the CCI has equal share of the federal and the provincial governments. The CCI will now have its separate secretariat, too. The functions of the CCI include formulation and regulation of policies pertaining to the subjects in Part II of the Federal List. It also supervises and controls the related institutions. The CCI, according to the 18th Amendment, is constituted within 30 days of the election of the prime minister. It meets at least once in 90 days. It resolves issues related to electricity.

v. The constitution has created the National Economic Council (NEC). Its members include the prime minister, four chief ministers, four nominees of the prime minister and four nominees of the chief ministers. It thus makes 13 members. The Council reviews the overall economic condition of the country and, for advising the federal government and the provincial governments, formulates

plans in respect of financial, commercial, social and economic policies. And, while doing so it ensures balanced development and regional equity as guided by the constitution in its chapter on Principles of Policy. The Council meets at least twice in a year. It is responsible to the parliament and submits an annual report to each of the two houses of the parliament.

vi. The National Finance Commission (NFC) is another important body which was created by the constitution of 1973. The 18th Amendment has made it more substantial and significant. The NFC is constituted after every five years consisting of the minister of finance of the federal government and the finance ministers of the provincial governments. The NFC makes recommendations to the president about the distribution between the federation and the provinces about the net proceeds of the taxes separately identified in the constitution. NFC also recommends about making of grants-in-aid by the federal government to the provincial governments. The 18th Amendment has introduced the clause saying that the share of the provinces in each award of NFC shall not be less than the share given to the provinces in the previous Award. It is also laid down that the federal finance minister and provincial finance ministers would monitor the implementation of the Award bi-annually and lay their reports before both houses of the parliament and the provincial assemblies.

vii. A significant amendment made in the constitution enhancing the autonomy of the provinces is the one which lays down the joint ownership of property. In the case of mineral oil and natural gas deposits in a province or territorial waters, the ownership will vest jointly and

equally between that province and the federal government.

2. Inter-provincial relations

After having centre and provincial areas of competence clearly demarcated, it is hoped that the inter-provincial matters would also be handled according to the overall scheme and the spirit of the new federalism. However, human societies are not immune to problems and issues. So, issues may emerge between the provinces which may be settled at the level of the CCI, Senate, or the joint session of the parliament.

Challenges

The 18th Amendment has remained so far the most significant step towards democratic devolution in Pakistan. Through its clauses it has presented a promising package which, if implemented with political will, would certainly bring about a noticeable change in the system of governance as well as in service-delivery in Pakistan. However, it will also be a difficult terrain as numerous challenges both at the level of centre as well as the provinces will make this transition a trial for the political class. Here one may mention some of the major challenges:

i. The transition has already met bureaucratic hurdles as central bureaucracy did not lose time in demonstrating its hesitation in letting the devolution through.

ii. A major section of the technocrats employed in the central government – either as part of the government service or as advisors – did not have much faith in devolution as

they saw it as a direct threat to their power and privileges.

iii. The centrist mindset of a big section of the political class, media, and intelligentsia also did not approve of the whole idea of provincialization of hitherto central subjects.

iv. It is also a bitter reality of Pakistan that authoritarianism is structural in nature, and it goes deep down in the society. Democratic devolution done at the constitutional level would bear fruit only when the democratization takes place at the level of the society for which social reform, uplift of the downtrodden and the mainstreaming of the marginalized are the prerequisites.

v. Decentralization from centre to the provinces is certainly a step in the right direction but it would become effectively meaningful only when it is taken to its logical end, which means that powers should further be devolved to the localities, for which an energized and vibrant local government system is crucial.

vi. For the success of devolution enunciated by the 18th Amendment, it is necessary that the general public of Pakistan accepts its ownership. The powers shifted from the centre to the provinces should not solely rest with the provincial politicians but their benefit should transmit to the people so that they have a vested interest in devolution.

vii. In order to make Pakistan's federal system a more democratically devolved one, it is suggested that a further package of constitutional reforms is geared up. It is important to have a separate constitutional court in order to settle the constitutional issues swiftly and without getting them confused with other matters at the disposal of the Supreme Court. It is also important to integrate

Federally Administered Tribal Areas (FATA) with the settled regions of the country. FATA's integration in the province of Khyber Pakhtunkhwa is all the more important for bringing about uniformity in the system of governance, as well as rights and duties of the people. The Senate of Pakistan can also be made more important and substantial by getting it elected directly and not through the electoral college of the provincial assemblies. The role of the provinces in amendment of the constitution should also be taken up seriously. The parliament of the country as well as the provincial assemblies can be made more effective and representative if function representation is also allowed in them. This would allow the professionals, teachers, workers, etc. to have representation in the legislature of the country.

These suggestions are likely to ensure further democratization of Pakistan's federalism and devolved democratic system.

i K.C. WHEARE: Federal Government, London, Oxford University Press, 1963, p. 10.

ii G.F. SAWER: Modern Federalism, London, C.A. Watts & Co. Ltd., 1969, p. 117.

iii See NATIONAL ASSEMBLY: Report on the 18th Amendment, page 35 http://www.na.gov.pk/uploads/documents/report_constitutional_18th_amend_bill2010_020410_.pdf

The Co-operative Dimension of "Fiscal Federalism"

Henrik Scheller

Introduction

Fiscal and budgetary policy is of particular importance for all political systems. The fiscal constitution – as a vital part of the constitution – fulfils a "deployment capability" and a "serving character" (Hidien 2000: 38). Particularly in federal states, special distribution mechanisms ensure an individual funding of the federation as well as the federal states. In all policy fields, the provision and execution of public goods and functions depends on the availability of financial resources. Fiscal policy is therefore power politics of highest rank and always interest-driven. Especially in federations, conflicts of fiscal redistribution between actors of the different jurisdictional levels are frequent phenomena. The fiscal autonomy of the federation and the individual constituent units is an indicator of the level and scope of their overall decision-making autonomy.

The distribution of financial and budgetary competences at various jurisdictional levels in a federation is referred to as "fiscal federalism". Fiscal autonomy is divided into several autonomies: regulatory autonomy, autonomy of revenue, administrative autono-

my, autonomy of provision and distribution (Schneider 2006: 37). The specific organisation of these competences as well as the respective degree of autonomy of the federation and the constituent unites is varying across federations. In detail, these are the following competences:

- The regulatory autonomy encloses legislative competences of the federation and the sub-national states stipulated in the constitution in order to decide on introduction, features, purpose and provision of individual taxes.
- The autonomy of revenue guarantees individual administrative competences within the federation to dispose of its own public revenues independently.
- The administrative autonomy of the jurisdictional levels regarding questions of taxes and fiscal policy founds in individual administrations' rights to levy taxes and dues autonomously.
- The autonomy of provision of local administrations relates to the free provision of revenues reallocated by another jurisdictional level. Allocations by the federation are often bound to a specific purpose and thus challenge priorities within the federal states.
- The autonomy of distribution granted to one constitutional level within a federation depends on the share of revenues that constituent states have to pay into the fiscal equalisation scheme to reduce differences of financial power between constituent states.

In a nutshell, the concept of "fiscal federalism" describes all constitutional rules and institutions which ensure an orderly tax collection, distribution and the use of public revenues (including public debt) in a federation to safeguard the necessary implemen-

tation of statutory duties by the individual layers of government. In all federations, the financial relations between the federation and the constituent unites are characterised by specific forms of fiscal governance. With regard to typical patterns of negotiations, decision-making and compromise between individual levels, it can be distinguished between a competitive-separatist and a cooperative-consensual politics style.

Collection of Public Revenues in Federations

The autonomy of the federal government and the constituent units in a federation bases on the allocation and distribution of competences stipulated in the constitution. However, a proper and efficient execution of individual duties requires a suitable fiscal autonomy. Otherwise, the "objective competences" of the constituent states would be proven futile if their autonomy would be undermined by a financial dependency on the union (Renzsch 1991: 12). To guarantee fiscal autonomy of both, the federation and the constituent units, there are three possibilities:

- exclusive revenue sources which are at the free provision of single jurisdictional levels
- the division of the federation's revenues between the jurisdictional levels
- financial transfers and redistribution mechanisms between the jurisdictional levels

Exclusive re sources mostly concern taxes that are entitled to one jurisdictional level exclusively. They base on tax sovereignty including the right of taxation and regulation of specific revenue forms. The federal government and the constituent units have to use

their tax revenues then to cover their respective budgets. Such tax sovereignty does not have to be automatically bound to legislative competences concerning these revenue sources. If both competences coincide in the hands of one jurisdiction, it is called "institutional congruence". This always indicates a high degree of autonomy of a federation and/or their constituent states. In such cases, there usually exists a prerogative of the federation and the constituent states to introduce and raise new taxes autonomously ("Steuerfindungsrecht").

Various federations have compounded tax systems. In such cases, the central government plays a prominent role in the legislation and distribution of respective tax revenues. Besides, annual revenues have to become distributed between the jurisdictional levels – mostly based on politically negotiated distribution rules or fixed formulae. If such distribution mechanisms are legally binding, respective revenues are understood as "exclusive" or "original revenues" of the federation or the federal states – since every layer of government is legally entitled to receive a particular share of the total amount. Another possibility to levy additional taxes is the right that allows the federal states and their municipalities to levy surtaxes or reductions on original taxes of the federation ("Steuerzu- oder -abschläge").

Almost all federations have some kind of fiscal equalisation system, which shall help to adjust the differences in the financial power of the various regions. It serves also as a further pillar of the fiscal autonomy of the constituent states. Such equalisation schemes can include horizontal as well as vertical components to carry out an

intergovernmental distribution of the overall public revenues and/or financial allocations of the federation to its constituent units. Financial transfers from the federation always involve a curtailment of the constituent states' autonomy, because, in theory at least, the federation could refuse granting funds to constituent states with reference to its own restricted budgetary situation.

For the distribution of public revenues between different jurisdictional levels, federations use some basic principles: the "inhabitant's principle" ("Einwohnerprinzip"), the "principle of local revenue" ("Prinzip des örtlichen Aufkommens"), the "principle of distributional justice" ("Prinzip der Verteilungsgerechtigkeit") and the "principle of equal treatment" ("Prinzip der föderalen Gleichbehandlung") of constituent states. Besides, specific financial needs of both, the federation and its constituent units are factored into the equalisation scheme. So, for example, population figures, territorial structures, socio-demographic factors and specifics in the individual economic structure are taken into account. Considering the individual circumstances of federations, the advantages and disadvantages of these principles must be weighed over and over again.

A distribution of public revenues, which bases on the constituent states' population seems to be the simplest allocation principle. Presuming that every inhabitant has "the same value" includes the assumption that financial needs and costs per citizen are approximately the same in each sub-national unit. One problem in this context, nevertheless, is the challenge of population statistics. Even in advanced industrial states, exact statistical measurements of

the actual number of inhabitants are rather difficult. Since changes in the population structure are often covered with a time lag, the suitable adaptations in the distribution of public revenues between different jurisdictional levels also occur with delays.

The "principle of local revenue" for the distribution of public revenues intends to provide decision autonomy for local administrations over its respective local revenues. This can lead to considerable distortions in financial power comparing individual constituent units. Hence, it is difficult to take political decisions on where specific taxes should be raised. Shall for example import taxes due at ports, corporate taxes due at a company's headquarters, excise duties due at production sites and individual income taxes due at the residence of the work place or shall all these taxes due at the taxpayers' residence? Above all, the quantification of these domestic financial currents raises difficult questions of distribution. In consequence, conflicts about fiscal distribution well up between constituent states regularly.

Besides, the "principle of local revenue" is often at a mutual conflict with the federal principle of equal treatment because the question of magnitude and redistribution of public revenues is always disputed politically. Considering the readjustments of such principles as well as already existing distribution and equalisation systems, makes it necessary to take also aspects of political culture on solidarity and fairness into account. These aspects play an important role in daily constitutional practice since they perpetuate restrictions and insistent forces – even though they are not concretised in the constitution or federal laws and thus are not enforceable (Scheller

2005). For example, countries like Australia and Germany value high and comparable living standards and public goods nationwide. However, federations like the USA and Switzerland as well as Brazil, Nigeria and India accept much bigger financial disparities between their constituent units because the political culture and the identity of their federal states is traditionally shaped by autonomy and direct authority.

Mechanisms for the redistribution of public revenues often lead to financial power shifts between constituent units. This proves to be an essential dilemma: Either the government decides on a distribution mechanism, which is a legal obligation for all constituent states despite their heterogeneity. Alternatively, a special treatment ("lex specialis") of single federal states and their local administrations founds a kind of de-jure-asymmetry. In the first case, the equal treatment in financial terms of all sub-national units takes precedence over considerations of specific features of single local administrations. In the second case, which can mostly be explained historically, the special fiscal treatment of single consti-tuent states is judged as a necessary guarantee for the cohesion of the whole federation.

Distribution of Public Revenues in Federations

In different federations, the distribution of public revenues as well as financial transfers among the jurisdictional levels pursue varying objectives. Either they serve to cover general fiscal requirements of the constituent units or they shall reduce disparities in the fiscal power between them. In addition, the federation may bind

allocations to specific purposes in order to realise certain political aims at other constitutional levels. For example, these funds can serve to finance health services and the education system as well as social services, which lead to high expenditures in all Western welfare state. In most of these policy fields, the constituent units also have some own competences. To provide their public goods it is often essential to get the federation's financial support.

The structure and operation mode of distribution mechanisms for transferring public revenues has consequences for the fiscal autonomy of federal states: it has effects on the distribution criteria as well as the "economies" or "diseconomies of scale" and not least, it affects the fiscal stability of the whole federation. The legal framework for the distribution of public revenues and the basic financial transfer mechanisms are often stipulated in the constitution, complemented by federal acts. To react on short notice to the ever changing political and economic conditions, the legislator have of a certain margin of appreciation – besides the restrictions given in the constitution – regarding the redistribution of public revenues. Thus, federal laws, intergovernmental agreements or state contracts regulate many distribution details. The constitution often stipulates the general principles. For example, in the constitution of the Federal Republic of Germany, Article 72 Paragraph 2 and Article 106, Paragraph 3 GG state "the establishment of equivalent living conditions throughout the federal territory". Although this phrase is generally not jurisdictionally enforceable by federal states or individuals, it does play a central role in political disputes.

In general, the following distribution forms of public revenues can be distinguished:

- **Formalised versus discretionary distribution of public revenues:** The tax distribution between the jurisdictional levels in a federation mostly bases on standardised obligations, quotas or formulae, which predicate on long-term experiences or become granted on the basis of long-term agreements. Due to the constituent states' preoccupations with possible cuts in their budgets, the abovementioned-formalised distribution forms may even grow so statically fixed that it becomes politically hard to change them. This has the advantage that the relative share of tax revenues of single jurisdictional levels is transparent and dependably predictable – even if the absolute amount of revenue may vary. Financial transfers within fiscal equalisation schemes rest also often upon long-term distribution formulae. As the respective mechanisms are widely standardised as a federal legal act, there is the possibility of short-term and discretionary adjustments. This is possible because the hurdles for amendments of federal laws are lower than for constitutional reforms. Fiscal transfers may be granted either on a constitutional or simple legal basis. A further option could be a discretionary decision made by the budgetary legislator of the federation dependent on specific situations. In the first case, a lawsuit by constituent states with regard to a possible violation of the federal principle of equal treatment is likely. In the second case, these proceedings are not possible. The granting of funds within the scope of transfer programmes with an extensive financial volume usually occurs on a standardised legal basis, which defines the extent, purpose and duration of financial claims and obligations. However,

with programmes of smaller extent the budgetary legislator has a wider margin for manoeuvre.

- General fiscal purposes versus purpose-bound financing programmes: The tax redistribution in federations serves to cover general fiscal requirements of constituent states and thus is generally not bound to a specific purpose. Yet this might have advantages in some cases. Binding financial transfers to a specified usage serves not only to finance certain purposes but also to guarantee the fiscal autonomy of the constituent units. However, purpose-bound allocations aim at the implementation of specific programmes – even if the degree of how the grants are bound may considerably vary and show a wide range between various detailed defaults on the one hand and abstract and accordingly sketchy objectives on the other hand.
- Capped versus free distribution: Distribution mechanisms and fiscal allocations often have relative or absolute expenditure ceilings. This is unusual for the tax provision between the jurisdictional levels in a federation. Accordingly, if a certain source of tax revenues grows, the respective share that individual constituent states receive increases proportionally. In contrast, fiscal transfers or grants are usually fixed and have to be spent for particular purposes. Moreover, the amount of the respective transfers is mostly capped.
- Co-financing obligations versus complementary allocations: Federal grants which are bound to co-financing obligations require an own contribution or a proportionate assumption of costs by the constituent states to fulfil requirements given in the individual respective programme. If there is general interest in the realisation of certain projects, it may well be that the federation covers all expenses.

Constituent states are often substantially dependent on revenues from compounded taxes and fiscal transfers. This is highly disputed in political and academic discourses. Some experts do not consider this dependence as a problem – particularly as long as the competences and expenditures are clearly standardised constitutionally; thus, restrictive deficit rules prevent an unimpeded public borrowing of constituent states. Otherwise, expectations may be raised that the federation would bail out sub-national jurisdictions if they got themselves into a financial crisis. The counter-argumentation takes off exactly at the fact that an extensive dependence of the constituent states on financial transfers – regardless of legally binding obligations – would actually cause a federal obligation to financial aid in extreme fiscal situations. Thereby, it would undermine the fiscal responsibility of the constituent units. This may be a consequence of the fact that purpose-bound grants lead often to a change in the constituent states' spending priorities in order to fulfil the federation's requirements.

Nevertheless, one aim of purpose-bound transfers are often the provision of comparable public services in the whole federation. A co-operation between the federation and the constituent states may also be necessary to guarantee a uniform and comprehensive implementation of expenditure programmes with regard to the promotion of domestic mobility of individuals and enterprises. Of course, there are also political interests involved, which take effect when granting fiscal allocations: sometimes, the federation does promote a certain programme, a specific investment or activity simply because it is considered to be a prestigious project and thus

relevant because of party politics or because of electoral campaign strategies.

In multi-level governance systems, it can never be completely ensured that the purpose-bound allocations provided by the federation strengthen expenditure programmes, which the constituent states would have placed anyways. Thus, in constitutional practice often so-called "adhesive effects" can be observed. In the light of the above, it is important to design transfer programmes in such a manner that they do not offer any incentive for deadweight effects or create unnecessary costs on behalf of the constituent states. Therefore, it makes sense to calculate federal allocation programmes not on the basis of current expenditures, but on standardised cost estimates. Besides, the obligation to put fiscal allocations to efficient use may be bound to the performance of respective outputs and outcomes. In the past, this aspect was often neglected because of a pure input consideration. Moreover, a ceiling as well as an arrangement on a diminishing scale of transfers ("phasing out") seems appropriate. Purpose-bound allocations may more often be found in dual federations where the federation does not dispose of the legal competence to put a constitutional and political frame which constituent states are legally obliged to.

Fiscal Equalisation Systems in Federations

The fiscal and economic power of sub-national states in federations varies substantially. Therefore, all federations have imposed fiscal distribution and equalisation mechanisms to adjust the fiscal disparities between financially "stronger" and "weaker" constituent

units. In this manner, most fiscal equalisation schemes are realising the "principle of federal solidarity", focussing not only on the unity of the federation but also on the nexus between the autonomy of administration and the budget autonomy of the constituent states. This link is also emphasised in definitions: "Fiscal equalisation in a broader sense encloses the vertical and horizontal subdivision of duties, expenditures and revenues on local administrations within a federation; fiscal equalisation in a narrower sense are the monetary currents between the different jurisdictional levels of a federation" (Mäding 2003: 402; own translation). Besides guaranteeing a fiscal "basic equipment", elevating the fiscal power of the constituent states to a standardised and comparable level is also pursued. The calculation of fiscal equalisation claims and obligations bases on the fiscal power, i.e. the sum of individual revenues, or general demands each federal state has.

In literature, exist two explanations for the institutionalisation of fiscal equalisation mechanisms. One argumentation, theoretically rests on fairness and interregional justice, focuses on the "federal principle of mutual responsibility for each other" as well as on a culture of mutual solidarity among federal partners. It addresses not only the duties regarding public welfare but also the responsibilities of each constituent unit to care for their own affairs. This latter responsibility has to be counterbalanced constantly anew – not only between the jurisdictional levels, but also between the constituent states themselves. The second argumentation, explaining the need for fiscal equalisation mechanisms in federations, is of an economic nature. Therein, resource allocation is a major concern, which would work inefficiently and adversely affected without any federal

equalisation mechanisms. Furthermore, there are naturally occurring discrepancies in the labour market, which consequently encompass lower productivity rates and reduced economic power of certain regions. Economic imbalances of this kind are further deepened because economically strong regions may lower taxes and are able to extend their public services. This increases their local attractiveness for enterprises and individuals belonging to high-income groups; since persons of these groups are more often willing to change their place of residency for tax reasons compared to taxpayers from lower income groups.

Fiscal equalisation schemes usually address the disparities in fiscal power between individual constituent states. However, there are other equalisation systems, which take not only the fiscal power but also expenditure requirements into account:

- The absolute financial power of individual constituent states can be determined for every single source of revenue the local administration possesses. In developing and emerging countries – which often only dispose of underdeveloped tax administrations as well as an according deficit in their statistic revenue reports – it is necessary to use approximations like the per-capita GDP or per-capita income. Sometimes, these have to be adapted or weighed if constituent states dispose of lucrative sources of revenue, as for example oil and natural gas.
- Fiscal requirements of individual constituent states may be calculated on the basis of representative expenditure models. This includes standardised expenses per inhabitant of certain age groups. Sometimes approximate values are used. For example, the average costs have to be

> taken into account for children and youths in the schooling system as well as expenditures for older people (who depend on a certain health and nursing infrastructure). Also indicators regarding "social segregation" – that is poverty and wealth distribution as well as topographic structures of the respective constituent state – may be considered in expenditure calculations.

Alongside purely mathematical difficulties, both approaches include always normative and political implications. Above all, these take effect when deciding upon the allegedly "necessary expenditures" of a territorial entity. A special challenge here is the question of calculating all differential costs. These problems always become viral when a constituent unit faces additional, above average costs, for example due to its geographic topography or specific features of its settlement patterns. An argument against the special consideration of these costs in calculations of general fiscal requirements proclaims that consequential differences would be neutralised in comparison to real costs.

According to the prevalent argumentation in literature, fiscal equalisation systems should not create false incentives and should not intervene in tax levies as well as interfering in the constituent states' expenditures. In constitutional practice, equalisation programmes are mostly carried out on the basis of representative revenue and expenditure calculations and are not rooted in actual political performance. Consequently, this would tempt constituent states to exploit the weaknesses of the existing system to their own advantage. The calculations of equalisation claims and obligations within most systems refer back to average numbers and reference

statistics of previous budgetary years – even though the real financial power of constituent states is always illustrated with a "time-lag".

Regardless of the question whether a fiscal equalisation system should consider financial power exclusively or alongside possible financial demands, it always requires a political decision as to which amount of the fiscal power of the financially weaker constituent states should be adjusted. Also, looking at the question of possible ceilings in all fiscal transfers as well as the arrangement of distribution formulae, landmark decisions are necessary to be made. Most equalisation systems are conceived to kick in to elevate the fiscal power of financially weak states only under the premise that all other revenue sources and transfers have been depleted. This applies to the equalisation systems in Austria, Canada, the Federal Republic of Germany and Switzerland. In comparison to other distribution mechanisms that can also have equalising effects, the actual volume of fiscal equalisation programmes does not have to be excessively large.

Fiscal equalisation schemes may prove counterproductive under certain conditions – even if their conceptualisation and structure were conceived in order to equalise inner-state fiscal power disparities. Thus, the concrete volume of equalising allocations is often volatile and consequently hard to predict, as it is dependent on the public authorities' cyclical revenue oscillations. This problem may be bypassed by calculating equalisation claims and obligations on the basis of periodical averages and reference values. Moreover, an obligatory ceiling of any divergences of the previous year's values

may prove to be helpful. According to the widespread criticism a guaranteed fiscal equalisation could offer disincentives for constituent states, because the upkeep of own revenue sources may be neglected and thus budgetary and expenditure discipline may suffer. Besides, the own tax collection sometimes do not pay off for the general fiscal situation due to low net effects as well as regular finance allocations. This is because possible tax revenues increased in a constituent state may be followed by the loss of fiscal equalisation claims. To avoid these problems – if they have indeed gone viral in constitutional practice –suitable mechanisms in the distribution formulae and standardised indicators of revenue and expenditure can be used.

The Fiscal Equalisation System in the Federal Republic of Germany

The fiscal equalisation scheme between the federation ("Bund") and the federal states ("Länder") in Germany functions as a "peak equalisation" and can be characterised as a "zero-sum game" (Hidien 1999: 908). It intends not to create new additional public revenues; it serves to redistribute parts of all tax revenues that *Bund* and *Länder* generate annually. The fiscal equalisation does not exist in order to compensate the differences in the regional economic power of the *Länder* nor to rectify their causes. In Art. 106 and 107 of the German Basic Law ("Grundgesetz"), the legislator already institutionalised a four-stage tax redistribution and equalisation system, as it was evident from very early on, that tax revenues in the Federal Republic's regions vary dramatically. If there would be no

fiscal equalisation between *Bund* and *Länder,* the original per-capita financial power of Hamburg would exceed the one of Saxony-Anhalt by more than a hundred per cent. This is due to the fact that Hamburg – before reallocation – has the highest per-capita financial power with a net of 149.4 per cent (of the average financial power per German citizen). It is followed by Bavaria with 126.2 per cent, Baden-Wurttemberg with 121.6 per cent and Hesse with 117.8 per cent. Without any reallocation, the Eastern German *Länder* would have a mere financial power of about 50 per cent (BMF 2013).

In the past, the four stages of the fiscal equalisation system have been called into question repetitively. However, they have never been changed radically. Already in 1986, the Federal Constitutional Court ("Bundesverfassungsgericht") has stressed that an arbitrary change of the different stages and components is not permissible. If the existing stages and mechanisms would be interchangeable or could be skipped the coherence of the whole system would be put in doubt in its entirety (BVerfGE 72, 330 (383)). Moreover, individual mechanisms could be followed by effects, which thwart the balancing effects intended by the constitutional legislators.

The fiscal equalisation scheme between the *Bund* and the *Länder* is composed of two vertical and two horizontal equalising components. The first stage of the system bases on the distribution of all annual revenues to *Bund, Länder* and municipalities as Art. 106 and Art. 107 *Grundgesetz* stipulate. The former is called the "primary vertical fiscal equalisation" ("primärer vertikaler Finanzausgleich"). Income tax and corporate income tax are split according to the "principle of equal division" ("Prinzip der hälftigen Teilung"). Subsequently,

Bund and *Länder* are entitled to half of the revenues from both taxes each. Since 1970, the municipalities also receive a share of 15 per cent of the income tax, so that the shares of the Bund and the Länder are eligible to be 42.5 per cent respectively. In contrast, the *Grundgesetz* does not determine which shares of the VAT *Bund* and *Länder* each receive. The VAT generates about 140 billion Euros annually and thus it is the Federal Republic's second largest source of public revenues. Details of distributing the VAT according to Art. 106 Paragraph 3 GG are limited to an enumeration of some abstract "principles". Accordingly, a starting point of the distribution should be a "multi-year financial planning" of the *Bund* and the *Länder* in order "cover their necessary expenditures" and thus "establish a fair balance, avoid excessive burdens on taxpayers, and ensure uniformity of living standards throughout the federal territory". The abstraction level of these redistribution criteria is so high that their intended supporting effect in political conflict situations is marginal. In past, these criteria were rather regularly a cause for political quarrels because *Bund* and *Länder* had different perceptions concerning their interpretation. The remaining needs for regulating the VAT distribution between the *Bund* and the *Länder* is covered by the "Fiscal Equalisation Law" ("Finanzausgleichsgesetz" – FAG), which is not bound to high parliamentary hurdles like a constitutional reform. The VAT distribution thus builds the flexible instrument of the German fiscal constitution which takes effect in case of unforeseen fiscal adaptation requirements. According to § 1 FAG the VAT is split up in a relation 49.7 to 50.3 per cent for the *Bund* and *Länder* respectively. Because of various special provisions and priority deductions, the actual quota of the *Bund* and the *Länder*

of the VAT revenues is 53.4 per cent to 46.6 per cent correspondingly.

On the second stage of fiscal equalisation, 75 per cent of the *Länder*'s VAT shares are distributed to the *Länder* according to their number of inhabitants. Those *Länder* whose tax revenues stemming from income tax and corporate income tax as well as their business tax and other exclusively local taxes accumulate less than 97 per cent of all constituent states' average receive the remaining 25 per cent. Moreover, a subsidy is granted in order to approximate 95 per cent of the constituent states' average. The remaining 3 per cent that are missing to achieve the financial power average (100 per cent) are filled in by a regressively structured tariff. In this manner, no long-lasting complete equalising grants should be guaranteed for any of the *Länder*, but they are meant to be an incentive for the beneficiary states to try to establish their own revenue sources. Because of the second stage's substantial equalising effects, it is called the "primary horizontal fiscal equalisation". The total volume of VAT equalisation amounted to about 7.3 billion Euros in 2012. About 96 per cent of the amount of grants, which are redistributed on this stage, are benefitting the East German *Länder*. It is the preliminary that their fiscal power is sufficient to be able to take part in the next step of the fiscal equalisation scheme.

The so-called "Länderfinanzausgleich" forms the third stage of the equalisation scheme in a narrower sense. It is termed "secondary horizontal fiscal equalisation" and is carried out among the *Länder* exclusively. This mechanism faces criticism from "donor states" since they are committed to raise a total of about 7.9 billion Euros in

2012 alone (Bavaria: 3.9 billion Euros; Baden-Wurttemberg: 2.7 billion Euros and Hesse: 1.3 billion Euros). The net recipients of this equalisation mechanism are – above all – Berlin with 3.3 billion Euros and Saxony with 963 million Euros. The calculations of the horizontal equalisation include considerations regarding different special needs and increased demands. Thus, the number of inhabitants of the city-states is "refined". This means that the number of inhabitants is adjusted and calculated as if about 35 per cent more inhabitants would live in the city-states of Berlin, Bremen and Hamburg. This "refining" of inhabitants is justified with the "agglomeration theorem", which was already formulated in 1932. This so-called "Brecht's law of state expenditure" assumes, that the per-capita expenditure – which the *Länder* have to provide in public services – increases disproportionately with an increased population density (Brecht 1932). As this law is also applicable to regions suffering from a drastically decreasing population density, Brandenburg, Mecklenburg-Vorpommern and Saxony-Anhalt may also assert an increased financial demand because of their sparsely populated regions. Calculating the claims and obligations within the horizontal fiscal equalisation all *Länder* are entitled to factor in their municipalities' revenues by 64 per cent only. This regulation favours tax-strong municipalities, which are disproportionately located in "donor states".

According to Art. 107 paragraph 2 of the German Basic Law, the fourth stage of the fiscal equalisation scheme, allows the *Bund* to "grant additional contributions to low-performance *Länder* to cover their general budgets (supplementary allocations)". This step is called "secondary vertical fiscal equalisation". The fiscal

equalisation reform in 2001 also modified the Federation's Supplementary Allocations ("Bundesergänzungszuweisungen" – BEZ). In consequence, the Fiscal Equalisation Act intends three kinds of Federal Supplementary Allocations only. Especially the "Deficiency BEZ" ("Fehlbetrags-BEZ") are of significance. They have been established to equalise weak constituent states' fiscal "gaps" in order to exercise the first three equalisation steps towards an equalisation maximum of up to 99.5 per cent. Beside "Deficiency BEZ", the federation offers weak constituent states a so-called "Special Assistance BEZ" ("Sonderbedarfs-BEZ") till 2019 with the purposes of "covering specific burdens due to the German division" and to "adjust disproportionately low municipal fiscal power", to level "disproportionately high costs of political management" and "to equalise specific burdens due to structural unemployment and the merger of unemployment aid and social aid" (BMF 2013b: §11 FAG). Only the five East German *Länder* and Berlin are entitled to "Federal Supplementary Grants" "as so to cover the specific burdens due to the (German) division". These form the "basket I" of the so-called "Solidarity Pact II" and enclose a total volume of about 105.3 billion Euros. They are regressively structured in order to ensure diminution by a specified amount each year. The total volume of the supplementary allocations passed on by the *Bund* amounted to about 12.1 billion Euros in 2012.

Conclusion and Outlook

In each federation, one could find a distinctive dimension of cooperation regarding questions of fiscal constitution and fiscal equalisation between the federation and the constituent unites. There is no optimal or permanently obliging fiscal constitution. A cornerstone of political systems is the constant adaptation of the fiscal system to shifting economic and socio-political conditions. Federal multi-level systems are signified by self-reinforcing tendencies because they have to adapt to their ever-changing surroundings. The magnitude of redistribution of public revenues between the jurisdictional levels in federations may always be a depiction of recent political arrangements. Neither the constitution nor the jurisdictions of the federal constitutional court determine quantitative ceilings, which prove to ensure permanent validity. Furthermore, academic research has not been able to construct exact distribution rules – even if this is suggested every now in discussions. In this respect, fiscal and budgetary discussions in federal states are a "never ending story".

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States' Fiscal Management and Regional Equity in India

Pinaki Chakraborty

1 Introduction

The Indian Union consists of 28 states and 7 centrally administered territories. A constitutionally mandated three-tier federal system is the basic governing structure with constitutional assignment of functions and finances for each level of governments. Among the states, one group (numbering 11) has been given a special status (called "special category states"), entitling them to preferential treatment in transfer of federal funds. In the three-tier federal system, the number of lowest tier of governments, i.e. rural and urban local bodies, vary widely across states. Currently, the total numbers of local bodies in the country are 254,448 of which urban local bodies are 4,448 in number. The combined size of the expenditure of central and state governments together is 28 per cent of GDP, in which states' expenditure account for around 15 per cent of GDP.[i] There is, however, huge asymmetry in revenue shares between centre and states. While the combined revenue (both tax and non-tax) accounts for roughly 20 per cent of GDP, states' own revenue accounts for only around 7.5 per cent of GDP. Aggregate

central transfers to states account for roughly little more than 4.5 per cent of GDP.[ii]

As per the Constitution, India is a "Union of States", with a strong centre. This is reflected in the assignment of functional/legislative subjects (and legislative powers thereof) under three lists in the Seventh Schedule of the Constitution – Union (with 100 subjects), State (61 subjects) and the Concurrent (52 subjects). The Union and State lists also include the powers of taxation, with the former including tax on income (other than agriculture), excise duties, customs, corporate and service tax, while the latter contains land revenue, excise on alcohol, tax on agricultural income, estate duty, tax on sale or purchase of goods, tax on vehicles, tax on professions, stamp duties etc. The residuary powers of taxation rest with the Union Government.

Given the asymmetry in functional responsibilities and revenue raising powers between the centre and the states, the Constitution makes specific provisions for correcting this imbalance. Articles 268–272 and 276 cover the division of responsibilities of levying and collecting various taxes/duties as well as distribution of revenues among centre and state. While Article 275 makes the provision for assignment of grants from the Union to the states which are assessed to be in "need of assistance", Article 280 mandates the creation of a Finance Commission to make recommendations to the President for the distribution of net proceeds of taxes between the Union and the states: "Principles which should govern grants in aid of the revenues of the States" and any other matter referred to it in the "interests of sound finance". Article 282 covers discretionary

grants (whereas Article 275 provides for statutory grants) and empowers both the centre and the states to give grants for any public purpose, even if it is not in their legislative domain.

The Constitution has also made certain provisions with regard to the borrowing powers of the centre and the states, with Article 292 restricting borrowing power of the Union (in India or abroad) to limits – if any – fixed by the Parliament. Article 293 restricts the states' borrowing (and guarantee issuance) powers to the Indian territory; limits are set by the legislature, entailing that a state cannot raise loans without the consent of the Union Government if there is still any part of a central loan to the state outstanding.

The constitutional scheme of transfers through Finance Commission as envisaged in the Constitution is not the only channel of resource transfers to the states. With the onset of planning in India and the setting up of a Planning Commission, a large share of the resources are being transferred to the states as granted by the plan by the Planning Commission. Apart from plan-grants, resources are also being transferred through various centrally sponsored schemes run by different central government ministries. In other words, the system as currently evolved is a complex one wherein multiple channels of fiscal transfers are in operation. The objective of this paper is to explain states' fiscal management and regional equity in India within the existing federal fiscal arrangement. However, the regional and fiscal inequality in a federal system cannot be examined in isolation ignoring the growth processes in individual states. So the paper also discusses briefly the state level growth process in India and development inequality across states. Apart from the

introduction, this paper has been divided into the following sections: in section II we discuss the regional growth and social and economic inequality in India. Section III handles the fiscal management and fiscal imbalance at state level. In section IV, we analyse the pattern of fiscal inequality across states. The last section (V) focuses on the issue of fiscal inequality and how it has been addressed by the transfer system. Section VI draws conclusions.

2 Growth and Regional Inequality

After the economic reforms of 1991, the regional inequality in India seems to have increased sharply (Sarkar and Mehta 2010). Ahluwalia (2001) also finds that regional inequality as measured with Gini coefficient has increased between 1986–87 and 1997–98. The major criticism of the post reform growth process is that it did not benefit all the regions of the country in the same manner; some states have been able to reap the benefits of reforms more than others, leading to faster increase in per capita income in the richer regions than in the past which in turn increased the state level inequality in income. Rao and Shah (2009) observed that the market oriented reform since 1991 enabled states with better physical infrastructure and more developed market institutions to grow at a faster rate than others. They also observed that with reforms impacting more on the manufacturing and service sectors, states with a predominant primary sector have lagged behind. This period has also seen concentration of poverty in certain pockets of the country. As per the latest poverty estimates, more than 55 per cent of the total poor live in six states: viz. Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh,

Rajasthan and Uttar Pradesh. Human development outcomes also continue to differ widely across states.

As evident from Table 1, there is a huge difference in per-capita income across states: The difference between lowest (Bihar) and highest (Goa) per capita income is 8.63 times as per the real per-capita income data of 2009–10.[iii] The last column of the Table 1 shows the increase in real per-capita income between 2004–05 and 2009–10. It is evident that some of the high income states like Gujarat, Haryana, Maharashtra and Tamil Nadu have shown faster increase in the per-capita income during this period. However, among all the states, Bihar, the poorest state in the country, has also shown the fastest growth of per-capita income (at 9. 14 per cent per annum) during this period. However, there is still a lot of catching up to do for the poorer regions of the country and if we plot the growth of per-capita income for the period from 2004–05 to 2009–10 against the initial per-capita income of 2004–05 (see Figure 1), we do not observe absolute convergence in growth across states. On the contrary: there seems to be divergence of growth happening among the richer and poorer regions.

Table 1: The Real Per-Capita Income: A state-wise comparison

State	Per capita Real GSDP (In rupees)						*Trend Growth Rate*	*Per Capita Income Ratio of 2009-10 over 2004-05*
	2004–2005	**2005–2006**	**2006–2007**	**2007–2008**	**2008–2009**	**2009–2010**		
Andhra Pr.	28141	30505	33564	37225	39401	41368	***8.32***	***1.47***
Bihar	8714	8649	10024	10626	11996	13059	***9.14***	***1.50***
Jharkhand	20716	19744	19911	23650	22910	23717	***3.77***	***1.14***
Goa	87676	91635	97675	99467	105511	112707	***4.97***	***1.29***
Gujarat	37564	42521	45404	49672	52293	56785	***8.26***	***1.51***
Haryana	41863	44870	49003	52208	55511	60577	***7.56***	***1.45***
Karnataka	29992	32756	35611	39653	42010	43726	***8.14***	***1.46***
Kerala	36153	39469	42245	45587	47752	51639	***7.19***	***1.43***
Madhya Pr.	17320	17912	19224	19784	21861	23765	***6.51***	***1.37***
Chhattisgarh	21510	21868	25551	27351	29230	29763	***7.60***	***1.38***
Maharashtra	40092	45208	50829	55483	56529	63136	***9.04***	***1.57***
Odisha	20195	21124	23602	25935	27686	29266	***8.21***	***1.45***
Punjab	37645	39355	42816	46113	48222	50811	***6.44***	***1.35***
Rajasthan	20895	21884	24002	24796	26589	27594	***5.90***	***1.32***
Tamil Nadu	33889	38315	43811	46162	48085	52268	***8.64***	***1.54***
Uttar Pradesh	14505	15158	16076	16936	17791	18541	***5.16***	***1.28***
West Bengal	24758	26027	27759	29615	30766	33478	***6.11***	***1.35***
Average	**30684**	**32765**	**35712**	**38251**	**40244**	**43071**	***7.04***	***1.40***

Now if we look at the reduction in poverty and human development outcome, the spatial inequality becomes evidently sharper. Table 2 shows the difference in poverty and other human development outcome across states. It is clear from Table 2 that the IMR (Infant Mortality Rate) is much higher in low income states compared to high income states. A similar pattern of uneven social sector development outcome with regard to MMR (Maternal Mortality Rate) and literacy rate is also observed across states with poorer ones lagging far behind compared to high and middle income states. However, studies have shown that some of the poorer regions have seen faster reduction in poverty during recent years (Panagariya, Chakraborty and Rao: 2014).

Table 2: IMR, MMR, Literacy Rate & Poverty Ratio

Sl.No.	States	IMR (2011)	MMR (2007–09)	Literacy Rate (%)	Poverty Ratio
A	**General Category States**				
1.	Andhra Pradesh	43	134	67.0	9.20
2.	Bihar	44	261	61.8	33.74
3.	Chhattisgarh	48	269	70.3	39.93
4.	Goa	11	NA	88.7	5.09
5.	Gujarat	41	148	78.0	16.63
6.	Haryana	44	153	75.6	11.16
7.	Jharkhand	39	261	66.4	36.96
8.	Karnataka	35	178	75.4	20.91
9.	Kerala	12	81	94.0	7.05
10.	Madhya Pradesh	59	269	69.3	31.65
11.	Maharashtra	25	104	82.3	17.35
12.	Orissa	57	258	72.9	32.59
13.	Punjab	30	172	75.8	8.26
14.	Rajasthan	52	318	66.1	14.71
15.	Tamil Nadu	22	97	80.1	11.28
16.	Uttar Pradesh	57	359	67.7	29.43
17.	West Bengal	32	145	76.3	19.98
B	**Special Category States**				
1.	Arunachal Pradesh	32	NA	65.4	34.67
2.	Assam	55	390	72.2	31.98
3.	Himachal Pradesh	38	NA	82.8	8.06
4.	Jammu & Kashmir	41	NA	67.2	10.35
5.	Manipur	11	NA	79.2	36.89
6.	Meghalaya	52	NA	74.4	11.87
7.	Mizoram	34	NA	91.3	20.40
8.	Nagaland	21	NA	79.6	18.88
9.	Sikkim	26	NA	81.4	8.19
10.	Tripura	29	NA	87.2	14.05
11.	Uttrakhand	36	359	78.8	11.26
	All India	**44**	**212**	**73.0**	**21.92**

IMR=Infant Mortality Rate, MMR=Maternal Mortality Rate, NA=Not available.

This raises following important questions:

i. Has growth benefited only the leading regions of the country resulting in widening inequality in income and other development indicators?
ii. Or is it that all the regions have grown but relative differences have increased over the years?
iii. What explains this differential growth performance across states?
iv. Why some regions/states are still lagging in terms of growth and development?
v. How the growth and development outcomes are related?
vi. What are the policy bottlenecks to be tackled to enhance growth and development?
vii. Has fiscal inequality increased across states with the increase in growth inequality? If so what are its implications for key development spending across states?

The concern of this paper revolves around the last question.

3 States Fiscal Management and Fiscal Imbalance

Fiscal management revolves around three policy instruments: tax policy, expenditure policy and debt management. The fiscal management at state level in India has to be seen keeping in mind the existing federal-fiscal arrangements. To start with, if we look at the tax policy, the state taxes are primarily collected through a levy on consumption. Apart from the consumption tax in the form of VAT, the other major state level taxes are state excise duty, stamp duty and registration fees, motor vehicle taxes, and other minor taxes. Among all these sources, VAT constitutes for around two thirds of states' own tax revenues. States still do not have the power to tax services.

Currently, the centre and states together are deciding on a broad base goods and services tax.

When it comes to the expenditure side, the Constitution of India has assigned a predominant role to the states in provisioning of social and economic services. The states' primary expenditure responsibility lies in the provision of health, education and other social services. The secondary responsibility covers physical infrastructure; for instance power provision. As far as borrowing is concerned, as mentioned above, the states' borrowing powers are restricted and become more so with the introduction of rural based fiscal control at the state level through the enactment of the State Level Fiscal Responsibility Act.

Let us look at the fiscal autonomy at state level. Fiscal autonomy of the state is defined as own revenue-to-revenue expenditure ratio of individual states. Evidently, the low income states have a low fiscal autonomy compared to high income states. In case of special category states, the fiscal autonomy ratio is even lower since a large part of the expenditure is financed by central revenue transfers (see figures 1 and 2). The low fiscal autonomy also has direct bearing in development expenditure on social and economic services. The inability of the transfer system to equalize fiscal capacity across states is an issue discussed later in this paper. It needs to be noted that fiscal inequality is intimately linked with the inequality in per capita income. The per capita income difference between the highest and lowest per capita income state in the country ranges up to 9 times; this brings us to the question whether a transfer system can actually address such level of differences in fiscal capacity.

The other component of the fiscal management at state level is the borrowing. If we look at the history of fiscal management at the state level, there was a sharp increase in fiscal deficit at the central and state level during the 1990s, and serious concerns were raised about fiscal sustainability. The fiscal deficit and outstanding debt as a percentage of GDP increased sharply during the 1990s. However, as evident from table 3, the situation started changing from 2004–05 onwards. There was a consistent decline in the level of deficits at both levels of government up to 2007–08. The global financial crisis and consequent fiscal expansion has again increased the level of fiscal deficits, particularly at the central level.

However, Since 1991 economic reforms, India's path of fiscal adjustment can be grouped into four categories: (i) Fiscal correction through fiscal contraction, 1990–91 to 1996–97; (ii) Increasing fiscal imbalance, 1997–98 to 1999–2000, primarily by pay revision, inducing an increase in expenditure and falling revenues; (iii) Fiscal correction without fiscal contraction, 2001–02 to 2007–08; and (iv) global financial crisis-induced fiscal expansion from 2008–09 onwards. Last two phases coincide with the era of rule based fiscal control. As it is well known, the path of fiscal adjustment in India has not been easy. The large fiscal imbalance – which culminated into a major crisis in 1991 – needed to be corrected and the structural adjustment programme initiated in 1991 put all out efforts to reduce the fiscal deficits of the central government. Also a major tax reform at the central level was initiated along with reforms in trade and industrial policy. During the early phase of reforms, revenue to GDP ratio declined sharply and the burden of adjustment was on the expenditure side of the budget, which resulted in a sharp reduction

in capital expenditure at the central level. However, during the initial years, reforms were largely concentrated at the central level. Nothing much was done at the state level, except some moves at the margin through various memorandums of understanding (MoU) between individual states and Ministry of Finance of Government of India. During this period, various states have also signed MoUs with the central government at the instance of multilateral lending institutions like Asian Development Bank and World Bank. Absence of fiscal reform at the state level became a major concern as the consolidated fiscal deficit did not decline much despite the decline in centre's fiscal deficit in initial years of reform (see Figure 1).

Figure 1

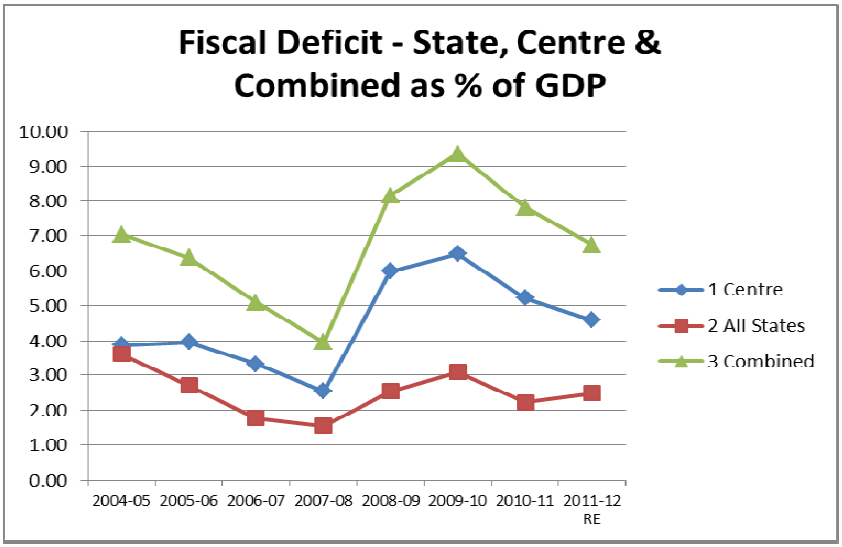
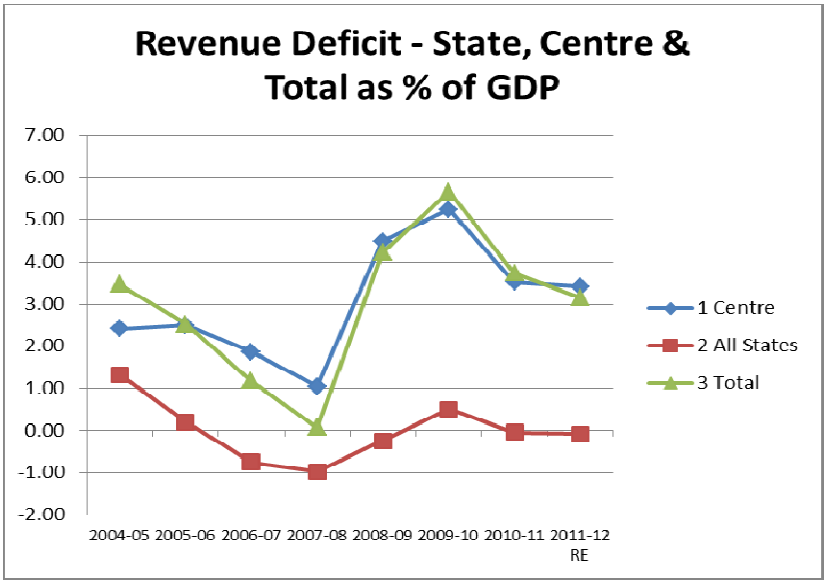


Figure 2



There are sharp differences in the inter-state fiscal imbalance profile. In tables 3 and 4, states are ranked in terms of their levels of fiscal and revenue deficits in three categories, viz. high, medium and low.[iv] Despite the reduction in fiscal imbalance, the states with a large fiscal imbalance are West Bengal, Jharkhand and Kerala. The states that have generated revenue surplus are eight, while the states of Kerala and West Bengal have very high revenue deficits in relation to other states. It needs to be emphasized that the states that have achieved a fiscal deficit level below 3 per cent of GSP (Gross State Product) are states having reasonably better history of management of state finances and fiscal prudence.

Table 3: Classification of states According to Level of Revenue Deficits and their Changes: 2004–05 to 2009–10

	High >2%	Medium >1%	Low <1%	Revenue Surplus
Increasing at high rate			Haryana, Maharashtra	Orissa
Increasing at medium rate		Punjab	Rajasthan, Gujarat	Bihar
Increasing at low rate	West Bengal, Kerala		Jharkhand	Tamil Nadu, Madhya Pradesh, Karnataka, Andhra Pradesh, Chhattisgarh, Goa, Uttar Pradesh

***Source**: (Basic Data) Finance Accounts (various issues).*

Table 4

2007–08	
States with Revenue Surplus	**States with Fiscal Deficit < 3% of GSP**
Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Orissa, Rajasthan, Sikkim, Tamil Nadu & Tripura
States with Revenue Deficits	**States with Fiscal Deficit > 3% of GSP**
Kerala, Punjab, & West Bengal	Jammu & Kashmir, Kerala, Mizoram, Nagaland, Punjab, Uttar Pradesh, Uttarakhand, West Bengal

Table 5

2011–12 (RE)	
States with Revenue Surplus	**States with Fiscal Deficit < 3% of GSP**
Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand	Andhra Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh & Uttarakhand
States with Revenue Deficits	**States with Fiscal Deficit > 3% of GSP**
Goa, Haryana, Kerala, Maharashtra, Punjab, West Bengal	Arunachal Pradesh, Assam, Bihar, Goa, Jammu & Kashmir, Jharkhand, Kerala, Manipur, Mizoram, Nagaland, Punjab, Sikkim, West Bengal

Table 6: Classification of states According to Level of Fiscal Deficits and their Changes: 2004–05 to 2009–10

	High >4%	Medium >3%	Low <3%
Increasing at high rate		Rajasthan, Goa, Punjab	Andhra Pradesh, Bihar, Chhattis-garh, Haryana, Karnataka, Maharashtra, Orissa, Tamil Nadu
Increasing at medium rate	West Bengal	Uttar Pradesh, Kerala	Gujarat, Madhya Pradesh
Increasing at low rate	Jharkhand		

Source: *(Basic Data) Finance Accounts (various issues).*

It is important to examine how this fiscal balance is achieved during the pre-global financial crisis years. This has happened in a low interest rate regime and also due to the improved revenue

mobilization at the centre as well as in the states up to 2007–08. Transfers as a percentage of GDP have increased during the era of rule-based fiscal control due to the higher growth of central revenues. The improvement in fiscal balance has been accompanied by a structural change in the share of revenues in combined revenues, where states' share has increased in the last couple of years (see table 5). However, a similar trend has also been observed in case of revenue expenditures, where states' share in combined expenditure is on the increase. This points to the fact that the vertical fiscal gap may not have come down, if not widened despite higher vertical transfers due to increased revenue mobilization at the central level.

Table 7: Vertical Fiscal Imbalance: Recent Trends (In Percent)

	1990–91	2000–01	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009-10 RE	2010-11 BE
Centre's Share in Combined Revenue	55.39	55.07	54.90	53.31	51.84	49.98	49.86	53.72	51.02	48.33	49.20
States' Share in Combined Revenue	63.21	63.37	62.31	62.21	61.24	62.44	61.96	58.52	61.93	64.52	62.76
Centre's Share in Combined Revenue Exp.	59.83	57.27	58.12	55.51	54.69	55.78	55.84	58.71	61.26	58.18	57.26
States' Share in Combined Revenue Exp.	55.19	56.03	54.31	56.27	56.28	55.17	55.33	53.48	49.30	51.64	52.64

Source: *Indian Public Finance Statistics 2010–11.*

4 Fiscal Inequality and Federal Transfers to States

Having examined the vertical imbalance, we see whether the era of fiscal reforms and rule based fiscal control have helped reducing the disparities in spending across states.[V] It is important to note that disparities in spending would ideally arise due to the disparity in revenues. As evident from table 6, the coefficient of variations of per capita own revenues have increased over the years, while that of transfers declined. This in turn has resulted in the increase in disparities in per capita development spending. If we look at the Maximum to Minimum ratio of per capita own revenues and per capita expenditure, the divergence has grown over time.

Table 8: Coefficients of variations of Per Capita Own Revenues, Transfers & Developmental Spending across states

	1990-91	2000-01	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Coefficient of Variance								
Own Revenues	0.370	0.535	0.5147	0.5174	0.5139	0.5126	0.4477	0.4093
Transfers	0.292	0.298	0.2850	0.1825	0.2000	0.2549	0.2380	0.2648
Development Exp.	0.173	0.382	0.292	0.283	0.316	0.295	0.276	0.300
Maximum to Minimum Ratio								
Own Revenues	3.49	7.13	11.35	11.54	13.26	11.54	8.12	6.38
Transfers	2.95	2.82	3.23	2.27	2.33	2.63	2.40	2.23
Development Exp.	1.67	6.29	3.63	2.89	3.07	2.92	2.94	3.16

Source: *Handbook of Statistics on State Finances 2010, RBI; State Finances: A Study of Budgets, RBI (various issues).*

There could be two reasons for this. One could be the FRA (Fiscal Responsibility Act), related fiscal restraint in spending, the other could be central government's undertaking many of the functions through centrally sponsored schemes that are within the functional domain of the states. It is argued that as state expenditure is substituted by central spending through various implementing agencies bypassing the state budget, state budgetary spending on these sectors is coming down. Though critically important, we will not discuss this matter in this paper; rather we turn to the larger question, whether such method of fund transfers bypassing the authority of the states is appropriate.[vi] However, we look at the transfer system and interstate differences in per-capita spending in greater detail.

The distribution of federal resources across various income categories of states shown in Table 7 revealed that between 2004–05 and 2009–10 there has been an increase in the share of tax transfers to the low-income category of states. The share of middle income states in the total tax transfers remained stagnant during the same period and the share of high-income states increased. While the share of grants devolved to low income states also declined during these period points, the share of middle income states in total grants declined with an increase in the share of high income states. Thus, if we look at the total transfers, it is the low income states, whose share in the total kitty of transfers from the centre has increased with a corresponding increase in the share of high income states up to 2009–10. It is to be noted that the distribution of grants

presented in table 7 includes all the grants, viz., Finance Commission grants, Planning Commission grants and discretionary grants.

Table 9: Distribution of Resources across Various Income Categories of states (percent)

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Tax transfers to states						
Low income	55.2	55.37	55.6	55.67	56.02	57.80
Middle income	33.77	31.11	31.24	31.28	31.08	29.98
High income	11.03	13.53	13.16	13.05	12.9	12.23
Transfers of grants to states						
Low income	46.36	37.76	41.37	42.24	43.29	44.29
Middle income	34.95	40.27	33.02	36.51	33.54	32.33
High income	18.69	21.97	25.61	21.24	23.17	23.37
Total transfers to states						
Low income	52.4	49.05	50.42	50.97	50.88	52.31
Middle income	34.15	34.39	31.89	33.11	32.07	30.94
High income	13.46	16.55	17.69	15.92	17.05	16.76

Source: *Finance Accounts and Twelfth Finance Commission http://fincomindia.nic.in*

The per capita tax transfers and grants in selected years are shown in tables 8 and 9. If we compare the per capita tax transfers across high, middle and low income states it becomes evident that low income states are receiving higher per-capita tax transfers *vis-à-vis* high and middle income states. In case of transfer of grants, no clear progressive pattern is evident. The per capita grant transfers to Bihar and Uttar Pradesh were below the all-state average. Regressive approach in the pattern of grants transfers become further evident when we look at the coefficient of variations in per-capita grants transfer to states which declined on a year and year basis up to 2007–08 and in the next two years it started to increase. In other

words, this seems to have changed in recent years with some improvement in the coefficient of variations.

Table 10: Per-Capita Tax Transfers: Selected Years (In Rs.)

States	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
Maharashtra	354	483	575	714	742	782
Gujarat	416	623	805	972	1128	1066
Punjab	355	477	601	748	890	934
Haryana	276	525	556	688	795	781
Tamil Nadu	661	776	982	1229	1287	1366
Karnataka	706	758	955	1191	1243	1314
Rajasthan	718	867	1085	1345	1394	1465
Kerala	735	763	966	1208	1394	1590
Andhra Pradesh	767	870	1098	1371	1599	1456
West Bengal	766	791	998	1246	1452	1582
Madhya Pradesh	793	973	1218	1510	1566	1580
Uttar Pradesh	854	1012	1267	1568	1813	2047
Orissa	1045	1267	1600	1998	2330	2211
Bihar	1040	1167	1465	1818	2108	2493
Goa	1150	1690	2091	2558	2907	3057
Max/Min	856	1127	1416	1759	2042	2315
Mean	871	774	1303	1612	1996	1883
CV	0.373	0.373	0.380	0.377	0.391	0.405

Source: *Finance Accounts and Twelfth Finance Commission http://fincomindia.nic.in*

Table 11: Per Capita Transfer of Grants to the states (In Rs.)

States	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
Andhra Pradesh	339.48	501.18	615.15	870.71	1502.76	1592.25
Bihar	322.75	373.39	578.17	632.48	1044.4	1080.76
Goa	511	462.07	589.81	961.04	2130.33	2531.72
Gujarat	374.74	488.18	575.31	675.35	840.6	935.68
Haryana	242.76	487.26	488.12	590.07	716.15	922.47
Karnataka	390.89	653.27	855.52	883.34	868.11	1012.87
Kerala	401.44	624.75	629.79	649.17	923.61	895.11
Madhya Pradesh	379.96	449.83	673.9	847.87	1023.61	1273.59
Maharashtra	265.09	385.69	816.29	705.92	1324.97	1425.06
Orissa	617.04	694.73	812.35	1174	1836.34	1813.37
Punjab	237.16	860.29	859.59	799.14	831.9	757.91
Rajasthan	482.96	477.79	609.06	776.56	993.58	1009.14
Tamil Nadu	413.44	467.33	510.63	995.29	1018.82	1080.58
Uttar Pradesh	235.24	297.96	428.36	460.98	690.87	810.22
West Bengal	271.62	670.41	513.87	561.86	756.6	706.98
Max/Min	2.62	2.89	2.01	2.55	3.08	3.58
Mean	365.70	526.28	637.06	772.25	1100.18	1189.85
CV	0.30	0.28	0.22	0.24	0.38	0.41

Source: *Finance Accounts and Twelfth Finance Commission http://fincomindia.nic.in*

Note: *In this table we have excluded Assam as with regard to grants Assam gets a preferential treatment as it is a special category state.*

We assume that in a system of progressive fiscal transfers, a negative functional relationship will exist between the per capita transfers, per capita income and fiscal autonomy. As mentioned, the fiscal autonomy is defined as the ratio of own revenues of the state government and total expenditure. We also have introduced a time

dummy to control the various policy changes during the rule-based fiscal control and related tax and expenditure reform measures introduced in 2005–06 onwards.

Thus, we specify a functional form:

$$\ln(A_{gt}) = \alpha_t + \beta_t \ln P_C Y + \gamma_T \ln F_A R + \Psi du_t + \mu_t \quad (2)$$

$$\ln(T_{tr}) = \alpha_t + \beta_t \ln P_C Y + \gamma_T \ln F_A R + \Psi du_t + \mu_t \quad (3)$$

$$\ln(GR_{tr}) = \alpha_t + \beta_t \ln P_C Y + \gamma_T \ln F_A R + \Psi du_t + \mu_t \quad (4)$$

where

A_{gt} = Aggregate Transfer

T_{tr} = Tax Transfers

GR_{tr} = Grants Transfers

$P_C Y$ = Per Capita Income

$F_A R$ = Fiscal Autonomy Ratio

du_t = Time dummy

These functional forms specified in equation (2) to (4) are estimated econometrically in a panel data framework by pooling data for 15 major non-special category states for a period of 10 years starting with fiscal year 2000–01 and ending with the fiscal year 2009–10. The coefficients are given in Table 10. The result indicates a regressive fiscal transfer mechanism in operation in India when controlled for fiscal autonomy. The random effect model of tax

transfer also shows a positive functional relationship between per capita income when controlled for fiscal autonomy.

Table 12: Dependent Variable: log of per capita tax and grants transfers to states

	Multivariate			Bivariate			Bivariate		
	Tax devolu-tion	**Grants devolu-tion**	**Aggregate transfer**	**Tax devolu-tion**	**Grants devolu-tion**	**Aggregate transfer**	**Tax devolu-tion**	**Grants devolu-tion**	**Aggregate transfer**
Ln (fiscauto)	-0.188	-0.234	-0.310	-0.188		0.073		-0.176	
	(-3.36)	(-2.59)	(-4.75)	(-1.28)		(0.38)		(-1.21)	
ln Pcit	0.224	0.299	0.229		0.717		0.584		0.579
	(1.65)	(2.32)	(2.00)		(3.10)		(4.80)		(3.97)
Timedummy	0.684	0.76	0.720						
	(13.12)	(13.39)	(15.07)						
Model Significance (Wald Chi^2)	404.33	280.49	455.76	1.63	9.63	0.14	22.99	1.45	15.76
	(0.00)*	(0.00)*	(0.00)	(0.201)	(0.002)	(0.707)	(0.00)	(0.228)	(0.00)
Number of observations	151	151	151	169	151	169	151	169	151

Note: *Figures in parentheses are t values; figures in parentheses are p values for the chi^2*

The regression table 10 explains that fiscal autonomy has a negative relationship on central tax transfers to states on a per capita basis. This is explainable by the argument that the more the state is able to meet its expenditures from its own revenue, the less central tax assistance it requires. The time dummy (from 2005) also has a positive impact on central tax transfers. It captures most of the policy changes that occurred since 2005. A positive sign for time dummy coefficients indicates that policy changes have affected the transfers from the centre to states positively; be it growth or reform in direct and indirect taxes at the central and state level.

It is also to be noted that there could be multicollinearity between per capita income and fiscal autonomy which in turn might produce inconsistent results. In order to avoid the problem of multicollinearity, we have estimated these four functional forms in a bivariate framework by separately estimating the relationship between fiscal transfers and per capita income and fiscal transfer and fiscal autonomy. This also helps checking the robustness of the result. It was found that even in this case the relationship between fiscal transfers and per capita income is positive in case of aggregate transfers, tax transfers, grants and negative with respect to fiscal autonomy. This brings us to the point that even though the transfer system has shown progressivity when looked at with respect to fiscal autonomy, it is only at the margin because of the problem of endogeneity income and fiscal capacity. This has been further accentuated by the fragmented transfer system through multiple channels and growing regional inequalities. The paper also observes that although at levels the transfer system appears progressive, it

shows regressive signs when one compares with the state level per-capita income over time.

5 Conclusion

It needs to be emphasized that any federal country requires addressing the issue of vertical and horizontal fiscal imbalances. Vertical fiscal imbalance arises due to the asymmetric assignment of function and finance across levels of government. Horizontal fiscal imbalance arises due to the differences in fiscal capacity across various constituent units within a federation. Different countries address the issue of horizontal imbalance differently. India has tried to address this issue through multiple channels of transfers, and these might have worked for cross purposes. If one looks at the evolving centre-state financial relations, three broad trends emerge: a) accentuation of vertical and horizontal imbalances, b) decline in the share of statutory transfers and formula-based grants in total transfers and c) huge increase in central interventions in expenditure functions which are primarily in states' domain. The system of federal transfers needs to move more towards fiscal equalization to achieve horizontal equity that states with lower fiscal capacity can bring up the level of public services to a normative level through higher provision of expenditure at comparable levels of taxation.

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i Data pertains to year 2011–12, sourced from Indian Public Finance Statistics, Ministry of Finance, Government of India

ii Data pertains to the year 2011–12, sourced from the Budget at a Glance, Union Finance, Ministry of Finance, Government of India.

iii This table does not include the special category states.

iv Fiscal deficit is the aggregate resource gap of the government to be financed by borrowings. Revenue deficit is the difference between revenue receipts and revenue expenditures.

v Now all the states have FRA. Out of these states – except Karnataka, Kerala, Punjab and Uttar Pradesh – all other states have passed the FRA during the fiscal year 2005–06 with a uniform deficit reduction target proposed by the 12th FC. The rush to pass the FRA by the states is clearly driven by DCRF. Though at the aggregate level, there is a fiscal consolidation at the state level due to rule based fiscal control with revenue deficit coming close to zero and fiscal deficits below 3 percent of GDP by the end of 2007–08, the outcome of such consolidation requires in-depth analysis of state finances.

vi As mentioned by Rao (2007, p. 1253), this kind of transfers have been "undermining the role of systems and institutions in the transfer system. In fact, even under the transfers for state plans, normal assistance, which is given according to the Gadgil formula, constituted less than 48 percent. Thus, we have a situation where the grants system's purpose has become predominantly a cobweb of conditionalities specified by various central ministries. Furthermore, quite a considerable proportion of grants which used to be given to the states now directly goes to autonomous agencies. This raises questions about the capacity to deliver public services by these autonomous agencies, mechanisms to augment the capacity and as the funds do not pass through states' consolidated funds, of accountability."

Conflict Regulation between Centre and the Regions

Andreas Heinemann-Grüder

India's Experience in Comparative Perspective

Perceptions, representations, and politicization of federal conflicts in India vary across institutional, ethnic, economic, regional, political, religious, linguistic, and cross-border cleavages. The crucial question does not pertain to the number of cleavages, but whether they reinforce or cross-cut each other. India's conflicts are multi-layered and various formal arrangements and informal practices add to the complexity. Political scientists tend to believe that modes of conflict behavior are a function of federal institutions; however, there is no single master narrative for India's federalism. Federal institutions matter, but they are part of an overarching political regime, of party politics and politics of identity as well as structural group patterns which are not over-determined by institutions. We need an understanding of the wider political regime within which the federal arrangements operate.

The literature on Indian federalism generally highlights religious, linguistic, and ethnic group conflicts, tensions between indigenes versus immigrants, of advanced versus backward states, threats of secessionism, and the minority conflicts especially in the North-

North-East. In political discourse, conflicts over a composite, secular India versus essentialized Hindutva or communal identities and the patrimonialism by the union prevail. Political scientists frequently mention group patronage and clientelism as source of conflict. Centralism, party competition, the "securitization" of domestic politics, incentives for new state or autonomous district formation and the respective frustration over the outcome of redrawing administrative boundaries are often stressed as conflict drivers. Obviously, the dominant conflict patterns in India changed over time.

Federal conflicts pertain to more levels of governance than just the centre versus the states or the predominance of the Hindi language, or backward states asking for "justice". Opposing secular and traditional forces operate simultaneously, reshaping and mobilizing group boundaries while causing adjustment of institutional responses at the same time. Regardless of these caveats, some insights may bear lessons beyond the confines of India. My focus is on conflict regulation devices and an assessment of their impact. Particular attention will be paid to three issues: politics of identity, violence, and equality among the regions. My main message: India's federalism adapts and demonstrates learning. India's federalism channels certain conflicts, but at a high prize – the deep entrenchment of group clientelism.

India counts as rare evidence of the coexistence and malleability of multiple identities, especially in a huge developing country. However, communalism, religious pogroms, sons-of-the soil politics, linguistic chauvinism, vitriolic anti-immigrant rhetoric, and violence

by state and non-state actors evince the lasting conflict proneness.[i] If there is a common thread in these politics of identity, it is group favoritism, nepotism and the pervasiveness of patron-client-relations which inform party politics and permeate the operations of federalism and democracy. When it comes to reserved or secure jobs and positions in government, re-distributional politics, ownership of natural resources, or investment projects, serving exclusive group interests is not far from the mind of politicians trying to serve and secure their vote banks. As a result of ever more regional parties seeking their share of power, the centre as well as the states have become sites for competing ethno-politics and regionalisms.

Indian federalism is characterized by its variety of normative legitimizations, the combination of parliamentarism and majoritarian democracy, asymmetries and the diversity of bargaining arenas.[ii] India is polymorph - modern and traditional, secular and religious, industrialized and feudal, urban and rural, open and hierarchically closed at the same time.[iii] Depending on context, Indians highlight their regional identity, religious, caste or tribal affiliations, or their linguistic belonging. Most of the larger groups - religious, tribal, caste, and linguistic groups - articulate themselves in segmented political contexts. As Stuligross and Varshney write, social and cultural cleavages do not reinforce each other in a cumulative manner.[iv] Only some identity markers overlap with territorial boundaries – mainly linguistic, ethnic or tribal identity markers coincide with territorial boundaries.

What kind of identities does Indian federalism foster?

Politically salient boundaries are marked by geography, ethnicity, caste, race, social or economic status, political affiliations, gender, and so forth. Boundaries provide the condition for agency; they pool resources and make collective action possible by closing off alternative avenues of interest aggregation. In the debate about the sources of unity and the legitimacy of diverse belongings in India, the ownership of the past often is a preferred battlefield for drawing borders. Secularists are pleading for a multicultural India whereas communalists point to the experience of religious and ethnic strife and derive a necessity for territorial demarcation. [v]

The multi-cultural discourse represents a composite vision of India as if it already existed in reality while the communalist discourse essentializes boundaries without providing a vision of overcoming them. Representations of the past articulate civic versus parochial norms, insider-outsider relationships, status functions and group hierarchies, and ultimately competing legitimizations of state ownership. The past is represented as fixed and over-determining in order to close fuzzy boundaries, win swing voters and to foreclose political preferences outside fixed group boundaries. Conceptions of the past and definitions of self-determination vary, and there is a plethora of ethnic entrepreneurs claiming to exclusively represent their respective *demos* or *ethnos*. The gatekeepers of primordial communities defend traditional social orders against the inroads of open-ended democracy and respective freedom of choice.

There is nonetheless a common theme in claims of self-determination – the juxtaposition of hegemonic Hindu nationalism versus those not willing to be subsumed to or being expressively excluded from the Hindu fold. According to rigid Hindu nationalism, some minorities can not be integrated at all and must be ex-territorialized while the self-assertion of "indigenous" communities, such as Jains, Sikhs and Buddhists, is seen as a threat to Hindu unity from within. The initial expectation that, following modernization, minority politicization would diminish did not materialize. Nehru expected an integrated Indian nation in the making, but the frustration over its lasting absence reinvigorates communalist politics of identity.

India's federal make-up was originally based on the premise that linguistic states would become economically viable, administratively efficient, culturally integrative, socially homogeneous and politically representative.[vi] Over time, new states were carved out of existing ones, and more are in the waiting. Did linguistic state formation become the main avenue of interest aggregation and representation in India? Did overarching regional identifications substitute or at least supplement exclusive ethnic or religious ones? Regional identities are only partially formed on the basis of relationships to the center. Regional identities are a peculiar mix of land, labor, landlords, languages, caste, religion, and new business. State-building altered political alignments, it stimulated distinct political cultures, provided regional incentives for party formation as well as competition over economic policies. The social and political heterogeneity is channeled and represented through state institutions, but the expectation that state formation would saturate

group aspirations by transforming them into a new social, democratic contract was premature.

Conflicts between religious, ethnic or indigenous majorities and aspiring or self-preserving minority communities are pervasive. It was probably a wise decision to form states originally on linguistic grounds, not on religious ones. But regional adherence or loyalty could not emerge on grounds of a language spoken by the dominant group or of elites in a given state. As Asha Sarangi put it: "The upper castes' control over the elite languages (Sanskrit, Persian and English) as a distinct form of hegemonic control deprives the lower castes from learning these "languages of power", and thus strategically disengages them from both the spheres of education and economy."[vii]

There is a constant battle over who is entitled to own the state (or at least a share of it) rather than a sense of inclusive, democratic citizenship. Identity-based mobilization may in part express pre-existing cultural aspirations, but group clientelism definitely puts a premium on articulating social, political, and economic interests in ethno-cultural terms, sometimes representing aspiring middle classes and sometimes lower classes. Claims to represent ethno-cultural, religious or caste groups are thus a main avenue to secure access to state patronage.

Instrumental identity politics frequently adjust their construction of group culture in order to broaden their basis for collective action. Nationalist or chauvinist group politics do not necessarily fit the vocal claims of ancestry. The pervasiveness of primordial group

politics might be seen as the flipside of missing prerequisites for democratic participation in the Indian states: analphabetism, unknowingness of democratic rights, information deficits, the dominance of chiefs and patrons in local politics, and weak rule enforcement.[viii] Participation in civil society associations is thus heavily skewed towards more highly educated and wealthier people.[ix] The paradox is that increasing opportunities for civil society associations may still instrumentalize the poor and the backward as mere vote banks. Furthermore, majoritarian democracy stimulates structural minorities to resort to clientelist politics in order to get their share of power. Instead of multiculturalism, the Indian federation promotes a culture of competitive, parallel monocultures.[x] Instead of overcoming minority status, the Indian political system continues to embolden and empower ethnic and religious minority politics. Deficits in democratic representation are thus an obstacle for regional identities to flourish.

But globalization and economic liberalization impact upon traditional agrarian politics and the social structure, undermining thus the preponderance of traditional elites. Commercialization and mechanization of agriculture as well democratic political processes have been transforming, for example, the caste structure of rural Punjab.[xi] With the *dalits* moving out of agrarian occupations, patron-client relations change and thus the conventional opportunities to mobilize around primordial concepts. Wherever the economic basis for primordial politics erodes and avenues for inclusive democratic participation broaden, regional affiliations may substitute, at least in part, parochial group politics.

Federal Culture and Insurgencies

Insurgency-related violence continues in the Northeast of India – especially in Assam – and in Jammu and Kashmir, although the fortunes of secessionist or militant groups declined if compared to one or two decades ago. Violent ethnic or regionalist organizations weakened due to internal splits, gruesome killings of civilians, diminished popularity, and heavy-handed counter-insurgency operations. Armed rebels adapted at times to institutional politics, acquired access to power in autonomous districts or newly formed states, often resembling conventional interest groups. But the original agenda did not fade away, i.e., immigration, the citizenship status of so called non-indigenous groups or "foreigners", "ownership" of the politico-administrative system, socio-economic disparities and ethno-religious patronage. The assumption of the national security establishment that rebel organizations can be crushed and thus forced to accept the government's peace terms, regularly proved premature. In many multi-national states with porous external and internal borders there is a stubborn conflict pattern between immigrant communities and so-called indigenes. It is the large chunk of potential vote banks that politicizes immigration or internal migration.

The Assam Movement might be a case in point illustrating the government's approach. The Indian government found a compromise with an agreement in 1985 foreseeing safeguards to protect the cultural identity of "the Assamese people", to establish major new cultural and educational institutions, and to spend additional resources for Assam's development. But irrespective of the pro-talk

and anti-talk factions, the primary thrust of the Indian government has been military.[xii] The government's willingness to negotiate with militant rebels seems to make the crucial difference, not by giving in to their demands, but by including them into broader settlements, that simultaneously address the concerns of "indigenous" people, immigrants and other minorities. There is thus no inevitability of violence.

Reynal-Querol recently showed that inclusive political systems face a lower likelihood of conflict.[xiii] Wilkinson (2004) demonstrates too that the exclusion of powerful social groups from political competition increased militancy and violence in the Indian states.[xiv] As the Sikh movement for Khalistan additionally illustrates, violence tends to receive greater public response when the government chooses to use repressive strategies. In contrast, a state policy of accommodating Sikh demands has generated either collaboration or a transformation from violence to peaceful protest.[xv]

Does federalism equalize or increase inter-regional disparities?

A common theme in federal states is that expenditure exceeds revenue. Most of the important revenue sources are assigned to the Indian union government, while major social and economic expenditure responsibilities are assigned to the state governments. Due to historical and geographical reasons there are vast differences between fiscal capacity and fiscal needs across the Indian states. The level of social and economic development varies considerably across the states. The Finance Commission is responsible to correct fiscal,

social and economic imbalances. The fiscal transfers are supposed to serve the objectives of equity, efficiency, equality, and fiscal consolidation.[xvi] Yet, Finance Commission allocations designed to bridge the regional disparities call into question whether equity, equality and efficiency can be achieved at the same time. Apart from making direct investments in major infrastructural and industrial projects in backward regions, the centre has been providing financial assistance to state governments for development projects. However, the effectiveness of the planning process was diluted and regional inequalities aggravated in the wake of economic liberalization. The development gap between the richer and poorer states has been widening.

From early 1990s onwards, state finances have been under severe strain; interest payment soared to more than 30 per cent of revenue expenditure of all the states. The overall revenue deficit of the states increased from below 20 per cent of the gross fiscal deficit to about 60 per cent. States started providing fiscal incentives including tax holidays and reduced tax rates to attract private investment. As a result states successful in attracting private investment found that their tax revenues grew at a much slower rate than their economies.

Caste-corporatist politics of collective action and populist mass politics resulted in the proliferation of subsidies and the growth of state expenditure without a concomitant rise in revenue generation. Entitlements and reservations for lower or so called backward castes as well as ethnic groups are instrumental in controlling the respective state and the bureaucracy. Patronage and political clientelism have implications for the composition of the state

bureaucracy and the implementation of policy – posts are reserved, paid for, or deliberately kept vacant. Patronage and caste-clientelism generate a pattern of transfers and promotions on grounds other than merit with a profound impact on taxpayer compliance. The state is thus complicit in the operation of arrangements for tax evasion. The record of revenue generation from the major direct and indirect taxes is poor; some observers claim a fundamental fiscal crisis might arise.

The gap between the richer and poorer states has been widening, and there are multiple dimensions of regional disparity. The Finance Commission transfers have neither been able to overcome the absolute gap in vertical transfers nor the policy of compensating for disparity, rather than addressing the root causes.[xvii] Apart from macroeconomic strategies and the inefficiency of resource use there is a cumulative wastage of resources due to politico-bureaucratic pressure to serve vested interest groups. The indifference of a pampered bureaucracy – the creamy layer of backward regions – has yet to wake up to the logics of market-preserving federalism.[xviii] States must definitely increase revenues. But how?

Instead of a mere gap-filling approach, equalization transfers have to take fiscal capacities, cost conditions and expenditure efficiency into account, otherwise undeserving states get benefits at the cost of deserving states. Higher tax devolution by the centre, state-specific and purpose-specific grants-in-aid, the transfer of central tax surpluses to the states, the introduction of value added tax by the states, and, ultimately, fiscal discipline make states more self-reliant.[xix] However, there are limits to the potential of regional

resource mobilization. Achieving fiscal targets might be achieved at the cost of essential social services in less developed states. Explicit investment into broad based, inclusive growth across the states is obviously required. Backward states may need a relatively longer timeframe to effect fiscal correction.

There is nonetheless good news. The Finance Commission increased the share of grants in total transfers to address the horizontal imbalances; it linked debt relief to revenue deficit reduction and fiscal responsibility by placing limits on borrowings by states.[xx] Furthermore, emphasis on technology-led growth coupled with local government reform proved to be an innovative strategy to combine growth with equity and has been exemplified by the "Karnataka model".[xxi] The relatively better indicators of Madhya Pradesh in the educational sector explain in part its economic performance and make thus a case for regional development policies focusing on education, especially in an era of market liberalization.[xxii]

Conclusion

Political institutions may mitigate the conflict potential of diverse societies. Does India offer insights into specific conflict regulation devices? Its federal system proved adaptable, pragmatic and innovative, the federal trust in federal institutions is, all in all, sound.[xxiii] Federal institutions and procedures are widely accepted and they have gained some stability. After the partition, no successful secession occurred. On the backdrop of its heterogeneity and multiplicity of conflicts, India's relative success might be explained by the interplay of institutional framing conditions, normative

discourses, and the performance of formal and informal bargaining arenas.

The geographical and temporal distribution of group conflicts evidences that institutional shortcomings, electoral calculus and intransigent behavioral patterns rather than ethnic, religious and regional diversity per se induced conflict escalation. In Punjab secessionism only increased after demands by the secular Akali Dal were ignored by the union government. In Kashmir violence spread particularly after undermining democracy in the aftermath of the elections in 1987. Rigid military reactions, especially in Punjab, Kashmir and the Northeast, severely affected the identification with the Indian state. The Indian government was probably better prepared to meet demands for new states in the Northeast, because in difference to Punjab and Kashmir security concerns and fears to become hostage of vested interest groups were there less pronounced. The willingness of the Union government to compromise was far less discernible vis-à-vis non-Hindus and in border regions.

The centralist features of the Indian system, underdevelopment, Hindu nationalism, and overheated electoral campaigns foster fears and primordialism among minorities.[xxiv] Although India privileges Hindus linguistically, politically, and economically, it does not represent a dominant "core nation". Hindus are geographically, culturally, politically and religiously extremely heterogeneous. An exclusive Hindu ownership of the state is only claimed by extremist minority parties such as Shiv Sena, RSS or the VHP. The federalized party system thus prevents a country-wide dominance of Hindutva nationalism.

Centralist legacies informed by the Westminster model – the weakness of the second chamber, the post of the governor, the president`s rule – cause tensions with federal principles. But contrary to theoretical expectations, the majoritarian electoral law did not lead to uniform polarization of the electorate, because national and state electoral patterns differ. Broad coalition governments became the rule, and most regional parties are neither exclusively ethnic nor principally opposed to the centre. Majoritarianism has forced both Congress as well as the BJP to reach out for constituencies beyond their core clientele. Congress is internally federal, and the BJP was forced to contain extreme Hindu-nationalist propaganda. Since the 1990s, Indian parties organize mainly around socio-economic cleavages. Linguistic identity politics lost in importance while ethnic cleavages, regional agendas, and caste politics gained prominence in party competition.

Federalism functions as a super-structure, which is permeated by group clientelism. The crisis of governance consists in the venality of politics, corruption, and nepotism, and the dominance of parochial party interests. Military repression, centralist direct rule, and restrictions on democratic rule were the most decisive causes for undermining pan-Indian loyalty. Some ethnic groups, especially in the Northeast, feel unprotected in their survival by the union and state governments. Intra-ethnic democratic competition depends thus on a sense of physical survival of the group. This worked out for the Tamils and the Sikhs, but not for the Northeast and Kashmir.

The autonomy of the states allows for leeway in minority protection. The balance sheet varies among the states. Politics against “minori-

ties in minorities" are mostly found in states with high immigration and where demands for autonomous districts or own states are expressed. Most complaints of minorities pertain to discrimination in the educational sector, in access to public services, deficient judicial protection, economic marginalization, restricted cultural rights, and religious denigration.

It is not easy to answer to what extent India's crisis of governability is enhanced by federalism.[xxv] Patronage and clientelism might be interpreted as "under-institutionalization" and defective mechanisms of interest aggregation. Some observers claim that the inefficiency of formal institutions catalyzes ethnic identity policy, the resort to violence, and quests for ever more autonomy.[xxvi] The weakness of state parliaments, overcentralized competencies and respective ignorance of one's fellow citizens' interests as well as pervasive quotas contribute to the lack of a non-partisan, efficient and motivated bureaucracy.

The system of reservations and the necessity to acquiesce to demands of groups with entitlements is a central incentive for buying posts, corruption, and clientelism. The reservations contribute systematically to the demarcation of group boundaries, especially the preservation of the caste system and the hardening of religious and ethnic confrontations in certain states. Since group membership is dynamic, reservations would have to be adjusted to actual demographic and socio-economic developments.

The formation of new states is a key instrument of meeting demands by ethnic minority groups; it stimulates the emergence of new state

identities, mostly of dominant groups, but it creates new minorities too. More autonomous districts or states could be formed in the future, for example Gorkhaland, Telengana and Vidarbha. The formation of new states resolves some, but causes a couple of new problems, too. Minorities becoming the owners of their state do not necessarily behave better towards "minorities in minorities".

India demonstrates flexibility in carving out new states, but the formation of new states such as Chhattisgarh, Jharkhand and Uttarakhand has not necessarily resulted in overcoming the grievances that led to their birth in the first place.[xxvii] New states are no guarantee for socio-economic development, steady governance and responsible administration. Apart from conventional criteria such as administrative efficiency, economic viability, development requirements and cultural-linguistic affinities, the future formation of states could make the protection of "minorities in the minority" into a prerequisite for granting autonomy. Additional reform proposals concern the limitation of union competencies, the direct election of governors, the creation of a state council consisting of the union and state executives, as well as the strict enforcement of union law vis-à-vis the states. Federalism could be enhanced through decentralization, subsidiarity, and referenda with a qualified quorum in case of state or autonomous district formation.

The Indian federal system is able to learn and to adapt. Its insisting on secular principles forced back quests for secession on religious grounds. The strong normative power of constitutional principles, accompanied by a federalism-friendly jurisdiction of the Supreme Court, proved effective in binding the centre. Due to the emergence

of a multi-polar party system, the growing relevance of regional parties, the decline of hegemonic parties and extensive executive federalism the "lived constitution" pushed back the impact of the original centralism.

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From the Autonomous Region in Muslim Mindanao to the Bangsamoro: Federal Structures in a Centralized System

Robert M. Alonto & Mohagher Iqbal

1 Introduction

Against the backdrop of a 193-member state United Nations Organization, the existence of 140 self-determination movements world-wide[i] opens the door of inquiry into the underlying principles that give legitimacy to a state; and finding the right formulation to settle differences by mutual concessions between the principles of self-determination and territorial integrity presents an astounding challenge for the 21st century.

This collision between the principles of people's self-determination and the state's national sovereignty and territorial integrity is what is now known as the sovereignty-based conflict. This type of conflict made its profound appearance after World War II although the formation of new states that altered traditional boundaries and swallowed and incorporated peoples and their homelands – it was a political phenomenon that began with the advent of colonialism.

The contemporary political landscape is a by-product of the 19th century creation of states that was premised on the Regalian

doctrine that subject peoples and territories to imperial prerogatives. While the illegal and unilateralist inclusion of weaker nations into the newly formulated state required the direct or indirect use of unbridled force, its consolidation and maintenance required a legal framework.[ii] The sovereignty of a state is enshrined in the constitution that provides the legal framework for the exercise of its authority and power.

When an armed conflict within the borders of the state is anchored on the question of sovereignty itself, an objective review of historical facts and the underlying principles in the formation of the founding state and the creation of its constitution inevitably becomes an imperative. Here, historicity and the appropriate application of justice becomes a must.

Pursuing the legal principle of the supremacy of the constitution, a sincere resolve to end an armed conflict arising from a clash between a state's assertion of sovereignty and a people's right to self-determination is hence manifested by the reflection of the restructured relationship that empowers the subsidiary state within that very same constitution.

Consequently, the newly conceptualized structural arrangement between the central government and its subsidiary state must not be confined to mere generalities that lack the necessary teeth to enable and implement the latter's exercise of power.

In other words, the consequent relationship must be within a legally binding framework that will rectify historical mistakes and injustices, and preserve and protect their respective rights and

interests through operational devices. The workability and stability of this arrangement, definitely, are hinged on the parties,' especially the central government's, faithfulness to the ideals of justice and fair play.

The post-World War II global political landscape was carved through the design of states pursuing interests that are backed by legal institutions, providing them a framework that gives them authority and legitimacy in the eyes of the world. These legal rulings were born out of the creativity of men upon the dictates of the needs of time based on their relative perspective.

Whereas the contention stems from a quest for territorial justice and political self-direction of a historically-attested captured nation within a state, it is essential that the higher ideals of human values and justice take precedence when going over the existing construct and be the basis of creativity in crafting the right structure of cooperation between these two. Furthermore, the preservation of the right balance must be undertaken so as to prevent future conflicts from arising, and this may be through a just implementation of the cooperation agreement and the institutionalization of required conflict-regulating measures.

2 The Autonomous Region in Muslim Mindanao

In the 1970s, escalating hostilities between government forces and the Moro National Liberation Front (MNLF) prompted Ferdinand Marcos to issue a proclamation forming an autonomous region in the Southern Philippines. This was, however, turned down by a

plebiscite. In 1979, Batas Pambansa No. 20 created a regional autonomous government in the western and central Mindanao regions.[iii]

With the failure of these previous measures taken to end hostilities between the forces of the government and Moro freedom fighters, and backed by a constitutional mandate[iv] to create an autonomous region for the Muslims in Mindanao, the Autonomous Region in Muslim Mindanao (ARMM) was created by virtue of Republic Act 6734 on August 1, 1989.

Although touted much to give autonomy to the Moro people, the ARMM, for all intents and purposes is simply an administrative extension of the Philippine government. In fact, it is under the direct supervision of the Philippine President as stated in RA 9054, ARTICLE V UNDER INTER-GOVERNMENTAL RELATIONS, SECTION 1: *"General Supervision of the President Over the Regional Governor. – Consistent with the Constitution and basic policy on local autonomy, the President of the Republic shall exercise general supervision over the Regional Governor to ensure that his or her acts are within the scope of his or her powers and functions."*[v]

For the executive branch of the ARMM, power is vested on the Regional Governor who is elected by the qualified electorate in the region but is subject to probable suspension by the Philippine President up to a period of six months. This in essence makes the ARMM Regional Governor totally under the patronage of the Philippine President.

As to the Regional Legislative Assembly, that is vested to legislate laws, their power is subject to the Congress of the Philippines and must be within the confines of the Philippine Constitution.

The judicial powers in the region still lie with the Supreme Court of the Philippines despite the new arrangement; and it is stated in the Organic Act that judges discharging their duties upon its approval may even be reshuffled by the Deputy Court Administrator of the autonomous region.

In the ARMM setup the power to generate funds for the autonomous region is still subject to the provisions of the Philippine Constitution and the Organic Act creating it; while as regards public order and security, a regional police commission was created but shall be under the administration and control of the National Police Commission.

The aforementioned suffice to show why the Autonomous Region in Muslim Mindanao is a failure.[vi] Also, the Organic Act's total disregard for the fundamental issue underlying the Moro insurgency and the Moro identity further necessitates the establishment of a totally different setup between the central government and the new political entity.

3 The Bangsamoro

The signing of the Framework Agreement on the Bangsamoro[vii] (or the FAB) between the Philippine government and the Moro Islamic Liberation Front is the initial giant step in redressing the centuries-old injustice committed against the Moro nation. This refers to the illegal inclusion of Mindanao by Spain when it ceded the Philippine islands to the United States of America through the Treaty of Paris in 1898, when in fact it was never colonized by the Spaniards as proven by the treaties it (Spain) had with the Moro Sultans like the Qudarat-Lopez Treaty of June 24, 1645 among others.[viii]

With the signing[ix] of the FAB, the fact that the Bangsamoro[x] is a distinct nation, unconquered by both the Spanish and American colonialists, was finally acknowledged by the Philippine state and the international community.[xi] With the FAB, the crucial question as to the legitimacy of the Moro identity is finally laid to rest. More importantly, the agreement gives the stamp of validity to the Bangsamoro people's inalienable right to set the course of their own destiny. The signing of this historic agreement, thus, is deemed the initial step in the permanent cessation of armed conflict in Mindanao. Given the reality that armed conflicts in this southern island of the Philippine Republic have already taken more than 500,000 innocent lives and displaced more than 2 million others, while wasting billions of pesos that could have then been used for development, plus considering the political realities of the day that gives the Philippine state its right to invoke territorial integrity on one hand and the Bangsamoro people's right to invoke independence on the other, the FAB, by far, is the best political solution to the otherwise never-ending story of mayhem and disorder pegged on legalized and institutionalized injustice. With the proper implementation of the provisions of this agreement and its annexes[xii] that restructures the relationship between the central government and the new political entity which is the Bangsamoro, hopes are high that peace, progress and development will finally reach this resource-rich southern island. The effect of this, however, will not simply be confined to the Bangsamoro territory since shared revenues from the proper operation and management of the resources in the area (Bangsamoro) will definitely boost the central

government's coffers and significantly help in expunging the Philippines' moniker as the 'sick man of Asia.'

4 The Philippine State and the Bangsamoro: A Restructured Relationship

What differentiates the Bangsamoro from the ARMM is the basis of its creation. While the ARMM was unilaterally crafted within the very confines of the 1987 Philippine Constitution by then President Corazon Aquino, the Bangsamoro is a product of a 16-year peaceful negotiation between the Philippine Government and the Moro Islamic Liberation Front, the legitimate representative of the Moro people. Although its establishment and sustainability would require its entrenchment in the Philippine Constitution, its creation came about with an agreement between the parties not to invoke the Philippine Constitution, on the GPH side, and to drop its bid for independence, on the MILF side. With the need to entrench the Bangsamoro government into the Philippine constitution, among the many tasks of the Bangsamoro Transition Commission which was created by virtue of Executive Order 120 is to recommend amendments to it (Philippine Constitution).

This new asymmetrical relationship between the Philippine government and the Bangsamoro government which is to be enshrined in the Bangsamoro Basic Law can be seen from the reformulation of the following elements: sovereignty or power, people, government and territory.

Both panels, the GPH and the MILF, have arrived at a more nuanced formulation of providing in the Framework Agreement the allocation of power relationships into: reserved power for the central government and exclusive power for the Bangsamoro government, as well as concurrent power, the ultimate form of shared authority in a quasi-federal system.[xiii] This quasi-federal system can be appropriately be defined as asymmetrical federalism – a uniquely federal arrangement between a unitary state (Philippines) and a sub-state (Bangsamoro) which does not exist in the relationship between the state and its component regions.

The devolution of powers in this new setup would not mean separatism for the Bangsamoro nor does this mean a diminution of the President's as well as the Congress' power, since the establishment of the Bangsamoro – that transfers the executive and legislative authority to the Chief Minister and the Bangsamoro Assembly – will be a dispersal of primary and secondary legislation.[xiv]

The governance structure of the Bangsamoro is shaped by its regional boundaries and its institutions and processes of interactions.

The 'government of the day' is formed by the Assembly (parliament) voting into office a Chief Minister and his Deputy Chief Minister. The posts of Ministers are allocated on the basis of proportionality in reference to an agreed formula and number of seats each party has in the parliament.[xv]

The FAB further guarantees that constituent units are authorized to regulate their own affairs and the privileges already enjoyed by the local government units under existing laws shall not be diminished unless otherwise altered, modified or reformed for good governance pursuant to the provisions of the Bangsamoro local government code.

As agreed, a new electoral system suitable to a ministerial form of government will be entrenched that shall allow democratic participation and ensure accountability of public officers primarily to their constituents and encourage formation of genuinely principled political parties. This shall be contained in the Bangsamoro Basic Law to be implemented through legislation enacted by the Bangsamoro Government and correlated with national laws.

The Bangsamoro people, while retaining their Filipino citizenship, will now be acknowledged as Bangsamoro in reassertion of their nationality.

Justice institutionalization in the territory includes the establishment of the Shari'ah justice that entails operation of its functions and the expansion of the jurisdiction of the Shari'ah courts; measures to improve the workings of local civil courts, when necessary and the establishment of alternative dispute resolution systems. The customary rights and traditions of indigenous peoples are guaranteed in the formation of the Bangsamoro's justice system. This will include the recognition of indigenous processes as alternative modes of dispute resolution.

As stated in the FAB,

> "The core territory of the Bangsamoro shall be composed of: (a) the present geographical area of the ARMM; (b) the Municipalities of Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal in the province of Lanao del Norte and all other barangays in the Municipalities of Kabacan, Carmen, Aleosan, Pigkawayan, Pikit and Midsayap that voted for inclusion in the ARMM during the 2001 plebiscite; (c) the cities of Cotabato and Isabela; and (d) all other contiguous areas where there is a resolution of the local government unit or a petition of at least ten percent (10per cent) of the qualified voters in the area asking for their inclusion at least two months prior to the conduct of the ratification of the Bangsamoro Basic Law and the process of delimitation of the Bangsamoro as mentioned in the next paragraph." [xvi]

Since both parties agree that wealth creation is important for the operation of the Bangsamoro as stated in the FAB, a new arrangement is presented in the Annex on Revenue Generation and Wealth Sharing. The Bangsamoro people, in this new arrangement, now has a say over their resources, determining how revenues from the exploitation of these must be placed, with some exclusive to the Bangsamoro while others shared with the Philippine government. Sharing on revenue and income generation and some taxing powers devolved to the ARMM are automatically carried over to the Bangsamoro plus an additional of some more. [xvii]

To further assure the effectiveness of the new arrangement, the FAB goes to state that

"an intergovernmental fiscal policy board intergovernmental fiscal policy board composed of representatives of the Bangsamoro and the Central Government in order to address revenue imbalances and fluctuations in regional financial needs and revenue-raising capacity."[xviii]

And that:

> "Once full fiscal autonomy has been achieved by the Bangsamoro then it may no longer be necessary to have a representative from the Central Government to sit in the Board. Fiscal autonomy shall mean generation and budgeting of the Bangsamoro's own sources of revenue, its share of the internal revenue taxes and block grants and subsidies remitted to it by the central government or any donor." [xix]

Police functions shall be turned over to the new Bangsamoro government through stages which shall be further clarified in the Annex on Normalization.

For this rearrangement to take place, a transition period will be effected under a Bangsamoro Transition Authority.

5 Conclusion

"The maintenance of territorial integrity is vital in light of the disruptive consequences of breaches of that integrity. But since its ultimate purpose is to safeguard the interests of the peoples of a territory, it follows that "the concept of territorial integrity is meaningful only so long as it continues to fulfill that purpose to all the section of the people."[xx]

For the Philippine state to invoke territorial integrity as qualified above and for it to attain real development and progress, it is imperative that the Bangsamoro right to self-determination is properly addressed. This is the only step that would prevent the cycle of armed conflict born out of a legitimate assertion of a people's basic right to continue. Legislative measures taken so far by the Philippine government have proven to be ineffective and seriously suggest that a radical shift in perspective must be taken, particularly that of those in the central government, whose truncated linear aspect of history proves to be a trammel to conscience and, thus, to options when addressing this issue.

An objective reappraisal of history and an in-depth analysis of the underlying concepts that brought about the birth of the Philippine Republic, guided by a faithfulness to the ideals of justice and social responsibility, is the initial step towards sustainable peace. The corollary effect of this would be the unleashing of creativity in formulating a system that will also be fair to the newly acknowledged nation within the Philippine state.

However, if steps taken fall short of implementing the elements in the new established structure of cooperation between the Philippine government and the Bangsamoro, the peace and development that are to better the lives of the Bangsamoro people will be elusive as ever and remain a dream impossible to realize.

Today, a mere 15 per cent of the Bangsamoro homeland is what is left for its people who have long been denied not just the exercise of their rights but also of a decent standard of living, with a majority of

them wallowing in dire poverty, as the revenue from its resources fill the national coffers, financing the central government. Also, statistics available, but not inclusive of numbers from recent happenings, validate that more than 500,000 Bangsamoro have lost their lives and more than 2 million have been displaced as a result of the Philippine government's implementation of its counter-insurgency policy to quell the Bangsamoro struggle.

As the Moro thinker Salah Jubair reflected: "The Moros are not asking for the whole of Mindanao, because circumstances have superseded some facts of history. They just want a parcel of it, especially where they predominate. This will enable generations after them to live in peace and piety, as Islam enjoins all believers. The indigenous peoples, whom the Visayans call Lumads may opt to join their blood-brothers, the Moros, and they are welcome. After all, the two peoples are inseparable in the history of Mindanao and Sulu. Is this too much a price for peace, development and prosperity for all?"[xxi]

True enough, "Until when can human conscience bear such disregard for justice?"

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i HALIM MORIS, Self-Determination: An Affirmative Right or Mere Rhetoric? 4 ILSA J. INT'L. & COMP. L. 201,201 (1997)

ii Prof. JAMES PETRAS, The Legal Foundations of War Crimes, Debt Collection and Colonization. Islam Today, February 2013

iii http://armm.gov.ph/history/ accessed 21.10.2013

iv Section 1, General Provisions of Article X of the 1987 Constitution of the Republic of the Philippines Constitution states that "The territorial and political subdivisions of the Republic of the Philippines are the

provinces, cities, municipalities and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided."

v GOVERNMENT OFT HE PHILIPPINES. Republic Act No. 9045. Published March 31, 2001. http://www.gov.ph/2001/03/31/republic-act-no-9054 Retrieved 05.02.2014.

vi ANDREO CALONZO, Government, MILF agree to create 'Bangsamoro' to replace ARMM. GMA News, Oct. 7, 2012, http://www.gmanetwork.com/news/story/277218/news/nation/govt-milf-agree-to-create-bangsamoro-to-replace-armm

vii The Framework Agreement on the Bangsamoro (FAB) is a product of 16 years of peaceful negotiations between the Philippine government and the Moro Islamic Liberation Front, the legitimate representative of the Moro people.

viii NU'AIN BIN ABDULHAQQ, Bangsamoro Dossier. Agency for Youth Affairs-MILF. January 2011

ix On October 15, 2012, the Framework Agreement on the Bangsamoro was signed at the Rizal Ceremonial Hall of Malacanang Palace between the Philippine Government, represented by GPH Panel Chair Marvic Leonen, and the Moro Islamic Liberation Front, represented by MILF Panel Chair Mohagher Iqbal, in the presence of Philippine President Benigno Simeon Aquino III and Malaysian Prime Minister Najib Razak, MILF Chairman Haj Murad Ebrahim, Secretary General of the Organization of Islamic Cooperation, members of the diplomatic corps, members of the Philippine House of Senate and House of Representatives, cabinet members and other government officials and Civil Society groups and the media.

x ROBERT M. ALONTO, Moro: Its Etymology and Historical and Political Significance, An Introduction to the Bangsamoro Dossier. Agency for Youth Affairs – MILF. January 2011

xi United Nations Organization Secretary General Ban Ki-moon was among those from the international community who sent a congratulatory message to the MILF for the signing of the Framework Agreement on the Bangsamoro between the Philippine government and the MILF

xii So far, two have already been signed between the parties: Annexes on Transitional Arrangements and Modalities, and the Annex on Revenue

Generation and Wealth Sharing. However, the remaining two (Power Sharing and Normalization) are still to be resolved

xiii Atty. Michael Mastura, Executive Summary: Shaping the Ministerial Form of Government. September 2012

xiv Ibid

xv Ibid

xvi Government of the Republic of the Philippines (2012) "2012 Framework Agreement on the Bangsamoro, p.6." Official Gazette of the Republic of the Philippines, accessed 9.10.2013. http://pcdspo.gov.ph/downloads/2012/10/20121007-GPH-MILF-Framework Agreement.pdf

xvii Ibid., p.4–6

xviii Ibid., p.5

xix Ibid., p.5

xx Michael P. Scharf, Earned Sovereignty: Juridical Underpinnings.

xxi Taken from MindaNews, excerpt from a paper delivered by Cotabato Archbishop Orlando B. Quevedo, O.M.I., also president of the Catholic Bishops Conference of the Philippines during the 27th General Assembly of the Bishops' Businessmen's Conference in Taguig, Metro Manila, on July 8, 2003.

Obstacles And Benefits Of Devolution In Pakistan: A Political View

Haji Mohammad Adeel

Introduction

Man started to live in the community because he became aware of the fact that cooperation is necessary for survival. On a large scale, national and regional cooperation is important because human beings are dependant on each other; no one can survive without the help of the others.

We all are aware that inter- and intra- regional cooperation is the need of the hour, but the question arises as what *modus operandi* should be adopted to cooperate in order to get a stable region for us. At the national level, different models of governance exist. Out of these systems, federalism seems to be the best suited one for Pakistan. It is a device to harmonize the sentiments of autonomy without affecting the unity of the state. National affairs are managed by the center while local interests are administered by the federating units.

Federalism describes a system of government in which sovereignty is constitutionally divided between a central governing authority and its units (such as states or province). This system is based upon

democratic rules and institutions in which the power to govern is shared between national and provincial/state governments.

Important thing is that whenever we are going through the process of nourishing the federalism, we came across a number of problems. Most important of them is the conflict of interest. Conflict of interest arises when there is a competition for resources. Pakistan also faced such conflict. Federating units also want to maintain their local autonomy, control over natural resources, cultural and economic interests and complete equality among the federating units. Federalism is perhaps the best choice for multicultural and multiethnic countries like Pakistan. Every nation or sub-nation has its own identity; we cannot say that a single system can suit best all countries. Federalism has distinct varieties. Likewise, no single model of federalism will suit all the countries. Some federations are decentralized, some are highly decentralized, while the others are loose alliances.

A federal form of government has capacity to bring people together and satisfy the aspirations of diverse ethnic, linguistic and religious groups. Marginalized communities are brought into the mainstream to participate in the decision making processes.

As far as Pakistan is concerned, throughout the history of democratic processes in the subcontinent, we observe the commitment of our forefathers to establish federal structures. Examples can be given from two historical documents of freedom movement. The first of Jinnah's 14 points says:

"The form of future constitution should be federal."

Another point reads:

"A uniform measure of autonomy shall be granted to all the provinces".

Similarly, the Lahore Resolution for Pakistan stated:

"The constituent units shall be autonomous and sovereign".

Pakistan after its creation adopted the government of India Act 1935 with minor changes. It is important to notice that the British Empire created a federal system but it was exclusively designed to serve the Empire purposes, and the tilt of authority in this act was more towards center than the federating units. This 1935 Act served as the first interim constitution. The federating units were given some share, but the real power was with the center.

Pakistan before and after the 18th Constitutional Amendment

After the 1935 Act, there were the constitutions of 1956 and – under Martial Law – of 1962. These both constitutions declared the center stronger. It was the same sense of inequality and disparity that brought the debacle of East Pakistan and resulted in the creation of the new country Bangladesh. Constitution of 1973 was the result of democratic struggle for parliamentary federation. For the first time, a bicameral system was introduced. Under 1973 constitution, some autonomy was awarded to the units. However, different amendments in this constitution further strengthened a strong center.

The 8th amendment was a departure from the parliamentary system to the quasi-presidential system. The empowerment of the president was a violation of federal character of constitution.

Again under Martial Law, LFO 2002 was the revival of 8th amendment. The federal characters of the constitution again became distorted by centralization of powers in the office of the president.

17th amendment was introduced in December 2003. This made a serving Army General President – to seek another term by a vote of confidence through the assembly rather than holding new elections.

The 8th and the 17th amendment changed the federal character of the constitution and tilted the powers towards the president. After assuming power, the elected government in 2008 decided to restore the 1973 Constitution to its original shape through a few better amendments. A special Committee of Parliament was formed which was represented by all political parties and independent groups in the parliament.

The major changes brought forward by the ensuing 18th amendment are the following:

i. It restores the federal and parliamentary nature of the constitution.
ii. The amendments incorporated by Martial Law dictators have been removed.
iii. Provincial autonomy has been increased. Concurrent list is removed and residuary powers are transferred to the provinces with few exceptions.

iv. The scope of the Council of Common Interests has been made effective. This council includes representatives both from center and the federating units. Its role is to resolve the issues of mutual interest, make policies and distribute national revenues. National Finance Commission is the protector of this share of the units which cannot be reduced beyond that, given the previous National Finance Commission Award by amendment in the constitution.

v. Article 6 of this amendment enhanced the sphere of definition of the offence of 'high treason'.

vi. Parliament has been given supremacy as the powers of the President are transferred to the elected house of the people. The President's power of holding referendum or dissolution of assemblies has been abolished from the constitution.

vii. The number of ministers, including ministers of state & advisors has been limited to the 11% of the total number of the parliament. This is now 49 out of 446 members of parliament. In case of provincial assemblies it cannot be more than 15 or 11% of the total membership of the provincial assembly.

Article 140-A is retained. This article is pertaining to the devolution of power to the local bodies. The change is that now these elections shall be held under administration of Election Commission of Pakistan. A new High Court has been created in Islamabad. The Judges of this High Court shall be taken from all four provinces and the territory of Islamabad & FATA (Federally Administered Tribal Areas).

A successful federation cannot be created and run smoothly without a strong, free, neutral and independent judiciary. A Judicial

commission has been set up for appointment of judges. A parliamentary committee has also been set up to oversee the appointment of judges.

For general elections, a caretaker government shall be constituted with the consultation of the Leader of Opposition.

Pakistan is an ethnically divided state. For countries like Pakistan, the issue to harmonize the societies in a national stream is a major task. In the era of globalization countries like Pakistan are facing multi-dimensional issues. The spectrum of challenges are vast, varies from ethnic divisions to power sharing between the sub-national entities. Such problems can be prevented through the empowerment of institutions.

The 18th amendment has somewhat solved these issues. It helps to strengthen the institutions through its provisions. Today, the Election Commission is a powerful organization. It is one of the most important institutions of our country to ensure holding of free and fair elections.

All members of the Election Commission including the Chief Election Commissioner are elected by a parliamentary committee represented by government and opposition benches equally. Their tenure is fixed, their salaries are ensured, and their removal is only possible through Supreme Judicial Council.

Now, in Pakistan, elected democratic governments have been replaced in both capital and provinces. To tackle the external and internal threats, a strong democratic government is necessary. These

threats are wide in nature, like terrorism, Talibanization, Fundamentalism, corruption, drug trafficking, economy & energy crises, displaced & missing persons, the situation in Afghanistan, etc.

In a decentralized system, all governments must be accountable to the people who choose them and who they represent. The system will be less decentralized if the constituent units are also accountable to the central level of government. Degree of decentralization is provided by the constitutions of the constituent units themselves. In some systems, the constituent units have control over their own institutions, even to the extent of having their own constitutions. In others, the framework for government at the sub-national levels is prescribed by the national Constitution as in Pakistan.

To address the issues between center and provinces in Pakistan, the 18th amendment proposes various modifications. "Council of Common Interests" is the body which was created by the 1973 Constitution, but was not effective. Now settlement of common interests between the center and the provinces shall be decided in this committee. The Council of Common Interests was formed to have provincial ministers, central ministers sitting and thinking together over matters which are of common interest between the center and the provinces.

Another improvement has direct implications for the government: the 18th constitutional amendment accepts a parliamentary form of government. And here, the Prime Minister is the chief executive. All orders emanate from him. He should always be responsible for every executive action. The 8th and the 17th Constitutional Amendments

had distorted this picture, granting more power to the President. The Prime Minister was either a subordinate or shared equal power with the President which was not in line with the parliamentary form of government.

So, by taking away the 8th constitutional Amendment and the 17th constitutional Amendment we brought back the parliamentary form of government. We have made the Prime Minister the Chief Executive of Pakistan. And President is only the constitutional and formal head/representative of the state.

The strengthening of provinces under the 18th Amendment is expected to boost the political class, especially from the smaller provinces. To that extent, the current project of federalization is expected to contribute to widening of the net of democracy through regionalization of politics and de-concentration of state authority. This process of devolution of powers and strengthening the provinces will hopefully help to strengthen the democratic process in the Pakistan. After the complete implementation of 18th amendment it will be difficult to derail the democratic process.

Benefits through sharing of power

Federalism is the best way to enhance cooperation. Actually federalism works on the formula of "unity in diversity". Once the provincial autonomy has been given to the provinces, it will open countless avenues for cooperation between the center and the provinces. Need of the time is just to implement the true spirit of the

federalism phenomena. As a result, it will act like a bridge for the national cooperation.

However, the prospects for sharing the responsibilities between the center and sub-national units do come with obstacles. Keeping in view the daunting challenges on socio-economic and security fronts, natural calamities and disasters like the recent floods, and an ongoing costly war on terror, the transition of more powers to the provinces and subsequent added responsibilities have also posed serious challenges to the provincial governments.

Increasing capacity to cope with additional responsibilities is no easy feat. But every cloud has a silver lining to make a new beginning, to bring a meaningful change, to rewrite history and to steer a nation's ship towards a better future – hence chances are good, Pakistan as a nation in general, and provinces in particular, will persevere and tide over all problems in this regard. By considering these challenges as transient teething troubles and turbulence associated with changing the system, we can perhaps use this opportunity as a favorable tailwind towards heights of prosperity and development.

The 18th Constitutional Amendment, having omitted the Concurrent List from the 1973 Constitution, has prompted transfer of some of the subjects/matters from the deleted Concurrent List to Part-II of the Federal List. The transfer of these subjects among others where on one hand has added to the legislative and administrative responsibilities of the provinces, it has also provided a great

opportunity to the local authorities to make a real difference by formulating and worker-friendly policies.

In a model of low decentralization of powers the central state retains final authority but devolves or delegates it to sub-national units. The powers delegated may be legislative, administrative or both. Authority to delegate power derives from the national constitution. The national constitution may also provide a framework of rules for decentralized government, so as to protect regional autonomy to a degree, but it will not necessarily do so. The center also retains final legal control over the exercise of delegated power, so that if anything goes wrong, it has the authority to intervene. The sub-national orders of government are accountable for their performance to the center, as well as to the people.

When we discuss the issue of distribution of responsibilities between the center and the provinces, in financial matters sub-national governments may have some powers of taxation, but they are likely to be dependent on the center for much of their revenues which they generate. Attention needs to be paid to the bases for revenue redistribution from the center and its allocation between the recipient governments, in accordance with procedures that are transparent, predictable and fair.

According to the constitution of Pakistan, the National Finance Commission is bound to give its award after every 5 years, but undemocratic military regimes failed to do so. An elected government formed a body for commission consisting of equal

representation of federating units and 3 members of Federal Government under Article 160(1) of 1973 constitution.

The commission announced 7th NFC Award Revenue Sharing formula base on multiple indicators as under:

Population	=	82%
Poverty/backwardness	=	10.3%
Revenue Generation/collection	=	5%
Inverse population density for Balochistan	=	2.7%

The Award also provides 1% extra to Khyber Pakhtunkhwa province for war on terror. The 7th Award passed unanimously by all provincial and federal governments.

There can be circumstances in which the center can intervene in the areas of responsibility of the other levels of government. The circumstances, in which a need for intervention might, arguably, arise, include national or local emergencies or the systemic failure of government in a constituent unit.

If a power of intervention is provided, it is necessary also to provide safeguards against its inappropriate use. A confrontation can evolve between the center and sub-national level in such conditions. Mechanisms to cope such conditions include the chamber of the legislature that represents the constituent units, the Upper House – in case the Pakistan Senate; a time limit on the period for which central intervention can last; clear and limited criteria for the

exercise of a power of intervention; and authority for the courts to review the lawfulness of decisions to intervene. Part X of the Constitution of Pakistan deals with emergency provisions & describes very limited criteria for Federal Government.

Ethnic, regional or religious conflict may be managed through decentralization. Decentralization may be used as a means of settling long-standing claims for autonomy within a single state; more generally, decentralization can provide minorities an immediate sense of ownership of the state and of belonging to it, by providing them with an opportunity for self-government.

A range of measures is available to offset any threat to the unity of the state from decentralization. Depending on the circumstances, these include regional representation in national institutions, power-sharing in political and administrative bodies at the center; a distribution of national resources on a basis that recognizes the claims of both poorer and richer regions and that provides for revision over time; active encouragement of unity on the part of the international community, or sections of it.

Challenges for federalism in Pakistan

Pakistan is facing numerous challenges. These challenges are internal as well as external. Pakistan has the core issue of terrorism. Acting as a front line state in the war on terror, strategy is not easy. Pakistan is currently paying the huge price as an ally of NATO & U.S. in the war on terror. At national level governments have continuously faced criticism from different sections of the society. Pakistan is also

absorbing the drone attacks, which is a clear cut violation of the country's sovereignty according to United Nations resolutions. To tackle such huge challenges of varying nature, we need some coherent policies. Unity as a nation can solve such challenges. Overall dealing with the problems as a nation while sticking to the formula of ***unity in diversity*** can be the best choice.

Provincial autonomy was promised in the 1973 Constitution of Pakistan. The dream has come true now after such a long period of time. Decentralization of power will make the government more responsive to the aspiration of the poor as their participation in governance would increase.

It is a usual experience and especially as far as the case of Pakistan is concerned that a strong center always leads towards problems. And if all goes well to maximum level, the biggest issue which arises is of resentment in small sub units. Such resentment can leads towards serious crises, separatist movements are among the examples of worst case scenarios. To tackle such issues a country can provide different solutions. Our solution is devolution of powers.

The concept of cooperation has implications for regionalism in Asia. The emerging regionalism in South Asia is going beyond traditional fields and is greatly influencing the region from South East Asia to North Asia, and up from Central Asia to North East Asia. It is predicted that by 2020 some seven out of world's top ten economies would be in East Asia alone. This shows the strength of the region as a whole. Cooperation in the field of competences is very useful for the south and south East Asian countries. Relatively developed

countries can take initiative for joint mega projects in somewhat less developed counterparts. Moreover, countries can share their competences in the field of human resources to enhance and promote democratic values and a uniform or somewhat balanced development throughout the region.

Cooperation is a desire to learn from the practical experiences of others. Countries learn best by seeing how others have tackled similar issues.

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