FEDERALISM AND DECENTRALIZATION

Perceptions for Political and Institutional Reforms

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LOCAL GOVERNMENT DEVELOPMENT FOUNDATION

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Foreword

Decentralisation has become a prominent topic for political and institutional reforms in Asia, in general, and in the Philippines in particular. In the Philippines, for instance, an ambitious decentralization reform was initiated in 1991 through the enactment of the landmark 1991 Local Government Code (LGC), and since then the country has made remarkable progress in devolving autonomy to Local Government Units. The code was the most radical and far-reaching policy solution for the devolution of power in Manila. It addressed the decades-old problem of a highly centralized politico-administrative system and the concentration of political and administrative decision-making power in Manila. More than 20 years have passed and despite numerous successes, the decentralisation process has been marred by problems too. In recent times, scholars, politicians and experts have been looking into the federal option as the next step for Philippine governance. Therefore, LOGODEF and the Konrad Adenauer Foundation organised an international conference in September 2015, which aimed to look at the different kinds of federal systems in various countries in Asia and Europe and see what would be the best way forward for the Philippines. The papers that were presented during this conference and which are published in this book confirm the broad international consensus that decentralisation is a necessary element for the promotion of good governance, particularly with regard to combating poverty and the strengthening of democratic rule.

Decentralisation and the strengthening of subnational governments and administrative units are indispensable elements for the successful and efficient resolution of problems and the promotion of local, regional and national development. Therefore, many, if not most, states have opted for the transfer of political, administrative and fiscal competences to decentralized levels of government and administration. Decentralisation is closely linked to the democratization of political structures, the participation of social groups that had been previously excluded from decision-making processes, the improvement of local services of public agencies, and, not least, improvement in efforts targeted at reducing poverty.

Good governance is highly dependent on decentralisation and local self-administration. Good governance is probably the single most important factor in eradicating poverty and promoting development. Therefore, in every

country the political decision makers will look for the best way to improve good governance and in this context they must consider decentralisation as one—not the only but the utmost important—instrument to achieve this goal.

What does decentralisation mean? Different countries offer specific responses to this question, which thus indicates that decentralisation has to be designed according to local political, social, regional etc. circumstances. Despite the necessity for each country to find its own response to the requirement of decentralisation, in a more general perspective we can understand decentralisation as the transfer of duties, responsibilities, resources and political decision-making powers to subnational levels. This understanding goes beyond administrative decentralisation.

For the proper fulfilment of the tasks of the decentralized units, an appropriate resource base is necessary. Fiscal decentralisation will enable local units to realize autonomous revenue and expenditure policies. The transfer of political legitimacy to the subnational levels is an essential component for both social acceptance as well as optimisation of the capacity of the newly created local units.

However, whilst we are emphasising the advantages of decentralisation, we also have to be aware of some risks of decentralisation processes, which have to be considered and avoided in the context of political and administrative reforms. These risks refer to the unreasonable strengthening of the dominance of local elites, the decentralisation of corruption and the weakening of national unity.

Similarly, one has to emphasise that not all processes striving towards decentralisation will automatically or immediately lead to successes in terms of democratization, reduction of poverty and development. Therefore, while discussing decentralisation and federalism in the Philippines, it is only wise and appropriate to look to other countries and learn from their experiences, both positive and negative ones.

If we analyze the experience of other countries we will see that under appropriate conditions, the different forms of decentralisation and federal structures can play important roles in broadening participation in political, economic and social activities of a country. Where it works effectively, decentralisation helps alleviate bottlenecks in decision-making that are often caused by central government planning and control of important economic and social activities. Decentralisation can help to simplify complex bureaucratic

procedures and can increase government officials' sensitivity to local conditions and needs. Furthermore, decentralisation can help national government ministries reach larger numbers of local areas with services; allow greater political representation for diverse political, ethnic, religious, and cultural groups in decision-making; and relieve top managers in central ministries of "routine" tasks so that they can concentrate on policy-making. Decentralisation may also lead to more creative, innovative and responsive programmes by allowing local "experimentation". It can increase political stability and national unity by allowing citizens to better control public programmes at the local level.

Nevertheless, decentralisation may not always be efficient, especially for standardized, routine, network-based services. It can result in the loss of economies of scale and control over scarce financial resources by the central government. Feeble administrative or technical capacity at local levels may result in services being delivered less efficiently and effectively in some areas of the country. Therefore, it is essential to improve local technical capacities by providing training programmes for local public servants and other forms of investment. Another challenge is that administrative responsibilities may be transferred to local levels without providing adequate financial resources; this makes equitable distribution or provision of services more difficult. Hence, the transfer of resources and fiscal competences is another prerequisite for the success of decentralised policies.

Decentralisation also creates a special challenge for the coordination of national policies. Therefore, good and efficient cooperation between local or regional governments and parliaments, the national government and parliament is a principal condition for successful decentralisation.

Based on our experience, parliaments have a decisive role to play when it comes to decentralisation. They will discuss and decide specific policies; they will monitor and control the implementation of these decisions; parliamentarians will receive the feedback of the population; and, last but not least, parliamentarians play an important role in the efficient cooperation between the central state and the regional governments.

a.   In this context, federalism can be seen as the strongest form of decentralisation. A decentralised state with a federal structure will give the state an institutional characteristic that a mere decentralised state will not have. One of the advantages of having such a structure is: In a decentralised state with a federal structure, the central government will not

only transfer power to its member states but accepts at the same time the requirement to share decisions on its own competences.

b.   In this kind of institutional system, the constitutional arrangement is more durable and less flexible for reform as co-decisions in the affairs of the central government is usually assured by the second chamber of parliament, which represents the national sub-units or member states.

c.   A federal structure always complements a country's diversity. When there is a flexible arrangement for different kinds of governance, it gives the local government the freedom to attend to different circumstances and contingencies at the lowest level in which they can be resolved and by the people directly concerned.

d.   The federal mechanism is the best solution for settling ethnic diversity issues and for managing ethno-national diversity.

We hope this book will not only enrich discussions about the strengths and weaknesses of federalisation and decentralisation but also contribute to finding appropriate solutions for political and institutional reforms in the Philippines.

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Federal Governance and Weak States

Felix Knuepling / Forum of Federations, Ottawa Canada

1. INTRODUCTION

This paper is aimed at people involved in "nation building" activities around the world, especially in post-conflict situations. Its purpose is to provide some practical and comprehensive examples of ways and means of recognizing and accommodating two or more national groups living within a single country.

In this paper, we make an effort to describe some basic characteristics of governance models (particularly federal models). Federalism is not the only possible response to diversity, and even where used, it is often accompanied by other measures, such as human rights legislation. However, for a structural, over-arching purpose, federalism offers a helpful set of options and experiences which are not widely known or understood.

Our aim is not to justify federalism, but merely to explain it. The word *federalism* itself is often controversial, because it is misunderstood. In many places, "federalism" is seen as a first step to secession, and truly, historical and present-day secessionist movements in some federal countries (including Canada) further justify this notion.

When minority nationalities in post-conflict countries propose a federal structure as a political solution, majority groups warn that federalism will split the country. However, the federal solution does not necessarily encourage the secessionist agenda, but contains it. A system of constitutional rules and democratic practices allows those who seek to advocate secession to do so in a peaceful, non-violent fashion, rather than resort to armed resistance. To date, federal countries (especially those with a strong tradition of democracy) have not experienced a secession, despite referenda and other forms of secessionist public advocacy. Democratic federalism has proven resilient and flexible enough to deal with the challenge of secession.

We will examine ways, other than federalism, through which diversity can be addressed. These include policies designed to assimilate heterogeneous elements within the majority culture, human and cultural rights provisions, and formal and informal arrangements to guarantee various groups a place

at the national decision-making table. Often, such measures accompany federalism, especially where it is designed as a means of recognizing and accommodating diversity.

The combination of means and strategies underscores the need to be creative in devising arrangements which fit particular situations. People involved in nation-building efforts need to devise their own solutions. They have to consider their options, and examine many techniques to create the structures suitable to any specific situation. For example, Belgium's peculiar federalism combines territorial, constituent unit governments with partially non-territorial linguistic community governments. This seems complex, but it suits Belgium's ethno-cultural character. One Belgian journalist, speaking to Sri Lankan federalism experts, said, "Belgian federalism works very well, except in theory!" He claimed that the greatest lesson of the Belgian federal experience was that it was an example of "thinking outside the box".

In what follows, we will attempt to cite concrete examples, important for developing the structural models. Our aim here is to provide useful and simple information, and we have included a bibliography for further reading. We do not suggest that what we have described here is exhaustive. Indeed, we envisage that this paper will be used in conjunction with other resources.

This paper is the work of the Forum of Federations, a Canadian-based international organization which acts as an international network on federalism. The Forum is not an academic research institute. Publications produced are to provide accessible information to practitioners, civil society actors, and others who do not have specialized or academic backgrounds. The authors use already available information, and do not propose any new theories. The Forum hopes it has succeeded in presenting a clear, factual account that can be helpful to those who have a direct, practical interest in these matters.

2. ETHNO-CULTURAL DIVERSITY

Many countries comprise diverse ethno-cultural or "national" groups. In some cases, these groups are concentrated in separate geographic regions (for example, in Spain, Belgium, Malaysia or Myanmar).

In other cases, the groups are not geographically concentrated. For example, the Muslim people of Sri Lanka are widespread around the country. Although many among them consider one region to be a historic homeland, they are not a majority in the region, and most Muslims live in other parts of

the country. The Swedish minority in Finland, the Hungarian minority in Slovakia, the Slovak minority in Hungary, and Romany populations throughout Europe are not territorially concentrated. Some indigenous peoples in the Americas and Australia have a "land base," while many others do not, and live interspersed with the general population.

There is also great variety in the population balance, although it is rare that the various groups are equal in population. In Canada, there are three English speakers for every French speaker. In Belgium, the Flemish are about twice the population of the Belgian Francophones. In such and other similar cases, there is a certain degree of balance between the main groups which compose the society, and this leads to political institutions reflective of this balance. In other cases, there is a single majority population and much smaller national or ethnic minorities. At times, the minority groups have had difficulty asserting their language, cultural, and political rights. Until recently, this was the case for Indigenous peoples, such as the Sami of Scandinavia and the Aboriginal peoples of Canada.

India presents a complex picture of diversity, with a number of very large language and ethnic groups (Hindi speakers, Bengali, Tamil, etc.) and many smaller groups, sometimes referred to as "tribals". China is also home to many language and ethnic minorities. Both giant countries provide some measure of accommodation for these diverse elements, but in very different ways.

There are also differences in the ways in which peoples define themselves as an "ethnic" or "national" group. There is a large body of social scientific literature on the question of ethnic identity, but this transcends the scope of this paper. A sense of distinct group identity is a clear fact all over the world. Sometimes it is based on language or religion, and sometimes, on a shared cultural tradition. Often, however, it is a combination of these and other factors. Many countries are home to a multiplicity of these identities—all demanding recognition. Political and civil society leaders, and those who advise them, have to deal with this ineluctable fact. We hope this paper can provide some helpful information for those who have such a task.

3. VARIETY OF MEANS

Countries that are home to diverse populations deal with that diversity in a number of ways.

3.1. Minority language and cultural rights

Many countries provide publicly funded schools and some access to government services in minority languages. Some also provide broadcasting facilities, and support cultural and community institutions for minority cultural groups. The Chinese authorities, for instance, provide for primary and middle school education in minority languages for the Uigur and Zhuang people, Koreans in certain areas, and also for Mongolians.

In Peru, Quecha is recognized as an official language of the republic, and Peruvian law provides that it be taught, together with Spanish, in all schools. There are similar provisions for the teaching of indigenous languages in other Latin American countries such as Brazil and Paraguay. In Finland, there are provisions for Swedish language education for the Swedish minority, in Poland for the Lithuanian minority, and in Hungary for the Slovaks, Czechs, Poles, Croats, Slovenians, Germans, Romanians, and a number of other groups.

Minority rights could include education in whole, or in part, in the minority language; access to some government forms in the minority languages (such as tax or census forms); the right to interpretation in court proceedings; and, in some cases, some territorial recognition of the minority language in local areas where it is widely used. Finland, for instance, defines some municipalities as being either officially bilingual or officially Swedish.

Minority rights in many countries are legally and/or constitutionally guaranteed. For instance, in 1993, Hungary passed a detailed law guaranteeing minority language rights for some groups, stating the conditions for their use, and legal redress available to members of minority groups.

In some cases, minority rights guarantees are reinforced by treaties between countries that provide for equal treatment of each other's peoples.

3.2. Consociational power-sharing

Social scientists use this term to describe how ethnic or national group members are included in the governmental and political structures. Experts often use the term "elite accommodation" to suggest that the leaders of the groups negotiate arrangements to guarantee all a share of power, jobs, educational opportunities, etc. Importantly, however, these are often informal. For instance, in some consociational countries, positions in the central government executive are, by custom, guaranteed to various national or ethnic communities. In other cases, the arrangements are legal or constitutional. In New Zealand

there are legally guaranteed seats in parliament for members of the Maori group.

3.3. Assimilation, exclusion, integration

Some countries handle minority populations by encouraging or coercing them to adopt the language and culture of the majority. This was commonplace in Indigenous communities in the Americas, where until recent times, Americans and Canadians did not accept the peoples' cultural and linguistic identities. The extent of these rights is still very much a matter of dispute.

To assimilate means to lose a significant part of one's original group identity—especially in its public manifestation. Assimilation proponents sometimes argue benevolently about how a common language and culture is necessary to ensure full participation in socio-economic and political life. Assimilation differs from policies of exclusion and discrimination, which the former South African apartheid system typifies.

Advocates of exclusion (and/or discrimination) justified its ability to allow each group to develop separately. For example, apartheid apologists argued that "Bantu" education served to foster and preserve black South Africans' distinct cultures. However, South African blacks decried the system's imposition of inferior education, its exclusive emphasis on their own languages, and its failure to prepare them educationally for opportunities.

Ironically, Aboriginal peoples in North America have long *demanded* that education and other services take account of their languages and traditions. It will be naïve to think that what to one group was a policy designed to limit opportunities was to another necessary to its cultural survival. North American Indigenous peoples have not demanded *inferior* services that would consign them to second-class status in society. Some argue that the situation of Indigenous peoples calls for a "citizens plus" policy. This will entail all the rights of citizenship in the general society, as well as additional measures to encourage indigenous languages, cultures and traditions.

Both assimilation and deliberate exclusion are discredited policies, associated with the racialist ideologies of an earlier age. We mention them here because they are an important part of the history of policies that respond to diversity. Assimilation, in particular, is still practiced with respect to immigrant populations. The usual assumption is that those groups which are among the original inhabitants of a territory have a greater claim to recognition than those who arrived more recently.

Integration of heterogeneous groups can also deceptively resemble assimilation, although it is different. Integration ensures all groups can participate in social, economic, and political life without sacrificing their distinct identities. Sometimes, this is achieved by consociational arrangements which guarantee group members participation in national institutions. Another means of achieving integration, without assimilation, is through affirmative action. This is a policy of "reverse discrimination" in employment, access to education, etc., *in favour* of historically disadvantaged groups. Affirmative action focuses on those who have suffered systemic discrimination in the past, and need more than a level playing field and lack of negative discrimination. Ideally, they need some positive measure, in the form of quotas, to counteract the long history of exclusion. In North America, this controversial policy contradicts the idea of liberal individualism, which favours equality of access without measures to redress historical wrongs. Nonetheless, affirmative action is implemented in North America and in India.

3.4. Devolution

Some countries have chosen to allow a great measure of self-government to territorial entities which are the historic homelands of distinct peoples. The British government did this in the 1990s for Scotland and Wales. Westminster "devolved" a great number of powers to the Welsh and Scottish assemblies, giving Wales and Scotland status akin to "constituent units" in federal countries. Devolution differs from federalism, as devolved entities derive their autonomy from central government legislation, which the central government can unilaterally reverse. In a federal country, the constituent units are constitutionally guaranteed, with an unalterable status. This distinction is important for those examining governance options in countries where there has been some history of conflict and mistrust between and among ethnic communities. The assurance groups may have in the impartiality of the judiciary is lacking in devolution arrangements.

3.5. Federalism

In a federal country, two or more orders of government share power and authority. In most cases, these orders of government are defined territorially. A federal country is divided into territorial constituent units (i.e., "states") with defined responsibilities and powers. They are also called provinces, territories,

länder, cantons, autonomous communities, and republics. In many federal countries, there are two orders of government: 1) the constituent unit (state, province, etc.) order and 2) the federal (national, central) order. They each have constitutionally defined and guaranteed roles and powers. In some federal countries, municipalities are also considered as constitutional orders of government, with defined roles and powers. In India, this extends to the village-level, "panchayat" order of government.

There are currently about twenty-five federal countries, which account for more than 40% of the world's population. We say "about twenty-five" because there are a number of borderline cases. Although South Africa and Spain do not identify as federal, experts classify them as such. Conversely, the United Arab Emirates and Pakistan identify as federal states, while experts dispute this. Among the more important federal countries are the United States of America, Germany, India, Nigeria, Brazil and Canada.

Experts often sum up federalism as combining self-rule with shared rule. This implies that a federal country is more than an alliance of independent entities. There is normally a federal government with immense authority to act in the interest of the entire country. The constituent units do not derive their legitimacy from the central government, but from the people. In many cases, all orders of governments are elected. Experts sometimes argue about whether federalism must be accompanied by representative democracy. There are differing views on this subject. For the purposes of this paper, we assume that those who are interested in federalism are also pursuing democratic solutions.

Experts generally agree that with federalism, all orders of government should have direct contact with the people, through elections and the related democratic processes. Importantly, some non-democratic regimes have identified as federal, such as the former Soviet Union. It did have the appearance of a federal country, with multiple constituent units. The constituent units did not have any real measure of autonomy, and did not derive their legitimacy from the willing consent of the governed. When the control of the single party was lifted, the "federation" fell apart. Today, many researchers describe cases such as the Soviet Union as "pseudo-federations."

Some federal countries, such as the USA, were formed by the coalescence of previously separate entities. Others, such as Belgium, were formed by creating constituent units out of a formerly single national unit. Yet, other cases

like Canada or India emerged out of an amalgamation and the creation of new units.

Federalism is a response to a variety of conditions (e.g., ethno-cultural or national diversity). Two of the prime motives for federalism are to bring government closer to the people, and to prevent any single government from acquiring excessive power over the citizenry. Those were the specific goals of post-World War II German federalism, and are often cited as the aims of Indian and United States federalism.

Some federal countries are ethno-linguistically homogeneous. Other multi-ethnic countries (e.g., United States and Brazil) have no arrangement of autonomy for distinct peoples or national groups. Such countries may choose to use other instruments, such as those described above, to deal with the challenge of diversity, as their federal systems were not designed for that purpose.

A number of federal countries are designed to politically express their diverse population groups. Among these are India, Spain, Ethiopia, South Africa, Belgium, Nigeria, Malaysia, Canada, and Switzerland. The combined experiences of these countries can help those challenged with constructing governance arrangements in diverse settings. Since no single model is without significant flaws, it will be helpful to examine various models. It is very unlikely that federalism as practiced in any given country will provide a perfect fit for any other country.

Federalism is always designed with specific, local conditions in mind. No two federal countries are exactly identical, though there are a number of general principles and practices that apply to most. Even where government is structured on the federal principle of shared and self-rule, and divided authority, there are other ways to guarantee that the rights of all groups are respected. What some call "ethno-federalism" is very often accompanied by other measures, including language rights and consociational arrangements. The Nigerian federal system allows for each of the states to assume a particular cultural character. At the same time, at the level of the federal cabinet, there is an effort to assure that all groups are represented (i.e., through a consociation arrangement). Very often, groups which form the majority in certain regions are minorities elsewhere. Federalism combined with other measures often has to take that into account.

4. FEDERALISM IN DETAIL

4.1. Federal constitutions

The federal principle is realized through a constitution, which defines the functions and powers of the federal and constituent unit governments. Some constitutions, such as that of Nigeria, list the areas of jurisdiction pertaining to each order of government. Other constitutions (e.g., the United States'), only enumerate the areas of federal jurisdiction and leave all residual areas to the constituent units. Most modern federations have similar lists of powers and place constitutional limits on governments. In the Indian and Malaysian constitutions, for example, government functions and powers are contained in a provision consisting of the federal list (functions and powers of the federal government), state list (functions and powers of the state government), and the concurrent list (functions and powers of both the federal and state governments).

Citizens of federal countries are at once citizens of the entire country and of their home state, province, etc. Each of them can have its own political personality within the framework of the constitution. This implies that citizens of some states might pay different taxes than the others. It also means that they might enjoy different language regimes than those of other states (provinces, etc.). That is the case in a number of federations designed to recognize and make a place for diversity, including Canada, Switzerland, Spain and India.

4.2. Basic features and division of roles and responsibilities

Most experts agree that there are six features which capture the essence of the federal model as it is practiced in virtually all cases. These are:

1. At least *two orders of government* each acting directly on their citizens; a formal distribution of legislative and executive authority and allocation of resources between the orders of government, including some areas of autonomy for each order;

2. Provision for the *representation and respect of regional and group views* within the federal (central) policy-making institutions;

3. A written supreme *constitution not unilaterally amendable* and requiring the consent of all or a majority of the constituent units;

4. A *referee* to rule on disputes between the various orders of governments;

5. Mechanisms and processes to facilitate *intergovernmental relations* for those areas where responsibilities are shared or overlap;

6. In most existing federations, there are two constitutionally recognized orders of government—usually the central or federal government and the state/regional/provincial governments. As discussed above, in a few countries such as India and Brazil, the constitution recognizes local governments as a distinct and autonomous third order of government. There is a clear-cut division of powers and responsibilities between the orders of government. As a general rule, federal governments tend to retain exclusive powers and functions over the following areas:

- National security

- Foreign relations

- Currency/Monetary system

- External trade/commerce

- Citizenship

- Immigration, emigration, extradition

- Protection of intellectual property and copyrights

Similarly, constituent unit governments usually have jurisdiction over the following areas:

- Regional trial courts/metropolitan trial courts

- Public Utilities

- Administration and enforcement of state laws and programs

- Grants-in-Aid to local governments

- Police, public safety; law and order

- State and local infrastructure

- Health

- Education

The above list is by no means comprehensive. Indeed, several federal constitutions do not provide an exhaustive list of specific responsibilities for the various orders of government. As mentioned earlier, the US constitution only lists the powers of the federal government. The federal legislature (Congress) may legislate within its jurisdiction, as well as within any other area that it might choose to enter. The states, on the other hand, have the ability to legislate in areas which have not yet been occupied by Congress, and they hold the residual authority.

In Canada, by contrast, there is a clear allocation of power between the orders of government. All unallocated powers automatically belong to the federal order of government through the "peace, order and good government" power. Thus, in Canada, it is the federal government that becomes the repository of residual powers. This ensures that no areas of jurisdiction are left outside the competence of both orders of government.

Still, other federal constitutions mention concurrent lists of responsibilities. In India, for example, education is on the concurrent list. This means that both the centre and states are competent to legislate on issues related to education. Hence, central and state boards of education co-exist in India, with centrally and state-funded post-secondary institutions, each functioning to a mandate laid down by the respective order of government.

Concurrency in the Austrian and German contexts allows federal governments to enact "framework legislation" in certain fields, leaving the Länder free to flesh these out with more detailed laws.

4.3. Representation at the centre

Constituent units in a federal system are usually territorially based (Belgium is an important exception—*see non-territorial, below.*) To this end, constituent units must have representation at the centre. This representation could take the form of provinces/regions/states electing a certain number of members to a federating chamber of the legislature—such as the Senate in the United States, or Bundesrat in Germany. The provinces/regions must have a voice and a stake in the centre, for the federation to ensure a respect for regional views. Furthermore, this helps keep in check a common tendency in countries with multiple orders of government to reclaim power back to the centre. Such a chamber helps to prevent unreasonable encroachment by the centre on regional powers and is usually mandated by a written Constitution.

4.4. Guarantee of rights

Some federations are established on the principle of ensuring the rights of all national minorities. For example, in Bosnia-Herzegovina, although there are Serb, Bosniak and Croat territories, none of them is *ethnically pure*. The federal government has been given the responsibility of creating an Office of the Ombudsperson which is answerable to the federal parliament to ensure that the rights of the national minorities are respected. This office works closely with the Human Rights Chamber. Another approach is to enshrine in the constitution a corpus of fundamental civil rights enforceable by the courts. Such was the case when Canada introduced a Charter of Rights and Freedoms in 1982.

The recognition among policymakers that there are few ethnically homogenous countries means that there is greater emphasis on providing communities with the requisite linguistic, religious or cultural protection. This means that the political accommodation of diversity may actually enhance political stability by reducing polarization.

4.5. Asymmetry

Constituent units are considered to be equal and have the same legislative powers. However, the constitutions of certain federations provide for an asymmetric division of powers, reflecting the differences among their constituent units. These differences may be territorial, demographic, linguistic, cultural, or religious.

There are two main forms of asymmetric federalism. First, the federal government's authority can be increased in regions of little legislative authority for the constituent units. The federal government may take over until the constituent unit is in a position to exercise its own authority. In India's first six years as a Union, the federal government assisted less developed states until they were able to exercise their own legislative power.

The second, and more common, approach to asymmetric federalism involves affording one or several constituent units more autonomy than the others. The Malaysian and Spanish systems are two of the best illustrations of this approach.

Although a centralized federal system, Malaysia has given Sabah and Sarawak powers that normally fall under federal jurisdiction. Both states are ethnically distinct, and have more autonomy than the eleven other states

regarding taxation (in particular customs and excise), immigration and citizenship, trade, transportation and communication, etc. Mainland Malaysians have to present their passports while entering the Borean states, like they would if visiting another country. This helps protect the distinctive characteristics and interests of the two states, by regulating the flow of non-indigenous people.

In Spain, the Catalan and Basque Autonomous Communities have greater powers than the other constituent units in the non-official Spanish federation. When modern democracy was founded in Spain (in 1978, post-Franco), the "historic" minority nationalities were granted greater powers than the rest of the new Spanish regions. Most regions had no constituent unit administrations, but developed them through a process (defined in the Constitution) of negotiation with the central government. The Catalan and Basque communities have always had control over culture, education and, in the Basque case, all taxation. They now seek greater powers, and this is a matter of tense debate in Spain, although conducted according to peaceful, democratic rules. Most of Spain's other constituent units have negotiated lesser measures of autonomy than the Basque and Catalan communities.

Spain shows how a country can emerge from a regime of violent minority repression and cultural rights violations, to one where their rights are guaranteed and fostered by special institutional arrangements.

4.6. Non-territorial federalism

Belgium has pioneered an ingenious form of non-territorial federalism. The small European country is divided into three main regions: Flanders in the north, Wallonia in the south, and as an enclave in Flanders, the Brussels-Capital Region. Each region has its own government, and there is a federal government for the entire country. The Flemish region is unilingual Flemish; the Walloon region is Francophone, while Brussels is bilingual. In order to provide services such as education to the populations of both regions and Brussels, the Belgians invented a "community" order of government. Thus, there is a Francophone and a Flemish community government; both responsible for matters that concern the "person", such as education, social services, culture, and health. The regional governments are responsible for territory matters, such as transport and economic development. There is also a small German-speaking population in eastern Wallonia. It also has a community government, dealing with German speakers who live in that area. For

territorial purposes, the German Community area is part of the Walloon region.

The Belgian model is a complex mixture of territorial and non-territorial (community) elements. Assuming Belgium consistently applies the linguistic community principle, the Francophone minority in Flanders and the Flemish minority in Wallonia would be considered part of their respective linguistic communities. However, the Francophone community government has responsibility for French speakers in Brussels and Wallonia. French speakers in Flanders are not included; and the same applies to the Flemish population. There are complex, local political reasons for these limitations on the "reach" of the linguistic community governments. The Belgian concept of "community" government is nonetheless a useful model for those seeking ways to accommodate geographically dispersed cultural groups.

Other countries use such measures as constitutionally defined language rights, in combination with territory-based federalism, to guarantee rights to members of cultural groups who may be part of the majority in one region, but are minorities elsewhere.

4.7. Secessionism

Several observers note that federal structures have not entirely succeeded in eliminating separatist impulses. Canada has lived through two secession referenda in the French-speaking province of Quebec (the second largest Canadian province, home to 25% of the population). Federalism may have provided the framework for Quebec to hold these votes, but the democratic, constitutional system also made it possible for the debate over a proposed secession to take place peacefully and legally. A federal system does not guarantee that all members of "national" groups will always be perfectly content and satisfied. It does create the conditions for differences to be argued, and resolved, without recourse to violence or threat of violence. When the Ethiopians created their modern, multi-national federation following a long period of one-party dictatorship and a series of civil wars, they included provisions for the legal right of secession in the new constitution. The federation, they argued, is a partnership based on a voluntary pact—not a prison.

Power-sharing or increased territorial autonomy gives distinct groups more confidence in their ability to preserve their distinctiveness. Far from leading to secession, federalism, if applied in a truly democratic fashion, can offer the political space needed to guarantee true regional autonomy.

4.8. No unilateral changes and a "referee"

A federal constitution is considered a covenant between the centre and the regions/provinces, and therefore, amendments require the consent of both the centre and the specific number of provinces/regions. Federal forms of government require power sharing which cannot be amended or withdrawn unilaterally.

In any country where there are state or provincial governments, as well as a central government, there are bound to be occasions where conflicting or contradictory laws are passed by different orders of government. Each federation must find a way to resolve these contradictory enactments. The "referee" in such situations is usually the judiciary. When a federation's highest court of appeal finds that a statute violates the constitutional division of powers, such a statute will be repealed, or declared *invalid* on federalism grounds. As every federal constitution enumerates areas of jurisdiction without defining the specific activities that pertain to each area, there is usually some degree of uncertainty and disagreement on the validity of statutes enacted by different orders of government.

The courts have to play an additional referee role in federations with fields of concurrent jurisdiction. In such countries, cases are regularly brought before the courts that expose a clear contradiction between two valid laws, each of which has been enacted by a separate order of government. Constitutions that establish concurrent jurisdiction must therefore provide a rule for the courts to use for resolving such disputes. In Canada, for example, that rule is the principle of *federal paramountcy*. Under this principle, when federal and provincial laws cover similar subjects and are in conflict, the central law is operative and the provincial law (to the extent of the conflict) is rendered inoperative and the provincial law cannot operate so long as the central or federal law exists.

4.9. Orders of government working cooperatively

In federal systems, central and constituent units have an interdependent political relationship. Consequently, all stakeholders benefit when orders of government resolve differences amicably. Governments find that using intergovernmental channels to ensure cooperation is often in their collective interests. The nature and scope of intergovernmental cooperation in federations depends on a variety of factors. For example, in Germany, each party has

the legal obligation of being pro-federal; each party has the legal obligation to cooperate in the interests of the federation. Countries with deep linguistic and ethnic cleavages coinciding with jurisdictional boundaries sometimes experience greater difficulty in securing harmonious intergovernmental relationships than countries whose social cleavages do not coincide with jurisdictional boundaries.

The way in which power is allocated to branches of government *within* each order also plays a significant role in shaping the character of intergovernmental relations. In *parliamentary* systems such as that of Canada, the executives of the federal order and of the constituent units are able to bind their respective legislatures to agreements struck at the executive level.

Intergovernmental relations can be managed using both formal and informal institutional arrangements. The Canadian case is illustrative of both approaches. The authority of executives at both orders of government in Canada allows them to often strike agreements through informal and personal contact between their respective senior officials. A more formalized mechanism for managing intergovernmental relations in Canada is the institution of the *First Ministers' Conference*. These conferences are perhaps the most important forum for striking intergovernmental agreements on a wide range of subjects. While these conferences are often held in informal settings, they are structured to bring together heads of governments from both orders of government so that each party can exchange information, negotiate and persuade. These meetings do not bind any party and by no means constitute a *super-legislature*. Rather, they are designed to identify the contours of accommodating the needs of various governments on specific issues. Indeed, in the words of the Supreme Court of Canada:

> A nation is built when the communities that comprise it make commitments to it, when they forego choices and opportunities on behalf of a nation…when the communities that comprise it make compromises, when they offer each other guarantees, when they make transfers and perhaps most pointedly when they receive from others the benefits of national solidarity. The threads of a thousand acts of accommodation are the fabric of a nation.

Intergovernmental relations can be incongruent and tense at times. However, it is generally easier to reach agreements when all parties respect the rule of law and are genuinely committed towards accommodating diversity.

4.10. Taxation and public spending

Constituent units can only exercise political autonomy when they are fiscally autonomous. Indeed, it is fiscal autonomy that allows states and provinces to implement their distinct programmes in their own fields of responsibility, even when they deviate from the policies of the federal government. In federations, the division of powers goes hand in hand with the ability of each order of government to raise its own resources. These instruments of fiscal autonomy include the ability to raise personal and corporate income taxes, property taxes and revenues from the public ownership of resources. Some constitutions also permit constituent units to raise funds via national and international capital markets. Fiscal autonomy is generally enshrined in a constitution and cannot be revoked unilaterally by the federal government.

There are significant issues in each federation about fiscal issues—how money is raised, shared, and spent. In Canada, resources are provincially owned, and the dividends accrue to different provincial governments. In Nigeria, the central government claims and divides all oil revenue according to a formula. In recent times, constituent units have had to take on additional responsibilities in rapidly growing areas, such as health and education. Given the inadequacy of existing fiscal arrangements to address the financial needs of constituent units, there has been much debate over how these imbalances may be rectified. There are two ways in which fiscal imbalances can be addressed. These include:

Vertical balance

Vertical imbalances occur when there is a disparity between the constitutionally assigned expenditure responsibilities of federal and constituent governments and their abilities to raise adequate revenues. Such imbalances may occur either because of unforeseen changes in taxation or expenditure regimes, or because the cost of responsibilities assigned to one order of government may have risen disproportionately over time. Adjustments for such balances are made through tax-share arrangements between the various orders of governments or grants (both block grants and specific purpose grants). In the absence of clear guidelines governing the disbursement of grants in many countries, it is the subject of political debate. Usually, individual provinces prepare their budgets separately and attempt to reach agreements on allocations at regular meetings of treasury officials or ministers.

Horizontal balance

Horizontal imbalances occur when revenue capacities vary across constituent units, such that there is disparity in the level of services they provide to their citizens. To rectify this in Canada, the federal government makes unconditional transfer payments to provinces based on a formula (adjusted from time to time) aimed at equalizing their revenue capacities. This is in contrast with Australia, which goes to great lengths to equalize both revenue and expenditure aspects. The United States, despite large inter-state disparities, has no formal equalization system.

The issue of conditional or specific purpose transfer payments is controversial. Federal governments will sometimes make transfer payments to fund part of specific provincial programmes to redress a shortfall in provincial funds. Such cost-sharing transfers come with conditions, which makes them less popular since they erode provincial autonomy and constitute a *federal intrusion* into their fields of competency. While such programmes ultimately help provinces meet their expenditure commitments, or increase equity among regions and social groups, the sustainability of such programmes is dependent upon reaching consensus on the nature of the funding between the orders of government. The federal division of power typically requires collaboration between different orders of government on areas of jurisdiction, which, though lying within the legislative competence of only one order, encompass pressing social needs requiring comprehensive, nationwide solutions.

CONCLUSION, WITH A FEW PERTINENT QUESTIONS

Federalism or elements of it could provide a fair and effective means for countries such as the Philippines, Indonesia, and Afghanistan to accommodate the unique needs of their minorities— under the condition that there is some form of political consensus to establish federal structures. Recently, federalism has been discussed or even introduced—sometimes successfully, sometimes not—in countries such as Ethiopia, Myanmar, Nepal, Nigeria, Pakistan, South Africa, Sudan/South Sudan, Sri Lanka, and Yemen.

Minority groups understand that federalism offers them the needed flexibility to develop and implement their own policies in education, culture, and social-economic development. Often, constituent allow a minority group on the national level to represent a majority of the population of one or more of the constituent units. In Spain, for example, the autonomous community

of Catalonia harbours the country's Catalan minority. Similarly, although French-Canadians are an ethnic and linguistic minority in Canada as a whole, they form the substantial majority of the population of the Province of Québec. As previously discussed, many federations have to deal with the issue of intra-unit minorities. In India for example, in the state of Assam, where Assamese is the official language, the Assamese community only forms 28% of the total population. Other large linguistic groups in the state include Bengalis and Bodos, who speak their own distinct languages.

Post-conflict institution building in multiethnic societies often entails both democratization of the state and engendering reconciliation between historically antagonistic ethnic groups. This requires minority rights protection both territorially and non-territorially, and the federal system's flexibility makes this possible.

Federalism is only one option countries may implement in managing ethnic diversity. However, regardless of the structure, policy makers need to clarify the relationship among constituent units (or peoples), and the relationship between the national government and constituent units. While the following questions are not exhaustive, they address some basic concerns on crafting institutions to accommodate ethnic diversity:

- What or who will the constituent units/people be? How many should there be and on what basis will their borders be demarcated? For instance, how would the state demarcate what constitutes an ethnic group? Will a federal structure have eighteen, five, three or two units?

- What distribution of powers and responsibilities is envisaged for the units and the centre? Will there be two lists distributing powers or three, including a concurrent list?

- What powers will be exclusive? Which will be shared? Where would the residual power reside, and in areas of shared jurisdiction which order of government will have primacy?

- Will there be provisions for constituent units to assume less or more power, according to their desires and needs? Will there be provision for asymmetrical arrangements (i.e., will one constituent unit have greater powers than the others—such as Catalonia in Spain, or Scotland compared to Wales in the UK)?

- How will the federal principle or power sharing be reflected in the central political institutions to make them truly national as opposed to central (e.g., the electoral system, representation in institutions such as the courts, the public service, the armed forces and police)?

- What are the mechanisms to provide for regional representation at the centre? Will there be an upper house? How will it be constituted and what powers and responsibilities will it have?

- Should there be constitutional recognition of a third tier of government? Could there be institutional arrangements to serve the needs of communities on a non-territorial basis?

- What provisions will be included for minorities, both at regional and national levels?

- How will the Chapter on Fundamental Rights/Bill of Rights be designed? What mechanisms will be used to enforce/protect rights?

- How would language rights be defined and protected? What language provisions would apply to the police, armed forces and public service at national and regional level? How would language rights be reflected in educational institutions, courts, etc.?

- Would a new constitution contain provisions for constitutionally established institutions to provide services to particular ethnic, linguistic or religious communities?

- What kind of Constitutional Court will be established? How will it be selected (in such a way to guarantee that all regions and groups are represented and protected)? How would references to the court work? Would the court have final jurisdiction on citizens' fundamental and language rights as well?

- What sort of fiscal arrangements will there be? Would all taxes be collected by the centre and redistributed according to a set formula? Or would all orders of government collect taxes? Would there be differential access to different kinds of taxes? What kind of equalization provisions would there be?

- Would there be a basic statement of "Federal Comity" embedded in the constitution—some kind of agreed-to "Principle of Co-operative Government"?

- How would the amending procedure be defined so as to assure a decisive role for both the centre and the constituent units?

- How would a new federal structure be ratified? What kind of consultation and citizen participation would there be in the process of approving a new constitution?

- How will the parties ensure that there is support among the members of the public for the evolving negotiated agreements? What is the anticipated place and role of political parties and citizens in the process of negotiations?

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Federalism in Europe, America and Africa: A Comparative Analysis

Jörg Broschek

1. INTRODUCTION

The historical roots of federalism are as old as the bible. In its broadest meaning, federalism captures different pre-modern arrangements as diverse as the partnership between man and God, ancient confederacies (such as the Aeolian dodecapolis) or the Iroquois Confederacy (Elazar 1987; Hueglin and Fenna 2015; Koselleck 1972). In its contemporary use, however, the notion of federalism became inherently intertwined with the rise of the modern state. Accordingly, federalism refers to an organizing principle of the state that often (although not always) has a normative connotation. The institutional manifestation of federalism is the federation, which can be defined as "a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, i.e. each has sovereign powers derived from the constitution rather than from another level of government, each is empowered to deal directly with its citizens in the exercise of legislative, executive and taxing powers, and each is directly elected by its citizens" (Watts 2008: 9).

In its modern form, federalism came into existence with the United States' constitution in 1789. The appeal of federalism in other state-building processes was ambivalent, to say the least, and has waxed and waned over time. While the three North American states Mexico, Canada and the United States of America all adopted federal constitutions, federalism remained the exception rather than the rule in other world regions. Although a large share of the world's population today lives in a federal state, only a small portion of all sovereign states are federations. And despite the fact that the federal idea seems to have gained currency during the second half of the twentieth century, resurfacing in many contemporary discourses on state reforms, successful federalization has been rare. New federations often have been short-lived,

and most ongoing federalization processes have become stuck half way in the transition from a unitary to a full-fledged federal state.

Federalism itself, moreover, is a highly diverse political phenomenon. While the experience of the United States in the late eighteenth century has influenced other state formation processes especially in the Americas and Europe, state-builders always construed the federal idea against the backdrop of the local situation and the historical context that informed their political universe. These initial conditions prompted different evolutionary pathways of federalism in the modern world, which were themselves reinforced over time through distinct developmental logics. As a consequence, we can observe not only the emergence of varieties of federalism, but also varieties of federal dynamics since the nineteenth century (Benz and Broschek 2013).

The purpose of this paper is to provide a broad comparative-historical overview of the evolution of federalism in America, Europe and Africa. The analytical framework that informs this comparative analysis highlights three aspects that appear to be of particular importance. First, federalism is conceptualized as a multi-dimensional phenomenon. It features—at least at the time of its emergence within individual countries—a macro-societal foundation, which needs to be "activated" in the discourses surrounding federalization processes (the ideational dimension) before it might manifest itself as a constitutional principle (the institutional dimension). Second, the paper shows that federalization processes follow different patterns, which can be important to understand the subsequent evolution of a federal system. Third, the article sketches the main contours of federal dynamics in three world regions: the Americas, Europe and Africa. It argues that different developmental pathways result from the interplay of ideas (the commitment to federalism within a country) and institutional characteristics (the relative weight of self-rule and shared-rule mechanisms within a federation).

2. COMPARING FEDERALISM: AN ANALYTICAL FRAMEWORK

Conceptualizing Federalism

When we talk about federalism, we often refer to a constitutional principle for the organization of the state. Federal states, then, are seen as the main alternative to the unitary state. While unitary states can have sublevel units, just as in the case of federal states, legal theory suggests that both state forms are

rooted in different conceptions of sovereignty. In unitary states, sovereignty is assumed to be indivisible and concentrated within one governmental tier. In federal states, in contrast, sovereignty is divided and shared between the federal level and constituent units.

Legal discourses on the nature of sovereignty in unitary and federal states tend to obscure, however, that federalism itself is a highly ambiguous and multi-dimensional phenomenon. Three dimensions seem to be of particular importance if we want to capture the core features of federalism for comparative analysis. First, federalism is rooted in territorially defined social cleavages. The formation of the modern state is a process driven by the effort of cultural, economic and political elites to create a new centre through the concentration and territorial expansion of political authority (Bartolini 2005; Rokkan 1999). Almost inevitably, the concentration of political authority prompted resistance from groups who feared to become culturally and/or economically marginalized within the new polity. Centre-periphery conflicts, therefore, represent a macro-social foundation of federalism.

While all state formation processes generate some form of centre-periphery conflict, however, such macro-social structures do not automatically produce a federal constitution. In fact, federalism has been the exception rather than the rule. Only about 25 countries out of approximately 200 states worldwide are formal federations. Federalization, therefore, depends on the presence of actors who actively promote federalism as a viable solution for establishing legitimacy in the new polity, and who engage in collective action to create a federal order. Although the presence of federal ideas per se does not guarantee successful federalization, it is a necessary condition for the creation and maintenance of a federation. As Preston King (1982: 76) has aptly put it, "[a]lthough there may be federalism without federation, there can be no federation without some matching variety of federalism."

On the ideational level, federalism prompts two central questions: First, is there a general consensus in federalism as an organizational principle of the state and, second, what is the nature of this compact, and how is the delicate balance between unity and territorial diversity to be established?

Federalism is derived from the Latin word *foedus*, which means treaty or agreement. It is also associated with the similar word *fides*, which indicates a supplementary connotation: trust and confidence. At the heart of federalism, therefore, lies the idea of a voluntary, treaty-based agreement on the creation of a union consisting of previously autonomous entities. The rational idea of

a treaty, however, is more than just motivated through utilitarist calculation. It is buttressed by a mutual relationship of trust, confidence and solidarity among the constitutive parts (Elazar 1987; Hueglin 2003; Hueglin and Fenna 2015; Koselleck 1972).[1] This "contingent consent" (Levi 1997), in turn, serves as the basis for a constitutional settlement that variously balances two goals: autonomy and interdependence.

This balance between autonomy and interdependence, third, finds its institutional manifestation in the federation. Because the relative importance constitution-builders attach to territorial autonomy on the one hand, interdependence on the other hand, differs, federal institutional architectures vary profoundly in terms of their outlook. In essence, they are composed of two basic institutional mechanisms that constitute the main building-blocks of any federation. Self-rule mechanisms promote autonomy as they concentrate power resources on each governmental tier, allowing them to act rather independently from each other. For example, competencies and fiscal resources can be allocated dualistically, and intergovernmental cooperation and representation of sublevel units at the federal level can be kept at a minimum so as to increase the scope for autonomous action. Shared-rule mechanisms, in contrast, distribute power resources in a way such that both governmental tiers are required to collaborate. For example, an integrated allocation of competencies where one level legislates while the other level is responsible for the implementation, as well as a strongly institutionalized system of intergovernmental relations or a powerful second chamber create interdependencies. Accordingly, they limit the scope for autonomous action for each governmental tier.

While both institutional mechanisms always appear in combination, federal architectures vary in terms of how they balance autonomy and interdependence through self-rule and shared-rule. Depending on how both mechanisms shape the institutional configuration of a given federation, it is possible to locate it on a continuum between self-rule/autonomy on one end, and shared-rule/interdependence on the other end. While some federations tend to tilt towards either pole due to the predominance of self-rule or shared-rule mechanisms, others feature a more balanced juxtaposition of both mechanisms (Broschek 2015).

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[1] The German word for federation, Bundesstaat, does reflect this deeper meaning: it implies a state created and sustained through an ongoing relationship built on mutual commitment and trust (Koselleck 1972).

Federalization and Federal Dynamics

Federalization is an instance of transformative institutional change, producing a profound authority shift within a polity. Federalization creates authority relationships between previously independent territorial units, or sublevel units that had lacked constitutional status, on a constitutionally entrenched basis. To qualify as a federation, this institutional outcome has to feature at least two equipotent governmental levels, each constitutionally endowed with primary law-making authority (Barrios-Suvelza 2014). At the same time, while the primary law-making authority delineates each level's capacity to exercise self-rule, both governmental tiers also need to be connected institutionally through mechanisms of shared-rule.

Two questions are particularly interesting from a comparative viewpoint: Why and how do countries federalize? The first question refers to the causal mechanisms that are responsible for producing a federal outcome, either in the wake of state formation or in the context of a fundamental process of constitutional change. The causes of federalization processes are complex, and federation is more than just a voluntaristic exercise. As Daniel Ziblatt (2004) has aptly put it, "wanting federalism is not enough". Federalism is a historically contingent outcome, and federations emerge through the contextualized interaction of ideational and institutional mechanisms (Broschek 2012).

The second question refers to the patterns of institutional change. Federalization processes, for example, can be fruitfully compared in terms of their duration as well as the direction of authority migration they involve. As for the latter, it is possible to distinguish between different types of federalization (Stepan 1999). In case of aggregative federalization (or "coming together federalism"), political authority moves upwards, from the bottom to the top, as previously independent and sovereign political units create a new governmental tier on a higher level. Accordingly, the scope of political authority is extended from smaller territorial communities to a larger scale, covering a greater population and geographic era. In case of dis-aggregative federalization, in contrast, authority migrates "top down" from higher to lower level political units. The scope of authority previously exercised by the political centre shrinks while lower-level authorities are endowed with new capacities to make collective decisions within their smaller scale. Empirically, both types of federalization often (but not always) correlate with different temporal properties. While most aggregative federalization processes have occurred in the wake of a critical juncture, generating institutional transformation within

a relatively short period of time, dis-aggregative federalization often unfolds through a process of gradual institutional change.

Understanding the formation of federal systems is crucial because they set federations on a distinct trajectory and, therefore, have a long-lasting impact (Broschek 2012). This includes early developments that occur after the federal principle has been formally adopted. Positive feedback effects, for example, can reinforce and amplify certain institutional features while negative feedback can contribute to undermining them. More specifically, institutional and ideational alignments that happen early in a historical sequence affect the configuration of self-rule and shared-rule mechanisms within a given federal institutional architecture and can influence the sustainability of a federation more generally.

As for the latter, if it is not possible to establish and solidify a compromise in federalism as a constitutional principle early on, it will be difficult to sustain a federal outcome in the long term. As we know from scholarship on the sustainability of policy reforms, it is crucial to create constituencies that form the basis for political support over the long term (Patashnik 2008). In addition, principles of federal design embody different incentives for those actors who are working within these institutions, thereby making federalism more or less self-reinforcing (Bednar 2009; de Figueiredo and Weingast 2005; Filippov, Ordeshook, and Shvetsova 2004). These mechanisms are, however, contextualized. While in one setting a strong emphasis on self-rule mechanisms might be warranted, in another contextual setting the opposite might be true.

Failure to establish conditions that promote the sustainability of a federal outcome can lead to the break-up of a federation, sooner (like in the case of Czechoslovakia) or later (like in the case of the United States in 1861). Institutional break-up, however, does not necessarily mean that federalism gets lost once and for all. Institutions can be sticky, and ideas might survive and become reactivated in light of changing contextual conditions. Re-federalization, therefore, refers to a process of institutional transformation in which federalism becomes re-institutionalized, after having been suspended for a certain period of time.

Finally, early institutional alignments lay the groundwork for the evolution of different institutional architectures. They are important to understand the varieties of federalism, or types of federalism, as well as the dynamic patterns of federal evolution. Institutionally, it is possible to trace dynamic patterns on

two analytically distinct, yet related dimensions (Figure 1). First, change in federal systems leads to a readjustment of self-rule and shared-rule. Self-rule and shared-rule mechanisms each tend to produce certain pathologies, such as unilateralism, competence duplication and overlap on the one hand, lowest common denominator outcomes or even deadlock on the other hand. As a consequence, change-seeking actors usually attempt to tackle these problems through rebalancing both institutional mechanisms (Broschek 2015). Second, the relative weight of self-rule and shared-rule has important implications for the potential of a federation to become more centralized or decentralized. The more an institutional architecture of a federation tilts towards the self-rule pole, the greater is its potential for becoming either centralized or decentralized. Only if either level of government has the discretion to act autonomously through self-rule, is it able to expand its policy scope relative to the other level. Vice versa, the more a federal system tilts towards the shared-rule pole, the less likely is a centralizing or decentralizing dynamic. Pronounced shared-rule mechanisms perform as a check: they enforce governmental tiers to collaborate and, therefore, reduce the scope for either level to move the federation unilaterally onto a decentralized or centralized pathway.

Figure 1: Gauging Institutional Dynamics in Federations
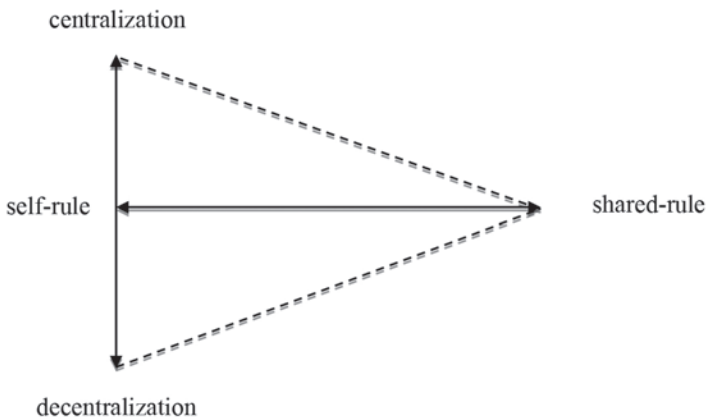
3. FEDERALISM IN AMERICA

State-formation in America emerged in the context of de-colonialization processes between the late eighteenth and late nineteenth century. These processes involved the creation of a new domestic centre of political authority, which in turned sparked resistance from actors who feared peripheralization within the new polity.

Federalism offered one possible solution to accommodate institutional centre-periphery conflicts. However, the appeal of the federal idea varied significantly. While all three North American (United States, Mexico and Canada) states became federations, there is no single federal system in Central America.[2] In South America, only three out of twelve countries are formal federations: Venezuela, Argentina and Brazil (see Tables 1 and 2).[3] Federalization processes in America emerged in a rather abrupt pattern in the wake of critical junctures. De-colonialization created a context where political authority was in flux. Order-shattering events like the revolutionary war in the United States as well as ongoing political conflict between centralizing and peripheral forces in postcolonial settler societies indicate the presence of such permissive conditions. Such conditions facilitate punctuated forms of institutional change as they reduce constraints otherwise in place.

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[2] With the exception of St. Kitts and Nevis, a micro-federation.

[3] Historically, Colombia was part of two rather short-lived federations during the second half of the nineteenth century: the so-called Granadine Federation (1858-1863) and the Unites States of Colombia (1863-1886).

Table 1: Federalism in America: North America

	Type and Mode of Federalization	Re-federalization	Federalism as an Idea	Institutional Architecture	Dynamics
United States (1789)	aggregative, abrupt	1865	strong; fundamental controversy concerning the nature of federalism (largely) resolved after 1865	dualistic allocation of competencies, relatively strong shared-rule mechanisms (Senate)	rel. stable, moderate centralization, but also decentralizing dynamics
Mexico (1824)	aggregative, abrupt	1857, 1917	weak-moderate; traditionally conflict between liberal and conservative forces	dualistic allocation of competencies, but weak shared-rule mechanisms	strong centralizing dynamic until the 1990s, since then decentralizing dynamic
Canada (1867)	aggregative and dis-aggregative, abrupt	-	strong, but separatist threat from Quebec	dualistic allocation of competencies, shared-rule mechanisms weak	rel. stable, two larger waves of decentralization since late 19th century, but also counter trends

Table 2: Federalism in America: South America

	Type and Mode of Federalization	Re-federalization	Federalism as an Idea	Institutional Architecture	Dynamics
Venezuela (1811)	aggregative, abrupt	1830; 1864; 1961; 1999	weak	dualistic allocation of competencies, but very weak shared-rule mechanisms (Senate abolished in 1999)	highly centralizing; decentralization reforms initiated in the 1990s largely counterbalanced by re-centralization after 1999
Argentina (1853)	aggregative, abrupt	No, but temporary suspension of constitution	rather weak	dualistic allocation of competencies, shared-rule moderate (Senate)	centralizing; decentralization reforms since the late 1970s, partly reversed through re-centralizing dynamics
Brazil (1891)	aggregative, abrupt	1945, 1988	moderate-strong	dualistic allocation of competencies, but strong shared-rule mechanisms (Senate); strong over-representation of less populated regions	centralizing (esp. 1964-1985); extensive (fiscal) decentralization since the late 1970s, with some re-centralizing dynamics

In its modern reincarnation, federalism emerged first as a highly contingent ideational construct in the United States. Alison LaCroix (2010) has shown how the federal idea grew out of a conjuncture of different ideational currents during the second half of the eighteenth century. Preoccupation with the Federalist Papers, as LaCroix argues, has prevented scholarship on the origins of federalism in the United States from fully acknowledging the broader historical context from which the federal idea had emerged. Rather than popping up like *deus ex machina* during the Philadelphia Constitutional Convention of 1787, in a "unique moment of genius that set the terms of debate" (LaCroix 2010: 2), federalism gradually took shape as an idea that would animate the direction of institutional change as early as the 1760s. As a concept guiding entrepreneurial actors in the colonies towards an innovative institutional solution, federalism was forged out of at least four different ideational sources that variously influenced the contemporary horizon of experience: Anglo-American constitutional debates and European political thought on the philosophical nature of sovereignty, as well as the practical experience of union-building in the North American colonies and within the British Empire.

Federalization in the United States has had multifaceted repercussions on other state-building processes. Nowhere, however, was American federalism simply emulated. The diffusion of ideas was processed against the historical background of individual settler societies and shaped deliberations in constitutional assemblies in various ways. In South America and Mexico, ideas gleaned from the United States experience were blended with ideational currents derived from the Spanish colonial legacy, while in Canada the federal idea had to be reconciled with the British legacy of Westminster-style democracy. Federalism advocates had to defend the federal idea against other viable institutional solutions, most notably confederal arrangements or a unitary state. Debates revolving around the question of sovereignty represent one important manifestation of this problem. The question of whether or not sovereignty is something that could be divided and, if so, with what implications for the nature of authority relationships between the federal level and constituent units, often remained contested.

On the institutional level, a dual distribution of competencies offered a potential solution to this problem. However, although constitution-builders often attempted to exclusively assign jurisdictions to each governmental tier through single or dual lists while keeping concurrent areas at a minimum, it is notoriously difficult to clearly demarcate the boundaries of competencies.

Rather than finding agreement on the concrete meaning of constitutional pro-
visions, constitution-builders often settled on a compromise that was fraught
with severe ambiguities from the beginning.[4] As a consequence, successful
federalization usually did not mean the end of institutional change, on the
contrary. Within the framework of a federal constitution, the six American
federations embarked on rather different institutional trajectories.

First, there is considerable variation in terms of the sustainability of the
federal outcome. Despite the fact that Canadian federalism, for example,
rested on a highly fragile compromise from the very beginning, and despite
the fact that tensions within the federation have increased considerably over
the course of the twentieth century, it represents the only case where the
original constitutional scheme has been in place without interruption. All
other cases have witnessed major regime changes, which led to the temporal
suspension of federalism and/or episodes of re-federalization. Venezuela is the
oldest federation in South America, with the first federal constitution created
in 1811. However, while federalism has formally been an ongoing constitu-
tional feature since 1864, there have been numerous episodes of constitutional
transformation and change (Brewer-Carias 2002). Similarly, in Argentina and
Brazil federalisms survived major regime changes (Patroni 2002; Costa
2002). In the United States, secession of the South and the civil war demar-
cate an important turning point. Re-federalization under the auspices of the
North ultimately resolved the fundamental dispute over the question where
sovereignty lies (in addition to the "people" as the main source of legitimate
authority). This critical juncture put the United States federation on a more
robust pathway that allowed for moderate centralization during the twentieth
century.

Second, in terms of their overall dynamic, all federations experienced
centralization processes in the aftermath of federalization. These dynamics,
however, differed profoundly in terms of their scope, duration and depth.
Centralization was most pronounced in the South American cases as well
as in Mexico, where federalism often survived in the context of authoritar-
ian regimes. In the United States, centralization was less encompassing and
affected individual policy areas in different ways. While the federal level
assumed more competencies and was often able to fully deploy its authority

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[4] As Paul Pierson (2004: 163) has aptly put it in a more general sense: "Where demarcations of
authority are ambiguous, original designers may be less capable of sustaining control over long-
term paths of institutional development".

in many jurisdictions, creating a form of "coercive federalism" in some areas of state activity, the states simultaneously retained a considerable degree of autonomy in others. The prevalence of capital punishment in several states as well as more recent developments like the legalization of same-sex marriage and marijuana possession demonstrate that centralizing and decentralizing dynamics are often simultaneously at work. The Canadian case stands out in so far as the high degree of centralization entailed in the British North America Act of 1867 was partially reversed through two larger waves of de-centralization. However, this has never been a unidirectional dynamic, as the federal level often attempted to counteract (Broschek 2012). Also, all cases underwent decentralization reforms since the late 1970s in the context of state restructuring, again with profound differences in breadth and scope.

Third, the interaction of ideational and institutional factors is crucial to understanding varying trajectories. If federalism only has a weak ideational foundation, there is no incentive for actors to oppose the centralizing dynamic which is inherent to all state-building processes. However, ideas alone are not sufficient. Peripheral actors who attempt to slow down or even reverse centralizing dynamics need institutional resources that allow them to put a brake on centre-building processes. In this respect, shared-rule mechanisms are important to temper centralizing dynamics. Abolishing the Senate of Venezuela under the 1999 constitution, therefore, was an important step to remove potential obstacles for future reforms initiated from the centre. In contrast, the strong US senate and the strong representation of substate actors in Brazil have often constrained the federal level from assuming a more dominant role in many areas (Gibson 2004; Falleti 2010). Finally, the weakness of shared-rule mechanisms in Canada historically have allowed for both centralizing and decentralizing dynamics to play out (Broschek 2009; 2010).

4. FEDERALISM IN EUROPE

The history of federalism in Europe is highly ambivalent. The prevalence of federalism has waxed and waned over the course of centuries. On the one hand, federal ideas have a long history, preceding the origins of federalism in America and elsewhere. As Thomas Hueglin (1999; 2003) has shown, the roots of early modern federalism in Europe can be found in the practice of politics in the Holy Roman Empire, which were reflected and theoretically elaborated in the work of Johannes Althusius. On the other hand, this rich

federal tradition barely left an imprint on the political landscape in the era of modern state formation. In fact, only two federations emerged during the nineteenth century: Switzerland in 1848 and Germany in 1866/71. Austria adopted a federal constitution in 1920, after the break-up of the Austrian-Hungarian Empire. In the majority of cases, however, centre-periphery conflicts emanating from modern state formation were accommodated within the framework of a unitary state like in the case of the United Kingdom (Bulpitt 2008).

During the second half of the twentieth century, federalism appears to have gained considerable currency, especially in Western Europe. While the federal idea remained insignificant in the democratic transformation of Central and Eastern European countries (with the notable exception of Russia), federalism implicitly or explicitly shaped many discourses surrounding the "rise of regional authority" in Western Europe (Hooghe et al. 2010). In addition, the European Union has emerged as a new type of federation beyond the nation-state.

Yet, while these developments are remarkable, one should be careful interpreting them as indicative of a "federalist revolution" (Elazar 1987). Although federalism has animated an increasing number of reform debates in contemporary Europe, its practical implications have been rather limited. Until today, there exist only five formal federations in Europe: Switzerland, Germany, Austria, Belgium and Russia (Table 3). Belgium represents the only case of a successful transformation of a unitary state into a federation. Russia is a special case for it become a federation in 1993, but the principles of federalism have continuously been violated since the 2000s, leaving the federation de facto in a highly precarious state. Besides, we currently observe four ongoing—and therefore uncompleted—federalization processes:[5] in Spain (since 1978), Italy (since the mid-1990s), the United Kingdom (since 1998) and on the level of the European Union (since 1987/1993) (Table 4).

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[5] I am not including here the federal experiment in Bosnia and Herzegovina.

Table 3: Federalism in Europe: Established Federations

	Type and Mode of Federalization	Re-federalization	Federalism as an Idea	Institutional Architecture	Dynamics
Switzerland (1848)	aggregative, abrupt	-	strong	integrated and dualistic features, with relatively strong shared-rule mechanisms	moderate centralization, while cantons retained considerable autonomy
Germany (1866/1871)	aggregative, abrupt	1919; 1949	moderate	integrated allocation of competencies with strong shared-rule mechanisms	neither centralized nor decentralized (since 1949), but strong "Unitarismus"
Austria (1920)	aggregative and dis-aggregative, abrupt	1945	weak-moderate	integrated allocation of competencies with moderate shared-rule mechanisms	strong centralizing dynamic
Belgium (1993)	dis-aggregative, gradual	-	strong	dual allocation of competencies with weak-moderate shared-rule mechanisms	de-centralizing dynamic
Russia (1993)	dis-aggregative, abrupt	-	weak	dual allocation of competencies with weak shared-rule mechanisms	highly centralizing dynamic since 2000s

Table 4: Federalism in Europe: Federalizing Countries

	Type and Mode of Federalization	Re-federalization	Federalism as an Idea	Institutional Architecture	Dynamics
Spain (since 1978)	abrupt (Franco's death) and gradual (since early 1980s), dis-aggregative	-	weak-moderate	dual allocation of competencies, shared-rule rather weak	asymmetric decentralization
European Union (since 1987/93)	abrupt and gradual, aggregative	-	weak-moderate	integrated and dualistic features, with relatively strong shared-rule mechanisms	moderate centralization with some reversals more recently
Italy (since the mid-1990s)	gradual and dis-aggregative	-	moderate-strong	dual allocation of competencies, shared-rule rather weak	asymmetric decentralization
United Kingdom (since 1998)	gradual and dis-aggregative	-	weak	dual allocation of competencies, shared-rule mechanisms almost non-existent	asymmetric decentralization

Federalization processes in Europe have displayed considerable variation. The two oldest federations, Switzerland and Germany, have followed the rather typical pattern of abrupt aggregative federalization during unification wars. Federalization in Austria is more difficult to capture analytically as it combined both dis-aggregative and aggregative elements (Pernthaler 1979). With the notable exception of the European Union, all other contemporary cases are dis-aggregative federalization processes. As for the duration, it is noteworthy that while in the past federalization occurred in a rather abrupt mode, all contemporary processes display a gradual pattern of institutional change (with the exception of Russia).

In terms of their institutional architecture, European federations differ among themselves as well as in comparison to their American counterparts in three important respects. First, an important institutional characteristic of the three traditional Continental European federations Switzerland, Germany and Austria, as well as of the European Union, is the integrated (or functional) distribution of competencies. In many important respects, the evolving distribution of labour between both governmental tiers provided that the federal level was (and still is) primarily responsible for legislation, while the sublevel units implement federal legislation. The degree to which sublevel units enjoy autonomy in the way they implement federal laws varies, however, significantly, being substantial in the European Union and Switzerland, moderate in Germany and rather low in Austria. This institutional trait sets these federations apart from the American cases as well as from the dis-aggregative federalizing countries, where legislative and administrative functions tend to be fused on either governmental tier. Historically, the integrated distribution of competencies is a consequence of sequencing: The new federal level was layered on top of constituent units which had already developed highly institutionalized bureaucratic state capacities, which provided them with an important historical advantage (Lehmbruch 2003).

Second, this foundational institutional characteristic created incentives for collaboration early on. Accordingly, shared-rule mechanisms have always featured more prominently in the classic Continental European federations, creating a distinct evolutionary pathway. This is reflected, for example, in a more densely institutionalized system of intergovernmental relations where executive actors co-ordinate, co-operate and often collaborate horizontally and vertically. In addition, in Switzerland, Germany, and the European Union regional interests are strongly incorporated in federal decision-making through

the second chamber. While Switzerland followed the American Senate model, in Germany and in the European Union the institutional legacy of the Holy Roman Empire prevailed as executive actors from the constituent units are directly represented through the *Bundesrat* and the Council of the European Union, respectively (Hueglin and Fenna 2015).

Third, dis-aggregative federalization processes, in contrast, often tend to lack shared-rule mechanisms. This is a consequence of a process logic that prioritizes the transfer of authority from the centre to the sublevel units, without the simultaneous development of institutional mechanisms that foster co-operation among and between governmental tiers, both vertically and horizontally. In this respect, the Russian federation initially differed markedly from the Western European cases of dis-aggregative federalization because shared-rule was ensured to some extent through the Federation Council. Institutional reforms under Putin, however, successfully weakened the role of regional governors and heads of regional legislatures in federal decision-making (Zhuravskaya 2010).

The interplay of ideas and institutional mechanisms has generated different federal dynamics over time. The Swiss federation has been in place since 1848. It has successfully adapted to changing contextual conditions through four major revisions of the constitution, in 1866, 1874, 1999 and 2008. In Austria and Germany, re-federalization replaced previous federal constitutions in the wake of regime transitions (Austria: 1945, Germany: 1919 and 1949). In both cases, the basic principles on which both federal architectures were established have been remarkably stable. While Switzerland has remained a rather decentralized federation, the federal level was nevertheless able to assume a number of important competencies over the course of the twentieth century. German federalism in its contemporary form is neither centralized nor decentralized due to the high degree of interdependence between both governmental tiers. Constitutional reforms, in combination with several landmark decisions of the constitutional court since the mid-2000s, have somewhat strengthened *Länder* autonomy, but joint-decision making is still the defining feature of German federalism (Scharpf 2009). Austria has become a highly centralized federation. A rather weak ideational foundation of federalism within the population and on the level of political elites and the weakness of the *Landeshauptmänner* (the Land governors) made this centralizing dynamic possible. A similar combination of factors apply to the case of Russia, where President Putin has continuously targeted the power resources

of territorial interests to weaken federalism. Among other things, he was able to take advantage of the Beslan hostage crisis in 2002 to make the Federation Council more dependent on the interests of the centre. Ongoing institutional reforms have thus facilitated a highly re-centralizing dynamic over the last decade (Zhuravskaya 2010).

Vice versa, the power of the member states represent an important obstacle for the federalization process in the European Union. On the one hand, reforms of the treaties since the late 1990s are indicative of a process that has strengthened the federal traits of the European Union. In addition, supranational institutions have been able to utilize the power resources at their disposal to become more autonomous in many areas of policy-making. On the other hand, however, the European Union still has a "federal deficit" (Trechsel 2005) that needs to be overcome in order to pass the threshold to become a full-fledged federation. In light of the more recent political responses to the European debt crisis, moreover, conditions appear to be more conducive to further accentuate a dynamic of re-nationalization, partially reversing previous patterns of authority migration towards the centre.

Finally, the four cases of dis-aggregative federalization—Belgium, Spain, Italy and the United Kingdom—also display interesting differences. As mentioned above, Belgium represents the only case where this process has finally ushered in an institutional transformation from a unitary to a federal state in 1993. Successful transformation, however, does not mean the end of institutional change. State reforms have continued since 1993, now within the framework of a federation (Swenden et al. 2006). In all other cases, the federal principle has not yet been formally adopted. Spain is often considered to be a de facto federation. However, despite ongoing federalization reforms since the early 1980s, the Spanish state is still unitary. Until more recently, in addition, federalism has not resonated well as an explicit idea for constitutional reform. Major political actors, such as the *Partido Popular*, have been strict opponents of federalism. The same holds for the United Kingdom, where federalism has traditionally been promoted only by the Liberal Democrats. This has changed, however, in light of the 2014 Scottish Referendum. Since then, a growing number of prominent politicians have more openly called for federalization as a way out of the current constitutional crisis. In Italy, most major parties have, in principle, endorsed federalism as a leitmotif for constitutional reform. However, federalization has not yet been completed, which is mainly due to the numerous government shifts since the 2000s (Palermo and Wilson 2013).

5. FEDERALISM IN AFRICA

State-formation in Africa is inherently intertwined with the legacy of post-colonialism. It has proven to be an extraordinary difficult challenge to establish and consolidate sustainable state structures that enjoy both specific and diffuse support, and which generate legitimacy and effective policy out-puts, regardless of whether the formal state structure was unitary or federal. Although federalism seems to immediately suggest itself as a useful governance mechanism for the establishment of lasting political institutions for the highly complex, conflict-laden post-colonial societies, previous experiments provide a rather disillusioning picture. In fact, with the notable exception of Nigeria, all experiments with federalization during the 1950s and 1960s largely failed. These included attempts to create both (quasi-)federal structures within (like in Uganda) and between states (like in Ethiopia and Eritrea) (see Burgess 2012: 9). Today, only three out of more than 50 African states are federations: Nigeria (1963/1999), Ethiopia (1995) and South Africa (1993).[6]

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[6] With the exception of the Comores, a micro-federation.

Table 5: Federalism in Africa

	Type and Mode	Re-federalization	Federalism as an Idea	Institutional Architecture	Dynamics
Nigeria (1963, but constitutions under colonial rule quasi federal: 1946, 1954)	dis- aggregative, abrupt	1999	rather weak	dualistic allocation of competencies, shared-rule mechanisms weak	centralizing dynamics, but sublevel units enjoy a certain degree of autonomy
Ethiopia (1995)	dis- aggregative, abrupt	-	rather weak	dualistic allocation of competencies, shared-rule (de facto) weak	centralizing dynamics
South Africa (1994/1996)	dis- aggregative, abrupt	-	rather weak	dualistic allocation of competencies, shared-rule moderate (National Council of the Provinces)	centralizing dynamics

In its current form, all three federations are products of constitutional change in the 1990s. Nigeria is the only country which has a long and continuous history of federal constitutions (Suberu 2015). The first quasi-federal constitutional arrangements emerged when it was still under colonial rule in 1946. While the so-called Richards Constitution put strong emphasis on self-rule by dividing the country into three regions, with regional legislative assemblies for each, the 1951 constitutions strengthened shared-rule mechanisms by introducing a Council of Ministers which was made up by representatives from each region (Nze 2002). Ethiopia and South Africa, in contrast, lack a similar federal constitutional legacy.[7]

All three federations share interesting similarities. First, they all represent cases of dis-aggregative federalization processes (Dickovick 2014). However, in contrast to the dis-aggregative federalization processes in Europe, which—by and large—represent instances of gradual institutional transformation, the African cases have emerged in an abrupt mode. In all three countries, the adoption of the federal principle occurred in the wake of critical junctures. The (quasi-)federal constitution of South Africa demarcated the end of the apartheid regime; in Ethiopia, a federal constitution was agreed upon after three years of negotiations after the fall of the communist military regime in 1991 and the current Nigerian constitution emerged in the context of the democratic transition from the Third to the Fourth Nigerian Republic in 1999.

Second, despite the fact that all three cases represent dis-aggregative federalization processes, where authority migrates from the centre downwards to the sublevel units, in fact all three federations have remained highly centralized political systems. Again, this paradox sets the African federations apart from the European cases, where competencies have continuously been devolved to lower levels of government. While federalism was primarily considered as a constitutional option to accommodate ethnic diversity, the centre retained considerable power to exercise control over sublevel authorities. Tyler Dickovick (2014) emphasizes three factors that mainly contribute to this trend:

- The existence of dominant parties, which in case of Ethiopia and South Africa operate as highly integrated organizations on all levels of government: The Ethiopian Peoples' Revolutionary Democratic Front

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[7]   Aside the fact the Ethiopia and Eritrea had co-existed as a federation between 1952-1962.

(EPRDF) and the African National Congress (ANC). In Nigeria, the People's Democratic Party (PDP) is somewhat less dominant, and even lost the general election in 2015, but was nevertheless capable of shaping politics on all governmental tiers in the past.

▪ The existence of highly centralized (however weak in international comparative perspective) state bureaucracies, often under the control of dominant parties, which exercise considerable control over the administration of public expenditures.

▪ The high degree of fiscal centralism, which also makes sublevel units extremely dependent on the centre.

Put somewhat differently, the historical dynamics of federalization in the context of critical junctures, in combination with the historical legacy of autocratic regimes, allowed dominant actors from the centre to pre-empt a large amount of political space within the federation early on. This initial advantage is difficult to reverse at later points in time. Although formally all three federations combine self-rule with shared-rule mechanisms in various ways, and thus open up different avenues to develop autonomy or influence decision-making at the centre, it is difficult to effectively make use of these provisions in light of the centre's ongoing predominance.

Third, another common feature of all three federations is the weak ideational foundation of federalism. Even the South African constitution, which operates in a comparatively stable democratic environment and under advanced economic conditions, avoids the explicit use of the label *federalism*. While in all three cases a federal solution was primarily chosen rather pragmatically for its potential to accommodate complex ethno-cultural and ethno-linguistic conflicts, constitution-building was not accompanied by a credible, deliberate ideational commitment to the value of federalism itself (Burgess 2012: 12). Federalism in the sense of *foedus*, which also refers to confidence and trust, appears to be largely absent in the African federations.

6. CONCLUSION

The prevalence of federalism varies considerably in the Americas, Europe and Africa. While it is the defining feature of the three North American states, only three states in South America are federations, with Venezuela representing a federation on paper rather than in practice. Federalism plays no role at

all in Central America. While in Europe the federal principle indeed enjoys increasing prominence, it is, at the same time, a highly contested idea. As a consequence, most recent reform processes have remained incomplete, and the eventual outcome is still open. In fact, Belgium represents the only case of successful federalization. Most federalization processes in contemporary Europe have gotten stuck, and newly established federations such as Serbia and Montenegro or Czechoslovakia have been short-lived and turned out to be non-sustainable. In Africa, the historical and contemporary experience with federalism is also ambivalent, to say the least. A considerable number of federalization processes have failed, and only three contemporary African states have adopted a (semi-)federal constitution, with varying success.

In light of these empirical observations, one should be careful not to overestimate the promises of federalism as a principle of governance for the twentieth century. To be sure, many contemporary reform discourses in rather different contextual settings, including countries such as Bolivia, Italy, Sudan, Yemen and the Philippines, have been animated by the federal idea. Moreover, the federal traits of the European Union have become more clearly discernible since the early 1990s. At the same time, however, a federal organization of the state is still the exception rather than the rule. There exist different options to modernize relationships between the centre and sublevel units, and federalization only represents one pathway of institutional reform. Others, such as administrative, legislative or fiscal decentralization, can also be achieved within the framework of a unitary state. Moreover, federalism does not represent a decentralized variant of the modern state per se. Unitary states can be, in effect, more decentralized than federal states, and federal states are not necessarily either decentralized or centralized (Broschek 2015a).

There exists, therefore, a variety of federalism, which is rooted in different institutional principles and different ideational prerequisites. As has been argued, the evolution of diverging federal trajectories is largely a consequence of different initial conditions that are present at the time of federalization. The subsequent interaction of ideational and institutional factors, moreover, shapes the sustainability of federalism in individual countries, and allows for different institutional adjustments over time. If anything general can be gleaned from the above analysis, then one could possibly suggest that a healthy and sustainable federation depends on two conditions: A broadly shared commitment to federalism as an idea as well as an institutional architecture that carefully balances self-rule and shared-rule mechanisms. This institutional

balance can vary, and is contingent upon the contextual conditions of the state and the peculiarities of its society. Understanding these contextual variations is thus crucial to critically assess the potential promises of federalism as a means of constitutional reforms for the Philippines and beyond.

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Political Engineering, Decentralization and Federalism in Southeast Asia: Strengths and Weaknesses of Governance

Patrick Ziegenhain

1. INTRODUCTION

Decentralization processes, often in connection with democratization processes, are a phenomenon which can be observed in all parts of the world. The third wave of democratization (Huntington 1991) in the 1980s and 1990s was accompanied by a similar wave of decentralization measures. Of 75 countries with a population of over 5 million people, 63 started or continued with decentralization measures in the 1980s and 1990s (Selee 2004).

Decentralization alone, however, is not necessarily in accordance with democratic principles. After all, authoritarian regimes such as Vietnam and Cambodia recently also tried to broaden their legitimacy by deconcentrating state powers in order to control more efficiently the state territory. Thus, decentralization must include the principles of devolution in order to successfully contribute to democratization processes. Devolution is a specific form of decentralization which includes that sub-national authorities have legally defined areas of competence, possess autonomy for tax-raising and public expenditures, and have discretion or decision-making power for local regulations. Additionally, local leaders must be elected by their constituents and not appointed by the national executive. Devolution is *a priori* anti-authoritarian, since it is by definition the dispersion of central government powers. It helps to counter the possible excessive domination of a national executive branch. Decentralization and local self-government are thus major institutional safeguards for individual liberty and protection against authoritarianism. Accordingly, decentralization can lead "toward vertical power-sharing among multiple layers of government" (Norris 2008: 157).

In Southeast Asia, only one state has adopted a federal system of government: The Federation of Malaysia, which, since independence, has been divided into several states and federal territories. Additionally, Myanmar has adopted a specific form of a federal system, which, however, de facto was undermined by a decade-long military dictatorship. Nearly all other Southeast Asian states started as centralist states after the end of colonialism. This state structure was widely seen as more in accordance with the nation-building processes in these countries.

Over the years, however, demand for more autonomy grew and in several countries democratization processes opened up the space for political engineering in order to transform the centralist state structures into more decentralized ones. Nowadays, decentralization has been realized in many states in Southeast Asia to different degrees: From far-reaching in Indonesia to moderate in the Philippines to rather weak forms of decentralized state structures in Thailand, Vietnam, and Cambodia. Decentralization can thus be seen as processes of political (or institutional) engineering.

In the following chapter, I will introduce the concept of political (or institutional) engineering. Then I will refer to the results of the processes of political engineering related to decentralization in Southeast Asia and emphasize positive and negative effects with regard to democratization and the strengthening of governance.

Some parts of this paper are based on my comparative study on institutional engineering and political accountability in Thailand, Indonesia, and the Philippines (Ziegenhain 2015), in which a part of the comparative analysis dealt with sub-national government structures in the mentioned three countries. Additionally, some parts were taken from a not-yet-published article (Ziegenhain forthcoming) on decentralization in Indonesia.

2. POLITICAL ENGINEERING

Political or institutional engineering can be defined as the designing of political institutions (such as governmental and administrative structures, election laws, parliaments), to try to achieve a desired effect (such as stabilization of a political order, economic benefits or deepening of democracy). An example of a case of political engineering would be if a state introduces power-sharing elements (such as federalism) in a highly fragmented state in order to reach peace and political stability. The underlying assumption is that

political institutions have large and predictable causal effects on the political system in general. Institutions limit and condition the behaviour of political actors. The preferences and the behaviour of the actors are thus determined by an institutional set-up. Institutions are thus understood as "coordination devices that resolve collective action problems" (Schedler 1999: 333). In most political systems there are many relatively enduring features of political life, particularly institutions which often cannot be changed *ad-hoc*. Therefore, the relatively inflexible nature of institutions hinders institutional change. As Bingham Powell rightfully remarked: "Things that are institutionalized tend to be relatively inert, that is, they resist efforts at change" (Powell 1991: 197). New governments often promise to revise major reforms of the previous government. However, in many or even most cases, they do not touch the issues again, even when they were fierce opponents of the reform measures while in opposition.

Therefore, "getting the institutions right" can create positive effects in an otherwise unfavourable environment. The usual tools of political engineering are constitutional amendments, the creation of new laws, law revisions, referenda, ordinances and decrees. Institutional engineering seeks to systematically improve the problematic parts of a democracy, as a mechanic would replace some broken parts of a malfunctioning car.

Political engineering is planned, structured, and organized by political actors. While the designers may have good intentions about the outcomes of an institutional reform, the reality could be quite different. Public officials, policemen, and the judiciary are thus very important for the effectiveness and outcome of institutional change, since they have to interpret, implement, and enforce every political agreement or rule.

Often, reformers are weak and ineffectual if important state and non-state actors with vested interests are wary of change. As early as in the 16th century, political philosopher Niccolò Machiavelli concluded "that there is nothing more difficult to carry out nor more doubtful of success nor more dangerous to handle than to initiate a new order of things; for the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order" (Machiavelli 1514: 173). Institutional reforms are thus usually not easily agreed upon. When the reforms are enacted, they are frequently won against the express will of defenders of the present circumstances (Schedler 1999: 337). Very often, reforms are delayed since the institutional winners benefit from the current status and

expect to lose in alternative futures. Powerful interest groups that face significant material and immaterial losses from reforms will inevitably oppose them, and often use their resources and influence to contest any changes to the *status quo* (Grindle and Thomas 1991: 100f.). Reformers thus often depend on the goodwill of broad and unstable coalitions supporting reform measures, including the opportunists. An important factor in the success or failure of any reform is the range of relationships between the various interest groups in favour of or opposed to the intended measures.

Political self-interest is often the reason for supporting certain institutional arrangements and refusing others, particularly for opportunists. By doing so, the decision-makers prioritize their individual short-term interests over possible long-term outcomes. Procedural consensus is more probable if the participants do not expect to lose all the time and expect that no dire consequences for themselves will follow when they lose (Valenzuela 1992: 83).

There are numerous examples of political engineering with regard to decentralization in Southeast Asia. In the Philippines, Article X, section 3 of the 1987 Constitution demanded that a local government code be provided by Congress in the following years to serve as a solid basis for decentralization. The Constitution further specified that this decentralization law should provide "for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials". The implementation of this demanded decentralization process started with the Local Government Code of 1991, whose details were negotiated in the Philippine Congress. The Philippines officially kept a unitary form of government, but introduced a multi-tiered structure.

In Indonesia, the start of the democratization process in 1998 also marked the beginning of a decentralization process. Suharto's successor, BJ Habibie, made decentralization one of the major focus points on his political agenda. The attempt to introduce democracy at various local levels, rather than only at the national level in the capital, Jakarta, was one of the main incentives for such an ambitious undertaking. Habibie ordered a team of bureaucrat-academics around Ryaas Rasyid to provide a draft for a legal framework that would decentralize the country. They opted for a "big bang" solution, which

would introduce new administrative structures as fast as possible in order to make them irreversible. Rapid introduction was also necessary since the new freedom after the demise of the authoritarian regime revitalized various ethnic and regional conflicts all over the archipelago, which had previously been suppressed by force. The short time between the resignation of Suharto (May 1998) and the election of Abdurrahman Wahid as the new president (October 1999) represented a window of opportunity for radical change. If decentralization were to be initiated afterwards in co-operation with the parliament and the numerous political parties and interests, a "big bang" solution would not have been possible. So, a complete fiscal and political decentralization process was started. Laws No. 22/1999 (on Regional Governance) and No. 25/1999 (on Fiscal Balance between the Center and the Regions) led to an enormous restructuring process. With the exception of a few tasks (foreign policy, defense and security, monetary policy, judicial system, and religious affairs), all public tasks were transferred to the local level. Sixty percent of government revenues were diverted within a few years from the centre to regencies and cities (Harvard Kennedy School Indonesia Program 2010: 74). Approximately 2.6 million public servants were transferred to local administrations. While in 1999 3.5 million government officials worked for the central government, this number was reduced to only 0.9 million by 2002. The inverse occurred at the local level; the number of civil servants in local governments rose from 0.5 million to 3.1 million (Rohdewohld 2003: 260).

In Thailand, decentralization was a major issue during the negotiations of the 1997 Constitution, in which an unprecedented number of representatives of civil society took part. The 1997 Constitution, Chapter V, Section 78, made decentralization a directive principle of fundamental state policies by declaring that "the State shall decentralize powers to localities for the purpose of independence and self-determination of local affairs." Accordingly, Chapter IX, section 282, stated that "the State shall give autonomy to the locality in accordance with the principle of self-government according to the will of the people in the locality" (Constitution of the Kingdom of Thailand 1997). In section 284, all local government organizations were given autonomy in laying down policies for their governance, administration, personnel administration, and finance.

The decentralization initiative laid down by the 1997 Constitution turned away from the long tradition in Thailand of a unitary administrative system with a strong centralized government. Furthermore, "several clauses direct[ed]

the central government to grant greater authority and autonomy to local level government organs so as to permit greater grassroots pluralist participation and input" (Chambers 2002: 21).

The Decentralization Act of 1999 donned further autonomy on local governments, the financial decentralization benchmarks being particularly remarkable. They mandated "that local revenues shall be at least 20% and 35% of the government's total revenue in the fiscal years of 2001 and 2006, respectively" (Amornvivat 2004: 6). This was in accordance with the re-shifting of tasks and personnel from national agencies to local governments. The number of local government officials grew more than 100 percent (Wongpreedee 2009: 4).

It is important to note that all decentralization reforms in Southeast Asia have been contested in the time they were initiated. The political decision-makers who were responsible for drafting the constitutions and laws had to include the preferences but also the doubts of the various stakeholders in the process of political engineering on the decentralization reforms in the mentioned Southeast Asian countries.

Additionally, some of the decentralization reforms were passed but never implemented thoroughly. Some of them have been distorted and some of them did not bring the desired positive outcomes, but caused severe negative side effects instead. In the following, I will identify some of the positive effects in terms of democratization and good governance, before I discuss rather negative developments as a result of the decentralization measures. In all countries, there are big ambiguities concerning the effects of political engineering with regard to decentralization.

3. POLITICAL ENGINEERING AND DECENTRALIZATION IN SOUTHEAST ASIA: POSITIVE EFFECTS WITH REGARD TO DEMOCRATIZATION AND THE STRENGTHENING OF GOVERNANCE

Decentralization can produce positive effects on the quality of democracy and the strengthening of governance. A major point is that the election of local leaders by the local citizenry makes the local leaders accountable to the interest of the citizens. If they only follow selfish interests and ignore the people's preferences and demands, they might not be re-elected. Therefore, the local leaders—at least in theory—try to avoid illegal practices and self-enrichment,

since the local elections provide a mechanism to register satisfaction or dissatisfaction with a representative's performance (Kulipossa 2004: 769).

Another often quoted advantage of decentralization is the idea that local elections enhance pluralism and political competition—both major preconditions for a liberal democracy—at the local level. Several contenders from different social backgrounds have the opportunity to compete in free and fair elections. Devolution offers previously disadvantaged groups and candidates the opportunity to take part in elections and political decision-making processes afterwards.

One of the most intended effects of devolution is the containment of separatism and communal violence. Often, these conflicts are caused by a perception of discrimination against ethnic or religious minorities within a nation state. Local autonomy offers these groups the chance to practise their culture/traditions and manage their affairs without central government interference, thus contributing to crisis prevention and socio-political stability (Mehler 2001: 292f.). The legitimacy of those in power at the local level is enhanced, often facilitating the deepening of existing democracy.

Increased political awareness and participation is also generally quoted as one of the main advantages of decentralization processes, because ordinary citizens witness democratic procedures directly in their villages and can even run as candidates. Democracy is thus not limited to the far-away capital but is closer to the needs of the citizens and directly involves the individual in political decision-making (Rondinelli 1980: 135f.). The closer relation of the ordinary citizens with its political system can lead to a strengthening of a democratic political culture and democratic patterns of attitude. Indeed, in many parts of Indonesia and the Philippines, decentralization has brought about increased public participation and opened new platforms for civil society activism. This has led to a vibrant civil society in many places, which comprises many social and political organizations and cares about matters of local interests. A recent study of Antlöv and Wetterberg revealed that the activities of civil society organizations have augmented to a great extent and became a regular feature of local politics in Indonesia (Antlöv and Wetterberg 2011). The political awareness of ordinary people has also increased. Local authorities are now monitored more strictly, not only by the elected local council (DPRD), but also by civil society organizations who act as watchdogs of good governance. The transparency and accountability of local administrations has risen enormously in recent years, what can be credited to the devolution.

Additionally, political participation on the local level increased significantly in many places. Public hearings on local budgets, for instance, have been introduced in dozens of regencies and cities.

In many cases, local governments' ability to respond to local needs more rapidly and appropriately could be observed. The quality of public service delivery has also increased in many cities and districts as a result of the decentralization measures.

Decentralization can also be advantageous for the resolution of ethnic and religious conflicts. Giving local autonomy to these groups can not only be useful for the reduction of violence, but also for the improvement of the quality of democracy. Ethnic and religious minorities themselves often feel disadvantaged by the national government and demand more autonomy, and as a last resort, a secession. In such cases, the national army under the control of the national government tries to suppress violent regional conflicts. These separatist tendencies and the human rights violations of the military further weaken the legitimacy of the democratic order and contribute to the regression of democracy.

The significant impact of decentralization on conflicts based on ethnicity and religious conflicts is that local autonomy opens avenues for negotiations between the central government and the insurgents. More powers for local governments offer more possibilities for the protection of the interests of minorities, which in turn can improve the chances for peace. Additionally, decentralized government structures allow the adjustment of national policies according to local customs and culture. This might help to reduce ethnic and religious tensions in multi-ethnic and multi-religious states. Decentralization can thus be seen as a tool to ameliorate local disaffection with the capital in the country's centre. If violent conflicts diminish, the overall quality of democracy rises.

In Indonesia, one of the most visible successes of the decentralization process was the drastic reduction of separatist tendencies since the early 2000s. The decision of the national government to give the local units discretion over their natural and other economic resources reduced the resentments against the national elite in Jakarta. Some regions witnessed an economic boom and now belong to the fastest economically growing areas in the country. Development in certain areas, particularly in the outer islands, is not hindered by resource exploitation for the profit of Jakarta elites anymore. Conflicts over

the distribution of wealth from the natural resources of the outer islands with the centre have thus decreased to a great extent.

Additionally the political devolution of tasks to locally elected governors, mayors, and *bupati* gave political space to a multitude of specific local identities and reduced separatist tendencies. Locals who are not satisfied with political, social and economic developments at their local level now first blame their elected local representatives rather than the central government. Thus, in many of the troubled spots of the years between 1998 and 2000, such as Poso, the Moluccas, and West and South Kalimantan, decentralization led to a sharp decrease of communal violence. Ethnic conflicts that were caused by local elites in search of power and material gains could be abated since many of these elites could achieve their goals without having to resort to violence (Aspinall 2010: 28). Instead, they were empowered to take over local government positions, which enabled them to rule and to enjoy material benefits for themselves.

4. POLITICAL ENGINEERING AND DECENTRALIZATION IN SOUTHEAST ASIA: NEGATIVE EFFECTS AND WEAKNESSES IN REGARD TO DEMOCRATIZATION AND THE STRENGTHENING OF GOVERNANCE

The devolution of political authority to lower state structures such as provinces and particularly regencies can unleash intense competitive dynamics among local political and economic elites. In various parts of Indonesia's periphery, for example, some of the previously ruling local elites tried to retain their privileged access to political and economic power under the new decentralized political conditions. At the same time, forces which have been excluded from this access so far tried to use the new legal and political framework as their chance to expand their political and economic influence. Or in other words, "anxiety and uncertainty mixed with gambler's hope for the main chance" (van Klinken 2007: 49).

The struggle about the re-organization of state power was particularly violent, since outside of Java, the state plays a bigger role in the local economy (van Klinken 2007: 139). Therefore, the grip of political power in Indonesia's periphery was much more connected with perceived economic gains than in Java.

Nowadays, the most apparent feature for Indonesian citizens is the fact that decentralization of political decision-making has also led to a decentralization of corruption. Graft, which under Suharto had been mainly restricted to the president, his family, and his closest cronies, has become an all-too-familiar aspect of daily local politics and administration. Since responsibility over significant financial means and discretion over business deals have also been delegated to local decision-makers, the latter became an attractive partner for illegal but financially attractive backroom dealings. Since it became so attractive in terms of power and money, squabbles and fights to influence the local administration and exploit (natural) resources turned into a frequent feature of local politics. In times of *otonomy daerah* it made more sense to collude with local politicians and bureaucrats instead of trying to bribe national officials who had lost much of their influence on the ground.

Dozens of mayors and regency leaders (*bupati*) in all parts of the country have been convicted of incorrect public procurement processes, manipulating public contracts or unlawfully spending public money. Nearly every week, the Indonesian public hears about those scandals, which—thanks to the national anti-corruption commission KPK (*Komisi Pemberantasan Korupsi*)—have led to investigations and finally penalties for local politicians and bureaucrats. However, it can be assumed that these cases are only the tip of the iceberg. Indonesia has a long tradition of corruption in politics and economic dealings. It would be surprising if local elites would be an exception, since obviously they are not *per se* better people and less greedy than national elites.

No wonder that in some regencies and municipalities, in Java as well as in the outer islands, decentralization has been accompanied by the rise of local mafia-style leaders who use their power for criminal activities and the intimidation of political contenders. Often, they are supported by *preman* (gangsters) who provide muscle power and security-related services for the local power struggle (Hadiz 2010: 133f.). It is therefore justified to state that in some areas local bosses, corruptors and thugs "have been innovative in capturing the new democratic spaces provided by the dismantling of the Soeharto empire and the centralized state" (Antlöv 2003: 72). These dubious and often criminal local elites were able to capture political and economic power and to establish local authoritarian zones.

The feudal political culture that still prevails over large parts of the rural Philippines is one explanation for the continued dominance of powerful political families. Here, the dominance of local leaders often reaches

quasi-monarchic levels, such that outgoing governors or mayors are able to pass their office to family members. These local clan leaders exert control over the access to state institutions, public offices, franchises, and business opportunities in a quasi-monopolistic fashion (Ardanaz, Leiras and Tommasi 2010: 14; Kreuzer 2009: 9). Local government positions are often used to redirect or gain privileged access to local public resources and to control the bureaucracy (De Dios 2007: 169).

Similar to the Philippines, there are several regencies in Indonesia that are dominated by local elites who are powerful and wealthy enough to ensure electoral victory. A case in point is the province of Banten, where the Chosiyah clan soon dominated in various levels of local government. These "little kings" (*raja kecil*) are "unaccountable to their citizens … and, due to decentralization, no longer constrained in their confiscatory impulses by a strong central government either" (Pepinsky and Wihardja 2011: 361). These local government leaders often implement policies that benefit themselves at the expense of the community at large and consolidate their power base.

Another negative effect of decentralization in Southeast Asia is that the given space for local autonomy did lead to a revival of traditional religious values which are not in accordance with the core values of democracy, such as universal equality of men and women and of different religions. In Indonesia, for example, many local regulations or by-laws (*peraturan daerah*, *perda*) are openly discriminative against women and religious minorities. In some areas, very conservative interpretation of the *shari'ah* came into effect and influenced many aspects of daily life. This concerned, for example, the dress code for women, which required them to wear a veil (*jilbab*) in public. In the Bulukumba regency in South Sulawesi, for example, all women (Muslim or not) must wear a *jilbab* to receive the services of the local government. In the same district, Qu'ran-reading ability became a criterion to get access in the local administration (Buehler 2008: 257). The mentioned local regulations contradict the values of a liberal, pluralistic and tolerant democracy, which also cares for minority protection.

5. PROBLEMS OF POLITICAL ENGINEERING WITH REGARD TO DECENTRALIZATION IN SOUTHEAST ASIA

Actors and actor constellations determine the outcome of processes of political engineering. These actors often pursue their own agenda and try to maximize

their profits or their political orientation. Thus, political engineering is influenced by short-term interests of individuals and certain groups instead of long-term benefits for the whole political entity.

Another problem of political engineering with regard to decentralization is the unwillingness of national governments to give up power. In an interview with the author, the director general of the Democrat Party in Thailand, Mr. Nataphol Teepsuwan, commented on the decentralization efforts in Thailand as follows: "The attempt to strengthen the local level was not successful. There was a lot of resistance from those who have the benefits from the central state structure. If the local governments become powerful, they would have to divide the cake into pieces."[1]

Therefore the national elites often complain about the assumed lack of knowledge and expertise at the local level. In some countries like Thailand, there is also a fear that certain regions will be ruled by politicians who belong to the opposition. In a federal state like Malaysia, however, this seems to be no major problem. Here, the states of Penang, Selangor, and Kelantan, for example, have been ruled by opposition politicians for many years.

In general, authoritarian governments prefer de-concentration instead of devolution. This holds particularly true for countries such as Vietnam and Cambodia, where the ruling forces wish for more efficient public service delivery at the local level but no additional political representatives at the local level that might cause problems for the national power holders. The reduction of democratization processes also often stops decentralization processes, as can be seen in the case of Thailand, where the political turmoil and the military coups have led to a standstill of the decentralization process.

As the cases of the Philippines and Indonesia demonstrate in Southeast Asia, decentralization can be seen as a "post-authoritarian response" (Alicias and Velasco 2007: 4) since real and effective reform measures concerning decentralization only took place after the end of authoritarian rule. However, even in these two more democratic countries in Southeast Asia, decentralization has not led only to positive effects. Consequently the discussion about better forms of local autonomy continues.

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[1] Interview with Nataphol Teepsuwan, Director General of Democrat Party, Member of the House of Representatives, Bangkok, 11 October 2010.

6. CONCLUSION AND RECOMMENDATIONS

There is no ideal form of decentralized government structures, since all the possible structures have inherent strengths and weaknesses. Hence processes of political engineering with regard to decentralization should focus on a federal or decentralized system that is in accordance with the country's specific needs and traditions. Institutional engineering *per se* is no panacea for democratization and good governance. What is important is that not only must the legal framework be changed by political engineering but the political practices in reality need to be reformed in order to improve governance and democracy in these countries.

One weakness of many Southeast Asian states is that the rule of law is weak. In many countries informal practices undercut laws and constitutions. Particularly among the political elites there is generally limited acceptance of formal rules since informal patterns of influence dominate. Therefore, the success of decentralization measures is closely connected to reforms in which informal power structures are transferred into transparent accountability relations.

The political practice shows the limits of institutional engineering. Power structures, in which political elites (family clans in the Philippines, a bureaucratic-military elite in Thailand) exert informal power irrespective of formal rules in a society which is still largely kept in feudal social structures, do not change if a new constitution or law is passed. Among these elites, informal political dealings that take place behind the scenes are more important than formal accountability relationships. Indonesia, Thailand, and the Philippines illustrate "how formal democratic institutions are dominated by informal power structures but also how the legitimacy of democracy can come increasingly in question" (Dressel 2011: 530). The deepening of democracy is thus closely connected to reforms in which informal power structures are transferred into transparent accountability relations.

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Hybrid Federalization in India, Sri Lanka and Nepal

Laura Allison-Reumann and He Baogang

INTRODUCTION

In 2015 a new constitution in Nepal was promulgated which recognizes Nepal as a secular, inclusive, multi-ethnic and federal state for the first time. It is now at the early stages of implementing its federal structures and institutions. This is a pivotal time for Nepal. The five previous constitutions of Nepal failed and did not manage to avoid discrimination or overcome the domination of the majority ethnic group (Lawoti, 2007), and agreements with and principles for different members of society have not always been adhered to or delivered (Hachhethu, 2009). For more than 60 years Nepal has struggled to find appropriate solutions to problems of development, democracy, peace and equality (Von Einsiedel, Malone and Pradhan, 2012) and its new constitution has proffered a new direction for Nepal, albeit with continued contestation and disagreement.

As will be explained in this chapter, the eventual decision made in Nepal reflects a hybrid federal approach. The final result is a compromise between different interpretations of and proposals for federalism that have largely focused on competing ideas as to the basis of federal borders. The context of Nepal's newly established federation raises questions that we attempt to answer in this chapter: Is there anything we can learn from other countries in South Asia about the likelihood of successful federalism in Nepal? How and why are hybrid federal approaches developing in Asia? And when does federalism not take hold in Asia? In order to begin to answer these questions we take India and Sri Lanka as two case studies of federalism. In India, we observe a state in which federalism has, in its own distinct form, taken hold. Conversely, in Sri Lanka proposals for federalism are met with ongoing opposition, yet as of 2015 they appear to have been tentatively placed on the agenda once again.

Through a critical analysis of India, Sri Lanka and Nepal we find that processes related to a "hybrid" federal type are useful when dealing with

minority issues and national identity questions in South Asia. Importantly, hybrid federalism does not require an either/or response to the question of territorial or multinational federalism (or related concepts such as ethno or ethnic federalism). Within the federalism literature, considerations of whether territorial or ethnic-based federalism is more appropriate have often been a focus. What has emerged from our analysis is that such debates are too conceptually narrow for the phenomena taking place in South Asia as they ignore or underrate the approaches to federalism that are present and emerging in Asia. This is because Western models of federalism have not been widely implemented in this region.

An examination of India, Sri Lanka and Nepal also provides the opportunity to determine certain conditions for hybrid federalism which may be useful for other states which are at a critical decision-making stage and where various proposals are divided along either territorial or ethno-federal lines. Whilst it is the case that there are other states within South Asia and the broader Asian region which are worthy of investigation, such as Myanmar, Pakistan and Malaysia, we restrict our analysis in this chapter to the three aforementioned states for a number of reasons.

Firstly, given the range, but also the frequency, of federal proposals in Asian states that are ethnically diverse, contain minority groups and are tackling issues of national identity, the main research question that drives our investigation is: why have federal solutions been successful in some contexts yet have failed in others? India provides us with a case study of a state which has successfully adopted federalism and Sri Lanka is an example of a state which has failed to implement federal structures. Nepal provides us with a case where a hybrid federal approach has been recently adopted. Therefore, beyond the similarities, such as their geographical proximity, and proposals that have been made at various times in each of these states for the purposes of reconciliation, accommodation and effective governance, it is rather their differences as opposed to their similarities which make them worthy foci of analysis in relation to each other.

The main objective of this chapter is to identify the processes (or lack thereof) of hybrid federalization in India and Sri Lanka, with possible lessons for federalism in the long term in Nepal. With regard to India as a case of hybrid federalism, the question arises as to whether hybrid federalism has evolved reflexively due to certain conditions and decisions made, or if it was a specific proposal, under the aegis of leaders and political figures who were

aware that models of federalism elsewhere were inappropriate for India during the period when it was drafting its constitution and the years that followed. This then requires a similar consideration of Sri Lanka—are explicit proposals for hybrid federalism evident or is a hybrid federal type emerging? (Or, in this case, is a hybrid federal type being rejected?)

To date, much useful research has been undertaken on, for example, "quasi-federal" and "partially-decentralized" states, and whilst valuable, we diverge from these discussions in two important ways. Firstly, we assert that hybrid federalism is present, and emerging within Asia, and, importantly, is unique in relation to previous "federal types" which have been discussed and established, particularly in the West. Secondly, a key element of hybrid federalism is, in fact, a focus on the *process* (federalization) and the conditions that allow this process to take place. This is especially significant given the fact that we have identified that the sequencing of certain federal elements is an important aspect of federalization within the hybrid federal approach.

Debates over federalism, and what type of federalism, are often centred on what model can most successfully contain and reduce ethnic conflicts and facilitate and promote democracy. The power and use of ideas to shape political outcomes such as federalism are acknowledged as imperative considerations by Lecours and Arban (2015). The extent to which political actors support or reject federalism, and indeed a particular version of federalism, can influence whether federalism will take hold. Reflecting this range of ideas in the academic literature, Kymlicka (2005; 2007), for example, argues for a form of multinational federalism (other terms such as ethno-federalism, plurinationalism and ethnic federalism reflect similar ideas), drawn from Canada, Spain and Belgium, where federal constitutions accommodate concentrated ethnic groups; internal boundaries are drawn to coincide with ethnic geography; ethnic minorities can exercise self-determination, and a group's language is recognized as an official language. Brown (2007), in contrast, argues for regional or territorial federalism for Asian countries—one characterized by the universal protection of rights, the neutrality of the state towards different ethnic groups, internal boundaries not coinciding with ethnic groups, diffusion of power within a single national community, and geographic regions rather than ethnicity being the basic unit of a federal polity.

While it is often claimed that multinational federalism is fairer on minority groups, others have claimed that federal states in which component regions are invested with distinct ethnic content are more likely to collapse

(Hale, 2004). In Asia, however, these debates between multinational and territorial federalism are misleading given that neither one nor the other can be evidenced in its pure form. For example, India is often described as an example of multinational federalism yet on closer inspection India's federalism is more complex than definitions of multinational federalism suggest. Instead, India's federalism has blended both regional and multinational elements of federalism. As will be discussed in greater depth below, the achievement of the Indian accommodation of ethnic groups is due to both multinational and regional federal mechanisms. It is this mix which we argue cannot be captured by previous conceptions of federalism and requires new conceptual thinking in the form of hybrid federal approaches.

A hybrid federal approach aims to facilitate compromise and not pluralize, which is essential for deeply divided and diverse states. It is also this element of compromise that distinguishes it from established approaches to federalism. Political and social polarization, as this chapter will demonstrate in the case of Sri Lanka, rarely contributes to workable solutions. Polarized debates in Nepal needed to be overcome in order for the constitution to be promulgated, which suggests that hybridity has been the most workable approach towards a federal solution, even if previous proposals were less hybrid in content. India has shown us that an element of compromise and a certain amount of alternation between federal approaches have been necessary for federalism to be a solution to states that possess ethnic diversity.

Hybrid federalism is distinct from concepts such as "partial-decentralization" and "quasi-federalism" given that its focus is on a mix of processes and outcomes as opposed to a model which is assessed against a predetermined federal type—and the prefix "hybrid", rather than describing the "strength" of federalism, refers to its nuances and variations. Previous conceptions and approaches have tended to be absolutes—multinational, territorial, asymmetrical federalism; or degrees—partial, quasi, semi and so on. The problem with these is the fact that contexts are usually assessed against a predetermined definition, and previous definitions, which have largely emerged from Western, liberal-democratic instances of federalism, do not serve the phenomena taking place in Asia well. Rather than a label, hybrid federalism therefore is an approach that remains open to variation, flexibility and compromise.

This chapter proceeds as follows: in the next section we critically examine hybrid federalization in the context of India and Sri Lanka. The observations

we make regarding these two case studies are then used to examine the recent example of Nepal.

INDIA: A CASE OF HYBRID FEDERALIZATION

A hybrid federal type has emerged in India, which can be attributed to the fact that India's Constitution refers to it as a "Union of States" and provides a significant amount of residual power to the centre whilst still maintaining its federal character, and that there has been a continual renegotiation of state boundaries based on either territorial or linguistic foundations. This political demarcation of state boundaries is also layered with another element of hybridity—on the one hand there are endeavours to create a secular state in order to alleviate and mitigate communal violence and, on the other, the provision by the government of institutions and policies which accommodate different ethnic and religious group demands, albeit with differing results (Narang, 2003).

Before Mughal rule, individual provinces functioned with a high level of autonomy and whilst there was a mode of central power, levels of decentralization were high (Mitra, 2011). During the period of rule by the Mughals, Indian states continued to function with a high level of autonomy until the last Mughal leader, Aurangzeb, attempted to centralize power. After his death in 1707, however, state autonomy and independence began to be reasserted. With the demise of Mughal power, Europeans began to move into the region, with the eventual control of the British emerging through the British East India Company.

As is often the case, remnants of previous eras have had a discernable impact on successive regimes in India. In the case of Mughal rule's influence on the period of British colonization of India, what was evident was the fact that a clear centre of political authority had been established, which had developed administrative capacities for law enforcement and tax collection. This, whilst adapted, was retained during the period of British rule. Nevertheless, despite the ability to establish a centralized political structure, the Mughals were not able to influence or change local institutions or village affairs, something which the British also attempted to accommodate by eventually opting for a federal approach to governance in India (Charlton, 2010).

Under British rule, it eventually became recognized that the diversity within India made centralized rule impossible. The colonization of India had

been achieved by 1858, and leading up to this Britain continued to expand its control by annexing a number of states during this period—Punjab in 1849, Jhansi, Nagpur and Hyderabad in 1853 and Awadhi in 1856. During the Sepoy Rebellion of 1857, Britain came to realise that there were hundreds (approximately 500) of princely states within India which were potential allies of the British. Although there were initial attempts to centralize power, the British soon realized that the devolution and decentralization of powers to regional and local bodies was necessary for effective administration (Narang, 2003). Britain began to develop a mixed system whereby "direct rule" applied to the British Indian provinces, "indirect rule" was used for the princely states, and tribes and groups, especially in remote areas, were allowed to retain a certain amount of autonomy (Mitra, 2011).

These different combinations of rule and the recognized need for a certain amount of decentralization began to be given concrete form in 1861 with the Indian Councils Act, which reversed some of the centralising trends set out in the Charter Act of 1833. This 1861 Act allowed participation by non-officials in the Legislative Council of the Governor-General and also the Legislative Councils of the provinces. Indirect election to these Councils was established in 1892, which happened alongside the widening of the mandates and functions of these Councils to discuss the budget and intervene on issues of public interest (Mitra, 2011).

The Government of India Act of 1919 furthered processes of devolution by proposing not only the delegation of administrative powers but also financial and legislative decentralization. To this end, Central and Provincial Lists of subjects were drawn up, with the Provincial Lists being divided into "reserved" and "transferred" subjects (Mitra, 2011). Elected ministers responsible for provincial legislature were to deal with "transferred" subjects, while "reserved" subjects were to be the responsibility of the governors with the support of their executive council.

Nevertheless, whilst this 1919 Act appeared to establish a more devolved state, the powers remaining at the centre set a precedent for future Indian governance and bore hallmarks of the mixture of federal and unitary elements. Despite the provinces gaining the political mandate to manage the subjects on the "transferred" lists, ultimate responsibility lay with the Governor-General, who answered to the secretary of state for India in Britain. Limited devolved controls over finance were also ensured given the fact that they were designated under the "reserved" subject list. Furthermore, the Indian civil service

and the Indian police were directly answerable to the secretary of state—the governors did not need to act in accordance with or on the advice of their ministers and no bill could become law without the approval of the Governor-General (Mitra, 2011).

Nationalist demands were not met with the 1919 Act and pressure from these groups resulted in Britain forming the Simon Commission (1927-9) in order to establish ways in which power could be further extended to Indians. Yet largely due to the fact that all members of the Commission were British, the Commission was boycotted and demands were made by the National Congress to convene a Roundtable Congress or Constituent Assembly to establish a future constitution for India.

A 1933 British White Paper, the precursor to the 1935 Government of India Act, set out the principles of constitutional reform. The Government of India Act of 1935, in large part to meet the demands of the Congress Party, committed the British government to a federal form of government in India (Narang, 2003). It created three lists to divide subjects—Federal, Provincial and Concurrent. Soon after the Act elected governments took offices in 1937; yet the Congress's continual dissatisfaction with the levels of autonomy and the intrusion of the centre into provincial affairs caused all Congress-led party governments in the provinces to resign in 1939 (Mitra, 2011).

During this time, while the Congress had initially advocated decentralization, growing nationalism and sentiments of independence were swaying some within the Congress towards centralization. In 1942, Sir Stafford Cripps proposed to the Congress a Constituent Assembly which would frame a new constitution for India. A component of this proposal was that the British government would allow any province to opt out and retain its constitutional position outlined in the 1935 Act. Cripps's proposal was rejected by the Congress, in large part due to the increasing preference for centralization in the Congress and the elements of pro-decentralization embedded within the proposal (Mitra, 2011).

Consequently, the British government in 1946 announced a British Cabinet Mission Plan, which envisaged a weak central government and strong provinces which would have all residual powers. Whilst initial reactions within the Congress were not in favour of the Plan, it was eventually accepted by the Congress. According to Mitra (2011), the main reason for this reluctant support was that the Congress believed the Plan would potentially stop the Muslim League from demanding a separate state in the form of Pakistan.

However, this was not to be the case as in 1947 the British government announced that it would partition the country. The resulting constitution that was adopted by the Constituent Assembly in 1949 and which came into force in 1950 is best understood as emanating from this context of British attempts to decentralize whilst maintaining a certain amount of central control and growing demands within the Congress for a strong centre.

Whilst the initial aim of the Congress focused on ensuring greater representation for Indians, the position of the Congress developed into a strong preference for unitary and centralized government as opposed to federal solutions, partially in response to opposition to British rule and also partially as a result of the independence movement which was emerging. The 1935 Government of India Act, with its commitment to a federal approach to governance, has been quoted as being in response to increasing communal antagonism as a result of the Congress party focusing on centralization and also the perception of Muslims that the Congress, whilst it included Muslim members, was predominated by a Hindu agenda (Narang, 2003). In this sense, the position of the Congress and the objectives of the British during this period appeared to propel the other towards either federal or central solutions.

Although the overall position of the Congress was in favour of centralization, Muslims were in fact advocating for federalism given their apprehensions of the emergence of a Hindu-dominated India. It is potentially for this reason that during the early 1900s, the Congress did at times coalesce with the British agreeing, albeit often reluctantly, to federal developments. For example, the Lucknow Pact of 1919 between the Congress Party and the Muslim League, and subsequent negotiations between the two were based on concessions to federalism (Narang, 2003). At the Nagpur Session of 1920, for example, the Congress indicated that India's federal structure would be formed on the basis of language and this approach was also stated as a political objective in the Report of the Nehru Committee of the All Parties Conference in 1928 (Mawdsley, 2002) (see later in this chapter for further discussion on territorial and linguistic state formation).

As discussions of independence and a new constitution were reaching their height, debates were centred on a federal structure and a federal constitution for India. Concessions by the Congress Party were made in order to further the freedom and independence movement. In 1946, despite Nehru's preference for centralization, he suggested to the Constituent Assembly a Republic of India whereby the territories would "possess and retain the status

of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom" (Constituent Assembly of India, 1946: 1).

However, once independence had been achieved, Congress rhetoric based on federal governance soon gave way to priorities based on unity and centralization. In this context, and especially in the vision of Nehru, the restructuring and creation of institutions which reflected a consolidated nation state became the priority. During this early independence period, the accommodation of linguistic, ethnic or religious minorities appeared worrying and threatening to the national unity which India's leaders were attempting to achieve. In addition, whilst the Congress Party often spoke of a federal India, and even a federal India based on linguistic groups, when trying to end British rule, once independence had been achieved, the Congress tried everything that it could to ensure that the new constitution would not involve the accommodation of India's diversity through the creation of linguistically-based states (Shneiderman and Tillin, 2015). During the period when the new constitution was being drafted, emphasis was placed on creating an overarching nation state for a diverse group of people as opposed to accommodation of those distinct groups.

Immediately after independence, the partition of Pakistan, a large number of external and internal security threats and the challenge of development greatly influenced the framers of the constitution in terms of supporting but limiting the amount of devolution. Added to this was the integration of India's over 500 princely states, the modernising and nation-building aspirations of politicians within the Congress and the ethnic, linguistic, cultural and religious diversity within India (Mawdsley, 2002). The focus was therefore on a constitution which would not threaten the control of the central government and also an approach which centralized economic planning so as to address development concerns (Mitra, 2011).

Notably, more than half of the provisions were taken from the Government of India Act of 1935 with minor revisions (Charlton, 2010). The referral to the 1935 Act combined with the context in which a strong centralized nation state was being prioritized, resulted in the Constitution setting out a federal system which was designed to establish centralized power complemented by federal arrangements (Narang, 2003). Reflecting this preference for central power

was the way in which the constitution was decided upon—a law made and enforced by the central authority as opposed to negotiation or consent among the constituent federal states. According to Narang (2003: 72) the eventual overall position of the Constituent Assembly was that "a federal governmental structure alone could not work and that a fortified central authority was imperative to maintain the unity and integrity of the nation".

This was to the extent that the Assembly made clear that they did not want to name India a federation, but rather chose to call it a Union, mainly due to the fact that they wanted to emphasize that it was not an agreement among the states and therefore they did not have the right to secede from it (Narang, 2003). The constitution of 1950 ensured that it was the central authority which had the power to determine the governance structure of India, and not the federal states, and thus included a number of provisions which ensured the supremacy of the state. Residual authority remained with the central government, and sweeping powers were given to the centre in times of emergency.

The Constituent Assembly, despite increasing demands for such, did not organize the federal states of India into linguistically-based units; 28 states were formed and split into three categories—A, B and C. A states were based on a federal structure with a clear division of responsibility split between them and the central government, and comprised former British provinces. B states were made up of the larger princely states and large amalgamated unions of states and were essentially under the control of the centre and had to follow directions issued by the president. C states were former small princely states which were under the complete control of the central government, and the president administered them through a chief commissioner or lieutenant governor appointed by the president, or a governor of a neighbouring state (Narang, 2003). During the constitutional set up phase, these states were mainly established with a priority on administrative and territorial divisions, and reflected the divisions and boundaries which had been established during the period of British rule.

Singh (2008) has shown that building nationalism post-independence, especially in the context of a newly created Pakistan, is linked to the preference for a strong centre and also the reluctance of accepting a vision of a multinational India, despite acknowledgement of the country's diversity. It was also the case that economic policy, often referred to as a state capitalist

approach, followed along the lines of centralization during this period, giving a large amount of economic and political power to the centre.

It was not, however, the case that structuring India's federal system along linguistic lines and therefore attempting to accommodate different groups within India had not been raised. For example, during British rule, the idea of restructuring state boundaries to reflect linguistic groupings was raised in 1838 in reaction to the Act XXXIX of 1837 which had replaced local languages for Persian in legal proceedings discussions on revenue (Narang, 2003). Other early examples include the Nagpur Session of 1920, where the Congress agreed to a linguistic principle and also reorganized its own structure in accordance with linguistic groups and the Motilal Nehru Report of 1928, which recommended a reorganization of the country's provinces along linguistic lines. Prior to independence, Ghandi in particular was of the position that India should strive for unity whilst protecting the significance of ethnic identities.

The situation India found itself in at independence and during the drafting of the constitution, is therefore quite a dramatic shift from the proposal and suggestions that were being made even by the Congress prior to independence. During the time when the Constituent Assembly was in place serving as a provisional parliament and constitutional drafting body, a committee, known as the Dar Committee, was set up to investigate the feasibility of creating linguistic-based states. The Committee's report of 1948 argued against the formation of states based on language. Later in the same year a committee comprising Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya was commissioned to look into the Dar report and present some final recommendations. They too dismissed the idea of linguistic-based states due to the concern that such a structure would have the potential to provoke and encourage separatism (Narang, 2003).

Therefore, rather than basing a newly independent Indian state on language groups, emphasis was placed on political ideas—secularism, egalitarianism, political equality, national integration and democratic participation (Narang, 2003). Yet the promotion of democratic principles and the mobilization and politicization of a large diversity of groups actually made a structure which was not focused on accommodation of ethnic, religious and linguistic groups in India inadequate. Demands began to rise for increased regional autonomy and frustration grew in response to a lack of attention on linguistic issues.

After riots, demonstrations and the death of Patti Siriramulu from a hunger strike, the Congress reluctantly created the first linguistically-based state, Andrah Pradesh (Telegu-speaking), in 1953, with the other part of what was formerly Madras becoming Tamil Nadu (Tamil-speaking) (Charlton, 2010). Following this, demands from other groups began to rise even more, eventually prompting the Nehru government to appoint a State Reorganization Commission to examine the problem (Singh and Saxena, 2011).

The arguments for and against the reorganization of federal states based on language groups were varied. Those who advocated a reorganization believed that linguistically-based units would eradicate the frustrations of minority groups living within heterogeneous states, reduce internal state tensions and assist national unity. In addition, unilingual states would reduce administrative complexity and therefore increase efficiency and linguistically homogenous states would foster the internal cohesiveness necessary for democracy (Singh and Saxena, 2011).

On the other hand, those against linguistically-based units argued that such an undertaking would be very difficult to achieve. They also argued that such a structure could encourage subnational loyalties and even a "balkanization" of India (Narang, 2003: 75), which would threaten federal unity, and many considered that there were issues other than linguistic or ethnic homogeneity which were also important, if not more pertinent, such as "national security, financial viability, the requirements of economic planning, historical loyalties, geographic factors, communications, and administrative convenience" (Narang, 2003: 75).

The Commission, however, eventually reached the position that creating states based on ethno-lingual groups was the most rational and feasible method with which to reorganize the states of India and adopted the principle of linguistic homogeneity. This was accepted by the central government and most states were reorganized in 1956, with the exception of Bombay and Punjab. These two states were later split along linguistic lines, with Bombay being divided into Maharashtra and Gujarat in 1960 and, whilst there was initial reluctance to create a Punjab state as the proposal was considered religiously motivated, it was eventually split into Punjab and Haryana on linguistic grounds in 1966. Since then, Meghalaya has been granted statehood in 1971, Manipur and Tripura in 1972, and Arunachal Pradesh and Mizoram in 1986. In 2001, Chattisgarh, Jharkhand and Uttaranchal were established based on ethno-linguistic groups from Madhya Pradesh, Bihar and Uttar

Pradesh respectively.[1] In 1985 Goa was upgraded from union territory status, as was Delhi in 1998. Oommen (1990) claims that the new states created in the 1960s, and also the more recent states, are examples that ethnicity or religion have become "informally valid" bases for reorganization in some circumstances. For many, insurgencies have also contributed to their success, but for many of those states mentioned above, the fact that they are geographically located on border regions has also had a role.

In general terms this reorganization has been deemed a success, with ethno-linguistic groups being accommodated without any serious threats to federal unity. Nevertheless, it has been pointed out that whilst this policy of accommodation has been pursued in the form of reorganising states and their boundaries, the aim to homogenize India's pluralism has not been absent. This, according to Narang (2003), has been done firstly by attempting to create a homogenous civil society by expanding the market and extending citizenship and also by integrating ethnic minorities into the philosophy and interests of the ethnic majority. It is also the case that there still exist large, heterogeneous states that are not based on linguistic groupings, such as Uttar Pradesh with a population of over 160 million (Mawdsley, 2002).

SRI LANKA: A CASE OF FAILED FEDERALISM

Whilst Sri Lanka remains a unitary state, at different moments both the Sinhalese and Tamil sections of society have either proposed or rejected federal solutions to the deeply divided society in which they live. Even before the end of the colonial period in Sri Lanka, proposals had been made for a federal governance structure. In 1926, S.W.R.D. Bandaranaike, who later formed the Sinhala Nationalist Sri Lanka Freedom Party, advocated for federalism following the Swiss model and also suggested a federal arrangement with India (Bigdon, 2003). During this time Tamils were not in support of a federal proposal and rejected his suggestions. Bandaranaike subsequently abandoned his plan for a federal solution and in the 1950s, when he was prime minister of Ceylon, strongly opposed the demand for a federal constitution by the Tamil Federal Party (Singh and Kukreja, 2014).

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[1] Nevertheless, Mawdsley (2002) argues that Chattisgarh, Jharkhand and Uttaranchal were in fact based on proposals for administrative efficiency rather than the principle of language.

Other proposals in the 1920s and 1930s included one from the Donoughmore Commission, which was sent to then Ceylon to produce suggestions for a new constitution. A delegation from the Kandyan National Association submitted a federal proposal to the Commission, and Leonard Sidney Woolf, similar to Bandaranaike, suggested a Swiss-style model of federalism (Clarance, 2002). These suggestions were rejected, however, partly because during this period the Tamil Congress was more in favour of a unitary approach to governance—the leader of the Tamil Congress Party, G.G. Ponnambalam, supported a unitary structure as long as it provided representation for all the ethnic groups on the island (Edrisinha, 2011). The Ceylon National Congress, however, did not approve of this unitary and centralized power-sharing proposal.

Yet from the mid-1950s on, and especially after the victory of the Sri Lanka Freedom Party and the passing of the Sinhala Only Act in 1956, Tamil demands began to change and Tamil calls for federalism emerged. The then leader of the Federal Party and recognized Tamil leader, S.J.V. Chelvanayakam, put forward federal proposals based on a cooperative model of federalism with a strong centre (Bigdon, 2003). Whilst he at times managed to forge agreements with the prime ministers of Ceylon at the time—S.W.R.D. Bandaranaike in 1957 and Dudley Senenayake in 1965—which were aimed at power decentralization and the introduction of autonomy agreements, these agreements were far from federal arrangements (Singh and Kukreja, 2014) and eventually certain groups within the Tamil community became frustrated with Chelvanayakam. This was reflected in the general election of 1970 when independents in the north espoused their preference for secession and Tamil nationalism, with the Federal Party's federal proposal being rejected outright.

In the parliamentary election of 1970, a government led by Bandaranaike and made up of the Sri Lanka Freedom Party, the Communist Party of Sri Lanka and the Lanka Sama Samaja Party remained in power. They followed pro-Sinhalese polices and produced a new constitution in 1972. Colvin R. De Silva, the Minister of Constitutional Affairs, who was mandated with designing the new constitution, proposed that Sri Lanka be declared a unitary state. This suggestion was opposed by the Federal Party who warned that the Sinhala people should not impose such a constitution on a country that consisted of different ethnic groups and put forward arguments for a federal state and constitution.

The end product of the 1972 constitution seemingly did not take on board the suggestions of the Federal Party and has been described as "a charter of Sinhalese-Buddhist supremacy" (Wilson, 1988: 88) and a "major milestone in the process of national disintegration" (Singh and Kukreja, 2014: 195). Among other issues, the 1972 constitution removed the previous constitution's section that protected minorities, declared it the state's duty to protect Buddhism and continued to uphold the hegemony of the Sinhalese language.

In reaction to the 1972 constitution, the Federal Party attempted to unite Tamil groups into the Tamil United Liberation Front (TULF) in 1976. Federalism was no longer the demand of the Tamils; it was replaced by a demand for the creation of an independent Tamil nation-state, Eelam (D'Costa, 2013). By the time of the general election in 1977 Tamil nationalism had well and truly emerged and prior to the election, younger generations, frustrated with the lack of success of the TULF, had begun to form other groups and movements, namely the Tamil Students Movement (TSM), which split in 1972 into the Tamil New Tigers (TNT) and the Tamil Eelam Liberation Organization (TELO) (D'Costa, 2013). Reflecting sentiments of Tamil nationalism, the Liberation Tigers of Tamil Elem (LTTE) was established in 1976 and eventually came to be a rival of the TULF, who continued to follow a more moderate line (D'Costa, 2013).

The liberal United National Party (UNP) returned to power in the 1977 election, and initially proposed to replace the 1972 constitution. Yet pressure and Sinhalese reaction to TULF demands resulted in a constitution in 1978 which further consolidated the unitary state and the position of the Sinhalese.

Compounding this, in 1983 a "no separation" amendment to the constitution was passed which insisted that all members of parliament take an oath to oppose separatism. The TULF members of parliament that refused to take the oath consequently lost their ministerial seats (Singh and Kukreja, 2014). With the TULF being silenced by this amendment, Tamils soon turned to the LTTE to push their cause. Anti-Tamil riots that had occurred after the 1977 election, the "no separation" amendment of 1983 and the riots and violence that occurred in the same year heralded the end of the moderate TULF party on the one hand and the emergence of Tamil nationalism on the other. Fighting between the Sri Lankan Army and the LTTE continued until 1987 when India sent in peacekeeping forces and implemented the Indo-Lanka Peace Accord.

The Indo-Lanka Peace Accord proposed a 13th Amendment of the constitution which would set up provincial councils. According to the amendment, a governor for each province would be appointed by the president. Under the amendment, the president had the power to dissolve the provincial councils and also remove the governor, ultimately limiting the power of the provinces and ensuring the retention of central power. The Amendment was challenged by some political parties due to the fact that it potentially violated Article 2, which declared Sri Lanka a unitary state, and therefore required a referendum for implementation. It also did not satisfy the demands of the Tamils (Singh and Kukreja, 2014) due to the apparent control the centre maintained and the absence of certain features, such as judicial review, a public service commission and a parliamentary mechanism that allowed for provincial representations.

Nevertheless, the 13th Amendment was certified in 1987 and a Provincial Council System was set up. This was only short-lived, however, with the Provincial Council in the North-East only running from 1988 to 1990. On the one hand, the Tamils demanded more substantial devolution than the 13th Amendment provided and on the other, political parties such as the Janathā Vimukthi Peramuṇa (JVP) believed that the efforts of devolution were already too substantial. The Amendment, whilst recognizing Sri Lanka as a multi-ethnic and multi-lingual society, failed to resolve the ethnic conflict in Sri Lanka (Bigdon, 2003).

Attempting to reach a solution, Chandrika Kumaratunga suggested a devolution package in 1995, a year after having come to power. This package suggested the removal of Article 2 and Article 76 and proposed referring to Sri Lanka as a "Union of Regions". Whilst it attempted to meet the demands of the Tamils, especially by addressing the powers of the police and land issues, it still failed to meet the demands of the LTTE and raised concerns amongst the Sinhalese parties that giving powers to the regions was a threat to Sri Lankan unity, and was ultimately abandoned.

A modified version was proposed in 1996 which was still unacceptable to the TULF and the LTTE. Some Sinhalese politicians such as Mahinda Rajapaksa and Ratnasiri Wickremanayake also opposed the proposal. They considered it a threat to the Sri Lankan identity and thought it had the potential to cause the break-up of the country. Muslims were also critical of the proposal as they did not feel there was enough protection for them in the north and east provinces, especially if they were to be merged as stipulated by

the proposal. The package was finalized in 1997 but failed to pass through the parliament.

Chandrika Kumaratunga again tried to find a solution to the ethnic conflict in 2002 when she invited the government of Norway to take on a mediation role between the Sri Lankan government and the LTTE. The negotiation process resulted in a ceasefire agreement in 2002 and a change of claim by the Tamils, who, rather than demanding a separate state, began to consider self-determination within a united Sri Lanka, bringing discussions of a federal arrangement once again to the fore (Singh and Kukreja, 2014). Negotiations stalled in 2003 and when they were renewed later in the same year, the LTTE returned with a proposal which was effectively a demand for an independent state (Kukreja and Singh, 2008). Discussions on a federal solution had disappeared almost as soon as they had re-emerged in Sri Lanka.

The idea of federalism lost support and when Rajapaksa became president in 2005 it became apparent that he supported a tough and militant response to the LTTE (D'Costa, 2013). Whilst he held talks with the LTTE in Geneva there were no concrete outcomes. He also organized an All Party Representative Committee (APRC) to come up with an approach to a resolution of the conflict. The only suggestion to come out of the APRC, however, was to implement the 13th Amendment that had failed years earlier and was most definitely considered inadequate by the LTTE. The government was not willing to follow through with the suggestion to implement these old proposals, and the ultimate decision was instead to apply military approaches.

The civil war, which ended in 2009 with the defeat of the LTTE by the Sri Lankan government, has contributed to ethnic and political divisions and has weakened democratic governance in Sri Lanka (Samarasinghe, 2010). Singh and Kukreja (2014) explain that the military defeat of the LTTE has moved the federal idea and discussions on constitutional reform and conflict resolution backwards. Federalism and power-sharing has only recently begun to be tentatively discussed again. In the post-civil war era there remains an unwillingness on the part of the dominant Sinhalese nationalists to consider proposals for power-sharing with minorities. Whilst the LTTE has been destroyed, a fragile situation will continue to prevail in Sri Lanka until there are moves to make Sri Lankan politics more inclusive and democratic.

Among many other explanations, a possible explanation for this polarized situation regarding federalism in Sri Lanka was the competing visions and understandings of federalism. The LTTE, for example, called for a form of

regional federalism which maximizes autonomy, where substantial powers are given to the north and east regions, including the right to maintain their military forces (Singh and Kukreja, 2014). Yet Sri Lanka's UNP and the People's Alliance (which later merged into the United People's Freedom Alliance), and the international community, advocated instead an approach that draws the Tamil minority back into the Sri Lankan nation-state. Furthermore, Sri Lankan Muslims have sought to ensure that there is a certain level of autonomy and sufficient avenues for representation for minority groups within a federal structure—to ensure that the Muslim minorities, mostly in the Tamil-majority regions, are protected and represented. Finally, given the presence of non-territorial minorities, there are those that advocate for a flexible federal arrangement where territorial and non-territorial power-sharing are creatively pursued (Uyangoda, 2006).

In addition, power-sharing, since the colonial era, has been a difficult concept to instil within the political mindset. At independence, all power was vested in the centre, with a majoritarian political system established that managed to exclude Tamils from the ruling elite. The Sinhalese political elite were reluctant to consider power-sharing arrangements for Sri Lanka's ethnic groups for numerous reasons, not the least being because the colonial period in Sri Lanka had created a sense of discrimination and alienation of the Sinhalese due to the treatment of the Tamils under British rule and the significant Tamil representation in the civil service (D'Costa, 2013).

Even before the end of colonial rule the Sinhalese had begun to reassert their culture and religion, which they felt had been suppressed under colonial rule. Therefore, in 1956, when the Sinhalese Sri Lanka Freedom Party came into power, the political rhetoric became focused on the concept of "Sinhala-Buddhist Nationalism". With this came the fear that any form of accommodation or power-sharing arrangement would be a threat to the survival of the Sinhalese, lead to the demise of their culture and be a danger to their religion. Nation-building and ethnic-identity politics became closely associated with a Sinhalese-Buddhist state elite (D'Costa, 2013). Such thinking was in part connected to the writings of the 5th-century text, the *Mahavamsa*, which stated that the Sinhalese were the preservers of Buddhism and the island was their sacred home. This, coupled with the fact that whilst the Sinhalese were a majority group in Sri Lanka, were only found on the island as opposed to the Tamils who also had large populations in India, contributed to the Sinhalese and central government's position of centralized rule and discriminatory

practices towards minority groups. Even the entrenched democratic systems in place, not least the "one-man-one-vote" system, ensured Sinhalese supremacy given the demography of the country (Singh and Kukreja, 2014).

The defeat of Rajapaksa in the 2015 presidential election has ended his decade-long rule, with Maithripala Sirisena becoming the new president. A large number of Tamils and Muslims voted for Sirisena; however, according to the media, "Sirisena, from the Sinhala majority, has not signalled any departure from Rajapaksa's hard line on reconciliation with the country's Tamil minority" (*The Guardian*, 2015). The current position of the Tamil National Alliance, which has a considerable following in the north and east of Sri Lanka, is currently a moderate one in which they request federalism within a united Sri Lanka (Newman, 2015). There is recognition that there is a need to meet these moderate Tamil demands; yet the Tamil position to date has been rejected. It is potentially too soon to know the impact the 2015 leadership change may have on Sri Lanka's future governance structures, to what extent the Tamil community will feel that their demands have been met and indeed whether Sri Lanka will have a federal future.

LESSONS FOR NEPAL: A CASE OF RECENT HYBRID FEDERALIZATION

The discussions on India and Sri Lanka offer certain indicators and conditions for hybrid federalism. The overarching lesson which can be drawn from the analysis is that prevailing models of federalism are incompatible with these countries. This has resulted in the unique form of hybridity found in India, and is one of the potential reasons for failed federalism in Sri Lanka thus far, given that proposals for federalism have occurred but have been lacking in the necessary level and type of hybridity. Similarly, for Nepal, a hybrid approach to federalism appears to have enabled a decision on the federal design of the state.

Lesson One: A Mix of Territorial and Ethnic Federalism

India provides an example of hybrid federalism in relation to a mix of territorial and multinational federalism. Three factors contribute to the success of India's federalism in containing ethnic conflicts. Firstly, the language claims of minority nationalities have not been anti-India per se and have not posed a life-threat to the nation-state. The recognition of special language needs

granted a special right to minority people who as a consequence gradually become more involved in political processes. Democratic inclusiveness and participation made people become pro-India and embody civic virtues. Secondly, collective regional identity did not translate into ethnic identity. Overlapping identities changed previously unique ethnic identity into regional identity, thus strengthening the national identity. Thirdly, there is a safeguard enabling the central government to deal with internal suppression when one ethnic group dominates. Federal institutions provided countervailing measures to reduce the domination of one ethnic group; and the centre has been strong enough to protect civic rights in provinces and sub-provinces.

Prior to its new constitution, federal proposals in Nepal were varied, and suggestions for "hybridity", albeit with different terminology, were not absent. As Lecours (2014) explains, whilst all political parties expressed their support for a federal governance structure, they were divided on the form federalism should take, especially with regard to the formation of the federal units. Some political groups, namely the Madhesi parties and leaders of the indigenous nationalities, advocated an "identity-based" federalism based on ethnic groups. The Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist-Leninist (UML) parties, on the other hand, advocated federalism more along territorial lines. The Unified Communist Party of Nepal-Maoist, meanwhile, supported federalism, but, according to Lecours (2014), was internally divided over whether ethnicity should be institutionalized through federalism. Lawoti (2012) has argued that there is a need for group autonomy and that this should be prioritized over decisions based on territorial or nonterritorial federal design or through provisions for small groups.

Nepal's constitution of 2015 has established seven states under a hybrid federal approach. Rather than creating states on the basis of ethnicity, these units are primarily based on viability, with ethnic considerations being incorporated. Previous proposals leant more heavily towards either ethnic or territorial federalism, despite the fact that the first Constituent Assembly had agreed that units would be based on the principles of identity and viability (Bishwakarma, 2015). For example, in 2010, the Committee for Restructuring of the State and Distribution of State Powers of the Constituent Assembly produced a federal map of fourteen units which were based primarily on ethnicity, with capability largely ignored (Karki, 2014). This proposal was rejected by some committee members associated with the NC and UML parties who proposed a six-unit model in response. Subsequent proposals ranged

from six or seven provinces to ten, eleven or fourteen provinces, vacillating in emphasis on identity and capability. Whilst Nepal attempted to instigate hybridity in the form of provinces that incorporate ethnic and non-ethnic principles at the onset of federation, and India has done this through gradual reorganization, it is similar to India in that an application of pure territorial or ethno-federalism has not been feasible.

Lesson Two: Political Parties and Democratization

In addition to the federal design of sub-units, as India has shown, processes of democratization, and in particular the formation and type of political parties that are possible, contribute to the success of hybrid federal arrangements and ultimately the mitigation of ethnic tensions, the fostering of reconciliation and the presence of favourable governance structures. Two factors which are seen to contribute to the success of India's federal model are its parliamentary system and coalitions consisting of polity-wide and regional political parties. Whilst there are those that suggest that the presence of regional parties will lead to instability (see Brancanti, 2006 for example), India appears to prove otherwise. This is because the parliamentary system has allowed regional, and even secessionist, parties to form ruling coalitions at the centre. The ability to form coalitions with polity-wide parties has potentially enabled parties to be "regional-centric" as opposed to "regional-separatist" (Stepan, Linz and Yadav, 2010). The central bias in India's federal design is therefore balanced by its parliamentary system and the ability to form coalitions. In terms of democratization, a key consequence in the Indian case is increased mobilization of different groups within these states. In India this has led to a reorganization of states and also, as was evident in the post-emergency period, a strengthening of regional parties, which potentially contributed to coalitions between polity-wide parties and regional parties. Sri Lanka, on the other hand, created a semi-presidential system in 1978, and since 1956 Tamils have had no opportunity to form coalitions with polity-wide parties. After 1957, no Tamil from the north has become a federal minister and since the 1970s, no major "Tamil-centric" party has existed (Stepan, Linz and Yadav, 2010).

In the 2013 elections in Nepal, 139 political parties registered, 76 of which did not exist at the previous elections in 2008. Many of these parties were regional- or ethnic-based (D'Ambrogio, 2014). How these regional parties will be able to share power at the centre will be crucial to how federalism will take hold. The new constitution will no doubt also spur the creation of

new political parties. Baburam Bhattarai, Nepal's former prime minister and top Maoist leader sympathetic to Madhesis, quit his party soon after the passing of the constitution to form his own political "force" due to differences with the major Nepalese political parties over the new constitution (*The Times of India*, 2015).

India and Sri Lanka present two different cases of democratization. While both states have followed a democratization-mobilization dynamic, the management and reaction to this mobilization has been crucial to the peaceful resolution of ethnic conflicts. In the Indian case, management led to further representation and inclusion of regional parties in the politics of the centre, and thus shared-rule complemented self-rule. In the case of the state reorganization period, negotiation and compromise gave way to the reformation of states that were not considered a threat to the unity of the country. In Sri Lanka, on the other hand, the management of, and reaction to, mobilization led to violence and civil war. A possible contributor to this is the lack of inclusion of regional parties in the centre and the perception that minority groups accommodation is a threat to the unity and identity of the state.

According to Byrne and Klem (2014), the political space for ethnic minority rights remains highly constrained in Sri Lanka. The previous government insisted that there was no ethnic problem, only one of development and poverty, and did not consider there a need to engage in dialogue with the Tamils—it instead requested the all-party mechanisms to reach a consensus before engaging with the government, which effectively reduces suggestions to lowest common denominator ones. It also means that the government could avoid taking a position on issues of ethnicity. This, according to Byrne and Klem (2014: 6), was a "charade of inclusive democracy staged by what [was] in fact a very majoritarian government with authoritarian reflexes".

Byrne and Klem (2014) assert that there are two main post-war effects on politics in Sri Lanka. The first is the silencing effect, which involves the reduction of space for dissent and opposition views. The second consequence is that it increased the space for politicking and in general, an increase in petty politics (see also Uyangoda, 2005).

Lesson Three: Mobilization Demands

The types of demands made during mobilization also contribute to the likelihood of a reduction in ethnic conflict and the chance for hybrid federalism to take hold. Mobilization for autonomy in India has generally been via calls

for greater representation and inclusion and engagement. The presence of certain groups within India that have sought secession during different periods, and the issues surrounding Jammu and Kashmir notwithstanding, it has also largely been the case that rather than pushing for linguistic or cultural separation, it has been the fight for greater access to and power within Indian politics that has been the concern of regional parties. For Sri Lanka, on the other hand, mobilization for autonomy has predominantly been for independence and the maintenance of the Sri Lankan government's power on the one hand and the state created by the Tamils on the other—potentially making a solution more unworkable as both the Sinhalese and Tamils claim statehood. Stepan, Linz and Yadav (2010) refer to cultural nationalists, rather than territorial nationalists, as being more amenable to accommodation and peaceful relations.

In Nepal, the reaction from the Madhesis in particular to the constitution suggests that the implementation of federalism as per the constitution may not resolve secessionist claims at this stage. Ethnic leaders in the lowland regions of Madhes are unhappy with the way their region has been divided and Madhesi leaders such as Sadbhavana Party Chairman Rajendra Mahato have threatened to break away from Nepal (Sangruala 2015).

Nepal's hybrid federal approach is promising, yet it is not absent of ongoing difficulties and its constitution will no doubt require further amendment. Rather than celebrations, there have been strong protests to the constitution which have prompted much violence. Externally India has not reacted warmly to the constitution and nor has the United Nations extended congratulations (Mukharji, 2015). Some commentators have offered that the future of the constitution depends on how the three main political parties include the Tharu and Madhesi parties into mainstream politics (Phuyal, 2015), reflecting Stepan, Linz and Yadav's (2010) regional-centric and regional-separatist dichotomy. Amendments to the constitution will also be necessary, and, similar to the Indian constitution which has had numerous amendments, the Nepalese constitution can also be amended relatively easily, requiring only a two-thirds majority parliamentary approval in all areas except sovereignty (Phuyal, 2015).

Lesson Four: Secularism

Through the reorganization of states in India, emphasis has primarily been on linguistic differences as opposed to religious accommodation, thereby

ensuring that the organization of states into linguistic groups did not threaten the secular ambitions of the state—linguistic units could be justified along administrative and efficiency lines as opposed to conceding to ethnic demands. Religious accommodation instead has been treated as cutting across federal boundaries and applied nationally in the form of personal religious laws. Sri Lanka, on the other hand, does not adhere to the principle of secularism and its 1978 constitution refers to it as a Buddhist state, and state subsidies favour Buddhists.

Proposals for Sri Lanka to "de-ethnicize" negotiations on future proposals also reflect the idea that secularism has the potential to facilitate the adoption of hybrid federal solutions (Uyangoda, 2005: 969). Uyangoda (2005) suggests a contractarian approach for Sri Lanka whereby a new social contract is devised to provide the moral and political bases for the state. Such an approach focuses on ethnic justice and ethnic fairness as opposed to religious rights. In order to do this he suggests to first have a de-ethnic approach to reconfigure groups as equals paralleling the "state of nature" in classical contract theory and "original position" in Rawl's theory of justice (Uyangoda, 2005).

Bolstering the argument for a link between secularism and federalization is Nepal's new constitution which refers to it as a secular state. This inclusion has not been free from protest or strong opposition, yet has managed to remain within the preliminary articles of the constitution. It is, however, accompanied by explanatory text that states that, "for the purpose of this article (Article 4), 'secular' means protection of religion and culture being practiced since ancient times and religious and cultural freedom" (Constitution of Nepal, 2015), prompting concern by some religious groups that this implies protection and preferential treatment of Hinduism (*The Economist*, 2015).

Lesson Five: Sequencing

In terms of the sequencing of hybrid federalization, there are two main lessons to be drawn. The first is that India's positive example and the challenges in Sri Lanka demonstrate that there needs to be a certain strength at the centre which enables minority and peripheral groups to be drawn into, but the centre cannot be domineering so as to hinder an appropriate level of autonomy for different groups. Secondly, the cases of Sri Lanka, India and Nepal all suggest that a certain level of renegotiation of values with reference to identity, religion, culture and ethnicity is required to take the first steps of hybrid federalization. Once this has occurred, the likely reaction is for demands to

increase for ethnic representation, rights and autonomy. At this stage, rene-gotiation which blends secularism and ethnic and religious accommodation occurs in the form of hybrid approaches to federal structures. To borrow Uyangoda's (2005: 969) term, a form of "de-ethnicization" of issues must take place before accommodation based on equality, integration and participation can be fully realized.

Secondly, a hybrid federal approach involves different modes of progression, and new constitutions may create watershed moments for change, yet progressive and incremental progress is also discernable, especially in states such as India where its constitution has gone through a plethora of amend-ments. An additional type of progress is a pendulum model. Like a pendulum, Indian politics has been, and continues to be, characterized by ongoing ne-gotiations and power arrangements which sway between centralized rule and federal arrangements. Moments in history have seen preference for a strong, unified nation with significant powers being held by the central, national gov-ernment and also proposals for federal and even confederal solutions to India's governance challenges. Where federal solutions have been pursued, the type of federal structure which should be implemented has also been contested and redesigned during the period since India's independence, with another pen-dulum swinging between preferences for territorial or linguistic-based federal units.

The pendulum model allows for the recognition that a hybrid federal ap-proach is inherently unstable—both progression and regression are possible and both will occur until a consensual level and type of hybridity is achieved. Federalism has rarely been settled at the point of constitutional promulga-tion, and a certain amount of "muddling along" and revision is typical of federations and federal-type states such as India and Spain. In Nepal, there was substantial determination to find answers to many of its federal questions before the constitution was decided. A flexible approach may prove to be valu-able to Nepal in the future and recognizing that future revision and change is possible, and in many cases inevitable, may aid future developments.

Lesson Six: The Nature of Diversity

Finally, the nature of diversity within a state, and how diversity is regarded and approached, is also an indicator of where and when hybrid federalism will take hold. India, with a high level of diversity, has managed to adopt federal-ism, while Sri Lanka, which has two main ethnic groups, has failed to reach

an acceptable solution—federal or otherwise. A high level of diversity in Nepal is, in fact, an indicator of high prospects for hybrid federal solutions, despite the difficulty it has gone through to create a new constitution. Hale (2004) supports this argument as he claims that the presence of a "core ethnic region" can increase the likelihood of federal failure, and Adeney's (2012) discussion on Punjab in Pakistan as a core ethnic region also reflects this argument. A high level of diversity is also an indicator that purely territorial or multinational solutions are unworkable and in need of hybrid federal solutions.

CONCLUSION

This comparative study of India, Sri Lanka and Nepal has identified some conditions and obstacles to hybrid federalization, and the value of hybrid federal arrangements in the divided and diverse states of South Asia. India's mix of territorial and multinational units, its political system comprising regional and national parties that can participate in the centre and its secular approach are just some conditions which serve its federal system well. Key to hybrid federalism is room for compromise and negotiation, and mechanisms that seek to overcome the polarization of demands, debates and ideas. Conditions for these elements are present at least to some extent in India and are generally lacking in Sri Lanka, where debates on federalism have been present but continue to be contested. Notably, many of the conditions in India that appear to foster federalism are conspicuously absent in Sri Lanka at this stage.

The challenge of implementing federalism in Nepal, whilst unique, can benefit from lessons arising out of India and Sri Lanka. At this stage Nepal's federal design involves a mix of territorial and ethnic federal elements which have the potential to allow for the Nepalese to be represented at both the local and federal level according to their location and potentially numerous identities. This may allay fears that minority groups within federal units would not be represented nor have their voices heard; yet not all groups in Nepal are satisfied with the arrangements under the constitution, including the Madhesis and the Tharus, a sizeable minority in western Nepal (Mukharji, 2015). Minority representation and accommodation has been a concern in all three countries under scrutiny in this chapter and while the implementation of hybrid federalism may be the best way in which to address this unease, its exact nature and the broader constitutional and institutional context in which it will be embedded is crucial to its success.

In addition, reactions to democratization and the subsequent mobilization of groups within the state need to include political processes whereby regional parties and national parties can form coalitions and interact. Group representation at the centre, as India has shown, is crucial to creating "regional-centric" as opposed to "regional-separatist" parties (Stepan, Linz and Yadav, 2010). Also, secularism, and the forging of common values and overlapping identities and loyalties, contribute to the "holding-together" dynamic noted as being intrinsic to Asian federalism (Stepan, 1999) and can facilitate further negotiation, hybridization and federalization. The long-term results of Nepal's constitutional and federal developments remain to be seen. Time will tell whether hybrid federalism takes hold in Nepal and contributes to a peaceful and inclusionary state.

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Decentralisation, European Integration and Peripheral Nationalism: Managing Multilevel Governance in Pseudo-Federal Spain

Francisco Javier Moreno Fuentes

INTRODUCTION

The transformations experienced in the institutional balances of power in Europe in the last decades, primarily characterised by a growing co-operation at the supranational level, have been partly triggered by the increasingly strong globalisation tendencies experienced in recent years. The growing interdependence between states resulted in a strong "centrifugal" tendency in the distribution of power. The response at the state level to the loss of control of the economic and social spheres was the development of instruments of international co-operation, among which the European Union could be pointed out as the clearest example.

The elaboration of a more accurate picture of the evolution of political events in Europe in recent years would require complementing the "centrifugal" tendencies with what we could call "centripetal" forces according to which people would be responding to globalisation and standardisation by reasserting local and regional identities. Although that identification with smaller territorial units of reference (generally) do not question the centrifugal tendencies affecting the economic sphere, for they do not (can not) propose viable and coherent alternatives to the growing interdependence of the global markets of goods, services, and particularly capitals, they do problematize the political scenario by bringing diversity to it. Partly in response to that demand for a bigger role for regional actors in the political sphere and in the policy-making arenas, and partly because of a search for more efficient ways of dealing with public issues, a process of decentralisation has been developed in most Western European countries.

In Spain, these conflicting trends have to be understood in the context of the emergence of a multi-level governance structure built at the beginning of the 1980s with the objective of overcoming the profound legitimacy deficit of the authoritarian regime left by General Franco at his death, and within the process of transition towards a democratic regime. This whole process was conceived as a part of the pre-conditions to join the European integration process, and perceived to be the best anchor for the country as a project of liberty and prosperity. The design of a power-sharing structure between the European Union, the central government and the newly created regions proved complex, and left a large number of issue unresolved, but allowed for the consolidation of a democracy that faces now the challenge of updating its own structures to respond to the large range of problems and dysfunctionalities that have emerged over the last three decades in the running of that complex multi-level governance system.

PSEUDO-FEDERAL STRUCTURES IN SPAIN

During the long years of Franco's dictatorship, the issue of peripheral nationalism (mainly in Catalonia and the Basque Country), together with the mobilisation by left wing organisations, functioned as the main channels for collective action in an environment of severe repression of all ideas opposed to the authoritarian rule.

After the death of the dictator in 1975, a relatively slow process of transition towards a liberal democratic system was led by the more open sections of the francoist regime. This transition process, based on the explicit objective of reaching the maximum level of consensus among all social actors of Spanish society, was marked by the first general elections of 1977, (won by the centre-right UCD, the party created by the aperturist sections of the francoist regime) and by the drafting and passing in referendum of the 1978 Constitution. The Basic Law received the majoritarian support of the total Spanish population.

The Spanish *Estado de las Autonomías* (decentralised quasi-federal state) started to be fully developed after the approval of the Constitution. The nature of this system could be defined as a mixture of bottom-up regionalism for a reduced group of territories with a strong sense of identity (Andalucía, Galicia, Catalonia, and the Basque Country), and top-down regionalism for the rest of the regions (Keating, 1996). Starting from that distinction, two constitutional paths were defined to move in the direction of that process of

decentralisation, thus embedding within the system a basic asymmetry that remains up to our days, and implies different degrees of self-rule for the different regions. While those regions included in the first group gained a high level of autonomy in a very short period of time, the rest of the regions were given competences at a slower path. Although the decentralisation process slowed down by the mid-eighties, thus facilitating some degree of homogenisation, the differences between those regions seeking higher levels of self-government and the others, remained as a major distinguishing element.

Apart from those differences in the political personality of the regions, many other social and economic characteristics (relative wealth, economic structure, degree of urbanization, etc.) distinguish the regions of the Spanish state. This complex set of differences strongly conditions the positions taken by the political authorities of the different regions with regard to the European institutions and their relations with the central government. The EU has played, in fact, a key role in the evolution of this process by consolidating the political nature of the regional level of authority, but also by constituting a symbolic level to aspire to in the case of those groups mobilizing the nationalist card and aiming to transcend the mediation of the central government in order to be recognized as nation states on equal grounds by the rest of the European countries.

EUROPEAN INTEGRATION AND MULTILEVEL GOVERNANCE

With the simultaneous pressures exerted by supranational integration and decentralisation, the role of the nation state as the main arena for political bargaining and negotiation seems to be seriously challenged in Western Europe. Different theoretical approaches look at this shifting political environment through different lenses, and therefore tend to emphasise some aspects of the process, dismissing others that they consider less relevant for the analysis of the situation. While intergovernmentalist authors perceive the processes of European integration, and the development of regional policies at the European level, as in the best interest of national governments (who would use those policy arenas to increase their control over economic and political assets), other authors think that both European integration and regionalism will weaken the central state by eroding its authority, and by slowly depriving it of its competences and powers.

What seems clear (allowing for a large degree of variation between different EU member countries), is that the construction of a new form of Euro-Polity, together with the increasing role played by the regions in many European countries, has had, as a primary consequence, the redefinition and redistribution of powers between the different levels of government.

The concept of multi-level governance developed by Hooghe and Marks (2010) seeks to explain how the authority of central governments is dispersed to actors operating at different levels, such as the European supranational one, and the sub-national level. As they describe, this concept implies: "a system of continuous negotiation among nested governments at several territorial tiers – supranational, national, regional, and local – as the result of a broad process of institutional creation and decision reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level."

These authors differentiate between two types of multi-level governance. Type one, closely associated with federalist projects, implies power sharing among several administrations operating at different levels, bundled functions, non-intersecting membership and system-wide frameworks. Within this type, change normally means reallocating policy functions across existing levels of governance, as has been the case in the European integration process, simultaneously empowering supranational and sub-national institutions.

The supranational institutionalization of the decision-making process is, thus, no longer monopolized by the central governments of member states, but diffused to different levels of power and responsibility, since policy decisions are the consequence of negotiations among the different territorial levels of government. The role of regional actors as active participants in European governance is increasing. This development is related to the incentives from the European Commission and its openness to the input of these actors, and to the actual input and participation of sub-national actors. In this regard, regionalization has been one process triggered by the European integration, followed by the actual mobilization of regional actors and their activity at European level and with European actors and institutions. Jeffery (2000) uses the term "sub-national mobilization" in order to describe the activity of regions within the EU.

Sub-national governments develop various strategies to influence national and EU policymaking, notably lobbying or negotiating policy preferences at other levels of government, also described as "vertical venue

shopping" (Scholten, 2013). This type of governance arrangement means that sub-national governments can act as "policy entrepreneurs" in relation to other levels of government via formal channels where governments of different levels meet, but also via informal policy lobbying or political networks (such as the organisation of summits with representatives from various levels, or active engagement in broader public and political debates). These efforts to influence governance processes at other levels also involves networking and coalition building with other sub-national governments and transnational networks. This can lead to the establishment of more permanent structures that facilitate collaboration across governmental levels, as well as "horizontal" coalitions with other sub-national governments in order to mobilize more strongly in "vertical" relations with the national and/or EU level.

Jeffery (2000) enumerates the developments within the EU which indicate mobilization: established formal involvement mechanisms for sub-national actors within their state, mushrooming of regional information and liaison offices in Brussels, interregional cooperation especially due to EU programmes, treaty changes which introduced the possibility of sub-national input into the Council of the EU, the creation of the Committee of the Regions and the establishment of the principle of subsidiary. On the other hand, Hooghe notes that sub-national mobilization can be used as an instrument to challenge state power and to support supranational authority, especially over territorial interest and a contested hierarchy problem.

The unfolding of interdependent governance at the supranational European level is taking place through multilevel interactions involving actors, regulatory powers and policy networks whose operations were traditionally confined to the national state arenas. More than half of the legislation affecting Europeans' lives is already EU's. The institutionalization of the EU has emerged as a combination of policy processes greatly conditioning the formal sovereignty of the member states (Piattoni, 2010). This quest for multilevel governance is generally associated with the idea that it provides a deepening of democracy by means of more effective access of civil society to political decision-making. In fact, intergovernmental relations may often blur accountability, as representatives in the administrative interplay of the design, elaboration and delivery of policies are not always directly responsible for their actions to the electorates in the territories where they operate. Local governments, for instance, at times portray a merely democratic façade of discretion

in policy-making as their decisions are wholly pre-determined by central state requirements (Colino and del Pino, 2015).

The conditions under which regions exert influence, the way these are represented at the European level, how they understand and perceive their contribution to the policy-making process, and how they organize their activities, seem to rely on their connections to European and national actors, as well as on their capacity to cooperate with other actors from different regions or member states. The constitutional regulations are the strongest factors influencing sub-national mobilization, because they determine the legal frames within which sub-national institutions are allowed to operate. Nevertheless, strong constitutional rights do not induce directly a strong influence of regional institutions, because the mobilization has to be wanted, legitimated and appropriate, depending on the situation of each specific regional government. The existing policy resources (expertise, information, legitimacy) affect the intergovernmental relations as well, which can contribute to a stronger formulation of interest. Regarding the role of entrepreneurship, Jeffery (2000) lists the elements that add to the power of mobilization, namely effective internal administration adaptation, leadership and coalition-building strategies. Therefore, there is a strong connection between the institutional structures, rules and informal procedures that take place, such as learning processes through networking and the representation of shared goals and interests. All these are part of active regional participation within multi-level governance structures. The political heterogeneity and institutional and constitutional features of sub-national actors allow active participation within European governance.

Following Anderson's arguments we can define three possible scenarios for the evolution of the relations between the main institutional actors in the European political realm: the maintenance of the status quo, the development of a Europe of the Regions, and the combination of heterogeneous results in the different European states (Anderson, 1990).

The first scenario, fully in accordance with intergovernamentalist approaches, considers that central states will continue to be the main actors in the political scene, with the EU and the regions playing only a secondary role. This approach has been seriously criticised for it tends to reify the central state as an all-powerful actor, over-simplifying the figure of the state in Western Europe (Mény, 1993), and ignoring the fact that the nation state never monopolised political action, not even at its moments of greater centralisation

and accumulation of power (Keating, 1996). This approach shows also important analytical limitations deriving from its tendency to perceive relations between different institutional actors as a zero-sum game, in which what one player gains must be lost by another (Dehousse, 1996). Those critiques represent powerful challenges to state-centric approaches, for they highlight the complexity of the institutional arrangements that exist in complex societies such as those of Western Europe. The maintenance of a status quo, with central states completely in control and EU institutions and regional authorities playing a secondary role, appears to be a quite unlikely outcome of the process of redefinition of competences that is taking place in the European political realm.

The second possibility, defined as the "Europe of the Regions" scenario, portrays a future in which national states would have lost many of their competences and powers in favour of both a strengthened European Union that would drain attributions from above, and regional governments that would absorb powers from below. This scenario is advanced by two different types of analysts. On the one hand, we find neo-functionalist observers of the European integration process who consider that if competences were to be distributed between regional governments and European institutions, the institutional arrangements would produce more efficient outputs. According to Keating, on the other hand we find, "romantics, utopians, ethnic activists, and a variety of movements inspired by post-industrial values, who wish to remove the 'artificial' and oppressive structures of the nation state in favour of 'natural' ethnic or spatial communities, within a democratic and pluralistic Europe" (Keating, 1996). Following this author, "both forms of the 'Europe of the Regions' scenario (...) ignore the very real power of nation states, the resilience of their political and bureaucratic elites and the powerful private interest which have invested in them". These remarks by Keating about the unlikely dissolution of the central states set the very clear limits of the process of redistribution of powers between the different institutional agents. Although Keating's characterisation of advocates of the "Europe of the Regions" scenario is quite comprehensive, I do not think it exhausts the list of political actors who trust in an evolution of the political arrangements in Europe in such a direction.

As Anderson points out, the development of a Europe of Regions is not only unlikely in the long term, but its result could also be undesirable, since it could trigger a whole set of unintended effects which could result

in an overload of the bargaining structures, and the start of a disintegration process. The weakening of central states could result in an inability to counteract extreme preferences among societal interests, which could outstrip the newly reformed European institutions. The development of a "Europe of the Regions", with the disappearance of national states, could also damage the interests of the regions themselves, for it would result in an aggregation of regions, more or less strong in political terms, in front of an all powerful European Union (Charpentier and Engel, 1992). The creation of a "Europe of Regions", in which national states would be reduced to a minimum expression for the sake of supranational and regional levels of government, though far from being a reality, represents the direction in which some institutional actors (including the elites of peripheral nationalist movements across Europe) are trying to advance in (more or less) rational and pragmatic ways.

The third scenario, constituted by a combination of heterogeneous results in the different European states, though rather ambiguous and too broad and general in its definition of the roles of each institutional level, allows for a greater diversity in the possible outcomes in the different political arenas of the European member states.

For some authors, it would be a mistake to see a weakening of the central state in the European integration process, for more than a retreat, we should talk of a re-deployment of the state following the regulatory capacities developed by the European Union (Dehousse, 1996). As an example this author analyses the creation of European agencies operating at the national level as a new area of activity for central states, complementary to the growing regulatory functions developed by the EU. Moreover, the European integration process represents an opportunity for national states to escape the control of parliamentary bodies, with the possibility to blame "Brussels" for any unpopular decision. In this process central states would lose autonomy at the supranational level, but they would gain in intervention capabilities, while escaping the political control of their constituencies.

In relation to the regional dimension, heterogeneity also seems to be the most likely outcome, for as Keating points out: "The new types of regionalism and of region are the product of this decomposition and recomposition of the territorial framework of public life, consequent on changes in the state, the market and the international context. There is no new territorial hierarchy to replace the old one, but a diversity of new forms of territorial action" (Keating, 1996). The levels of regional decentralisation in the different member states

of the European Union vary greatly, from the more federalised states like Germany, to the more centralised systems like the United Kingdom. This initial heterogeneity in the territorial distribution of political power is likely to continue despite the Europeanization process, which favours the development of a regional level of governance (even where it was very weak or did not exist previously), as a requirement to finance projects through the different funds (ERDF, ESF) aimed at redistributing wealth across the Union.

EU member states vary greatly in their capacity to retain their roles as gatekeepers, although, in general terms, that capacity is still greater than contemporary observers generally recognise. In the complex processes which are taking place in the European political arena, a heterogeneity of outcomes prevents us from constructing a single model or theory explaining all cases. The zero-sum game once used to analyse the relationships between regional governments and central states is no longer valid, for the European Union has introduced a third level of bargaining and negotiation that problematizes the game. The distinct opportunity structures and sets of incentives and constraints offered by every state will make each country a particular case (Keating, 1996). These obstacles to the development of a common theory should not discourage us from pursuing research in this area. On the contrary, the development of case studies should help us to identify patterns of common variation as well as to analyse specific characteristics of each case.

In the following section the dynamic process of interaction between regions, the central state and the European Union in Spain, and the shifting distribution of powers among them will be analyzed. Particular attention will be paid to the impact that the process of European supranational integration has had on the evolution of the situation of nationalist political mobilisation in Spanish regions that have this type of movements.

MANAGING MULTILEVEL GOVERNANCE IN PSEUDO-FEDERAL SPAIN

The incorporation of Spain to the European Community in 1986 represented a major transformation in the distribution of power between the *Comunidades Autónomas* and the central state. Many competences, the control of which had already passed from the central state to the regional level of government, had to be transferred to European institutions. In this way the central state regained a certain degree of control over specific areas of competences (industry,

agriculture, economic planning, territory, environment, consumer rights, etc.). The response of the regions was to ask for some degree of control over the positions that central state representatives would defend in the European arena, and to seek responsibility for implementing European Community decisions in their territories.

The European Union appeared as an important third party in the game of the relations between the *Comunidades Autónomas* and the Spanish central state. While assuming competences from both the national and the regional levels of government, it has forced a new equilibrium of forces between state and regions.

As has happened in other EU member countries, and despite efforts by the Spanish central state to monopolise everything it considered to be related to foreign policy, the European Union tried (and to some extent succeeded) to bypass the central state authorities, and to establish direct links with the regional and local levels of government. The regional development policies were the area in which those attempts resulted more successfully. The reform of the European Regional Development Funds (ERDF) in 1988 introduced the compulsory involvement of the regional authorities in the programming, implementation and control of the programmes financed by EU institutions. This reform followed a dual strategy. On the one hand, and in order to ameliorate the results of the programmes aimed at reducing regional imbalances, EU authorities required that local and regional authorities be directly involved in the management of the programmes. The second goal pursued by EU authorities with that reform was to increase its legitimacy on behalf of a level of government that they considered to be closer to the citizenry (Smyrl, 1995). Despite those efforts to establish direct links with the regions the central state remained the main interlocutor of EU institutions, and there is no evidence that this is likely to change in the near future.

The enlargement of the Union to the East, and the EU's budgetary austerity represented two significant challenges to that strategy of linking the regions to EU institutions. The institutional arrangements that were established thanks to the increasing importance of the structural funds have been shaken by the calls to reduce the Union's budget, a dynamic that has been aggravated by the integration of new members from Central and Eastern Europe. This enlargement dramatically increased the social and economic inequalities within the Union, making the structural funds more necessary, but at the same time a heavier burden for the rich countries of the Union, growingly

reluctant to increase their contribution to the Union's budget. Despite this approach to the regions by the Commission, the central state remained the main interlocutor with the EU institutions.

The Treaty of the European Union created the Committee of the Regions (COR) as a way of providing a formal mechanism of participation for the regions. This Committee will have twenty-one Spanish members, seventeen of them elected by the autonomous regions, and four by the federation of local governments and cities. Its consultative character does not allow us to expect a very active role in the policy-making process at the European sphere, and it could very well end up as a symbolic body with a very limited role, as has happened before with the Economic and Social Committee (ESC). Nevertheless, the COR has played an interesting role by trying to facilitate and promote cross-border co-operation agreements across the EU, as well as trying to influence the Commission and the Council of ministers in favour of the local and regional levels of authority.

The European Union forced a new equilibrium of forces between the national and regional levels of government. Through the involvement of the regions in the management of its regional policies, it established itself as a new source of power and resources for the regional authorities. Although the central government remained the main interlocutor, several Autonomous Communities established direct links with Brussels and started to directly lobby EU institutions.

The Central State: Redefinition of Competences.

As we have already mentioned, according to intergovernmentalists the central state remains the main political arena in which national preferences are determined, and where positions to be defended at the European forums are decided. This argument follows the assumption that the European integration process is the result of negotiations between the national governments of the member states. As Mazey and Richardson point out, "Whilst it is obviously important for groups to lobby Commission officials (and MPs), the final decision in all EC policies is, of course, taken by national officials and politicians in the Council of Ministers. (...) Thus, somewhat paradoxically, the growing importance of EC legislation has in many cases reinforced the dependency which exist at the national level between groups and their ministries, since the latter are effectively intermediaries between groups and the EC in the final stages of Community decision-making" (Mazey and Richardson, 1991).

This type of conclusion fits the judgement that European policy is, above all, foreign policy, and therefore it strengthens the role of the central state (Smyrl, 1995).

In the Spanish case, the picture is a bit more complicated. The decentralisation process which took place before Spain joined the EU took many competences away from the central state. The process had not been completed when Spain's entry into the EEC shook the still unstable institutional arrangements between the central state and the regional governments. In this new stage, both levels lost some competences in favour of the European institutions, but the central state re-gained some influence because of its role as spokesman in dealings with European institutions in relation to certain areas (industry, agriculture, economic planning, territory, environment, consumer rights, etc.), where it became responsible for the formulation of policies at the national level. The Spanish central state also gained new functions with EU membership, for it became ultimately responsible for the implementation of all European directives in its territory, even if the legislative responsibilities were already transferred to the governments of the *Comunidades Autónomas*.

The structural funds gave the central state another opportunity to expand its competences. As Morata points out, many problems arose over the distribution of resources made available by these funds, between the different levels of government. The interference of the regions in European issues was only very reluctantly accepted by the Spanish central state (Leonardi, 1993). This can be seen, for example, in the idea to present three national plans to benefit from the structural funds, one for each specific type of objectives (1, 2 and 5b), instead of a plan for each region as was inherent in the spirit of the reform of the ERDF of 1988. Through this mechanism, the central state curtailed the role to be played by each region as direct interlocutors with the European institutions. Despite this, the regions became direct interlocutors with European Union officials with respect to establishing mechanisms of co-ordination for the application of the programmes included in the ERDF.

The response of the regions was to ask for a higher degree of control over the positions that the central state defended in the European arena, and to seek responsibility for the implementation of European Community directives in their territories and areas of competence. This issue remained as an open question, and no very clear result has been reached yet in this respect, although several negotiations took place between the central state and the autonomous governments.

As consultative mechanisms rarely exist in the decision-making process that defines the position to be held by the nation state in Brussels, the participation of the regions is reduced, and the state enjoys new powers while the regional governments have seen their competences curtailed. Up to this point the situation fits the intergovernmentalist model which I mentioned before. Nevertheless, the overly simplistic picture that could emanate from this perspective should be problematized. A non-monolithic vision of the central state should allow us to understand that whilst the regions may not have direct means of determining the foreign policies of the central state, many other ways to condition those policies may still be developed. As Keating points out: "Regions seek to influence the policies of the EU by direct contacts; by using their influence within their own States; through inter-regional lobbies; through the partnerships established by the Commission for the implementation of its regional policies; and in the new networks created by EU activities" (Keating, 1996). It is not those regions which try to contact directly with the European institutions that achieve the greatest levels of influence in Brussels, but rather those which are best integrated into national networks of influence.

As described above, the attitude of the Spanish central government to the decentralisation process changed as a consequence of Spain's entry into the European Communities, as did its attributions and competences. The balance is not simple and, although it re-gained some competences and developed new ones, it could not block the access of at least some of the regions to the decision-making process, both in the national arena with regard to European issues and in the European sphere.

The Autonomous Regions International Projection

This is the level where we find the greatest diversity from one European state to another. As Keating points out, "Each state provides a distinct opportunity structure and set of incentives and constraints" (Keating, 1996). The dialectics between the different types of regionalisms and the central states will determine the development of regional policies.

In the Spanish case, we are likely to find pronounced differences between the *Comunidades Autónomas*, differences which will strongly affect the result of the redistribution of competences between the three levels of administration.

In his study of three French regions, Smyrl shows how conditions at the regional level determine the outcomes in relations between the different institutional actors (Smyrl, 1995). Through the development of more flexible

administrative procedures, better use of information on European issues, and a more active role of the policy networks, different regions within the same legal framework may take greater advantage of European regional policies. Smyrl also notes the importance of a co-operative political culture, and of entrepreneurial elites in the creation of positive linkages with European institutions.

In the same way, Keating argues that "regional government operates best where there is a well developed civil society, a sense of identity, civic traditions, an associative life, and relationships of confidence and exchange within the territory". Despite the problems that arise with the origins of this civil society, and the ways it is transmitted through history, this type of analysis offers some clues about the differences between regions. For example, it can help us to understand the existence of some room for the appearance of political entrepreneurs, who through political action, can mobilise support for their projects of identity building. We are then placed in a process in which identity is constructed through political action and this, in turn, reinforces identity.

The conclusions of that analysis may help us understand the different positions held by regions in Spain. Starting out from the two paths to achieve autonomy established in the Constitution, the Spanish *Comunidades Autónomas* developed their self-government with very different attitudes. Those included in the "historic nationalities" followed a faster path, trying to achieve the highest level of autonomy. From this reduced group, Catalonia and the Basque Country (regions with the strongest nationalist component, and with a sizeable share of votes attracted by these parties) could be mentioned as the regions that proved more determined to make direct contact with the European institutions. In addition to opening offices before the EU institutions in Brussels, the Basque autonomous government (together with the Catalan and Galician governments) pressed for the definition of a system of co-representation according to which their representatives would be present in the negotiations between Spanish authorities and EU institutions. Following the examples of Belgium, Germany and the United Kingdom, they also proposed to be able to participate in those meetings not only as representatives of their autonomous community, but also representing the interests of the whole Spanish state. Those efforts could be perceived as a means of bypassing the Spanish nation state, but also as a way of reaching new forms of articulation of their own polities within the context of a decentralised Spanish state. Nationalist parties, and their leaders, can be considered, in this

respect, as "political entrepreneurs" mobilizing the card of the participation and influence in a complex multi-level governance structure as a legitimizing mechanism to seek their own persona in the international arena, while gaining additional supports within their own societies by increasing the perception of their feasibility as a polity outside the framework defined by the nation state to which they belong.

As Keating argues, a very important variable for understanding the different roles adopted by each region with respect to the EU and the central state is that of their weight in national politics: "At one time some regions believed that it was possible to compensate for an exclusion from influence in domestic politics by establishing direct links with the Commission and thus by-passing the nation state. The evidence, however, shows that it is those regions which are best integrated into national circuits of influence who have most influence in Brussels. Power resources are cumulative and it is not easy for regions to substitute one for another" (Keating, 1996).

In the case of Catalonia, the existence of a strong regional identity sense in the region, and favourable opportunities in Spanish national politics in the form of the need for Catalan support in the Spanish parliament to sustain the government[1] placed the regional authorities in a perfect position to project the image of the region, not only in Europe, but throughout the world. In this case, the government of the region played all the available cards, from its influence in the national-state to their own role in international spheres. This situation is quite unique, and only the Basque Country could, to some extent, develop similar strategies. This raises the question of equality I mentioned above. Several authors have wondered about this issue. As Engel points out, powerful regions within their own states have gained greater influence on the European dimension, while weaker regions find it considerably more difficult to make their voices heard at the EU level (Charpentier and Engel, 1992).

This raises the issue of the inequality of access of the different regions to the European arena, and the role to be played by the central state in such an unequal environment. A dual system seems to be developing. In such a

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[1] Since the general elections of 1989, and for three legislatures (until March 2000), the formation of the government at the central state level depended on the political agreements between the incumbent party at the national level (twice the centre-left PSOE, and once the conservative PP) and the nationalist minorities in the Catalan and Basque regions. In such a political environment the political representatives of these regions were seriously taken into account in the elaboration of positions regarding European issues.

system some powerful regions, with the necessary resources, skills, and political will, may gain influence in the European sphere by using every means at their disposal to influence the decision-making process in Brussels. For these regions, the central state would be just one of the mechanisms to influence the European institutions.

A second set of regions, lacking one or more of those characteristics, would not be able to develop a European persona, and would therefore become more dependent on the central state to defend their interests in the European political sphere.

The tensions between these two groups of regions can be seen in the type of programmes that are financed by the ERDF. On the one hand, there are the more powerful regions, which qualify for programmes included in objectives 2 (regions in industrial decline), and 5b (rural areas) and try to lobby directly in Brussels. On the other we see those regions with a GDP of less than 75% of the EU average, which qualify for programmes included under objective 1, and which rely exclusively on their national central states to defend their interests. As McLeavey shows in his study, the decision on how to distribute the resources between the different objectives is the result of a bargaining process in which the poorer regions will show a more centralist attitude (McLeavey, 1994).

In the Spanish case, while some regions lobby European institutions, both through their national governments and through their direct presence in Brussels, others with less institutional and organisational resources rely exclusively on the central state to defend their interests in the European sphere.

The impact of the European integration process on the regional level should not be underestimated, for as Keating points out, it has taken regions out of the strict framework of the national state and has encouraged a process of learning and imitation which has led certain regions to become actors in European politics. Despite the fact that they have relatively little room for manoeuvre, due to the absence of effective mechanisms of participation and the strict control that national states try to keep on their exclusive competence in foreign affairs, several regions have acquired a European personae which ensures that they are listened to by the European institutions.

One interesting evolution for the possible overcoming of the situation of conflict and separatist mobilisation could be based on the elaboration of a discursive framework where the current polarisation is substituted by multiple-identities within Europe, in a decentralised multi-national Spanish

state, and ruled by autonomous institutions with a strong position in the role of defining and implementing policies at the different levels of authority. The idea of "melting" into Europe (the current crisis of the EU project makes this scenario more and more unlikely, and in the opposite direction of causality, it may be at the origin of the effervescence of peripheral nationalism), reducing in this way the identity-related tensions which exist within the institutional and political framework of the Spanish state, was present in the discourses of moderate nationalist parties, and to some extent in the discourses of the Spanish state during the nearly fifteen years of the PSOE government.

Although the decentralisation process slowed down by the mid-1980s, it accelerated again in the mid-2000s with the approval of a new series of *Estatutos de Autonomía* that tested the limits of the current constitutional framework regulating the distribution of powers between the different levels of the state administration.

The pseudo-federal system established in Spain falls short of a proper federal distribution of powers in the insufficient nature of the mechanisms for policy coordination (sectorial conferences), the lack of participation of regions in the decision-making process at the central level of government, the unsolved problems of the fiscal arrangements, and the non-existence of a second chamber representing state interests (the Senate is officially responsible for pursuing those objectives, but never adapted its functioning to reach those goals).

CONCLUSION

A few conclusions regarding the shifting balances of power between the different institutional levels of authority may be drawn from the arguments presented before.

The combined processes of decentralisation and Europeanization in the EU member states has resulted in very different outcomes since the institutional structures vary greatly from one state to the other. The outcome could be a positive-sum game, for the three levels of administration (European, national and regional) could benefit from a new distribution of competences. The game could also be a zero-sum one, the losers being the citizens who may lose control of the decision-making process.

The impact of EU membership for Spain should be understood in a complex manner, and beyond any short-sighted consideration, to include the role it

had in the anchoring of democracy in Spain. The impact at the regional level should not be underestimated either, for it has taken regions out of the strict framework of the national state, and has encouraged a process of learning and imitation which has led certain regions to become actors in European politics. Despite the fact that they have relatively little room for manoeuvre, due to the absence of effective mechanisms of participation and the strict control that national states try to keep on their exclusive competence in foreign affairs, several regions have acquired a European persona which ensures that they are listened to by the European institutions.

There seems to be a set of characteristics that define the regions which are present in Brussels in their own right with some degree of success. Those regions which have a strong identity have made more effort to gain a place in the European political arena. The existence of a more participative civil society, and/or a more entrepreneurial leadership, also seems to favour a stronger presence in EU institutions. Regions affected by industrial decay also seem to have been more active in this respect in comparison to those largely rural and agricultural regions.

According to some authors, it pays to remain close to the national state in order to gain access to the EU institutions. Although there is some evidence to support this argument (those regions which are better represented at the European level are also strong at their national level), it seems equally clear that powerful regions try to play both cards, and only regions with no possibility and/or ability to lobby directly in Brussels rely exclusively on their national governments to defend their interests in the EU.

It may be suggested that a new arrangement between the EU, nation states and regional governments is likely to emerge in some European countries, including Spain. In this new arrangement, some regions would acquire greater autonomy with regard to their relations with their central states, developing direct links with the EU institutions. Thus, while more powerful regions would gain a European persona of their own, the central state would continue to be the guarantor of the interests of the weaker regions. Some sort of "Matthew effect" would contribute to transforming the institutional arrangements in Europe, which would move closer to what Rhodes and other authors have called a revised version of the Holy Roman Empire (Rhodes, 1995).

The effects of the severe economic crisis that started in 2008 affected political attitudes in Spain, and individuals' national self-identification have

not escaped from this context. Catalan nationalist political entrepreneurs have considered this situation the most favourable "window of opportunity" in recent decades to push for a secessionist agenda, which they built on the promise of future prosperity scenarios to be achieved once Catalonia manages to break with the complex multilevel governance structures that characterize their links with the rest of Spain and the EU (Burg, 2015). Ignoring the multiple risks and uncertainties that would derive from dismantling the complex political arrangements that regulate the relations between Catalan society, the rest of Spain and the European integration process, they have been trying to embark Catalan society on an extremely uncertain enterprise that introduces considerable tensions at all levels. In this context, looking back at the social, cultural, economical and political integration processes that created the complex equilibriums that characterize the last three decades of fruitful participation of Spain in the European project should inspire all political leaders to play the card of further integration in search for a more sophisticated articulation of identities and interests that favours all participants, without forcing citizens to take sides, or to have to choose between identities defined as monolithic and exclusive.

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Pursuing Federalism in the Philippines: The Context of State and Democratization[1]

Edmund S. Tayao

It is all about income inequality. At least that's what economists like to tell us, starting from Malthus to Karl Marx and the scientific approach introduced by Simon Kuznets (Piketty 2014). This is the challenge to developed countries, Stiglitz argues, especially in the United States (2012) and this is the main hurdle developing countries like the Philippines continue to face. While the explanations given were economic, the solution can only be political as the question is about institutions, and about the accountability and effectiveness of governance. For developed countries, the question is whether its existing public institutions or the state as a whole can address new challenges. In the case of developing countries, the question is whether it has already evolved a state that is not limited by societal and/or economic factors.

It is from this perspective that the idea of federalism, couched in the context of political and structural reform in the Philippines, is approached in this paper. The point is that political systems and structures are significant in establishing a state and ensuring functioning state institutions. This is a crucial issue in understanding development in the country. Institutions are essential for ensuring the rule of law; for a government to formulate and implement policies and programmes without bias to particular interests. This is imperative especially considering the challenge of limited statehood in most countries today. Risse (ed. 2011) argues that "limited" statehood "is not a historical accident or some deplorable deficit of most Third World and transition countries that has to be overcome by the relentless forces of economic and political modernization in an era of globalization". It was argued further that "limited statehood is here to stay" and thus the role of experts in governance is to understand these new conditions and recommend the best way

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forward. It is interesting, however, that the book also notes that the problem or the question is if current scholarship in the social sciences, especially in political science, economics, and, we should add, even public administration and, of course, law could address the challenges posed by limited statehood. What should be noted apparently is that governance is a process that entails two dimensions, actors and modes of coordinating social action—various institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods. Various combinations of state and non-state actors "govern" in areas of limited statehood (ibid: 9, 11). Essentially, this argument points to "social institutions" as an alternative to state institutions.

Social institutions are dominant in the Philippines more than the state—precisely the reason why it is virtually impossible for the government to formulate programmes and policies that are not influenced by particular interests. We can start with a good look at the kind of laws that we have and we can easily notice how one law contradicts another, which effectively puts to waste whatever is good in a piece of legislation. The reason for this is that policy making is purely driven by partisan interests. The kind of laws that will be passed in between elections will surely be different from the types of laws that could be passed during election periods. With the various, often competing, social institutions in the country, there has to be an entity that provides some semblance of structure or process, if not hierarchy and authority, needed to knit society into a unit. The process of searching for this entity has resulted in the emergence of groups in society that now effectively compete with the state for influence and authority. Instead of a state that is made up of public institutions that is separate from societal forces, what we have is a network of dyads, i.e., two-person reciprocities, that is articulated vertically, one that is consistent with feudalism, slavery, serfdom, the caste system or the patron-client structure of leadership that we have (Scott 1990: 61). There are no horizontal links among subordinates, which means, therefore, that if they are to be assembled, it must be by the lord, patron, or master, the one who represents the only link joining them. It may be possible to have horizontal linkages, that is by way of village traditions, ethnicity, religious sect, dialect, and other cultural practices, but these, however, have no place in the official picture (Ibid: 62). If at all, this prevailing structure should be enhanced; it has been already well established that while ideally, it should be replaced by a state structure that is considerably separate from society, it is a social and political

project that is subject to so many factors that only history can very well determine.[2] What we can learn from this new scholarship is that working to make governance work today requires taking a step back and refraining from "either everything or nothing" conceptual solutions (Risse ed. 2011: 16, 17).

What is important to note in the foregoing is the objective that we now have in our hands. We have a government and this government is run by leaders whom we elect, but because the government has to compete with other elements of society for authority and influence, it has not been effective enough to amount to a functioning state. The objective is to make our public institutions work and this can be done by structuring it well enough to serve our purposes. We can learn from the assertions of scholars that have closely studied countries that democratized recently, those so-called third wave democracies.[3] Democracy is a form of governance of a modern state, and without a state, no modern democracy is possible (Linz and Stepan 1996: 17).

It is in this context that this paper plans to pursue the subject of federalism in the Philippines. Based on the thesis that a functioning state is a problem in the country, federalism as a form of government is assumed to be a means to strengthen if not develop a better functioning state. The idea is to acknowledge the inherent diversity in Philippine society and use it as an advantage; federalism is to structure the state to be consistent with this socioeconomic and cultural diversity in the country in order to effect a more unified system of governance. We can reflect on the current conditions in the world and the context of the Philippines and from there determine the best way forward in pushing for political and structural reforms.

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[2] There have been a number of useful works in this regard. Among those that can succinctly explain state formation or state building, see Barkey and Parikh 1991, Axtman 2004 and Migdal 2004.

[3] Samuel Huntington in his seminal study (1991) explains the different waves or "group of transitions from non-democratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period" (p. 15), and third wave democracies are those that democratized, starting with Portugal, in 1974 up to 1990, when the total percentage of democratic states in the world had doubled from 24.6 to 45.4% (21-26).

THE CHANGED CHARACTER OF THE POLITICAL ENVIRONMENT TODAY

We are global and at the same time local. The viability of the new government or regime framework (new government/set of institutions) requires simultaneously serious work and cooperation internationally and locally (Tayao 2002). States today do not have the same options available to communities working to build states before. Local communities today have to work on state structures that are already in place. This essentially means that because conditions have changed, states today are bound by international conventions, limiting options available for state building. The context before is such that most societies still had largely undefined social, cultural, political and economic environments. States were either inhabited by originally homogenous people or allowed a conscious effort to homogenize. Before, the unification of previously separated peoples was possible, whether by peaceful or violent means. Weak states or peoples were either vanquished or absorbed by a stronger one.

Those options are no longer compatible with today's international and local political environments. The diversity that characterizes countries today has led to the formulation of means by which different peoples may be united without sacrificing their identities; knowing as well that this arrangement is mutually beneficial. Unity has become an essential characteristic particularly for new democracies. The challenges that democratization introduced, however, particularly social and cultural diversity, have made regimes today unstable; some are even continually threatened by disintegration. Managing diversity then has been the principal consideration and has led to a different look at federalism, where countries like the Philippines, while having been centralized and unified from its establishment, considers establishing a federal structure. This proposal in the Philippines may be described as following the direction of "from the centre" and not "to the centre," as has been the experience of countries that federalized early on.

Hadenius outlines at least three reasons why federalism has been a popular option for developing countries (newly democratized countries)—that it has often been pointed to as a way of laying the ground for the maintenance of democratic rule (Beetham, ed. 1994: 73). First, federalism apparently provides more political positions to distribute. Regional political leaders may opt to compete in their own territories if they fail to get hold of a national position. Second (which is very much a result of the first), because it can accommodate more stakeholders, it is held to contribute to a moderation of political

conflicts. Third, providing an arena of influence relatively close at hand geographically, federalism can also be expected to facilitate the organization of parties and interest groups at the local level. In effect, more participation from the local communities is expected to result from a federal structure (Ghai in Reynolds ed. 2002: 141).

This may, however, be good only in theory. We should first look into the experiences of other countries under a federal setup and see if the assumptions or expectations hold true. Precisely the difference lies in the process of federalization today. As we have noted in the foregoing, separate states were the ones that agreed to come together and create a unified federal state in those countries that were established earlier (Finer 1970; Dikshit 1971; Elazar 1993; McDonald 1994; Kesselman et al. 2000). This consideration is crucial as it explains two important factors in a federal structure. First, we can assume that because the federal state was formed out of the coming together of previously established states, sovereignty had already been established beforehand. The individual states already enjoyed and exercised sovereignty and were now only sharing it with the federal state. This principle is called *shared sovereignty* (Riker 1964; Diamond 1973). Second, essentially by implication, federalism is to function only *under strict enforcement or recognition of boundaries set by law* (Tarlton 1965; Hero 1989; Thomas-Woolley and Keller 1994; Inman and Rubinfeld 1997; Kincaid 1999). These two factors are crucial if we are to determine what exactly is the intent of federalization, which can only be anchored on expected benefits or results if successfully undertaken. The question on the other hand is if it can be realized.

Using this description of how federalism was originally formulated we can consider that the principal purpose is to harmonize relations between different political entities and at the same time pull their resources together (Tayao 2000: 613). States were then viewed as better off if they opted to unify. Tocqueville's basic assumption is that every modern nation-state needs a complete, centralized government (Kincaid 1999: 211). Tocqueville writes (in his *Democracy in America*), "I cannot conceive that a nation can live, much less prosper, *without a high degree of centralization of government,*" the "federal form … allows the Union to enjoy the power of a great republic and the security of a small one." You can observe then that federalism was originally opted to as a way towards centralization because it was a way considered to be able to unite separate states.

Federalization as viewed by newly democratized states today on the other hand is a process of coming apart and then voluntarily coming back together again (Kincaid, in Griffiths ed. 2002: 10); *new federalism in the age of the third wave of democratization*. As already mentioned, the direction is not "to" but "from" the centre. At a glance it may be assumed that the intention is to divide, considering that the state intending to federalize is already unified; the intention, however, is indisputably to unite. This means that the objective is to recognize the natural diversity in society and use this diversity as an advantage. The objective is essentially still the same, that is, to unite, except that, because of the conditions today, the different character of new states, the process is different and appears to be towards dividing the state. Aptly describing the factor that distinguishes states today, that is, mostly coming from colonialism, Kincaid writes, "[C]onstituent political communities that emerge from beneath the pall of suppression must still want to stay together". The reason mainly is the ultimate objective of holistic social, economic and political development (Tayao 2000: 611).

The expected benefit of structural reforms is political stability, one that is essential to achieving development in the country. On the other hand, expectations should be calibrated, foremost of which is not to expect that results will happen immediately. In fact, the details, especially the mechanisms of a federal system, must be carefully formulated so that the intended result can really be achieved. Once the reforms or the change in structure has already been introduced, absent these expectations, there is the danger that in coming apart, the constituent units will not unite again (Kincaid). Worst, the danger of reverting back to a non-democratic regime is always a possibility for a new state experimenting with a new structure or system. Instead of harmonizing diverse peoples and interests in the country, a new structure may further prevent the state from moving forward and may result in a compromise of democratic structures.

Such is the primary determinant of democratic consolidation. Democracy will stay in a country if the new regime is able to satisfy the people's expectations. After all, they democratized precisely because their lives in the former regime were not good enough. Structural reforms are viewed as means in achieving this end. If such means fail to work, other options will for certain be considered. Regions are not the actors here but the inhabitants (Gourevitch 1979: 304). If a particular territory becomes nationalistic, we must explain why some of its residents find nationalism attractive, and, if this nationalism

is new or suddenly much stronger politically, why they have abandoned old appeals for new ones.

We should learn from developments in the Slavic region of the former republics of Czechoslovakia and Yugoslavia. Linz, Eisenstadt and Rokkan, Berger, Wallerstein and Anderson, to name a few scholars, have noted early on recent challenges to the unity of the nation-state in advanced industrial societies: Scotland, Quebec, Flanders, Occitania, Catalonia, and the Basque region, to name a few (Gourevitch). Of course whether the move for independence, or should I say separatist movements, will succeed is another question. We are talking of the developing country that is the Philippines on the other hand, one where public institutions are everything but strong and not influenced significantly by particular interests in society. Because of this, many consider that there may be a greater chance of dismemberment if the option of federalism fails to bring what is expected.

Stephane Dion explains why secession is difficult in well-established democracies, suggesting that development is the measurement of the significance of political structures. Secessionist movements are rooted in two types of perceptions: the *fear* inspired by the union and the *confidence* inspired by secession (1996: 271). *Fear* refers to the sense among members of a regional group that their cultural, economic or political situation will deteriorate within the existing union. *Confidence* on the other hand is defined as the sense among the group that it can perform better on its own and that secession is not too risky. We can look at the varying experiences of different countries under a federal structure, say Quebec in Canada, and Catalonia and the Basque region in Spain.

We can then take a look at the African states Nigeria, Kenya, Sudan, Eritrea and Ethiopia, which fall under our classification of new federalism; considering especially that these countries are made up of regions struggling to keep their borders intact in the face of pressures to break up or sub-divide their inherited territorial boundaries (Thomas-Woolley and Keller 1994: 416). There are those that consider federalism in the Philippines to be in the same situation, not to mention that like the African countries mentioned, we are still classified as a developing country.

As has earlier been mentioned, one thing is common with all countries today, particularly those struggling to sustain democracy and at the same time build strong state institutions. The basic challenge of social diversity has become an essential part of governance in a democratic setup. Such a challenge

can only be addressed by proper management of relations between different peoples, particularly in the distribution of resources and the administration of public services to each constituency. As has been illustrated by the experience of the Serbians, Montenegrins and ethnic Albanians, the Christian Ibos and Muslim Hausas in Nigeria (Smith 1981; Suberu 1988, 1991), and the Kikuyu elite in Kenya (Ndegwa 1997; Southall 1996), subjugating or displacing opposing groups or minorities will not solve the problem of survival and development in a country. Federalism is seen by many advocates as a way to accommodate a large degree of diversity in a state. Because of varying circumstances though, it cannot be approached with a simple adoption of a political or administrative model like federalism. Otherwise, we run into the danger of contributing only to the differences that already characterize each community, fuelling prejudice. This will therefore not strengthen but instead undermine the government's capacity to effectively govern. It is in this regard that leading federal countries have, through the years, adopted measures that modified the federal structure, even to the point of re-centralizing.

CONTEXT: FUNDAMENTAL CONSIDERATION IN PUSHING THE FEDERALISM ENVELOPE FORWARD

The idea is to proceed carefully and ensure that the federalism we are pushing for is the right or real federalism, one that will actually work, even if it will take time for it to work and meet the expectations of the public. The idea is to be realistic with the advocacy, noting the conditions, the context we are in and not be too fixated with the idea, as we know it in established democracies. The changing conditions in society, the economy, and therefore politics and policy making, will always be a significant factor in the successes or failures of the state and governance.

Federalism should be pursued in the Philippines with the key consideration of effectiveness in governance, that is, of policy making and implementation. This effectiveness hinges essentially on the relational dynamics between different levels and agencies of government. The role of each office, of each level of government must be clearly defined so that cooperation and collaboration, and not competition and conflict, is promoted. There has to be real public institutions working that will presuppose the existence of a state. By institutions we mean many offices at different levels, run by many individuals and different officials, but they work as one as their actions are

coordinated and guided by standards and data on the ground. All this simply means there is a system in place.

A system is needed so that the work of a particular office will not be dependent significantly on the role an individual official plays and that his or her discretion is tempered by the standard procedures and what is gleaned from facts and figures, from the results of the interaction between the government and the people. This is possible only if the government, with all the different offices and or agencies at different levels, is able to work effectively; hence, the need for an effective framework for intergovernmental relations. A working structure of intergovernmental relations is a means to put a system in place and ensure that the same is sustained, that the objective of good governance is attained. We can consider two components to have a system of intergovernmental relations; one is a good structure, a design that clearly delineates the role and function of each but at the same time enables, even goads, the different offices and agencies of government at all levels to work alongside each other well. The second component is a set of standards and processes, one that includes transparency and openness, which generates facts and figures that are then used as the basis for any government action. All these will help ensure institutionalization and continuity of policies and programmes regardless of who is in charge in the central or national government. These are key considerations when structuring or re-structuring governance, essential for any democracy, especially for a state that is still strengthening democracy.

Federalism will work only if democracy is strengthened or the way it is designed strengthens democracy. Of course, the more difficult question is how this could be ensured. We can start with "inclusion" and "participation," two concepts that encapsulate democratization in the Philippines that are often unfortunately treated separately. These two concepts essentially capture the need to have effective autonomy not only in Mindanao and the Cordillera as decreed in the 1987 Constitution but even in the other regions of the country. Inclusion because essentially, the Philippines, like many states today, departs from the classic concept of a nation-state as established by the Westphalian doctrine. States today are characterized by considerable social and cultural diversity, so much so that we can barely define 10 percent of all sovereign countries as a nation-state, defined as a homogenous ethnic community where the inhabitants possess an identical culture (Smith in Hall 1994: Vol. II, 60). In fact, if we are to be strict and refer to nation-states as those that refer "to a

nation that occupied a distinct territory and enjoyed high degree of political autonomy" and not just to "any geographically-delineated political aggregate of individuals living under a common government, no matter how varied their origins" (Pearson 2004: 403) but by some design evolved to be a homogenous society, it would clearly show that the Philippines is not a nation-state. The problem of inclusion therefore is in making sure that the numerous peoples in a state are adequately included in the state processes.

Inclusion of course presupposes participation; and by participation, we mean not just "token" participation, where everyone is recognized by law and at the age of majority is able to exercise his right of suffrage. Participation should mean that one is able to substantially contribute at the minimum to public discussions on issues of public importance. Regardless of whether one's voice resonates or not, at the least he is able to say his piece and this is so because he has the capacity to do so; by inclusion, the state is able to provide the basic requirements of one's existence in society, such as education, health, security and, overall, the rule of law. This rule of law is an attenuated concept of the "power" of the people; a weaker term, which captures the elements we associate with modernity—institutionalized popular influence, and procedures of accountability (Parry and Moyser in Beetham, ed., 1994: 44). Because inclusion and participation remain significantly limited in the country, reflected in the popular sentiment that governance remains wanting, the proverbial assertion is that this is due to the Filipino culture. The moment the question of culture is raised, the explanation is always the lack of discipline. This lack of discipline is due to a lack of unity in the country, and this lack of unity is due to a lack of national consciousness. This points to the previous supposition that the Philippines is not a nation-state.

It will be a long-dragging debate if we look into what makes a nation-state and whether the Philippines qualifies as a nation-state. What cannot be disputed is that we are inherently a diverse society, owing largely to our history and even to our geography. This is why we speak good English compared to our neighbours. English is recognized in our constitution as one of two official languages and the reason is because of our history and not necessarily because we are a colonial people. Tagalog was adopted in 1939 as an official language, at the time that the Philippine state was being built in preparation for independence. This became a controversy overnight, however, as other regional ethnic groups demanded equal treatment. We are a country of at least 80 ethno-linguistic groups, 8 of which are the major groups of Tagalog,

Ilokano, Bikol, Pampangan, Pangasinan, Visayan, Hiligaynon (or Ilonggo) and Waray (Asuncion-Lande 1971: 677-678; Abinales and Amoroso 2005: 11). As preparation for independence during the Commonwealth period, there was a need to adopt a common indigenous language that could be used by everyone in the country to communicate. The term *Filipino* was used to refer to this indigenous language, even if it is essentially Tagalog. The adoption of English as one of the official languages was a compromise in that it was the language that was spoken by the majority at that time; and this was not just because the Americans were in control of the country then, but also because even before the coming of the colonial powers, we were already a trading nation and many were able to communicate with the other countries in their respective languages.[4]

This diversity is often used as an explanation or excuse that there's so much division in the country and that somehow it is the culprit why it is difficult for the people to agree and for the government to get its act together. Perhaps in effect, it serves as some kind of resignation that there is not much that can be done to overcome this; hence, the proverbial excuse that it is "our culture" that explains it. At the least, there may be some way to work with it as a given, noting that other countries are in similar circumstances or conditions but have, nonetheless, managed to develop and have a better working government.

OPPORTUNITY TO EVOLVE A SYSTEM

When Edsa People Power happened in 1986, everyone felt the euphoria, as it was an exercise needed to get rid of a dictatorship and return democracy to the country. To have another people power, however, is to suggest that political institutions remain unstable, that the political system cannot sustain regular constitutional processes and ensure that political leaders are made accountable. This precisely is what happened in 2001 when the country had to again resort to extra constitutional means to unseat then President Joseph Estrada. Impeachment was successfully initiated in the House of Representatives, but was abruptly cut at the Senate when the president's allies prevented the

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[4] Anderson also writes in the late 19th century that "Filipino leaders were peculiarly adapted to this Babelish world" as they manage to communicate with other countries' own language while "Tagalog, the native language used in Manila and its immediate periphery, was not understood by most Filipinos, and in any case was useless for international communication" (Anderson 2006: 5).

opening of an envelope that many thought contained incontrovertible evidence of impropriety. This has been the story of politics in the Philippines, one that is dependent on personalities. Policies and programmes are formulated and implemented based on the preference of a sitting president, or of any particular interest that has access to the leadership, with the result that long-term plans cannot be made. There is no continuity of programmes; a new leader will always pursue another direction. Structural and/or systemic reforms are needed, but this is something that will require support from the same elites that control the country's politics and economy.

Philippine democracy exists in an atmosphere of institutionalized crisis. National and local posts remain dominated by an unrepresentative elite that is more adept at advancing personal interests than at crafting coherent policies (Rogers 2004: 114). There are four factors, according to Hutchcroft (in Kasuyo and Quimpo, eds. 2010: 428), that explains this. One, colonial state formation in the Philippines began just as a "new American state" was emerging at home amidst diverse strands of political thought in the US. The reformed US state, however, the product of substantive exchanges between the different American political strands, was not the one that was exported to the Philippines, as the major builders of the colonial state were the conservatives. Second, Quezon secured largely uncontested executive authority for himself when he assumed the presidency of the Philippine Commonwealth in 1935. Third, there was an impulse toward administrative centralization during the Japanese Occupation. Fourth, there were important elements of centralization during the martial law regime of President Ferdinand Marcos. Even before the declaration of martial law, there were those who already saw the limitations of our system, one that is presidential and significantly centralized.[5] The country's experience under martial law only further established the limitations of our political system, so that when the 1986 Edsa People Power happened, the inclination to reform was firmly there.

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[5] The late statesman Claro M. Recto wrote in February 8, 1949 (published in *The Manila Times*) that "[t]he American presidential system of government originally established under our Constitution and reinforced by the amendment allowing Presidential reelection has, it now appears, worsened an endemic disease in our body politic. That system has worked in the United States on the basis of an alternation of parties, more or leas regularly, with both majority and minority maintaining themselves as effective organization, in and out of power." He further wrote, "Under our Constitution the Presidency is potentially even more powerful. I do not believe it an exaggeration to state that the President of the Philippines could easily convert himself into an actual dictator within the framework of the Charter."

Many still debate whether the 1986 Edsa People Power was a revolution or not. This contested revolution could have given us the same result as Spain's "Ruptura Pactada" (see Linz and Stepan 1994), where elites came together and forged an agreement on how to proceed from the end of Generalissimo Francisco Franco's rule. At least as far as taking the risk of facing the tanks and guns of the state, it was clearly a revolution for those who took part (Ileto 2003: 177). On the other hand, the sense of participating in the "grand forward movement of history," one that supposedly will overhaul the social, economic and political structure of the country, the same precept the Marcos brand of revolution and even the National Democratic Front tried to tap, was clearly absent in 1986 (Ibid: 200).[6] If the end result of the 1986 Edsa People Power is the measure to determine if it was a revolution or not, many would say it was an "unfinished revolution" (Ibid.) or it was simply a "restoration" (Coronel 1991; Eaton 2003). 1986 "may well be a constant reminder of promises unfulfilled, hopes dashed, and expectations unmet;" and while many revile the Marcos regime as brutal and abusive, the inertia that best characterizes government today has led some, especially in the business and professional sector, to be nostalgic of that era as Marcos "got things done" (Abinales and Amoroso 2006: 290).

The return of democracy provided the impetus to carry out fundamental political and economic reforms in the country (Ringuet 2003: 236). We should learn from our history what led to the declaration of martial law and suspension of democracy in the country. Similar to the story of Weimar Germany, there was just so much dissension in society in the 1960s that, with the kind of political system we have, political stakeholders could hardly work together. This only made things worse, preventing any chance of checking on any ambition like that of Marcos's or even provided the impetus to declare martial law. There are fundamental problems in establishing long-lasting reforms, as this requires changing the system and strengthening political institutions, the kind that will dilute the control of the elites. The broad features of the problems and challenges of democratic consolidation in the Philippines include a volatile ensemble of the following factors: a cycle of contentious politics in a state with weak capacities and political institutions, a slow-growth economy, and a vibrant and contentious civil society (Rivera 2002: 467). The latter factor, that is, a contentious civil society in the country, requires further

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[6]   Ileto further noted that it was "a strange coincidence that the number 1986 was a simple rearrangement of 1896".

study as it precisely presupposes a weak Philippine state; there are not enough avenues to accommodate a plurality of political voices and interests, and at the same time, the presence of the state in the countryside is hardly felt. This is then filled by the work of civil society, of the church most especially and other civic organizations. We had several opportunities before to build the state that we need, a system that could best represent and accommodate the varied social, political and cultural interests that we richly have in society, but unlike other countries that managed to grab and make the most of their opportunities, we simply failed to do the same and will now have to wait for another chance that will come our way.

FEDERALISM AS STATE-BUILDING AND DEMOCRATIC CONSOLIDATION

It is not a new observation or idea to pursue federalism in the Philippines. The purpose of the foregoing is to emphasize that federalism should be pursued in the context of state-building and democratic consolidations. Federalism is seen as a way to address the existing problems and challenges of governance in the country. In this sense, the danger is that there could be too much expectation and we should be able to temper this so that we can proceed in a more substantive way and not assume simply that we can adopt a model and all our problems will right away be solved.

Political systems as we know it can provide a good framework. The experiences of different countries under a particular model can give us a good picture of what to expect, but it does not mean we can just copy an entire existing system from another country and adopt it. The framework or model is there, but the details will have to be determined. As we have already seen in the foregoing, working on a political and or administrative system is neither easy nor simple, and in fact should not be taken to mean just drawing a line that separates different levels of government. The distinction between political authority and public administration should not be confused, with literal separation such that the latter in the process suffers. Public institutions have to work as if it is one huge entity even if it is composed of different parts, i.e., offices and agencies at different levels. This is a significant challenge as the study of political power is often couched in terms of barriers or limits, of turf and or jurisdiction. On the other hand, it should be noted that delineation is due largely to the need for accountability, of determining who is responsible

for what. It does not have to mean that one office or jurisdiction is separate from the other or moreover, can effectively function without the other. In fact, the successes and failures of the whole government, even of a particular agency or office, are often due to the extent of cooperation and collaboration between different offices, especially at different levels. There is division for purposes of assigning particular tasks to specific offices and areas, but it does not mean that one does not have anything to do or will not affect the other. Given the history of the Philippines, it is important to start the understanding of federalism with these provisos, otherwise our expectations will just result in frustrations in the process and we wrongly attribute failure to the model that is adopted. The details have to be clear from the start and it should coincide with the process that will be followed to realize it.

There are three propositions (Werlin 1988: 48) to consider if we are to avoid the pitfalls of just relying on models and ensuring we do not lose the need for details. Herbert Werlin calls this "political elasticity", which simply means that political words such as power, authority, and control must be qualified or elaborated (rather than quantified) to be understandable or useful (1988: 50). It simply means that the use of these political terms should be consistent with the dynamic nature of politics. 1) Political systems are most effective when authority is widely dispersed without diminishing the ultimate responsibility of top leadership for results. 2) Administrative effectiveness—the ability to achieve goals—depends upon the capacity and willingness of leaders to delegate operational responsibility to subordinates without reducing supervisory prerogatives and correctional potential. 3) Insofar as leaders must rely upon non-persuasive forms of power (e.g., coercion, corruption, or intimidation), their capacity to delegate responsibility is limited. While elastic political power is generally persuasive in form, it can be coercive when necessary. Structuring federalism should allow, in fact, should encourage, collaboration and cooperation across and among different government offices, agencies and levels. Delineation of functions should be drawn up in terms of complementary roles.

There has to be a way of designing a political system where the entities each has complementary functions rather than just division of authority. The federal or central government should have broad powers, i.e., set standards and basic processes to follow. Implementation of policies and/or programmes could be joint or coordinated but the state and local governments are provided enough leeway to determine how policies and programmes could be

implemented best according to unique conditions on the ground. Emphasis is needed on the phrase "how to best implement", which means simply that the federal government should be primarily providing the goals or objectives while the state and local governments will be chiefly responsible for determining how these goals and objectives could be best achieved given the unique conditions on the ground. The best reference should be the vantage point of each level of government. The federal government's purview is the whole country, which is therefore broad, so that any policy and or programme it is to consider should be applicable to all. The states' and local governments' perspective on the other hand is narrow as it is specific to its jurisdiction. These considerations are fundamental, since the interests of the majority in the country do not always match the interests of a particular region, state, or even local government. Note again as already explicitly provided in the foregoing that the Philippines is a multi-ethnic society and ostensibly multi-cultural.

Now that we have the structure in place, our reforms should include the mechanism we mentioned earlier. Mechanism refers to standards and procedures to be followed. Of course, these standards and procedures should not be confused with the objective of governance, that is, to ensure effective policy making and implementation, as these are part of the tools of governance. Just like the flexibility we mentioned in the structure, standards and procedures should remain the means and not the ends of governance.

The mechanism includes a reliable data management system in government, from the central to the local government, from census and mapping to keeping track of revenues and expenses of government. This is what is sorely lacking in our government; data gathering in government whether for academic and or policy research requires insanely strenuous work of going from one office to another. The current administration supposedly introduced an open data system but the requisite of inter-agency sharing of facts and figures remains absent. The function of generating facts and figures also remains solely with the national government as a law was enacted establishing that official data is only that which comes from the national government. This would have been acceptable if there was a system where local government units (LGUs) manage their own database and the national government collates. The point is, apart from autonomy, there should be a established way of sharing information, including sharing and coordinated efforts to generate information amongst different levels of government. A good example is mapping, an interesting limitation in this country that has taken us ages to enact

a national land use act. LGUs could be empowered to do their own mapping, with the role of the national government to integrate. This lack of maps prevents us from coming up with a meaningful comprehensive development plan for the country.

Assuming that we now have a clear understanding of the requisites in order to make sure that any model adopted will work as expected, the next equally important question is how to proceed; and this consideration is strategic, in that it has to determine what will be crucial to which group or interest. Reflecting on our analysis of the Philippine context and the state of democracy and democratization, despite the many limitations and pitfalls of politics and governance, there are key elements that we can identify that favour the development of democracy, or should I say consolidation of democracy in the country that requires systemic political reform. These are openings or entry points so that we can forge an opportunity for real reform in the country. Of course the ultimate test is if we can muster enough following or support from the public in pushing for these reforms.

As mentioned in the foregoing, we have a very vibrant civil society. The specific description of experts is that our civil society is vibrant and contentious. We can stop at or focus on this vibrancy and find a way to harness it and channel the energy of contentiousness to engage the elite. The civil society is made up of very strong social institutions in the country anyway—the church, that means all religious groups and denominations, the academe and of course the non-government, socio-civic and peoples' organizations. These groups are mainly channels of democracy linking the people to the government, the closest equivalent to, probably our alternative to or a way to achieve some amount of, "deliberative democracy."

You might say we are forgetting one institution in this scheme of things, that is, the media. On the other hand, factoring in the media is part of engaging the elites as they control the media, just as they control the economy and politics in the country. Precisely the reason why we'd like to start with the non-state actors is to force the issue, the discussion of systemic reforms in the country. The hope is to generate enough public consciousness and support so that the elites, the political leaders, will be forced to respond, to take part in the public discussion and to effect the reforms we need. The non-state actors can only persuade, rather vigorously and emphatically, but the elites have to be on board, regardless if they are forced or not, as long as they understand the urgency and significance of the needed reforms. If we are to again reflect

on the experiences of other countries, the key component of agreement among the elites regarding the substance of the agreement was lacking in our story of democratization. What we had was just a change of the set of elites in power and a change of personalities every election.

To conclude all the foregoing, reforms should not start and end at structures and forms. Different systems and forms of government definitely have advantages and disadvantages. The advantages may be true in general, but the required details have to be there to ensure that what is expected actually becomes the result. On the other hand, while it is imperative to fully understand or determine how exactly we think the federal system in the country should look like, we also have to contend with the feasibility of pushing this forward. In the first place, there is no sparsity of intellectuals and reformers in the country, academics or pure advocates who understand the imperatives of systemic reforms. What is clearly lacking is the wherewithal to proceed and put these needed reforms in place. As we have already discussed, there had been so many opportunities to institute real and lasting reforms before but all these simply were wasted. For now we have to be on the lookout for another opportunity for reform; or perhaps, the better option is to create this opportunity and push for reforms.

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Cambodia's D&D Reform Program: Progress and Challenges

Min Muny

1. BACKGROUND ON DECENTRALIZATION & DECENTRALIZATION REFORM (D&D) IN CAMBODIA

Cambodia is a unitary and indivisible state, established by its constitution, with an area of 181,035 square kilometres and a population of roughly 15 million people. At the macro level, Cambodia surpassed its MDG targets on poverty reduction, sanitation coverage and many others targets set for 2015. According to the World Bank it enjoyed average annual growth rate of 7.7 percent over the last two decades, making it the sixth-fastest growing country in the world over that period.[1]

To recall the recent history of the country, Cambodia only regained recognition from the international community after the UN-sponsored general elections in 1993, when international assistance started to flow into the country. During the 1990s, this vital aid was mainly channelled through international organizations (IOs) and hundreds of newly established local organizations (NGOs), and largely directed at the community level. Village- and community-based structures (known as Village Development Committees [VDC] and Community Based Organizations [CBOs]) were created by IOs and NGOs to absorb, manage and disburse this international assistance; existing government structures including commune and village administrations were seen as political tools of the ruling party, and hence largely ignored. Meanwhile, some 40 political parties (then new—other than the CPP) attempted to take control of these newly established structures to gain ground for their political ambitions.

Having seen this trend, the ruling party (CPP) quickly reached an agreement with its coalition partner (FUNCIPEC Party) and moved to legitimize this lowest tier of government through a nationwide decentralization

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[1] Cambodia Economic Update "Clear Skies", October 2014.

program, installing a party representation (PR) direct election system for 1,621 commune councils[2] in February 2002.[3] Prior to February 2002 all local administrations were appointed by the government and performed duties on behalf of the central government. They were essentially agents of the central government to which the government delegated certain functions for implementation of its policies. To this day, line ministries have their line departments/agencies at district and provincial levels that carry out the development policies and plans of their ministries. Under this system the central government has retained ownership and responsibility for all functions, deconcentrated through their branch offices located at provincial and district levels. This arrangement includes significant degrees of control and instruction. In this environment, local administrations and agencies continue to respond to and are accountable upwards to the Royal Government.

To put this into brief context, Cambodia only ended its 30-year-long civil war in 1999 when the last faction of democratic Kampuchea (known as the Khmer Rouge or KR) joined the government. Prior to this integration, the UNDP's CARERE2 project, supporting the government, and its Seila Program[4] worked and proved successful in promoting participatory planning and financing to the newly integrated factions in formerly KR-controlled areas and other rural areas in five provinces. Seila was also one amongst a few big donor-government partnership program during that early international recognition, aiming to promote integrated rural development (through local planning and financing) that contributed to the country's poverty reduction. Today's government decentralization program has mainly grown from this Seila initiative.

1.1. D&D Progress in Phase I (2002-2008)

D&D reforms were officially kicked off after adoption of the Law on the Administrative Management of Commune/Sangkat in 2001 (referred to as the 2001 Organic Law). Local elections took place in 1,621 communes across the country for the first time, allowing former enemies to transform themselves

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[2]   The number of these commune/Sangkat Councils is now 1,633.

[3]   The commune/Sangkat council elections took place every five years: 2002, 2007 and 2012.

[4]   Seila means "foundation stone" in Khmer (Cambodia's official language). The Seila Program was implemented from 2007 to 2001 while the full-scale D&D reform program started in 2002 and is being implemented to date.

into political parties to contest these elections. Four political parties won these elections and fielded their party members to sit and work together for the first time.

To some extent, the establishment of elected commune councils since 2002 has shown a number of satisfactory results. First, the commune council has gained legitimacy as the people's representative organ, leading to a re-channelling of development assistance to the commune councils rather than the VDCs and CBOs as in the past. Second, participatory planning and financing processes have allowed the people to participate and to have their needs heard (up to the national level). Therefore, starting from February 2002, governance at C/S level substantially changed. This lowest tier of administration created through election was the means to transfer governance ownership from the central to the C/S level, ensuring that the C/S councils represent the interests of their local communities, and are responsive and accountable to their local communities.

Third, the decentralization program has contributed to security and peace building, and infrastructure improvement (thus contributing to economic growth). As for the latter, results have largely been achieved through the creation of the Commune/Sangkat Fund (C/S Fund), which has allowed an increase of budget flows to this tier of sub-national administrations. The share of the national budget allocated to the Commune/Sangkat Fund has increased from 1.5% of current domestic revenues in 2002 to 2.7% in 2008 and 2.85% in 2015. The Fund has enabled Commune/Sangkat councils to respond directly to the priorities and needs of their local citizens through participatory planning and project management. According to the government's Commune Project Implementation Database, there were over 5,000 water points (including drilled wells and community ponds); nearly 10,000 kilometres of earth and laterite commune roads (including culverts and bridge structures); about 1,000 primary school rooms; and many small-scale irrigation, agriculture, NRM and health-related schemes financed by this C/S Fund, which is managed directly by the elected commune/Sankat councils from 2002-2008.[5]

Finally, it is worth noting that the process has also been highly beneficial for the governing party: by strategically selecting popular community leaders as candidates, the CPP has succeeded in winning control of the vast majority of commune councils over the last three elections: 2002, 2007 and 2012. This

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[5] For details, please visit the government D&D reform program's official website: www.ncdd.gov. kh.

has reinforced the political legitimacy of the ruling party, as well as its control over development activities. All these reasons have somehow contributed to the government's (i.e., the ruling party) confidence for further reforms at the next levels of sub-national administrations.

1.2. D&D Reform Program in Phase II (2009-date): The Law on Administrative Management of Capital, Provinces, Municipalities, Districts, Khans (2008 Organic Law)

A number of "governance" studies have shown that D&D reforms in Phase I have significantly changed the perception of the citizens regarding the state from one of purely central planning and implementation, towards one that is more consultative, respectful and responsive to the needs of the people. Despite this success, the quality of life of the rural and urban poor in Cambodia remained well below potential, especially compared to other countries in the region. Sub-national service delivery and regulation of markets and public goods were characterised by a confusing mix of centralised, decentralised and deconcentrated arrangements. Furthermore, the allocation of management responsibilities and the use of public goods were not clearly defined between central and local governments and between local administrations themselves. While the technical capacity of government staff has improved, civil servant deployment was not in line with the scale of functions and the priority needs of local communities. At the same time, conflicting and fragmented assignments of functions to different ministries had resulted in the creation of multiple sectoral programs that compete and administrative management overlap amongst programs, projects and institutional responsibilities. This had further created complexity for responding to local needs.[6]

Recognizing both the successes of D&D 1st Phase and the need for further improvements had given confidence to the Royal Government of Cambodia to move forward its reform to cover all sub-national levels including district, khan, city, province, and capital. It recognized that in order to satisfy its people and bring the country to prosperity, further and deeper reforms were necessary. As for D&D, keeping the reform at the commune level means not recognizing the bottleneck of the presently centralized service delivery (SD) system—no resources (both human and finance) at local level. District administrations were previously utilized as the provincial arm for

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[6] The 10-year National Program for Sub-National Democratic Development (NP-SNDD), 2010.

security during the war, but are now (after the war) seen as important agents for development and local governance.

To move this reform into the second phase, the government adopted the Organic Law on the Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans in 2008. Under the 2008 revised constitution and this 2008 adopted organic law, Cambodia is divided into the capital (Phnom Penh) and provinces. Phnom Penh is further divided into Khan (urban district), with Khan further divided into Sangkat (urban communes). Provinces are divided into municipalities and districts. Municipalities are divided into Sangkat (urban communes), and districts are divided into Sangkat (i.e., the town of the respective district/urban commune) and communes. This Law called for promotion of sub-national democratic development (i.e., local development and democratic governance) through the D&D reform program by creating an overall sub-national governing structure that allows for (1) Public representation, (2) Local autonomy, (3) Consultation and participation, (4) Responsiveness and accountability (5) Promotion of equality of life of the local residents, (6) Promotion of equity, (7) Transparency and integrity, and (8) Measures to fight corruption and abuse of power.[7]

To implement these organic laws (2001 Law on the Administrative Management of Commune/Sangkat and 2008 Law on the Administrative Management of the Capital, Provinces, Municipalities, District/Khan), the government through its National Committee for Sub-National Democratic Development (NCDD) formulated the 10-year National Program for Sub-National Democratic Development (NP-SNDD). Through the NP-SNDD, the RGC's goals for sub-national democratic development are to:

- Create a culture of local participatory democracy, accountable to the citizens;

- Improve public services and infrastructures;

- Bring about social and economic development;

- Contribute to poverty reduction.

The NP-SNDD is a 10-year plan of Cambodia's decentralization reform program adopted by the government in 2010. It aims to promote democratic, inclusive and equitable development by strengthening Sub-National

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[7] Article 8 of 2008 Organic Law.

Administrations (SNA), namely the Capital/Province (P/C), District/Municipality/Khan (D/M/K) and Commune/Sangkat Administrations (C/S).

1.3. D&D Progress in Phase II (2010 to date)

The 10-year NP-SNDD has been implemented in phases since 2011. The first four-year (2011-2014) Implementation Plan (or IP3) of NP-SNDD has placed its focus mainly on strengthening D/M/K administrations. At the macro level, the achievements and challenges of NP-SNDD's last four-year implementation plan could be summarized as follows:

The regulatory framework for sub-national democratic development was largely completed and reformed administrative structures and systems have been established and are functioning at all levels of the sub-national administration. Important preparatory work was carried out by several ministries to map out and review the various functions under their mandates in advance of assigning functions to SNAs. The District/Municipal Fund was established and became operational, the Commune/Sangkat Fund continued implementation across the country and preparatory work on establishing the Sub-National Investment Fund (SNIF) was advanced. A separate statute for SNA Personnel was drafted which, when approved as expected in 2015, will enable SNAs to effectively manage their own staff. Finally, a three-year plan for Implementation of the Social Accountability Framework (ISAF), 2015-2017, was designed, field-tested and ready to be rolled out during 2015-2017.

At the micro/district level, the concrete achievements of the past four-year D&D Program Implementation (the first mandate of the newly established D/M/K and P/C councils) could be summarized as follows:

- There is clear evidence that political opposition parties are included in council deliberations. There are representatives of between two to three political parties in every district/municipality/Khan and province/capital. These councils discuss local issues and their differences at their monthly (public) meetings.

- In several D/M/K and P/C, the exercise of authority by the Council in relation to the Board of Governors (BoG)—a system of checks and balance—has been put in place. This is of course very much dependent on leadership style and the commitment of the council leaders, who are mainly from the ruling party.

- In some locations, D/M/K and P/C councils have demonstrated an ability to be autonomous, especially with respect to provincial and national political interference. This is found in a limited number of districts and provinces where support from the national party working group is adequate.[8]

- Different provinces and districts have had different achievements. In some places, provincial and/or municipal/district councils helped mobilize local resources from residents, companies and NGOs for development work. This method of resource mobilization has been apparent in the urban areas, especially in all 12 Khan (i.e., municipalities/cities) in Phnom Penh.

- Mainly through NGO support, there is efficacy of public engagement through the organization of public forums, people's consultations and information dissemination on sub-national roles, duties as well as service delivery and administrative fees. This NGO-local government partnership has helped very much on improved service delivery through promotion of transparency and responsive service delivery.[9]

2. D&D 2015-2017 CHALLENGES AND PRIORITIZED ACTIONS

While the achievements over the past four years have been impressive in laying the foundation for the democratic development reforms, many critical issues remain and are the focus of NP-SNDD Implementation Plan Phase II (IP3-II), 2015-2017. Of primary importance, substantial functions need to be transferred from central ministries to SNAs, along with the associated human and financial resources, bringing service delivery closer to the people who in turn can contribute to improved accountability and performance. The District/Municipal (D/M) Fund needs sufficient financing to enable D/M to contribute to local development through their general mandate and the D/M financial system needs a revision to remove excessive controls and become

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[8] Cambodian political parties, in particular the ruling CPP, nominates specific teams, called working groups, chaired by high-profile party officials to promote their popularity at localities starting from village, to commune, district and provincial levels.

[9] NGOs help to publish service delivery tariffs through loudspeaker announcements, leaflets, placements on whiteboards in front of SNA offices, dissemination through organization of public forum, and workshops etc.

more efficient. The SNIF needs to become operational and own source revenue developed for SNAs. The powers and responsibilities of the SNA Councils and their Board of Governors need further clarification both in regulations and in practice in order for democratic accountability to be reinforced. The Associations of SNA Councils need to develop effective mechanisms to ensure that their collective voice is heard by policy makers and that peer learning around best practices is promoted. Greater interaction and partnerships between SNAs and civil society need to be developed both to promote social accountability and to contribute to local development. Finally, a new strategy for demand-based capacity development (CD) for SNAs that draws upon a wide range of CD service providers within the government, civil society and the private sector needs to be established through provincial resource facilities.

Concretely, there are challenges and corresponding actions recognized by NCDDS that have now been prioritized for this second-phase Implementation Plan (IP3-II) of NP—SNDD:[10]

2.1. Challenges on D&D Policy Process

- At the central level, many centralization-minded people simply believe Cambodia is too small for these types of reforms, causing D&D progress to be very slow. Central ministries believe SNAs have limited capacities and can only carry out their development works with adequate technical support from the centre. Furthermore, there is very limited understanding that SNA councils can perform policy-making functions on their own. In this regard, national ministries have always tried to impose rules, regulations and strict guidelines for SNAs with cascade trainings on those policies and guidelines across the country.

- Policy is viewed by SNAs themselves as a decision, and usually one directed from upper levels of government for SNAs to implement, and not as a set of ideas that combine to address a particular problem raised by their communities for actions from them. As a consequence, all problems and issues raised by their people are mostly consolidated and reported to higher levels, or forgotten without proper responses.

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[10] These challenges were identified and written by Kate Frieson, Min Muny and Nop Phal in their SNA Assessment Report called "Policy Processes of SNA Councils: Achievements, Challenges and Lessons for the Future", July 2014.

- Similar to the situation at the national level, there is very limited understanding that the SNAs' councils can perform policy-making functions on their own. SNA administrations understand that policy formulation is mandated for the national government/ministries: National Level decides policy -> Policy Directive sent to Councils -> SNA Councils wait for guidelines from above -> By laws or policy would then be adopted at sub-national level to implement according to the national guidelines.

2.2. Challenges on SNAs' Staff/System

- **Staffing is skeletal and low on skills**. Since the country has been very centralized and gone through a civil war, competent and capable staff avoided appointments and deployments to rural areas. In many districts, the number of staff on payroll lists are far different from those actually present and carrying out the work. Recruitment systems and annual recruitment exercises are carried out by central ministries, and mostly on "numbers" of staff by ministries rather than by needs and specific (demanded) skills.

- **Despite the fact that there has been effort to delegate human resource (HR) management functions to SNA councils (through Sub-decree 497 on SNA delegated authority over staff management to SNA), implementation of this sub-decree has not been smooth**. Central ministries have not instructed their line offices in the provinces to work with their respective SNAs for identification of solutions to staff shortage, staff absence and incompetent staff, but rather to remain silent and not request for any changes (replacement) to the existing workforce.

- **Capacity of SNA staff is definitely an issue**. As mentioned above, due to war and centralization, competent and capable staff avoided appointments and deployments to rural areas. Another reason for staff not being interested in working in rural provinces and districts is the lack of or limited quality services (in particular, health and education) for themselves and their families. Rural districts' finance staff in particular are lacking skills.

- **SNAs' five-year development plan and three-year rolling investment program are developed, but not implemented**. It should be mentioned that despite the fact that limited resources are channelled to

SNAs, SNAs are required to carry out participatory planning activities and steps, so that all communities are included in the planning process. This participatory planning approach has proven to be very successful during the integration of different fighting factions in the late 1990s. Now, people criticize that discussions on priorities from community and village levels (with 60% of families participating at such discussions) do not provide much benefits due to the fact that only a small budget is given to SNAs.

- **Regular monthly (public) council meetings (which has been noted as the main achievement thus far) are regarded by the public as a symbolic gesture only**. Discussions have been focused very much on clarifications of any works between the council and its board of governors who in response have always tried to pass on responsibilities to others (mostly central ministries).

- **Advanced age, low allowances and limited operational budget**, preventing some councillors from coming to office and being actively involved in public discussions.

Prioritized Actions for 2015-2017 (NP-SNDD IP3-II Document)

NCDD through its NP-SNDD IP3 Phase II (2015-2017) approved document commits that policy development processes will be improved to make them more participatory, to more consistently begin with an analytical phase, to review best practice, and to better identify strategic options. With regard to capacity development, a more demand-driven methodology will be used and SNA Resource Facilities will be established to ensure technical advisors who are paid by a development partner's pool fund are used for capacity development instead of capacity substitution. Councillors will be empowered to decide and act on behalf of their constituents. This will be done through a focus on skills such as communication, consultation, and problem solving, which cannot be acquired through standard training. Through a combination of direct support and sub-contracting, facilities will: (i) mentor and coach, support, advise, provide information, and help with problem solving; (ii) respond to immediate queries and requests for information through IT communications; (iii) facilitate organizational development; (iv) provide training on request; (v)

create regular learning activities across and between peer groups, and, (vi) roll out any necessary training on new legislation or administrative systems.

2.3. Challenges with regard to SNAs' Budget

- Little or no discussion by the respective councils on provincial/district budget formulation because the process requires final endorsement from the Ministry of Economy and Finance (MEF). Councillors viewed that SNA budget formulation had been overruled and approved by MEF, and hence there was no interest to engage in the debates on allocations of this budget for prioritized sectors based on local needs.

- Small amount (only about 0.8% of the national annual domestics revenues for all districts/municipalities, and about 2.8% for commune/ Sangkat administrations)—preventing district/municipality and commune administrations from engaging in promotion of development activities and service provision.

Prioritized Actions for 2015-2017 (NCDD's IP3-II Document)

For 2015-2017, MEF has promised to develop a strategy on SNA fiscal decentralization, including medium-term expectations for SNA revenues and expenditures. Based on the targets found in this document, preliminary estimates of SNA finances can nevertheless be made and reflect a shift of significant resources to SNAs, especially D/M. As documented below the current level of D/M financing (US$16.7 million in 2014) is expected to rise to US$106 million by 2017. This increase is expected to include US$15.9 million in the D/M Fund Development Component; US$65.6 million in conditional grants; and US$3.4 million in own source revenues. Furthermore, MEF will establish Sub-National Investment Facility (SNIF) funding window and will provide US$6 million to district administrations under this new SNIF window during 2016 and 2017. Shared non-tax revenues amongst province and D/M administration will also be discussed in this second phase of NP-SNDD.

Estimated Fiscal Transfers and SNA requirements (in US$ millions) for 2015-2017

ITEM	2014	2015	2016	2017
1. DMs	20.73	19.19	63.40	106.41
1.1. DM Fund	16.70	19.19	30.34	34.32
1.1.1. Administration	11.30	14.50	16.55	18.46
1.1.2. Development	9.43	4.69	13.79	15.86
1.1.2.1. RGC	5.40	4.69	8.27	13.25
1.1.2.2. DPs	4.00	0.00	5.52	2.61
1.2. Conditional Grants	0.00	0.00	28.5	65.60
1.3. Own Source Revenues	0.00	0.00	1.52	3.43
1.4. SNIF	0.00	0.00	3.00	3.00
2. CS Fund	58.58	67.37	77.47	89.09
3. PC budget	158.20	181.93	209.22	240.60
TOTAL	232.08	268.48	350.09	436.10
% contributed by RGC	98.28%	100.00%	98.42%	99.40%

2.4. Challenges on SNAs' Oversight

- Administrative control over SNA is still high, preventing pure legality checking mechanisms from growing—thus not allowing SNA autonomy to grow. Central ministries have regularly sent inspection teams to carry out administrative control over SNA performance. Inspections are frequently conducted, particularly on finance (including procurement and petty cash expenditures) and property management.

- All ministries are still treating SNAs as subordinate and think that SNAs do not have enough capacity to handle matters autonomously. As a consequence, SNAs would rather wait for instructions and do not try to deepen their understanding of the D&D reform program or its relevant policy.

Prioritized Actions for 2015-2017 (NCDD's IP3-II Document)

For these coming years, 2015-2017, NCDD will develop a framework and system of oversight, including legal, regulatory, and strategic instruments, exercised by national authorities with the capacity to enforce them, to replace the current system of administrative control, thereby allowing SNAs to exercise their autonomy and to be accountable for the results of their actions within an overall national framework. Actions will include promotion for increased SNA initiatives and local autonomy in decision making, in developing local

regulations, in the processes used to deliver services and in the management of human and financial resources.

2.5. Challenges on Inclusive and equitable development

▪ Citizens are unaware of their rights or do not see themselves as being empowered to act. Due to a centralized mode of management in the country's history, it has been difficult to promote people's rights and obligations for their active participation in local development and democratic development. They prefer listening to questioning and seeking clarification of authorities.

▪ Poor people do not have the time and resources to participate. In most cases, marginalized and vulnerable groups of communities are more concerned with their daily livelihood activities rather than with getting involved in local development and governance processes. Furthermore, there is little effort from local authorities in enabling their participation (such as creating friendly, conducive and convenient meeting places or outreach meetings, incentive scheme and/or allowing for longer time-spans for their decision-making).

▪ Inclusive and equitable development approaches are good on paper, but lack the means (mechanisms and resources) to be implemented. Literally, RGC's NP-SNDD aims to promote democratic, inclusive and equitable development by strengthening Sub-National Administrations, and despite the fact that it has produced many good, relevant policies (for example the Social Accountability Framework or ISAF, 2015-2017), implementations have been hampered by lack of resources and appropriate mechanisms.

▪ The government sees CSOs as a threat rather than means to the solutions. With a loss of 22 parliamentary seats to the coalition opposition party that has a background as an NGO in the 2013 general elections, the government is now seen by many as tightening its control over NGOs (through 2014 NGO Law adoption).

Prioritized Actions for 2015-2017 (NCDD's IP3-II Document)

Recognizing its weaknesses on promotion of inclusive and equitable development, NCDD has prioritized the following actions during 2015-2017:

- Ensure that the voices of women members of SNA councils, Board of Governors (BoG) and staff are well represented in the review of roles and budgets of P/C and D/M/K and representation of SNA Councils to the NCDD and its Secretariat on how reforms can be better designed and implemented;

- Develop and approve D/M Charters which will encourage councils to discuss and include issues concerning social equity and inclusiveness to ensure that service delivery is planned and implemented in an equitable manner; the Charter Development Facilitation Kit will be prepared for council mentors to work with the respective councils throughout this period;[11]

- Ministry of Women Affairs (MoWA), as well as NGOs which have been actively promoting and supporting gender equality, women's empowerment and social equity at the C/S level, will be invited to participate in the preparation of the facilitation kit;

- Ensure that the decision-making processes of SNAs provide opportunities for a broad range of voices to be heard, including those from women, children and disadvantaged groups;

- Advocate for representatives of CSO/NGOs to be represented in the SNA council committees for women's and children's affairs.

3. CONCLUSION

The decentralization reform program in Cambodia has been implemented nation-wide since 2002. Decentralization policies and programs have been well developed and are still being developed. These key reform policies included:

- Strategic Framework on D&D (2005);

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[11] NCDD has already launched D/M Charter Development Process Guide and Samples in September 2015.

- Law on C/S Administrative Management (2001);

- Law on C/S Council Election (2001);

- Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans (2008);

- Law on the Election of Council of Capital, Provinces, Municipalities, Districts and Khans (2008);

- The 10-Year National Program for Sub-National Democratic Development (NP-SNDD, 2010);

- Three-Year Implementation Plans of NP-SNDD Phase I (2011-2013), its 1-year Extension (2014), and Phase II (2015-2017)—called IP3-I and IP3-II;

- Law on Financial Regime and Property Management of Sub-National Administrations (2011); and

- Hundreds of necessary regulatory instruments (sub-decrees, circulars, decisions, guidelines, operational and technical manuals) to serve the implementation of the above laws.

In conclusion, Cambodia has implemented decentralization reform under a "slowly, but surely" approach. This notion could be found in all the above-mentioned laws and policies. To implement these laws, the relevant supporting legislation will have to be produced. This means that if no consensus or agreement is reached by national ministries during the implementation process, the laws are enacted very slowly. A concrete example is the requirement to produce the relevant law to decentralize functions on local own-source revenue collection. To date and after over ten years of decentralization program implementation, no own-source revenue law has been formulated.

Below are two cases to demonstrate progress and this notion of a "slowly, but surely approach". They are real cases gathered directly by the author during his work for NCDD and an international NGO called ChildFund Cambodia.

Examples: "Turning Words into Actions" under NP-SNDD

Case Study 1: Rural Sanitation Function Assignment to Sub-National Administration (district)

The Ministry of Rural Development (MRD) is the mandated institution on rural sanitation functions and has been operating/performing this function through its provincial line departments on rural sanitation planning and implementation of relevant activities, which include:

    a.   Latrine constructions at household, village and commune levels;

    b.   Dissemination and education on sanitary food, water consumption and living, and other relevant tasks on health education;

    c.   Public dissemination on rural sanitation and promotion of standards in working procedures between health centres (HC) and community; and

    d.   Promotion of the community's participation and awareness of their practices concerned with health and sanitation and provision of assistance to the community in community health planning.

The National Strategic Plan for Rural Water Supply, Sanitation and Hygiene 2014-25 (NSP-RWSSH) aims for universal access by 2025. Given the scale of the problem and the slow acceleration rate of rural sanitation in the past, which has been at an annual rate of 1% (now reached a national average of 38%), NSP-RWSSH recognizes the strategic opportunity to embark on the wider government's agenda on decentralization and deconcentration as part of strengthening institutional arrangement and improving local service delivery for rural sanitation.

On the decentralization reform, IP3-II of NP-SNDD has set functional transfer of line ministries to SNAs accompanied with human and financial resources a top priority. Therefore and in a response to achieving RGC's 2014-2025 NSP-RWSSH and IP3-II priority, MRD and the National Committee for Sub-National Democratic Development (NCDD) with technical and financial support from the World Bank's Water and Sanitation Program (WSP) has developed a technical assistance (TA) project on decentralized rural sanitation service delivery (DRSSD) for 2015-2016 to be implemented and tested in ten rural districts in two provinces (out of 159 rural districts in Cambodia).

For this functional transfer testing, MRD signed Prakas or Circular on Delegation of Rural Sanitation Function (the above activities of rural sanitation) to ten districts on 16 July 2015. Subsequently, all ten target districts signed an MOU with MRD on 27 July 2015 for MRD's resource transfer of US$350 per pilot district for 2015 (out of their 2015 total budget for rural health care and sanitation of US$560,000).

To ensure this testing works, the WSP (of the World Bank) has granted about US$500,000 for 1.5 years to SNV to support and gather lessons for scaling up beyond 2016. Now, SNV has to have the appropriate capacity building strategy and implementation approach for the districts to mobilize additional resources for the implementation of sanitation- and hygiene-related activities (which have been delegated by MRD). The first source of fund could be that the districts agree to allocate their own development fund (which is discretionary and amount to about US$30,000) to accelerate the sanitation coverage rate in their localities.

The below table explains the sanitation situation in the ten pilot districts:

Province	District	Poverty Rate 2013	# Poor HHs (2013)	# HHs (2013)	% HH without latrine	# HH without latrine
Kampong Speu	Basedth	24.45	7090	28993	85%	24644
	Kong Pisei	22.37	5783	25849	65%	16802
	Aoral	31.85	2431	7634	84%	6413
	Odongk	22.84	5785	25326	69%	17475
	Thpong	27.73	3327	12000	83%	9960
Thbong Khmum	Dambae	19.34	3337	17249	78%	13454
	Tboung Khmum	13.41	5800	43247	70%	30273
	Memot	15.41	4812	31224	68%	21232
	Ou Reang Ov	16.36	3260	19922	74%	14742
	Ponhea Kraek	15.43	4942	32036	69%	22105

Source: 2014 IDPoor Database.

It should be noted that this delegation pilot on rural sanitation function transfer to the ten districts does not only aim to promote sanitation (more latrines

are constructed in a faster manner) and hygiene situation in 2015 and 2016, but also has the following objectives:

- Test obligatory functional transfer on rural sanitation to sub-national administrations.

- Test funding mechanism, track funding flows from all sources and identify effective ways to manage conditional grants and other on-budget funding for rural sanitation.

- Capture lessons learnt for inputs into policy/strategy for scaling up beyond 2016.

In this respect, the government has formed a Joint Technical Working Group (JTWG), composed of officials from MRD, Ministry of Economy and Finance (MEF) and the Secretariat of NCDD. The primary tasks of this JTWG are to guide, facilitate, M&E as well as gather lessons and experiences from this pilot for further decision-making on this rural sanitation function and resource transfer.

Case Study 2: Promotion of Inclusive and Equitable Development

Any attempt to promote service delivery and inclusive and equitable development has to be simple and practical, and at the community's level. Below are some possible actions through D&D to be considered:

- Community needs and priorities are identified and responsively addressed through participatory planning process and partnership actions/agreements of SNAs, CSOs, and Private Sector. Social accountability tools such as public forums, peace table dialogues, public-private partnership events and public hearings (consultations) are essential and should be applied.

- SNAs' investment programs reflect and responsively address the priorities, including NRM development priorities, social development priorities and local economic development priorities and other priorities.

- CSO and community members are empowered and coached to monitor and rate SNAs' performance on local public service delivery, using community score card, citizen rating report or social audit.

- Promotion of good practices of people's participation in decision-making and governance processes. Efforts to promote people's participation should place strong focus on all the social community's groups, in particular women, children, youths, indigenous and other disadvantaged groups.

Youth Development Program through D&D

Cambodia has one of the highest youth populations in Southeast Asia, with one in three Cambodians with ages between 15-29 years and two-thirds of the population below the age of 29. The Royal Government of Cambodia's (RGC) National Youth Policy 2011 aims to address the specific needs of young people, defined as age 15-30 years, in the areas of health, education, participation, employment and well-being. Youth literacy rates among 15-24 year olds has increased to 91.5% in 2011; however enrolment and completion rates in upper secondary schools, 27.4% and 27.8% respectively, remain worrying low.

Furthermore, the rural areas in Cambodia have undergone rapid out-migration in the last decade, and three-quarters of all internal migrants, estimated at 2.5 million, in Cambodia are youths between the ages of 15 and 29 years. Poverty and lack of job opportunity in the rural area have been ticked as the major causes for this migration.

Youths in Rural District, Romeas Hek, Svay Rieng Province

The poverty rate is still high in Romeas Heak district, with 25% of the households classified as poor according to the 2012 ID Poor Survey. Youth members in this district still have limited access to life skills knowledge, vocational skills training, new agriculture techniques and modern technology such as computers and the internet. The lack of sporting facilities and positive social opportunities has been linked with negative health and social behaviours. Youths who drop out of school often go to work in factories, migrate as unskilled labour to work in Phnom Penh or other countries and/or find work with companies in the agriculture sector, leaving them vulnerable to exploitation. Furthermore youths are still not fully recognized as having a voice nor do they participate in matters that concern them in their families and communities.

Responses to Youth Needs—Youth Club

Youth clubs have been established at seven communes through the support of an NGO called ChildFund Cambodia during the last five years. In each commune Youth Club there are about thirty youths. The main reasons for youths to join the clubs are their desire to increase their knowledge, skills and experience as well as to participate and assist with developing their community.

Brief Activities and Results:

Youths received a wide range of training courses and awareness-raising activities. Training courses include Integrated Pest Management (IPM) on organic fertilizer and compost, rice production, vegetable growing, mushroom growing, fish, chicken and pig raising as well as earthworm and cricket raising. Other key income-generating activity topics included small business plan and marketing concepts, with sessions on business cycles, entrepreneurship, bookkeeping, costing and pricing, marketing mix and marketing research and

planning. Domestic violence, birth registration, traditional music, tailoring/sewing, safe migration, children rights, facilitation skills and leadership were also training topics provided to youth clubs.

740 youths trained in income generation activities and 60% are able to earn a liveable income with more than US$60 per month.

Most of the youth participants who attended the awareness raising activities shared the knowledge they acquired with their family members and friends. Youths played an effective role in sharing and disseminating to other groups (in particular, parents and children) in the community partly because they had better knowledge and were trained in various relevant skills. They also passed on knowledge to their peers and other members of the community through drama performance during traditional festivities.

Youths are recognized by their elected Commune Council and Commune Council Committee in Charge for Women and Children's Affairs (CCWC) as having more knowledge and better education levels in the community, and with their means of communication and commitment to support the Commune Council and CCWC, they helped fill the information gap in the community.

Youth clubs have played significant roles assisting the commune councils and their CCWC in their works. This includes the promotion of the community voices' participation in the local development process, in commune-village safety program implementation and in becoming an effective community feedback mechanism. In return, youth clubs' representatives have learned about local administration work and some now see it as their future careers. Now, there is a lot of improvement in public service delivery as well as accountability and transparency at the commune level.

As demonstrated in this case, district and commune administration can work closely with social groups very effectively. Therefore, the remaining questions are how to support and enable all district and commune administration to expand this approach of inclusiveness in their planning, financing and governance processes to other marginalized and vulnerable groups such as people with disabilities, indigenous groups, women-headed households, children, farmer associations, religious groups and others.

D&D	Decentralization & Decentralization
BoG	Board of Governors
C/S	Commune/Sangkat
C/S Fund	Commune/Sangkat Fund
CBOs	Community Based Organization
CCWC	Women and Children's Affairs
CD	Capacity development
CPP	Cambodian People party
D/M/K	District/Municipality/ Khan
DRSSD	Decentralized rural sanitation service delivery
HC	Health Centers
HR	Human Resource
IOs	International Organization
IP3	Implementation Plan Phase II
IPM	Integrated Pest Management
ISAF	Implementation of the Social Accountability Framework
JTWG	Joint Technical Working Group
KR	Khmer Rouge
MDG	Millennium Development Goals
MEF	The Ministry of Economy and Finance
MRD	The Ministry of Rural Development
NCDD	Sub-National Democratic Development
NGOs	Non-Government Organization
NP-SNDD	Sub-National Democratic Development
NSP-RWSSH	The National Strategic Plan for Rural Water Supply, Sanitation and Hygiene
P/C	Capital/Province
PR	Party representation
SD	Service delivery
SNA	Sub-National Administrations
SNIF	Sub-National Investment Fund
TA	Technical assistance
VDC	Village Development Committee
WSP	Water and Sanitation Program

Feckless Federalism in Malaysia

William Case

Unusually among countries in East Asia, Malaysia has organized relations between its central and state-level governments along federalist lines. It has not been motivated to do this, however, by any standard considerations. Malaysia is divided spatially between mainland and Borneo territories. But the country is not large, containing only thirteen states and a population of some 30 million. Hence, it needs no federalist scaffolding to aid in the administration of extensive and far flung localities. In addition, Malaysia is ethnically diverse. But its principal ethno-religious communities, constructed locally as Malays and "non-Malays", though in some degree still adhering respectively to rural and town-dwelling patterns, are interspersed throughout the country. Accordingly, no federalist delineation, unless de-territorialized in corporatist ways, would aid in protecting the identities and interests of social minorities. Finally, Malaysia has gained a reputation for devising, if not always implementing, innovative solutions to policy challenges, especially in connection with managing economic crises or canvassing various reforms. But in doing this, the central government has either taken the lead in planning or contracted foreign consultants. Thus, little experimentation has been conducted by state-level governments within the natural "laboratories" that under federalism their states might provide.

In the analysis below, we begin with questions over why, in the absence of "normal" incentives, Malaysia has adopted—and perpetuated—a federalist form of political organization. As we will see, the answer begins with the country's historical legacies and its "divided" but ethnically interspersed social structure. Next, even if federalism has persisted in Malaysia, how much substance does it really possess? Even a cursory assessment demonstrates that federalism in Malaysia is highly centralized, with most powers over important areas of policy making and revenue raising held by the central government. It is for this reason, then, that federalism as we find it in Malaysia is conceptualized as "feckless." Even so, notwithstanding the near vacuity of Malaysia's federalism, its terms do vary across states, providing different amounts of autonomy. At the heart of this essay, then, a taxonomy is developed through which to explore these dynamics. Finally, attention turns to questions about

the links between federalism and democracy. Though assumptions are commonly made that one arrangement leads to the other, or even that they are mutually reinforcing, more experienced analysts know better. And their fears are borne out by Malaysia's record. Just as federalism in Malaysia does little to encourage decentralization, so does it fail to promote democratic change. Indeed, it may be that federalism in this country case sooner buttresses a particular form of authoritarian rule. What lessons, then, can Malaysia's experience with federalism hold for the Philippines? Very few—unless one is seeking new ways in which to tame the prowess of provincial strongmen, replacing arbitrary bossism with better institutionalized but feckless federalism.

WHY IS MALAYSIA A FEDERATION?

Malaysia possesses the only polity in East Asia that can be conceptualized as federalist—lest one understands the region as encompassing Russia and Australia. To be sure, other countries more centrally located in East Asia have sometimes been assessed through federalist lenses, including Japan and mainland China with the latter's "two systems" approach to Hong Kong. But as Takashi Inoguchi conceded, Japan at most possesses "quasi-federalist" traditions.[1] And as Baogang He observes, Hong Kong's autonomy over many areas of policy making—and indeed, over the institutional design of its own electoral system—has grown increasingly constrained during the years since the handover, with its constitution, the Basic Law, freely reinterpreted by the National People's Congress in Beijing.[2] We begin by asking, then, why Malaysia, alone among the countries of East Asia, has adopted federalist forms, even if limited in substance? This configuration would seem particularly unlikely given the government's strongly centralizing preferences.

A first reason involves historical legacies. With the appearance of Islam in maritime Southeast Asia, sultanates began to form at strategic river mouths and junctions in the Malayan peninsula, overseen by what have come over time to be denominated as the Malay Rulers, a term that encompasses sultans, rajas, and other royal potentates. The Sultanate of Kedah, in tracing its origins

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[1]   Takashi Inoguchi, "Federal Traditions and Quasi-federalism in Japan", in Baogang He, Brian Galligan and Takashi Inoguchi, eds., *Federalism in Asia* (Cheltenham: Edward Elgar, 2007), pp. 266-289.

[2]   Baogang He, "Democratization and Federalization in Asia", in *Federalism in Asia*, pp. 17-18.

to the twelfth century, is probably the country's oldest. During a century or so of British colonialism, the Rulers survived, with the British even celebrating their sovereignty through pageantry, palaces, and financial allowances. To be sure, the Rulers functioned in large measure as window dressing, fronting the British "Residents" or "Agents" who, through a deceptive approach to dominance of indirect rule, set substantive policy directions in the states to which they were appointed.[3] Yet the Rulers did retain control over religious affairs and cultural matters in their states. And after the British were expelled during the Second World War, the Japanese treated the Rulers accommodatively. Today, nine Malay Rulers remain in Malaysia. And importantly for our analysis, state borders in the country, at least on the peninsula, have approximated the sultanates' territorial dimensions. In these circumstances, states remain as important incubators and markers of the multi-tiered identities of ethnic Malay today. Loyalties to their respective Rulers and states of origin remain potent for many Malays, gaining reinforcement through distinctive regional dialects and inter-state rivalries. Malays from the states of Kelantan in the peninsula's northeast and from Johor in the south exhibit especially pronounced state-based identities and outlooks.[4]

But of course Indonesia also featured royal potentates. And so too did the Philippines. Yet in the first case, only those in Yogyakarta survive in any meaningful way, a legacy of the Yogya Sultan's supporting the struggle for independence against the Dutch, therein enabling his descendants to retain a lasting popular affection. Further, though in the Philippines contending Sultans still echo their claims over vanished sultanates, once embracing scattered territories in Sulu archipelago and Sabah, they are taken seriously by few today. So why, when royal potentates have nearly disappeared in Indonesia and the Philippines, have the Rulers and their state-level bailiwicks so endured in Malaysia? It is here that we might turn to the second part of our explanation for federalism in Malaysia, the country's distinctive social structure.

Malaysia has long been characterized as a plural, divided, or even bi-polar society, a posture emanating from the extractive industries and labour migra-

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[3] Rupert Emerson, *Malaysia: A Study in Direct and Indirect Rule* (New York: Macmillan, 1937).

[4] Francis Hutchinson, "(De)centralization and the Missing Middle in Indonesia and Malaysia", ISEAS-Yusof Ishak Institute Economics Working Paper, no. 2015-2, 2015, p. 27.

tion practices by which the British once operated their colonial economy.[5] In brief, in seeking to perpetuate rural patterns of authority and economic relations, the British preserved the customary powers of the Malay Rulers and the village-level occupations of ordinary Malays, confining the community to rice-growing, fishing, and smallholding. At the same time, in developing tin mining and rubber plantations during the final quarter of the 19th century and up until the advent of the global depression during the 20th, the British recruited large numbers of Chinese labourers from the mainland and Indians from the southern states. And though the British imagined these migrants as sojourners, keen to return to their homelands at the end of their work lives, many instead remained in Malaya, gravitating into urban artisanry, commodities trading, retailing, and money-lending. Indeed, through rubber-trading, rice-milling, shipping and finance, a few became powerful business magnates, enabling them to assert new standing in their community through wealth accumulation and philanthropy. A crude, but in many respects valid, dichotomy can thus be sketched, involving pyramidal formations of rural Malays on one side and Chinese and to a lesser degree Indians on the other.

During the three-and-a-half years of Japanese occupation during the Second World War, this dichotomy was strengthened. Malay Sultans retained their statuses and palaces. Malay aristocrats gained promotion in the civil service, replacing British officials. And ordinary Malays remained mostly undisturbed in their rural pursuits. The Chinese, by contrast, were generally treated harshly, in retaliation for the resistance mounted by their compatriots on the mainland. Some Chinese reacted, then, by mounting a guerrilla insurgency which, while making few strategic gains, infused the community with militant resolve.

After the war, the British returned. And in seeking to punish the Malays for their perceived collaboration, the British proposed to weaken the Rulers. And indeed, the Rulers even humbly agreed to surrender sovereignty to the British crown in Kuala Lumpur. At the same time, to reward the Chinese, the British proposed to grant them equal citizenship under a new governing arrangement that they christened the Malayan Union. But at this point, the Malays were suddenly galvanized. Representing themselves as indigenous and sovereign, they demanded that while non-Malays might be given citizenship,

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[5]   J.S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (Cambridge: Cambridge University Press, 1948); Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).

their own "special rights" must be respected, giving them priority in govern-
ment hiring and contracts, for example, and asserting the cultural supremacy
of the Malay language and Islam. As their resentments surged, the commu-
nity's aristocrats brought sundry Malay associations together to forge a broad
new social movement, soon to become a political party, that they labelled the
United Malays National Organization (UMNO). They also drew support
from Malayan "old hands", retired colonial officials who, in recalling pre-War
understandings, lobbied influentially to renew them. In this situation, the
British relented, enabling the Rulers to gain veto power over constitutional
amendments and ordinary Malays to claim their communally-defined special
rights. Thus, the Malayan Union scheme was supplanted by the Federation
of Malaya agreement, its terms formally recorded at independence a decade
later in the 1957 Constitution. In this way, historic sultanates evolved into
modern state entities. And because of the persistence of the sultans, and at
the insistence of their respective Malay constituencies, their new state-level
governments would retain some measure of political and administrative au-
tonomy. Meanwhile, many embittered Chinese withdrew to the hinterland to
reactivate their guerrilla insurgency, further polarizing relations and rigidify-
ing the country's communal dichotomy.

In sum, the origins of federalism can first be traced in Malaysia to his-
torical legacies, specifically, the long-time presence of the Rulers and their
territorial sultanates. But secondly, it has been concretized in the country's
unique social structure, made manifest in a dyad wherein the indigenous
Malays, far from seeking political liberation in a new republic—as social
forces did in Indonesia and the Philippines—sought reassurance over their
identity and claims to birthright through the preservation of traditional mon-
archies. In collective reaction, the Chinese voiced their resentments over their
"second class" citizenship. In addition, since independence, the initial terms
that the Chinese were handed have been worsened by a systematic and deeply
penetrative institutionalization of affirmative action programs favouring the
Malays. Gathered generally under the rubric of the New Economic Policy
(NEP).[6] These programs have come heavily to skew the distribution of public
and private sector employment and benefits, university places, ownership quo-
tas on business and equity stakes, and even discounted loans on homes and
cars. Amid sharp tensions, then, popularly framed in terms of "the Malays

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6   K.S. Jomo, "Whither Malaysia's New Economic Policy", *Pacific Affairs* 64(4), 1990-1991, pp.
469-499.

vs. the non-Malays", Donald Horowitz has famously designated the country's ethnic relations as "bi-polar" in their dynamics and tensions. However, though regarded by Horowitz as episodically explosive, this configuration has, in prompting the Malays to cling to their state-level identities and notions of traditional authority, formed a uniquely enduring basis for federalism. Added reinforcement derives from simple institutional continuities, stemming from decisional junctures, encrusted political trajectories, and the closure of side routes to a fully unitary alternative. We will also see that because federalism, as it is practiced in Malaysia, lends functionality to a particular kind of authoritarian rule, UMNO has cultivated and made use of it.

This section can be concluded by returning briefly to Indonesia, a natural comparator that highlights the uniqueness of Malaysia's federalist experience in the region. In Indonesia, independence leaders rejected Dutch colonial advice over federalism. They chose instead to institute a unitary system. In Malaysia, independence leaders rejected British advice over a unitary government. Instead, for the historical and structural reasons outlined above, they instituted a federalist system. The contrast between these cases—and indeed, the overall anomalousness of Malaysia—is striking. But how substantive, really, is the federalist power-sharing that Malaysia undertakes? A question to which we now turn.

THE TERMS OF FECKLESS FEDERALISM

In addressing the distribution of power, we are cautioned upon learning that the Constitution of 1957 was modelled initially on the Government of India Act (1935), which was based in turn on the British North America Act (1867). Thus, from the start, federalism in Malaysia was characterized "by a high degree of centralization."[7] And over time, the terms of power-sharing have been tightened. In particular, while under the Federation of Malaya agreement, concluded in 1948, residual powers were left to the states, these powers were reallocated under the Federation of Malaysia Act of 1963 to the central government. Imbalances in revenue flows grew steeper too. Jomo and Wee observe that between 1985 and 1999, the central government's revenue

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[7]   Ronald L. Watts, *Comparing Federal Systems* (Montreal and Kingston: McGill-Queen's University Press), p. 28.

increased from four times the consolidated state-level government revenues to seven times.[8]

Accordingly, federalism in Malaysia must first be understood as feckless. But in demonstrating this, it is unnecessary for us to rehearse exhaustively the extent of power sharing as it has evolved in the country. Such enumeration of respective powers has often been undertaken, most recently by Francis Loh.[9] But to review briefly, we start by noting that the powers of the central and state-level government are specified in the 9th Schedule of the 1957 Constitution. We find that under the Constitution's highly centralized form of federalism, the federal government seizes the lion's share of policy-making powers and prerogatives. This includes all control over foreign relations, diplomatic affairs, and cross-national policy negotiation. It includes authority too over all macro-economic policy settings and high-level economic planning and initiatives. State-level governments do operate State Economic Development Corporations (SEDC), charged with "catalyzing their respective economies." But the Ministry of Public Enterprises, a federal entity, possesses "wide-ranging supervisory powers."[10]

Full control over immigration, at least for the peninsular states, is also exercised by the central government. To be sure, as part of the agreement by which the East Malaysian states of Sabah and Sarawak, at the urging of the rapidly departing British, finally entered the federation in 1963, they were ceded control over local immigration. This was meant to reassure the many indigenous groups in these states, in particular, the mostly Christian Kadazan-Dusun in Sabah and the Iban in Sarawak, that they would not be swamped by newcomers, endangering their statuses and livelihoods. But over time, state-level governments have come mostly to invoke immigration controls at the urging of the central government. They seem most commonly used, then, to bar entry by opposition politicians from the peninsula, as well as civil society activists and environmentalists, whether from the peninsula or Western countries. By contrast, where the central government finds it politically

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[8] K.S. Jomo and Wee Ching Hui, *The Political Economy of Malaysian Federalism: Economic Development, Public Policy, and Conflict Containment* (United Nationals University, World Instituet for Development Economics Research, Discussion Paper No. 2002/113, p. 29.

[9] Francis Loh Kok Wah, "Centralized Federalism in Malaysia: Is Change in the Offing", in Meredith Weiss, ed., *Routledge Handbook of Contemporary Malaysia* (Oxford-New York: Routledge), pp. 72-82.

[10] Hutchinson, p. 14.

expedient, we will see too that in connivance with state-level governments that it promotes, it has sometimes ignored state boundaries and immigration controls, turning a blind eye to, or even tacitly encouraging, large influxes of Muslim migrants in order to erode the majorities of indigenous groups.

On this count, we see that the central government also retains control over the granting and withdrawing of citizenship, a key prerogative that has enabled it to modulate the numbers and statuses of different ethnic groups. And when challenges crop up against its policy making in any sphere, the central government responds through a vast judicial pyramid. Though separate court systems are articulated on the peninsula and in the East Malaysia, cases percolate up through the many Sessions and Magistrate's courts to the High Court of Malaya and the High Court of Sabah and Sarawak. But they converge in the Court of Appeals, then the Federal Court at the pyramid's apex. But however articulated, many observers lament the steep erosion of judicial independence in Malaysia, with the judges, justices, and magistrates overseeing political cases nearly always anticipating the preferences and bending to the will of UMNO, especially at the topmost federal level. Muscle is then provided by a Royal Malaysian Police, a vast apparatus that radiates from the centre and, on political matters, such as the arrest of dissidents and the control of protests, operates in close collaboration with UMNO.

In addition, the central government sets major policy directions for, and retains veto power over, almost all facets of social development policy. Vast federal bureaucracies have thus been set up to structure and control the national education system and its curriculum, from primary school up through the country's publicly funded universities. To be sure, an array of private schools, technical colleges, and even a few specialist universities exists. But these entities cater disproportionately to non-Malay aspirants who fail to gain places in public institutions, as well as foreigners, predominantly from Indonesia and the Middle East, who flock to Malaysia's affordable educational "hub." Further, these parallel systems demonstrate little correlation with federalist power-sharing. In addition, the central government controls, and ensures acceptable standards in, the country's national health care service, operating an extensive network of clinics and hospitals. Again, private clinics and hospitals abound, but do nothing to augment the policy making prerogatives of state-level governments. Finally, labour is regulated exclusively by the central government, with federal ministry officials negotiating with, or dictating to, public sector unions over conditions and wages. Even in private

markets the central government remains influential, using its engagement with foreign investors and its powers to set up free trade zones to undercut wage demands.

So what powers might be left to state-level governments? In what policy areas can state-level governments act with immunity from the centre's penetrative interference, the litmus test of even feckless federalism? Importantly, state-level governments retain power over land usage in their states, in keeping with a logic that originated in territorially-based sultanates. And in a few states on the peninsula, but more prominently in Sabah and Sarawak, state-level governments, through their regulatory control over land, gain access to rich resource endowments, encouraging extractive industries in agriculture, forestry, and mining. Hence, in states like these, federalism appears at last to gain substance. However, as it is practiced in Malaysia, the normative and material implications of this are doubtful, bearing negative lessons for the Philippines. Put simply, state-level governments have tended ruthlessly to push indigenous peoples aside in order to carve up their territories into timber concessions, then, after clear cutting, allocating land for oil palm plantations. Further, in return for granting land, almost always to locally-connected contactors, state-level governments typically take payments, useful for financing reelection campaigns and personal high-living, therein perpetuating at the state level pernicious forms of "money politics". In this way too, indigenous land-holding patterns and natural environments have been despoiled. And the country's dependence on commodity exports has been perpetuated, stunting its economic development.

Before leaving questions about policy making and turning to revenue raising, we briefly take note of the Rulers and the vast Islamic bureaucracies that each of their states has come to operate.[11] As Islamic sentiments have deepened in Malaysia over the last three decades or so, the importance of control over religion and culture for setting policy directions and mobilizing Malay followings has grown. Mufti and other top Muslim officials are appointed by the Rulers. And the mosques operated by these officials have turned into important platforms from which to activate the umat, sometimes in support of the opposition. In turn, federal authorities have pressured state-level officials to tighten surveillance. But they have mostly been prevented by the Constitution from purging these officials outright. Islam, then, though

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[11] Patricia Martinez, "The Islamic State or the State of Islam in Malaysia", *Contemporary Southeast Asia* 12(1), 2001.

increasingly uniform in its Sunni content, with a vigorous persecution of a tiny Shiite minority and other "deviant sects" underway in Malaysia, provides a small state-level bulwark against the central government's encroachment.

Let us turn now to questions over the autonomy that state-level governments might derive through their capacity to independently raise revenue. How free are states in Malaysia to do this? The 10th Schedule of the 1957 Constitution cedes little scope, specifying clearly that the government hold a monopoly on direct taxation, that is, all income, corporate, and capital gains tax. State-level governments are only able to tap into a small range of indirect taxes and export duties. They are able to augment this through the local regulatory powers that they retain, enabling them to charge for the issuance of various licenses and permits. Additionally, states with natural resources can generate still more revenue through their timber concessions, plantation schemes, and oil and gas production. But as we will see, the central government is able to limit these activities when politically expedient. In particular, as oil and gas production began to increase during the 1970s, the central government passed the Petroleum Act of 1974, enabling it to lay claim to most of the drilling profits, then share most of what remains with its foreign partners, Esso and Shell. Only a paltry five percent "royalty" payment is made to producer states—Sabah, Sarawak, Terengganu, and Kelantan—though even this, as will be shown, can be taken away.

How, then, do state-level governments in Malaysia gain the funding necessary for operating their bureaucratic apparatuses and delivering essential services? Article 108 of the Constitution requires that the central government provide an annual capitation grant to each state, with the amount determined by consultations held in the National Finance Council between the prime minister, several federal ministers, and one representative from each of the state-level governments.[12] Selangor and Johor, two of the largest and most developed states in the federation and, historically, strongly supportive of the UMNO-led Barisan government, have received the largest amounts of grant funding. But as noted below, state-level governments that fall to the opposition in elections, even when small and comparatively poor, risk having their funding cut or delayed. Other transfers involve tax-sharing grants and item-specific grants, like road building and maintenance. But these too can

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[12]   K.S. Jomo and Wee Ching Hui, "The Political Economy of Petroleum Revenue under Malaysian Federalism", paper presented to the Human Rights and Oil in Southeast Asia and Africa Workshop, University of California at Berkeley, January 31, 2003, p. 28.

be modulated by the central government. In consequence, revenue raising in Malaysia must be assessed overall as highly paternalist and conditional, further eroding the substance of federalism.

VARIATIONS IN FECKLESSNESS

Malaysia's political regime is frequently cast as a single-party dominant system. And the party that dominates, from independence until today, is UMNO. Over time, availed of its redistributive rationale, it has become a vast and deeply institutionalized patronage machine. It has thus fused closely with the federal and in most cases state-level bureaucracies, as well as with government-linked corporations (GLCs), enabling it readily to access state funds and assets. It then dispenses budgets and contracts to party members, with topmost figures posing as "trustees". Contracts for infrastructure development and major services are also dispensed to corporate allies, therein fostering close loyalties, reciprocity, and returns.

In this context of single-party dominance, federalism in Malaysia has been feckless. But the terms of federalism do vary, with UMNO's reach across states unevenly spread. Accordingly, some state-level governments are able to act with greater autonomy than others. Even so, where they "go too far", they may be sharply reined in, or even replaced, with the central government resorting to a variety of financial and coercive techniques.

In this section, I develop a four-cell taxonomy in order to capture the broad postures that relations between the central and state-level government can take. At base, it is the extent to which the central and state-level governments are aligned in party composition and policy agendas that is determinative. In brief, in states where UMNO penetrates deeply, relations between the centre and the states are seamless, leaving the extent of federalist power-sharing untested. In states where UMNO depends on a different but cooperative party to rule, federalism grows more substantive. And in states where opposition parties hold power, autonomy may seem initially to surge. But the fecklessness of federalism is usually made plain, with state-level governments systematically constrained in their policy making or even ousted from office. Let us explore these distinct sets of outcomes across the Malaysian federation and over time.

"Telescope" Federalism

In all eleven states on Peninsular Malaysia except one, Penang, ethnic Malays form a majority. In these states, then, two major parties have historically competed for their loyalties, UMNO and its rival, the Pan-Malaysia Islamic Party (PAS). UMNO is greatly advantaged in this competition by the single-party dominant system that it operates, enabling it to manipulate elections in multiple ways. PAS, in turn, though dispensing potent Islamist imagery, has usually found that its appeals are limited in their resonance to rural Malay populations in the north and east, traditionally regarded as the "Malay states", more recently as the "Koran belt". PAS's call has gained most resonance, then, in the state of Kelantan, where the party has ruled since 1990, and occasionally in neighbouring Terengganu. But with UMNO then forming the central government and most state-level governments across the rest of the peninsula, it has penetrated deeply into local policy making and administrative apparatuses. Ranging from north to south, these dynamics have historically adhered in Perlis, Kedah, Perak, Selangor (until the 2008 election), Pahang, Negeri Sembilan, Malacca, and Johor.

Chief ministers in these states (known by the Malay term "menteri besar" or "MB", except in Penang and Malacca, distinctive in their former designation as British crown colonies) convene executive councils (Exco), the core of state-level governments. At the same time, chief ministers serve as UMNO state liaison chiefs, evoking the fusion between their roles at the state level and in the party. What is more, though they are officially elected by their respective state assemblies, then given approval by the state's Ruler, they have in fact been chosen beforehand by the UMNO president, who serves in a nearly ex officio capacity as Malaysia's prime minister.

In rare instances, resistance has set in, with the Ruler refusing to accept, or to cooperate with, the UMNO prime minister's favoured candidate for chief minister. After the ruling coalition's grave electoral setback in 2008, a much-weakened prime minister, Abdullah Badawi, found his choices rejected by the Rulers and local UMNO leaders in two states, an outcome in which he unprecedentedly acquiesced, doubtless helping to pave the way for his ouster by the party a year later. But much more generally, relations between the central and state-level governments are seamless. The central government makes known its favoured appointees and priorities. It then delivers grants and other revenues in full and on time. In turn, state-level officials act on the central government's policies and programs. Recruited heavily from UMNO,

exco members, state assemblymen, and bureaucratic functionaries coordinate closely with the federal agencies that operate in their states, encouraging them to behave as mere extensions of the central government. In these circumstances, we might conceptualize this relationship as "telescope" federalism, with the federal government projecting its power deeply and almost seamlessly from Kuala Lumpur into state-level arenas, ensuring similar outlooks and long continuities in ruling styles and vision. It is thus impossible in conditions like these to measure federalism's real substance. Put simply, the state-level government so rarely deviates from the telescope's party thrust that it never creates the political space or incurs the federal crackdown that would reveal the degree to which its autonomy was meaningful. But intuitively, it seems safe to gauge telescope federalism as feckless.

Even so, though as mentioned above, the central government long ago clawed back residual powers, concurrent powers remain. Federally appointed functionaries that operate in particular states are hardly omnipresent. In some measure, then, they rely on their state-level counterparts to see policy measures through to their conclusion and to finalize delivery of routine services. In this situation, Ronald Watts contends that while federalist power sharing may be "relatively centralized legislatively, [it is] much decentralized administratively."[13] But the interpretation here demands caution. Far from constituting any ironclad federalist guarantees over power-sharing, this would appear to yield little more than controlled forms of out-sourcing.

But after state-level governments have accepted the central government's appointees and acted faithfully on its policy priorities, they are generally free to exercise their powers over land use, issuing concessions and contracts, and to use their regulatory powers, granting licenses and permits. We recall too that in states that possess petroleum sources, their governments attract royalty payments. And after all, as noted above, for many state-level politicians and functionaries, the patronage rewards that these activities generate constitute their chief motivation for entering political life. But though these pursuits, more than any decentralized administration, may evince a type of federalist substance, even this is hardly absolute. In some cases, chief ministers who have displeased top leaders in UMNO have found themselves jailed for corruption, as happened to Harun Idris, chief minister of Selangor, in 1977.

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[13]   Watts, p. 41.

"Franchise" Federalism

When might federalism grow more substantive, giving state-level governments a longer leash? In three states in Malaysia, ethnic Malays do not form a majority: Penang on the peninsula and Sabah and Sarawak in East Malaysia. In these cases, then, UMNO has often secreted campaign finance to, or even coalesced with, local parties that resonate more deeply with the state's demography. Further, where these parties then win state-level elections, UMNO has deferred to them, enabling them to take the lead in forming state-level governments. The central government has then followed through with budgetary and development grants.[14] And it has delegated to these state-level governments wide latitude over administration, land use, and developmental policies, therein enabling state-level governments freely to exploit business opportunities and natural resources. Hence, so long as these local parties and their governments stay loyal to the central government at election time, reliably delivering up votes, they are given much autonomy. We can conceptualize this mode of power-sharing as "franchise" federalism, the mode in which federalism gains most substance.

The best example of franchise federalism today involves the East Malaysian state of Sarawak. Within this state's highly diverse demography, some 27 ethnic groups are officially identified. The chief communities, however, are constructed as indigenous Dayaks or Iban, who make up around 40 percent of the state's population, Chinese, about 30 percent, and ethnic Melanau, Malays, and other Muslim groups, who together comprise approximately 25 percent. In this setting, with suspicions toward the central government widespread, UMNO politicians have gained little traction. Thus, since the early 1970s, they have deferred to a local vehicle, Parti Pesaka Bumiputera Bersatu (United Indigenous Traditional Party, PBB), appealing largely to rural Melanaus and Malays. The PBB chief minister of the state, Abdul Rahman Yakub, served until 1981, after which he was succeeded by his nephew, Abdul Taib Mahmud, who remained in power until 2014, then "ascended" to the state's governorship. In addition, the PBB is a component party within Barisan at the national level, enabling it to snare a few cabinet posts. However, it operates far more vitally within Sarawak, overseeing an ever shifting ruling coalition through which to broaden its ethnic base. Further,

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[14]   However, in dealing with Sarawak, rich in oil and gas, the central government has kept the royalty payment to the standard five percent.

in keeping with tacit understandings, the state-level governments that PBB leads have always taken pains to suppress anti-federalist sentiments. Indeed, they have transformed Sarawak, especially since 2008, into one of the central government's surest voting banks. In turn, UMNO has taken a "hands-off" approach toward the PBB's state-level administration and development policies.[15] But franchise federalism has hardly redounded to the benefit of indigenous ethnic groups, however, for their traditional forest lands have been disfigured through the state's rabid money politics, timber concessions, and plantation schemes.

A second example of franchise federalism has involved the state of Penang. Here, the Chinese form the largest ethnic community, with a plurality today of 42 percent, narrowly eclipsing the Malays. But historically, the Chinese population segment has been larger. And it has often made common cause with the state's Indian population, thereby advancing their mutual interests. In this situation, UMNO's appeal has been limited. Thus, from the early 1970s until the "tsunami" election of 2008, though Barisan formed the state-level government, UMNO deferred to the Gerakan Rakyat Malaysia (Malaysian People's Movement). This vehicle, though organized nationally, has operated almost exclusively in Penang. And though proclaiming its "multi-racial" mission, it has appealed overwhelmingly to local Chinese and Indian voters. Both of Gerakan's chief ministers, then, Lim Chong Eu until 1990, thereafter Koh Tsu Koon until 2008, were ethnic Chinese. And through the state possesses few natural resources, it was able to articulate effectively with foreign direct investors, creating a thriving export manufactures sector in electronics. Property and tourism sectors have also flourished, making Penang one of Malaysia's most developed states. Hence, the central government, though wary of Penang's ethnic Chinese character, long tolerated the state-level government's autonomy in policy making and attendant revenue-raising, therein conforming to patterns of franchise federalism.

In Sabah too, non-Malays form an ethnic plurality, with indigenous Kadazan-Dusun, mostly Christian or animist in their beliefs, constituting around 40 percent of the state's population. Chinese make up 30 percent, while Malay and "other" Muslim groups 25 percent. In these conditions, UMNO has historically deferred to local parties, creating periods of franchise federalism. Much autonomy over land use has thus been ceded—though this

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[15] James Chin, "Politics of Federal Intervention in Malaya, with Reference to Sarawak, Sabah, and Kelantan," *Journal of Commonwealth and Comparative Politics* 35(2), 1997, p. 102.

has generated syndromes of local money politics, concessions, plantations, and environmental despoliation akin to those of Sarawak. But much more than in Sarawak or even Penang, the state-level governments that have formed in Sabah have sometimes provoked or given free vent to anti-federalist sentiments, to the point of intimating secessionism. The central government has thus intervened, producing a much rockier record overall of franchise federalism. Even so, from the mid-1970s until the mid-1980s, UMNO deferred to a local party, Berjaya. But the chief minister, Harris Salleh, acted so faithfully on the central government's preferences over bureaucratic hiring and Islamization that, in alienating local voters, his party was driven from power in 1986. A tumultuous transition to a new party, Parti Bersatu Sabah (PBS), led by a Kadazan "paramount chief", Joseph Pairin Kitingan, then followed. Tensions eased after PBS joined Barisan, enabling it to form the state-level government. But as recounted briefly below, when relations with UMNO soured later, PBS backed away from Barisan, prompting the central government to severely tighten the terms from franchise to "muscular" federalism.

"Grudging" federalism

In several states in Malaysia popular resentments against the central government have grown intense, usually over issues of ethnic identity and Islamic religiosity. And in these conditions, despite the extensive manipulations that characterize the country's single party dominant system, opposition parties have sometimes won state-level elections, either defeating UMNO outright or a local party to which UMNO had deferred. In response, the central government has sometimes ousted the new state-level government, using a variety of coercive strategies. However, in cases where local parties mobilize robust support, the central government calculates that to push them from office would only worsen resentments. Here, then, the central government bides its time, allowing the local party, though still in opposition in national politics, to form a new government at the state level. But it is given no easy ride. Rather, the central government, in hoping eventually to regain power, works systematically to undermine the state-level government, gradually eroding the latter's standing among voters. We conceptualize the strained power-sharing that results, limited in its terms and sometimes short in duration, as "grudging" federalism.

    In which states in Malaysia do we find this posture? It has often set in where non-Malays form the largest ethnic communities, with their popular

resentments so escalating that they are no longer allayed by franchise federalism, fomenting electoral challenges. Thus, in Penang, for example, with its Chinese plurality, the opposition Democratic Action Party (DAP) defeated Gerakan and its coalition partners in the 2008 general election. And in Sabah, with its Kadazan-Dusun plurality, the opposition PBS defeated Berjaya in 1985. In both cases, local parties mobilized robust voter support, prompting the central government to retreat to grudging federalism, even if only briefly in Sabah.

Further, even in states with ethnic Malay majorities, differences over Islamic religiosity and religious identity can fuel local resentments. Specifically, a spiralling rivalry between UMNO and the opposition PAS has sometimes broken out, with PAS claiming its greater piety and earnest commitments to forming an Islamic state. Initially drawing support from rural Malays, though with distinctive local identities, PAS won state elections in Kelantan in 1990, in Terengganu in 1999, then in Kedah in 2008. And in cooperating with another opposition Malay party, the People's Justice Party (PKR), and improbably with the DAP, it aided an opposition front, known later as Pakatan Rakyat (People's Pact), even to defeat the UMNO-led Barisan in Selangor and Perak, again in the momentous election of 2008.

How has the central government reacted in these cases? Where a local party has won overwhelmingly, the central government grudgingly accepts its coming to power, but then works patiently to weaken it. It may do this firstly by delaying its issuance of revenue grants until the end of the fiscal year, seriously interrupting programs or policies. Or it may bypass the state-level bureaucracy altogether, shifting funding into the hands of federal agencies that operate in the state. Finally, it may even "freeze" revenue funding, as it did in Kelantan in 1969, citing the state-level government's "mismanagement as the excuse", while promising voters a "special development allocation" if UMNO should win the next election.[16] In this context, across opposition-held states, even everyday matters like water management, waste disposal, and setting up new bus routes can bog down in contentiousness, especially as privatization has been instituted. What is more, the central government may convert its grants to loans, deepening the indebtedness of state-level governments which, in their penury, then surrender control over key agencies and social services,

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[16] Chin, p. 108.

"leading to further centralization since the formation of Malaysia."[17] Further, when Terengganu was captured by PAS in the 1999 election, the central government even withheld the royalty payments on petroleum profits. But then, in seeking favour with voters, it issued patronage directly to village-level recipients through a range of ad hoc and discretionary programs and payments.[18] The state-level government, formed by PAS, sought to make up its losses by proposing to levy kharaj, a kind of agricultural land tax sanctioned by Islam. But the plan drew such ire from the central government that it was abandoned.[19] Finally, and perhaps most devastatingly, the central government can cancel all federal infrastructure projects, as is did in Kelantan and Sabah during the 1990s, inducing what has frankly been termed "political recession." And in a warning to voters, distinctly unveiled, the central government advised that the slowdowns in their states were attributable to poor relations with the central government.

Sabah's experience under PBS shows us also how the central government can intrude far more deeply. More than influencing the outlooks of voters, it may transform the electorate's composition. Much of the resentment in Sabah that PBS was able to muster stemmed from the Kadazan-Dusun's Christianity and animist beliefs, intensifying in the face of UMNO's mounting Islamism. Recognizing the immutability of these heartfelt grievances, the central government countered by Islamicizing the state's demography. Specifically, federal agencies turned a blind eye during the 1980s-early 1990s as Muslim migrants streamed into the state from the southern Philippines. It then rapidly awarded them national identity cards and voting rights. Known as "Project IC", this strategy helped to increase Sabah's population by some 300 percent.[20] And grateful migrants duly reciprocated, voting in such numbers for parties favoured by the central government that PBS was defeated in the 1995 election.

In sum, by starving state-level governments of funding or transforming the state's demography, the central government in Malaysia has sought to weaken the standing among voters of the state-level governments that it opposes. Cautious about worsening local resentments, however, the central

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[17] Jomo and Wee, pp. 29-30.

[18] Ibid, pp. 46-47.

[19] Ibid, p. 39.

[20] See Desmond Davidson, "Sabah 301% Population Growth Raises Concern over Illegal Immigrants Issue", *The Malaysian Insider*, December 3, 2014, at http://www.themalaysianinsider. com/malaysia/article/sabahs-301-population-growth-raises-concern-over-illegal-immigrants-issue.

government is content to move slowly. But if not yet in Penang, Kelantan, or Selangor, this subterfuge has enabled Barisan to win back the states of Sabah, Terengganu, and Kedah. Thus, in many instances, grudging federalism really amounts to slow-moving recentralization. But in other states, where voter loyalties are more evenly split, the central government may act more decisively, displaying its muscularity.

"Muscular" federalism

Whether states might be ethnically pluralist or predominantly Malay, when a local opposition party wins a state-level election overwhelmingly, the central government usually accepts its taking office, at least initially. But where the popular vote and legislative seats are more evenly split, the central government resorts to a variety of coercive techniques in hopes of more speedily ousting the new state-level government. It seems especially keen to do this where the local party that has come to power had been a member of Barisan, but then defected. We can conceptualize this approach, utterly bereft of meaningful power sharing, as "muscular" federalism.

The central government typically begins its intrigue in the state's legislative assembly, seeking to bribe enough of the local party's legislators that the latter loses its majority and falls. And if then, as independents, these defectors support Barisan, UMNO may step in, though in varying degree and pace. The central government first did this in the state of Terengganu. In the 1959 election, PAS won enough seats in the legislative assembly to form a new state-level government (as it also did that year in Kelantan). But two years later, the central government instigated the defection of two of PAS's legislators to UMNO. And as the Sultan of Terengganu refused to countenance any new election, UMNO was able to displace PAS.

In Sabah, after PBS won the state-level election in 1994, defections from the party were so rapidly expedited that its leader, Parin Kitingan, was never even sworn in as chief minister. Instead, the central government forged an ad hoc rotational system for selecting a new chief minister every two years, a scheme that enabled UMNO to participate directly in the state's politics for the first time. To be sure, UMNO's inauthenticity was declared in Sabah by its having to recruit indigenous non-Malays as members. However, this strategy succeeded, enabling UMNO finally to dismantle the state's rotational scheme in 2003 and to hold the chief ministership ever since.

The central government worked similarly in the state of Perak. Through the election in 2008, the opposition Pakatan had come to power. But in early 2009, three of Pakatan's legislators were induced to defect, causing the government to fall. The chief minister, Nizar Jamaluddin, from PAS, was then elbowed aside by Barisan's candidate, Zambry Abdul Kadir, from UMNO. Nizar demanded that the assembly be dissolved and new elections held. But as in Terengganu, the Sultan of Perak refused his assent, sparking a constitutional crisis. Nizar protested vigorously through the courts. But in 2010, he was overruled, leaving Zambry and his Barisan government in place.

The central government's usage of the judiciary to seal Barisan's control over Perak foreshadows its heavily partisan use of other state institutions. In Sabah, shortly after the PBS defected to the opposition in 1990, the High Court added to the pressure on Pairin Kitingan by charging him with seven counts of corruption. And on the orders of the Home Ministry, his brother, Jeffrey, was detained without trial under the country's notorious Internal Security Act (ISA), allegedly for promoting secessionist sentiments. But though the central government then demanded that Pairin Kitingan resign as chief minister, he refused, forcing it to wait until after the election in 1994 to oust him. As noted above, PBS won this state-level contest. But its support base had been enervated through Project IC. And it was tested by the registration in "record" time of a new local party that opposed it, while "unusually large" financial allocations were given to challengers.[21] PBS was thus left vulnerable to defections. However, this deflated party would later limp back into Barisan, enabling Pairin to serve as deputy to the state's UMNO chief minister.

Finally, the government may react with still greater muscularity, instigating such social unrest and political deadlock that it creates a setting in which to declare emergency rule. In this way, it sweeps the state-level government from power, then administers the state directly from Kuala Lumpur. And it uses this interim to create the conditions in which UMNO might regain office. We find two examples of this in Sarawak, shortly after the state's troubled entry into the Malaysian Federation. The chief minister, Stephen Kalong Ningkan, had refused to pass legislation making land available to non-indigenous Melanaus and Malays. In 1966, the central government retaliated, citing Sarawak's ungovernability and declaring a state of emergency. It then amended

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[21] Chin, p. 106.

the state's constitution in ways that allowed it to oust Ningkan, replacing him with a "weak politician", Tawi Sli.[22] Further, to tighten its grip, the central government again intervened three years later. Briefly, in 1969, after election outcomes sparked ethnic rioting in Kuala Lumpur, a state of emergency was declared nationally. And the central government intimated that it would not be lifted in Sarawak until PBB had been admitted into the state's ruling coalition. In this way, PBB's leader, Abdul Rahman Yakub, gained the chief ministership. Emergency rule was duly ended. And never again would there be any serious meddling by the central government in "Sarawak's affairs."[23]

The most grievous instance of muscular federalism, however, involves the state of Kelantan. In 1974, PAS, which formed the state-level government, was pressured to join the UMNO's new and all-encompassing Barisan coalition. And later that year, PAS led Barisan to win the state election. But the relationship remained strained, with UMNO's prime minister, Tun Abdul Razak, going over the head of PAS to impose his own choice, Mohammad Nasir, as Kelantan's chief minister. Angry PAS members responded by expelling Nasir from the party, then calling for a no-confidence vote in the state assembly. In turn, UMNO members staged rallies in support of Nasir, sparking rioting in Kota Baru, Kelantan's small capital city. "Seizing the opportunity", the central government declared a state emergency. And Barisan followed up by ejecting PAS from its ranks.[24] Nasir was also encouraged by UMNO leaders in the state to start a new party, Berjasa, which, together with UMNO, won the 1978 state-level election handily. Indeed, PAS was left with only two seats in the assembly. It would not return to power in the state until 1990, with federalism softening into a grudging variant that has since persisted.

CONCLUSIONS: FEDERALISM AND DEMOCRACY IN MALAYSIA

Officials in Malaysia either claim that their country is a democracy, or that it will soon become one under the country's Vision 2020 agenda for full political and socioeconomic development. But by the reckoning of Freedom House, Malaysia can at most be evaluated as "partly free." Though the country has long held regular and even somewhat competitive elections, it resorts to an

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[22] Ibid., p. 101.

[23] Ibid., p. 102.

[24] Ibid., p. 109.

extensive menu of electoral manipulation.[25] The government also tightly constrains civil liberties, limiting free speech, press freedoms, and protest activities. It has recently responded to an uproar over a scandal-plagued state development fund, known as 1MDB, by blocking critical websites and suspending newspaper licenses.[26]

In these circumstances, Malaysia has been characterized by analysts as either a single-party dominant system or a competitive or electoral authoritarian regime, wherein political freedoms are curbed, but elections regularly take place. But because of the manipulations of the electoral system, as well as the prior limits on civil liberties, the ruling coalition is reliably returned to power. Indeed, the last general election, held in May 2013, showed that even when the ruling coalition in Malaysia loses its popular majority, in this case winning only 47 percent of the vote, it is still able to claim a majority of seats in parliament, owing to the first-past-the-post system of balloting, gerrymandering, and an extreme malapportionment in districting.

Federalism, as it is practiced in Malaysia, has done nothing to prise open this system and promote democratic change. On the contrary, feckless federalism correlates closely with, and enhances the efficiencies and resilience of, the country's hybrid approach to authoritarian rule. As a dominant party, UMNO "telescopes" deeply into states where its ethnic Malay supporters form the majority of voters. Next, it franchises out power to cooperative parties in states where the demography is more complex. This leaves it able to impose its muscularity, whether slowly or rapidly, on states where opposition parties, bolstered by a local demography of religiosity or ethnicity, are able to win elections and take power. Feckless federalism reinforces a single party dominance, then, augmenting the efficiencies by which the central government can control the states. Hence, quite unlike India, where federalism has been invigorated by myriad opposition and regional parties that flourish in the states, the central government in Malaysia has responded to opposition by perpetuating, and even tightening, the initial terms of power sharing.

But this should come as no surprise. Federalism, especially when structured in ways that are flawed, cannot by itself lead to democratic change. Rather, causality flows in quite the opposite direction. As Tony Reid has

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[25] Andreas Schedler, "The Menu of Manipulation", *Journal of Democracy* 13(2), 2002, pp. 36-50.

[26] Jason Ng, "Malaysia's Najib Razak fires Deputy Prime Minister in 1MDB Rift", *Wall Street Journal*, July 28, 2015, at http://www.wsj.com/articles/malaysias-najib-razak-shakes-up-cabinet-amid-1mdb-investigation-1438065854.

observed, it is democratic procedures, already in place, that must give substance to federalism.[27] Thus, only when Malaysia's regime finally gains more democratic content will its federalism grow more substantive.

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[27] Anthony Reid, "Indonesia's Post-revolutionary Aversion to Malaysia", in *Federalism in Asia*, p. 162.

Inevitability of Hybrid Model: Trajectory of the State's Transformation in Post-Suharto Indonesia

Purwo Santoso[1] and Joash Tapiheru[2]

The analysis presented in this paper finds that there was a strong centrifugal force from the regions immediately after the fall of Suharto's presidency, known as the New Order regime. The significantly weakened central government, due to the economic and political crises at that time, greatly contributed to shaping the large-scale and sudden process of decentralization in 1999. The decentralization policy became the most viable and feasible answer to saving Indonesia from Balkanization. Yet, this paper also found that there was surprisingly little resistance against the adoption of some federal mechanism and institutional arrangement. A federal line of thought has been inserted within the design of the decentralized state's structure, and hence the seeming hostility to the anti-federal discourse came along with the federalist mindset.

Apparently, the adoption of a large-scale decentralization policy does not alter the legal and formal arrangement of Indonesia as a unitary state. The decentralized arrangement in Indonesia, including its most extreme form in the cases of Aceh and Papua has, at least so far, been effective in maintaining national unity. It works to ease the tension between the central government and the regions, provides a channel and arena for the public in the regions to express their aspirations, and serves to condition the state to present itself, through the autonomous sub-national governments, in many regions which otherwise would have stayed in isolation. It indicates the availability of a discursive manoeuvre, which facilitates Indonesia in redefining state-region relations in general, thus enabling the discourse on decentralization to shape a broad-based political bloc and strengthen the collective pressure toward

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the central government. The dominant global discourse, which favours decentralization, has been a part of the liberalization and it further gave the decentralization discourse leverage.

The discussion in this paper is presented in five sections. The first section provides the introductory remarks, presenting necessary information on the context in which the discourse of decentralization started to take its initial form. The second section discusses the current development of studies on federalism and unitarianism. The third section is committed to discussing the dynamic of political discourse in Indonesia related to the issue of national and sub-national relations in the post-1998 era. The fourth section discusses in more detail how some principles and practices generally identified or associated with the federalist mode of government were adopted in Indonesia without causing any significant polemic. In the fifth section we will discuss the points that other countries facing a similar situation may draw some lessons from.

REVERSING BALKANIZATION IN POST-1998 INDONESIA: THE BACKGROUND OF LARGE-SCALE TRANSFORMATION

Indonesia in the year of 1998 was marked with a huge and sudden transformation. The fall of the New Order regime was soon followed by a major transformation for a more democratic and decentralized political structure. One substantial part of this transformation in the Post-Suharto era has been decentralization. Decentralization became a crucial movement at this stage due to the growing tensions between the national and sub-national governments *cum* the local public around this period. By the end of its rule, the centralized regime of New Order had lost much of its legitimacy and strength to maintain its control over the large span of Indonesia's territory. Perceiving this liability and with the discursive support from international institutions such as the World Bank and IMF, which favour more decentralized forms of governance, the local public from many parts of Indonesia, mostly those with rich natural resources, intensified their demand for broader autonomy for their local governments.

The demand for broader autonomy at the sub-national level was manifested in various forms. Some even went as far as to demand a separate state, such as the then East Timor (nowadays Democratic Republic of Timor Leste), Papua, and Aceh. In those regions the demands descended into vertical violent

armed conflicts, which, in Papua, is still ongoing. Separatist discourses at that time also emerged in other regions, such as the Riau Islands, East Kalimantan, and Bali but, fortunately, did not evolve into violent armed conflicts. In general, discourses for broader autonomy at the sub-national level were commonly shared among the public and consolidated them into a political bloc. It was around this time that the discourse of federalism re-emerged after it had long been discredited as detrimental to national unity, the Trojan horse of the colonial powers to maintain their control over Indonesia and many others.[3]

Some analysts and commentators, considering how deep the notion that equates centralized government and national unity is rooted and institutionalized among the Indonesian state's apparatuses and how federalism is an anathema in Indonesian political discourse, predicted that Indonesia would soon fall into the same fate as had befallen the former Federation of Yugoslavia.[4] Immediate attempts to search for a "soft-landing" scenario then proceeded. One major challenge was to come up with a framework of power devolution that would meet the sub-national demands for broader autonomy while at the same time not radically alter the perceived symbols of unitarianism, thus denying the justification of its hardline supporters, especially among the Indonesian military, to resort to coercive means.

In overcoming the challenges of balancing the tension, there was widespread agreement that the authoritarian and centralized style of governance should be abolished. Yet, the alternative to that style left a certain degree of controversy between those who were in favour of a highly decentralized form

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[3] A small book titled *Menuju Republik Indonesia Serikat* (Toward the United States of Indonesia) was published in 1998, almost immediately after the fall of the New Order regime. The publication of a book with such an explicit title referring to federalism was unimaginable under the New Order regime. The publishing of this book marked the climate of political openness at that time and the anxiety among the Indonesian public to address the issue of growing tension between the national and sub-national governments. See Mangunwijaya, Y.B., 1998, *Menuju Republik Indonesia Serikat* (Toward the United States of Indonesia), Jakarta: Gramedia. On the association of federalist ideas with the perception of collaboration with the colonial power, especially the Dutch, see Booth, Anne, "Before the Big Bang: Decentralization Debates and Practice in Indonesia" in Hill, Hall (ed.), 2014, *Regional Dynamics in a Decentralized Indonesia*, Singapore: ISEAS, pp. 25-28.

[4] See Richburg, Keith B., "Will Indonesia be Balkanized", *Washington Post*, Thursday, June 4, 1998, http://www.washingtonpost.com/wp-srv/inatl/longterm/indonesia/stories/balkan060498. htm, accessed August 30, 2015. See also Lineback, Neal G., "Indonesia's Balkanization", Geography in the News, December 15, 2000, http://media.maps101.com/SUB/GITN/ARCHIVES/ PDF/550_121500indoc.pdf, accessed August 30, 2015.

within the unitary form, and those who were in favour of a federal system. It ended with the enactment of Law no. 22 of 1999 on local government, which marked the big bang process of decentralization within the seemingly unitarian form of state. The enactment of this law, however, did not mean that the challenge was finally resolved. It has been persisting up to this day, as this law has undergone two revisions through Law no. 32/2004 and the recent Law no. 23/2014. The constitutional reform was undertaken in the following years, which in essence, strengthened the mandate to have a unitarian form of state, which at the same time, grated the local government at the most extensive possible. One persistent feature of those laws has been, surprisingly, the relatively weak opposition against some principles and practices provisioned in those laws that are basically drawn from the common federalist model of government.

The decentralization process in post-1998 Indonesia has been the subject of many studies and analysis. Positive remarks even mention this process, alongside its democratization counterparts, as deserving to be considered as a large-scale, and yet drastic, process of transformation toward democracy in a post-authoritarian state.[5] The World Bank dubbed it as a "Big Bang Decentralization".[6] Some other comments voice more critical, if not sceptical, comments about the efficacy of this decentralization to lead Indonesia toward a sustainable and substantive democracy.[7] Despite this divided opinion about the decentralization process in post-1998 Indonesia, this policy has succeeded in achieving one thing, that is, easing the tension between the national and sub-national governments, between the centre and the periphery, thus enabling Indonesia to avoid the predicted Balkanization.[8] The adoption of some fundamental principles and practices conventionally associated with federalism and the federalist mode of governance has been crucial to mould-

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[5] See Kurtlanzick, Joshua, "Middle East revolutions only aspire to Indonesia's success", *The National*, February 20, 2011.

[6] World Bank, 2003, "Decentralizing Indonesia: A Regional Public Expenditure Review", East Asia Poverty Reduction and Economic Management Unit. (Report No. 26191 – IND).

[7] See Nordholt, Henk Schulte and Garry van Klinken (eds.), 2007, *Politik Lokal di Indonesia* (trans. *Renegotiating boundaries local politics in post-Suharto Indonesia* by Bernard Hidayat), Jakarta: KITLV and YOI.

[8] See Karim, A.G., Amirudin, Mada Sukmajati, Nur Azizah (eds.), 2003, *Kompleksitas Persoalan Otonomi Daerah di Indonesia* (The Complexity of Regional Autonomy Issues in Indonesia), Yogyakarta: Department of Government and Politics, Gadjah Mada University - Pustaka Pelajar.

ing decentralization in Indonesia as we know it today. Incorporating these principles into the decentralization policy amidst the deep-rooted public antipathy to anything associated with federalism is a phenomenon that deserves thorough elaboration.

Tension between federalism and unitarianism is, apparently, not merely academic. It is a matter of the integrity of Indonesia as a nation state. Indonesia is a state which was formed initially by a collective effort in overcoming the colonial ruler, and overburdened with making its different local power structures retain their control over the national government.

At this stage, it is apparent that there have been two different notions of federalism and unitarianism. There is a need to understand the choice between the unitary state and the federal state as an academic discourse. The next section aims to uncover what this entails. The section following the next will bring to the fore unitarianism and federalism as political choices.

UNDERSTANDING FEDERALISM AND UNITARIANISM: AN ACADEMIC MAPPING

At an academic level, the discussion on federalism and unitarianism is, in essence, a discussion on the locus of a state's sovereignty. The perceived discursive battle over the ideal form of state and government in Indonesia has often been portrayed as that between federalism and unitarianism. However, in the most recent studies, there has been an attempt to differentiate between federalism and unitarianism on the one hand and between a federal state and a unitarian state on the other. The former refers to a conceptual framework while the latter refers to a certain organizational arrangement.[9] Such a distinction reflects and has been represented in the practical implementation of those two concepts. There are much less rigid boundaries between those two at the conceptual level. Studies on more specific cases show that a country that formally and explicitly declares that it is adopting either unitarianism or federalism turns out to have adopted certain principles and practices associated,

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[9]   Burgess, Michael, 2006, *Comparative Federalism: Theory and Practice*, Routledge.

at the conceptual level, with its counterpart form of state and government.[10] Bearing this in mind, it is important to specify the nature of the federal elements adopted by Indonesia as it embarked on drastic changes toward a highly decentralized feature.

There are at least three major features that characterize each model and have been used to juxtapose these two models of government. Those features are: (1) the pre-existing political entity, (2) the main source of political authority and sovereignty, and (3) the relations of authority between the national government and its particular constitutive or sub-national unit of government.

The first feature mainly refers to the formative process of the particular state discussed. Rooted in Tocqueville's observation of the polity in the United States of America, conceptually the federal form of state pre-supposed that the particular constituent units pre-date its national or federal polity. In contrast, the unitarian form of state presupposes that the sub-national polities are established by the national polity and exercise some of the national government's sovereignty and authority handed over to them within their defined jurisdictions.

The explanation of the first feature relates to the second one, that is, the original source of sovereignty and authority. The federal concept presupposes that the particular units are the original source. The particular unit retains some parts of this sovereignty and entrusted some others to the federal polity to exercise. Meanwhile, the unitarian concept perceives the national polity to hold the original sovereignty and authority, some of which it hands over to the sub-national polities to exercise.

The third feature might not be fully fit to contrast federalism and unitarianism because it refers to the issue of whether the particular constituent units may retain their right to withdraw from the broader political union or not. In both concepts of federalism and unitarianism secession is not an option, at least legally. This feature is rather intended to juxtapose the concepts of federation and confederation.

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[10]   See Rifqinizamy, M., "The Doctrine of Federalism in a Unitarian State: A Study of Local Autonomy in Indonesia and Devolution of Power in United Kingdom", *International Journal of Social Science Studies*, Vol. 2, No. 1, January 2014, RedFame Publishing. See also Jackiewicz, Andrzej, "The Principles of Unitarism, Subsidiarity and Decentralization as a Constitutional Basis of Regional Self-government of the Republic of Poland", *Studies in Logic, Grammar and Rhetoric*, 31 (44), 2012.

These features have more or less been conventionally accepted to signify their corresponding concepts. One thing that will be much related to our further discussion is the tendency to perceive these features as essentially to define whether a state is adopting a unitary, federal, or confederation form. This "essentialization" in Indonesia's case has blurred most of the public's perception on this issue and contributed to the well-entrenched notion of unitarianism. Ironically, this essentialization also greatly contributes to enabling the insertion of many federalist elements into the decentralization scheme in post-1998 Indonesia without causing relatively strong resistance from the hardline proponents of unitarianism, which will be discussed in the following section.

The perception that federalization in Indonesia took place through the decentralization policy is mostly based on the provisions that specify the division of policy areas and issues between the national and sub-national governments. There has been a division of policy areas and issues between the units of these two levels of government. There are specific areas that typically belong to the federal government, namely, defence, monetary control, foreign affairs, and the judiciary. To ensure that the federal government works on behalf of the provinces within it, a typical institutional representative body is established, namely the senate. As constitutional reform took place to convey the spirit of reform following the stepping down of President Suharto, a new representative body was established, namely the Regional Representative Council or *Dewan Perwakilan Daerah* (DPD). This gives the impression that, somehow, the sub-national governments exercise authority, which springs out from its sovereignty, such as the senate in the federal state. The establishment of the DPD created an impression that Indonesia, somehow, has an institution similar to the senate in the federal state. Yet, given the insistence of securing effective national control of its territory, it turned out that the DPD was granted with marginal authority in decision-making. It has limited legislative authority; it was granted with the opportunity to propose legislation, but not to enact laws to deal with sub-national affairs. In the following section, we will discuss further these federal features and how they actually do not alter the underlying premise of Indonesia as a unitary state.

REDESIGNING INDONESIA AS A STATE:
UNITARIANISM VERSUS FEDERALISM

There has been an up-and-down process of power devolution to the sub-national governments. It reflects the persistence of tension between the need for centralized governance to deal with the fast-growing population residing in large parts of the country, and the demand for a decentralized set-up to allow locally based problem-solving to take place. The framework to deal with this issue is either federalism or large-scale decentralisation.

The point to make here is that institutional reform to find the appropriate set-up involves contentious discourse. Yet, given the contentious nature of the discourse, the founding fathers of Indonesia set up a paradoxical term: *bhinneka tunggal ika* (unity in diversity). In other words, what really matters is not merely the locus of decision-making on sovereignty but the ability to take advantage of diversity. The architectural design of the state shall take into account that a complementary and mutually dependent structure of the entities is strength in itself. This opened up an avenue for innovation, instead of merely specifying the centrality of either the provincial or national government.

The discursive contention between unitarianism and federalism has long roots in Indonesian history indeed. Since its inception, even among the founding fathers, there was no definite agreement on what form of state and institutional arrangement was to be adopted to properly govern Indonesia's vast territory and diverse society. On the one hand there were proponents of a federal state who argue that it was necessary to accommodate the diverse nature of Indonesian society and the specific context of each of the regions that constituted its territory. The federal form of institutional arrangement would be appropriate since it enabled each sub-national polity to tackle its immediate problem in a more flexible manner with a better understanding of the specific problem and context it was facing. On the other hand, there were strong supporters of a unitarian form of state and institutional arrangement. The main argument of this group was strongly based on the specific situation that Indonesia was facing in its early years, that is, the need to mobilize the whole nation's potential to thwart the attempt of the Dutch to re-establish its rule after WWII.

There was a discursive twist, which leads to an impression among lay persons that federalism implies fragmentation, and hence is contradictory to securing the unity or territorial integrity of the state. For the federalist, it was

unfortunate to see that the Dutch employed federalism as a form of strategy to divide and rule the country. It carried out the strategy to federalize Indonesia within the Union of the Kingdom of Netherlands in order to secure their already shaky control of the country. The Dutch managed to establish a number of states across the Indonesian territory, which later constituted the United States of Indonesia in 1949. This state was short-lived though. After the brief period of United States of Indonesia, this tension persists despite the fact that officially Indonesia is still a unitary state. In the 1950s all states decided to dissolve themselves and join the Republic of Indonesia to form the unitary state of the Republic of Indonesia.

The fact that the Dutch used the federal scheme to maintain its control over its former colony has put the federal discourse in Indonesia at a disadvantaged position. Anyone publicly articulating a federalist discourse would be easily accused of being a Dutch lackey or sympathizer. The federalist discourse underwent a major setback in this period. The decline of this discourse also contributed to the tendencies of the national government in Jakarta to respond to a series of rebellions in various regions in the 1950s and the political dynamics of a multi-party system with a more and more centralized mode of governance. It culminated in the abolition of a liberal democracy regime and the initiation of Guided Democracy, which centralized the political power in the hands of the president in 1959.

The ascendancy of the New Order regime in 1966 furthered the dominance of the unitarian discourse in Indonesian politics. Various policies were designed to ensure effective control by the central government almost throughout this period. Law no. 5/1974 on local government even went as far as to impose a uniform model of governance at the village level. Any counter-discourses were at risk of drawing brutal repression as the government's response, including demands for broader autonomy at the local level, such as in the case of Aceh, Papua, and East Timor. The discourse of the unitarian state was articulated in association with the notion of "national unity", political stability, and economic development. It worked to convince most of the Indonesian public to accept the unilateral interpretation that associates the unitarian state with a state-centric centralized government, and imposed uniformity in one string of discourse as long as the regime was able to maintain high economic growth. This was despite the counter-discourses that demanded more equitable economic development between Java and the outer islands.

The cold war context also contributed to the relatively firm position of the centralized New Order regime. Indonesia's strategic value in halting the advance of communism in the Southeast Asian region provided the New Order regime with leverage for its bargaining positions with the international community, especially the Western bloc, which identified itself as the champions of human rights. This situation that favoured the New Order regime and its centralised approach, however, underwent major changes in 1998 and the immediate period prior to that. The economic crisis that hit Asia in 1997 derailed the economic development in Indonesia, the most fundamental base of justification for its centralised rule. At the global level, the Cold War had ended earlier in the beginning of the 1990s; thus Indonesia's strategic value in halting the advance of communism had become much less relevant and the international community had started to increase its pressure in relation to Indonesia's human rights conduct. The emergence of this discourse was accompanied by the increasing dominance of another global paradigm that favoured a more society-oriented and market-based developmental approach, including devolving the decision making arena to the sub-national level.

This was the critical juncture at which the discourse of decentralization was able to penetrate the well-entrenched hegemony of a centralised mode of governance. The sudden collapse of the central government was due to its inability to readjust itself to the new dynamics taking place. The new regime suffered heavily from a lack of legitimacy before the Indonesian public, who demanded immediate and effective measures to alleviate the impacts of the economic crisis. Power devolution to the sub-national governments was also an important moment in the discourse of crisis resolution as part of the good governance discourse endorsed by the IMF and the World Bank, two international monetary institutions which came with conditional aid-packages to rescue the Indonesian economy from complete collapse.

The significantly weakened position of the central government, coupled with strong demand from the public, backed with endorsement from influential international donors, for political devolution opened up a broad space in which multiple discourses could jump in. Suddenly discourses on decentralization filled the public space in Indonesia around this period, including the discourse of federalism and the federal state. The pressure to come up with a workable framework for decentralization became more intense, as almost immediately after the fall of New Order, there were sparks of horizontal and vertical conflicts in some regions in Indonesia. The independence of East

Timor occurred during this period and the break-up of the Indonesia nation state seemed more likely than ever in this period.

The formulation of the decentralization policy took place amidst this situation. The core discussion, in fact, involved a very small group of technocrats who worked on the draft, which was promulgated as Law no. 22 of 1999. Nordholt and van Klinken took note of how the nature of this process has contributed to the relatively fast adoption of the produced draft into law, with, surprisingly, very minor resistance.[11]

Law no. 22/1999 reflected the spirit of that period well. It gave very broad autonomy to the sub-national governments. This law is accompanied by Law no. 25/1999, which regulates the fiscal relations between the national and sub-national governments. This Law secured a larger fiscal share and more favourable fiscal arrangement for the sub-national governments to carry out the broader autonomy provided by Law no. 22/1999. Giving in to the pressure for decentralizing power to the sub-national level is one thing, while defining the operable framework is another. In order to design the commonly acceptable framework for decentralization, Indonesia relied on a small group of experts and senior bureaucrats, known as Team 7, who worked almost entirely without public scrutiny and representatives from the sub-national level to draft the bills for decentralization. These bills were almost immediately passed into Law no. 22/1999 and Law no. 25/1999. The members of this Team 7 had strong international connections, and were committed agents of the decentralization discourse.[12]

These laws were, however, revised through Law no. 32/2004 on Local Government and Law no. 33/2004 on the Central and Local Government Fiscal Relations. Nordholt and van Klinken see this new law as part of a re-centralization attempt.[13] The latest revision, through Law no. 23/2014, shows a more explicit trend toward re-centralization.

The main feature that distinguishes between Law no. 22/1999 and the later laws which replaced it is how the position of the district/municipal chief of executive is defined between its dual roles as the head of the local government and as the central government's representative at the local level. Law

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[11] Nordholt and van Klinken, "Pendahuluan" in Nordholt and van Klinken, op. cit.

[12] Nordholt and van Klinken, op. cit., p. 16.

[13] Ibid.

no. 22/1999 emphasized the former, while the later revisions gradually shift toward the latter.

Parallel with the ups-and-downs of power devolution or decentralization in Indonesia's modern history, we may see competing nationalisms between the Indonesian nationalism and particular nationalisms, based either on religious aspects, ethnic aspects, or combinations of both. The decentralization in post-1998 Indonesia has provided an opportunity for these nationalisms to assert themselves in a way which does not necessarily antagonize the Indonesian nationalism and the Indonesian nation state by demanding their own local autonomous governments through a sub-division of the existing districts and municipalities. This leads to a spiking numbers of provinces and, especially, districts or municipalities.[14] The number was doubled within the first ten years of drastic decentralization. This explanation does not negate the fact and argument that such a sub-division is necessary for further shortening the government's span-of-control, especially for more effective and efficient public service provision. The particular nationalistic discourse, however, always presents in most of the sub-division cases in post-1998 Indonesia as the agenda of local politicians to have their own local political stages.

In many ways, the ability of the decentralization policy to provide a broader space to include those discourses in the political interplay in post-1998 Indonesia greatly contributed to easing the tensions between Jakarta and the rest of Indonesia. Under the previous regime, most of those discourses would have been met with immediate suppression, leading to their dissolution or eruption into further spirals of violence, such as the cases of Aceh, East Timor, and Papua. The decision to grant autonomy at the district/municipal level much lessened the potential for sparking new separatist movements, because the size of the population and the territory size is commonly perceived to be not large enough.

Despite the steady trend of re-centralization in the later period, this policy of power devolution, up to its current form, seems to be able to stabilize the chaotic situation and potential of Balkanization, which loomed over Indonesia during the immediate period after the fall of the New Order regime. Moreover, as the principle of unity in diversity implies, the variegated process of institutional set-up has become the rule of the thumb. Special

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[14] At the end of 2014, Indonesia is divided into 34 provinces, from the initial 27 in 1998, which dropped to 26 after the independence of East Timor. The number of district/municipalities reached 514 from around 200 during the same period.

arrangements have been made for some special cases such as Aceh, Papua, and also Yogyakarta, which received their special autonomy status during this period. It worked pretty well to end the armed hostility and separatist movement in Aceh though not in Papua. The recent law on local government, Law no. 23 of 2014, goes even further in variegating the local institutional set-up, such as to deal specifically with maritime provinces, for allowing more contextual responses to sub-national problems.

TO FIND THE RIGHT BLEND: FEDERALIST SPIRIT WITHIN UNITARY BARRIER

There are several factors that simultaneously opened up the trajectory of state transformation within post-1998 Indonesia, which in essence blend two ideas that have been commonly perceived as contradictory: unitarian versus federal. The two apparently have many things in common, especially the importance of dispersing the authority of the central authority. This deserves elaboration.

On the one hand, the changes, which were unthinkable during the authoritarian rule, began out of necessity as the state was no longer was able to fulfil its promise: to secure the improvement of the welfare of the people. The country was in severe crisis. It was the crisis that allowed a dramatic change to take place. The 1997 economic crisis and its impact on the Indonesian economy and socio-political life greatly influenced the trajectory of decentralization in post-1998 Indonesia. The direction of the change was set by the idea of democracy, more specifically liberal democracy, which is typically in favour of a minimal state. On the other hand, the anxiety in relation to embarking on drastic change to meet the demands of liberal democracy in the country was very high and persistent. In a way, the idea of unity in diversity became a magic word that allowed Indonesia to match the contradictory requirement. The magic word then guides the required compromise: such as to establish the DPD for making a symbolic representation that the local has a say at the national decision making level, but insisting that the representative body does not endanger the perceived threat of secession.

The acceptance of federal elements of reform came as a result of the interplay of these factors. There are at least two other factors influencing the play here. First, the growing demands for a redefinition of central-periphery relations and the significantly weakened position of the central government. Second, the transformation of the geopolitical landscape that presented strong

pressure from the international community for Indonesia to carry out political and economic liberalization, including decentralization. Last but not least is the clever arrangement of the provision for decentralization in the constitution, which, if we look closer, actually maintains the underlying unitarian premise despite its strong federalist tone.

As aforementioned, the current framework of decentralization in post-1998 Indonesia, despite the re-centralization trend in the following revisions, has been working relatively well in appeasing all major involved parties since the demand for autonomy at the local level has been dominantly articulated as a redefinition of relations between the centre and periphery in general. Aceh, East Timor, and Papua were articulated rather as special particular parts of this discourse, which required special arrangements. The discourse of transformation into a federal state, though it also came into play in the debates, was never able to gain the position of dominant discourse.

In other words, Indonesia's ability to come to terms with the contradicting issues rests on the prevailing discursive design. It somehow provides a collective framework and guides the more operational process of consensus building. The articulation of demand for a large-scale process of decentralization in this way allowed the discourse to attract a broader support base from both sides of the controversy. It includes almost everyone in the outer islands; not only those in the rich regions. who expect a greater share from the local revenue, but also those in the not-so-rich and poorer regions, who expect more transfer fund from the central government and broader authority to spend. This discourse sets the political stage, pitting the central versus the periphery, instead of the central versus a particular region, such as Aceh, Papua, or East Timor.[15] The fact that some regions even went further to declare their separate states in response to the perceived government indecisiveness, culminating in the independence of East Timor, also shifted the odds in favour of the periphery. The central government could not respond to this trend with the same strategy of military action that they had used against the regional rebellions in the 1950s because the central government and the military were under

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[15] See Tapiheru Joash Elisha Stephen, 2011, *Nation State in Multi Ethnic Society*, dissertation for Master degree at the Program of Master in Human Rights and Democratisation, University of Sydney, Australia-University of Colombo, Sri Lanka. This is in contrast to the Power Devolution policy in Sri Lanka, which has been associated almost exclusively with the Tamils' cause. Thus this discourse has been unable to build a cross-ethnic, the main political cleavage in the Sri Lankan context, political bloc and it has been pitted against the central government in Colombo.

heavy pressure and criticism for alleged human rights violations against pro-democracy and student activists.

The discursive nature of the process allows Indonesia to see the difficulty in dealing with it. The very fact that demands for decentralization re-emerged after decades of authoritarian-centralized rule also created the impression of the futility of any harsh and coercive responses against such demands for the policy makers at the national level. Simultaneously, two influential monetary organizations, the IMF and the World Bank, whose aids Indonesia relied on to save its economy from the impacts of the 1997 economic crisis, also endorsed the decentralization policy and put it as one of the conditions for delivering their aid packages. These two organizations became vital agents for the decentralization discourse in Indonesia. With the discourse of decentralization gaining the upper hand, there emerged an impression that to maintain its centralized policy would be an anachronism and would make Indonesia more likely to disintegrate. Yet, later on, a kind of systemic self-correction took place. The gradual process of recentralization took place after an unprecedented change occurred.

The discursive capacity of the country is at stake here. It signifies the role of the discourse in consensus making. Here is the important example. In post-1998 Indonesia, decentralization has been brought forward and defined through the principle of broad autonomy. In order to avoid the re-emergence of a centralised regime, this notion was provided in the Indonesian Constitution through amendments.[16] The federal flavour in the provision is that "[t]he regional authorities shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government." This may be interpreted to mean that the authorities the central government carries are residual. However, this point also provides that the specification is further provided through the law checks this federal overtone since the authority to make law is in the hands of the central government and the national parliament. This arrangement, however, makes all the parties involved satisfied.

Simultaneously, while the decentralization framework seems to devolve much power to the sub-national level, the central government, in fact, maintains its fiscal control.[17] Apparently, the demand to secure national control kept the devolution under control. In this regard, decentralization in

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[16]   Article 18 point 5, Indonesian Constitution of 1945.

[17]   Nordholt and van Klinken, p. 17.

Indonesia does not alter the centralised mode of governance adopted by all political parties. With Aceh as an exception, local political parties are not allowed throughout Indonesia.

The formation of the Regional Representative Council or *Dewan Perwakilan Daerah*-DPD, which serves a similar function as the senate in the US, may, at first glance, give the impression that Indonesia has transformed into a federal state. This, however, is only a façade. By establishing that its legislative power is limited, federalism "ironically" works against the commonly held assumption that it will lead to secession. By limiting its authority only to proposing and being consulted on bills related to: (1) regional autonomy, (2) the relationship of the central and local government, (3) formation, expansion and merger of regions, management of natural resources and other economic resources, local elites are united and engaged at consensus building at the national level. The role of a DPD member in drafting bills related to the financial balance between the central government and the regions provides a link between local and national decision-making. By ensuring that its legislative power does not include the authority to pass bills into law, this represented body is kept at bay for a good reason.

At issue here is that, in avoiding being entrapped with a particular institutional set-up, Indonesia relies more on the federal spirit rather that the prototype of federal institutions. At this point the adoption of federal mechanisms and elements into the decentralization policy does not really alter the underlying premise of a unitary state that Indonesia has officially adopted. The wide-ranging autonomy, though provided for in the constitution, is adopted only as a principle and its operational specification is under the central government's authority to define through law. Technically the central government may expand or narrow its definition of this autonomy in the law that provides it, thus maintaining the premise that the authority of the local governments originates from the central government.

The room for manoeuvre has been the differences between the sub-national entities that made up Indonesia as a national state. It is a state with diverse nationality. The design of a modern national state has been well accepted, but the way it is linked with the culturally and historically laden sub-national entities has not been specified due to preoccupation with the legalistic and administrative approach in governing Indonesia. The big-bang decentralization approach apparently brought to the surface local identities, each of them making reference to their respective local and historical set-up.

The most obvious example has been the Special Province of Yogyakarta. It manages to retain, to a large extent, its monarchical legacy, and, at the same time, to fit within the modern-form Indonesia as a republic. This stems to the prominent discourse on asymmetrical decentralization. It is management of diversity which Indonesia is currently exploring, in keeping itself united, but at the same time, providing room for different expressions.

CONCLUSION

The adoption of federal elements in Indonesia's decentralization process did occur, but the arrangement does not alter the underlying premise of the unitary state where the national government, the sole representative of the people as a whole, is the ultimate source of sovereignty and authority. The mandate to provide local governments with the widest scale of autonomy is set in the Indonesian Constitution of 1945; yet the very same constitution maintains that Indonesia is a unitary state. Moreover, apart from the legally binding constitutional set-up, Indonesia has been well equipped with a discursive design, which interestingly, contains a paradox. The attempt to deal with the paradox leads to an endless breakthrough. In a way, the large-scale and sudden process of state transformation is beyond the technocratic notion of planning, and it involves so much uncertainty.

The devolution of specific policy areas and issues to the sub-national governments to tackle through their autonomy may seem to indicate that the local governments in Indonesia operate within a federal mechanism. The usage of the terms "broad-" or "wide-ranging autonomy" further adds to the federal tone. However, the specification of the policy areas and issues is provided through the law, for which the authority to make resides in the hands of the central government. Technically the central government is the entity that holds the authority to expand or narrow the specific policy areas and issues devolved to the sub-national governments.

The establishment of the DPD is also another feature of the decentralisation policy in post-1998 Indonesia that tends to lead most people to believe that Indonesia is turning into a federal state. However, a closer look at the provision of this organization in the constitution shows that the DPD lacks the legislative power to represent the regions its members belong to as sovereign constituents of a federal state. Despite this, it is to be admitted that Indonesia ventures near the borderline between unitary and federal institutional

arrangements. However, this is not something that is exclusive to Indonesia. It also happens in other countries that officially adopt unitary institutional arrangements, such as UK and Poland.

In the academic field, what happened in Indonesia has become more and more common. When we compare the studies on unitarianism and federalism, the latter is much more developed nowadays.[18] Thus, more applicable and ready-to-use models are easier to find from this particular area of study than from its counterpart. Considering the tremendous pressure to devolve power to the sub-national level that the central government had to face in the early post-1998 Indonesia, it is understandable if they drew on many elements provided by this study.

Furthermore, the formal legal arrangement described above does not take place in a vacuum. The political dynamics has been the main force that created the situation for such an arrangement becoming the most viable and feasible option. The ability of pushing the decentralization issue into policy in post-1998 Indonesia, despite its federal elements, should be attributed to the clever move of its agents, who pushed this discourse into its dominant position. At that time, the discourse of decentralization in Indonesia rarely explicitly included federation and federalism as its moments. These moves enabled this discourse to neutralize potential counter-discourses that were favoured towards maintaining Indonesia as a unitary state.

No less important is the discursive strategy to articulate decentralization as an expression of general regional interests. By doing so, the decentralization discourse gained broad bases of support from all over Indonesia. Thus, this discourse was able to construct a cross-regional political bloc to siege the central government in Jakarta, which had much more limited options of strategies to answer to these demand other than to accommodate it.

In fact, by accommodating the demand for power devolution Indonesia has been able to maintain its existence. The decentralization policy initiated in 1999 eased the tension between the central government and the regions. The central government even pushed this strategy further in the cases of Aceh and Papua and by doing so these two regions remain part of Indonesia, at least until this day. This does not mean that this decentralization policy is free from any contradictions, such as patronage politics and widespread corruption in the decentralized post-1998 Indonesia. This, however, is a topic for

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[18] Santoso, Purwo and Joash Tapiheru, 2015, *Bentuk Negara: Unitarianisme dan Federalisme* (Forms of State: Unitarianism and Federalism), upcoming publication.

another paper because what we are discussing here is whether decentralization leads to national disintegration or the other way around.

The phenomena of sub-divisions of autonomous regions as the later development of decentralization in Indonesia has somehow positively contributed to maintaining national unity. Instead of articulating their identity politics into separatist causes, the regional communities expressed them as demands for their own autonomous sub-national government units. The formation of a new sub-national government unit means new infrastructure necessary to have the local government running, new job opportunities, and a new flow of fund into the corresponding region and its inhabitants. Through this process the state presents itself into the corresponding region which otherwise would have been less likely to happen. Thus, despite the complexity of challenges that these phenomena of sub-division pose, they also contribute to consolidating the Indonesian state by forcing it to present itself, through the sub-national government units, more effectively at the local level.

The ultimate challenge for Indonesia is not merely on blending the seemingly different models, but also on creatively managing the diversity. Indonesia is fortunate to have a jargon "unity in diversity" laid out by its founding fathers.

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Crafting State Nations:
India's Federalism as a Case for Developing Economies

George Mathew

INTRODUCTION

When India achieved its independence from British Rule in 1947, it was a loosely knit conglomerate of nearly 600 princely states. Today, in 2015, after 68 years, India is a federation of 29 states and 7 union territories with a population of 1.27 billion. The transition period—nearly four decades since 1947—has been turbulent times. There were secessionist tendencies along with conflicts based on religion, ethnicity, language, history and communal identities. Another question being asked often is: how did India survive as a state in conditions of poverty, illiteracy and extreme regional disparities?

Today, India is a successful federal nation. How did it happen? What was the route it took to achieve this goal; thus becoming the largest federal nation in the word? This paper aims to look at these issues from a political and sociological perspective.

FEDERALISM IN THE CONSTITUTION

A federal system with strong states and a weak centre was evolving during the independence struggle. However, partition of the country, that is, Pakistan, including today's Bangladesh, separating from India at the time of independence, was a turning point in the evolution of the nature of India's federal structure. The two pull-and-push factors at the time of independence helped shape the Indian federal system. Firstly, prior to independence, limitation of the powers of the Union was agreed upon by the Indian National Congress leadership, the political party which fought for India's freedom from the British empire, rather reluctantly, "only to accommodate the Muslim League [the political party which pioneered the partition of British India on the basis

of religion] and keep India united. Once partition became a reality, there was no need to restrict the powers of the Union Government."[1]

How was the federal idea underplayed? According to Ashis Banerjee, "with the withdrawal of the Muslim League and the declaration of Pakistan's formation things swung in a totally reverse direction. It was generally believed that the maintenance of the unity and integrity of what remained as India could be possible only under a strong centre. The federal idea was consequently underplayed."[2]

However, with India's diversity and demographic entity the founding fathers considered it imperative to adopt a federal structure of government.

What Rasheeduddin Khan said fits well with what India is today: "A federal nation is a mosaic of people in which unified political identity is reconciled with socio-cultural diversities. Its hallmark is unity of polity and plurality of society. It is a conglomerate of segments whose diverse identities based on ethnicity, language, religion, region etc., are nevertheless united politically into territorial sovereignty."[3] This socially diverse identity is underlined by Balveer Arora and Nirmal Mukherjee when they note that "preference for a federal ordering and articulation of diversities arises from the need for political recognition of territorially-based social pluralism."[4]

If the concept of federalism engages itself just with territorial loyalties, then this serves as a limit inherent to federalism itself but India has gone further. Indeed, as Subhash C. Kashyap notes, "The Indian Union does not fit into any of the accepted federal models. Our pluralism is not territory based. Every Indian has multiple identities.[5]"

The primary concept of governance at the centre and state in a federal manner was enshrined in the Constitution though it is pertinent to note that these terms, namely "centre" and "state", are not used in the Constitution

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[1] Subhash C. Kashyap, 2003, "Union-States Relations in India", *Indian Journal of Federal Studies*, Vol. 4, No. 1, pp. 29-30.

[2] Ashis Banerjee, 1992, "Federalism and Nationalism: An Attempt at Historical Interpretation", *Federalism in India: Origins and Development*, New Delhi: Vikas Publishing House Pvt. Ltd., p. 52.

[3] Rasheeduddin Khan, 1992, *Federal India: A Design for Change*, Vikas Publishing House Pvt. Ltd., Delhi, pp. 29, 30.

[4] Nirmal Mukarji and Balveer Arora, 1992, "Introduction: The Basic Issues", *Federalism in India: Origins and Development*, Vikas Publishing House Pvt. Ltd., New Delhi, p. 2.

[5] Subhash C. Kashyap, "Union-States Relations in India", op. cit., p. 35.

(they were used in the 1919 Government of India Act under the British, and have been replaced by "Union" and "Union Government"). They, however, remain integrated with the Indian political culture, as "even after the new Constitution came into force, the bureaucracy could not discard the colonial hangover and the use of these terms continued."[6]

The Supreme Court of India in *West Bengal vs. Union of India* (1963) interpreted the Constitution as "clearly intended to convey the federal nature of the structure of polity but with a subordinate position to the States and structural-functional balance in favour of the supremacy of the Union."[7]

K.C. Wheare, about 45 years back described the Indian Constitution as being "quasi-federal"[8], and indeed, when one reads the Constitution, one finds that it is largely favourable to the Union or federal level, less so to the states or constituent units. The devolution of powers as well as specific provisions of the Constitution evidence this imbalance between the different levels of government.

THE UNION AND STATES

The Indian Constitution contains a list of subject matters upon which the Union and the states are authorised to legislate. Contemporaneously, there exists a list of concurrent subject matters as well. Here again it may be noted that this structural facilitation is by and large favourable to the Union[9].

It is the 7th Schedule of the Constitution that defines the sharing of powers between the Union and the states whereas Articles 245 to 255 of the Constitution deal with the legislative powers of the Union and the states. The powers awarded to the Union by the aforementioned articles clearly have a centralizing impact, such as "Residuary powers of legislation", "Power of Parliament to legislate with respect to a matter in the State List in the national interest", and "Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation." Thus the

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[6] Subhash C. Kashyap, "Union-States Relations in India", op. cit., p. 29.

[7] *West Bengal v. Union of India*, (AIR 1963 SC 1241), ibid., p. 30.

[8] K.C. Wheare, 1971, *Federal Government*, London: Oxford University Press, pp. 77, 177. See also Subash C. Kashyap, op. cit., pp. 32-33, who shares Wheare's opinion.

[9] See *Schedule 1: Union List and Concurrent List (Jurisdiction)* for a list of selected subject matters devolved to the Union, in the Union List and the Concurrent List.

components listed in Schedule 1 of the Constitution illustrate the imbalance of powers, both fiscal and legislative, in favour of the Union.

The Union list, after its share of amendments, consists of 97 items that include matters of national importance like foreign affairs, defence, insurance etc. The state list consists of 66 items with 47 items in the concurrent list. However, through constitutional amendments many changes were introduced regarding the items. The concurrent list has not lost any item; it has only gained.

One of the contentious issues relating to the executive power of the Union is the power to enter into international treaties (Art. 253). "Rapid globalisation and liberalisation have led the union government to sign several international treaties with little or no consultation with the states. Conflicts arise when the interests of the centre differ from those of the states. Though treaty-making power lies with the centre, it needs to consult the states before signing agreements that affect state jurisdiction under the constitution. Moreover, the process of consultation needs to be institutionalised in the federal polity"[10].

Another contentious issue has been the cases where state governors exercise pivotal roles in undermining Indian federalism. A critical concern in this regard is related to the appointment of the governor by the Union government and the partisan role in the formation and dismissal of a state government at the behest of the political dispensation reigning at the Union government level. Various committees and commissions have examined the controversies about the role of the governor. The Administrative Reforms Committee (1966-69) and the Report of the Committee (1971) on governors took exception to the political appointments of governors and the abuse of powers by them.

In this context, by a landmark judicial verdict, popularly known as the *S.R. Bommai* case (1994)[11], the Supreme Court departed from the past practice of reticence to judicially review the Presidential Proclamations and declared the actions of the Union under Article 356, subject to judicial review[12].

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[10] Rekha Saxena, 2007, "Treaty-Making Power: A Case for 'Federalisation' and 'Parliamentarisation'", *Economic and Political Weekly*, January 6, pp. 24-28.

[11] S.R. Bommai vs Union of India and others, All India Reporter, Supreme Court Section, 1994.

[12] Rekha Saxena, 2006, *Situating Federalism: Mechanisms of Intergovernmental Relations in Canada and India*, Monohar Publishers & Distributors, Delhi, p. 125.

LOCAL GOVERNMENTS—RURAL AND URBAN

The local governments (LGs) in India are the panchayats (democratically elected village councils) for the rural areas, where 70% of the population in India live, and the municipalities for the urban areas. They have existed de facto from ancient times and during the British period. After independence, when the Constitution was adopted, they were mentioned in the Directive principles of the Constitution which is not justiciable. Therefore, there was a demand to include them in the main text of the Constitution. Consequently, on 23 December 1992, the Parliament of India amended the Constitution through the 73rd and 74th Amendments and today they are included in part IX and IXA of the Indian Constitution. Following these amendments, there are two additional lists of subject matters devolved to local governments, in Schedules 11th and 12th of the Constitution, respectively.

The subject matters mentioned in the 11th and 12th Schedules, unlike the 7th Schedule, are not mandatory; they are only suggested lists.[13] The devolution of powers to the local governments' jurisdiction is left entirely to the states and almost all the states in the country except a select few are unwilling to devolve power to the panchayats and municipalities. Therefore the local governments have their limitations in achieving their full democratic potential and Constitutional rights. The lack of an exclusive jurisdiction on defined subject matters has been a matter of serious concern henceforth.

The 73rd and 74th Amendments, however, serve as administrative regulators rather than as "institutions of local self-governments" as envisaged in Article 243G of the Constitution. This view finds echo in the words of K.C. Sivaramakrishnan: "[T]hey [local governments] have been endowed with the responsibility to look after the rooftop of the school".[14]

At the Union government level there is a Ministry for Panchayats and a Ministry for Urban Development to oversee the functioning of panchayats and municipalities. But in the federal structure of India, there is no room for the Union government to deal directly with the local governments. All local governments work under the state governments. The Union govern-

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[13]   See *Annexure 2: Rural and Urban LGs (Jurisdiction)* for a list of the subject matters devolved to the LGs.

[14]   K.C. Sivaramakrishnan, 2007, lecture delivered at the Institute of Social Sciences on 7 December.

ment has to provide the states with the incentives required to transfer powers downwards.

STATE AUTONOMOUS COUNCILS

The 7th Schedule of the Constitution broadly divides and distributes functional authority between the Union and the states. However, Articles 370, 371 and 371A-I modify this generality in order to provide for special arrangements of power distribution between the federal government and a particular class of states. These states are Jammu and Kashmir and the eight states in the northeastern area: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. This provision is aimed at accommodating features of regional and ethnic governance.[15]

Furthermore, the Constitution makes special provisions for the administration of certain areas called "Scheduled Areas": the Fifth Schedule operates in nine states that have significant tribal (*Adivasi* or aboriginal) populations; the Sixth Schedule of the Constitution provides for autonomous districts or regions for the tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram in the northeast.

Studies show that they were in selected areas, selectively applied and at varying stages of "autonomous" functioning. According to B.K. Roy Burman, this institution (autonomous districts) "represents more of a political rhetoric than systemic devolution of power and functions."[16]
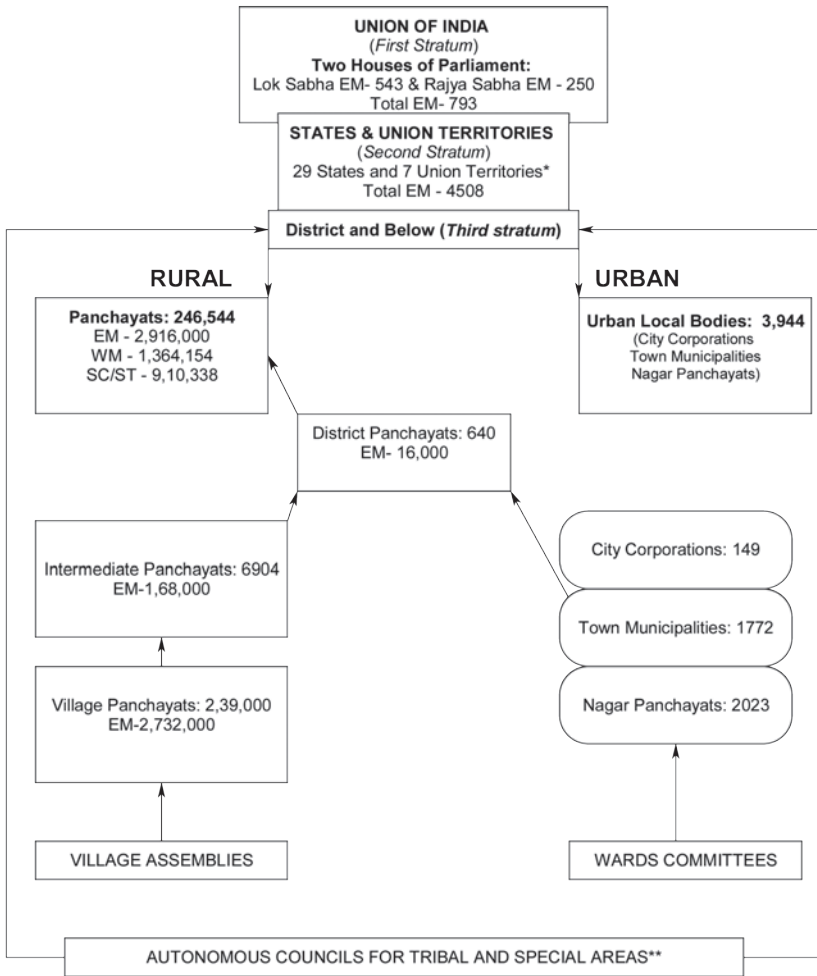
Thus, constitutionally, there exists a three-tier federal system in India today; with the Union at the top, the states at the middle level and below the states, districts with panchayats and municipalities for the rural and urban areas respectively. Of course, Autonomous Councils are there in other specific areas.[17]

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[15] George Mathew, 2006, "Republic of India", in *Distribution of Powers and Responsibilities in Federal Countries*, Akhtar Majeed et al. (eds.), Mc Gill-Queen University Press, London, p. 161.

[16] B.K. Roy Burman, 1993, "Federalism in Perspective: Problems and Prospects for North-East India", *Mainstream*, 7 August, p. 9.

[17] See *Schedule 3: Three tier system under Indian federalism* for an illustration of the three-tier Indian federalism.

UNION OF INDIA
(*First Stratum*)
Two Houses of Parliament:
Lok Sabha EM- 543 & Rajya Sabha EM - 250
Total EM- 793

STATES & UNION TERRITORIES
(*Second Stratum*)
29 States and 7 Union Territories*
Total EM - 4508

District and Below (*Third stratum*)

RURAL

Panchayats: 246,544
EM - 2,916,000
WM - 1,364,154
SC/ST - 9,10,338

URBAN

Urban Local Bodies: 3,944
(City Corporations
Town Municipalities
Nagar Panchayats)

District Panchayats: 640
EM- 16,000

Intermediate Panchayats: 6904
EM-1,68,000

City Corporations: 149

Town Municipalities: 1772

Village Panchayats: 2,39,000
EM-2,732,000

Nagar Panchayats: 2023

VILLAGE ASSEMBLIES

WARDS COMMITTEES

AUTONOMOUS COUNCILS FOR TRIBAL AND SPECIAL AREAS**

EM-Elected Members, WM-Women Members, WP-Women Presidents, SC/ST-Scheduled Caste
Scheduled Tribe Members.　　　Panchayats = Village Councils
* Out of 7 Union Territories only two have Democratically elected Assemblies.
** Autonomous Councils are in West Bengal, Jammu & Kashmir and Assam for
administration and development of Tribal areas.They have statutory local governments.

DECENTRALISATION OF POWERS AND LOCAL GOVERNMENTS

Decentralization to the lowest level, especially the Panchayati Raj institutions in rural areas, has been a major step to strengthen Indian federalism. Development takes place when power is transferred to local governments. When India achieved independence rural India was without development—lack of infrastructure, decreasing agricultural output and distress migration for casual employment. Social and economic changes have taken place in rural India. However, despite 65 years of "planned" development there is a long way to go to achieve human development in 6,40,930 villages, where 876,057,482 people live (2011). In India today, policymaking and implementation of development schemes can happen effectively only through the third stratum of the federation, the panchayats and municipalities. They are the best instrumentality for good governance and development. Sobriqueted as father of the nation, Mahatma Gandhi had visualised that every village must develop as a little republic, "independent of its neighbours for its own vital wants and yet interdependent for many others in which dependence is a necessity."[18] He envisaged something close to a confederation of villages. These were supposed to have all the powers vested in the full-fledged government of a sovereign state. To quote Gandhi:

> The Government of the village will be conducted by the Panchayat of five persons, annually elected by the adult villagers, male and female, possessing minimum prescribed qualifications. These will have all the authority and jurisdiction required. Since there will be no system of punishments in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year of office…[19]

Gandhian ideals met with resistance from the beginning because, according to the elitist views, the rural Indian population was incapable of governing itself.

B.R. Ambedkar, the architect of the Indian Constitution, who was a victim of caste discrimination, had witnessed how the traditional village panchayats were the epitome of injustice and inhuman centres for the poor and low caste people. He was a critic of the self-centric level at which these "little republics" had survived throughout Indian history. In the Constituent Assembly debate he said,

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[18] Mahatma Gandhi, 1942, "On Panchayati Raj", *Harijan*, 26 July, p. 238.

[19] Ibid.

> The love of the intellectual Indians for the village community is of course infinite if not pathetic (laughter). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. […] I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.[20]

Thus, when the Indian Constitution was finalized, the only reference to the Panchayati Raj was in Article 40, which read: "The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

Since 1949, when the Constitution came into force, till 1989 when then Prime Minister Rajiv Gandhi introduced the 64th Constitution Amendment bill to include panchayats in the Constitution, there were nationwide debates about the critical role of panchayats in good governance and development of the country. The idea that came to the centre stage was that the people, contrary to elitist views, were well capable of self-government. As the Sarkaria Commission report mentioned much later, most people are concerned with the issues they face immediately, here and now. Hence, when it comes to water, food, shelter, power, and infrastructures, villagers are able to set priorities and participate in the policymaking.

The motivation to extend representation through the panchayats was also to maintain social order and eliminate the causes of social unrest[21]. According to the then Minister of Panchayati Raj, Shri Mani Shankar Aiyar, India could no longer afford to have the problems faced by its many hundreds of millions of poor remaining unresolved and they are like time-bombs waiting to explode; it is preferable to give them representation and participation in the policymaking that concerns them immediately, thus "replacing a bullet with a ballot[22]."

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[20] Constituent Assembly Debates, 4 November 1948, Book No. 2, Volume No. VII, New Delhi, Lok Sabha Secretariat p. 39.

[21] Minister of Panchayati Raj Shri Mani Shankar Aiyar, 2008, speech delivered on the occasion of the launch of the "India-Brazil-South-Africa Local Governance Forum", 17 January, New Delhi.

[22] Ibid.

This was moreover a very sensible change because to involve villagers and to get their participation in the development agenda and implementation process resulted in a shift from the traditional top-down to a bottom-up policymaking, thus empowering the people.

When India became independent a powerful idea, inspired by Gandhi, was that panchayats should be "non-political", meaning that political parties should be kept out of local government elections and functioning. Consensus was considered the best way of arriving at decisions. But the report of the Committee on Panchayati Raj Institutions (1978) under the chairmanship of Asoka Mehta suggested measures to strengthen the panchayats through the participation of the political parties.[23]

Under the Constitution of India, state governments are required to endow the panchayat institutions and municipalities with financial powers and functional responsibilities (Article 243H and Article 243X). It is the state governments that decide the fiscal options of rural as well as urban LGs with regard to levying and assigning taxes, duties, tolls and fees, providing grants-in-aid to them. It is mandatory for the state governments to constitute State Finance Commissions (SFCs) under Articles 243I and 243Y. The SFCs determine the principles on the basis of which financial allocations can be made by the states for the panchayats and municipalities. By and large, local governments are still at the mercy of the states. However the Union government through the state governments provides a majority of panchayat finances in most states. These grant-based transfers from the Planning Commission or the Union ministries are made in the form of Centrally Sponsored Schemes (CSSs). Many of these schemes pertain to the 29 subjects of the 11th Schedule but are being implemented by different ministries and departments of the Union Government[24].

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[23]   *Report of the Committee on Panchayati Raj Institutions,* 1978, Department of Rural Development, Government of India, New Delhi.

[24]   V.N. Alok, 2006, "Local Government organisation and finance: Rural India", in Anwar Shah (ed.), *Local Governance in Developing Countries*, NW: World Bank, p. 224.

INTERGOVERNMENTAL RELATIONS

In an "ideal" federal system, the need for inter-governmental relations (IGRs) may be close to none. But it is theoretically improbable that exclusive jurisdictions over particular subject matters can be attributed hermetically to different levels of government, and that such a polity would be at all manageable in the long run; inter-governmental relations are therefore inevitable. We may distinguish between two types of inter-governmental relations: formal institutional and informal political arrangements or "executive federalism". It is argued that "legislative federalism" is typically weak as an instrument for settlement of intergovernmental disputes, for the simple reason that its popular legitimacy is eclipsed by the directly elected parliamentary chamber. The Rajya Sabha (the Upper House) in this regard was expected to represent states. However, its federal character is diluted by the absence of the principle of equal representation for each federating unit[25].

Federalization in India has been sidestepped by the question of unity and integrity of India over a number of years. This was also the main concern of many commissions (for example, the JVP[26] Committee, the Justice S.K. Dar Commission 1948, the States Reorganisation Commission 1953, chaired by Justice Fazal Ali, the Dr. P.V. Rajamannar Committee 1969, the Justice R.S. Sarkaria Commission 1983, etc)[27] set up to examine the functioning of the federal system.

The Sarkaria Commission's Report, submitted in 1988, was the most elaborate and its recommendations were innovative. It recommended among other things that an inter-governmental council be set up with adequate authority and infrastructure to inquire, investigate, and recommend on matters of inter-state relations, on a continuing basis. It recommended that the inter-governmental council meets four times a year. And most importantly, that it evolves around national consensus. More recently, the Constitution Commission blamed the malfunctioning of inter-governmental councils on the political culture: "It is felt, the report reads, that the real source of many problems is the tendency of centralisation of powers and misuse of authority."[28]

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[25] Rekha Saxena, 2007, "The Rajya Sabha: A federal second or secondary chamber?", *Indian Journal of Federal Studies*, pp. 75-83.

[26] JVP: Jawaharlal Nehru, Vallabhbhai Patel, Pattabhi Sitaramayya.

[27] Subash C. Kashyap, "Union-States relations in India", op. cit., p. 31.

[28] Ibid., p. 32.

POLITICAL ARRANGEMENTS TO STRENGTHEN FEDERALISM

The National Development Council (NDC) is an example of executive federalism. It was first set up in 1952. The discussions at the NDC meetings were only a front since all the preparatory work was done behind curtains prior to the meeting. The NDC was established by an "administrative decision to make it more amenable for the centre to manage its own affairs".

FORMAL INSTITUTIONAL INTERGOVERNMENTAL RELATIONS

Article 263 of the Constitution allows the Union President to set up a Council—the Inter State Council (ISC)—to (a) inquire and advise upon disputes, which may have arisen between states; (b) investigate and discuss subjects in which some or all of the states, or the Union and one or more of the states, have a common interest; or (c) make recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

It is important to note that the factors which influence the working of inter- governmental relations are the party system, interest groups and media, geography and diplomacy, demography, internal boundaries, wealth of states and varying capabilities, and changing contexts.

Basically, "the NDC and the ISC have emerged as two apex intergovernmental mechanisms of great importance, but they have hardly realised their full potential. To this end, they need to be constitutionally entrenched and functionally streamlined, especially in a climate when the Indian political system is charted on a course of growing federalisation that is still working the process out to its denouement. It has been suggested here that these two mechanisms should be merged into one key apex forum"[29].

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[29] Rekha Saxena, 2002, *Situating Federalism: Mechanisms of Intergovernmental Relations in Canada and India*, New Delhi: Monohar, New Delhi, 2006 p. 307. Also see Lawrence Saez, *Federalism without a Centre*, Sage, New Delhi, chapter 4.

INDIA: THE SUCCESS STORY

Part of the answer certainly lies in the adaptability and flexibility of Indian politics, but mostly the answer lies in its policy of democratic and multicultural federalism. One position about multiculturalism theory holds that it is antagonistic to "nation-building" projects. Chandhoke believes that "the rise of the multiculturalism has meant the end of the 'grand vision' of the culturally homogeneous nation-state, of national integration."[30] Harihar Bhattacharyya notes that "the so-called 'nation-state' in India is […] vastly different from those in the West."[31] The solution to this very academic debate is perhaps that the idea of "nation-state" itself needs to be looked into.

India's first prime minister, Jawaharlal Nehru, had a distinct vision about "nation-building". He was opposed to coercive assimilation; "such an assimilation process would develop of its own accord through education and contacts, without any special effort".[32] His pioneering of the cultural diversity of India's remote, mountain and tribal communities evidently demonstrates his empathy towards the smallest groups that feared assimilation and loss of identity to the dominant mainstream cultures of India. For instance, Nehru proposed five fundamental principles for "national" integration for the warlike northeastern states dominated by tribes:

> 1. People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their traditional arts and culture. 2. Tribal rights in land and forests should be respected. 3. We should try to train and build a team of their own people to do the work of administration and development. 4. We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through and not in rivalry to their social and cultural institutions. 5. We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.[33]

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[30] Chandhoke, N., 1999, "The logic of recognition?", *Seminar (India)*, No. 484, pp. 35-9, cited in Harihar Bhattacharyya, "Multiculturalism in Contemporary India", op. cit., p. 155.

[31] Harihar Bhattacharyya, "Multiculturalism in Contemporary India", op. cit., p. 162.

[32] Ibid., p. 156.

[33] Jawaharlal Nehru in his *Foreword* to Verrier Elwin's A Philosophy for NEFA (1957/1959), cited in Harihar Bhattacharyya, op. cit., p. 157.

Nehru faced multiple obstacles in carrying on his soft assimilation with the ongoing process he envisaged. Even after several decades of independence, his vision is far from reality. The obstacles may all be related to what John Rex and Gurharpal Singh explain as the process of change in post-colonial societies:

> In formerly plural societies, on the withdrawal of the metropolitan ruler, power often passed to one of the ethnic segments who now controlled the state. […] Whoever inherits power in the newly independent formerly colonial territories will usually do so under the guise of nationalism.[34]

"What is beyond dispute", writes Bhattacharyya, "is that India has been relatively successful in resisting disintegration."[35]

   How did India cope with its extraordinary diversity? Some of the steps it took had long-standing impact. They were:

STATES REORGANISATION

The Indian way to cope with its diversity was initially to reorganise states on an ethnic and linguistic basis. Hence, "most of the states have some dominant ethno-linguistic and ethno-religious groups (Punjab, Jammu and Kashmir, North-East)" but this is still imperfect since religious and linguistic minorities remain within those states.[36] Major reorganisations have been achieved in the 1950s and 1960s.

   The States Reorganisation Act (1956) was adopted in the continuum of the States Reorganisation Commission (1953) that recommended carrying on with states reorganisation largely on a linguistic basis. The sole exception to this principle in the following years was Punjab (1966)—which was done on a religious basis. Therefore it was true at the time that "[t]he essence of the statehood demand has always been the congruence between federal political boundaries and the ethno-linguistic boundaries of the people."[37]

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[34] John Rex and Gurharpal Singh, 2003, "Pluralism and Multiculturalism in Colonial and Post-Colonial Society—Thematic Introduction", *International Journal on Multicultural Societies (IJMS)*, Vol. 5, No. 2, p. 111.

[35] Ibid., p. 155.

[36] Harihar Bhattacharyya, "Multiculturalism in Contemporary India", op. cit., p. 152.

[37] Ibid., p. 160.

The creation of the state of Tamil Nadu was a success in accommodating Tamil nationalism in the early stages of states reorganisation—through linguistic recognition. But recent state reorganisations have moved towards some other *rationale* than ethno-linguistic. Thus in the new states of Chhattisgarh (carved out of Madhya Pradesh), Jharkhand (out of Bihar), Uttaranchal (out of Uttar Pradesh) and Telangana (out of Andhra Pradesh), language was not the identity-definer which played the major role. For example, in the state of Uttaranchal, problems related to the ecology of the region, situated as it is between the plains and the high Himalayas, became the dominant motive behind the statehood demand. The creation of the new state allowed a minority, the hill people, to become a political majority in their own land and enabled them to assert their interests in economic development.[38]

Federalism is concerned, according to classical theory, with geographically based jurisdiction only for power sharing. One area that failed to gain linguistic-based reorganisation for a long time is the northeast of India, and this failure could be explained by the lack of strength in the formulation of the demands.[39] Thus it appears that (on top of the "good administration" goal of the Union through the first phase of states reorganisation), the redefinition of states' borders was always ultimately limited to a geographical process of sharing political power.

OPEN SOCIETY

India has more than 70,000 newspapers and over 690 satellite channels, with more than 80 being news channels, and is the biggest newspaper market in the world—over 100 million copies sold each day[40]. This has contributed to it being a unique aspect of the country's democratic fabric wherein there exists a spirit of tolerance for differences of opinion and conflicts of interest. The premise for such a framework is characterized by freedom of speech and expression that are guaranteed as justiciable fundamental rights in India. The relevance for liberality of expression across the public domain through its constituent actors namely the citizenry cannot be undermined. In the case of

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[38] Ibid., p. 161.

[39] Mitra, S.K. and Lewis, A.R. (eds.), 1998, *Sub-national Movements in South Asia*. Segments, cited in Harihar Bhattacharyya, New Delhi, op. cit., p. 153.

[40] "Why are India's media under fire?", BBC News, 12 January 2012.

India, this has been a primordial prerequisite from a constitutional perspective and has served to protect and promote the tenets of a vibrant democracy.

Complementing this is the existence of dynamic civil society activism on themes such as human rights and gender equality that are characteristics of an open society like India. The instrumentality exercised for the same include public interest litigations wherein a citizen or entity can file petitions in a court of law to seek redressal in matters of public interest. The Right to Information (RTI) Act 2005 enacted in India has empowered citizens to seek information from the government that has an overt bearing on them. Moreover, the growth of mobile telecommunication combined with the advent and rise of social media among the masses has contributed to the connectivity factor that acts as a medium for flow of information.

However, from a governance perspective, it is imperative to facilitate a robust mechanism of checks and balances to ensure that seeds of fundamentalism are not sown in any form whatsoever. The liberty to express oneself, be it in any domain, including proponents of religion and secularism, should not obstruct the larger mandate of public order. It is in this context that elected lawmakers, along with other pillars of a democracy, have to congenially align themselves to promote collective growth and development as the cardinal priority in the realms of legislation and service delivery.

In a pluralistic democracy and the largest one at that in the world order, India hosts within its demography a diverse multitude of opinions emanating from its citizens. The societal progress in light of its geographical stretch and population is significantly rooted in the country, India, being an open society propagating a constitutionally mandated vision of egalitarian liberty for its citizens.

SECULARISM

India has gone further in accommodating cultural diversities than simply drawing state boundaries along ethno-linguistic lines. The religious diversity of India remained very important notwithstanding partition. Therefore, as "religion may also unite individuals whom these other structures would divide", India had to do something to accommodate communitarian forces and contain communalist forces. As religion is an important source of common identity, communitarian forces are necessarily at work in India. Communalist forces though have brought religious communities under the very dark

spotlight of the media as they led to violence in the past years. According to Bhambhri, competitive communalisms based on alternative concepts of Indian nationalism are posing a serious challenge to the practice of secularism by the Indian state. A fundamental challenge to the secular state has come from the believers of religion-based politics in India and the Indian state has shown serious weakness in meeting the challenge[41].

The equal-respect theory of "secularism" meant respecting all religions alike and granting religious liberty to all.[42] "In spirit," writes Sanghamitra Padhy, "the Constitution did seek to promote a secular and plural society based on neutrality towards all religions. State intervention in religious affairs was allowed to bring in social reform while guaranteeing religious freedom to all."[43] "Secularism" was inserted in the preamble to the Constitution in 1976 by way of Constitutional Amendment.

In his Inaugural Speech at the national symposium on "India's Struggle Against Communalism" in 1986, Rajiv Gandhi said, "Secularism cannot be indifference to religion, like I said, it must be a positive direction as Gandhiji and Panditji had shown us. We must get back to redeveloping that direction in today's situation, in today's reality and then take it to every corner of our country."[44]

EVOLVING PROCESS OF INDIAN FEDERALISM

Indian federalism is not static. It is evolving and dynamic. With India crossing the sixth decade of independence, it has *de facto* entered the multi-level federal era, a radical change from being just a union of states. Moreover, the political culture has shown some changes in recent years, proving that the

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[41] C.P. Bhambhri, 1998, *The Indian state: Fifty years*, Delhi: Shipra publications, 1997, p. 267. Also see Rajeev Bhargava, "The Secular Imperative", in M.P. Singh and Rekha Saxena (eds.), *Political Science Annual 1997*, New Delhi: Deep and Deep.

[42] Shefali Jha, "Secularism in the Constituent Assembly Debates, 1946-1950", *Economic and Political Weekly*, 27 July 2002, cited in Sanghamitra Padhy, "Secularism and Justice: A review of Indian Supreme Court Judgements", *Economic and Political Weekly*, 20 November 2004, p. 5027.

[43] Sanghamitra Pady, 2004, "Secularism and Justice: A review of Indian Supreme Court Judgements", *Economic and Political Weekly*, 20 November, p. 5027.

[44] "Uphold secular values", 1986, Inaugural Speech at the national symposium on "India's Struggle Against Communalism", New Delhi, 8 October, [online: http://www.aicc.org.in/rajiv-speech-details.php?id=3].

constitutional framework is flexible in its application by the various levels of governments.

There have been critical challenges to the ethos of federalism in India. To cite one scenario, the first time the Congress Party saw its majority decline in parliament was in 1967. In 1967, tensions arose in Union-states relations immediately. For any response to the crisis, Indira Gandhi had an authoritarian one. She "used a variety of methods to defeat her opponents. She made the Congress a centralised and regimented party. Both the culture and institutions of informal federation that had existed within the Congress especially before the 1967 elections virtually collapsed. The state units became increasingly weak and dependent upon the party's political centre under the leadership of Indira Gandhi."[45]

The climate which India was going through at the time was one of intense political tension. There were movements pulling in every direction, with the poor demanding change and development, the neighbours threatening India's sovereignty, secessionists from within, etc. Thus the Union government side-stepped the federal question successfully, for the electorate was preoccupied by other "imperious questions". She opposed the communists in Kerala in a profoundly non-federal manner, she removed governors and chief ministers of states like a general plays with lead soldiers, India was put under Emergency Rule, etc.[46]

> The concentration of powers into the hands of the Prime Minster reflected the authoritarian trends of leadership. The Congress system became more and more dependent on the Prime Minister and any attack on the Prime Minister was seen as a blow to the system.[47]

By the mid-eighties the edifice of the Indian polity began to show signs of cracks and instability due to the concentration of powers. The Anandpur Sahib Resolution (1973), assassination of Prime Minister Indira Gandhi

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[45] S.K. Jain, 1994, *Party Politics and Centre-State Relations in India*, Abhinav Publications, New Delhi, p. 78.

[46] See S.K. Jain, op. cit., pp. 67-93, for a more detailed account of these events. Also see Rajni Kothari, *Politics in India*, Orient Longman, New Delhi, 1970; Peter Ronald de Souza, *Contemporary India—Transitions*, New Delhi: Sage Publications, 2002, chapter 10; M.P. Singh and Rekha Saxena, *India at the Polls: Parliamentary Elections in the Federal Phase*, New Delhi: Orient Longman, 2003.

[47] James Manore, "Where Congress survived five states in the India's general election of 1977", *Asian Survey*, Vol. XVIII, 8 August 1979, pp. 758-803, noted in S.K. Jain, op. cit., p. 84.

(1984), intensification of the Punjab agitation, Jammu and Kashmir slipping to ungovernable conditions, rise of militant regional aspirations—all were symptoms of this cracking up.

Although India has had some experience of multi-party rule in 1967 and 1977, it's in the 1989 election that India really entered a new political era:

> [The] irreversible phase of federalization may be said to have really started only with the 1989 Lok Sabha elections. This was the turning point in a party system configuration when India made a definite transition from one-party dominance to a multi-party system. […] since 1989, India has witnessed a strong spell of federal governance that seems likely to continue in the foreseeable future.[48]

And today, the United Front government's alternative model of governance is improving significantly federalism through "devolution of greater economic and administrative autonomy to states."[49]

INDIAN FEDERALISM AND GLOBALISATION

Since the economic reforms in 1991, another development observed is the multiplication of autonomous and semi-judicial regulatory agencies set up under Parliamentary Acts, for example, the Security and Exchange Board of India (SEBI), Central Telecom Regulatory Authority, Central Insurance Regulatory Authority, etc. This phenomenon is termed as "sectoral federalism."[50]

On the development of the 1990s, Rudolph and Rudolph have maintained that "India has moved from a command economy to a federal market economy".[51] This is based on the idea of shared sovereignty and capability of the state governments to penetrate the society.

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[48] Rekha Saxena, 2003, "Recent Trends in Parliamentary Federal System: India and Canada", *Indian Journal of Federal Studies*, Vol. 4, No. 1, 2003, p. 76.

[49] Ash Narain Roy, "Cajoling and compromise drive India's multi-party system: Indian federalism bristles with paradoxes", [Online: http://www.forumfed.org/en/products/magazine/vol7_num1/india_cajoling.php].

[50] M.P. Singh and B.D. Dua (eds.), 2003, *Indian Federalism in the New Millennium*, Delhi: Monohor, pp. 379-435.

[51] Llyod Rudolph and Susanne Rudolph, 2001, "Iconisation of Chandrababu: Sharing Sovereignty in India's Federal Market Economy", *Economic and Political Weekly*, vol. XXXVI, no. 18, 5-11 May, pp. 1541-52.

ROLE OF STATES IN FOREIGN ECONOMIC POLICY

It is common for Indian newspapers and magazines to report on the regionalization of politics and the growing clout of state-level leaders on the international stage. Visits by Indian chief ministers to places like the World Economic Forum in Davos, Switzerland, are much commented upon.

On the one hand, the "basic argument" is that while "the formal provisions of a country's constitution" may give its central government "sole authority to manage the foreign relations of a country, of late, the exclusive grip of the centre has in this area [been] slowly… loosened by the activities of the units/members of a federal union."[52] But some analysts feel that this is an exaggeration.

The Rudolphs emphasise the shifting *pattern* of central restraint, not its outright reduction. They argue that fiscal contraction at the centre has "forced the states to become more self-reliant"—meaning, in practice, that they turn to private capital and international development assistance. The role of the state as regulator has been showing a tendency to impede the autonomy of the state. For example, The Electricity Act 2000, a centre-initiated piece of legislation, places the central electricity authority and newly established central and state electricity regulatory authorities in the dominant position with respect to state electricity planning and management.

REGIONALIZATION

The federalisation of India is an ongoing process. As Carl Friedrich has explained, "federal diversity" expands with time because "in the course of democratizing of a society, regional and linguistic-cultural communities become more articulate and demand recognition in the form of a set of political institutions, including safeguards for the identity of the particular community."[53]

In the past "the Union government had often been accused of ignoring the aspirations of different states and region. Centre-state economic relations were often under a lot of strain with regional leaders blaming New Delhi for being

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[52] See Jenkins, Roy, 2003, "How Federalism Influences India's Domestic Politics of WTO Engagement (and is Itself Affected in the Process)", *Asian Survey*, Vol. 43, No. 4, pp. 598-621.

[53] Friedrich, C., *Trends of Federalism in Theory and Practice*, London: Pall Mall Press, 1968, pp. 135-136, cited in Harihar Bhattacharyya, "Multiculturalism in Contemporary India", op. cit., p. 152.

parsimonious in allocating and releasing funds to states."[54] From the recent political discourse in India it is evident that the country is moving towards a greater degree of federalism because the coalition governments accommodate diverse identities and interests and the trend is towards more decentralization of power, accommodating the diversity of the country.[55]

The shift to coalition politics encouraged the regionalization process, for it allowed the rise of new political parties. Subhash C. Kashyap acknowledges major changes:

> […] widespread craving for a more federal structure implying need for greater sharing of power and patronage; rise of a larger and more powerful middle class with political ambitions and conflicts of employment opportunities; craving for regional or sub-national identities as the means to political power; and a rise of a rich farmer class with trading interest conflicts with the other states, lobbying for pricing policies for farm products, royalties for natural resources and so on.[56]

FEDERAL COALITIONS

Post-1990s, the presence of few national parties and several regional and state-based parties led to the rise of federal coalitions. Federal coalitions seek to reconcile territorially based identities within a cohesive frame even in the absence of shared ideologies. It is easier to achieve stability within this type of coalition than in ideological and programmatic coalitions as the latter cannot root out the regional aspirations and territorial ambitions of the constituents. For political parties, caste-based and class-based competitions remain significant at state and panchayat levels, but regional aspirations gain importance as politics move beyond the state boundaries.

Mostly, analyses of the Indian federation's journey from "quasi-federalism" (Wheare) to "quasi-confederacy" (Verney) seem to point towards the rising influence of regional parties. One of the reasons was the reaction to erstwhile Prime Minister of India Mrs. Indira Gandhi's centralizing tendency and assertion of state autonomy.

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[54] Paranjoy, Guha Thakurta, Shankar Raghuraman, 2004, *A Time of Coalitions – Divided We Stand*, New Delhi: Sage Publications, p. 344.

[55] Ibid., pp. 336-348.

[56] Subhash C. Kashyap, "Union-States relations in India", op. cit., pp. 35-36.

Lok Sabha (Lower House of Parliament) Elections

Years of Parliament Elections and No. of Parties Contested												
Parties	1980	1984	1985	1989	1991	1992	1996	1998	1999	2004	2009	2014
National Parties	66	77	77	88	99	77	88	77	77	66	77	66
State Parties	119	117	22	220	227	22	330	330	440	336	334	339
Regional Parties	11	99	--	885	1109	110	1171	1139	1122	2173	3322	4419

Source: Election Commission of India (www.eci.nic.in)

In the 1989 general elections the number of seats secured by regional parties was only 45. In the 11th Lok Sabha elections the scenario had changed dramatically. The triumph of the regional parties reached its height. The mandate appeared to be for regional parties and they bagged a total of 137 Lok Sabha seats. In the 16th Lok Sabha elections, which was globally recognized as the world's largest democratic exercise, the country witnessed contestation for 543 Lok Sabha seats.

ROLE OF GOVERNOR

In India, there is an office of governor for each state, as constitutional head of the state executive and whose appointment is made by the president of India. The role exercised by the governor for the state is analogous to that of India's president for the country with select exceptions in favour of the latter. Owing to the nominal nature in terms of authority, there has been a demand from some quarters for the abolition of the office of governor, but the founding fathers had decided to continue with this colonial office in this form primarily for preserving national unity and integrity. Jawaharlal Nehru opined in the Constituent Assembly that nominated governors would keep the centre in touch with the state units. Thus its relevance and significance as the centre's link person in the context of national unity has acquired currency across the divergent political spectrum. Secondly, the founding fathers would not have entrusted wider constitutional discretionary power in the matters of reserving bills passed by the state legislature for presidential assent, consulting the president before promulgating ordinances on certain matters, recommending for the president's rule in the state, and special administrative responsibility in Fifth and Sixth Schedule Area states, if they had wished to make the governor

merely a constitutional head on the lines of the president. Even when they were contemplating the idea of a loose federation, they were planning to vest the governor with more discretionary powers. So, the governor seemed to have been accepted as an important device in their scheme of national solidarity— which was considered as equally important as the projects of social justice and democracy.

DECENTRALISATION OF POWERS

Several studies on the working of the PRIs came to the conclusion that the PRIs created a new awakening in the villages. The elected panchayat representatives' supervision improved attendance of teachers in primary schools; made the block administration more responsive and helped to check petty corruption both of the subordinate staff as well as of the newly elected leaders.[57] Therefore there is a great benefit to expect from further decentralisation.

Nirmal Mukherjee and Balveer Arora make a plea in favour of an evolution of the PRIs from a development-linked administrative institution to real self-government: "India would then have cascading federalism; a federation of federations. […] Multi-level federalism needs to be seen as the structural means through which self-governments can go all the way down to village Panchayati Rajs."[58]

Anwar Shah presents a new vision of LGs that is termed as citizen-centred governance and argues for a leadership role by LGs in a multi-centred, multi-order or multi-level system in which citizens are ultimate sovereigns and various orders of government serve as agents in the supply of public governance[59].

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[57] See, for instance, L. P. Shukla, 1964, *A History of Village Panchayats in India*, Institute of Economic Research, Dharwar; R. V. Jathar, 1964, "Evolution of Panchayati Raj in India", I.E.R., Dharwar; *Report of a Study Team on Panchayati Raj in Rajasthan*, by Association of Voluntary Agencies for Rural Development, New Delhi, 1962; B. Baheshwari, 1963, *Studies in Panchayati Raj*, Metropolitan Book Co., Delhi.

[58] Nirmal Mukarji and Balveer Arora, *Federalism in India: Origins and Development*, op. cit., p. 270.

[59] Anwar Shah with Sana Shah, "The new vision of Local Governance and the evolving roles of Local Governments", in Anwar Shah (ed.), *Local Governance in Development Countries*, op. cit., pp. 41-2.

One further evolution expected from Indian federalism is the "inter-scheduling of subjects between 7th, 11th and 12th schedules of the Constitution". Also, as noted before, the parallelism of functions between the different levels of government is a deterrent to autonomy of the decentralised levels; this must change for further federalisation to happen. Practitioners put a lot of hope in the ISC, for this is a very useful institution in reforming the federal structure of the polity.

CONCLUSION

The transitionary period from colonial rule to national integration after independence has been one of the most primordial challenges India faced in the decades after it became a republic. It is through the tenets of cooperative federalism and democracy that India, as a nation, addressed these challenges. From a single-party leadership during the formative years and the gradual growth and evolvement of coalition politics, Indian federalism has developed in a dynamic and robust manner.

With time, India accommodated its diversity through acknowledgment of statehood demands. Statehood is lauded as "an institutional framework of autonomy and decentralisation which may respond better to the need for development and identity"[60]. The quest for power that drives the "pull-down" statehood demands cannot theoretically go further than complete decentralisation to the local governments. India seems to be tilting towards the Gandhian ideal of the "Little Republic" today. Further changes are required on the political/institutional level to achieve ideally decentralised self-government at the grassroots level. In order to achieve it, local governments, especially in rural India, are critical, for "Panchayat is a microcosm of the society of which the village forms a part. The noble ideals of 'institutions of self-government' as expounded by the 73rd Constitution Amendment cannot be translated into reality in the present inequitable society."[61]

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[60]   Harihar Bhattacharyya, "Multiculturalism in Contemporary India", op. cit., p. 162.

[61]   George Mathew, 1997, "Federalism, Local Government, and Economic Policy", *The India Handbook: Prospects onto the 21st Century*, Chicago: Fitzroy Dearborn Publishers, p. 110.

By working through the local governments (instead of hierarchically above them), the Union and the states may witness a growth in "the quality of the human character", to quote Jawaharlal Nehru's fundamental principles, and render Dr. B. R. Ambedkar's experience of the village a thing of the past. Thus, to facilitate the development and quality of life for the demography is the penultimate goal of every government.

Federalism in Australia Revisited: Political History and Culture as Forces for Stasis and Change

A J Brown[1]

I. INTRODUCTION

As one of the older, stable federations, Australia can appear to hold lessons for countries seeking durable forms of political decentralisation. This is especially the case if one considers the "lucky" social and economic fortunes that most Australians have enjoyed, as a colonial and post-colonial country in which democratic innovation became a hallmark of political development at the state-regional level—that is, the colonies—from as early as the 1850s, when the country's political context was the British Empire. Along with greater independence, Federation in 1901 brought, to a large degree, a classic "compact" between the elected leaders of six democratically-functioning colonies, who used popular political engagement to generate a momentum for change. This "utopian moment" reflected and confirmed the colonists' national consciousness but also their pragmatic outlook—and the political impossibility, in the eyes of most citizens and their representatives, of the new "Australia" reverting to a centralised, British-style unitary system even if it was to remain British in every other possible respect (Irving 1999; Galligan 1995).

Indeed, when compared to archipelagic, multi-ethnic countries like the Philippines or Indonesia, everything about Australian federalism looks simple.

The catch-cry of Federation, "one country for one continent", bespoke not only the relative ease of achieving an organised federation of one large island (as against hundreds), but the economic imperatives for uniting a relatively small, scattered population and their industries and markets, as well as the cultural objective of consolidating a British/European nation which was relatively homogeneous (reflected in the now defunct "White Australia policy"), and a commitment to egalitarian values. This commitment underpinned the new federal politics, and translated into a unique balance between liberal individualism and social justice, including commitments to the political and social equality of citizens, and principles of national equity which have since provided much of the legitimacy for expanding federal social and economic programs. It also entrenched a federal financial system based on the relatively rare idea of "full" horizontal fiscal equalisation between states.

As a result, the tensions in Australian federalism today can seem relatively minor when compared to the social, economic and political forces playing out in the Philippines. Nevertheless, tensions there are. Just as Australia's relative success story as a prosperous, democratic ex-colony belies important ongoing debates over a proper political and constitutional settlement with its indigenous peoples, so too there is ongoing debate over the need to reform the federal system. This chapter looks at some of the more fundamental tensions, as diagnosed by research into public perceptions and preferences, to assist those trying to compare Australia's federal system with possible options for the Philippines, or elsewhere. There are no hard and fast lessons here for what any decision-makers in the Philippines should do. After all, the Philippines has its own rich history of federation options, dating from the 1800s, and its own live debates (Brillantes, this volume). Reform is likely to continue to be shaped less by any copying of institutions in other countries, than by the "complex constellations of country-specific factors" which have shaped existing decentralization reforms over the last 25 years, without any specific "regional model" and "little if any policy transfer" (Turner 2006: 271). Further, while Australia may have fared comparatively well, socially and economically, in its present federal form (see, e.g., Twomey and Withers 2007), the relation is more correlative than causal. As argued by Baliscan et al. (2008, p. 294), there are "lots of theoretical economic arguments for decentralisation, especially for democratising and liberalising economies", but the "complexity of factors" means there is not much direct evidence of links between decentralisation, development and outcomes like greater spatial equality or equity.

Instead, this chapter argues that it is important, in any country where the structures of subnational and national governance are under scrutiny, to closely examine citizens' attitudes, expectations and political culture when trying to fully assess the viability of particular governance reforms—both in terms of whether or how reforms might be made sustainable, and whether they stand to address the major social and political objectives of the perceived need for change. The first part of the chapter reviews Australian federal reform debates to show why the need to closely examine political culture is fundamental to current discussions. As will be seen, contrary to the superficial simplicity suggested above, the fundamentals of Australian federalism are not as settled as they appear. Australian citizens are generally supportive of the ideal of a federal balance in which a national government is empowered to advance economic prosperity, social equity and national security, and strong regional governments work to protect economic, community and political needs at community levels—but a substantial proportion of citizens remain sceptical of the current spatial framework of federalism (based on the six ex-colonial "state-regions") and believe a differently configured federation might be much better.

So how did Australia come to have a federal political geography with which so many citizens do <u>not</u> identify? And how might a better federal resolution be achieved? The second part of the chapter discusses the importance of political history for understanding how current structures have evolved, rather than assuming that they continue to possess ongoing legitimacy simply because they exist. Here, an unlikely point of shared colonial history between the Philippines and Australia—the Tordesillas lines of 1494—reinforce the importance of this question, by exposing the extent to which each country's political geography has been left as a victim of its colonial heritage. Put simply, the Australian case suggests there may be more value to the Philippines or other more recent democracies in getting the fundamentals of their geography right, in accordance with enduring citizen needs and values, than in simply copying the features of ostensibly stable and successful systems in other countries.

The third part of the chapter bears this out, by providing public opinion-based evidence of Australian political culture collected since 2008 through the Australian Constitutional Values Survey. For many citizens, the federal system—irrespective of whether it delivers sufficiently on centralist demands—does not deliver sufficiently on decentralist ones. This is an

important problem because internationally, it is easy to mistake Australia for being a relatively decentralised federation (e.g., Hooghe et al. 2010, p. 52), but a closer examination of public opinion and political culture reveals the significant degree to which Australians see ongoing potential for structural reform aimed at greater decentralisation. This part of the chapter explains how popular preferences for the structure of government can be better explored, not only in Australia but more broadly. While regional science is often about economic geography (e.g., Baliscan et al. 2008), debates on decentralisation should also be informed by political science. Moreover, political science can contribute not only through the study of public opinion with respect to direct electoral preferences and party-political behaviour—studies which have been politically contentious in the Philippines (Hedman 2010)—but through quantitative and qualitative techniques for unpacking communities' political culture, in ways that may help inform longer term decisions of institutional choice.

In Australia, this closer examination reveals that rather than a single regionalism reflected in the current federal structure, Australia has two regionalisms—"state-regionalism" and "region-regionalism"—which sometimes align but also sometimes compete in citizens' values. Federalism may be logical for Australia, just as many regard it as logical for a country such as the Philippines. However, just as the Philippines' political structure continues to wrestle with its Spanish and US colonial legacies, a closer understanding of political culture shows this is also true of Australia in respect of the particular style of federation inherited as a result of British colonisation. Subnational regionalism exists in Australia. However, if a core value of federations is to reflect and maximise the role of "bottom-up" regional political identification in the way that best reflects and captures communities' self-identification, cohesion, participation and support, this reappraisal of Australian federalism indicates there are better and worse ways of achieving this. A better appreciation of political culture becomes fundamental to understanding, and where necessary overcoming, the results of political history for the sake of a better system.

II. BACKGROUND: THE STATE OF AUSTRALIAN FEDERAL REFORM

Despite the comparative success of Australia's system of government on many levels, reform of Australia's federal system has been a continually

recurring issue since its inception, and especially since the 1970s. Writing in Opposition, as a former federal Workplace Relations and Health Minister, a recent Prime Minister described the federation's dysfunctions as Australia's "biggest political problem" (Abbott 2009, p. 110). As a result, the latest reform process, initiated by the new Coalition federal government in 2014, is aimed at producing a comprehensive "White Paper" (or policy paper) on Reform of the Australian Federation, with the support of state (6), territory (2) and local governments (c. 500) (Commonwealth of Australia 2014a, b; 2015). While there are many pressures for reform (see Brown 2009; Senate 2011; Appleby et al. 2012; Kildea et al. 2012), the most prominent include:

- Increasing confusion of responsibilities and unproductive overlaps and wastage in duplicated services and regulations, due largely to unplanned Commonwealth (federal) expansion in many areas of policy, especially since the Second World War;

- A complication that not as many federal programs as previously assumed are based on clear constitutional power, following High Court decisions to more clearly define the Commonwealth's spending and executive powers in 2009, 2010 and 2012;

- Falling capacity of the state governments to deliver on rising expectations in major areas of policy and services (especially the public health system, but also school education and infrastructure), especially as the federal government has increasingly monopolised taxation collection—leading to Australia's remarkable degree of fiscal centralisation and vertical fiscal imbalance in comparative terms (even noted by Hooghe et al. 2010, p. 102);

- The various additional negative consequences of this state dependency on federal transfers (also increasingly politicised), as well as federally-coordinated equalisation arrangements, on their policy capacity, assertiveness, and accountability; and

- The need to strengthen institutions and processes of intergovernmental cooperation to overcome these problems, whether or not any significant changes are made to the distributions of responsibilities and revenues (e.g., Kildea and Lynch 2011; Commonwealth 2015; Craven 2015).

These debates have been less about decentralisation than about *possibly* returning some of the policy autonomy and revenue certainty that has incrementally

been lost by the existing state governments over successive decades. This can be seen reflected in the six guiding principles adopted by governments for re-considering the roles and responsibilities of the different levels of government:

1.　Subsidiarity, whereby responsibility lies with the lowest level of government possible, allowing flexible approaches to improving outcomes,

2.　Equity, efficiency and effectiveness of service delivery, *including a specific focus on service delivery in the regions*,

3.　"National interest" considerations, so that where it is appropriate, a national approach is adopted in preference to diversity across jurisdictions,

4.　Accountability for performance in delivering outcomes, but without imposing unnecessary reporting burdens and overly prescriptive controls,

5.　Durability (that is, the allocation of roles and responsibilities should be appropriate for the long-term), and

6.　Fiscal sustainability at both Commonwealth and State levels

(Commonwealth 2014a,b; emphasis added).

To date, a Discussion Paper released by governments in June 2015 (Commonwealth 2015b) suggests there are unlikely to be more than minor positive outcomes from the process, such as at least temporary clarification of roles and streamlined funding arrangements in select policy areas, and some attempt to agree on improved processes for intergovernmental relations. The process has already been identified as being at risk of failing to achieve more substantial changes to prevent the same problems recurring, for at least four reasons. First, it has been conducted as a largely government-to-government exercise, with little attempt to mobilise public support behind harder or longer term decisions—even though public support is out there, as will be shown below. Thus, for example, governments have already flagged they have no intention of strengthening the architecture of intergovernmental relations, such as by creating an independent secretariat for the Council of Australian Governments, or a Federation Commission, "because there are existing bodies performing similar functions, including the Productivity Commission" (Commonwealth 2015b, p. 27), despite this not actually being true.

　　Second, governments are showing no appetite for giving outcomes any enhanced legal durability, despite this being a key goal of the process. For

example, there appears to be no intention to embed reformed funding arrangements in replacement legislation for the federal financial framework, let alone any "enshrining" of clarified roles in legislation or the Constitution, because "implementing them would be costly and complicated and they would limit the flexibility of individual governments" (ibid.; cf. Brown 2015). Thus the changed arrangements, behaviour and culture needed to secure improvements even in limited policy areas will be left unsupported by anything but political goodwill and the memories of the current political leadership. In order words, durability will not follow.

Third, the whole process has been identified as lacking a grounding and justification in the principles of democratic accountability which might make its intended outcomes cohere, and engage the public, in ways that could inform longer-term decisions and both justify and require their entrenchment (Saunders 2015).

And fourthly—which is the focus of the rest of this paper—neither the process nor the options as outlined so far have followed through on indications that they might strategically address the most fundamental weakness driving *ad hoc* federal over-reach into areas of previous state responsibility: challenges to the questionable performance, democratic accountability, suitability and political legitimacy of state governments themselves as Australia's primary "regional" level of government.

This last criticism of Australia's federal reform process is important, because strong citizen support for and identification with their subnational governments remains a key defining features of healthy federations. Indeed, this is one of the clearest intended benefits of political decentralisation programs more generally—"the ability of citizens to express their views and expectations through the democratic channels opened up by decentralization" (Turner 2006: 270). Stronger recognition of regions has been identified as a significant part of the response to declining political trust and rising "critical citizenship" not only in recent democracies, but established ones (Norris 1999, p. 270). But this is only possible if institutions and *scales* of political participation afforded to regional and/or local communities are sufficiently aligned with their political culture, to *make real* this participation, accountability and legitimacy.

Australia's current federal reform process acknowledges this challenge, in at least two major ways. As noted above, the key criterion of achieving optimal arrangements for delivering services to Australians includes "*a specific focus on*

service delivery in the regions" (NB, not "in the states"); and the official reform issues paper includes the following passage, and footnote, with respect to the theoretical benefits of federalism:

> Federalism is regarded as one of the best systems for ensuring govern-
> ment is close to the people while also dealing with the competing pres-
> sures produced by globalisation. … Regional governments are "closer to
> the people". Regional governments are arguably more within the reach of
> their communities than the central government and are more responsive
> to the specific needs of their communities, allowing policies and services
> to be customised.[n.85]

> [n.85: However, in a large country like Australia, often rural and re-
> gional communities can feel just as disconnected from the concerns of
> a State and Territory government as they do from the Commonwealth
> Government.]

Thus, on the one hand, governments recognise that relying solely on the ex-
colonial state governments as the first-order "regional" units of the federation
is not necessarily enough to achieve the theoretical or practical benefits of
federation in the Australian case. The history of this basic political geography
of Australian federalism is set out in Figure 1.

Figure 1. "State-regions": Evolution of Australia's colonial/federal divisions, 1788-present.

5.1 Boundaries of states and territories
(NSW: New South Wales; NT: Northern Territory; Qld: Queensland; SA: South Australia; Tas.: Tasmania; VDL: Van Diemen's
Land; Vic.: Victoria; WA: Western Australia). In 1911 the Australian Capital Territory was excised from New South Wales.

Source: Macintyre 1999: 96, as corrected by author

By contrast, discussion about the place of "the regions" in the current reform process reflect at least three concerns with the underpinnings of Australian federalism in political history and geography:

- The weakness of local government in functional and financial terms as a tier of the Australian federation; and its inability to compensate for governance deficits at community levels, also manifesting politically through repeated campaigns for recognition in the 1901 Constitution (Brown 2008; Commonwealth of Australia 2011; Brown and Kildea 2016);

- Concerns about deficiencies in policy, service capacity and responsiveness at alternative "regional" scales (e.g., Beer 2000; Gray and Lawrence 2001; Peters 2007; Brown and Bellamy 2010);

- The tendency of federal and state governments, since the 1940s, to create *ad hoc* administrative programs and temporary structures at this alternative "regional" scale, with varying degrees of involvement from local government, in compensation for these governance deficits (see Brown and Bellamy 2007; Figure 2).

Figure 2. "Region-regions": Regional Development Australia committees (2013).

Source: http://rda.gov.au/rda-region-maps <viewed 29 August 2013>
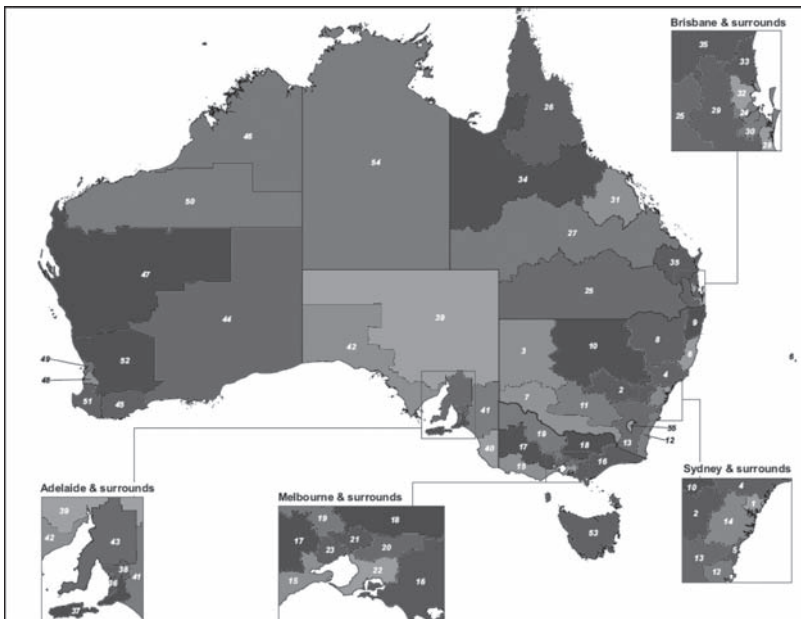
The significance of these dimensions of the federal reform problem is three-fold. First, as a question of pragmatic policy, these trends tend to confirm that only solutions which properly incorporate regional policies and institutions are likely to have enduring effectiveness and credibility. Second, this is reinforced by the fact that these regional dimensions of reform revolve partly around underlying questions about state governments' capacity to deliver on community needs, even with clarified roles and funding, which is a major trigger for the federal government to intervene in a wide range of policy fields in response to citizen concerns (see Brown 2007). In the past, this trigger for many federal-regional initiatives has contributed directly to competition between state and national governments (Chapman and Wood 1984, pp. 171-2, 202; Dollery and Marshall 1997, p. 11; Twomey 2008).

Thirdly, however, there is a great deal of political uncertainty about how to properly incorporate the regional dimension in federal reform, because these concerns have also fed into fundamental arguments, over a long period of time, that the states should simply "wither away", perhaps along with federalism itself. As late as 1995, Brian Galligan (1995, pp. 9, 53-62) predicted that as long as Australia has a federal system, "there will probably be critics calling for its abolition". Reform proposals for a larger number of "provincial" or "regional" governments to replace the states, whether federally constituted or otherwise, have a long history (e.g., Power and Wettenhall 1976; Galligan 1995, p. 102; Hurford 2004; Soorley 2004). More recently, pro-federal scholars have begun to point out more forcefully that social and economic diversity in Australia justifies "a significant degree of policy autonomy" not only for state governments, but also for "local and perhaps *regional* governments" (Aroney et al. 2012, p. 298, emphasis added).

Whether or how these challenges will be grasped by the current reform process is highly uncertain. For example, despite the official statements cited earlier, the only reference to regional arrangements in the latest discussion paper lies in one option for reorganising public health services using "regional purchasing agencies", based on "existing [regional] structures, such as Primary Health Networks and Local Hospital Networks" negotiated with the states (Commonwealth 2015b, p. 40). Similarly, despite the reform process being supposedly oriented towards holistic reform, local governments' roles and financial position have dropped out of the discussion, with the latest paper describing its options as "not intended to foreshadow any potential changes to local government funding arrangements" (Commonwealth 2015b, p. 91).

Commentators have described the process as largely meaningless in terms of real decentralisation (e.g., Grant 2015). Whether the process will recover from this point is unknown at the time of writing. However, what this reinforces is the importance—including for lessons for other countries—of more fully understanding the extent to which Australia's federal structure is operating as much in tension with, as in support of, the nation's "regional" needs; and how it came to be this way; in order to chart a viable reform path for the future.

III. POLITICAL HISTORY AND THE STRUCTURE(S) OF FEDERALISM

Before turning to the state of Australian political culture and the extent of citizen disaffection with the federal structure, it is useful to fill out more of the history of this structure—not only to understand why the main "state-regional" structure provokes the difficult challenges above, but because of its importance for other ex-colonial countries, including the Philippines, where the search for the right contemporary governance structures comes on top of a difficult constitutional history. This lesson is reinforced by an under-recognised point of shared colonial history between the Philippines and Australia, dating back ultimately to the Spanish discovery of the Americas in 1492, which over half a millennium later continues to impact on the structure of government in both countries. Such lessons are important for reminding us that current structures have evolved for particular reasons, within human control, rather than representing some fixed "destiny" that cannot now be changed simply because that is what exists.

In Australia's case, as already seen above, the territorial basis of federalism has been heavily contested in recent decades—contrary to its reputation as highly settled and stable. In fact, this contestation goes back to the early days of colonisation itself. Some interpretations speak of the "naturalness" of Australia's colonial divisions (Figure 1) for the purposes of colonising and governing the continent, but in fact, the siting of the colonies and demarcation of their territories was the result of deliberate, official decisions, made on the basis of highly variable degrees of information, wisdom or contemporary relevance for governance purposes. Indeed, contrary to any idea that these territories had any overall social, economic or biogeographic logic, their subdivision by the British commenced as part of the world's first "top-down" federation, *intended* in its initial stages (1823 to 1840) to create and harness regionalism as a governance strategy, rather than reflecting any pre-existing

regionalism (Brown 2004). Coming soon after US independence and federation, territorial subdivision was seen as a way to stimulate colonial settlement, with a federal union of the colonies also then the logical and desirable result. However, the process faltered for two reasons: a British colonial policy reversal back towards unitary principles, as a result of the "Canada problem"; and because New South Wales colonial elites resisted further subdivision.

By the time British authorities granted "responsible government" and effective independence to each colony in the 1850s, nevertheless, pressures for alternative "regional" divisions were well-established. The final two colonies (Victoria, 1850 and Queensland, 1859) resulted largely from political movements for "separation" from New South Wales. These were not the last such movements, because even after the British Colonial Office removed itself from such decisions after 1859, campaigns in favour of further colonial "separations" continued in many parts of Australia. They led to the inclusion of US-style "new state" provisions in the 1901 Constitution, and "new state" movements continued in the 1920s, 1950s and 1960s, especially in northern and central Queensland and northeast and southern NSW (Ellis 1933; Prescott 1987; Blainey 2004). Over time, these older "separation" and "new state" ideas have tended to be replaced by the proposals for alternative provincial and regional governments described in the previous section.

All these debates, over almost 200 years, have produced longstanding arguments over whether the six "state-regions" on which the federation is based actually make any sense. On one hand, most Australian citizens probably believe the popular stereotype that the six states have no governance logic, because they are mere historical accidents, based on lines "determined arbitrarily in London" without knowledge of, or regard for, the reality of Australian conditions (Chapman and Wood 1984, pp. 169-70). On the other hand, federalist scholars such as Rufus Davis have claimed the opposite—that far from being the product of "Whitehall blindness", "the interstate boundaries in Australia were drawn not in accordance with whim but in accordance with conventional criteria of boundary design that have not changed to this day" (Davis 1987, pp. 22-3). In fact, both stereotypes are wrong, and while the history of each subdivisions differs, the truth usually lies in between.

This reality, and its implications, are best demonstrated by the most arbitrary boundary of all, that dividing Western Australia from the rest of the continent. It is this boundary which provides an unlikely but revealing point of shared colonial history with the Philippines. It spans the country

from north to south, consisting entirely of the meridian of longitude, 129°E. The British proclaimed this boundary in 1824, as the western boundary of New South Wales; and then five years later, claimed the territory to its west, after establishing a first penal outpost at King George's Sound (Albany) and then deciding to approve civilian colonisation at Swan River (Perth). Prior to British annexation, for European purposes, Western Australia was still called New Holland, and was part of the Dutch East Indies, despite the Dutch having established no presence there (Battye 1924, 73; Gammage 1981, 530-1; Cameron 1989; Ricklefs 2001, 185). The new Swan River colony could not simply be added to New South Wales, and instead had to become its own legal jurisdiction, because unlike NSW it was intended to be convict-free, with land to be granted to free colonists on a different administrative and commercial model (Pike 1957, pp. 38-9; Crowley 1960, pp. 2-7, 17-8; Blainey 1966, pp. 90-1; Kociumbas 1992, pp. 119-23). South Australia and the Northern Territory were subsequently subdivided from NSW, as shown earlier in Figure 1. The result, today, is the huge boundary of the enormous state of Western Australia.

What led the British government to proclaim the 129°E meridian as a boundary for its existing and new colonies, in 1824-1829? The question is all the more pertinent because the choice of this line in 1824 involved no more than a western extension of the original boundary of NSW, by 700 kilometres, from the line originally proclaimed by the British in 1788 (135°E). What made the British choose either of these lines? In fact, as shown in Figure 3, these boundary decisions had nothing to do with any logic of subdivision or colonial governance, but purely the British Admiralty's logic of colonial *acquisition*.

Figure 3. Treaty of Tordesillas Lines 1494-1829.
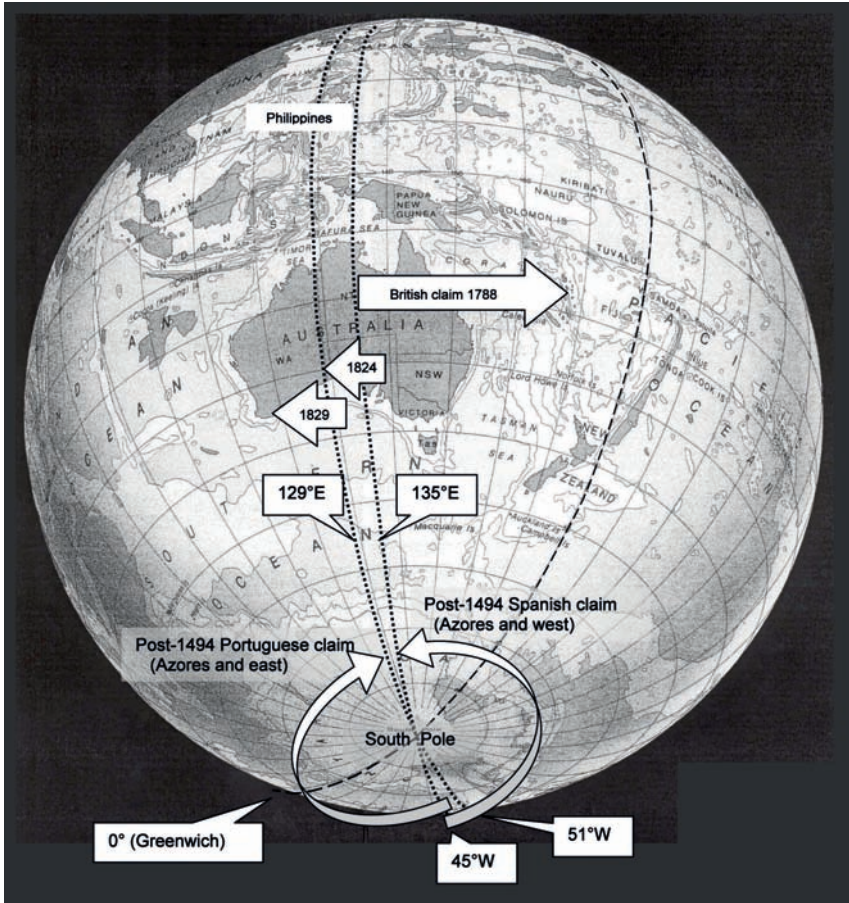
Source: Drawn by author.

As shown in Figure 3, both these lines were the antimeridians of boundaries first created in 1494 on the other side of the world, in the Atlantic Ocean, to recognise the colonial interests of the great European seafaring powers of the time: Spain and Portugal. Under the 1494 Treaty of Tordesillas, the two countries agreed that Spain would take the trading and colonisation rights to the western half of the world, including the newly discovered Americas (everything beyond a north-south line, 370 leagues west of the Azore Islands), while Portugal would take Africa and everything to the east (McIntyre 1977; Gammage 1981; Ward 1987, pp. 87-8). Ultimately, their interests met again

on the other side of the world, Portugal taking its trading posts as far as Macao and Timor, and Spain taking its colonisation as far as the Philippines. Three hundred years later, the British Admiralty brought the Tordesillas lines back into play by using them to defining its own colonisation claims in the South Pacific, using the line which represented Spain's lapsed interests (135°E) in order to minimise provocation to Portugal or its more important colonial successor, Holland; and then Portugal's own line (129°E), prior to annexation. Two lines were in play because the European discovery of Brazil had led to a contest over the location of the Tordesillas line, leading to two Atlantic lines depending on the preferred datum point.

This history is significant, not only because it provides a link between the territorial history of the Philippines and Australia. Just as the acts and omissions of the Spanish heavily influenced the styles and structures of governance in the Philippines, continuing to impact through to the present day (see, e.g., Wong 2006), so too British decisions based on the original logic of European imperialism and colonial acquisition continue to impact upon the structure of governance in Australia. While the choice of 129°E as an Australian colonial boundary was not arbitrary, its logic had nothing to do with any British colonial plan for the good governance of the colonies thereafter. Indeed, there is little evidence of any coherent territorial plan for the vast area acquired in 1829; when the Swan River settlement's geographic limits were legislated in 1829 and 1831, it was not clear that a "colony" of similar status to NSW or Van Diemen's Land had been authorised (McLelland 1971, p. 676), nor how much territory had been allocated to Swan River. In 1831 the first overland expedition to Albany concluded with a proclamation that it now lay within the new settlement (Crowley 1960: 9). The colony was conspicuous for being "almost accidental and largely unplanned" and rather than booming, it languished for decades (Statham 1981, pp. 181-9). It was a colony, and state, born by default. British governments affirmed their fear of allowing such vast territory to fall permanently to one small colony by continuing to reserve various northern areas.

While Western Australia remains the most "independently minded" state in Australia, and is thus in many respects the most supportive of retaining a federal system, its huge geographic scale confirms the tensions that underpin Australian federal reform debates. In the lead-up to Federation, it experienced its own strong movement for the separation of the "Goldfields" as a new colony or state. Debates over centralisation in Perth and neglect of the distant

parts of the state continue. Over recent decades, it is no accident that Western Australia has been forced to develop Australia's strongest examples of alternative, "fourth tier" regional development institutions, of the kind discussed in the previous part—but whose place in the national federal reform picture remains problematic.

This history therefore reinforces both the need, and the feasibility, of reappraising the territorial basis of a well-functioning federation in the Australian context. It is a historical mistake to exaggerate the political legitimacy of Australia's state governments as "natural" or "logical" territorial units, as if they represent the only scale of governance on which a healthy federalism can or should be based. Instead, it becomes more important to directly confront the tensions that flow from this history, and in particular, to establish how the relationship between the roles of the different levels of subnational governance in Australia—state, regional and local—can be better theorised and reconciled, in order to better marry "pure regionalism" with federalist principles of divided sovereignty in some kind of realistic alternative design (Wiltshire 1991, p. 12). While Australia's state boundaries may be here to stay, that does not mean that a federation structured simply in those terms is—or has ever been—an optimal governance strategy. A first major lesson for the Philippines or other more recent democracies may therefore be the importance of getting the fundamentals of their political geography right, if considering a federal restructuring—and working to maximise the extent to which the demarcation, roles and responsibilities of subnational governments accord with the enduring needs and values of the country's constituent communities, rather than copying particular features of ostensibly stable systems elsewhere.

IV. POLITICAL CULTURE TODAY: REGION-REGIONALISM AND STATE-REGIONALISM AS FORCES FOR CHANGE

How does a country identify the enduring needs and values of its constituent communities, for the purpose of shaping or reforming the demarcation and roles of its subnational governments? If there are tensions between existing levels of governance, how do we identify what kind of alternative structure might command greater legitimacy, attract less unproductive conflict, and be more sustainable as an institutional strategy? The second lesson of the Australian case, at present, is that it is possible to use not only political history, but the measurement of political culture to begin to more clearly diagnose the

answers to longstanding dilemmas. "Political culture" can be defined as "the total 'way' of politics and government as practiced and seen by a given group of people", based especially on "the attitudes and opinions which people hold about their government" (Stevens 1974, p. 112); or, a citizenry's body of "collective assumptions" about governing institutions and processes, embedded in wider power relationships and woven into their assumptions about life (Smith 2001, p. 5).
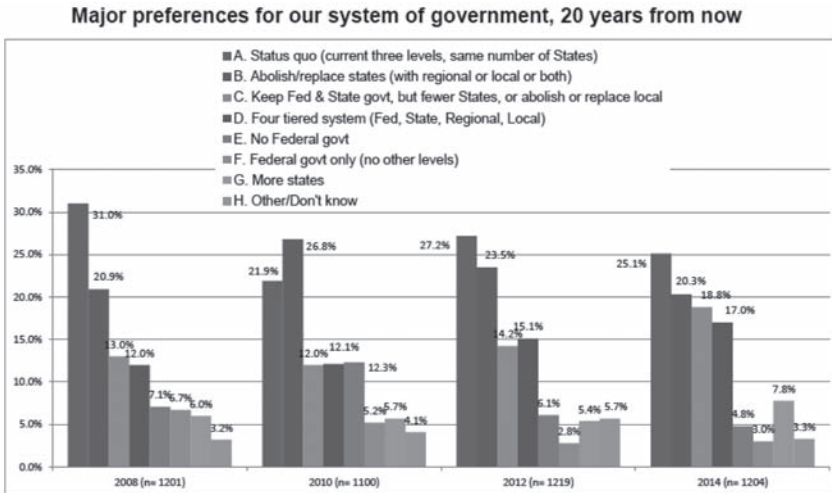
Political culture is more than simply "public opinion", even though some of the research techniques such as telephone interviewing or other surveys of mass, "representative" population samples may be the same. Even in Australia, where such research is relatively straightforward and accepted, the myriad factors that explain how political trust and confidence links citizens with their institutions have been described as a "complex miasma" (Denemark and Niemi 2012). It is therefore an open question how it might best be conducted in a country such as the Philippines, where the "formally equalitarian aggregative logic" of opinion polling has been criticised for ignoring and obscuring "profound realities of deprivation, poverty, and social inequality" (Hedman 2010, p.111). Whatever the mode of data collection, however, the aim of measuring political culture is exactly to investigate how public attitudes and experiences with respect to politics relate to key elements of the community's (or communities') underlying political values, cultures and subcultures, in order to have a deeper conversation about how the citizenry relate to existing institutions, and might relate to alternative ones; goals related to the type of "political psychology" (Montiel and Chiongbian 1991: 774) or "anthropology" (Wong 2006) which have been recommended for understanding governance options for the Philippines. Whether among governing elites or the entire population or both, the aim is to see whether or how culture might be "turned from a static obstacle to the dynamic foundation" of a decentralization or other governance reform program (Guess 2005, p. 222).

In Australia, empirical evidence of both public opinion and the underlying attitudes, experiences and values of communities are allowing a better understanding of the bases of political culture that bear upon and support different desires with respect to the federal system. By adapting methods used elsewhere, we have been able to gain clearer evidence as to the prevalence of citizen views that the present federal system is performing well or poorly, of preferences for reform, and of underlying factors like federal political culture (Kincaid and Cole 2011; see, e.g., Brown 2012a, b). Our principal data is

derived from the Australian Constitutional Values Survey (ACVS) conducted by Griffith University every two years since 2008—a stand-alone twenty-minute telephone interview of stratified random samples of 1100-1200 adult Australian residents, funded by the Australian Research Council.[2]

Figure 4. Australian Constitutional Values Survey results (ACVS 2008-2014).

Major preferences for our system of government, 20 years from now

■A. Status quo (current three levels, same number of States)
■B. Abolish/replace states (with regional or local or both)
■C. Keep Fed & State govt, but fewer States, or abolish or replace local
■D. Four tiered system (Fed, State, Regional, Local)
■E. No Federal govt
■F. Federal govt only (no other levels)
■G. More states
■H. Other/Don't know

Note: Some % vary from text due to combination analysis (e.g., both "Abolish/replace states" and "Only federal government" involve no state level of government; "Four tiered system" includes four tiers with more states; etc.).

As shown in Figure 4, this research enables us to identify the extent to which citizens continue to see alternative structures as preferable to the present configuration of the federation as just six states, in line with the tensions and history noted in the earlier parts of this chapter. Respondents were asked to

[2] The ACVS has so far been conducted in May 2008 (n=1211), March 2010 (n=1100), October 2012 (n=1219) and August-September 2014 (n=1204). Fieldwork was conducted under contract by Newspoll Limited. Participants were sampled in a quasi-random fashion, with random digit dialling and within-household screening questions employed to ensure a random sample from quotas set in capital and non-capital stratum. Cross-referencing with data from the Australian Bureau of Statistics indicated that the samples were generally representative of the overall Australian population. Percentages shown are for results post-weighted to most closely represent the population using Australian Bureau of Statistics data on gender, age, area, and highest level of schooling. Analyses were conducted using the statistical software package SPSS. An alpha of .05 was set for all tests of significance. Tests of significance were mostly conducted on unweighted results. Further project details are available at www.griffith.edu.au/federalism.

describe the system of government as they think it should be in the future, "say twenty years from now", defined in terms of the levels of government (choices include any, all or none of "federal", "state", "regional" or "local") and their number. Consistent with the history above, "region" was defined as "an area… bigger than your local area, but smaller than the whole of [your state/territory]".3 As Figure 4 shows, responses differ, and they also differ significantly in different parts of Australia. Overall, however—consistent with the history—a majority of respondents in all years (from two-thirds to more than three-quarters) describe a preferred future system that is constitutionally different from that today. Around 20-25 per cent of respondents describe a national system in which the present states are abolished or replaced; while around 40 per cent would include a new "regional" level (whether in place of the current state or local levels, or in addition).

When citizens express support for decentralist reforms, it is important to know whether this reflects a form of regional identity, attachment or consciousness of the kind needed to sustain democratic engagement with any new institutions at that level. Relationships between the geographic size of political communities, the scale of their institutions, and democratic goals and values have long been recognised as important to political design and practice (Dahl and Tufte 1973). Understanding the relationship between a people and the political territories and boundaries that influence their subnational lives matters enormously in individual countries (e.g., as demonstrated by Ramutsindela [2013] for South Africa). Therefore, we have also measured "regionalism" as an element of Australian political culture (as detailed in Brown and Deem 2014). Extending on established methods for describing regionalism (Moreno 2006; Henderson 2007; Fitjar 2010), we sought not only to establish popular identification with, or support for existing political arrangements; but also to provide insights into evaluation of those arrangements and possible alternatives.

Taking a "moderately relational" approach to identification and measurement of regional identity (Jones 2009; Varró and Lagendijk 2013), we therefore followed the common method for measuring the existence and

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3 Respondents were free to nominate other levels of government but very few did so (n=1, 2008; n=4, 2010; n=0, 2012). "Federal" was used throughout the survey to indicate the "national" level, for clarity and consistency, but not all resulting preferences can be presumed to be federal in nature (for example, some respondents [n=67, 2008; n=58, 2010; n=29 , 2012] wanted a federal level but no other level).

relative strength of regionalism as a feature of political culture, by measuring the strength of regional identity in terms of how "attached" respondents felt to their locality, region, state and nation ("very", "fairly", "not very", or "not at all") (Henderson 2007; Fitjar 2010, p. 3). We also measured regional identification more directly by adapting the "Moreno question" (see Moreno 2006; Henderson 2007; Fitjar 2010, pp. 36-38), in which respondents are asked whether they identify more strongly with one particular scale or another, or equally so. In response to a standard Moreno question about identification with nation and with the respondent's state, 79 per cent of respondents identified as "state-regional" citizens in at least some measure. In addition, to test the degree of tension between "state-regionalism" and support for alternative scales of regionalism in Australia, as discussed earlier, we extended the Moreno approach by asking respondents if they identified "more as a person from their State than their region", "equally as a person from their State and their region", or "more as a person from their region than their State".

The results of these enquiries are shown in Table 1. They not only confirmed "region-regionalism" to be a real feature of Australian political culture, but confirmed its comparable strength, nationally, to "state-regionalism". Overall, 56 per cent of citizens nominated as being "more" from their region than their state, or "equally" from both. Slightly more citizens identified as region-regionalists than as state-regionalists. Overall, the mean attachment of citizens to their region was slightly stronger than the mean attachment of citizens to their state.

Table 1. State-regionalism and region-regionalism (adapted Moreno) (ACVS 2012, weighted).

When it comes to (name of state/territory of residence) and (name of region nominated by respondent), do you think of yourself:

	%	Australia (n=1219)	ACT (n=19)	TAS (n=50)	WA (n=180)	SA (n=161)	NT (n=20)	QLD (n=228)	VIC (n=245)	NSW (n=316)
Adapted Moreno question	More as a person from (State)	33.0	64.8	56.0	39.0	29.8	48.5	37.2	33.4	25.4
	Equally from (State) as (Region)	20.2	12.6	4.8	21.1	29.5	12.8	23.5	18.5	18.8
	More as a person from (Region)	35.7	19.1	25.1	25.0	25.5	28.1	34.2	35.8	44.1
	None/ Don't Know / Missing	11.0	3.5	14.1	14.9	15.3	10.6	5.1	12.3	11.7
	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Mean attachment	Australia	3.75 (.5225) N=1218	3.94 (.2301) N=19	3.74 (.4760) N=50	3.71 (.5112) N=180	3.73 (.5076) N=161	3.70 (.4773) N=20	3.78 (.5421) N=228	3.74 (.4843) N=244	3.75 (.5566) N=316
	State	3.38 (.7114) N=1214	3.47 (.5364) N=19	3.54 (.6925) N=50	3.60 (.6650) N=179	3.32 (.7737) N=159	3.38 (.6834) N=20	3.42 (.7342) N=228	3.49 (.6223) N=244	3.21 (.7303) N=315
	Region	3.42 (.6866) N=1130	3.50 (.5385) N=18	3.67 (.4908) N=44	3.54 (.6847) 168	3.43 (.5902) N=147	3.23 (.5049) N=18	3.36 (.7687) N=224	3.49 (.6375) N=223	3.34 (.6912) N=289
	Local area	3.44 (.7046) N=1214	3.47 (.5000) N=19	3.71 (.4680) N=50	3.42 (.6883) N=179	3.44 (.6018) N=160	3.36 (.48078) N=20	3.38 (.8018) N=226	3.45 (.7145) N=244	3.46 (.6829) N=316

Attachment scored 1 (Not at all attached) to 4 (Very attached); Don't Know responses omitted.

State breakdowns are also shown in Table 1, from weakest "region-regionalism" to highest. Analysis of variance confirmed the range in state results to be statistically significant (F (7, 17470) = 30.083, p <.001). While state-regionalism was weakest in NSW and Victoria, region-regionalism was strongest in those states along with Queensland (44, 36 and 34 per cent respectively)—together, the three largest states in combined demographic terms, each consisting of several recognisable regions. Within NSW and Queensland, region-regionalism was slightly more prevalent among non-metropolitan residents, tending to confirm a geographic influence; although not significantly so, with metropolitan regionalism also strong. Indeed, the relation between region-regionalism and the demographic size of the state-region appears to be the main explanatory factor, with no other variables predicting membership of the groups.[4] Like state-regionalism, region-regionalism appears to relate strongly either to demographic context or to the effects on that context of the current political structures, apart from other factors. Again, overall, regionalism was confirmed as a real and salient element of Australian political identification.

To identify whether citizens' identification with their region impacts on their view of how the system should be structured, we then divided respondents by their dominant regionalist orientation ("state-regionalists", "dual regionalists", "region-regionalists" and "non-regionalists"), and compared these according to a range of variables (Brown and Deem 2014). As shown in Table 2, perceived performance of the different existing levels did vary between the groups when respondents were asked which level of government they considered to be most effective, next most effective and least effective at "its particular job". The results tend to confirm a relationship between regional citizenship and political judgments. In the perception of most effective level, the state level ranked last or equal last among all groups, confirming that if there is a perceived problem, it is at the state-regional level. Dual regionalists and region-regionalists had more confidence in local government; and not only non-regionalists, but region-regionalists (30 per cent) were almost twice as likely as state-regionalists (17 per cent) to judge the state level as "least effective", with dual-regionalists not far behind (confirmed by analysis of variance to be statistically significant: F (3, 17474) = 38.730, p <.001).

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[4] State-regionalism was slightly stronger among those aged 65+ and retirees, suggesting a generational attachment to "states' rights", but otherwise gender, ethnic background, level of education, age and employment were not significant.

Table 2. Perceived effectiveness of levels by regional group (ACVS 2012, weighted).

%	State-Regionalists	Dual-Regionalists	Region-Regionalists	Non-Regionalists	Total
Most effective at its particular job					
Federal level	(1st) 27.3	(=2nd) 25.4	(2nd) 31.4	(1st) 45.0	(2nd) 29.2
State level	(3rd) 25.1	(=2nd) 25.4	(3rd) 21.9	(3rd) 16.9	(3rd) 23.6
Local level	(2nd) 27.1	(1st) 35.7	(1st) 31.8	(2nd) 20.2	(1st) 30.1
Least effective at its particular job					
Federal level	(2nd) 27.2	(3rd) 25.6	(2nd) 26.9	(3rd) 15.4	(2nd) 26.2
State level	(3rd) 17.4	(1st) 27.4	(1st) 30.1	(1st) 32.2	(3rd) 24.6
Local level	(1st) 29.1	(2nd) 25.8	(3rd) 23.2	(2nd) 27.4	(1st) 26.3

Don't knows omitted.

Figure 5. Reform preferences by regional group (ACVS 2012, weighted).
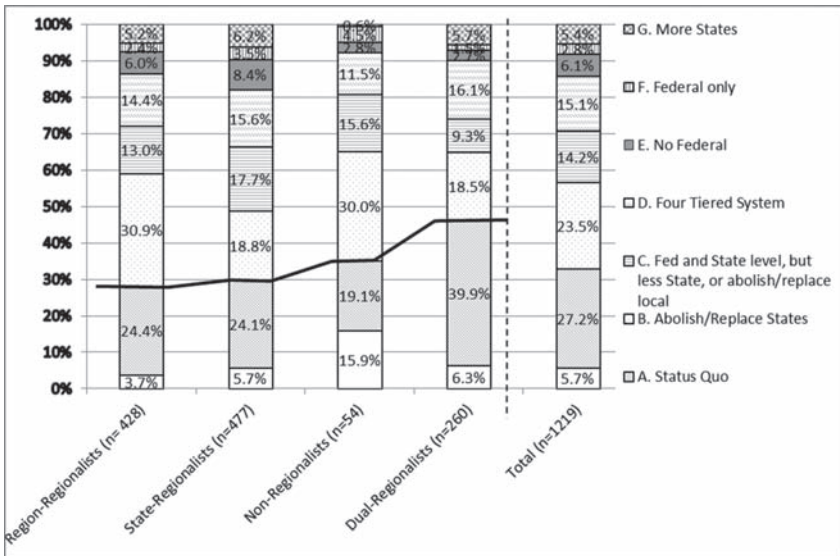
Finally, Figure 5 compares these same groups of respondents according to their preference for the federal system in the future, "say twenty years from now", as explained earlier. This enables us to further identify the extent and relevance of current federal reform tensions by identifying the relation between citizens' regional attachment and their views about whether the system should be reformed. The groups are ordered from highest proportion of reformers (region-regionalists) to lowest (dual regionalists). As can be seen, support for retaining the status quo (27 per cent of the total) was highest among dual-regionalists (40 per cent) and lowest among non-regionalists (19 per cent)

(Chi-square analysis confirms this range as statistically significant: χ^2(21, N= 1219) = 36.92, p = .017). Citizens who are strong state-regionalists *and* strong region-regionalists—that is, for whom their identification with these scales are not in tension—appeared to be the most satisfied and see the least need for reform. However, as shown, support for reform was visible across the board, with only 55 per cent of state-regionalists (and 63 per cent of dual regionalists) indicating they would retain the present state level unchanged. Similarly, support for the creation of new regional governments was also strong across the board, although—as one would expect—was stronger among region-regionalists (45 per cent), than among state-regionalists or dual-regionalists (each 38 per cent; no statistically significant difference: χ^2(3, n=1219) = 9,06, p = .028). Similarly, more region-regionalists (31 per cent) wished to see state governments abolished and replaced with regional and/or local government, than did state-regionalists or dual-regionalists (each 19 per cent).

Overall, these data help confirm that—consistent with the history noted earlier—the tensions running through Australian federal reform debates are not theoretical, imaginary or transitory, but rather reflect quite deep beliefs and preferences on the part of the Australian community towards the structure and performance of their political system. The results are sobering, in that they tend to confirm that unless current reform processes live up to their promise to deliver a more durable, effective distribution of power and resources at all subnational levels in the federal system, they are not likely to address some of the most fundamental pressures for reform. However, they are also positive, in that they make it more feasible to imagine and negotiate what kind of alternative structures, roles and responsibilities might represent a new, more viable long-term compromise for an effective federation. This is a step forward for any country considering major reform.

V. CONCLUSIONS

This chapter has reviewed current tensions in debates over the desirability of reforming Australia's federal system, including the current "Reform of the Australian Federation" White Paper process, to investigate how some of its fundamental tensions are playing out, and how they are being diagnosed by research into public perceptions and preferences. It has shown that the fundamentals of Australian federalism are not as settled as they often appear, with a substantial proportion of citizens showing enduring scepticism regarding

whether the current spatial framework of federalism (based on the six current "state-regions") represents the optimum system. It has discussed both the political history of Australian federalism, and evidence of public opinion and political culture collected through the Australian Constitutional Values Survey as forces of stasis and change in federal reform dynamics.

The results provide some understanding of the extent to which the resulting federal system—irrespective of whether it delivers sufficiently on centralist demands—can currently be assessed as struggling to deliver sufficiently on decentralist ones. A closer understanding of political culture has revealed that rather than a single regionalism reflected in the current federal structure, Australia has two regionalisms—sometimes aligned but also sometimes competing in citizens' values: "state-regionalism" and "region-regionalism". The form of regionalism *least* reflected in the present political structure (region-regionalism) correlates with reform demands associated with alternative, more devolutionary structures. This has helped answer questions about whether subnational regionalism exists in Australia—but more importantly, also helps point the way towards the redesign of Australia's political geography to better reflect and capture communities' self-identification, cohesion, participation and support, in ways that current institutions and processes seem to be struggling to do so.

The results also confirmed some of the historical evidence that for substantial proportions of the population, concentrated in the existing larger states, regionalism's real day may be yet to come—and that the state-regional framework is under genuine, bottom-up political pressure. Some elements of the political culture of regionalism in Australia are clearly working as forces in support of the status quo. However, others are clearly working, or capable of working, as forces for significant change, of the kind evidenced in historical movements. The results reinforce the likely outcomes from the limited scale of federal reform apparently being considered under Australia's current reform process—that the cycles of *ad hoc* federal intervention in regional and local policy and service delivery are likely to continue, as a result of widespread community preferences, but at the expense of the states and the system as a whole…unless or until more durable arrangements for satisfying "region-regionalist" expectations are found.

The next question is whether, or how, any such research approaches might be useful to policymakers grappling with the political development of the Philippines. The main lesson from the underlying tensions in Australian

federalism, and this research, is that it does appear possible to use both history and contemporary political culture—or *cultures*—as tools for investigating the extent to which current institutions are out of alignment with political expectations, and the potential for political support and participation to make alternative institutions work better, within existing traditions. By using political culture to help inform and guide reform, it is possible to better gauge popular identification with, and support for particular political arrangements—both existing and alternative.

While a strong majority of Australians can be seen as supporting federalism in principle, and some kind of federation almost certainly remains the "natural" form of government for the nation's political culture, a major lesson of the Australian experience is the need for adaptability in the way in which institutions are configured to serve their communities, if federal goals of unity with diversity are to be properly realised. This lesson reinforces the importance for political scientists and policymakers of measuring subnational regionalism as it *is*, in socio-cultural terms, rather than accepting existing institutions as immutable or limiting analysis of regionalism to a country's existing "first order" or "meso-level" institutional subdivisions. Overall, if federalism is to realise its potential, and subnational regions are to play their role in building social cohesion, economic sustainability and political trust, then accurate recognition of the true nature, political legitimacy and institutional needs of regionalism is crucial within any federal system. If Australian federalism looks relatively stable and successful to some outside observers, then countries that learn from its underlying tensions, and make the effort to get these fundamentals right in their federal design at the outset, should only benefit from that process.

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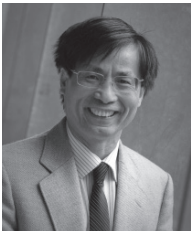
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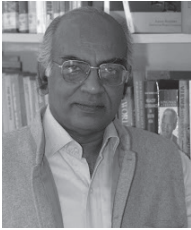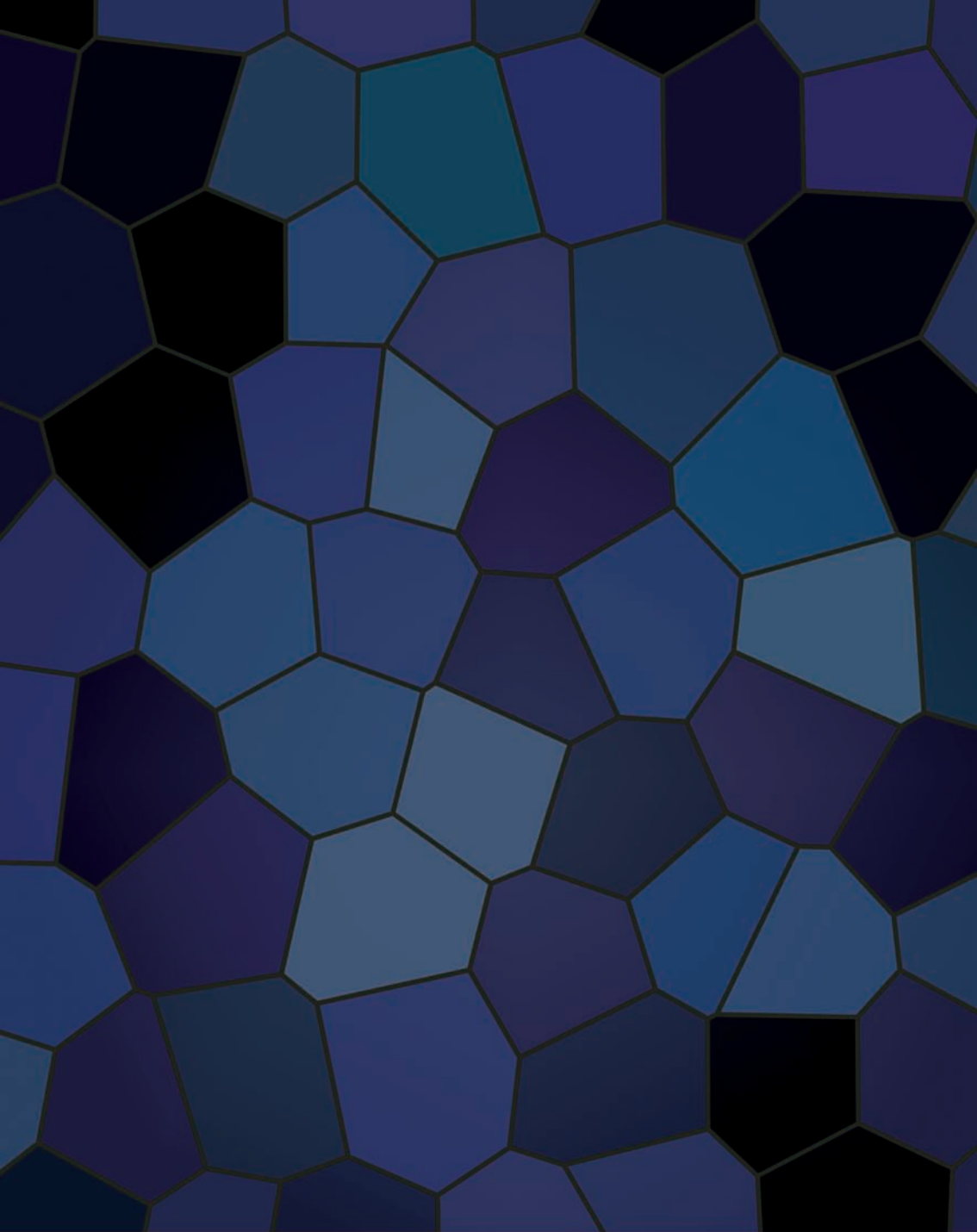

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