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Foreword to the First Edition

For many observers, the Canadian debate over the reform of our federal systems has fallen into predictable patterns. Decades of argument about the central issues facing the federation seem to have etched deep grooves in our collective consciousness, subtly guiding successive rounds of discussion along familiar — and unsuccessful — lines. Yet, as Ron Watts emphasizes, Canadian debates underestimate the wonderful flexibility inherent in the central idea of federalism and the rich variety of federal arrangements that exist around the world. The central message of his monograph is that a comparative perspective can expand our understanding of the possibilities before us.

To broaden our vision, Professor Watts draws on his unique breadth of knowledge of federal systems. He explores the complexities of federations in advanced industrial nations such as the United States, Switzerland, Australia, Austria and Germany, multilingual federations such as India and Malaysia, emerging federations such as Belgium and Spain, and federations that have failed such as Czechoslovakia and Pakistan. In exploring this diverse set of countries, he focuses on the ways in which they cope with the kinds of tensions that dominate Canadian headlines every day.

Ron Watts is Principal Emeritus and Professor Emeritus of Political Studies at Queen's University, and is a Fellow of the Institute of Intergovernmental Relations. He has devoted a lifetime of study to the comparative analysis of federal systems, and is an international leader in the field. He has also served as an advisor to governments on many occasions. In 1978–79, he was a Commissioner on the Task Force on Canadian Unity (the Pepin-Robarts Commission); and in 1991–92, he served the federal government as Assistant Secretary to Cabinet for Federal-Provincial Relations (Constitutional Affairs). Since 1991 he has been President of the International Association of Centers for Federal Studies.

The Institute of Intergovernmental Relations, which is the only centre dedicated exclusively to federal studies in Canada, provides a forum for research and debate over critical questions confronting the Canadian and other federations.

Preface to the Third Edition and Summary

Many observers have noted that during the past decade there has been increasing interest throughout the world in adopting federal political institutions. Indeed, there are at present some two dozen countries encompassing over 40 percent of the world's population that exhibit the fundamental characteristics of a federation. A distinctive feature about this current popularity of federalism in the world is that the application of the federal idea has taken an enormous variety of forms and that there have emerged new and innovative variants.

In these circumstances and at a time when the future of the Canadian federation was very much in question, the first edition, published in 1996 under the title *Federalism: A Canadian Perspective*, was written with a view to looking at the theory and operation of federal systems elsewhere in the world for both the positive and the negative lessons they might provide Canadians. That edition focused upon a selected group of twelve federations chosen for their particular relevance to issues that were currently prominent in Canada and for the lessons they might provide. Four categories of federations were selected. The first was that of federations in developed industrial societies including the United States (1789), Switzerland (1848), Canada (1867), Australia (1901), Austria (1920) and Germany (1949). The second category consisted of two federations in Asia which, in spite of all their problems, have had a remarkable record of accommodating their intensely multilingual, multicultural and multiracial populations: India (1950) and Malaysia (1963). The third category was represented by two recently emerged and emerging federations in developed industrial societies: Belgium (1993) and Spain (1978). These two have adopted innovative approaches to the application of the federal idea, the former in relation to bicomunal arrangements and the latter in terms of an asymmetrical approach to accommodating its Autonomous Communities. The fourth category consisted of two bicomunal federations that

Three years after the first edition was published, with copies of that edition sold out, the opportunity was taken to update the text generally in a second edition entitled *Handbook of International Business*. It is now eight years since that edition first appeared, and given the many developments that have occurred internationally it has seemed appropriate once again to update the text, hence this third edition. Moreover, since the demand, not just in Canada but elsewhere, has led to the need for repeated reprinting of the second edition (five to date), this new edition is now directed less specifically at a Canadian audience and more widely at the lessons that can be learned from the experiences of federations throughout the world. With this in mind, two new chapters have been added: chapter 3, which reviews

revenues and expenditures in different federations is compared. This indicates the virtually inevitable existence of vertical and horizontal imbalances and the need for intergovernmental transfers to correct these. There is considerable variation in the extent to which conditional or unconditional transfers are employed and in the use of schemes of equalization transfers. An important aspect considered as well is the processes and institutions used for adjusting the financial arrangements and the variety of forms that these have taken.

The processes that federations have adopted for achieving more general flexibility and adjustment through intergovernmental collaboration are considered in chapter 7. It includes a consideration of the relative merits of cooperative and competitive federalism and their implications for democratic accountability. It would appear that a blend of intergovernmental cooperation and competition is in the long run most desirable.

The issue of symmetry and asymmetry among the constituent units within a federation is addressed in chapter 8. A distinction is made between political asymmetry and constitutional asymmetry among the constituent units within a

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institutions and the degree of regional input to federal policy making; in the procedures for resolving conflicts and facilitating collaboration between interdependent governments; and in procedures for formal and informal adaptation and change.

One cannot, therefore, just pick models off a shelf. Even where similar institutions are adopted, different circumstances may make them operate differently. A classic illustration of this is the operation of the similar formal constitutional amendment procedures in Switzerland and in Australia. Both involve referendums for ratification of constitutional amendments requiring double majorities, i.e., a majority of the federal population and majorities in the majority of the constituent units. In Switzerland over 110 formal constitutional amendments met this requirement between 1891 and 1999 (over three-quarters of those initiated by Parliament and submitted to referendum), but in Australia of 42 attempts since 1901 only 8 have succeeded.

As long as these cautions are kept in mind, there is a genuine value in undertaking comparative analyses. Indeed, many problems are common to virtually all federations. Comparisons may therefore help us in several ways. They may help to identify options that might otherwise be overlooked. They may allow us to foresee more clearly the consequences of particular arrangements advocated. Through identifying similarities and differences they may draw attention to certain features of our own arrangements whose significance might otherwise be underestimated. Furthermore, comparisons may suggest both positive and negative lessons; we can learn not only from the successes but also from the difficulties or failures of other federations and of the mechanisms and processes they have employed to deal with problems.

1.2 A BRIEF HISTORY OF FEDERALISM

While the United States, which adopted a federal constitution in 1787, is often regarded as the first modern federation, the history of federalism is much older.

The first documented federal system came into being among the ancient Israelite tribes over 3200 years ago.² Of similar antiquity were the confederations of the Bedouin tribes and the Native confederacies in North America. The early leagues of the Hellenic city-states in what is today Greece and Asia Minor were designed to aggregate communal democracies to foster trade and secure defence.³

²Daniel J. Elazar, *Federalism: A History* (Pretoria: HSRC, 1995), p. 19.

³E.A. Freeman, *The History of the Norman Conquest*, ed. J.B. Bury (London & New York: Macmillan, 1893).

TABLE 4

major characteristics of federations. They contain about two billion people, or 40 percent of the world population, and they encompass some 510 constituent or

all the desires of its citizens. Because of the development of the world market economy, the old-fashioned nation-state can no longer deliver many of the benefits its citizens value, such as rising living standards and job security. Self-sufficiency of the nation-state is widely recognized as unattainable and nominal sovereignty is less appealing if it means that, in reality, people have less control over decisions that crucially affect them. At the same time, nation-states have come to be too remote from individual citizens to provide a sense of democratic control and to respond clearly to the specific concerns and preference of their citizens. In such a context federalism with its different interacting levels of government has provided a way of mediating the variety of global and local citizen preferences.

Third, the spread of market-based economies is creating socioeconomic conditions conducive to support for the federal idea. Among these are the emphasis on contractual relationships; the recognition of the non-centralized character of a market-based economy; entrepreneurial self-governance and consumer rights consciousness; markets that thrive on diversity rather than homogeneity, on interjurisdictional mobility and on competition as well as cooperation; and the recognition that people do not have to like each other in order to benefit each other. There has been a long association between federations and market economies and as Kincaid has noted federal countries have been more likely than non-federal countries to have a market economy.⁶

Fourth, changes in technology have been generating new and more federal models of industrial organization with decentralized and “flattened hierarchies” involving non-centralized interactive networks. This in turn has produced more favourable attitudes towards non-centralized political organization.

Fifth, increasing public attention, especially in Europe, has been given to the principle of “subsidiarity,” the notion that a “higher” political body should take up only those tasks that cannot be accomplished by the “lower” political bodies themselves. There are some problems with the concept: it is difficult to translate into legal terms, it has a clearly hierarchical character, and it implies that ultimately it is for the “higher” body to decide at which level tasks should be performed. Nevertheless, the decentralist thrust of the subsidiarity principle has been instrumental in encouraging wider interest in a “citizen-oriented federalism.”

Yet another factor has been the resilience of the classical federations in the face of changing conditions. The constitutions of the United States (1789), Switzerland (1848), Canada (1867) and Australia (1901) are among the longest

⁶ John Kincaid, “Federalism and Democracy: Comparative Empirical and Theoretical Respectives”, paper presented at workshop on “Federalism and Democracy”, Centre for Federal Studies, University of Kent, Canterbury, April 2-6, 2006.

⁷United Nations Development Programme, *Human Development Report* (New York: Ox-

1.4 DEFINITION OF TERMS AND OF PRINCIPLES OF FEDERALISM

There has been much scholarly debate about the definition of federalism. Generally, in this debate the term “federalism” has been widely used both as a normative idea and as a descriptive category for a certain category of political institutions. For the sake of clarity, however, I shall distinguish the three terms: “federalism,” “federal political systems,” and “federations.” In this distinction, “federalism” is used basically not as a descriptive but as a normative term and refers to the advo-

4. Kugel, A. E.

TABLE 1 (continued)

4	Political units that function under the joint rule of two or more external states in such a way that the inhabitants have substantial internal self-rule. Examples have been Andorra, which functioned under the joint rule of France and Spain 1278–1993, Vanuatu, which operated under a British-French condominium 1906–80, and Nauru which was under a joint Australia–New Zealand–United Kingdom condominium 1947–68.
c e . . e	Linkages of politically independent polities for specific purposes that function through a common secretariat, rather than a government, and from which members may unilaterally withdraw. See table 7 for examples.
4 4 . 4 4 4	An agency established by two or more polities for joint implementation of a particular task or tasks. The North Atlantic Fisheries Organization (NAFO), the International Atomic Energy Agency (IAEA), and the International Labor Organization (ILO) are three of many examples. Such joint functional authorities may also take the form of trans-border organizations established by adjoining sub-national governments, e.g., the interstate grouping for economic development involving four regions in Italy, four Austrian Länder, two then-Yugoslav republics and one West German Land established in 1978, and the interstate Regio Basiliensis involving Swiss, German and French cooperation in the Basle area.
4	Some political entities combine characteristics of different kinds of political systems. Those at

TABLE 2: Contemporary Functioning Federations (including quasi-federations)¹

TABLE 3: Constitutional and Operational Character of Nominal Federations

United States	50 states + 1 federal district + 2 federacies + 3 associated states + 3 local home-rule territories + 3 unincorporated territories + 130 Native American domestic dependent nations	Federation (1789)	Federation
Switzerland	26 cantons	Federation (1848, 1999)	Federation

TABLE 3 (continued)

South Africa	9 provinces	Devolved Union (1996)	Quasi-federation
Russia	86 subjects: republics and various categories of regions	Federation (1993)	Quasi-federation
Argentina	23 provinces + 1 federal district + 6 regions	Quasi-federation (1994)	Quasi-federation
Malaysia	13 states	Quasi-federation (1963)	Centralized quasi-federation
Venezuela	23 states + 1 federal district + dependency consisting of 72 islands	Federation (1999)	Centralized quasi-federation
Micronesia	4 states	Federation (1978)	Micro-federation
Belau	16 states	Federation (1981)	Micro-federation
St. Kitts-Nevis	2 islands	Federation (1985)	Micro-binary-federation
Comoros	3 islands	Federation (2001)	Micro-quasi-federation
Pakistan	4 provinces + federally administered tribal areas + 1 capital territory	Quasi-federation (1973)	Devolved unitary military regime
United Arab Emirates ¹	7 emirates	Confederation (1996)	Hybrid confederation-federation
European Union	27 independent, democratic member states	Hybrid (1993)	Hybrid confederation-federation
Bosnia and Herzegovina	2 entities + 1 district	Federation (1995)	International (EU) tutelage
Sudan ²	25 states	Federal Constitution (2005)	In transition
Iraq ²	18 governorates	Federal Constitution (2005)	In transition
Dem. Rep. of Congo ²	25 provinces and capital	Federal Constitution (2006)	In transition

¹ The constitution of the United Arab Emirates refers to it as a "federal state," but its structure is fundamentally confederal.

² Federal experiments not fully operational and therefore not listed in table 2.

TABLE 4: Some Contemporary Confederations and Hybrids

Confederation	Number of member states / associate members / observers	Year of formation (and significant amendment)
Benelux	3 member states	1944 (1958)
Caribbean Community (CARICOM)	15 member states + 5 associate members + 7 observers	1973
Commonwealth of Independent States (CIS)	11 member states + 1 associate member	1991
European Union (EU)	27 member states	1993
United Arab Emirates (UAE)	7 emirates	1971 (1996) ²

¹ Current constitution, with founding date and significant amendment in brackets (if applicable).

² The Constitution of the UAE refers to it as a “federal state,” but in structure it is fundamentally confederal.

TABLE 5: Associated States and Federacies

Associated State / Federacy	Relationship	Parent State
Åland Islands	Federacy	Finland
Azores Islands	Federacy	Portugal
Bhutan, Kingdom of	Associated State	India
Cook Islands	Associated State	New Zealand
Faroe Islands	Federacy	Denmark
Greenland	Federacy	Denmark
Guernsey, Bailiwick of	Federacy	United Kingdom
Isle of Man	Federacy	United Kingdom
Jammu and Kashmir	Federacy	India
Jersey, Bailiwick of	Federacy	United Kingdom
Liechtenstein, Principality of	Associated State	Switzerland
Madeira Islands	Federacy	Portugal
Monaco, Principality of	Associated State	France
Netherlands Antilles	Associated State	Netherlands
Niue	Associated State	New Zealand
Northern Mariana Islands, Commonwealth of	Federacy	United States
Puerto Rico, Commonwealth of	Federacy	United States
San Marino	Associated State	Italy

TABLE 6: Decentralized Unions with Some Federal Features

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TABLE 7: Examples of Varieties of Federal Arrangements

Antigua-Barbuda	Argentina
Cameroon	Australia
China	Austria
Colombia	Belau
Italy	Belgium
Japan	Bosnia
Netherlands	Herzegovina
Papua/New Guinea	Brazil
Solomon Islands	Canada
Tanzania	Comoros
Ukraine	Ethiopia
United Kingdom	ychinabmos
Vanuatu	

Second, while knowledge about the structural character of a federal political system or a federation is important to gain an understanding of its character, equally important is the nature of its political processes. Significant characteristics of federal processes include a strong predisposition to democracy, since they presume the voluntary consent of citizens in the constituent units; non-centralization as a principle expressed through multiple centres of political decision making; open political bargaining as a major feature of the way in which decisions are arrived at; the operation of checks and balances to avoid the concentration of political power; and a respect for constitutionalism and the rule of law, since each order of government derives its authority from the constitution.

Third, federal processes may be territorial or consociational or both. While there are some examples of federations in which there are non-territorial constituent units recognized in the constitution, the most notable example being the Belgian Communities, the constitutional distribution of power among *the* units is by far the most common pattern among federations. In many federations the constitutional powers are distributed equally among the main category of constituent units. It is noteworthy, however, that in some federations there is some asymmetry in the relationship of the main constituent units (e.g., Canada, Malaysia, India, Spain and Russia). In some the main constituent units are classified into two or more categories with "territories" distinguished from the major constituent units by having less autonomy. (Table 2 indicates those federations that include such territories.)

Fourth, among the advantages claimed for federations compared with confederations as a form of political partnership are that federation permits a relatively decisive form of shared-rule able to carry out redistributive policies. Furthermore, because most of the federal institutions are based on direct election by the citizens (in contrast to confederations, federacies and associated states), federation as a form provides all citizens with an opportunity to participate fully through democratic processes in the legislative and executive operations of shared-rule. In this way it contributes to a sense of citizen-ownership of the institutions of shared-rule. While the political autonomy of the constituent units is limited to those spheres assigned to them by the constitution, unlike decentralized unitary systems these are fully safeguarded by a supreme constitution not unilaterally amendable by the federal government. The main disadvantage usually attributed to federations is their tendency to complexity, legalism and rigidity.

1.5 VARIATIONS IN FEDERATIONS

While certain structural features and political processes common to most federations can be identified, federations have exhibited many variations in the application of the federal idea. There is no single "ideal" or "pure" form of federation. Among

the variations to meet particular circumstances that can be identified among federations are those in:

- the degree and distribution of cultural or national diversity that they attempt to reconcile;
- their creation by aggregation of constituent units, devolution to constituent units, or both processes;
- the number, relative size and symmetry or asymmetry of the constituent units;
- the distribution of legislative and administrative responsibility among governments;
- the allocation of taxing powers and financial resources;
- the roles of federal and constituent-unit governments in the conduct of international relations;
- the character and composition of their central federative institutions;

When political studies were concerned less with the analysis of political forces within society or of political and administrative behaviour and more with the study of legal and constitutional structures, authors examining federations tended to concentrate primarily on the legal framework within which federal and provincial or state governments carried on their activities. Since the 1950s, students of politics have come to realize, however, that a merely legalistic study of constitutions will not adequately explain political patterns within federal systems. Indeed, the actual operations and practices of governments within federal systems have, in response to the play of social and political pressures, frequently diverged significantly from the formal relationships specified in written legal documents.¹⁰

Scholars writing about federations in the second half of the twentieth century have been conscious of the importance of the social forces underlying federal systems. Even K.C. Wheare, whose pioneering comparative work, *Federalism* (1946), is often described as institutional in approach, included a chapter on "Some Prerequisites of Federal Government" which was in some respects a sociology of federal systems.¹¹ W.S. Livingston, writing in 1956, went so far as to suggest that federal systems were a function not of constitutions but of societies:

The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces — economic, social, political, cultural — that have made the outward forms of federalism necessary ... The essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.¹²

In view of the importance of social forces in moulding federal political institutions and their operation, throughout this study there will be frequent references to their significance and influence.

But the view that federal institutions are merely the instrumentalities of federal societies, while an important corrective to purely legal and institutional analyses, is also too one-sided and oversimplifies the causal relationships. As authors such as Alan Cairns and Donald Smiley have pointed out, constitutions and institutions,

¹⁰ For one effort to operationalize the idea of a federal political culture note Richard L. Cole, John Kincaid and Alejandro Rodriguez, "Public Opinion in Federalism and Federal Political Culture in Canada, Mexico and the United States, 2004," *Journal of Democracy*, 34: 3 (2004): 201-221.

¹¹ K.C. Wheare, *Federalism* (London: Oxford University Press, 1946), ch. 3. See also his "Federalism and the Making of Nations," in A.W. Macmahon, ed., *Federalism and the Making of Nations* (New York: Russell and Russell, 1955), pp. 28-43.

¹² W.S. Livingston, *Federalism* (Oxford: Clarendon Press, 1956), pp. 1-2.

once created, themselves channel and shape societies.¹³ For example, in both the United States and Switzerland the replacement of confederal structures by federal institutions in 1789 and 1848 marked turning points enabling more effective political reconciliation of pressures for diversity and unity within those societies.

It must be recognized that the causal relationships between a federal society, its political institutions, and political behaviour and processes are complex and dynamic. The pressures within a society may force a particular expression in its political institutions, processes and behaviour; but these institutions and processes, once established, in turn shape the society by determining the channels in which these social pressures and political activities flow. Thus, the relationships between a society, its constitution and its political institutions are not static but involve continual interaction. In comparing federal systems and their design, we shall be concerned, therefore, not only with the influence of social forces upon the adoption, design and subsequent operation of federal constitutional structures, but with the influence that particular federal political superstructures and the related processes and political practices have had upon social loyalties, feelings and diversities. It is in the interplay of the social foundations, the written constitutions and the actual practices and activities of governments that an understanding of the nature

FIGURE 1: The Interaction of Federal Societies, Constitutions and Governments

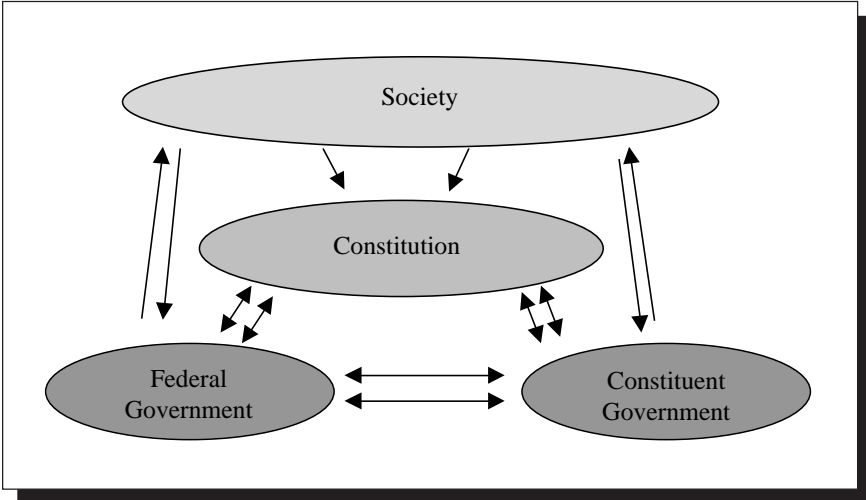
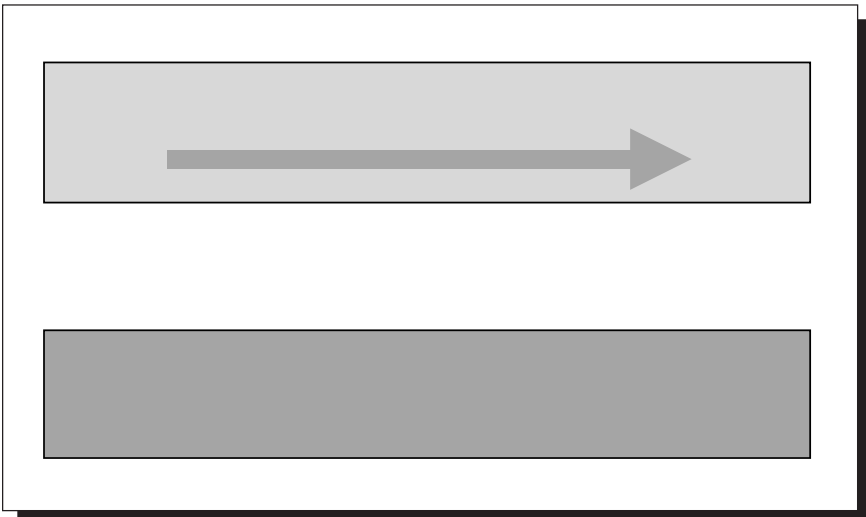


FIGURE 2: Federal Evolution through Time



A predominant issue running through all these examples has been the effort to encourage a balance between the pressures for unity and diversity. Where diversity within a society is deep-rooted, the effort simply to impose political unity has rarely succeeded, and indeed has often instead proved counter-productive, creating dissension. The early experience of Canada before 1867 illustrates this, as has the much more recent experience in the USSR, Czechoslovakia, and even the United Kingdom. On the other hand, the recognition of diversity, by providing the different internal groups with a greater sense of security, has often contributed to reduced tension, as in Switzerland and more recently India and Spain. But by itself, greater autonomy may simply encourage separatism, a trend that in Belgium, Quebec and Scotland has drawn concern. It is clear that more regional autonomy may contribute to the accommodation of diversity, but by itself it is likely to be insufficient. It needs to be accompanied by the institutional encouragement of common interests that provide the glue to hold the federation together. Thus the elements of “self-rule” for constituent units and “shared-rule” through common institutions, a combination that characterizes federal political systems, are essential to their long-run effectiveness in combining unity and diversity. This theme runs through this volume but will be explored further in chapter 13 on the pathology of federations.

1.7 ISSUES IN THE DESIGN AND OPERATION OF FEDERATIONS

This study, because its aim is to draw lessons from the experience of federations,

- whether the drawing of constituent unit boundaries and constituent units should represent differences or cut across them (chapter 4)
- the distribution of functions in terms of the following:
 - the form of distribution, including the significance of exclusive, concurrent and residual authority assigned to each level (chapter 5)
 - the allocation of legislative and administrative responsibilities (chapter 5)
 - the scope of functions allocated to each level (chapter 5)
 - the allocation of financial resources (chapter 6)
 - structures and processes relating to intergovernmental relations within federations (chapter 7)
 - degrees of symmetry or asymmetry in the allocation of powers to constituent units (chapter 8)
 - degrees of decentralization and non-centralization (chapters 5, 6, 12)
 - degrees of autonomy or interdependence of governments (chapters 5, 6, 12)
 - identification of commonly regarded essential federal powers (chapter 12)
- the nature of the common federative institutions (chapter 10):
 - the distinction in this respect between federations and confederations
 - the distinction between parliamentary and non-parliamentary federations and their differing impact
 - special provisions for proportionate representation of constituent units in the federal executive, legislative institutions (particularly second chambers), public service and agencies
 - the role of constituent unit representatives in common decision making
- the role and status of the constitution (chapter 11):
 - as supreme law
 - the role of the courts and judicial review
 - the issue of balancing rigidity and flexibility
 - formal constitutional amendment processes
 - the role of referendums
 - safeguarding individual and collective rights

1.8 FEDERATIONS CONSIDERED IN THIS STUDY

Among the federations currently in the world, those on which attention will especially be focused are the “mature” federations that have operated effectively for at least a half-century or more. In this category are the United States (1789),

Switzerland (1848), Canada (1867), Australia (1901), Austria (1945), Germany (1949) and India (1950). Each of these relatively long-standing federations exhibits virtually all of the characteristics of a federation (described in section 1.4 above) and has displayed a prolonged period of relative federal stability. Unlike some of the more recent emergent federations, these mature federations have in their evolution developed both federal and state governments which have not only formally autonomous powers but which have exercised them fully in practice.

A second category of federations that is of interest are those that might be described as “emergent.” These are federations that have been established during the past fifty years and are still in the process of establishing their equilibrium. Two European federations in this category are Spain and Belgium. In Spain, the 1978 constitution has produced a continuing process of asymmetrical devolution which has resulted in a federation in everything but name. In Belgium, two decades of step-by-step devolution culminated in 1993 in the implementation of an explicitly federal constitution.

Among the emergent federations are three that have developed a relatively centralized “quasi-federal” character. These three provide interesting examples of the impact of a dominant political party on the operation of a federation. Malaysia (1963) is of interest because of its multiracial character and the formal asymmetry of powers allocated to its Borneo states. Russia (1993) is significant because of its swing from an almost confederal and extreme asymmetry in the treatment of its constitutional units in the Yeltsin years to the emphasis on central predominance in the Putin era. South Africa’s quasi-federal constitution adopted in 1996 exhibits many interesting features designed to foster intergovernmental cooperation.

The Latin American federations, Mexico, Brazil, Argentina and Venezuela, all have had long histories of federal institutions stretching back to the nineteenth or early twentieth centuries, in each case heavily influenced by the model of the United States. But all four have experienced either lengthy periods of military and autocratic rule or of one-party dominance. Each of them has had a new federal rebirth in the past two decades, Mexico with the end of PRI party dominance, and the other three with new federal constitutions: Brazil in 1988, Argentina in 1994 and Venezuela in 1999. Mexico, Brazil and Argentina have developed somewhat less centralized regimes, but in Venezuela strong centralizing trends have been reinforced by the Chavez presidency. Each is still in the process of finding its equilibrium as a federation.

Two emergent federations have been marked particularly by instability and by frequent periods of military rule. Nigeria first became a federation in 1954 but emerged from its most recent period of military regime with the new constitution of 1999. It remains a troubled federation still seeking stability. Pakistan, after the secession of Bangladesh, adopted a new federal constitution in 1973, but like Nigeria it has suffered repeated periods of military rule, and while the 1973

constitution (heavily amended) remains nominally in force, a military president since 1999 has created a decentralized but unitary government.

An emergent federation with particularly unique features has been Ethiopia (1995). Ethiopia is particularly interesting in the way in which the ethnic basis of the constituent units is emphasized, but to date the federal policy process has been mainly channelled by and through the ruling political party.

Among the 25 federations listed in table 2 are four micro-federations. Largely the product of decolonization, these “lilliput” federations, as Anckar has referred to them, are federations of small islands: Micronesia, Belau, St. Kitts and Nevis, and Comoros, with populations ranging from 630,000 in Comoros and 104,000 in Micronesia to 41,000 in St. Kitts and Nevis and 17,000 in Belau.¹⁴

The United Arab Emirates has mixed aspects of traditional and modern rule and consequently a number of unorthodox and unique federal arrangements which are in many respects more confederal in character, although the constitution describes it as a “federal state.” The other distinctive example of a hybrid is the European Union, which is fundamentally confederal in character but includes a significant number of features more typical of federations. Therefore, where relevant, it will be alluded to in this volume.

In addition to these functioning federations and hybrids, four others are of special note because they represented post-conflict experiments. Bosnia and Herzegovina emerged out of the conflict accompanying the disintegration of Yugoslavia. It has a number of unique features arising from its complex structure consisting of two entities — one of which, the Bosniac-Croat Federation is itself a federation — and from its operation under international (first UN then EU) tutelage. Iraq and Sudan have adopted federal constitutions in efforts to resolve conflict situations, but continuing conflict has meant that in practice they remain non-functional as federations. The Democratic Republic of the Congo is another post-conflict federal experiment whose constitution came into effect (in 2006) following a prolonged period of ethnic strife and civil war. Because these latter three federations are still in transition and do not yet operate functionally, they are not listed in table 2, although they are noted in table 3.

Other cases to which attention will be paid in chapter 13 on the pathology of federations are the bicomunal federations of Pakistan (1947–71), Czechoslovakia (1918–1939), and the Czechoslovak Republic (1945–1989).

The federations reviewed in this study encompass a wide range of variations.

Chapter 2

Overview of Contemporary Federations

2.1 MATURE FEDERATIONS

UNITED STATES OF AMERICA (1789)

involving a system of checks and balances. Congress includes a Senate in which the states are equally represented with members elected directly (since 1912).

Over more than two centuries of operation, the United States as a federation has become increasingly integrated and the federal government more powerful. In recent decades the dominant role of the federal government and the extensive practice of unfunded mandates and federal pre-emption has been described as a trend from cooperative to coercive federalism.¹ At the same time, there have been political counter-pressures for more decentralization, although progress in this direction has been limited. The Bush administration has not propounded an explicit policy on federalism, but in practice its advocacy of legislation and constitutional amendments, fiscal policies, administrative actions and judicial policies has sacrificed federal considerations to specific objectives which have had centralizing impacts.²

Virtually all subsequently attempted federations have taken some account of the constitutional design and operation of the United States in developing their own federal structures, making it an important example.

THE SWISS CONFEDERATION (1848)

The Swiss Confederation, which had existed in various forms since 1291, broke down in the brief Sonderbund civil war of 1847; a new constitution in 1848, “the Federal Constitution of the Swiss Confederation,” converted it into a federation. Switzerland, a small country of some 7 million people, now comprises 26 constituent units called cantons, of which 6 are designated “half cantons.”

The Swiss federation is notable for its significant degree of linguistic and religious diversity, although the German Swiss continue to dominate in overall numbers and economic power. Its three official languages (German, French and Italian; a fourth, Romansh, is recognized as a “national language”) and two domi-

A significant proportion of the constitutional distribution of powers is assigned to the federal government, with the residual powers to the cantons. However, there is in practice a high degree of decentralization because the constitution leaves the federal government highly dependent upon the autonomous cantons for the administration of a large proportion of its legislation. There is a relative symmetry in the jurisdiction of the cantons, although 6 of the 26 cantons are classified as “half cantons” and therefore each of these has only half the representation in the federal second legislative chamber, the Council of States (Ständerat).

The principle of the separation of powers has been applied to the federal institutions, but the executive (the Federal Council) is a collegial body elected by the Swiss federal legislature for a fixed term and composed of seven councillors among whom the presidency rotates annually. The federal legislature is bicameral, composed of the National Council (Nationalrat) and the Council of States (Ständerat); in the latter, cantons have two representatives each and half cantons one. The electoral system based on proportional representation has resulted in a multiparty system, but the fixed-term executive has provided stability, and the tradition has developed that it should encompass the four major political parties representing an overwhelming majority in the federal legislature. A characteristic of the Swiss political process has been the widespread use of referendums and initiatives. Another feature is that dual membership in the cantonal and federal legislatures is permitted so that about one-fifth of federal legislators are also members of cantonal legislatures. A long Swiss tradition of consensual politics has in the past decade come under increasing strain with the growth of Christoph Blocher’s Swiss People’s Party and its controversial policies. This has been illustrated by its virile anti-immigration campaign in the 2007 federal election.

In April 1999, three decades of sporadic efforts to achieve a comprehensive revision of the Swiss Constitution culminated in the approval in a referendum of the total revision of the constitution. In the referendum, the new constitution was supported by 59.2 percent of the voters, including majorities in 12 of the 20 cantons and in 2 of the 6 half cantons. Although a total revision of the constitution, the draft avoided substantial and controversial reforms. It took the form largely of modernizing the language rather than the content of the federal constitution. Even then, it resulted in a closer than expected vote, opposition coming largely from the small rural cantons of Switzerland fearing greater centralization, while the main cities all supported the new constitution. The new constitution, while largely a modernization of the previous one, nevertheless refined the fundamental rights of citizens and the relations between federal, cantonal and municipal authorities. The largest long-term issue currently on the agenda of the Swiss federation is its relationship with the European Union, which to date the Swiss voters have rejected joining. However, marginal steps have been made in European integration, with Swiss citizens voting in favour of joining the Schengen Treaty in June 2005.

In 2003, Parliament approved a reform of the fiscal equalization arrangements which disentangles respective responsibilities, invigorates cooperation among the

cantons with an institutionalized system of burden sharing, encourages cooperation in areas of joint responsibility, and creates a new system of direct fiscal equalization.

Although small in terms of population and area, its multilingual and multicultural character makes Switzerland a federation of particular interest.

CANADA (1867)

Second only to Russia in territorial size, Canada became a federation in 1867. While Canadians use the term "Confederation," this refers to the process of bringing provinces together into a federation in 1867 rather than the adoption of a confederal structure. The federation grew out of efforts to overcome the political difficulties and deadlocks within the United Province of Canada created by the Act of Union of 1840. This was to be achieved by splitting it into the two new provinces of Ontario with an English-speaking majority and Quebec with a French-speaking majority, and by the addition of the maritime provinces of Nova Scotia and New Brunswick both for trade and defence purposes. Originally a union of four provinces, the federation has grown until it is now composed of ten provinces and three northern territories, following the division in 1999 of the Northwest Territories. It has a population of over 30 million. A distinctive feature of the Canadian federation is the continuing existence and vitality of a French Canadian majority concentrated within one province. Approximately 80 percent of the French Canadian population live in Quebec, where they constitute over 80 percent of the population. Throughout its history, the Canadian federation has been marked both by the French-English duality and by a strong regionalism expressed through the provinces. More recently, there has been increasing attention given to recognizing the place of the Aboriginal peoples within the federation.

The original 1867 constitution was marked by strong central powers, including some powers enabling the federal government to override the provinces in certain

The most innovative feature of the federation was that in contrast to the United States and Swiss federations, which emphasized the separation of the executive and legislature in their federal institutions, Canada was the first federation to incorporate a system of parliamentary responsible government in which the executive and the legislature are fused. This combination of federal and parliamentary systems was subsequently adopted in Australia and in many of the other federations considered in this study. The majoritarian character of the parliamentary federal institutions has had a significant impact on the dynamics of federal politics in Canada.

The March 2007 federal budget introduced sweeping changes to the system of equalization. This budget represented a move towards equal per capita cash payments for Canada's vertical fiscal transfers and the restoration of a formula-based equalization program for horizontal fiscal transfers.

In comparative terms the Canadian federation is of particular interest because of the way in which it has attempted to deal with the English-French duality of its society and because it was a pioneer in combining federal and parliamentary institutions.

As a parliamentary federation, Australia has developed the institutions and processes of “executive federalism” more extensively than any other federation, with

The Austrian federation is of interest because it shows how far centralization and federal-state interdependence can be taken in the spectrum of federal arrangements. It is worthy of note that although recent efforts at reforming the federal system in 1989–94 and 2003–05 did not succeed, in 2007 another effort was launched to enhance the constitutional autonomy of the *Länder* and reduce the supervising powers of the federal government over the states in the implementation of federal laws. A committee of experts was appointed to make recommendations on these objectives.

THE FEDERAL REPUBLIC OF GERMANY (1949)

The German federation owes a great deal to the earlier experience of the German Empire (1871–1918), the Weimar Republic (1919–34) and the failure of the totalitarian centralization of the Third Reich (1934–45). West Germany in 1949 became the Federal Republic of Germany comprising 11 *Länder*. The reunification of Germany in 1990 provided for the accession of 5 new *Länder*. The federation now consists of 16 *Länder* with a total population of over 82 million.

The population of the German federation is linguistically homogenous, although a considerable gulf remains between the political cultures of the former West Germany and the former East Germany.

A notable characteristic of the German federation is the interlocked relationship of the federal and the state governments. The federal government has a very broad range of exclusive, concurrent and framework legislative powers, but the *Länder* have a mandatory constitutional responsibility for applying and administering a large portion of these laws. These arrangements are similar to those in Austria and Switzerland, although the Swiss cantons have legislative jurisdiction over a larger range of subject matters. A significant difference in the German federation, however, is that the *Länder* governments in Germany are more directly involved in the federal government decision-making process through the representation of their first ministers and designated cabinet ministers in the federal second chamber, the *Bundesrat*, which possesses a veto on all federal legislation affecting the *Länder*. (About 60 percent of federal legislation fell into this category until reforms in 2006 reduced this proportion). Thus the *Bundesrat* is a key institution in the interlocking federal-state relationship within the German federation. Within that framework, the *Länder* are marked by symmetry in their relative powers, although special financial arrangements have been particularly necessary for the five new eastern *Länder*.

Both the Federal and Land institutions are parliamentary in form. The Federal Chancellor and Cabinet are responsible to the *Bundestag*, but there is a formal head of state, the President of the Federal Republic, elected by an electoral college consisting of the *Bundestag* and an equal number of members elected by the legislatures of the *Länder*. The federal parliament is bicameral, with the second chamber composed of *ex officio* instructed delegates of the Land governments.

The German federation is of interest because of the manner in which the relationships between the federal and state governments interlock and because of the way in which the unique Bundesrat serves as a key institution in these interdependent processes. It is worth noting that recently the tightness of the interlocking arrangements has come under some criticism and review.

The first stage of reforms to the federal system came into force in September 2006 with the support of a “grand coalition” of political parties. The overarching goal of these reforms was to enhance the ability of both the Federation and the Länder to take autonomous decisions and to clarify the division of political powers.³ It is estimated that these reforms will reduce the proportion of federal legislation requiring the assent of a majority in the Bundesrat from 60 to about 40 percent. The second stage of federalism reforms is planned to address the prevention and management of budget crises, the necessity of realigning revenue-raising capabilities with expenditure responsibilities, and consolidation of special political services and their impact on the financial relationship between the Federation and the Länder.

THE REPUBLIC OF INDIA (1950)

India became independent in 1947 and its parliament, serving also as a constituent assembly, drafted the new constitution that came into effect on 26 January 1950, establishing the federal Union of India. Its federal features followed closely the *Constitution Act, 1867*, under which the British government had attempted a federal solution to resolve the problems facing India at the time, an act which itself had been modelled on the *Constitution Act, 1867*, which established the Canadian federation. Given the vast, populous and variegated nature of India and concerns with the threat of insecurity and disintegration, the Constituent Assembly concluded that the soundest framework was “a federation with a strong Centre.” Today, the federation comprises 28 states and 7 union territories (one of the territories being the “National Capital Territory of Delhi” having a special status) with a total population of over one billion people.

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a religio-linguistic basis. Since then there have been some further revisions to the number of states.

While the founders sought to create a new kind of federation with sufficient central powers to ensure cohesion and hence with some unitary elements, the ethno-linguistic basis of many of the states and the powerful forces of regionalism within the Indian sub-continent have meant in practice a federation that is only partially centralized and that has powerful states. The constitution provides for three exhaustive lists of legislative powers — exclusive federal powers, exclusive provincial powers and concurrent powers (with federal paramountcy) — and for residual powers assigned to the Union government. There is a degree of asymmetry with respect to the state of Jammu and Kashmir, which has been given powers different from those of other states. Asymmetrical relationships have also applied to some of the smaller new states established in tribal areas. Formally, the Union government possesses very substantial powers, especially powers of intervention and pre-emption in emergencies, but it functions within an ethno-political and multiparty context that requires that those powers be used for the most part to preserve federalism in form and spirit. Increasingly, power-sharing as a way of reconciling conflict and the operation of coalition governments has come to predominate, despite some imperfections in the process.

The institutions of the Union and state governments are parliamentary in form with responsible cabinet governments at both levels. The head of state is a president, elected by an electoral college consisting of the elected members of both houses of parliament and the state legislatures. The formal heads of the states, the governors, are appointed by the Union government but, the chief ministers and their cabinets are responsible to their state legislatures.

Six developments in recent decades have been especially significant. One is that with the decline of the Congress party, which had dominated in the early years after independence, there has grown a multitude of regional parties, making necessary multiparty coalitions sensitive to regional interests within the federal government. The second was the passage of the Seventy-Third and Seventy-Fourth Amendments to the constitution in 1991 establishing local governments, the panchayats and municipalities, as constitutionally recognized basic “institutions of self-government.” Third has been a decline in the frequency with which the Union government has exercised “emergency rule” in the states, a decline influenced by a ruling of the Supreme Court defining the limits of this power. Fourth has been the impact of two major influential commissions, the Sarkaria (1988) and the Venkatchelliah (2002) commissions, on the working of the constitution. Fifth has been the bringing into operation of the Inter-State Council, provided for in the original constitution to facilitate intergovernmental cooperation but implemented only following the recommendations of the Sakaria commission. Sixth has been the reinforcement of state finances progressively by the recent quinquennial Finance Commissions.

India as a federation is of particular interest because of the way in which it has used federal institutions and processes to hold together a linguistically diverse society for over half a century. In 1947 many doubted that the federation could endure for more than a decade in this vast, poor and deeply divided country, but India has defied the sceptics and sixty years later it is marked by a vibrant federation and a growing economy and role in the world.

2.2 EMERGENT FEDERATIONS

THE UNITED MEXICAN STATES (1917)

Historical pressures towards excessive centralization have heavily influenced the practice of federalism in Mexico. Although this country has technically operated as a federation since 1917, significant discretionary powers were vested in the central government, in practice allowing sub-national units little autonomy. This centralization arose from the need to overcome the strong regional forces.

A major source of centralization was the dominance of the Partido Revolucionario Institucional (PRI) party, which from its creation in 1929 to 2000 exercised virtually hegemonic control at all levels of government. It has only been since the loosening of PRI dominance in the past decade that Mexico has begun to function federally.

The 1917 constitution established a “federal, democratic and representative republic, composed of free and sovereign states in regard to their internal regime.” It consists of 31 states and one Federal District (Mexico City) with a current population of over 100 million.

The constitution granted the federal government, and especially the President, substantial discretionary powers. The distribution of powers heavily favours the federal government. Although the residual power technically resides in the states, until reforms in the 1990s the federal government’s exclusive jurisdiction even included the major areas of education, health and labour. In these areas the state governments now have responsibility, relying on conditional grants from the federal government to deliver these “social rights” guaranteed by the constitution. In terms of fiscal powers, the federal government collects all the major sources of

politics and the renewal of Mexico as a federation has led a significant number of politicians, academics and journalists to advocate the need for a new constitution that reflects these changes.

THE FEDERATION OF MALAYSIA (1963)

The Malaysian federation now comprises 13 states with a population of over 24 million. It was established in 1963 when Singapore and the Borneo states of Sabah and Sarawak joined the already existing Federation of Malaya that had achieved independence in 1957. Singapore was expelled from the Federation of Malaysia just two years later, and since that time the federation has consisted of the 11 states of the Malay peninsula and the two more autonomous states on the island of Borneo.

A significant political feature of Malaysia is the diversity of its population in terms of race, ethnicity, language, religion and social customs. The population is approximately 65 percent Malay and other indigenous peoples, 26 percent Chinese and 7 percent Indian. Malays are a majority in most of the peninsular states, but there are strong concentrations of Chinese in the west coast states, and other indigenous peoples, composed of a variety of linguistic groups, form the vast majority in the two Borneo states. The federal system has been an important factor therefore in maintaining the delicate communal balance within the federation.

As in India, the Malaysian federation was initially characterized by a high degree of centralization, which in the latter case was derived from the preceding Malayan constitution, itself modelled on the

Malaysia has incorporated the institutions of cabinets responsible to the legislature within both levels of government, but it has a unique form of rotating monarchy to provide the formal head of state of the federation. The

is selected for a five-year term from among the hereditary rulers of nine of the Malay states.

The Malaysian Federation is of interest because it is a complex delicate balance of diverse communities within a relatively centralized parliamentary federation that has experienced rapid economic development, and because it incorporates asymmetry in the powers of constituent states in order to safeguard the particular interests of the Borneo states.

THE ISLAMIC REPUBLIC OF PAKISTAN (1973)

Following the partition of India in 1947, Pakistan, with a total population then of about 90 million, was a country of two large fragments severed from the structure of old India. Each of these parts was very different in every way except one – religion – and separated by a thousand miles of hostile territory. The result was a federation of two basic units, West Pakistan, largely Urdu-speaking, Middle-Eastern in character, and the wealthier unit, and East Pakistan, Bengali-speaking, South-East Asian in outlook, and the more populous with 55 percent of the population. The 1956 federal constitution established a federation of two provinces, each with parity in representation in a unicameral federal legislature. However, bipolar tensions between the two units resulted in the secession of East Pakistan (later Bangladesh) in 1971. The former province of West Pakistan then became a federation of four provinces in 1973. It now has a population of about 145 million. Of the four provinces, Punjab alone has 55.6 percent of the total federal population and, therefore, is in a politically dominant position.

The 1973 constitution, despite repeated suspension and numerous arbitrary amendments by the military, most notably in 1985 and 2002, remains in force. While the constitution is federal in form, its operation is that of a centralized devolved unitary state. The federal government wields extensive powers through 67 enumerated exclusive federal powers and 47 concurrent powers. Although the provinces are assigned the residual authority outside these enumerated areas, the federal government has the ability to intervene in matters of provincial concern. The federal government has the power to appoint provincial governors, approve the dissolution of a provincial assembly, confer on a province functions that fall under the executive authority of the central government, and give directions to the provinces. When coupled with the provinces' relative dependence on the federal government for fiscal transfers, the autonomy of the provinces is severely limited.

The constitution establishes a bicameral federal legislature. The 342 seats in the National Assembly are allocated among the 4 provinces, 6 Federally Administered Tribal Areas and the Federal Capital on the basis of population elected from single-member constituencies by plurality. The Senate is intended to represent

the constituent units, each provincial assembly electing 22 members (14 general members, 4 women and 4 technocrats). The Federal Capital elects 4 members (two general members, one woman and one technocrat) and the Federally Administered Tribal Areas elect 8 senators through direct ballot.

In 1999 President General Pervez Musharraf took power in a military coup and his presidency was confirmed in a referendum in 2002. President Musharraf chairs the National Security Council, which is where most of the decision-making authority is currently vested. This council is composed of military chiefs, the prime minister and cabinet members. In 2002 and since, a series of legal and constitutional changes have been manipulated to entrench military rule and restrict the operation of some political parties.

Thus, while nominally a federation, Pakistan has in practice become a predominantly centralized military regime. By the end of 2007, after eight years of the latest period of a Punjabi-dominated military regime, not only had the federal parliament been reduced to a rubber-stamp and the smaller provinces deprived of a significant voice, but the stability of the country had come into question.

THE KINGDOM OF SPAIN (1978)

Spain has been going through a dual process of federalization relating to internal devolution and e(v)1iui8 TwK(FTm0.003 (g)-13.1(btion rwithn hhe cEur)5opern hUnon.) r pao25.1(vw6.9(rerfulr)-1.2()16.9(wgonal cnternstisf)-962(oter d mb re)1289(vin)199(v)12.9

leaving the residual power to the central government. Thus, Spain is a federation in all but name, with the 17 Autonomous Communities possessing constitutional authority for a considerable degree of self-rule. Spain is now one of the most decentralized countries in Europe, but the political regionalization has been derived less from constitutional mandate than from party strategies, competition and bargaining within a loose institutional framework.⁵

The central government is a parliamentary monarchy with the Council of Ministers responsible to the lower house of the Cortés, Spain's bicameral legislature. The Senate, the second chamber of the Cortés, consists mainly of directly elected members, but 51 of the 259 senators are appointed by the autonomous parliaments.

The asymmetry among the Autonomous Communities extends to the inter-governmental fiscal arrangements where there are two regimes in place, a "common" one for most Autonomous Communities and a special " " one derived from long-standing traditional rights for Navarre and the Basque Country. Under the latter, Navarre and the Basque Country levy all national taxes, but in return pay a subsidy for the services provided by the central government.

For a period, the central government rejected virtually all calls for further increased autonomy, basing its position on a conservative interpretation of the constitution, which holds that it is untouchable because it reflects and upholds civic consensus. The Spanish Socialist Workers' Party, elected in 2004, however, has been more amenable to further decentralization. In June 2006 a referendum in Catalonia, already one of the most advanced in terms of self-government, was passed to expand its autonomy further, and leaders in a number of other autonomous communities have been pressing for an increased devolution of powers. Meanwhile, the Basque Country has continued to be the source of a secessionist movement.

As a unitary state engaged in devolutionary federalization within its own borders by a process characterized by considerable asymmetry, Spain is an interesting example of an effort to accommodate variations in the strengths of regional pressures for autonomy.

THE FEDERATIVE REPUBLIC OF BRAZIL (1988)

The Brazilian federation as it now exists was established in 1988, but before that Brazil had periodically operated as a federation during the years following the military coup that ended monarchical rule in 1889. With a substantial population of about 180 million, the constitution recognizes 26 states and one federal district,

⁵ Josep M. Colomer, "The Spanish 'State of Autonomies': Non-Institutional Federalism," in P. Heywood, ed., *Journal of Democracy*, 21:4 (1998), special issue on "Politics and Party Democracy in Spain: No Longer Different?" pp. 40–52.

as well as some 5,500 municipalities. Brazil is one of few federal countries that have explicit provisions in the constitution regarding municipalities.

The operation of this federation has been strongly influenced by the pressure of state interests in the national government. This predominance of the sub-national governments has been principally due to political rather than constitutional provisions; although the 1988 constitution allocates the residual power to the state governments, it includes an exhaustive list of exclusive federal powers that limit the scope of this residual clause. On an informal level, however, state governors play an important role in the federal legislative process, because of the nature of the presidential system and the necessity of securing agreement of three-fifths of all state legislatures for any significant constitutional reforms.

Federal-state relations focus particularly on financial relations. The 1988 constitution strengthened the already significant tax base of the states and municipalities, and subsequent amendments to the tax system in 2003 have reinforced the trend to fiscal decentralization. A notable feature has been the effort to terminate the “fiscal war” between the states.

The regionally concentrated social and economic disparities in this large country have been a major source of political conflict. The affluent southern states have pushed for greater fiscal decentralization. The less affluent northern and central states have benefited from peculiarities that overrepresent these regions in the federal institutions. A constitutional provision guarantees each state at least eight and no more than 70, seats in the Chamber of Deputies. The biggest loser in this situation is Sao Paulo, the most populous and most affluent state, which would be entitled to 111 seats if there were no upper limit. The configuration of the federal Senate accentuates this by giving the northern, northeastern and centre-western states (which have 43 percent of the population) 74 percent of the membership.

Recent reforms by President Lula da Silva have included constitutional amendments to address the unsustainable social security system and the reassignment of some taxes to the state governments. Also, attempts have been made to reform intergovernmental relations so that they operate in a more cooperative manner. However, reforms have been made difficult by the problems of the separation of presidential and legislative branches and the lack of legislative support for presidential initiatives.

Brazil is a useful example of the pressures created by regional disparities and fiscal decentralization.

THE KINGDOM OF BELGIUM (1993)

Belgium was founded in 1830 as a unitary constitutional monarchy, but four stages of devolution in 1970, 1980, 1988 and 1993 culminated in a formal federation with a population of just over 10 million people. It is composed of six constituent units. Three are regions territorially defined (the Flemish, Walloon and Brussels Regions) with councils responsible largely for regional economic matters.

over whether to devolve social security to the regions led to a stalemate preventing the formation of a coalition federal government for a protracted period of crisis.

Although the emergent Belgian federation is too recent to allow firm conclusions to be drawn about its operation, the devolutionary federalization process is of particular interest because of its intense linguistically bipolar character. It also serves as an example of a country responding to simultaneous pressures for federalization in two directions: through internal devolution, which has converted it from a unitary state into a federation, and through external integration arising from its membership in the European Union.

THE RUSSIAN FEDERATION (1993)

The Russian Federation, with an area of 17, 075, 000 km², is territorially the world's largest federation, spanning two continents and eleven time zones. Its population is approximately 145 million.

The Russian Federation evolved out of the Russian Soviet Federated Socialist Republic (RSFSR), the largest member state in the Soviet Union. After 75 years of communist rule, with the disintegration of the Union of Soviet Socialist Republics in 1991, the Russian Federation became independent with Boris Yeltsin as its first president.

During Boris Yeltsin's presidency (1991–99), in an attempt to construct a stable and integrated federal state, Yeltsin offered decentralizing concessions to the regions. The volume and diversity of Russia's sub-national units was a testament to this process, with as many as 89 constituent units of various types existing in 1991. Although the 89 sub-national units were considered equal members of the federation, under the constitution, only the 21 republics were entitled to their own constitutions and law; other types of constituent units only had access to ordinary statutes and laws.

the hopes embodied in the reforms of 1994, the Argentine federation still seeks long-term economic and political stability.

Ethiopia's experiment with "ethnic federalism" offers some insights for other federations with significant ethnic, religious and linguistic diversity. The Ethiopian experience, however, is not without challenges. From on

constitution in section 41(3) includes a unique provision requiring all spheres of government to exhaust every reasonable effort to resolve any dispute through intergovernmental negotiation before approaching the courts to resolve the matter.

A major factor affecting the operation of South Africa since 1996 has been the dominance of the African National Congress (ANC) within virtually all spheres of government. This has meant that despite the many federal features of the constitution, the predominance of the ANC has led in practice to a high degree of centralization in policy making.

of state governors. These 1989 reforms served to counter to some degree the previously high degree of centralization.

This marginal process was undone by the new constitution introduced by President Hugo Chavez in 1999. This document further centralized Venezuela's already centralized federal system by drastically limiting the role, responsibilities and powers of state governments. The formerly bicameral legislature was reduced to the unicameral National Assembly, its 165 members being elected by proportional representation. The abolition of an upper legislative house greatly diminished state representation in the institutions of central government. Nominal recognition of state interests is accommodated through constitutional provisions that require the federal government to consult with state bodies before passing any legislation that concerns the states. However, this has not been the case in practice.

The responsibilities of state governments were greatly diminished by the division of constitutional powers in the 1999 constitution, which enumerated a significant number of solely federal powers and a few matters of concurrent jurisdiction. While the residual power had previously been with state governments, the new constitution introduced a parallel residual power at the federal level.

This centralization is further entrenched by a system of fiscal federalism that devotes no sources of revenue to the state governments. The federal government retains all significant sources of taxation revenue, with municipal governments given responsibility for local taxes. In contrast, the state governments must rely entirely on transfers from the federal government to finance their responsibilities.

Non-democratic processes have reinforced the centralizing tendencies of the current Chavez government. The blend of centralization, presidentialism and militarism has given the Venezuelan federation a distinctly authoritarian inclination. The highly centralized nature of federalism in Venezuela and the tenuous grasp of democratic institutions remain the twin challenges to this country in the present day.

2.3 MICRO-FEDERATIONS⁷

THE FEDERATED STATES OF MICRONESIA (1978)

The Federated States of Micronesia (FSM), created in 1978, comprises four island groups (Yap, Pohnpei, Chuuk and Kosrae) and 108,000 people. The constitution recognizes three levels of government: national, state and local. The

⁷ See especially Dag Anckar, "Lilliput Federalism: Profiles and Varieties," , 13:3 (2003): 107–124.

Micronesian experience with federalism has been influenced greatly by the United States, which was assigned administration of all island groups in the Micronesian archipelago in 1947 under a United Nations Trusteeship Agreement. The FSM became formally independent in 1991, but the United States retains a significant degree of involvement. Although the division of powers enumerates many areas of responsibility of the federal government, in practice the United States has delivered these services (including postal services, currency and defence) as part of the free association agreement last negotiated in 2003. The system of fiscal federalism takes into account each state's right to 50 percent of taxes collected within its territory, but also to a certain percentage of development aid.

The Congress, the federation's unicameral legislature, has 14 seats. Each state elects one member "at large" to represent the territory, while the remaining 10 are elected on the basis of representation by population. The President and Vice-President are elected by Congress and serve four-year terms with the possibility of one re-election. An ongoing challenge for the FSM is the lack of attachment to the institutions and offices of central government since some citizens regard the federal government as another colonial administration. Additionally, the islands making up the FSM are geographically dispersed with only a small land mass.

Given the dispersal of the islands within Micronesia and the islands' wish for autonomy, and the wish of the United States to deal with the Trust Territory as a single entity, a federal solution emerged as the only solution for holding together this entity.

THE REPUBLIC OF BELAU (1981)

Belau, like Micronesia, was a United Nations Trust Territory administered by the United States, but its electorate rejected inclusion in the projected Federated States of Micronesia in 1978. Belau opted to maintain the principle of federalism, however, by establishing a federation of 16 states. Given the diminutive size of the federation with a total population of 17,000, these states operate at the level of local governments elsewhere, some of them having in fact fewer than 200 people.

The constitution is modelled on the U.S. constitution. Of the four micro-federations, Belau is the only one to have a bicameral rather than unicameral federal legislature. The constitution prescribes the powers of the local states but leaves the residual authority with the federal government, which may delegate powers to the states. The powers delegated to the states are, however, few. Given the small size and local nature of the states, it is not surprising that their powers are relatively limited.

The adoption of a federal structure when there was such a small population has provided a means of accommodating the historical traditions of the previous 16 loosely tied village clusters. Belau became independent in 1994.

THE FEDERATION OF ST. KITTS AND NEVIS (1985)

The islands of St. Kitts and Nevis are located in the Lesser Antilles chain of islands in the eastern Caribbean, separated by just over 3 kilometres. With a total population of 46,000, 76 percent reside in St. Kitts and 24 percent in Nevis. Together with Anguilla these islands formed a single territory within the short-lived Federation of the West Indies (1958–62). The three islands became a state in voluntary association with Britain in 1967, but Anguilla, resentful of the domination of St. Kitts, left the arrangement in the early 1970s. In 1983, St. Kitts and Nevis obtained independence as a federation.

The new constitution adopted the Westminster form of government. As such, a Governor General acts as a representative of the monarch as the head of state, while the Prime Minister is the head of a parliamentary government vested in the unicameral National Assembly. The National Assembly currently has 11 seats elected by a first-past-the-post electoral system, 8 of which are allocated to St. Kitts and the remaining 3 to Nevis. In addition, the Governor General appoints three senators on advice of the Prime Minister and the Leader of the Opposition; these senators also sit in the National Assembly, giving this body 14 seats in total.

The St. Kitts and Nevis constitution differs from most federations in two respects. First, the federation is unbalanced in that Nevis has its own government and assembly as a constituent unit while St. Kitts does not. Second, the constitution provides explicitly for the process of Nevis's secession requiring a two-thirds majority in a referendum. The Nevis Island Assembly is allocated a considerable measure of jurisdiction, but this power is limited by the constitutional requirement that it cannot take action in many matters without the concurrence of the federal prime minister. This imbalance has created a political dynamic where the drive for Nevis's secession was virtually inevitable, and indeed in 1998 a referendum fell just short of the required two-thirds, with 62 percent.

Political life within the federation continues to be contentious and unstable, illustrating the problems inherent in a binary and asymmetric federal structure.

THE UNION OF THE COMOROS (2001)

The largest of the micro-federations with a total population of 630,000, Comoros has had three federal constitutions since independence in 1975. Successive federal constitutions in 1978, 1992 and 2001 have attempted to unite the islands of Grande Comore, Anjouan and Mohéli (a fourth island, Mayotte, opted to remain a French dependency). Despite the aim of these constitutions to achieve unity with a measure of autonomy for each island, the federation has been marked by

assemblies elect half of the 30 members (5 per island), the other 15 seats (5 per island) being filled by popular vote. There is a small list of enumerated federal powers (external affairs, defence, currency, nationality and religion), with the islands being granted increased autonomy over their own affairs. The Union President and the Federal Assembly, however, have continued to retain considerable control in practice over defence, posts and telecommunications, transit, civil, penal and industrial law, and external trade.

There is a significant asymmetry in the island governments. Grande Comore, which constitutes 51 percent of the federal population, has its own president (as the executive heads of each island are known), but unlike the other islands does not have its own sub-national assembly. The result has been clashes between the President of the Union and the President of Grande Comore over which ministries each controls, particularly relating to the revenue-generating departments such as finance and customs.

To date, the operation of the Comoros federation has been turbulent as a result of concerns about the adequacy of devolution.

2.4 CONFEDERAL-FEDERAL HYBRIDS

UNITED ARAB EMIRATES (1971)

The United Arab Emirates, situated on the eastern tip of the Arabian Peninsula, has a population of just over three million people and comprises seven emirates. The 1971 provisional constitution, which was made permanent in 1996, proclaims the United Arab Emirates to be a “federal state,” but in form it is largely confederal in character.

The Supreme Council of Rulers, consisting of the seven non-elected traditional emirate rulers, is the highest federal authority and has both the legislative and executive authority. Since the emirs derive their status from their position within the emirates, this gives the Supreme Council a confederal character. There is a Council of Ministers with a prime minister appointed by the President of the Supreme Council to serve executive functions, but the Supreme Council formu-

strengthened the processes of majority rule within the Council of Ministers and the co-decision authority of the European Parliament. By 2007 the process of widening the EU had embraced 27 member countries encompassing a population of over 490 million.

In institutional terms there are four key bodies within the first pillar of the EU, two of which are legislative bodies. The Council of Ministers is the main deci-



respects is similar to that of an executive body, of the directly elected European

The Bosniac-Croat Federation and the Republika Srpska share a central bicameral legislature (the House of Representatives and the House of Peoples) and a three-member presidency composed of Bosnian, Croat and Serb representatives. In both legislative houses seats are allocated with one-third to each of the three ethnic groups. Among the procedures for resolving constitutional conflicts are a Constitutional Court and a special parliamentary procedure enabling each ethnic group to block legislation vital to its interests.

Bosnia and Herzegovina is a relatively decentralized federation, with the residual powers assigned to the constituent units. Jurisdiction over taxation is not explicitly mentioned in the division of powers, and thus this important power falls to the entities. The Bosniac-Croat Federation provides two-thirds and the Republika Srpska one-third of the revenues required by the federal budget. The decentralized division of powers also allows the constituent units to act in areas that may appear to overlap the central government's jurisdiction over foreign policy and trade, such as establishing relationships with neighbouring states and entering agreements with foreign states and international organizations (with the consent of the federal Parliamentary Assembly). This reflects the imperative of accommodating diverse and regionally concentrated populations. However, the Dayton Peace Agreement allows for some powers that were temporarily entrusted to the entities to be eventually transferred back to the central government, and it empowers the central government to create additional institutions to preserve the sovereignty, territorial integrity, political independence and international personality of the country.

The complex institutions created to accommodate diversity have at times threatened Bosnia and Herzegovina with paralysis. As such, recent reform efforts have attempted to reinforce the institutions of the central government. Whether the international community's continued interventionist role exercised by the United Nations up to 2002 and by the European Union and NATO after that can succeed in establishing a prosperous and stable Bosnia and Herzegovina remains to be seen.

REPUBLIC OF SUDAN (2005)

Military regimes favouring Islamic-oriented governments have dominated national politics in Sudan since independence from the United Kingdom in 1956. Sudan was embroiled in two prolonged civil wars during most of the remainder of the twentieth century. These conflicts were rooted in northern economic, political and social domination of the southern Sudanese, largely non-Muslim, non-Arab. The first civil war ended in 1972 but broke out again in 1983. The second war and famine-related effects resulted in more than 4 million people displaced and more than 2 million deaths over a period of two decades. Peace talks gained momentum in 2002–04 with the signing of several accords. The final North/South Comprehensive Peace Agreement, signed in 2005, granted the southern rebels autonomy for

six years, after which a referendum on whether the South should be independent is scheduled to be held. The Interim National Constitution of 2005 established a federation of 25 states, with a bicameral federal legislature and a president who is both head of state and head of government from the north and a vice-president from the south. A distribution of powers listing federal, state and concurrent powers was set out.

Meanwhile, a separate conflict, which broke out in the western region of Darfur in 2003, has displaced nearly 2 million people and caused an estimated 200,000 to 400,000 deaths. As of 2007, peacekeeping troops were struggling to stabilize the situation, which has become increasingly regional in scope and has brought instability to eastern Chad as well as Sudanese incursions into the Central African Republic. Sudan also has faced large refugee influxes from neighbouring countries, primarily Ethiopia and Chad. Armed conflict, poor transport infrastructure, and lack of government support have chronically obstructed the provision of humanitarian assistance to affected populations.

While there has been some progress on the autonomy promised to the south, there have been accusations that Khartoum has been dragging its heels on the

where they choose to join together and including a Kurdish region from the beginning. The distribution of powers set out federal and concurrent powers but contained a number of ambiguities, especially relating to control of natural resources such as oil and gas ownership. In the area of concurrent jurisdiction paramountcy was assigned to regional law over federal law. An election under the constitution was held in December 2005, but many of the ambiguities remained unresolved, and despite the continued presence of coalition forces a virtual state of civil war has continued to persist. In the meantime a constitutional review committee has made proposals which, if accepted, would clarify and strengthen the role of the central government and establish a number of key central institutions. These proposals have not yet been approved, however.

THE DEMOCRATIC REPUBLIC OF CONGO (2006)

After a prolonged period of ethnic strife and civil war beginning in 1994, the Pretoria Accord in late 2002 was signed by the warring parties to end the fighting and establish a government of national unity for this country of 68 million people with some 250 ethnic groups. The transitional government held a successful constitutional referendum in December 2005 and the new constitution came into effect

Chapter 3

The Formation of Federations

3.1 THE VARIETY OF FACTORS AND PROCESSES

What factors and processes have led to the adoption or creation of federations? Some analysts have tried to identify a single common factor. For instance, W.H Riker attributed a significant external or internal threat as the factor common to the creation of all federations.¹ But while this factor has been important in a number of cases, notably Switzerland, Canada and Mexico, there are a number of other instances, such as Australia, where it was clearly not the major factor. Indeed, in most federations it has been a combination of factors that was responsible for the choice by political leaders of federation as a form of government, and the particular combination of factors and the process of formation has varied from federation to federation.

3.2 THE BALANCE OF PRESSURES

While the particular factors encouraging unity and regional autonomy have varied in the formation of federations, what is common to all the successful instances is the existence of a relative balance in the pressures for political integration and for regional autonomy. It should be noted that it is possible for a strong integrative consciousness in a wider community to coexist with an equally strong regional consciousness, as has been the case in India for instance, or for both forces to be

¹ W.H. Riker, "Federalism," in Fred I. Greenstein and Nelson W. Polsby. eds., *Handbook of Political Science: Government Institutions and Processes*, vol.5 (Reading, MA: Addison Wesley, 1975).

relatively weak, as was the case in the founding of the Australian federation; but what both these cases had in common was the relative balance in the forces for unity and for regional autonomy.

Where one of these pressures is strong and the other weak, the result is likely to be either unitary political integration, on the one hand, or the independence of the regional units or at least a confederal solution, on the other. Where both motivations exist in something approaching an equal balance, federation as a solution is likely to appeal by enabling both an effective federal government and genuine regional autonomy to coexist. This latter situation arises because people may be members of and feel loyalty to several groups and communities at the same time (e.g., family, work group, professional association, church, ethnic or linguistic community, political movement, village or city, regional community, nation, supranational association or global community) rather than being focused on only one of them to the exclusion of the others. Because people's attachments to these different groups or communities vary in intensity and over time, these loyalties are not necessarily mutually exclusive; hence, the possibility of the coexistence of both uniting and regionalizing pressures at the same time.

It needs to be emphasized that while this relative balance of motivations is common to federations, the particular factors contributing to the balance has in each case been the unique result of differing historical and social forces and the choices made by political leaders. As a result, each federation has in a sense been a unique experiment, combining in its own distinctive way a particular regional structure, distribution of powers, arrangements for intergovernmental cooperation, organization of central government, and protection for the supremacy of the constitution — all to fit its own particular circumstances.

It should be noted that the balance of factors encouraging unity and regional autonomy is important not only in leading to the creation of federations but also in their subsequent operation. Over time, the importance of particular factors may change, shifting the balance of pressures. For instance, typically in colonial federations, movements for independence have provided a strong unifying force, but once independence has been achieved the strength of that unifying motivation has dissipated. In a number of cases this led to the subsequent difficulties or even disintegration of newly independent federations in the 1960s and 1970s. This indicates that in assessing the effectiveness of a federal political system, it is necessary to consider not only whether initially the particular form of its institutions appropriately exposed and reconciled the conflicting demands of the society on which it was based, but whether subsequently it continues to reflect changes and shifts in the factors affecting aspirations for both unity and regional autonomy. The splitting of overcentralized Pakistan in 1970 and the disintegration of the ineffectual Federation of the West Indies in 1962 illustrate cases where the particular form of the federation failed to reflect accurately the balance in the aspirations for united action and for regional autonomy.

3.4 CATALYSTS OF POLITICAL INTEGRATION

One set of factors found in the formation of federations has been those contributing to political integration. While the specific factors contributing to the motivation for distinct regional groups to come together or when devolution occurs to maintain common institutions of shared-rule has varied from federation to federation, the existence of some desire for shared-rule has been common to all of them.

The pressure for united action in at least some areas has depended on the following factors. The first is the influence of the background conditions, including (a) the degree of spillover from pre-existing national, economic and social links or integration among the constituent units, (b) the geographical proximity of the constituent units, (c) the relative size and bargaining power of the constituent units, and (d) the affinities between their elites. Second is the strength of the integrative motives present, including (a) the desire for security from external or internal threats, (b) the desire for economic benefits from the larger market or complementary products, (c) the desire for greater international influence, and (d) the desire for a common identity. Third is the character of the integration process itself in terms of (a) the character of the bargaining process, (b) the role of political leaders, (c) the role of external governments or, in the case of colonial federations, the imperial government, and (d) the timing and sequence of steps in the process of negotiation and unification.

3.5 CATALYSTS OF CONSTITUENT UNIT AUTONOMY

The strongest catalyst for political union into larger federations since the middle of the twentieth century has been increasing worldwide interdependence in an era when advances in technology and communications have made it difficult for even nation-states to be self-sufficient economically or to defend their own security. Paradoxically, it has been the awareness of this trend that has also frequently encouraged a stronger regional consciousness within political systems. The growth of larger and remote political structures, coupled with the increasing pervasiveness of vast governmental structures and bureaucracies impinging upon the life of citizens, has often provoked a counter-reaction.

The heightened resistance to political integration and the vigorous demand for self-expression, dignity and self-rule have been particularly strong where regional groups have been marked by differences of language, race, religion, social structure, and cultural tradition. In such cases as Switzerland, Canada, India, Pakistan, Malaysia, Nigeria, Ethiopia, Belgium and Spain, linguistic, religious or racial minorities, fearing discrimination at the hands of political majorities, have insisted on regional autonomy as a way to preserve their distinct identities. Where the threat to this distinctiveness has been perceived as particularly serious, such regional groups have sometimes turned to outright secession as the only sure

Not to be overlooked is the impact in some cases of direct or indirect external influences upon regional consciousness. Quebec in Canada, Biafra in Nigeria and the Jura in Switzerland provide powerful examples of the impact of direct encouragement of a regional separatist movement by a foreign government.

This discussion suggests that to understand regionalism it must be examined not simply in terms of the absence of factors encouraging political union, but also in terms of factors that encourage a regional consciousness. These factors parallel the factors f

prerequisite for effective operation. Since federations involve accommodating and reconciling territorial diversity, a political culture emphasizing tolerance and compromise is an equally important prerequisite. These prerequisites mean that the

Chapter 4

The Constituent Units

4.1 THE BUILDING BLOCKS OF FEDERATIONS

The constituent units representing one of the orders of government constitute the building blocks on which a federation is based. In different federations the basic constituent units have gone by different names: “states” in Australia, Belau, Brazil, Ethiopia, India, Malaysia, Mexico, Micronesia, Nigeria, the United States and Venezuela; “provinces” in Argentina, Canada, Pakistan and South Africa; “Länder” in Austria and Germany; “cantons” in Switzerland; “Autonomous Communities” in Spain; “Regions” and “Communities” in Belgium; “subjects” in Russia; “islands” in Comoros and St. Kitts and Nevis; “emirates” in the United Arab Emirates; and “entities” in Bosnia and Herzegovina. All of these, however, represent the basic governmental components in these federations.

4.2 THE NUMBER OF CONSTITUENT UNITS

The number of constituent units plays an important role in shaping the dynamics of political relationships within federations. In this respect there has been a great variety among federations (see table 8). In nine federations there are 20 or more basic constituent units, the largest number being originally 89 (in 1993) but now 86 (in 2007) subjects in Russia, and 50 states in the United States. The others are Argentina with 23, Brazil with 26, India with 28, Mexico with 31, Nigeria with 36, Switzerland with 26 and Venezuela with 23. Having such a large number of constituent units has usually meant that none of them is in a position to dominate politics within the federation or to individually counterbalance the federal government.



At the other extreme are federations with 2 to 4 constituent units. Examples are found in three of the micro-federations: Comoros with 3; Micronesia with 4; and St. Kitts and Nevis with 2. Other examples are Pakistan since 1973 with 4 provinces; Bosnia and Herzegovina with 2 entities; and in its early years as a federation until 1963, Nigeria with 3 regions. Also notable are the bicommunal characters of Pakistan 1956–71 before the separation of Bangladesh, Czechoslovakia prior to segregation in 1992, and Serbia and Montenegro 1992–2006. In all these federations the small number of regional units, often with one dominant region, has made it possible for individual units to challenge the federal government, typically producing quite unstable political relationships.

The remainder of the federations fall between these two extremes: Australia with 6 states, Austria with 9 Länder, Belgium with nominally 3 Communities and 3 Regions, Canada with 10 provinces, Ethiopia with 9 states, Germany with 16 Länder, Malaysia with 13 states, South Africa with 9 provinces, Spain with 17 Autonomous Communities, and the United Arab Emirates with 7 emirates. In these instances, individual constituent units have been able to exert more political influence than in the federations that have a larger number of units, especially where one or two regional units have themselves been significantly large or wealthy, but they have not experienced the degree of instability displayed by the federations with only two to four constituent units.

4.3 THE SIZE AND WEALTH OF CONSTITUENT UNITS

There are also enormous variations in the size of the constituent units among the contemporary functioning federations listed in table 8. The largest units – Uttar Pradesh in India with 166 million, Punjab in Pakistan with 80 million and California in the United States with 34 million – are each larger than the total population of many federations. At the other extreme, some constituent units in Belau have barely more than 200 inhabitants, while Kosrae in Micronesia has a population of only 8,000, Nevis in St. Kitts and Nevis 10,000, and Appenzell–Inner Rhodes in Switzerland 15,000.

The absolute size of constituent units is significant because this may affect the range of functions that they have the capacity to perform. On the other hand, where constituent units are of the immense size of Uttar Pradesh in India, Punjab in Pakistan or California in the United States, questions arise about how responsive they can be to the interests of individual citizens or to distinct local communities.

Another important aspect relating to the size of constituent units is the relative variation among the regional units within a given federation. Many federations are marked by enormous variations, as table 8 indicates. This means that within a federation there may be a wide difference among constituent units in terms of their capacity to perform functions and in their influence on federal policy making.

TABLE 8: Population of Full-Fledged Constituent Units

India	28	1028.6 m	Uttar Pradesh	166.2 m	16.2%	Sikkim	0.5 m	0.5%	307.2
European Union	27	461.4 m	Germany	82.5 m	17.0%	Malta	0.4 m	0.1%	205.2
Ethiopia	9	67.3 m	Oromia	23.7 m	35.2%	Harar	0.2 m	0.3%	117.3
Belgium	6	10.5 m	Flemish Community	6.2 m	59.7%	German Community	0.07 m	0.68%	87.3
Switzerland	26	7.4 m	Zurich	1.3 m	17.0%	Appenzell-Inner Rhodes	0.015 m	0.2%	86.7
Canada	10	30.0 m	Ontario	11.4 m	38.0%	Prince Edward Island	0.1 m	0.5%	84.5
Micronesia	4	0.1 m	Chuuk	0.05 m	50.1%	Kosrae	0.008 m	7.2%	71.4
Argentina	23	36.3 m	Buenos Aires	13.8 m	38.1%	Santa Cruz Province	0.2 m	0.5%	70.2
United States	50	281.4 m	California	33.9 m	12.0%	Wyoming	0.5 m	0.1%	68.7
Venezuela	23	22.8 m	Zulia	2.9 m	12.9%	Amazonas	0.07 m	0.3%	43.9
Germany	16	82.4 m	Nordrhein-Westfalen	18.1 m	21.6%	Bremen	0.6 m	0.8%	28.5
Mexico	31	103.3 m	Mexico	14.0 m	13.6%	Baja California Sur	0.5 m	0.5%	27.4
Spain	17	44.1 m	Andalucia	7.8 m	17.8%	La Rioja	0.3 m	0.7%	26.1
Malaysia	13	23.3 m	Selangor	4.2 m	18.0%	Perlis	0.02 m	0.9%	21.0
Australia	6	18.8 m	New South Wales	6.3 m	33.6%	Tasmania	0.5 m	2.4%	13.9



Particularly significant in this latter respect are federations where one or two constituents may constitute a majority or nearly a majority of the federal population. Notable examples where a single constituent unit contains a majority of the federal population are the Flemish Region in Belgium (59.7 percent), the Bosniac-Croat Federation as an entity in Bosnia and Herzegovina (61 percent), Grande Comore within Comoros (51.3 percent), Chuuk within Micronesia (50.1 percent), Punjab within Pakistan (55.6 percent), and St. Kitts within St. Kitts and Nevis (75.8 percent). The tensions such a situation may give rise to are illustrated by the disintegration of such federations as the Federation of the West Indies (1958–62) where Jamaica, one of ten territories, had 52 percent of the federal population; Pakistan 1956–71 where one unit, East Pakistan, had 54 percent of the federal population; Czechoslovakia 1920–92 where the Czech Republic had 66.4 percent of the population; and Serbia and Montenegro from 1992 until its demise in 2006, where Serbia had 91.8 percent of the population. Also a considerable source of tensions are cases where two constituent units together have constituted a majority of the federal population or close to it. Examples are Abu Dhabi (41 percent) and Dubai (26 percent), totalling 67 percent of the UAE population; Ontario (38 percent) and Quebec (24 percent), totalling 62 percent in Canada; Oromia (35 percent) and Amhara (26 percent), totalling 61 percent in Ethiopia; New South Wales (34 percent) and Victoria (25 percent), totalling 59 percent in Australia; and Buenos Aires (38 percent) and Cordoba (9 percent), totalling 47 percent in Argentina. These units have tended to play a predominant role in the federal politics of their federations, to the resentment of the more numerous smaller constituent units. It is of interest to note that despite the large absolute size of their populations, Uttar Pradesh in India and California in the United States represent only 16 and 12 percent of their total federal populations, thus moderating their influence in federal politics.

In most federations there is also a considerable variation in the wealth of their constituent units, especially in relation to natural resources. As in the case of population, this is significant in terms of their capacity to perform the functions constitutionally assigned to them. Also, variations within each federation in terms of their relative wealth have been a factor affecting the influence of particular constituent units in the dynamics of federal politics.

4.4 CATEGORIES OF CONSTITUENT UNITS

In most federations there is just one category of full-fledged constitutional units although, as noted in section 4.1, their labels may vary. In a few cases, however, these full-fledged constituent units may be placed into several categories.

Most notable in this respect is Belgium where two kinds of constituent units were established in 1970 with different jurisdictions assigned to them. Three of the constituent units (Flanders, Wallonia and Brussels) are Regions territorially

demarcated and responsible mainly for regional economic development, public works, transportation, international trade and agricultural policy. Three constituent units are culturally defined Communities (Flemish, French and German) overlapping the Regions and with powers over language, culture, education and social services such as health care. The situation is further complicated by the fact that since 1980 the Flemish Region and Community have merged their institutions.

The Russian Federation as created in 1993 comprised 89 constituent units in several categories inherited from the previous Soviet Union. These were 21 republics, 49 oblasts (regions), 6 krajs (territories), 10 autonomous okrugs (districts), one autonomous oblast, and 2 federal cities (Moscow and St. Petersburg). According to the constitution all have equal legislative and executive powers, but the republics are distinguished by the fact that they contain significant non-Russian ethnic populations (e.g., Tartars in Tartarstan, Bashkirs in Bashkortostan, and so on). Oblasts and krajs are non-ethnically based regions. Autonomous okrugs are ethnically based districts that are homelands to indigenous Aboriginal populations. They are considered both separate members of the federation and parts of the oblasts or krajs in which they are located, a situation that has led frequently to jurisdictional disputes.¹

Spain, in addition to its 17 Autonomous Communities, has 2 non-indigenous Autonomous Communities, Ceuta and Melilla (located on the north coast of Morocco), which were granted eligibility to become Autonomous Communities in 1995.

In a number of federations there are secondary classes of constituent units with less autonomy than the full-fledged constituent units and with special funding arrangements. These less autonomous units, most commonly called "territories," usually are remote and thinly populated regions lacking the resources to sustain full self-government, or they are special tribal areas, overseas possessions or federal capital districts. The arrangements of federal capital districts is dealt with below in section 4.7. Examples of non-capital territories are found in Australia (the Northern Territory plus 7 administrative territories), Canada (Northwest Territories, Nunavut and Yukon), India (7 Union Territories), Pakistan (6 Federally



Some federations have also had a looser federacy or associate state relationship with certain units. Examples of federacies are the Northern Mariana Islands

nationalism can engender. The objective is to proliferate when possible the multiple points of power away from a focus on ethno-nationalism. Among federations with ethnic, linguistic and religious differences, this specific strategy in the design of constituent units was attempted in India originally in 1950 (although abandoned in 1956) and in South Africa when establishing the boundaries of its nine new provinces.

An alternative strategy has been to accommodate ethnic, linguistic and regional groups by establishing regional units within which they may form a majority with the power to protect and promote their distinctiveness through a measure of self-government.³ Those advocating this approach see it as reducing interethnic tension by giving each group a sense of security in protecting its distinctiveness. Among federations clearly following this path have been Switzerland, Canada, Belgium, Spain, Russia and Ethiopia. In Switzerland, as noted in chapter 2, most of the cantons are predominantly unilingual and have either a Roman Catholic or Protestant majority. In Canada, the French-speaking population is heavily concentrated in Quebec, where it constitutes about 80 percent of the population; New Bruns-



4.6 REFORMING CONSTITUENT UNIT BOUNDARIES

Most federations have a special constitutional amending procedure for altering the boundaries of constituent units and for creating new constituent units. Revising constituent unit boundaries usually requires the consent of the constituent units directly affected. For the creation of new constituent units, this usually requires the consent of any constituent units directly affected or a special majority of all existing constituent units. The reason for these procedures is to assure constituent units that their interests as distinct units will not be vulnerable to federal action. Thus, as a rule, in most federations the redrawing of internal boundaries, once they have been established, is a difficult process.

There are exceptions to this pattern, however. In the United States, Canada, Brazil and Argentina, federal action has created new states or provinces out of former “territories,” or provinces have been enlarged by adding former territorial lands to them. In India, the Constituent Assembly, anticipating a need to redraw state boundaries after the immediate crises of independence, partition and the integration of the princely states had been surmounted, provided a particularly flexible constitutional amendment process specifically for this purpose — namely, passage by the Union Parliament by ordinary law.⁴ This facilitated the subsequent systematic redrawing of state boundaries from 1956 on. In the case of Nigeria, most of the evolution from the 3 regions of 1960 to the 36 states of today was facilitated by the action of the military regimes when democracy was suspended. The process adopted by Switzerland to define the boundaries of the new canton of Jura out of the canton of Bern is of interest: a series of cascading referendums was used to determine its creation and boundaries.

In the current efforts to merge some constituent units in Russia, referendums have also been used. Under the amendments to the Russian constitution in 2001 and 2005, the territorial integrity of the subjects of the federation is guaranteed: their borders cannot be changed without their consent as well as that of the Federation Council. On the other hand, the subjects of the federation have the right to merge with another subject of the federation to form a new constituent unit. The procedure for such mergers is established by federal law. As of 1 January 2007, referendums had passed approving two mergers involving 5 constituent units reducing the total number of subjects in the federation to 86, and 3 further mergers involving 6 subjects, which would reduce the total to 83, were projected.

⁴ Such bills can be introduced only by the government, however, and only after the views of the legislatures in the affected states have been obtained.

4.7 FEDERAL CAPITALS

Every federation faces the difficult task of deciding how its federal capital should be governed. The problem is a difficult one because usually it involves a conflict of interests. The federal government usually wishes to control and develop the capital and the seat of federal government in the interests of the federation as a whole. If the capital is itself a member state or comes under the jurisdiction of one of the members states, then that state is in a position to dominate the federal capital, and the control of the federal government over its own seat of government is restricted. On the other hand, the citizens of the capital city usually wish to govern themselves to the greatest extent possible, rather than being controlled by the federal government. These issues are compounded by the fact that federal capi-

decentralized, this arrangement may severely limit the scope of the federal government to control and develop its capital.

In some federations there is a third kind of arrangement. The capital city comes under the jurisdiction of the member state within which it is located, in a manner broadly similar to other cities within that state.

Eight examples are Bern (Bern, Switzerland), Ottawa (Ontario, Canada), Kuala Lumpur (Selangor, Malaysia), Bonn (North Rhine Westphalia, Germany, during 1949–90), Madrid (Madrid Autonomous Community, Spain), Basseterre (St. Kitts, St. Kitts and Nevis), Pretoria (Gauteng, South Africa)⁵ and Abu Dhabi (Abu Dhabi, United Arab Emirates). In many of these cases, the federal capital is situated in the largest member state, and sometimes, as with Bern, Basseterre and Abu Dhabi, it is also the capital of that state.

Two advantages of this arrangement are that the management of the boundaries of the federal capital with the neighbouring areas is open to flexibility, and that it has usually provided for the general operation of local self-government in the federal capital in the same way as elsewhere in the state of which it is a part.

This arrangement, however, clearly limits the degree to which the federal government can managee to w0ciete0.9(y)60.9t (Selgy a mañ as with Bernthat it19ther ceene.is



To summarize, each of the arrangements for the organization of federal capitals has its peculiar advantages and disadvantages. They also vary according to the general distribution of powers between the federal and member state governments affecting the degree of centralization or decentralization within the federation. The federal district form of organization avoids the situation of placing the federal capital under the dominance of the state in which it is located. But generally, the federal district form of organization has resulted in limited local self-government, although Caracas and Delhi provide examples that this is not inevitable. Because of the tendency for local self-government to be restricted in federal capital territories, where such a form of organization is adopted there has been a need to include specific provisions for local political rights and self-government.

On the other hand, there are numerous examples where federal capitals have operated either as city-states or under the jurisdiction of the state in which they are located. These have generally been marked by greater degrees of local self-government and in the case of federal capitals in a state by greater flexibility of boundaries. But these advantages come at the expense of limited scope for the federal government to control and develop its own capital. The example of Kuala Lumpur, however, indicates that even without creating a federal district, there can be arrangements for giving the central government some exclusive or concurrent jurisdiction over some aspects of the organization of the federal capital in order to allow its needs to be met.

Chapter 5

The Distribution of Authority in Federations

5.1 A FUNDAMENTAL FEATURE OF FEDERATIONS

In all federations, a common feature has been the existence at one and the same time of powerful motives to be united for certain purposes and of deep-rooted motives for autonomous regional governments for other purposes. This has expressed itself in the design of federations by the distribution of powers between

contributing to the strength of the motives for union and for regional identity, and therefore have affected the particular distribution of powers in different federations. Generally the more the degree of homogeneity within a society the greater the powers that have been allocated to the federal government, and the more the degree of diversity the greater the powers that have been assigned to the constituent units of government. Even in the latter case it has often been considered desirable, however, that the federal government should have sufficient powers to resist tendencies to balkanization.

In addition to expressing a balance between unity and diversity, the design of federations has also required a balance between the independence and interdependence of the federal and regional governments in relation to each other. The classic view of federation, as enunciated by K.C. Wheare and often quoted in the United States, Switzerland, Canada and Australia, considered the ideal distribution of powers between governments in a federation to be one in which each government was able to act independently within its own watertight sphere of responsibility.² In practice federations have found it impossible to avoid overlaps in the responsibilities of governments, and a measure of interdependence is typical of all federations. An example of this in its most extreme form is the interlocking relationship between governments in the German federation which has developed because most of the federal legislation is administered by the states. Such a strong emphasis upon coordination through joint decision making may carry its own price in terms of reduction in opportunities for flexibility and variety of policy through autonomous decision making by different governments. Indeed, in both Germany and Austria, which represent in extreme form interlocking relationships, there have been recent efforts to disentangle some of these in order to encourage more autonomous initiatives in each level of government. There is therefore a need to find a balance between the independence and interdependence of governments within a federation.

The process by which federations are established may affect the character of the distribution of powers. Where the process of establishment has involved the aggregation of previously distinct units giving up some of their sovereignty to establish a new federal government, the emphasis has usually been upon specifying a limited set of exclusive and concurrent federal powers with the residual (usually unspecified) powers remaining with the constituent units. The United States, Switzerland and Australia provide classic examples. Austria and Germany followed this traditional pattern although their reconstruction during the post-war period did involve some devolution by comparison with the preceding autocratic regimes. Where the creation of a federation has involved a process of devolution

from a formerly unitary state, the reverse has usually been the case: the powers of regional units have been specified and the residual authority has remained with the federal government. Belgium and Spain provide examples. Some federations, such as Canada, India and Malaysia, have involved a combination of these processes of aggregation and devolution, and they have listed specifically exclusive federal, exclusive provincial, and concurrent powers with the residual authority, in Canada and India (and the earlier Malayan Federation) but not in the Malaysian Federation, assigned to the federal government.

Note should also be taken of three other sets of factors affecting the distribution of powers in federations. One is the period in which the constitutional distribution of powers was drafted. The eighteenth- and nineteenth-century constitutions of the United States, Switzerland and Canada distributed powers in fairly general terms, while the newer federal constitutions of the latter half of the twentieth or early twenty-first centuries have often included minutely detailed lists of powers and extensive provisions for intergovernmental institutions and processes. Examples are the three lists (exclusively federal, concurrent and exclusively state) of powers in the Seventh Schedule of the Indian constitution containing 97, 47 and 66 entries, respectively, or the very finely detailed distribution scheme in the Swiss constitution of 1999.

Second, the prevalence of a common law tradition (as in the United States, Australia, India, Malaysia and Nigeria), a mixed common law and civil law legal system (as in Canada, South Africa and Nigeria), or a civil law tradition (as in European and Latin American federations such as Switzerland, Germany, Austria, Belgium, Spain, Brazil and Mexico) has had a strong bearing on how the constitutional law is applied and interpreted. In federations where the civil law tradition has prevailed the result has usually been a much more explicit delineation of jurisdiction and a more limited scope for judicial review.³

Finally, a factor that has had some impact upon the form and operation of the distribution of powers is the character of the federal legislative and executive institutions (dealt with more fully in chapter 10 below). Whether these institutions are presidential-congressional in form (as in the United States, the Latin American federations and some others) or essentially parliamentary in form (as in most of the other federations) affects the diffused or fused way in which the assigned legislative powers are handled within each level of government and ther

clear which government is accountable for policy in that area. In practice, however, even where most powers have been assigned exclusively to one level of government or the other, experience, such as that of Switzerland, Canada and Belgium, has indicated that overlaps of jurisdiction are unavoidable because it is virtually impossible to define absolutely, watertight compartments of exclusive

constitutionally specified areas of concurrent jurisdiction are agriculture, immigration, old age pensions and benefits, and export of non-renewable natural resources, forest products and electrical energy.

Concurrency has a number of advantages in federations. It has provided an element of flexibility in the distribution of powers, enabling the federal government to postpone the exercise of potential authority in a particular field until it becomes a matter of federal importance. The constituent governments can thus be left in the meantime to pursue their own initiatives. The federal legislature may use concurrent jurisdiction to legislate federation-wide standards while giving regional governments room to legislate the details and to deliver the services in a manner sensitive to local circumstances. Indeed, in Austria and Germany (and in some respects in Spain, Mexico and Brazil) there is a special constitutional category of jurisdiction specifying a federal power to enact “framework legislation” in certain fields, leaving the *Länder* to fill out these areas with more detailed laws. In addition, in Germany a constitutional amendment in 1969 added a category of “joint tasks” in relation to higher education, improvement of regional economic structures, and agrarian improvement and coastal preservation in which the federal government would participate in the discharge of *Länder* responsibilities.

Concurrent lists of legislative power avoid the necessity of enumerating complicated minute subdivisions of individual functions to be assigned exclusively to one area of government or the other, and reduce the likelihood that such minute subdivisions will over time become obsolete in changing circumstances.

Normally where concurrent jurisdiction is specified, the constitution has specified that in cases of conflict between federal law and unit law the federal law prevails. Consequently, areas of concurrent jurisdiction are potentially areas where federal legislation may predominate. One notable exception occurs in Canada where old-age pensions are an area of concurrent jurisdiction but in cases of conflict provincial law prevails over federal law. This has enabled Quebec to preserve its own pension system and other provinces to accept federal pension jurisdiction. The proposed constitution of Iraq, affirmed by the referendum of October 2005, is unique in extending the area of concurrent jurisdiction in which regional law prevails to virtually all areas of concurrent jurisdiction. A problem with the Sudanese constitution is that although it provides for areas of concurrent jurisdiction, no paramourcy or clear criteria are specified for the courts to establish which law should prevail in cases of conflict.

SHARED AUTHORITY

There is a category of powers akin to concurrent authority but distinct from it. “Shared powers” occur where both orders of government have related powers. This is distinct from concurrency over a specific common head of power. An example is the nature of power over environmental matters in many federations. For example in Canada both orders of government have exclusive powers with

federal authority at the expense of the scope of the undefined residual state powers, thus producing a tendency over time towards the progressive centralization of government powers. Paradoxically, in such federations as Canada, India and Malaysia, where the centralist founders enumerated what were intended to be limited specific provincial powers, there has been a tendency for the courts to read those powers broadly, thus tempering the expansion of federal authority.

EMERGENCY OR OVERRIDE POWERS

In a few federations the constitution provides the federal government with specific override or emergency powers to invade or curtail in certain conditions otherwise normally provincial constitutional powers. These have been the result of the fears of their founders about the prospect of potential balkanization or disintegration. The most extensive examples of such quasi-unitary powers are found in the Indian, Pakistani, Malaysian and Argentine constitutions. During the Putin presidency, some quasi-unitary powers have also been introduced. The Canadian constitution continues to include the powers of reservation and disallowance of provincial legislation; the declaratory power relating to public works in the national interest; and the peace, order and good government clause, but in practice, over the past half-century, almost all of these federal unilateral powers have fallen into disuse. On the other hand, the extensive emergency powers embodied in the Indian constitution of 1950 have been frequently used, although the Supreme Court has ruled that the use of this power may be subject to judicial review and there is now growing political pressure to limit their use. In South Africa the central government may within certain constraints override provincial legislation that threatens national unity or national standards.

these areas, however, especially those relating to social services and income security, are often shared. Among areas for which the assignment has varied are agriculture, natural resources, postsecondary education, environment, criminal law, civil law, courts and police. In a number of cases these have represented shared responsibilities. While this represents a general pattern, there is considerable variation in the specific allocations within different federations, depending on the degree of emphasis placed upon common action or upon non-centralization as well as the impact of particular circumstances.

Some subject matters have proved particularly troublesome. Foreign affairs is an example.⁴ In many federations a sweeping federal jurisdiction over foreign affairs and treaties has sometimes been used to override jurisdiction that would otherwise belong to the governments of the constituent units. In a few federations, however, the federal treaty power has been limited by the requirement that where treaties affect the jurisdiction of regional governments consultation must occur or their consent must be obtained. In the case of Canada, as a result of judicial interpretation of the constitution, implementing provincial legislation is required where treaties relate to fields in the exclusive jurisdiction of the provinces. In Germany such treaties have required the endorsement of a majority in the Bundesrat composed of delegates of the Land governments, and since 1993 the German Basic Law has required extensive consultation or agreement of the Länder with regard to European Union matters. Two of the most recent constitutions, that of Belgium (1993) and Switzerland (1999), assign to their respective constituent units a significant role in the conduct of foreign relations or require their extensive consultation regarding foreign policy decisions.

Coordinating public debt has also sometimes been a problem because a constituent unit government may by its external borrowing affect the credit-worthiness of other governments within the federation. This led in Australia to provision for the coordination of public borrowing by an intergovernmental Loan Council with power to make decisions binding on both levels of government. In some other federations such concerns have led to federal control of public borrowing, particularly foreign borrowing, by constituent unit governments.

Two areas where in practice there has tended to be extensive activity by both levels of government are economic policy and social affairs. In the former, regional units of government have been concerned to ensure the economic welfare

⁴See H.J. Michelmann, ed., *Comparative Federalism: A Study of the Federal States of the World*, Forum of Federations and International Association of Centres of Federal Studies, *Journal of Federalism*, vol. 5 (Montreal & Kingston: McGill-Queen's University Press, forthcoming 2008); J. Kincaid, "Comparative Observations," in J. Kincaid and G.A. Tarr, eds., *Comparative Federalism: A Study of the Federal States of the World*, Forum of Federations and International Association of Centres of Federal Studies, *Journal of Federalism*, vol. 1 (Montreal & Kingston: McGill-Queen's University Press, 2005), pp. 434–5.

of their citizens and to develop policies related to their own particular economic interests. This has sometimes extended to the establishing of trade offices in foreign countries to encourage both trade and investment, a pattern found in such federations as the United States, Canada, Australia and Germany. In the area of social affairs, including health, primary and secondary education and social services, regional governments have usually had primary constitutional responsibility. But, commonly, extensive federal financial assistance has often been necessary because of program costs and because of the pressures for federation-wide standards of service to citizens. Where constituent units have welcomed such federal financial assistance, it has frequently proved to be a Trojan horse for federal dominance.

The increased interrelation of economic and cultural policy in the contemporary world has made the resolution of multi-ethnic issues within federations more complex than in the past. The original simple Canadian solution of 1867, which consisted of centralizing control of economic policy but assigning responsibility for cultural distinctiveness and related social programs to the provinces, has been complicated by two developments. One is the greatly increased cost of social policies requiring federal financial assistance, and the other is the realization by regionally concentrated ethnic groups that their distinctiveness depends not just upon cultural policy but also upon being able to shape economic policies regarding their own welfare. A further complication is that different ethnic groups are never completely demarcated in territorial terms. Consequently, any distribution of powers has to take account of the need to protect minorities within minorities by placing constitutional limits upon state or provincial governments regarding their policies towards internal minorities.

In the distribution of responsibilities within the European Union the principle of *subsidiarity* has been adopted as the basis. This is the principle that only subjects that cannot be adequately dealt with by a lower order of government should be performed by the higher order of government. As a principle, it has had considerable appeal. By itself as a principle, however, it leaves open the issue of who decides on its application to a particular subject matter. This is not merely a technical issue but in many ways may have to do with fundamental values and issues of identity. If the decision is made by the higher order of government, that leaves the lower order vulnerable; while if it is made by the governments of the lower order, they may — despite difficulties — resist transferring responsibility.

5.5 DISTRIBUTION OF ADMINISTRATIVE RESPONSIBILITIES

As noted in section 5.2, in a number of federations, especially those in the Anglo-Saxon tradition (e.g., the USA, Canada and Australia), the distribution of administrative responsibilities in most matters corresponds with the distribution

legislative and administrative jurisdiction in an area between different orders of government. These permanent and constitutionalized arrangements are to be distinguished from temporary delegations of legislative and executive authority that

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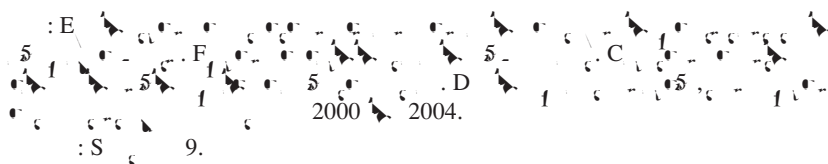
NATURAL RESOURCE REVENUES

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TABLE 10: Foreign Direct Investment (FDI) Inflows (US\$ million)

	2000
Mexico	84.3
Brazil	59.5
Nigeria	59.7
Argentina	59.3
Morocco	58.7
Algeria	55.0
Saudi Arabia	51.0
Russia	46.0
United States	45.9
India	44.6
Bangladesh	38.1
Ghana	37.0
China	37.0
Singapore	32.0



6.4 THE ISSUE OF VERTICAL AND HORIZONTAL IMBALANCES

Vertical imbalances refer to the uneven distribution of income and wealth between different social classes or groups. Horizontal imbalances refer to the uneven distribution of income and wealth across different regions or countries. Both types of imbalances can lead to social and economic instability. Vertical imbalances can result in a concentration of wealth in the hands of a few, leading to a widening income gap. Horizontal imbalances can result in some regions being more developed than others, leading to regional disparities. Addressing these imbalances is a key challenge for many governments and international organizations.

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6.5 THE ROLE OF FINANCIAL TRANSFERS

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6.6 CONDITIONAL OR UNCONDITIONAL TRANSFERS

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TABLE 12: Comparison of the Percentages of the Total Population

	2000
Urban Settlements	100.0
Administrative Centers	78.9
Suburban Settlements	73.1
Suburban Settlements	66.1
Central Urban Settlements	64.9
General Urban Settlements	64.5
Medium Urban Settlements	55.5
Administrative Centers	40.9
Urban Settlements	40.7
Medium Urban Settlements	39.3
Urban Settlements	25.0
Suburban Settlements	11.5
Rural Settlements	9.0
Urban Settlements & Central Urban Settlements	5.0
Rural Settlements	6.1

Urban Settlements: 2000 - 2004, 26.8% increase. Administrative Centers: 2000 - 2004, 9% increase. Suburban Settlements: 2000 - 2004, 11% increase.

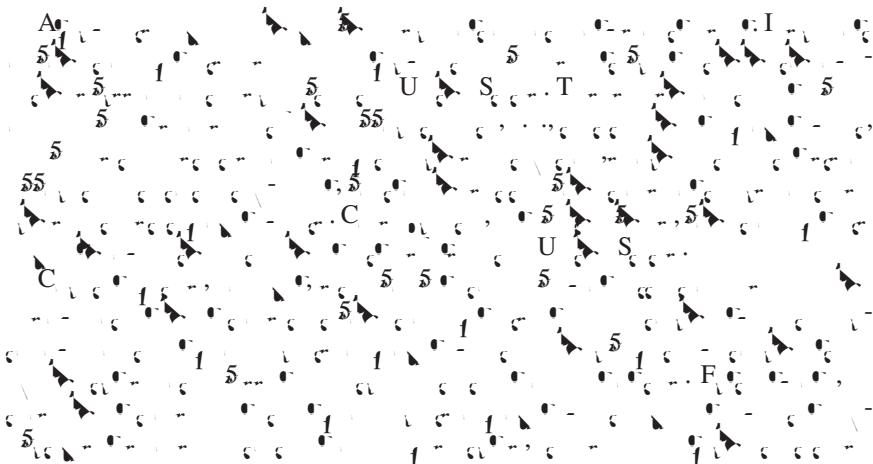


TABLE 13: Provincial Government Expenditure on Provincial Government Services, 2000-01

	2000/01
Maintenance	48.8
Salaries	41.9
Administrative	37.4
Utilities	25.6
Transport	18.7
Advertising	18.6
Supplies	17.0
Capital	14.1
Miscellaneous	12.0
Subsidies	11.0
Grants	9.8
Borrowing	7.5
Borrowing & Capital	4.8
Reserves	3.5
Reserves	2.5

Source: Provincial Government Expenditure, 2000-01 and 2004-05. CHT/CST is the ratio of provincial government expenditure on provincial government services to provincial government expenditure on provincial government services. S is the ratio of provincial government expenditure on provincial government services to provincial government expenditure on provincial government services. 9 and 11.

The provincial government expenditure on provincial government services is a significant component of the provincial government's total expenditure. This expenditure is used to fund a wide range of services, including maintenance, salaries, administrative, utilities, transport, advertising, supplies, capital, miscellaneous, subsidies, grants, borrowing, and reserves. The expenditure on provincial government services has increased over time, reflecting the growing demand for these services. The ratio of provincial government expenditure on provincial government services to provincial government expenditure on provincial government services is a key indicator of the provincial government's commitment to these services. This ratio has increased from 9 in 2000-01 to 11 in 2004-05, indicating a growing emphasis on provincial government services.

6.7 EQUALIZATION TRANSFERS

The provincial government's expenditure on provincial government services is a significant component of the provincial government's total expenditure. This expenditure is used to fund a wide range of services, including maintenance, salaries, administrative, utilities, transport, advertising, supplies, capital, miscellaneous, subsidies, grants, borrowing, and reserves. The expenditure on provincial government services has increased over time, reflecting the growing demand for these services. The ratio of provincial government expenditure on provincial government services to provincial government expenditure on provincial government services is a key indicator of the provincial government's commitment to these services. This ratio has increased from 9 in 2000-01 to 11 in 2004-05, indicating a growing emphasis on provincial government services.

TABLE 14: Economic growth

Country	Year	GDP Growth (%)
USA	1980	2.3
	1981	1.9
	1982	0.2
	1983	3.1
Spain	1980	5.1
	1981	4.2
Australia	1980	1.8
	1981	1.4
	1982	1.5
UK	1980	2.7
	1981	1.6
France	1980	1.1
	1981	0.5
	1982	0.1
	1983	0.4
Germany	1980	1.8
	1981	0.4
Italy	1980	1.2
	1981	0.3
Japan	1980	5.3
	1981	3.9
	1982	2.6
	1983	2.7

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⁶J. I. E. (J. A. P. H. ...
 2005), 243&16; J. I. E. (J. A. P. H. ... 2007).

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Chapter 7

Intergovernmental Relations

7.1 IMPORTANCE OF PROCESSES FOR INTERGOVERNMENTAL COLLABORATION

The inevitability within federations of overlaps and interdependence in the exercise by governments of the powers distributed to them has generally required the different orders of government to treat each other as partners. This has necessitated extensive consultation, cooperation and coordination between governments.¹

The institutions and processes for intergovernmental collaboration serve two important functions: conflict resolution and a means of adapting to changing circumstances.

Furthermore, intergovernmental relations have two important dimensions. One is that of relations between the federal and unit governments. The other is that of inter-unit relations. Typically in federations both kinds of intergovernmental relations have played an important role.

¹ See, for instance, R. Agranoff, "Autonomy, Devolution and Intergovernmental Relations," *Journal of Federalism*, 14:1 (2004): 25–65; Forum of Federations, *Intergovernmental Relations in Federations* (Ottawa: Forum of Federations, 2001); R.L. Watts, *Intergovernmental Relations in Federations* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1989); J. Kincaid and G.A. Tarr, eds., *Intergovernmental Relations in Federations* (Forum of Federations and International Association of Centres for Federal Studies, 2005), vol. 1 (Montreal & Kingston: McGill-Queen's University Press, 2005), pp. 438–9; K. Le Roy and C. Saunders, eds., *Intergovernmental Relations in Federations* (Forum of Federations and International Association of Centres for Federal Studies, 2006), vol. 3 (Montreal & Kingston: McGill-Queen's University Press, 2006), pp. 375–8.

Within each of these dimensions relations may commonly involve all the constituent units within the federation, regional groupings of units, or be bilateral (i.e., between the federal government and one regional unit or between two regional units).

7.2 FORMS AND EXTENT OF INTERGOVERNMENTAL RELATIONS

An important element of intergovernmental relations that occurs within federations is carried out informally through various means of direct communication (e.g., by letter and telephone) between ministers, officials and representatives of different governments at various levels with each other.

In addition to these there are in most federations a range of more formal institutions to facilitate intergovernmental relations, such as those we have already noted in section 6.8 above relating to financial relations. These have usually taken the form of a variety of standing and ad hoc meetings involving ministers, legislators, officials and agencies of different governments. A noteworthy feature, especially in parliamentary federations where first ministers and cabinet ministers responsible to their legislatures tend to predominate within both levels of government, is the prevalence of “executive federalism,” i.e., the dominant role of governmental executives (ministers and their officials) in intergovernmental relations. The institutions and processes of executive federalism have usually developed pragmatically rather than by constitutional requirement, but in such federations as Canada, Australia, Germany, India and Malaysia y r(x)1Aust1Lw.8 o -216.5(giseseec0uch

but after an active period in its first few years its influence has varied with the emphasis put on its activities by the Australian prime minister. Another interesting development was the intergovernmental cooperative framework established in Canada in the form of the "Framework for Improving the Social Union for Canadians" signed by the federal government and nine of the provinces (but not including Quebec) on 4 February 1999. This was intended to commence a new era of federal-provincial cooperation, collaboration and information-sharing in creating and financing social programs and includes a dispute resolution mechanism. Proceeding with this framework without the participation of Quebec because of the difficulty of obtaining an agreement with the Quebec government of the day marked an implicit recognition, however, of the need for asymmetry in the relationships within the Canadian federation.

Among contemporary federations, executive federalism in intergovernmental relations is probably the most extensively developed in Australia and Germany, with the Bundesrat serving as the centrepiece in the latter. In India, the activation of the Inter-State Council (provided for in the 1950 constitution) recognized in the 1990s the increased importance of processes for formal intergovernmental relations within a federation marked by multiple political parties.

While executive federalism has not developed in Spain as far as in Australia, Canada and India, a Council of Autonomous Community Presidents was formed recently, and it has biannual meetings with the federal prime minister. Nevertheless, multilateral networks as opposed to bilateral relations between Madrid and the communities are still relatively underdeveloped. This may have been influenced by the bilateral laws governing relations with the communities.

leaders and organizations in the constituent units. In these cases, many of the intergovernmental issues have been virtually dictated by the federal government or have been resolved through party channels. In federations where different parties predominate within different levels, as has often been the case in Canada, Australia, and in recent years India, the formal intergovernmental processes and institutions have been the major channels for negotiating cooperative arrangements.

The need for extensive intergovernmental relations has been further increased in those federations where there is a constitutional requirement that a considerable portion of federal legislation must be administered by the governments of the regional units. This has been a major factor contributing, for example, to the "interlocked federalism" for which Germany is especially noted.

As already noted in section 6.8, in most federations intergovernmental institutions and processes have been particularly important for the regular adjustment of financial arrangements and transfers.

In virtually every federation intergovernmental relations have had both vertical and horizontal dimensions. In addition to relations between the federal and constituent unit governments there have been inter-unit relations. These have often

constitutional amendment has proved extremely difficult as the experience of such efforts in Canada, Switzerland, Germany and Austria has made clear. This has required the resort to a variety of devices for flexibility and adjustment.

In those federations such as the United States, Australia, India and Malaysia where the constitution sets out extensive areas of concurrent jurisdiction this has provided a degree of flexibility and cooperation in areas of shared jurisdiction. It should be noted, however, that concurrency can also contribute to intergovernmental competition and conflict when processes for partnership in these areas are not developed.

Another device for flexibility is that of intergovernmental delegation of powers. The earlier federations did not expressly provide for this and as a result courts have sometimes limited the scope for the delegation of legislative powers. Australia and most of the federations created later in the twentieth century enhanced their flexibility by including express constitutional provisions enabling delegation of legislative as well as administrative authority in either direction.

7.4 COOPERATIVE VERSUS COMPETITIVE FEDERALISM

The unavoidability of interdependence and the need for intergovernmental institutions and processes to deal with this has led to an emphasis on “cooperative federalism” within most federations. But equally significant is the concept of “competitive federalism.” In many federations, but particularly in Germany during the past decade as the internal interlocking relationships of the federation

take vertical (federal-state) or horizontal (inter-state or inter-provincial) forms. In the case of the latter, advocates of competition often criticize equalization arrangements because they suppress competition, thus producing Länder inefficiencies. But it must be noted that, while competition does not necessarily equate with conflict, “competitive federalism” to excess, as Canadian experience indicates, can lead to intergovernmental conflict and acrimony and have a divisive impact within a federation.

It should be noted that virtually all federations combine elements of cooperation and competition. Thus, for instance, while the culture of cooperation has been important in Switzerland, there is considerable tax competition among the cantons. Federations generally are characterized simultaneously by elements of cooperation, collaboration, coordination, collusion, competition and conflict co-existing and changing over time. The extent to which elements of cooperation or of competition prevail among governments within different federations has varied, however. In some, such as Switzerland, Germany and South Africa, there is a strong “culture of cooperation” which in some respects has been enshrined as a principle in the constitution. In others, such as Canada, Australia, India, Brazil, Nigeria, Comoros, Mexico and St. Kitts and Nevis, intergovernmental relations have to varying degrees tended to be competitive and conflictual, although all of them have found some measure of cooperation unavoidable. The differences have tended to reflect the divisions within their societies and the character of party politics.

7.5 IMPLICATIONS FOR THE DEMOCRATIC CHARACTER OF FEDERATIONS

Excessive “cooperative federalism” may undermine the democratic accountability of each government to its own electorate, a criticism frequently voiced about executive federalism in Germany, Australia and Canada. But while, as noted above, there is some democratic value in competition among governments to serve their citizens better, competition to excess can be harmfully divisive. As is usually the case in federations, the need for balance seems to be the keynote. It has usually been found that there needs to be a combination of cooperation to avoid the harmful effect of conflict in areas of interdependence, and of competitive bargaining among governments, each aiming through autonomous action to serve better the interests of its citizens.

In these circumstances, most federations have attempted to reinforce the direct democratic accountability of their representatives in intergovernmental negotiations through the development of internal procedures, processes and legislative committees within each level of government rather than by restricting intergovernmental collaboration.

Chapter 8

Section 8.1 Federalism

8.1 POLITICAL AND CONSTITUTIONAL ASYMMETRY DISTINGUISHED

The distinction between political and constitutional asymmetry is crucial. Political asymmetry refers to differences in the powers of sub-national governments, while constitutional asymmetry refers to differences in the legal status of sub-national governments. For example, in a federal system, sub-national governments may have different powers of taxation, but all are created by the same constitution and have the same legal status.

8.2 POLITICAL ASYMMETRY

Political asymmetry is a feature of federal systems where sub-national governments have different powers. This is often achieved through the distribution of powers between the central and sub-national governments.

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 b ed a 61 e ce), a d Ne S h Wa e a d V c a A a a
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TABLE 16: C a A e f F -F edged C e U
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<i>Symmetrical Units</i>	<i>Asymmetrical Units</i>
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A a a	B a-He eg a
A a	Ca ada
B a	C
E h a	E ea U
Ge a	I d a
Me c	Ma a a
M c e a	S . K a d Ne
N ge a	S a
Pa a	
S h Af ca	
S e a d	
U ed A ab E a e	
U ed S a e	
Ve e e a	

Note: The e a e a ge a a he deg ee f a e he fede a ed
 he ec d c .

The e a h d c a a ach f e g a e he -
 d c a d e e e c ed b ce a e be a e . Tha e h ch he
 c f a e ca g g a he e be a e he a e
 d c , b c de ha e e be a e ce a ca e
 f he e a g e . The e e ab e g e e
 a e he f e e c e f he a a d ffe e eed . S ch a a ge-
 e e a he f a e ca a ca f he c a d b
 f e a e be a e , b de ec f c ea f acc da g
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 f he e e . I Ca ada ec 94 a d 94A f he *Constitution Act, 1867* a d

ec 23(1)(a) f he *Charter of Rights and Freedoms* he *Constitution Act, 1982* ha e bee ch c a . Th , a a ac ca e e , Q ebec a a ce h Ca ada ha e ed a deg ee f eg a e a e he c a ed h he ce (e e Fed b he Q ebec Pe Pa) a d ad a a e (c ec c e a , f e a e). The Meech La e Acc d 1987 a d he Cha e Ag ee e 1992, h ch e e a f a c ehe e e f he Ca ad a c , c a ed f e a e e a g Q ebec, b he e e e e ac ed. The S a h a ach ha bee ec g e a a he e e f a d ffe - e eg b g a g each A C a e f a a ed a c a e f c e eg a ed be ee Mad d a d he eg a eade h . The e age e e a e e he e e h a f a e h ch a c a ed ha e e a he e bee a e a g he . A g he e a e f fede a e e e ed h ch ha e e h b - ed e deg ee f c a a e he a ca f d c a e he E ea U , R a a d Be g . The E ea U , eg a - g he acce f each e e be , ha f e had a e a c a c ce . F he e , de ge age e e he ad f he Maa ch Tea , he E ea U f d ece a acce a ea e f a e he f a ca f ha ea , ab he ca e f B - a a d De a . Pe ha he c e c e e a e f c a a e h a fede a ca e cc ed he a e f e h ch he 89c e (cha e b c , b a , g , e c .), c - g he R a Fede a e e abe eg a ed g he Ye e de c . W h a f a e ca c a f a e , a f he c e h R a c c ded b a e a ea e d g f a e ca ea - e . U de he P e de c he e ha , h e e , bee a c ca ce he e ea e a d e e e ca a a ge e . I he Be g a Fede a , c a a e e he d ffe e ce d c f he he e a c e Reg a d he he e - e a c e C e , b a he e e a be ee Reg a C c a d C C c , ce he Fa de Reg a d he Fe h C - ha e e ged he . B a a d He eg ac f e e , e f h ch e f a fede a (he B ac - C a Fede a) a d he he he a Re b c f S a . T f he c - fede a , C a d S . K a d Ne , ha e e ab - hed a e cc e b a a g g ha he a ge a d (Ga de C e he f e a d S . K he a e), e he he a d d e ha e e a a e eg a e a e b , ha e be g e ed b he fed - e a a e b . I a a fede a h a a ge e ed ce a d ca a d c e , b b h ca e ha c b ed e a e . A a a fac f e c g he e a d a ha e be a e a fede a a e abe e e c e he c a a ca f f a c a

e ce .A he e e e e a e f ca fede a ha a ab e ha-
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9.2 THE PLACE OF LOCAL GOVERNMENT

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.438-9.

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⁴D . . : P P L G . . A , *Policy process on the system of Provincial and Local Government: Background: Policy questions, process and participation* P . : D . . P P L G . . (2017).

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10.2 I I I BA ED HE E A A I F E

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Federation (current constitution)	Federal Executive- Legislature Relationship	Head of Federal Government	Head of Federation	Bicameral or Unicameral Federal Legislature	State/Provincial Executive- Legislature Relationship	Head of Regional Government	Head of Regional State
I (1789)	I; I -C	I	I	B	G I;	G	I G
I (1848, 1999)	I; F I-	I	I ²	B	F I; I-	I	I I ³
I (1917)	I; I -C	I	I	B	G I;	G	I G
B (1988)	I; I -C	I	I	B	G I;	G	I G
A (1994)	I; I -C	I	I	B	G I;	G	I G
(1999)	I; I -C	I	I	B	G I;	G	I G
(1999)	I; I -C	I	I	B	G I;	G	I G

A) Separated Executive (Presidential or Fixed Term Collegial)

B) Fused Executive									
C I (1867)	F I:	↙	↘ (G G)	B	F I:	↘ G	↙ G	↘ G	4
A (1901)	F I:	↙	↘ (G G)	B	F I:	↘ G	↙ G	↘ G	5
A (1920)	F I:	C	I	B	F I:	↘ G	↙ G	↘ G	
G (1949)	F I:	C	I ⁶	B	F I:	↘ C	↙ (I)	↘ I)	7
I I (1950)	F I:	↙	I ⁶	B	F I:	↘ C	↙ C	↘ G	
↙ (1963)	F I:	↙	I ⁸ A	B	F I:	↘ C	↙ C	↘ H I G	9
(1978)	F I:	↙	↘ ¹⁰	B	F I:	↘ I	↙ I	↘ I	11
B (1993)	F I:	↙	↘	B	F I:	↘ I	↙ I	↘ I	
E (1995)	F I:	↙	I	B	F I:	↘ I	↙ I	↘ I	

... continued

AB, E 17 (continued)

Federation (current constitution)	Federal Executive-Legislature Relationship	Head of Federal Government	Head of Federation	Bicameral or Unicameral Federal Legislature	State/Provincial Executive-Legislature Relationship	Head of Regional Government	Head of Regional State
(1973)	F I;	↘	I ¹²	B	F I;	C I	G ¹³
	F I;		I ¹	B	F I;	G I ¹⁴	I ¹⁴

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 (1956 73) I I (1992 2006), I I I I -
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 , I I C B H I -
 C , I I I I I E I I I -
 , I I I I I I I I -
 , I 18 , I I I I I I -
 I I I 19 I I I I I -
 E EC I I BE I I I

AB	E 19:	, C	I	F I	I C
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B	C :	C I	I (40), I	I (10);	-
B	I F I ():	3	I -	I I I	I
C I	:	I I	; I	; 4	3
E	H F I (I	I B): 71	I 41 (27%)	I (63%) I	I
G	B I : 5 6	I);	I	I (3, 4,	-
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Chapter 11

Constitutional Supremacy in Federations

11.1 THE CONSTITUTION AS SUPREME LAW

Since an essential characteristic of federations is the constitutional distribution of

federal legislation. An interesting by-product of this constitutional procedure is the inducement that it provides for interparty compromise and cohesion within the federal government and legislature in order to ensure the maximum possible breadth of support, thereby reducing the risk of a successful challenge through the legislative referendum process.

In addition to elections within each level of government, most federations have also relied upon the courts to play a major adjudicating role. In this role, courts have performed three functions: (1) impartial constitutional interpretation, (2) adaptation of the constitution to changing circumstances (especially where constitutional amendment is difficult), and (3) resolution of intergovernmental conflicts.

11.3 SUPREME COURTS AND CONSTITUTIONAL COURTS

Two types of courts for ultimate constitutional jurisdiction may be found among federations. One is a supreme court serving as the final adjudicator in relation to all laws including the constitution. Examples are the Supreme Courts of the United States, Canada, Australia, India, the four Latin American federations, Malaysia,

as Australia, India, and Malaysia) have common law legal systems, while most of the European and Latin American federations have civil law systems. Canada, South Africa and Nigeria have mixed legal systems, although in the field of public law they are predominately common law in character. In civil law systems, legislative codes are the predominant source of law, and the courts in their interpretation tend to be more limited in their scope. In the common law federations, the law derives from either legislation or judicial decisions with the latter having precedential value, and in these federations judicial review has come to be a major element in the operation of their constitutions.

The question is sometimes raised, especially in common law federations, whether federation as a form of government results ultimately in rule by judges rather than by elected representatives. There is some element of truth in this and it is reinforced where the judges also interpret a set of fundamental individual and collective rights in the constitution. This has sometimes led to the advocacy of the popular election or recall of judges, although that has not yet been applied to the most senior constitutional court in any federation. To be noted is the Swiss alternative referred to above, of the legislative referendum to determine the validity of federal laws. In this process the electorate becomes the adjudicating umpire. It should also be noted that, generally speaking, the extent to which the role of courts as adjudicators becomes prominent depends on the extent to which problems fail to be resolved by other methods of adjustment and conflict resolution through intergovernmental agreements, mediation procedures between the federal legislative chambers (as in the USA, Germany and South Africa), governmental changes induced by elections, and formal constitutional amendments. The South African constitution, in order to minimize intergovernmental litigation, uniquely provides (section 41(3)) that "all spheres of government must exhaust every reasonable effort to resolve any disputes through intergovernmental negotiation," and the

necessary since a sense of regional or minority insecurity generally tends to undermine federal cohesion. At the same time it is important that as conditions change, the federation is sufficiently flexible to adapt. Too rigid a constitutional structure may seriously weaken the ability of the federation to respond to and accommodate changing internal economic, social and political pressures and external international conditions. What is required, then, in the constitutions of federations is a balance between rigidity and flexibility.

One common means of achieving such a balance has been to provide for different amendment procedures for different parts of the constitution, with amendment of those aspects of the constitution that establish its fundamental federal character requiring the involvement of both orders of government, but the procedure for amending other portions of the constitution being more flexible. For instance, federal legislatures are often free to amend those institutions of federal government that do not affect the representation or influence of the constituent units, and constituent units are usually free to amend their own constitutions within the limits permitted by the federal constitution. This is typical of most federations, but particularly notable examples are the constitutions of India and Canada, both with a variety of amendment processes for different parts of the federal constitution. Following this pattern, when the Canadian *Constitution Act, 1982* (sections 38–49) added procedures for amending the Canadian constitution, five different procedures were actually set out for amending different parts of the constitution. These involve varying degrees of rigidity: (1) a “normal” procedure requiring the assent of Parliament and two-thirds of the legislatures of the provinces containing at least half the total population of all the provinces, (2) a procedure requiring the assent of Parliament and the unanimous consent of the provincial legislatures for a select number of constitutional provisions, (3) a bilateral procedure for amendment of provisions relating to some b1(.of 1(o)0.TJ/F3 1 le)13.itutional proes 7(t)0(a Tce

Nigeria and Russia. In some a simple majority of state legislatures is required, as in India and Mexico. In Switzerland and Australia, instead of approval by constituent legislatures, a referendum with a double majority consisting of an overall majority and majorities in a majority of constituent units is required. A referendum with a special majority both federally and in Nevis is required in St. Kitts and Nevis for constitutional amendments. A simple federal majority in a referendum is required in Venezuela and in some special cases in Russia. Major amendments in Malaysia affecting the Borneo states require the concurrence of

to consent by that majority among the Land governments. In practice this procedure has proved relatively flexible, producing 46 constitutional amendments during the first 50 years, including a strengthening of the legislative and financial roles of the federal government in 1967–69 and the reunification of Germany in 1990.

In South Africa the level of approval in Parliament required varies with the nature of the constitutional amendment, but the highest threshold requires approval of three-quarters of the National Assembly and 6 of the 9 provinces in the National Council of Provinces (composed of provincial delegates voting as a provincial block).

In Austria, partial constitutional amendments require passage in the lower house (Nationalrat) of the federal legislature by a two-thirds majority with at least half of the membership of the chamber present, but one-third of the membership of either federal house may demand a total revision of the constitution requiring a referendum at which a majority of the population decides the matter.

The Belgian procedure for constitutional amendment (article 131) involves only a two-thirds majority in the federal parliament, and does not involve the Regions or Communities. Most of the detailed provisions relating to its federal features do, however, require a complex process which involves a special election, special majorities in each federal house, and in many areas (relating to amendments to the distribution of powers or to the Court d'Arbitrage) special legislation supported by a majority of each of the two major linguistic groups in Parliament.

In Spain the initiating of constitutional amendments lies normally with the government, Congress or Senate, although there is provision for an Autonomous Community Assembly to propose constitutional amendments. Ratification is by a majority of three-fifths of the members of each federal chamber or, where the chambers disagree, by an absolute majority in the Senate and a two-thirds vote in the Congress. If one-tenth of the members of either house request it, this is fol-

incremental partial constitutional revisions as opposed to efforts at comprehensive constitutional revision in achieving adaptation. The failure in Canada of several efforts at comprehensive constitutional revision of its federal features during the past forty years confirms this. The general rigidity of most constitutions of federations has made other forms of adjustment to achieve flexibility and adaptability all the more important. Consequently, there has been a heavy reliance in virtually all federations upon other forms of adjustment, including judicial review, financial transfer arrangements, and intergovernmental collaboration and agreements.

11.5 THE ROLE OF CONSTITUTIONAL BILLS OF RIGHTS

Federations are essentially a territorial form of political organization. Thus, as a means of safeguarding distinct groups or minorities, they do this best when those groups and minorities are regionally concentrated in such a way that they may achieve self-government as a majority within a regional unit government. Examples are the many largely unilingual and uniconfessional cantons within Switzerland, the predominantly French-speaking majority in Quebec within Canada, the various linguistic majorities in the different Indian states following the reorganization of the states along linguistic lines, the distinctive populations

As one of the most ethnically and linguistically diverse federations, India's constitution makes provision not only for fundamental individual rights but also for the recognition of 18 regional languages and for the recognition and protection of linguistic minorities (including their language and education), Anglo-Indians, and scheduled castes and tribes. This includes provision for a "special officer for linguistic minorities" and a national commission to investigate and monitor all matters relating to the rights and safeguards of the Scheduled Castes and Scheduled Tribes.

The Malaysian constitution similarly lists individual rights and also makes special provision for certain specified groups within the states. There are explicit

Three basic principles came to prevail considering language rights.³ These were (1) the absolute equality of the Swiss languages, (2) cantons have general jurisdiction over language matters except where the constitution provides specific limits in favour of the federal government, and (3) the principle of “territoriality” prevails. This is interpreted to mean that “any canton or linguistic area is deemed to have the right to preserve and defend its own distinctive linguistic character against all outside forces tending to alter or endanger it.”⁴ The revised Swiss constitution adopted in 1999, while largely a modernization of the language of the previous constitution, does, however, now include a consolidation of fundamental rights (articles 6–32) as well as a statement of social goals (article 33).

The Ethiopian federation has ethnicity as its underlying organizing principle, clearly expressed in the preamble of the constitution. With more than 80 different ethnic groups and some 200 dialects, there are too many for each to have its own constituent unit within the federation. Consequently, although Amharic is the working language of the federal government, all Ethiopian languages enjoy equal recognition under the constitution.

In Australia and Austria the constitutions do not elaborate a set of fundamental rights. Australia’s constitution contains no general statement of individual or group rights, although there are specific references relating to the acquisition of property on just terms, trial by jury, freedom of movement between states, freedom of religion, protection against discrimination on the basis of state residence, and voting rights. Recent jurisprudence of the High Court indicating its willingness to “imply” certain rights from the provisions of the constitution has been the subject of considerable debate.

The Austrian constitution includes no list of rights of any kind, but there is a reference to minority group rights of the Croatian and Slovene minorities in article 7 of the *State Treaty of Austria, 1955* that was signed by the Allied powers and the Austrian government at the time the occupation of Austria was ended.

In a number of federations, including the United States and Canada, some state or provincial constitutions also grant more individual rights or minorities protections adding to those embodied in the federal constitution.

11.6 PROVISIONS FOR FORMAL SECESSION

Until recently, few federations anywhere have included in their constitution the recognition of a unilateral right of secession or explicit provisions for a formal

³ Kenneth D. McRae, *Conflict and Compromise in Multilingual Societies: Switzerland* (Waterloo: Wilfrid Laurier University Press, 1983), p. 21.

⁴ *Ibid.*, 122.

process for secession. Indeed, the constitution of the former USSR was in its time unique in this respect, being the only constitution of a federation then making reference to a unilateral right of secession. Generally, three reasons have been offered for not including a unilateral right of secession in the constitutions of federations. First, it has been feared that the right to secede would weaken the whole system by placing a weapon of political coercion in the hands of the governments of the constituent units. Second, there has been anxiety that the possibility of secession would introduce an element of uncertainty and lack of confidence in the future, seriously handicapping efforts to build up federal economic development and unity. Third, theorists have argued that it would undermine the fundamental principle of coordinacy between levels of government in a federation: if a regional government acting alone had the unilateral right to leave the federation, or the federal government had the unilateral right to expel a regional unit, then the other level of government would be subordinated.

Consequently, secession has rarely been authorized by a federal constitution. Indeed, many federations have emphasized the "indissoluble" character of the federation and where necessary have enforced this by federal military action, of which the civil war in the United States in the 1860s was a prime example.

The current exceptions are the constitutions of Ethiopia, St. Kitts and Nevis, and Sudan, and the result of judicial review in Canada. The Ethiopian constitution with its emphasis on ethnic self-determination expressly provides for the constitutional right of secession (article 39(4)) by a procedure that includes as steps a two-thirds majority vote of the council of the respective state, a referendum organized by the federal government, and a majority vote in the national assembly.

would require the agreement of the federal government. The judgement of the court left many issues open, but in attempting a balanced judgment that would not inflame passions among either federalists or Quebec secessionists, it did recognize the possibility within certain terms of the possibility of a non-unilateral secession.

It must be noted that the fact that virtually all other federations except Ethiopia, St. Kitts and Nevis and Sudan have made no explicit constitutional provision for a right of unilateral secession does not mean, however, that there have not been cases of actual unilateral succession or expulsion. It simply means that when

Chapter 12

Degrees of Decentralization and Non-centralization in Federations

12.1 CONCEPTUAL ISSUES IN MEASURING DECENTRALIZATION AND RELATIVE AUTONOMY

The concepts of decentralization and non-centralization are closely related. Some authors have preferred to use the term “non-centralization” to “decentralization” in relation to federations on the grounds that the latter implies a hierarchy with power flowing from the top or centre as exemplified by decentralization within unitary political systems, whereas the former infers a constitutionally structured dispersion of power and therefore better represents the character of a federation.¹ Nevertheless, since the term “decentralization” is in such widespread public use in referring to federations, the terms will be used interchangeably here.

While in ordinary language we may loosely compare differing degrees of decentralization within federations, the comparative measurement of decentralization or non-centralization is actually a complex issue. There are at least four problems in discussing the degree of decentralization (or centralization) within a political system: first, how to define what the concept of decentralization actually refers to; second, how to measure it; third, how to relate different indices of measurement to each other; and fourth, how to compare such measurements across countries or over time.

To begin with we must distinguish between decentralization of jurisdiction, i.e., the responsibilities exercised by each level of government, and decentralization

¹ Daniel J. Elazar, *E F* (Tuscaloosa: University of Alabama Press, 1987), pp. 34–6.

of decision making at the federal level, i.e., the degree to which the constituent units play a significant role in decision making at the federal level. The former, decentralization of jurisdiction, itself has two aspects to be distinguished: the exercised by each level of government, and the or freedom from control by other levels of government with which a particular government performs the tasks assigned to it. For example, in one sense

- Another aspect of the autonomy of legislative decentralization is the extent to which constituent units are bound by international treaties negotiated by the federal government in areas that normally come under the jurisdiction of the constituent units. In some federations international treaties may create a limitation on state autonomy (e.g., USA and Australia), but in others such federal treaties in areas normally under state jurisdiction require implementing state or provincial legislation or the consent of the provincial or state government (e.g., Canada, Germany and Austria) or non-binding consultation of state governments (e.g., India and Malaysia). The Belgian federation goes the farthest in giving constituent units specific powers to negotiate international treaties in areas of their own competence.

ADMINISTRATIVE DECENTRALIZATION

- The allocation of administration responsibilities assigned by the constitution or developed through delegation or intergovernmental agreements is another relevant index of the scope of jurisdictional decentralization. While in many federations the constitutional allocation of administrative responsibilities broadly corresponds to the constitutional legislative jurisdiction, there are many exceptions to this. Indeed, in most European federations their constitutions require a substantial portion of federal laws to be administered by the states. Thus, in these cases these federations are more decentralized administratively than legislatively. The same arrangement has also been applied in the European Union.
- The relative sizes of the public services of each level of government is another indicator of the scope of decentralization of decision making, particularly in relation to administrative responsibilities, although it provides little indication of the degrees of autonomy.
- In assessing the degree of autonomy in the exercise of administrative jurisdiction, one needs to take account of the extent to which one level of government may be dependent on another for implementing its policies (especially where a federal government is dependent upon constituent governments for this) and the degree to which the level of government that has legislative responsibilities may, as in Germany, give directions to the government that is administering its legislation. It is significant, for example, that in Switzerland, however, the cantons have extensive autonomy in how they implement federal laws for which the constitution has given them administrative responsibility, thus emphasizing the decentralized character of that federation. In other federations, where administration of federal laws is delegated by the choice of the federal government rather than by constitutional requirement, the terms of the arrangement (including financial terms) and the directives of the federal government may limit the degree of autonomy with which the delegated administration is performed.

FINANCIAL DECENTRALIZATION

- Federal government revenues before transfers as a percentage of all government revenues (federal-provincial-local) provide one measure of the scope of financial centralization or decentralization. Since this relates to own-source revenues directly raised by each level of government and excludes transfers, it also provides a measure of the degree of their financial autonomy. Table 9 in chapter 6 above provides a comparative tabulation of federations in descending order, from the more centralized to the more decentralized in this respect.
- Federal government expenditures after transfers as a percentage of all government expenditures (federal-provincial-local) give a measure of the scope of centralization or decentralization of expenditure and of the administration of programs and delivery of services. Since these include expenditures funded by transfers, however, they are not a good indicator of the degree of financial autonomy. Furthermore, the cost of different responsibilities does not by itself indicate their importance. Those functions involving delivery of services are generally more expensive than those that are primarily regulatory. Nevertheless, table 10 in chapter 6, which provides a comparative tabulation of expenditures after transfers, gives another measure of relative decentralization.
- The size and character (whether conditional grants, unconditional grants or shares of federal taxes) of transfers from one level of government to another gives some indication of the degree of dependency or autonomy with which levels of government perform their responsibilities. Table 11 in chapter 6 provides a comparative tabulation indicating intergovernmental transfers as a percentage of provincial or state revenue, and tables 12 and 13 indicate the significance of conditional and unconditional transfers affecting the degree of dependence or autonomy in different federations.
- The extent to which one level of government may and actually does use its spending power to act or influence activities in areas of responsibility constitutionally assigned to other levels of government must also be taken into account in assessing both the scope and the degree of autonomy applying to decentralization within a particular political system.
- Access of constituent units to public borrowing is another indicator of the degree of financial autonomy. Provided their governments are not mired in debt, the autonomy of constituent units is enhanced when they have direct and unhindered access to borrowed funds. Federations differ widely in terms of the formal or practical ability of constituent units to borrow. In some federations (e.g., Austria, India and Malaysia) the federal constitution limits foreign borrowing to the federal government. In the United States there are balanced budget requirements in many states. In Australia the constitutionally established intergovernmental Loan Council is a coordinating body with binding authority upon both levels of government. Such cases contrast with

other federations, including Canada, where constituent units have substantial and unhindered access to both domestic and international borrowing.

UNFUNDED MANDATES

In some federations, such as the United States, “unfunded mandates” may introduce an element of federal government control. These are federal actions requiring state and local government activity that are not accompanied by funding to cover the costs of the activity. This has been described as leading to the emergence of “fend-for-yourself federalism” in the United States.³ The increase of this practice since 1945, coupled with the increase in federal pre-emption of state and local government authority, federal laws and actions pre-empting the ability of state and local governments to take action or generate policies on their own, and reductions in federal aid and support levels has produced a common assessment of the federal role in relation to states and local governments as “less money and more regulations”.

DECENTRALIZATION TO NON-GOVERNMENTAL AGENCIES

- The scope and extent of decentralization to non-governmental agencies as opposed to other levels of government is also relevant in judging the character and scope of decentralization within a political system.

CONSTITUTIONAL LIMITATIONS

- Constitutional prohibitions (e.g., constitutional stipulations of individual or collective rights such as the Canadian *C R F*) prohibiting certain activities by any level of government must also be taken into account in measuring the extent of non-centralization.
- In some federations the extent of the autonomy of both levels of government (e.g., Switzerland) or of the states (e.g., some states in the USA) may be subject to the checks and balances of citizen-initiated referendums and initiatives.

THE CHARACTER OF FEDERAL DECISION MAKING

- In addition to the above indicators that provide various measures of decentralization and non-centralization in terms of the scope and autonomy of

³ Christopher Hoene, “Unfunded Mandates in the U.S. and fend-for-yourself federalism,” *F* 6:1 (February/March2007):31-2.

jurisdiction, the extent to which federal decision making requires involvement of other levels of government in a co-decision-making process (e.g., the role federal second chambers such as the German Bundersrat) is another measure of the degree to which policy making is decentralized. A related factor here too is the political party structure and the degree to which federal parties are distinct from or dependent upon provincial or state party structures, or control provincial or state party organizations.

The assessment of the degree of decentralization within a political system is further complicated by difficulties of quantification when measuring powers, degrees of dependency or autonomy, relative roles in areas of overlap and interdependence, or influence upon other governments. In many federations where the distribution of responsibilities among provincial or state governments is not uniform, one needs also to take account of differences (i.e., asymmetry) in the powers assigned or exercised by different constituent units and in the resources and expenditures available to them noted in chapter 8 above.

Thus, it is clear that attempting to measure with any precision the degree of decentralization (or centralization) within political systems is complicated and difficult and at the very least requires reference to multiple indices with some effort to weigh their relative importance.

12.2 A COMPARATIVE ASSESSMENT

Given the complex issues identified in the preceding section, a comparative assessment of the degree of decentralization in different federations would require intensive and extensive research in terms of the various indices noted above. Much of this research has yet to be undertaken by comparative scholars. Nonetheless, it is possible to make two sets of broad objective generalizations.

First, as noted in section 5.4 in chapter 5 above, the particular areas of legislative jurisdiction that are centralized or decentralized vary from federation to federal and

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In addressing this question it should be noted that the essence of federal political systems is to reconcile diversity and unity within a single political system by assigning sovereignty over certain matters to the constituent provinces and sovereignty over other matters to the federal government, with each level of government responsible directly to its electorate. Any consideration of devolving additional powers to states or provinces must, therefore, also take account of what powers may be required for the federal government to fulfill its role effectively for the federation as a whole. Decentralization and devolution of powers that may be desirable to accommodate linguistic, cultural, historical and economic diversity or to enhance administrative efficiency will not by themselves hold a federation together. All federations need also a central focus of loyalty able to deal effectively with matters of common interest if the federation is to hold the loyalty of its citizens over the long term.

Experience in other federations suggests that although there have been many variations in the terms of the precise formulation, federal governments have generally been assigned the major responsibility for defence, international relations, currency and debt, and equalization, and the primary (although not exclusive) responsibility for management of the economy and the economic union.

Provinces or states have usually been given exclusive or major responsibility for education, health, natural resources, municipal affairs and social policy. Areas such as agriculture, environment, immigrant, language and culture have often been shared through some form of concurrency, legislative delegation or inter-governmental agreements. However in some multicultural or multinational federations (e.g., Switzerland and Belgium) constituent governments have been given a primary responsibility for their own language policy and culture.

In addition, as noted in chapter 8, in a number of federations and even asymmetry in the powers of particular constituent units have affected the balance (e.g., Belgium, Malaysia, India, Spain and Canada).

Chapter 13

The Pathology of Federations

13.1 SIGNIFICANCE OF THE PATHOLOGY OF FEDERATIONS

Much of the comparative literature on federal systems and federations has concentrated on their establishment and operation. Furthermore, it is true that many federations continue to be remarkably effective and that many of the longest-standing constitutional systems anywhere in the world today are federations still operating basically under their original constitutions (e.g., United States 1789 (despite the civil war 1861–65), Switzerland 1848, Canada 1867 and Australia 1901).¹ A number of authors have attributed the prosperity, stability and longevity of such federations to the effectiveness of federation as a form of political organization.²

But the period since 1945 has seen not only the proliferation of federal systems and particularly federations, but also the failure of some of them. Significant examples have been the disintegration of federations in the West Indies (1962), Rhodesia and Nyasaland (1963), Yugoslavia (1991), and the USSR (1991); the splitting of Pakistan (1971), Czechoslovakia (1992) and Serbia and Montenegro (2006); the expulsion of Singapore from Malaysia (1965); and the civil war in Nigeria (1967–70) followed by alternating civilian and military rule. In any comparative review, account must therefore be taken of these failures, of other cases

¹ The new Swiss constitutions of 1874 and 1999, although total revisions, preserved the basic character of the federation established in 1848. In Canada, the *Constitution Act, 1982* added to but did not replace the *Constitution Act, 1867*.

² J.R. Pennock, "Federal and Unitary Government: Disharmony and Reliability," *Behavioral Science*, 4:2 (1959): 147–57; Martin Landau, "Federalism, Redundancy and System Reliability," *Publius: The Journal of Federalism*, 3:2 (1973): 173–95.

of serious stress in federations that have not failed, and of the literature examining the conditions and processes leading to the breakdown of federations where this has occurred.³ An important point to note at the outset of any consideration of the pathology of federal systems is that the problems faced by them have arisen not so much because of the adoption of federation as a form of government but from the particular variant or variation of federal arrangements that was adopted. It should also be noted that it is not so much because they are federations that countries have been difficult to govern but because they were difficult to govern in the first place that they adopted federation as a form of government.

13.2 SOURCES OF STRESS

There are four factors that have contributed to stress within federations: (1) sharp internal social divisions, (2) particular types of institutional or structural arrangements, (3) particular strategies adopted to combat disintegration, and (4) political processes that have polarized internal divisions.

THE DISTRIBUTION AND CHARACTER OF INTERNAL SOCIAL DIVISIONS

Regional divergences of political outlook and interests are typical of all federations; that is usually why they adopted "federation" as a solution in the first place. But a number of factors may sharpen such differences. Among the sharpest divisive forces have been language, religion, social structure, cultural tradition and race. Where several of these have operated simultaneously to reinforce each other, as for instance in India, Malaysia, and particularly in Pakistan before its separation, Nigeria, Rhodesia and Nyasaland, Yugoslavia and the USSR, the internal cleavages have been accentuated. By contrast, in Switzerland linguistic, religious and economic differences among the cantons have tended to cut across each other, moderating the sharpness of internal differences. Other factors that have contributed to the sharpness of internal cleavages have been variations in the degree of economic development, and regional disparities in wealth accentuating regional resentment, especially when these have further reinforced linguistic, cultural and social differences among regions. On the other hand, in some instances moderating

³ See, for instance, Thomas Franck, *Why Federations Fail: An Inquiry into the Requisites for a Successful Federation* (New York: New York University Press, 1966); Ronald L. Watts, "The Survival and Disintegration of Federations," in R. Simeon, ed., *Must Canada Fail?* (Montreal: McGill-Queen's Press, 1977), pp.42–60; Ursula K. Hicks, *Federalism: Failure and Success: A Comparative Study* (London: Macmillan, 1978); Robert A. Young, *The Secession of Quebec and the Future of Canada* (Montreal & Kingston: McGill-Queen's University Press, 1995), chapters 10 and 11.

factors that have emphasized the importance of maintaining unity have been the need for security from external threats (an important motivation in both Swiss and Canadian history but in both cases now much diminished in relative influence), and the significance of interregional trade and of the need for international leverage through united action in trade and investment negotiations and relations.

THE ROLE OF THE INSTITUTIONS AND STRUCTURES

Whether the stresses within a federation can be accommodated and resolved depends not only upon the strength and configuration of the internal divisions within the society in question but also upon the institutional structure of the federation. The way these institutions have channelled the activities of the electorate, political parties, organized interest groups, bureaucracies, and informal elites has contributed to the moderation or accentuation of political conflict. The function of federations is not to eliminate internal differences but rather to preserve regional identities within a united framework. Their function, therefore, is not to eliminate conflict but to manage it in such a way that regional differences are accommodated. But how well this is done has in practice depended not just on the adoption of a federal form of government but often upon *the particular form of the institutions* adopted within the federation.

Four institutional factors have been particularly critical. First,

Jamaicans in the West Indies Federation, and the black Africans of Nyasaland and Northern Rhodesia. A particularly dangerous situation is where parties operating at the federal level have become primarily regional in their focus so that there are no federal political parties serving as effective interregional bridges. This was a major factor in the instability within Pakistan prior to its split in 1971, in Nigeria prior to the outbreak of civil war in 1967, in the ultimate breakdown of the Yugoslavian federation in 1991, and in Czechoslovakia in the period before it was divided in 1992. In this respect one of the most ominous signs within the current Belgian federation is the regional character of all its political parties operating at the federal level and the difficulties of negotiating federal coalitions of these parties to bridge the divisions. Indeed, this situation reached crisis proportions following the 2007 elections. The recent signs of a similar trend in Canada in terms of the federal opposition parties and the difficulty of obtaining majority federal governments is therefore something of a danger signal.

Third, in most multicultural federations it has proved necessary to recognize as official the languages of major minority groups and to provide constitutional or political guarantees of individual and group rights against discrimination. Where the language of a major regional group has been denied recognition as a federal language, extreme bitterness and tension has resulted. Pakistan, Nigeria, India and Malaysia have provided examples of the intensity of resentment and pressure that can be aroused.

Fourth, where the particular distribution of powers has failed to reflect accurately the aspirations for unity and regional autonomy in a given society, there have been pressures for a shift in the balance of powers or, in more extreme cases, even for abandoning the federal system, as in overcentralized Pakistan or the ineffectual West Indies Federation. It has been to avoid this extreme result that some federations, such as Malaysia, have instituted and maintained a constitutional asymmetry in the distribution of powers.

13.3 THE SPECIAL PROBLEM OF TWO-UNIT FEDERATIONS

A set of cases worthy of special examination is that of federal systems and federations composed of only two constituent units.

The experience of bipolar or dyadic federal systems is not encouraging. Pakistan prior to the secession of East Pakistan in 1971, Czechoslovakia prior to its

Maastricht model, which despite its difficulties works for a confederation of 27

e.g., Pakistan (1971) and Yugoslavia (1991–95). The breakup of the USSR also led to some incidences of violence, and within the successor Russian federation bitter fighting in Chechnya followed an attempt at secession. One interesting case that did not involve violence was that of Western Australia which, dissatisfied with its place in the federation, in 1933 voted by a majority in a referendum to secede from the Australian federation. The Australian federal government, however, stood firm and refused to implement the separation of Western Australia (as did the United Kingdom Parliament when subsequently petitioned by the state of Western Australia to permit secession). The federal government instead responded to the concerns and grievances of Western Australia by establishing a system of special financial assistance to claimant states based on advice by a Commonwealth Grants Commission instituted in 1933.

While secessions have usually been contested and have often led to violent conflict, there have been some cases of peaceful secession from federations.⁶ Two of these, which led ultimately to the disintegration of the West Indies Federation (1962) and the Federation of Rhodesia and Nyasaland (1963), occurred in colonial federations. In these cases it was the imperial government in the United Kingdom that not only accepted secession but held the ring to ensure that there was no violence. Among independent federations the only cases of peaceful separation during the past half-century have been in Malaysia, Czechoslovakia, and Serbia and Montenegro. The first of these in 1965 was not really a case of unilateral secession but of unilateral expulsion by the federal government reacting to the troublesome political dynamics that had followed Singapore's inclusion in the Malaysian federation two years earlier. The Czechoslovakian separation, which came into effect on 1 January 1993, occurred largely because it was the climax of a gradual but accelerating process of polarization in which the regionally based political parties within each of the two units found it politically profitable to en-

or dissolution have tended to persist. They have usually discouraged, for a considerable subsequent period, creation of a looser form of association between the separating territories, because whenever secession has occurred it has inevitably been accompanied by sharp political controversies that were not easily

49, occurred in a period that was not marked by internal strife. The adoption of a federal constitution by the United States took place a full decade after the War of Independence, but more than seventy years later the USA did experience a pro-

Chapter 14

Conclusions

14.1 IMPLICATIONS DRAWN FROM THIS COMPARATIVE STUDY

In drawing implications from this comparative analysis of federations, we must keep in mind the comments at the outset about the benefits and limits of comparisons among federations. Comparisons do help draw attention to crucial issues and to possible alternatives illustrated by the experience of other federations. But we need also to recognize the limits to the applicability of comparisons and particularly to the transferability of institutions to differing circumstances and contexts. Above all, it is important to recognize that it is not simply in the examples of different institutional structures that the comparisons may lead to useful conclusions; rather, it is in coming to understand the way in which underlying social, economic and political conditions, and federal institutions and political processes have interacted with each other within federations.

What we can learn from federations that have succeeded and from the pathology of other federations is that even more important than their formal structures has been the public acceptance of the basic values and processes required for federal systems. These include the explicit recognition and accommodation of multiple identities and loyalties within an overarching sense of shared purposes and objectives. Efforts to deny or suppress the multiple identities within a diverse society have almost invariably led to contention, secession or civil war. An essential element therefore in any federation encompassing a diverse society has been the acceptance of the value of diversity and of the possibility of multiple loyalties expressed through the establishment of constituent units of government with genuine autonomous self-rule over those matters most important to their distinct identity. At the same time, equally important has been the recognition of the benefits within

even a diverse society to be derived from shared purposes and objectives providing the basis for the parallel processes of shared-rule.

This comparative study has made clear that within the general category of federal political systems, and indeed within the more specific category of federations, there has been a considerable variety in the patterns of social conditions accommodated and an enormous range in the institutional arrangements and political processes adopted. All these systems have attempted, many with considerable success, to combine elements of autonomous self-rule for the constituent units in certain matters and an overarching shared-rule in other matters in order to reconcile the desire for both distinctive diversity and united action. But the variations among them also make it clear that there is no single pure ideal form of federation that is applicable everywhere. Federations have varied greatly in their institutional design and in their operation to meet their own particular conditions and context. A further implication that may be drawn from some of the more recent examples is that political leaders should not be constrained to traditional arrangements or theories about federalism but should be ready to consider more imaginative and innovative ways of applying pragmatically the spirit of federalism as a way of combining unity and diversity. At the same time, it may be possible to draw lessons or inspiration from practice in other federations, particularly in relation to identifying potential dangers to be averted, desirable objectives to be attained, and appropriate and inappropriate processes for achieving those objectives. But ultimately, while bearing these in mind, each federation, if it is to be effective and long-lasting, will have to direct its efforts at pragmatically accommodating the particular conditions and “realities” of its own society.

We can conclude by noting that the experience of federal systems has taught us five major lessons. *First*, as the mature federations illustrate as a group, federal systems *do* provide a practical way of combining through representative institutions the benefits of both unity and diversity. For instance, the United States (1789), Switzerland (1848), Canada (1867), and Australia (1901) are among the longest continually operating constitutional systems anywhere in the world today. Furthermore, the United Nations annual Index of Human Development, issued in recent years, ranking some 174 countries in terms of quality of life based on a weighted average of life expectancy, adult literacy, school enrolment and per capita gross domestic product, has consistently ranked four federations — Australia, Canada, the United States and Switzerland — among the top ten countries in the world, with four others — Belgium, Austria, Spain and Germany — not far behind.¹ Furthermore, a number of recent empirical studies, including those of Arendt Lijphart, Ute Wachendorfer-Schmidt and John Kincaid, have indicated that federal

¹ United Nations Development Programme, *Human Rights Report* (New York: Oxford University Press, 2006).

political systems have on balance generally actually facilitated political integration, democratic development and economic effectiveness better than non-federal systems.²

Appendix A

The Distribution of Powers and Functions in Selected Federations: A Comparative Overview

The purpose of this appendix is to provide a comparative overview of the constitutional distribution of powers in 12 federations (as originally published in R.L. Watts, *Comparing Federal Systems*, 2nd edition (1999), pp. 125–30). Information in this table is based on a reading of constitutional texts, academic interpretive texts and other sources. The tables indicate whether legislative authority for a subject matter is Federal (F), State (S) or Concurrent (C). Where different aspects of a matter are assigned exclusively to the federal and to the state governments this is indicated by the notation FS. The legend at the bottom of each page explains the notations for variations or exceptions to these standard classifications. A space left blank indicates that the matter is not explicitly referred to in the constitution or that the power to legislate in that area rests with the residual authority (indicated in the first line of the table). The content and allocation of some subjects are often more complex than might appear from the table, and reference to the constitutional documents themselves should be made for greater detail.

The Distribution of Powers and Functions in Federal Systems: A Comparative Overview

	Canada (1867)	United States (1789)	Switzerland (1848/1999)	Australia (1901)	Germany (1949)	Austria (1929)	India (1950)	Malaysia (1963)	Belgium (1993)	Spain (1978)	Czechoslovakia (1968)	Pakistan (1962)
BASIC FEATURES												
Residual Power	F	S	S	S	S	S	F	S	F	FS*	S	S
Enumeration of State Powers	YES	NO	SOME	NO	NO	YES	YES	YES ^a	YES ^a	YES ^a	NO	NO
Delegation of Legislative Authority	NO	NO	YES	YES	YES	NO	YES	YES	YES ^a	YES	NO	YES

SCOPE OF POWERS

The Distribution of Powers and Functions (*continued*)

Canada (1867)	United States (1789)	Switzerland (1848/1999)	Australia (1901)	Germany (1949)	Austria (1929)	India (1950)	Malaysia (1963)	Belgium (1993)	Spain (1978)	Czechoslovakia (1968)	Pakistan (1962)
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International Relations

The Distribution of Powers and Functions (*continued*)

Canada	United States	Switzerland	Australia	Germany	Austria	India	Malaysia	Belgium	Spain	Czechoslovakia	Pakistan
(1867)	(1789)	(1848/1999)	(1901)	(1949)	(1929)	(1950)	(1963)	(1993)	(1978)	(1968)	(1962)

Transportation and
Communications

FC†

F

The Distribution of Powers and Functions (*continued*)

	Canada (1867)	United States (1789)	Switzerland (1848/1999)	Australia (1901)	Germany (1949)	Austria (1929)	India (1950)	Malaysia (1963)	Belgium (1993)	Spain (1978)	Czechoslovakia (1968)	Pakistan (1962)
Social Affairs												
Education and Research	S	S	C†S	S	S	FS	CS	F ^a	Sc	FS*	S	
Primary and Secondary Education	S	FS	FC†S	FS	C†**	F	FCS	F ^a	Sc	F		
Postsecondary Education		FS	F	FS	SC†	FS	FCS	F ^a	FSc			FS
Research and Development												
Health Services		SF	S	FS	C†	C†	S	F	Sc	FS*		
Hospitals		S	C†	S	C†	FS	S	F ^a	Sc	S		
Public Health and Sanitation								FC	Sc			
Labour and Social Services			FS		C			F			C	
Unemployment Insurance	F	FS	C†	C	C	F	S	F ^a	F	F		
Income Security	FS		FC	C	C	F	CS	F ^a	F	F		
Social Services	SF	SF	C†	C	C†	S	CS	C	Sc	FS		C
Pensions	C ^s	C	C†	C	C†S	F	C	F ^a S		F	F	FS

Legend:

- F = federal power
- S = state (provincial/canton/Länd)
- C = concurrent power (federal paramourncy except where denoted C^s which denotes provincial paramourncy)
- c = "Community" power

^a = asymmetrical application of powers

* = 6 of the 17 sub-national orders of government have jurisdiction over education and health

** = enumerated as a framework legislation jurisdiction whereby the federal government may enact general principles only

† = federal legislation in this field administered by the states

Note: Italics denote *de facto* distribution of powers and functions

The Distribution of Powers and Functions (*continued*)

Canada (1867)	United States (1789)	Switzerland (1848/1999)	Australia (1901)	Germany (1949)	Austria (1929)	India (1950)	Malaysia (1963)	Belgium (1993)	Spain (1978)	Czechoslovakia (1968)	Pakistan (1962)
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