A Global Dialogue on Federalism

BOOKLET SERIES VOLUME 3

DIALOGUES ON LEGISLATIVE, EXECUTIVE, AND JUDICIAL GOVERNANCE IN FEDERAL COUNTRIES

EDITED BY RAOUL BLINDENBACHER AND ABIGAIL OSTIEN

DIALOGUES ON LEGISLATIVE, EXECUTIVE, AND JUDICIAL GOVERNANCE IN FEDERAL COUNTRIES

A GLOBAL DIALOGUE ON FEDERALISM
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Contents

Preface

After having published our first two booklets, the first on federal constitutions, the second on distribution of powers, we are pleased to introduce the third booklet in the Global Dialogue on Federalism Series. This booklet explores various aspects of legislative, executive, and judicial governance in federal systems. It reflects several lively dialogues that occurred at roundtables in Argentina, Australia, Austria, Canada, Germany, India, Nigeria, Russia, South Africa, Switzerland, and the United States. Those who participated in the dialogue events - both practitioners and academics - are experts in their respective countries, all contributing a diversity of viewpoints.

The content of these short articles provides the reader with a brief synopsis of interactions between the constitutional design and actual operation of institutions of government in 11 federal democracies and the current challenges to each system. The authors' words are a reflection of their own understanding of the issues and of the insights gained during the dialogue events.

Among the questions explored in the articles are: How does each country's history and culture affect the system in action as opposed to the constitution in design? What reforms are currently being proposed and what changes can improve the functioning of the system? To what extent does the system rely on intergovernmental relations and "cooperative federalism?" How influential has federalism been on the design of institutions? What is the relationship between federalism and democracy?

The exploration of these questions forms the body of the booklet in country articles entitled "Dialogue Insights." The concluding chapter by Katy Le Roy and Cheryl Saunders summarizes commonalities and differences in the featured countries. A glossary at the end of the booklet contributes to the accessible and educative nature of this publication, laying the groundwork for a more comprehensive book on this same theme. As such, it is our intention that the articles presented here will serve to

provide an entry point for Volume III of the book series, *Legislative, Executive, and Judicial Governance in Federal Countries*, wherein the same authors explore the topic in comprehensive detail.

The booklet is one outcome of a much greater project: *A Global Dialogue on Federalism*, a joint program of the Forum of Federations and the International Association of Centers for Federal Studies (*IACFS*). It is an exploration of federal governance by theme, which aims to bring experts together to inspire new ideas and fill a gap in comparative information on federal governance. The first theme examined the origins, structure, and change of several federal constitutions; the second explored distribution of powers and responsibilities; examples of future themes include fiscal federalism, foreign relations, and local governance.

Each theme exploration entails a multiple-staged process. First, a chosen "theme coordinator" makes use of the most current research on the theme to create an internationally comprehensive set of questions covering institutional provisions and how they work in practice. This set of questions is the foundation of the program, as it guides the dialogue at the roundtables - held concurrently in selected federal countries. A "country coordinator," invites a select and diverse group of practicing and academic experts to participate in a roundtable in his or her country. The goal is to create the most accurate picture of the theme in each country by inviting experts with diverse viewpoints and experience who are prepared to share with and learn from others in a non-politicized environment. At the end of the day, the coordinators are equipped to write an article that reflects the highlights of the dialogue from each country roundtable. The articles presented here have been generated from such an exchange. Once each country has held its roundtable, representatives gather at an international roundtable to identify commonalities and differences and to generate new insights. Such insights are incorporated into the country chapters in the aforementioned theme book. The chapters reflect the fact that their authors were able to explore the theme from a global vantage point, resulting in a truly comparative exploration of the topic.

The Global Dialogue on Federalism Series continues the Forum of Federations' tradition of publishing either independently or in partnership with other organizations. The Forum has produced a variety of books and multimedia material. For further information on the Forum's publications and activities, refer to the Forum's website at www.forumfed.org. The website also contains links to other organizations and an on-line library.

Finally, we would like to express our appreciation to the authors of the third theme booklet for their contributions to this volume. Special thanks are due to Katy Le Roy and Cheryl Saunders for writing the final chapter, "Comparative Reflections," and for offering their feedback on the booklet as a whole. We wish to acknowledge the experts who took part in the

dialogue events for providing a diversity of perspectives that helped to shape the articles themselves. Their names are listed at the end of the booklet. John Kincaid, Ronald Watts, and the rest of the Global Dialogue Editorial Board have offered their invaluable advice and expertise. Thank you to Alan Fenna and Thomas Hueglin for doing the painstaking work of creating the glossary. We would like to acknowledge the support offered by several staff members at the Forum of Federations. They include: Sandra Braun, Lisa Goodlet, Karl Nerenberg, Nicole Pedersen, and Carl Stieren.

Readers of this booklet are encouraged to use the knowledge gained to inspire new solutions, thereby strengthening democratic governance, and to join the many Global Dialogue participants around the world to expand and strengthen the growing international network on federalism.

Raoul Blindenbacher and Abigail Ostien, Editors
Forum of Federations

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DIALOGUES ON LEGISLATIVE, EXECUTIVE, AND JUDICIAL GOVERNANCE IN FEDERAL COUNTRIES

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Argentina: Centralized Power and Underdevelopment

ANTONIO M. HERNANDEZ

Throughout its history, Argentina has experienced a high degree of concentration of power in the national executive, based in the capital of Buenos Aires, which is also the focus of economic and financial power. This phenomenon in turn has had implications both for the operation of democratic institutions and for the enactment of federalism. While the causes lie in part in problems of institutional design, which might be remedied by constitutional or legal change, they are attributable also to political culture and to a lack of respect for constitutional principles and the rule of law, for which remedies are less readily found.

Argentina's national Constitution, originally promulgated in 1853, reflects the combined influence of the Constitution of the United States and the civil law tradition in the design of both the federal system and the

institutions of government. The federation comprises the federal or national sphere of government, 23 provinces, and the autonomous city of Buenos Aires, which is also the federal capital, and the Constitution divides power between them. The establishment of the federation in 1853 brought together 14 existing provinces and, as is often the case in a federation formed in this way, each sphere of government has its own Constitution and governing institutions. The institutional model involves a separation of powers between the executive, legislative, and judicial branches, including the direct election of the federal president, the provincial governors and the head of government (*Jefe de Gobierno*) of the Autonomous City of Buenos Aires. Since 1994, a measure of direct democracy has been available as well through referenda and the "initiative," which is the power of the citizens to present a bill under the Chamber of Deputies.

As is the case with other countries in Latin America, Argentina has experienced serious difficulties with the stability of its political system. This is evidenced, for example, by the series of military coups d'état that took place between 1930 and 1983, disturbing both constitutional order and democracy. This instability has been a major cause of the centralization of power; successive rounds of constitutional alteration have impeded the enactment of provincial and municipal autonomy. While Argentina fortunately returned to a democratic form of government in 1983, the performance of its institutions remains unsatisfactory in many ways. The history of the past twenty years is marked by a lack of institutional quality because the country has endured a state of continuing political, economic, and social emergency, suggesting an underlying political and legal immaturity that must be overcome.

Unfortunately, the constitutional system has not functioned properly and, consequently, neither have the republican and federal institutions. The key problem is the imbalance of power both at the federal and provincial orders.

With the re-establishment of democracy in 1983, the exercise of municipal and provincial autonomy advanced and the public rights system was modernized through reforms in the provincial constitutions. Finally, the national constitutional reform of 1994 confirmed the decentralization of power by strengthening federalist principles, recognizing municipal autonomy, and granting a special status to the Autonomous City of Buenos Aires.

But the lack of quality of Argentina's institutions prevents the country from adequately complying with the federal nature of the Constitution. The country cannot overcome the obvious economic, financial, political, and social dependence of the provinces on the federal government. Negotiations regarding fiscal co-participation have been inconclusive, and there is still no legislation in spite of the fact that the constitutional timeframes expired 8 years ago.

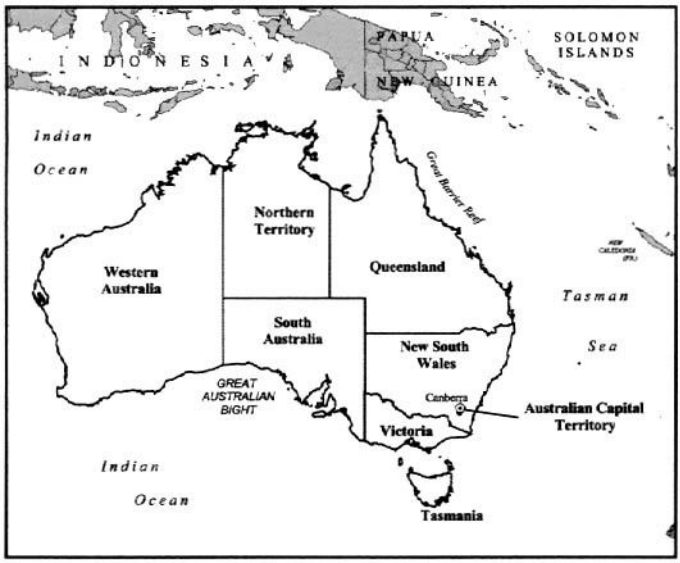
Unfortunately, the constitutional system has not functioned properly and, consequently, neither have the republican and federal institutions. The key problem is the imbalance of power both at the federal and provincial orders. Consequently, it is in the president's and the governors' hands that real political power lies. Furthermore, to this is added the predominance of the president and national government over the governors and the provinces, which produces a centralization of power that is distant from the constitutional principles.

The political problems mentioned above create a situation that prevents Argentina from considering such a delicate matter as the federal system and in particular, the modifications that have to take place in order to comply with the principles of the Constitution. The republican system has, among its stated objectives, the goals of freedom, equality among all people, and the horizontal division of power. Federalism as a form of decentralization of power can be conceived only within a democratic political regime that brings power closer to the people and that acts as a vertical control within the state. In effect, vigorous provincial and municipal autonomy presupposes active participation on the part of citizens in order to have good governance and serve as a check on the power of the national government.

Several important changes can be made to address the poor functioning of Argentina's institutions:

- Compliance with the principles of the republican and federal system established under the national Constitution.
- Strengthening the federal role of the Senate.
- Reaffirmation of the role of the Supreme Court of Justice as a guarantor of federalism and balance of the powers.
- Emphasizing democratic education at all levels.
- Initiating deep political reform aimed at improving political parties that are currently not properly performing their roles within the institutional system.

Insofar as future trends are concerned, the best opportunities for the country lie within the opportunities of globalization and deepening the process of decentralization of power. That is why today the word "Glocal" has been coined, indicating that people must think in global terms but act locally. Regarding the risks at hand, it is impossible to hide the magnitude of the crisis that the country is going through. Combined with economic and social underdevelopment, Argentina has historically been compelled to concentrate only on the circumstantial problems that prevent it from resolving the deeper structural ones.



Australia: Dualist in Form, Cooperative in Practice

KATY LE ROY AND CHERYL SAUNDERS

Australia is a federation in which the centre and constituent units each have an almost complete set of institutions of government in a style that is broadly typical of a common law parliamentary democracy. On the face of the Australian Constitution, each jurisdiction has considerable autonomy from the others in the design and operation of its own institutions. As in any federation, however, there is a range of ways in which the federal character of the polity affects the structure and operation of institutions and, conversely, in which the choice of institutions affects the dynamics of the federal system. Some are the consequence of the original design of the system of government. Others are the result of developments that have taken place over the course of more than 100 years since the Australian federation was established, including the reliance of governments on increasingly sophisticated forms of intergovernmental relations.

Australia was settled by the British from the end of the 18th century as six separate colonies scattered around the coast of the Australian continent and on the island of Tasmania. Over the following 100 years, the colonies

gradually became self-governing, with their own constitutions and their own governing institutions, broadly in the British tradition. By the end of the 19th century, each colony had a parliamentary system with a bicameral legislature, from which the executive government was drawn; a governor, representing the Crown, who acted as local head of state; and a court system, with a Supreme Court at the apex within each colony, from which appeals could go to the Privy Council in London.

The colonies federated in 1901, under a constitution that borrowed primarily from Britain and from the United States. As a result, the Australian Constitution combines British-style parliamentary government with a federal system broadly along United States' lines. The Constitution allocates specific powers to the Commonwealth, mostly as concurrent powers, leaving residual power to the states. It also provides the framework for the Commonwealth institutions of government: Parliament, executive government and courts. This framework has been interpreted as mandating a separation of powers, with particular significance for the judicial branch of government, as the degree of separation between legislature and executive in a parliamentary system is necessarily rather weak.

On the face of it, therefore, Australia is a federation in which each sphere of government has a complete set of institutions of its own. There are some exceptions however. The most important concerns the courts. While each sphere of government in fact has its own court system, the Constitution allows the Commonwealth Parliament to give its jurisdiction to state courts, and this is often done; prosecutions for offences under federal law are one example. More importantly still, in a significant departure from the United States model, Australia has a single, final appellate court, the High Court of Australia, for both federal and state court systems. One result of this arrangement is that there is a single common law for the whole of the country.

A more unusual exception to the US model concerns the monarchy. Australia is still a constitutional monarchy, with Queen Elizabeth II as head of state in her capacity as Queen of Australia. She is represented in Australia by a governor-general, in the Commonwealth sphere, and governors in each state, who effectively perform all of her functions. This pattern of representation of the Queen in Australia is consistent with the dualist model; the monarchy itself, however, is a single institution, with no greater connection to any one jurisdiction than another. Australia has already had one failed vote in 1999 to establish a republic. If and when another attempt is made, it will be necessary to consider how to choose a republican head of state in a manner that is both sufficiently democratic and sufficiently federal.

Despite the duality of the institutions of the two spheres of government, federalism has a very considerable influence on the design of the central institutions. Most obviously, the Commonwealth Parliament is bicameral,

with a "popular" House, the House of Representatives, and a Senate, created as a federal chamber. Each original state is entitled to an equal number of senators (presently, 12) and the powers of the Senate are almost equal with those of the House of Representatives, with the exception of certain categories of money bills, which may not be initiated or amended in the Senate. State governments and parliaments also have some say over the manner and timing of Senate elections, unlike elections for the House of Representatives, which are solely within the responsibility of the Commonwealth itself.

Despite the duality of the institutions of the two spheres of government, federalism has a very considerable influence on the design of the central institutions.

Senators are directly elected, on a system of proportional representation, using each state as a single electorate. As a rule, senators act as representatives of their party, rather than as representatives of their state, although presumably they bring a state perspective to party deliberations. Within the Senate itself, senators typically vote on party lines. Usually, the party majority in the Senate differs from that in the House. In this way, the Senate operates as a check and balance in the system, blocking some government initiatives, requiring negotiation over others, and scrutinizing government action more carefully than is likely in the House of Representatives. There is a mechanism for the resolution of deadlocks, but it is time consuming and cumbersome, at least for the purpose for which it was designed.

Australians are divided on the merits of the Senate as a check on the power of the government in the House of Representatives. Change seems unlikely, however. A recent attempt by the Commonwealth government to stimulate interest in altering the Constitution to simplify the deadlock procedure in a way that would make it more likely that the views of the House would prevail was unsuccessful. For the moment the question may have been defused. In 2005, the governing coalition won a majority in the Senate for the first time in 30 years.

There are other, less obvious examples of federal influence on the design of central institutions as well. Constituencies for the House of Representatives cannot cross state boundaries. Each state is entitled to a minimum of five members in the House of Representatives, irrespective of the size of its population. The Commonwealth government is required, by legislation, to consult state governments in relation to High Court appointments. Many Commonwealth agencies have regional offices in most or all states. Alteration of the Constitution requires a positive vote at a referendum, with majorities in a majority of states, as well as a national majority.

The formal dualism of the Australian constitutional design is very considerably altered in practice by extensive intergovernmental cooperation.

Meetings of ministers from all jurisdictions take place at least annually in most areas of governmental activity. There is now an extensive network of ministerial councils, supported by intergovernmental meetings of public service officers and public officials of other kinds including, for example, parliamentary drafters. At the apex of this complex is the Council of Australian Governments, or *COAG*.

Second, there is a considerable fiscal imbalance in favour of the Commonwealth, which requires substantial transfers of revenue between the Commonwealth and the states each year. Many of these transfers are made on condition, for particular purposes. Acceptance of these transfers theoretically is voluntary. Nevertheless, in this way, the Commonwealth government and Parliament in fact exercise considerable control over areas of state responsibility.

In addition, Australia now has in place a wide range of highly complex intergovernmental legislative schemes, designed to achieve effective uniformity of legislation and administration on matters in which the Constitution divides responsibility between Australian governments. Typically, these schemes are agreed at meetings of ministers, who generally can rely on their parliaments to implement them, if legislative action is necessary. This form of executive federalism is now a pronounced feature of the Australian federation.

Intergovernmental cooperation in Australia is a response to perceived demands of efficiency, in a country with a relatively small and essentially homogenous population of 20 million people. However, given the constitutional structure of the system of government along lines that assume the responsibility of governments to parliaments and courts within each jurisdiction, some forms of cooperation also create concerns about transparency and accountability, which have not yet been effectively tackled.

Austria: Failure of Constitutional Convention; No Changes for Federal System

ANNA GAMPER

The Republic of Austria is one of the "old" European federal systems. It was founded in 1918 as the Republic of German-Austria by the Provisory National Assembly, created out and with the political will of the German-speaking *Länder* of the former Austro-Hungarian Empire; it was then re-established in 1945 at the end of the Second World War. The federal Constitution, which dates back to the Constitutional Act of 1920, has been amended many times and also supplemented by numerous, additional federal constitutional acts and provisions. This is one of the reasons why Austria convened a constitutional convention in 2003, consisting of 70 experts and functionaries, including representatives of the nine *Länder*, and chaired by the president of the Federal Court of Auditors. Its task was to draft a new federal constitution and to present it at the beginning of 2005. The intention was not just to create a comprehensive constitutional document, but also to update the substance of the present Constitution and, in particular, to reform the federal system. However, the Constitutional Convention failed to effect a compromise between the

political parties and between the federation and the *Länder* so that a broad reform of the federal system seems unlikely at the present time. A parliamentary committee is now expected to tackle some of the reform issues, but the conservative government faces the difficulty that any constitutional reform would need the consent of the main opposition party - the Social Democrats.

Options for change include a modification of the composition and functions of the Federal Council (*Bundesrat*), the upper house of the federal Parliament. The members of the Federal Council are elected by the *Land* parliaments, with a system of proportional representation according to the numbers of *Land* citizens. As a rule, the Federal Council is only entitled to object to a bill that passed the lower house (National Council or *Nationalrat*), but its objection may be overruled by the National Council with a qualified quorum. There are only few cases where the Federal Council enjoys the right of absolute veto, such as a bill that intends to diminish *Länder* powers. This right of absolute veto has not been exercised so far and neither, with very few exceptions, has the right of suspensive veto. This is because the members of the Federal Council are closely linked to their political allies in the National Council, which deters them from withholding their consent to a bill that was approved by a majority of the National Council. The question, therefore, is whether another mode of selection (for example, nominations by *Land* governors or direct elections by the *Land* citizens) or a closer linkage between the *Land* parliaments and their delegates would strengthen the representation of *Länder* interests in the Federal Council.

Another issue is a possible transformation of the system of "indirect federal administration" into direct *Länder* representation. Presently, the *Land* governors - and the independent administrative tribunals - are able to perform the major federal administrative tasks on behalf of the federation. Modifications regarding the allocation of responsibilities could therefore include an extension of *Länder* administrative powers, although this would not compensate for the loss of legislative powers that the *Länder* will probably suffer.

Although legislative and administrative powers are shared between the federation and the *Länder*, the judiciary remains solely the responsibility of the federation. This could change, however, as the Constitutional Convention recommended the establishment of *Land* administrative courts. These courts would replace the present independent administrative tribunals and put the administrative jurisdiction on a more decentralized footing, rather than being exercised by a central authority, namely the Administrative Court.

The federal Constitution regulates the system of legislative and executive governance in the *Länder*. It determines the selection and role of the *Land* parliaments, the *Land* governments, and *Land* governors, leaving it, however, to the *Länder* constitutions to adopt more detailed or supplementary

provisions. In addition to the explicit federal constitutional rules that apply to the *Länder* constitutions, the Constitutional Court has repeatedly applied implicit standards of homogeneity to the *Länder* constitutions. Still, their systems of legislative and executive governance do not completely reflect the system at the federal level. For instance, the *Land* parliaments do not have a bicameral structure, nor are the *Land* governors elected directly (as the federal president is). The *Land* governments, including the *Land* governors, are elected by the *Land* parliaments according to either a proportional or majority election system, whereas the federal government is appointed by the president. The *Land* governors render an affirmation with respect to the federal Constitution to the president before assumption of office.

The *Länder* are directly represented at the level of the federal legislature in the Federal Council. *Land* law-making, in turn, is subject to federal supervision, which, in some cases, may even prevent a *Land* law from entering into force. The federal president is formally involved at the *Länder* level, as he appoints the *Land* Governor and is even empowered to dissolve the *Land* parliaments (which in practice has never happened).

Clearly, the status of the *Länder* would be much weaker were it not for numerous instruments of intergovernmental cooperation, both legal and informal, such as *Länder* conferences, a *Länder* liaison office, private law contracts, and public law treaties between the federation and the *Länder*. In the arena of fiscal federalism, where the federation still plays the predominant role, the two orders have developed many instruments of intergovernmental coordination.

Clearly, the status of the *Länder* would be much weaker were it not for numerous instruments of intergovernmental cooperation, both legal and informal.

Although local government constitutes the third tier in Austria, the municipalities are not constituent units of the federal system. Their basic structure is established by the federal Constitution, but the more detailed law making on local government is left to the *Länder*. Municipal representative associations take part in cooperative fiscal federalism, but that is almost the only sign of a "three-layer-federalism."

The Constitutional Convention was confronted with a plethora of reform options. It will remain a very difficult task to find a suitable solution, which must combine a federal structure of governance with the challenges of *EU* membership. In particular, this will have vital importance for the future role of the *Land* parliaments, as any further decrease of their powers would throw into question the federal system as a whole.

Canada: Federalism Behind (Almost) Closed Doors

THOMAS O. HUEGLIN

Canada differs from most other established federations, in that it contains two entirely different views of its federal structure. From the outset, francophone Quebeckers have understood Canada as a compact between two equal partners and founding cultures, one French and one English. When the Canadian federation expanded, from initially four to finally ten provinces, they saw the compact dissolve into an intergovernmental numbers game, with the lone French province in a perpetual 9:1 minority position. For most francophone Quebeckers, in other words, even if they are not outright separatists, the question of governance cannot be separated from the larger issue of Canadian federalism's ability to accommodate self-determination.

For most English Canadians, this is not so. They do not see Canadian federalism as fundamentally flawed or lop-sided. Intergovernmental practitioners will acknowledge that the system is dominated by executive federalism, and they will add that this is probably inevitable given the federation's regional as well as cultural asymmetry. The most important

political questions affecting the country cannot be decided by the parliamentary process at either level of government. It requires a collaborative agreement among first ministers: the prime minister, and the provincial premiers.

Observers may acknowledge the dominance of executive federalism, but they also deplore its democratic deficit: the fact that the most important decisions affecting the lives of Canadian citizens are the result of deals made behind closed doors, with both the public and the process of parliamentary deliberation largely excluded. They are also generally unsure whether this state of affairs is inevitable, or whether it can be addressed and alleviated by the reform of other institutions of governance. Canada's federal system is imbedded with a Westminster-style tradition of parliamentary majority rule that allows for little leeway in the accommodation of regional or provincial interests. At the same time, the Senate, whose members are named by the prime minister, lacks the capacity to give adequate expression to territorial diversity.

Even after the Americans deliberately broke with British governance traditions, Canadians remained loyal to them. Canada superimposed the British parliamentary system with a federal system to accommodate the divergent interests of English Canada and Québec. This structure allowed the two levels of government to operate autonomously within their respective spheres of powers.

In time, this dual design of Canadian federalism was confronted with issues of concurrency, the superiority of the federal spending power, as well as the increasing unwillingness of Québec to play along within the confines of the federal system. The parliamentary system is poorly equipped to deal with this complexity and interdependency. The first-past-the-post electoral system and the regime of strict party discipline have reinforced the impression of unmitigated dominance from the centre, Ontario, the most populous province. First-past-the-post also has the effect of making each region seem more uniform in political hue than it actually is. Added to Québec nationalism now is an increasingly irritated voice of Western alienation.

One proposed solution is some variation of a proportional electoral system, which several provincial governments are now contemplating. A second area of discussion is Senate reform. Canadian senators are not only appointed by the prime minister, they also are selected on the basis of a regional formula discriminating against Western provinces. However, Western demands for a triple-E senate (directly elected by the citizens, effective as a second chamber, and equal in the number of senators per province) have found little support elsewhere in the country. To most observers, it seems quite unlikely that an American-style senate would yield what the parliamentary system has been unable to accomplish: patching over deep regional differences in a pragmatic way of governing by compromise.

This is why political accommodation at the executive level of governance remains the quintessentially Canadian way of conducting the business of federalism.

This more flexible style of treaty federalism, such as in the European Union, may be a new and trendy way of federal governance. Instead of upgrading the legislative process in political decision making, the idea would be to make the process of executive governance more transparent and inclusive. This might be accomplished by simply opening up the process to the public - although it is the secrecy of "first minister" negotiations that most likely allows them to reach compromise.

Political accommodation at the executive level of governance remains the quintessentially Canadian way of conducting the business of federalism.

The recent creation of a Council of the Federation among provincial and territorial premiers may bring a more rational mode of decision making. With a permanent secretariat and a steering committee headed by senior public servants, an institutional organization has been put into place that could prepare ministers' meetings more pragmatically on an on-going basis. The Council of the Federation will have difficulty in overcoming the notorious ills of Canadian intergovernmental relations: federal-provincial confrontation and gridlock. Following the European model, it will have to abandon the old consensus model and move towards some form of qualified majority voting.

Finally, there is a general sense of urgency with regard to the underdeveloped local dimension of federalism. Most Canadians today live in large urban areas with their specific range of problems. All municipalities remain administrative creatures of the provinces, subservient to provincial agendas and increasingly dependent on federal spending largesse. A formal place at the intergovernmental bargaining table remains in the realm of wishful thinking. The same can be said about the question of self-government for Canada's more than one million Aboriginal peoples. Governance participation for the most part remains at the level of bilateral consultation and treaty negotiation, at the discretion of the federal government. Innovative patterns of joint governance can only be found in the territories, and those are mainly in the realm of economic development projects.

Germany: Balancing *Bundestag* against *Bundesrat* and Governments against Legislatures

STEFAN OETER

The German federal system has for decades been perceived as a success story because it helped to integrate the diverse segments of post-war Germany and safeguarded Germany's multifaceted political, economic, and cultural structure. The federal system has also played an important part in successfully integrating the eastern part of Germany, the former German Democratic Republic. Since the 1990s, however, there has been a growing feeling of discontent among the general public as well as among political elites. The federal system is perceived as a source of political paralysis. Public demands for reform in the political setup and in economic legislation end up in a quagmire of contradictory tactical moves by the political parties, which usually block each other effectively.

The obstacle to any kind of reform is the difference in majorities between the *Bundestag*, the directly elected federal legislature, and the *Bundesrat*, which represents the *Länder* at the federal level. In the *Bundesrat*, the parties in opposition in the *Bundestag* have a majority - a situation not foreseen in 1948 when drafting the Constitution, but typical for the last

three decades. This discrepancy of majorities does not create serious problems for ordinary legislation, since the governing majority in the federal Parliament can outvote the veto of the *Bundesrat* in cases of ordinary legislation. For some categories of legislation, however, the *Bundesrat* can block statutory law-making after the *Bundestag* has approved a law. These stand-offs derive from the mutual dependency between the federation and its member *Länder*.

Public demands for reform in the political setup and in economic legislation end up in a quagmire of contradictory tactical moves by the political parties, which usually block each other effectively.

One important area of joint governance is the financial structure of the federal system. The *Länder* have no real autonomy in financial matters, but depend on taxes shared with the federation and legislated by the federal parliament. As compensation for such dependency, the *Bundesrat* has a full veto in legislation on these taxes.

The other crucial area of joint governance is the field of administrative organization and procedure. Most federal statutes are implemented by *Land* administrations and the federal executive has only a few branches of direct administration. Because the federal government has a strong interest in influencing the patterns of implementation, the federal legislator can regulate issues of administrative organization and procedure. However, the price paid for this federal intrusion is again the full participation in law making in these cases by the *Bundesrat*, which can veto a law approved by majority vote in the directly elected *Bundestag*.

The use of this instrument has led to a significant growth of statutes depending on consent of the *Bundesrat*. Originally conceived as an exception, such legislative stand-offs have become a common phenomenon in legislative practice, making up more than 50 per cent of the statutes passed. Current debate on federal reform concentrates very much on this phenomenon, together with a revision of the distribution of legislative jurisdictions. The major political forces have set up a bicameral reform commission to prepare a proposal for federal reform. The efforts of that reform commission, however, have to-date ended in deadlock.

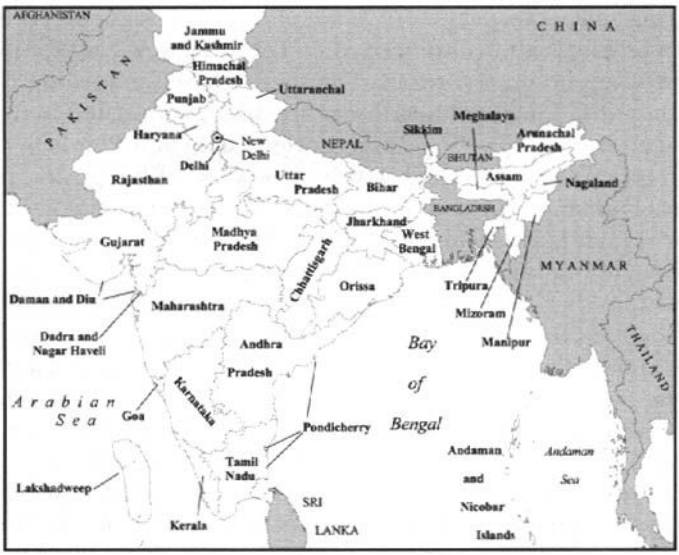
In order to solve the problem of "excessive" veto powers, the reform commission discussed whether the *Länder* should unilaterally modify the standards of administrative organization and procedure set in federal legislation. In exchange for this right, the *Länder* probably would be willing to give up the veto power concerning statutes regulating administrative organization and procedure. Federal ministries are strongly opposed to this idea, but it seems to contain the nucleus of a compromise.

The *Bundesrat* is an institution with no parallel in most of the other federal systems. It is a historical legacy from the first federal government

constructed between 1867 and 1871 under the Kaiser by Chancellor Otto von Bismarck, and is composed of members of *Land* governments, who vote as a group for their own *Land.* It does not play a decisive role in drafting legislation, but is extremely important in giving states a voice in federal decision making. If the *Bundestag* and *Bundesrat* insist on different proposals, the task of drafting a compromise is shifted to a specific committee of mediation formed by members of both houses. This body, the so-called *Vermittlungsausschuss,* constitutes a kind of "black hole" for political transparency, since its negotiations are secret and the *Bundestag* and *Bundesrat* can only accept or reject its proposals as a whole. The entire system blurs political responsibility and forces political actors to enter routinely into more or less arbitrary package deals.

Whereas the federation and states are inseparably intertwined in the system of legislative governance, the structures of executive governance are more clearly separated. The administrations of the *Länder* manage most issues of routine administration, with only a few fields of direct administrative jurisdiction for the federal government. The balance has been shifting in recent years, however, due to the creation of new regulatory agencies of the federation in fields of telecommunications, postal services, energy services, and others. The *Länder* are now afraid that they might lose their decisive role in executive governance in the long run.

The development of European integration is an additional factor intensifying fears of a loss of autonomy. With the growth of European community law, more and more areas under *Land* control are regulated in Brussels. In the European decision-making processes, however, only the federal government represents the *Länder.* Several compromises entered into by the federal government to the detriment of the states have created a strong suspicion by the *Länder* towards European politics. In 1994, the *Länder* managed to introduce a new "European clause" into the federal constitution that was intended to safeguard their participation in European issues. However, the general impression now is that these safeguards do not really work and that the mechanisms of consultation and participation have no real impact. The bigger *Länder* have changed to a policy of direct lobbying in Brussels, building up *Land* representations to a significant size and expertise. For the small constituent states, however, this will not be an affordable strategy.



India: An Ongoing Experiment to Redefine Federalism

RAJEEV DHAVAN AND REKHA SAXENA

The Indian Constitution was enacted in 1950, after four years of deliberation, to cater to the governance of what was then a population of 361 million. The nation consisted of an immense array of peoples from religious, linguistic, ethnic, caste, and community backgrounds reflecting great economic differentials. Fifty-five years later, with the population increasing to well over a billion, India has become like a microcosm of the world itself.

India's federal system was based on the British Government of India Act 1935, which was designed to deal with issues of law and order and revenue collection. Following the British design, the Indian Constitution created a strong, centralized federalism with room for flexibility to re-write both the geography of Indian federalism as well as the distribution of power within it.

The power to re-write the geography of Indian federalism was reposed in the Union - or federal - Parliament at the centre which, by simple legislation, could create new constituent units and abolish old ones. This was necessary to absorb the erstwhile princely states as well as to meet regional demands for recognition. The Union Parliament, with scant consultation of the state

legislatures, created new states out of the old seven times between 1956 and 2000 on a linguistic and cultural basis so that India now has 28 constituent states and seven union territories. The states are self governing members of the federation. The union territories are directly governed by the Union government although two union territories, Delhi and Pondicherry, have elected assemblies with limited devolved powers. Although the power of the Union Parliament to re-draw the boundaries of the state has attracted academic criticism, the actual exercise of this power has allowed India to give a multicultural dimension to its federal governance.

The division of legislative power between the Union and the states has been heavily weighted in favour of the Union to serve the interests of planned development - both in terms of the distribution of power as well as the capacity to raise finances. Under the Constitution, the distribution of the Union's revenues has been entrusted to a Finance Commission whose members are appointed by the Union. In the year 2000, the financial entitlements of the states were enhanced by constitutional amendments. But, it is the aforementioned Finance Commission that decides how Union revenues are distributed.

In its actual working India has lively legislatures; however, there has been a decisive shift from legislative to executive federalism, run by elected politicians and permanent civil servants within a parliamentary style system - both at the Union and state levels. In addition to the executive sweep of federal legislation, it is executive bodies appointed by the Union, such as the Planning Commission and the National Development Council that have been responsible for future socio-economic planning. Union and state governments and bureaucracies interact with each other informally. While the Constitution made provision for an interactive inter-state council, such a body was created only in 1990. It has proved to be unwieldy, exercizing no power and little influence. The Union's power and influence has been enhanced greatly due to the pressures of globalization, its treaty-making powers, the World Trade Organization treaty, regional treaties such as the South Asian Association for Regional Cooperation (*SAARC*), and the problems and possibilities created by cross-border terrorism, migratory movements, and foreign investment trade.

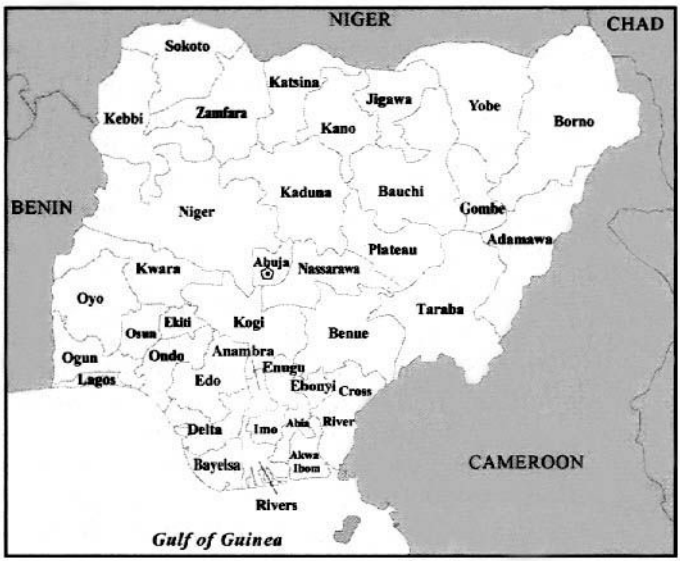
The Constitution gave the Union a vast "emergency power" to declare national emergencies and "President's Rule," the latter resulting in the takeover of the legislature and government of any particular state. An external national emergency was declared in 1962 due to the India-China War. In 1975-77, an internal national emergency enabled extensive powers to be reposed in Indira Gandhi's Congress government. During such national emergencies, the legislature and executive of a state continue to function. However, under President's Rule, the state's legislative and executive branches cease to function and the state is run by the Union legislature and executive through an unelected governor of the state, who, in any event, is a Union nominee. The President's Rule provisions have been indiscri-

minately abused; some 100 impositions of President's Rule have been imposed on various states - mostly to ensure that opposition governments in the states are removed from office. Such impositions continue albeit with much greater restraint due to a Supreme Court judgment of 1994, which opened up the possibility of judicial interference to strike down any unconstitutional abuse of the President's Rule power.

In 1994, the Supreme Court declared federalism to be part of the inviolate basic structure of the Constitution, which is fundamental to Indian governance and cannot be changed even by constitutional amendment. But changes have been made both to strengthen the Union's power and to give some respite to the states on the distribution of revenues. Not surprisingly, various states - especially Tamil Nadu in 1971 and West Bengal in 1978 - have asked for more power and more finances. This found some reflection in the Sarkaria Commission "Report on Centre-State Relations" (1988) which, while sensitive to the demands of the states, did not seek to greatly alter the status quo but called for greater constitutional discipline.

Indian federalism started on the assumption that the legislatures would be firmly in charge of federal governance. However, this has globally proved not to be the case. A stable parliamentary system also produces strong executives that are constitutionally empowered to act both in their own right and to implement legislation. Inevitably, federal governance slips into executive hands, but to a lesser extent than may be believed. In every democracy, all governments have to face the electoral ballot and cater to diverse demands. Accountability to the legislature has been strengthened in various ways. But, most importantly, executive governance has also been forced to respond to the people through new mechanisms of accountability devised by the media, social activism, freedom of information regimes, and elections in both the states and the Union. In India, the 1992 amendments to the Constitution have also brought power closer to the people by imposing a mandatory three tier local government on the federal structure. The irresistible rise of executive federalism cannot ignore the no less irresistible demands for democratic governance. But, clearly the older mechanisms for distributing power and responsibility between the Union and states whilst leaving it to the judiciary to resolve disputes is not enough. Both executive federation as well as overt and covert mechanisms for inter-state interaction have to be recast within a framework of democratic accountability. This, then, is the challenge for the future - reconciling federalism to democracy. Perhaps, it is in this sense that an Indian Supreme Court judge asked if India's Constitution is constantly in a state of being or becoming.

Indian federalism started on the assumption that the legislatures would be firmly in charge of federal governance. The irresistible rise of executive federalism cannot ignore the no less irresistible demands for democratic governance.



Nigerian Federalism at the Crossroads

EBERE OSIEKE

Nigeria attained political independence in 1960, but like many other countries in Africa, and even Latin America and Asia, it has not enjoyed uninterrupted democratic governance since that time. The military has intervened so many times that out of the 45 years of sovereignty, a democratic system of government has operated for only 15 years. Significantly, the first major action of the military regimes once they had seized power was to abolish the legislative and executive arms of the government by suspending the parts of the Constitution that relate to them. Thus, when reference is made to legislative and executive governance in Nigeria, it is to a very short period of time, but one filled with both turbulence and legal and constitutional growth.

Nigeria's Constitution from independence introduced a parliamentary system of government - popularly known as the "Westminster Model" - which lasted until January 1966 when the military took over power. When the military left in 1979, Nigeria changed to a presidential system of government borrowing from the model of the United States of America, but it practised the system for only four years before the military again seized power, accusing the civilian government of mismanagement, incompe-

tence, and corruption. A new democratic government took office in Nigeria on May 29, 1999, with Chief Olusegun Obasanjo (a retired army general and, at one time, Nigeria's military head of state) as the president of the country. The question of a parliamentary versus presidential system is still at issue today.

Thus, when reference is made to legislative and executive governance in Nigeria, it is to a very short period of time, but one filled with both turbulence and legal and constitutional growth.

The Nigerian Federation is now composed of 36 states and a federal capital city, Abuja. There is an elected national legislature, made up of the Senate and the House of Representatives, as well as a federal judiciary. All the states are headed by a governor, who is the chief executive and who exercises the same functions and responsibilities for the state as the president does for the Nigerian Federation. Each state has a unicameral legislature and a judiciary.

No serious constitutional problems have arisen within the states with respect to legislative and executive governance, with the exception of two or three cases of impeachment of deputy governors and one case involving a governor in the state of Anambra. There have been a number of controversies relating to the exercise of legislative and executive powers at the federal level.

In the year 2000, the president, in the exercise of his constitutional powers, modified an existing law to bring it into conformity with the provisions of the 1999 Constitution, but the legislators claimed that he had performed a legislative function and had usurped their powers. Also, in May 2004, the president proclaimed a state of emergency in Plateau State in north-central Nigeria, and suspended both the governor and the state legislature for a period of six months. Many commentators asserted that his actions were unconstitutional.

The legislature has also been accused of exceeding its powers on a number of occasions. In 2002, some state governors challenged the Electoral Act of 2001 adopted by the federal Legislature on the grounds that it was unconstitutional because it, among other things, extended the tenure of local government chairs to four years from the three years specified in the Constitution. The Supreme Court upheld the objection and declared the relevant parts of the act inoperative.

The lessons that Nigerians have learned from legislative and executive governance in the six years of democratic rule since 1999 is that the president wields enormous powers and that there is over-concentration of powers at the centre. This situation has made the post of president and membership of the federal Legislature very attractive. People from different parts of the country now vie to produce the president–sometimes quite fervidly. Up to now, the federal structure which the British colonialists

bequeathed to Nigeria, whereby the North alone is bigger than the East and the West combined, had not made it possible for every part of the country to produce the President. This was because the North traditionally voted as a block in a presidential election to produce the automatic majority required to elect the president.

In recent years, however, as a result of the general dissatisfaction expressed by various parts of the federation against Nigeria's existing federal structure, a consensus has emerged to divide the country into six geo-political zones: namely, North Central, North East, North West, South East, South South, and South West. The main advantage of the zones is to create a distinct identity for the minorities in the North, who would be in the North Central zone, and those in the East and West, who would be in the South South zone. Another advantage of the proposal is that the post of president would rotate among the zones so that every part of Nigeria would have the opportunity to produce the president, which is viewed as a post that will improve the lives and welfare of the people of the zone from where the president is elected.

Many people, however, would prefer the division of the country to be into regions. They believe that the six geo-political zones could be turned into regions with prime ministers, regional parliaments, and regional ministers, and that the six regions would then constitute the federating units, while the present states would become administrative units. The new regions would have autonomy to manage their affairs and natural resources, and to maintain their security. The powers of the central government would be reduced and passed to the regions.

There are also proposals arguing that the president should have only a single tenure of six years, while state governors should have one term of only five years, instead of the present two terms of four years each for both offices. If these measures are accepted and implemented, the powers of the president and the state governors would be considerably reduced and the positions would become less attractive.

There is a division of opinion on the question of whether Nigeria should continue with the presidential system, go back to the parliamentary system, or adopt a mixture of the two. Some people feel that the parliamentary system is best for Nigeria because it is cheaper to run, enhances democratic development and accountability, and promotes legislative and executive cooperation. Those supporting the presidential system maintain, however, that the parliamentary system was tried for six years from independence, but failed, while the presidential system has been surviving for over 10 years, and should be continued.

There is no doubt that federalism in Nigeria is at a crossroads at the moment. The search for a true and acceptable structure continues, while the country copes as best it can.

The Russian Federation under Putin: From Cooperative to Coercive Federalism?

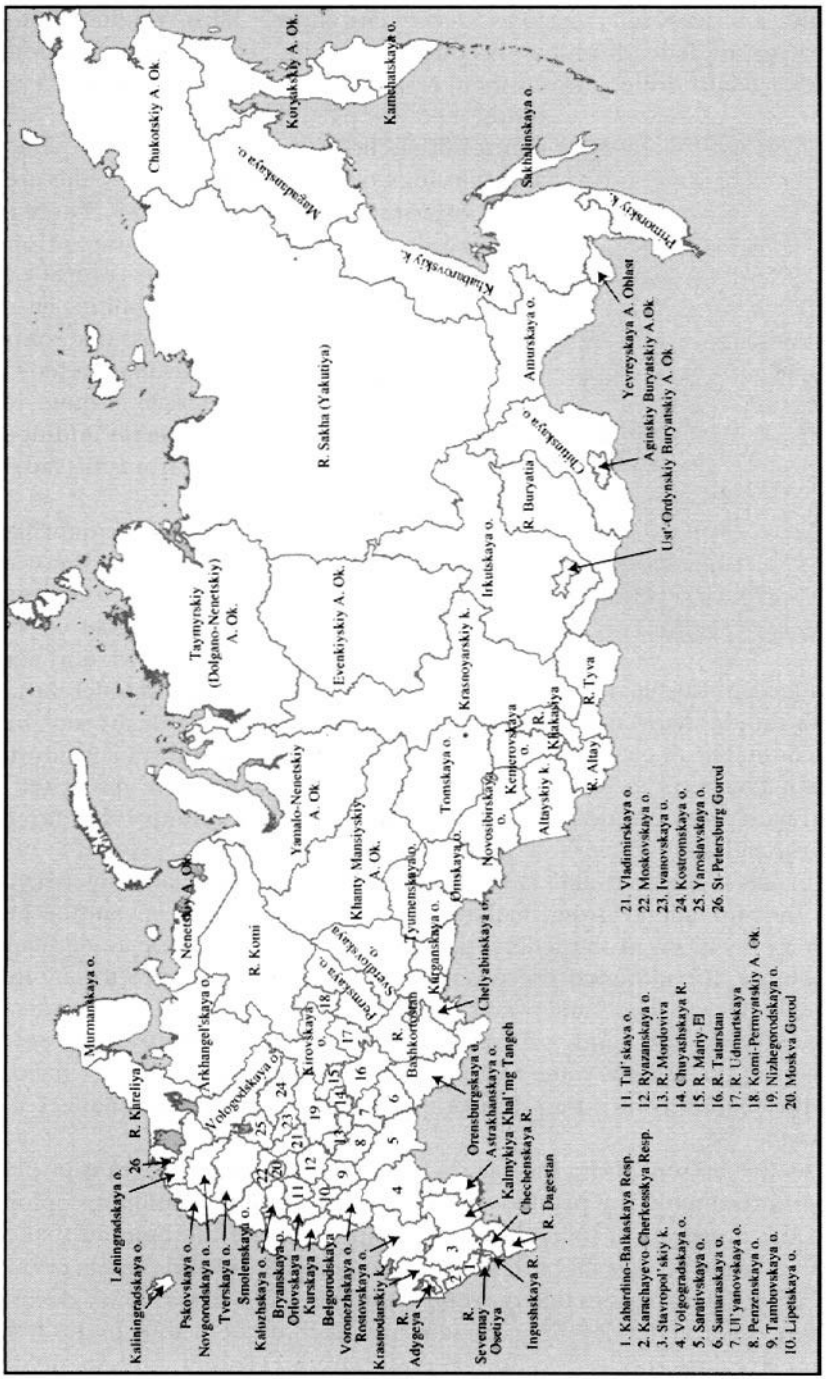
ALEXANDER N. DOMRIN

Russia's highly complex federal structure has become a significant problem, but one that could soon be addressed by imminent reforms. Re-elected in March 2004, President Vladimir Putin has begun his second term with a sweeping initiative to redistribute powers between the central government and the regions and to reduce the number of constituent units in the Russian Federation. The current changes are a continuation of Putin's attempts to strengthen the federation from the centre and to establish stronger "vertical power" in the country.

The adoption of the 1993 federal Constitution is not a culmination of Russian history or of Russia's constitutional development; rather, it was the beginning of Russia's experiment with federalism. Even though complete abandonment of federalism in Russia is very unlikely in the foreseeable future, the current expansion of federal government activity in virtually all spheres of life could be considered a sign of Russia's transition from "cooperative" federalism (based on treaties between the federal centre and subjects of the federation) to "coercive" federalism (based on the federal Constitution and strict compliance of the federation units with it).

Even though complete abandonment of federalism in Russia is very unlikely in the foreseeable future, the current expansion of federal government activity in virtually all spheres of life could be considered a sign of Russia's transition from "cooperative" federalism to "coercive" federalism

The Russian Federation is a presidential republic. The Russian president - proclaimed the "guarantor" of the Constitution and of the rights and freedoms of citizens - is the head of state representing the Russian Federation within the country and in international relations. He or she is empowered to take measures to protect the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20. Moskva Gorod
21. Vladimirskaya o.
22. Moskovskaya o.
23. Ivanovskaya o.
24. Kostromskaya o.
25. Yaroslavskaya o.
26. St Petersburg Gorod

sovereignty of the Russian Federation, its independence and state integrity, ensure the coordinated functioning and interaction of agencies of state power, and to determine the basic orientations of internal and foreign policy of the Russian Federation in accordance with the Constitution and federal laws.

There are three different court systems in Russia: 1) the Constitutional Court (created in 1991); 2) "regular" courts or the courts of general jurisdiction (including military courts); and 3) arbitration courts (*arbitrazh*) or commercial courts. It is important to underline that Russia doesn't have a single highest court of the country. All three highest courts - the Constitutional Court, the Supreme Court (the highest court among courts of general jurisdiction), and the Supreme Arbitration Court - enjoy similar status.

Russia's Parliament became bicameral after the 1990 constitutional amendment, shortly before the disintegration of the Soviet Union, and the 1993 Constitution kept its bicameral structure. The Parliament, or Federal Assembly, is composed of two chambers: the State Duma and the Federation Council. The State Duma consists of 450 deputies; the Federation Council, of 178 members (sometimes called senators), two from each of the 89 subjects of the Russian Federation.

The Constitution divides all subjects of the federation into three main groups: republics; national-territorial units (known as autonomous regions and autonomous areas); and administrative-territorial units (which includes regions, territories, and the country's two federal cities, Moscow and St. Petersburg). The units themselves are formally defined as "subjects" rather than constituent units of the Russian Federation. The Constitution grants equal rights and responsibilities and full state power to all of the country's 89 component units. In practical terms, though, some subjects enjoy that power much more than others. This makes Russia an asymmetric federation.

Issues of federalism are among core elements of recent far-reaching reforms in Russia. First, a proportional election system was introduced for the State Duma; the next Duma will be elected in accordance with party ballots alone. This new law provides that each political party must have at least 50,000 members, with regional chapters boasting at least 500 people each. Second, the regional election system was overhauled. New electoral laws state expressly that from now on, all territorial governors shall be elected by territorial legislatures in line with presidential recommendations. Third, Russian authorities began the process of merging some of the country's federal units. The latter two of these reforms are discussed below.

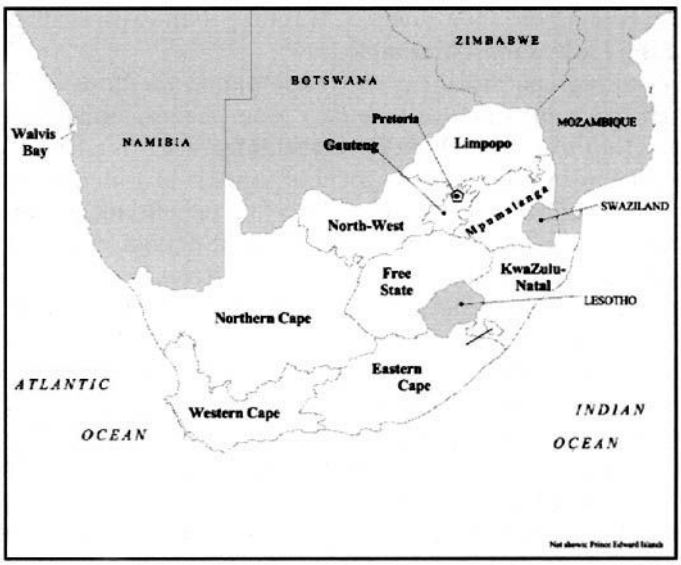
The Russian federal government has taken a number of measures aimed at elimination of "ethno-territorial federalism" in the country, changing the status of ethnic republics and bringing them down to the level of ordinary Russian regions. The Duma has passed a law that gives the presi-

dent authority to remove popularly elected regional leaders, including presidents of ethnic republics. Further, with the aim of merging ethnic and non-ethnic entities within federal districts, Russia has been divided into seven federal districts, each comprising about 10 to 12 subjects of the federation. The districts are supervised by representatives of the Russian president.

The 2004 Beslan tragedy, in which Chechen and Ingush terrorists took about 1,200 hostages at a school in the town of Beslan, killing 330 people (a third of them children), prompted Putin to initiate new reforms for regional authorities. The president proposed appointing governors instead of electing them by direct vote, along with other initiatives designed to mobilize the society, strengthen the Russian state, improve administration of subjects of the Russian Federation and make them capable of responding appropriately to modern threats and challenges. On December 7, 2004, the Federation Council approved new legislation to eliminate direct gubernatorial elections across the country. Since the new regulation came into effect, 18 Russian governors have been re-appointed by the president and four have been dismissed. These moves towards the greater centralization of power are seen by the Russian federal government, its political elite, and the general public as being necessary in order to keep the country together.

On July 2, 2005, President Putin announced his plans to sign a decree that will return to governors many of the powers that had been taken away from them as a result of Putin's regional policies. Addressing a session of the State Council in Kaliningrad on the subject of improving federal relations, President Putin emphasized that the delegation of additional powers to the regions was not a goal in itself but rather a step aimed at helping secure economic growth in the regions. The powers to be delegated include authority over forestries, environmental policy, cultural landmarks, education, and science. According to Russian observers, overall the latest Putin initiative will return to governors 114 of their original powers.

However, this new approach of restoring power to the governors doesn't contradict a more general centralization tendency in the country. Moreover, Putin's aforementioned "Kaliningrad report" supported an idea of establishing direct federal rule in financially insolvent regions. Failure of the regional authorities to effectively use their numerous powers and ensure the proper use of funds allocated to the regions aggravates economic problems in the region, increases the unemployment rate, and eventually strengthens extremism. These arguments rationalize the belief that direct federal rule from Moscow would be a necessary and justified measure.



South Africa: Provincial Implementation of National Policies

CHRISTINA MURRAY

South Africans agree that change is essential and that it is not happening fast enough. Too few people have shelter, water, and access to basic health care and too many people are malnourished, uneducated, and unemployed. Provinces are key to dealing with these issues. Although the national government sets national policy, provides virtually all the financing, and prescribes the standards to which provinces must adhere, it is provinces that are expected to implement change.

The system of shared responsibility between provinces and the national government requires a great deal of cooperation between the two spheres. Will the emerging practices of government in South Africa's new multilevel system ensure that cooperation occurs and that both the national and provincial governments can contribute in ways that strengthen democracy and contribute to the eradication of poverty?

Each of South Africa's nine provinces has a fully-fledged legislature and executive on the parliamentary model. However, the central government is very strong. It has power over all but a short list of functions reserved for

provinces and local government. The provinces do have the power to legislate on a list of matters critical in a developing country (such as education, health, and housing), but they share this authority with the central government and their main role is to implement the policies of the national government.

The decision to vest considerable power in the central government was in response to the massive transformation needed to undo the legacy of South Africa's apartheid past. The consensus has been that the transformation could not be ad hoc or dependent on the resources and commitment of individual subnational governments. Nor could the redistribution of wealth and opportunity be limited by provincial boundaries. It must be countrywide.

Will the emerging practices of government in South Africa's new multilevel system ensure that cooperation occurs and that both the national and provincial governments can contribute in ways that strengthen democracy and contribute to the eradication of poverty?

A provincial chamber in the national Parliament, the National Council of Provinces (*NCOP*), has been established to ensure that provinces participate in the passage of the national laws that the provinces must implement. In the National Council, each province has one vote and the support of five provinces is needed for a bill to pass.

In addition, the Constitution establishes "cooperative government" as an overarching principle of government. In all their activities, the national government and provinces must consult and cooperate. This means that executive intergovernmental relations, which have become a characteristic of federations worldwide, are formally required by the Constitution. When the national government develops policy in an area in which it shares responsibility with provinces, it discusses the policy with provinces at executive intergovernmental forums on an ongoing basis. To clinch this constitutional commitment to cooperative government, the Constitution also forbids a court from considering a dispute between governments, unless adequate attempts have been made to resolve the matter outside court.

Despite the commitment to cooperative government in the Constitution, many people think that federalism and the provincial system are not working. They point to relatively inactive provincial legislatures, the weakness of provincial administrations, the failure of the provinces to influence national policy through the *NCOP*, and the absence of any evidence that the distinct views of provinces are heard in policy debates.

Of course, shared powers and a strong commitment to cooperative government do not on their own determine the pattern of executive and legislative government. Three other aspects of South Africa's political landscape are critical to understanding current patterns of government.

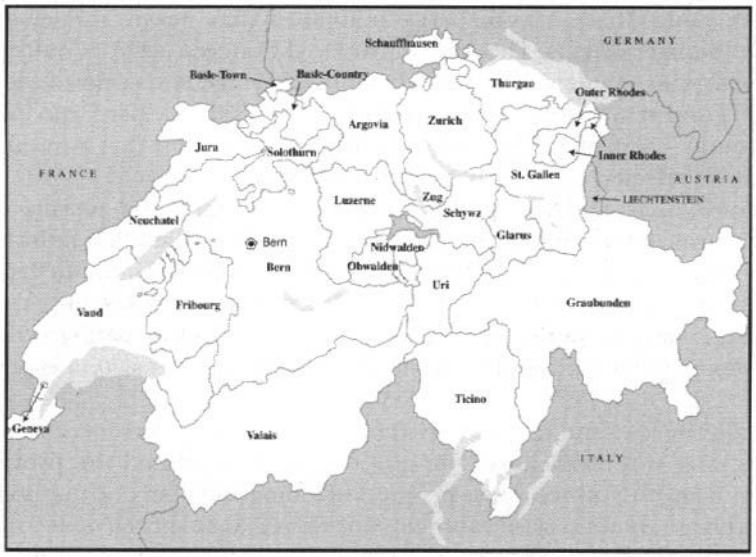
First, South Africa is a one-party-dominant system heavily influenced by its Westminster origins. The African National Congress (*ANC*) controls the national government with an overwhelming 69 per cent majority of the vote in 2004 and it controls all nine provinces. In addition, party discipline - and loyalty - is strong. The individuality and innovation that a multi-level system is expected to bring has yet to be seen.

Second, apartheid left South Africa with a ragged and racially structured government infrastructure and very few skilled administrators. Governments at all levels, but particularly in provinces and municipalities, struggle with a lack of human capacity. For many, simply keeping up with the most basic responsibilities is a challenge. Effective participation in complex negotiation required to develop the multi-level system is beyond reach.

Finally, the beginnings of the system of multi-level government in South Africa were not auspicious. The governing *ANC* opposed the provincial system from the outset. Most people, including members of the political elite, remain unenthusiastic about it. It is viewed as an unwelcome compromise made to secure peace in the country at the time of transition.

Each of these features has a centralizing tendency. The system is controlled from the top and many provincial ministers regard the national minister for their line function as their "boss." The relative inactivity of provincial legislatures encourages provincial departments to view themselves as agents of the central government, whose main role is to implement national legislation. This is reinforced by the fact that provincial premiers are "deployed" to the post by the national *ANC*; they do not gain office through autonomous politics at the provincial level. Real confusion also exists about accountability. If provincial ministers are responsible for implementing national policy, to who are they accountable? What is the role of the provincial electorate and legislature?

For some, the failure of provincial governments, and particularly provincial legislatures, is a fatal flaw of the system, because it means that multi-level government fails in one of its most important goals, which is to deepen democracy and thereby enhance accountability. For others - perhaps the more pragmatic - it reflects a compromise of regional accountability in favour of more efficient government that is appropriate in a young democracy with massive developmental needs.



Switzerland: Cooperative Federalism or Nationwide Standards?

WOLF LINDER AND ISABELLE STEFFEN

In many respects, Switzerland owes its identity to its political institutions. In 1848 the founders of the Swiss nation state were not able to build on a common culture, but were faced with the peoples of 25 cantons with different historical backgrounds, speaking four languages, and following different religions. The solution proved to be a combination of democracy and federalism, which still today are at the centre of the Swiss political system. While this institutional design has proved to be rather successful for the past 150 years, it faces new challenges today.

The core element of Swiss federalism was and is the autonomy provided to cantons for organizing their own affairs. It allows the cantons to consider specific cantonal matters and to solve problems on their own. As a consequence, the differences among the cantons are substantial, involving political institutions, the interaction among political actors, and the output resulting from these political contests. For example, there are significant differences in tax burdens and income levels. However, this high degree of cantonal diversity is being questioned today for several reasons.

First, some cantons call the decentralized structures basically inefficient, in the sense that they are too small to undertake large projects are their own. Some economists and political scientists believe that the major problem is not the fact that there are too many cantons, but that they are very unequal in size. This leads to a different level of service and infrastructure. For example, a small canton does not have the capacity to provide complex services such as universities or specialized medical centres. Often smaller cantons have arrangements with bigger cantons who provide them with the more complex services of education or health. In other areas like culture or family policy, however, smaller cantons have lower levels of infrastructure and poor cost/benefit ratios for some of their services.

If the federal level provided a policy or at least general standards, it could help to equalize the costs from and the supply of public services between the cantons. However, this would encounter a lot of opposition, as there is no consensus on what would be centralized. Furthermore, cantonal governments insist on their quasi-statehood, and they protect not only their own political organization but also their own political autonomy. So for the time being, it appears that the majority of politicians and people still prefer the decentralized solution, demanding cantonal autonomy and accepting the possible disadvantages of diversity.

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The second point focuses on the relationship between the cantons and the federation. Historically the distinction and division of power between the federation and the cantons was clear. Today the complexity of modern infrastructure, society, and economy makes it necessary to cooperate. Most of the federal legislation is implemented by the cantons, accompanied by extensive cost and revenue sharing. However, this "cooperative federalism" is not free from problems. On the one hand, the implementation of federal policies increases the canton's political influence and weight. On the other hand, cantons feel their autonomy is in danger if the federal legislation gets too extensive, giving no cantonal leeway and thus leading to an informal centralization. The cantons are very skeptical about uniform policies, because it is the ability to live differently from each other that has made the federal union successful.

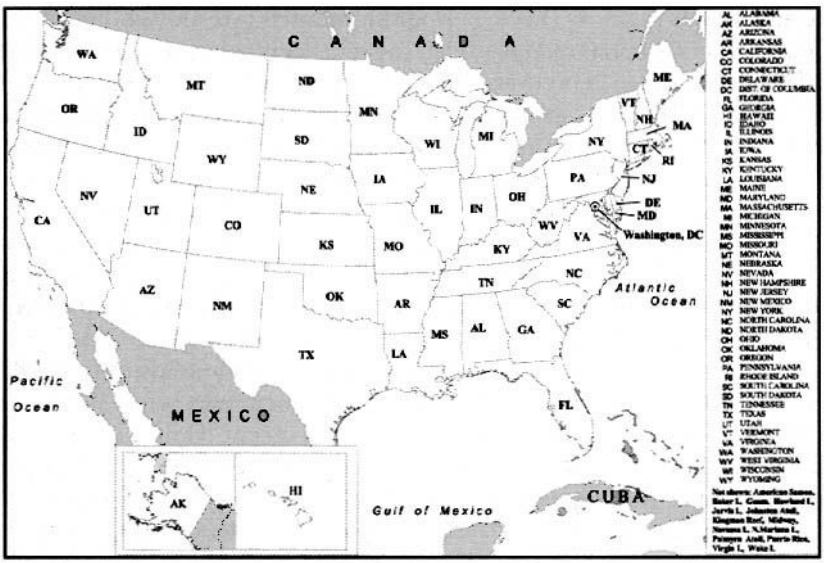
A third area of contention deals with the political relations between the cantons and the federation. At the beginning of the Swiss federation in 1848, it was essential to integrate the cantons into the federal decision-making system and to give them a voice in national affairs. This was accomplished by setting up two chambers of parliament, with a Council of States (the *Ständerat*) where each canton has two seats independent of its size,

and a National Council (the *Nationalrat*), directly elected by proportional representation. To become binding, a law has to be accepted by both chambers.

However, this influence of the cantons in national affairs is still controversial. Some say that the small cantons - profiting from their more-than-proportional representation - have too much influence on federal policies. Others complain that the Council of States is not a truly federal chamber, because it votes along the same lines of interest - and party - affiliation as the National Council. The cantons are therefore demanding more influence at the national level, be it in matters of cooperation with the central government or even in questions of foreign policy.

One of their most successful actions has been the creation of a "Conference of the Cantonal Governments." In the last 10 years, this body has become not only a successful lobby by the cantons, but also an important partner in dialogue with the central government. The Conference of the Cantonal Governments has certainly strengthened the voice of the cantons - but only in areas where there are common cantonal interests. However, the legitimacy of this body is often criticized. The Conference is based only on the collaboration of cantonal government leaders, while cantonal legislatures, representing the people, do not participate. Inter-cantonal cooperation among parliaments is therefore an important issue on the federal agenda.

The federal structure was established 150 years ago as a political compromise between the progressive, mostly Protestant radicals that wanted a strong nation state and the rural, mostly Roman Catholic conservatives that wanted no federation at all. It was therefore a key to nation-building and to the development of a Swiss identity. Since then, Switzerland has developed into a modern society, in which most historical conflicts have vanished. Still, the peoples in the cantons want to be different from each other: cantonal autonomy and self-determination are highly praised values. This helps people to overlook the severe shortcomings of some federal structures and procedures. In this sense, Switzerland's symbolic and integrating values have become strong barriers to institutional reforms, even though many might make sense from a rational point of view.



Contemporary Debates about the US Presidency and Congress: The Electoral College, Legislative Gerrymandering, and Enumerated Powers

JOHN DINAN

Although US legislative and executive institutions have been remarkably stable over time, several recent developments have given rise to debates about particular aspects of these institutions. The fundamental questions of institutional design have long been settled, such as the choice of a presidential system, with the president selected independently of Congress. There has certainly been no reconsideration of the decision to establish a bicameral Congress, with the states entitled to equal representation in the Senate, and the House of Representatives apportioned among the states by population. Nor are there any challenges to the constitutional arrangement by which Congress possesses enumerated, rather than plenary powers, with other powers reserved to the states. In recent years,

though, there has been some discussion about specific aspects of these arrangements, including the presidential selection system, the drawing of district boundaries for the House, and the Supreme Court's enforcement of the limits of congressional power.

The presidential selection system has attracted the most attention of any of these institutions, particularly after the year 2000 election. The framers of the Constitution determined that the president would be selected neither by the legislature nor by a direct popular vote, but rather by an Electoral College. According to this system, each state has a number of electors equal to its numbers in Congress; thus a total of 538 electoral votes are apportioned among the 50 states (plus the District of Columbia), with the smallest states receiving three electoral votes and the largest state, California, receiving 55 electoral votes. Presidential candidates then compete for the 270 electoral votes needed to win the election by campaigning in the various states, which in all but two cases award the entirety of their electoral votes to the winner of a plurality of popular votes in the state. (Maine and Nebraska allow for a division of their electoral votes, with both states awarding two of their electoral votes to the winner of the statewide popular vote, and then awarding each remaining electoral vote to the candidate who wins the popular vote in each representative district)

This system gives the states a prominent role in presidential selection, but it also encourages presidential candidates to focus almost all of their attention on the 15-20 largest, most competitive battleground states, to the exclusion of the others. More importantly, a candidate can win a plurality of the popular votes but lose the election to an opponent who captures a majority of Electoral College votes. This was what happened in 2000, when Al Gore won 500,000 more popular votes than George Bush, but lost the election because Bush won five more electoral votes. Though not the first time that the winner of the popular vote has lost the election, this was the most controversial, and it has generated renewed demands for various alternatives to the Electoral College. A variety of reforms have been proposed - such as instituting a direct popular vote or encouraging more states to allow their electoral votes to be split among candidates - but critics of these reforms argue for the importance of considering the various effects of each proposal on the federal system. In particular, would alternatives to the current system lead presidential candidates to campaign and govern in ways that would be less responsive to state and local concerns? And would these proposals make it easier for candidates to win with the support of much less than a majority of the populace, and thereby encourage the creation of multiple parties, some of which might be geographically based?

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Reformers have also focused recently on congressional elections, and particularly on the process by which House districts are drawn. This is not an issue in the Senate, because Senators are selected on a statewide basis. However, House districts are redrawn every 10 years, and this responsibility is vested in state legislatures. To be sure, Congress and the Supreme Court have imposed limits on the redistricting process. Districts must be compact, contiguous, and of equal size. Otherwise, state legislatures enjoy a good amount of discretion drawing House districts.

The concern in recent years is that state legislatures are abusing this discretion by relying on computer technology to draw House districts that are completely safe for incumbents of one of the two major parties, a practice called gerrymandering. Consequently, House races have become increasingly uncompetitive, so that fewer than 40 of the 435 contests are in any doubt each election. House incumbents are already almost impervious to defeat (rarely has their re-election rate fallen below 90 per cent in recent decades), but partisan gerrymandering has worsened this situation, and it has made House members less moderate and less open to compromise once in office. As a result, judges have been called upon to become more involved in drawing district lines, and proposals have been advanced to create independent redistricting commissions or other non-partisan means of restoring competition to congressional elections.

A third issue that has attracted attention in recent years concerns the extent of congressional power in comparison with those of the states. Delegates to the federal convention of 1787 provided that Congress would exercise enumerated powers, and the 10th Amendment in 1791 confirmed that powers not delegated to Congress are reserved to the states. The challenge throughout American history has been to determine which acts of Congress are legitimate exercises of these enumerated powers. Since the mid-1990s, the Supreme Court has been aggressive in striking down acts that exceed these powers. Among the statutes invalidated during this period were popular laws prohibiting the possession of guns near schools and providing civil remedies for victims of gender-motivated violence.

Naturally, these Court decisions have generated significant criticism from members of Congress, as well as from groups and individuals who supported these specific statutes. These decisions have also given rise, though, to more general complaints about the role of the Supreme Court in policing the limits of congressional power. Many scholars and public officials have argued that the Court should refrain from issuing decisions of this kind and should leave it to Congress to determine the extent of its enumerated powers. On the other hand, a smaller group of scholars has defended these decisions as an important first step in enforcing the constitutional boundaries between congressional and state power at a time

when neither Congress nor the states have shown any inclination to do so on their own.

The debate about legislative and executive governance in the US continues. At this point, the debates are not so much about fundamental questions of institutional design. These have long since been settled, and there have been few significant changes in the structure of government since the founding. Rather, the current debates - whether about the Electoral College, the drawing of House districts, or enforcing the limits of congressional power - raise narrower, but still important, questions about the performance of these longstanding institutions.

Comparative Reflections

KATY LE ROY AND CHERYL SAUNDERS

The choice and design of the institutions of government is a key issue in the establishment and operation of any federation. Institutions are the mechanism through which the federal principle is given practical effect within all spheres of government. Many of the institutions of government in federal democracies are the same, or similar, to those in use in any democracy, whether federal or unitary. But, as this booklet shows, federalism and democratic institutions have an impact on each other. Federalism very often affects the way in which democratic institutions are designed, and the way in which they work in practice. And the converse also is true: institutional choice will usually have some effect on the form and operation of the federal system.

The range of institutions

The countries covered in this booklet use a range of different institutions for the purposes of legislative and executive governance. Some have presidential systems, in which the executive is elected separately from the legislature. Others have parliamentary systems, in which the executive depends on the continuing support of a majority in the legislature. One, Switzerland, also uses a considerable measure of direct democracy, which affects the operation of institutions of representative government, encouraging the development of the consensus style of democracy that the chapter on Switzerland describes.

There are considerable variations, however, within each of the two main types of institutional design, presidential and parliamentary. These are the result of other factors: the nature of the party system, including the cohesiveness of parties and the extent to which they are organized along national, as opposed to regional lines; the electoral system and in particular its tendency to produce majoritarian as opposed to proportional outcomes; the depth and stability of the democratic culture; and the social and economic context within which the institutions exist. And another important variable is the design of the federal system itself. Factors of these

kinds account for the very considerable differences between the presidential systems that operate in, say, Argentina and the United States and the comparable differences between the parliamentary systems of, say, Germany and Australia.

The range of federal systems

At least three types of differences in federal design, affecting institutions, are reflected by the countries in this volume.

First, there is an admittedly somewhat indistinct difference between federations and what might be called quasi-federations. The latter, of which South Africa is an example, are typified by the degree of centralization and, perhaps, also by the extent of central authority to directly control governance within the constituent units. This characterization is not necessarily fixed for all time, as the examples of Canada and India show.

A second important distinction is between dual and integrated federations. The former, typically, divide powers vertically and provide for a complete (or almost complete) set of institutions within each jurisdiction. The United States is the paradigm example. The latter, of which Germany is an example, may also divide powers horizontally, leaving the administration of most national programs to the constituent units and in turn giving them a direct voice in the national legislature.

A third distinction lies in the depth of federal culture: the extent to which federalism is, in the words of Rajeev Dhavan, considered a "gift of governance" as opposed to a mere fact of political life, which, when it stands in the way of efficiency, needs to be neutralized or minimized, often at cost to the institutions of the constituent units.

The interaction between federalism and institutions

Each of the country chapters shows that the federal character of the polity affects most of the institutions of government in some way or another. The electoral units for the popular house of the national legislature, for example, are often defined by reference to the boundaries of the constituent units. The composition of the national executive is often influenced by a desire to include members from some or all of the constituent jurisdictions.

There are particular institutions, or groups of institutions, on which the impact of federalism is particularly pronounced, however.

The most obvious is the upper house, or second chamber, of the national legislature, often designed to perform a federal role of some kind. Two paradigm models are represented in these chapters. One is the German *Bundesrat*, in which the influence of the state governments on federal decision making is institutionalized. The other is the United States Senate, elected directly rather than by the state polities. South Africa represents an important variation on the former, insofar as provincial legislatures, rather than provincial governments, are represented in the National

Council of the Provinces. As the South African chapter argues, it is still too early to judge the significance of this experiment with federal institutional design.

A second institution significantly affected by the fact of federalism is the administration. Some federations are designed to allow or require the administration of programs of one sphere of government by the administrations of another. As these chapters show, however, in almost all federations it is relatively common for administrative bodies in the constituent units to carry out some federal functions, whether formally or pursuant to informal arrangements, including the administration of grants in aid.

Thirdly, there is significant variation in the way in which courts are organized in federations. The logic of a dual federation is that each sphere of government has a court system of its own. Only in the United States is this logic completely realized, however. In other common law federations, the court system is integrated to a greater or lesser degree, sometimes to the point where, as in India and Canada, there is effectively a single system of courts. In civil law federations also, while the courts may have specialist functions, there are effectively single hierarchies, extending from the constituent units to the central sphere of government.

Finally, most federations have a range of (generally informal) institutions through which discussion, coordination, and cooperation between the various governments of the federation also occur. Examples include the Canadian Council of the Federation, the Swiss Conference of Cantonal Executives, and the Indian Inter-State Council. The chapters in this booklet tend to show that institutions of this kind are increasing in significance and sophistication. One question that arises is whether these institutions should be formalized in some way, in the interests of enhancing accountability, although at inevitable cost to flexibility.

Some consequences

At least three important consequences of the interaction between federalism and institutions emerge from these chapters.

First, where there is a federal second chamber of the central legislature, it will affect the capacity of the legislature to reflect the will of the national majority, whether the second chamber in fact plays an effective federal role or not. Ironically, in conditions where the executive otherwise tends to dominate the legislature, a second chamber, differently constituted, will make the legislature more of an independent force. Most federations nevertheless struggle to find an acceptable balance between the powers of the two such chambers, in the interests of both democracy and governing efficiency.

Second, in most federations the symbiotic relationship between institutions as they operate in a unitary system is disturbed to some degree. The institutions most affected are courts and administrative agencies, to the

extent that they answer in some ways to two or more spheres of government. Such cross-jurisdictional arrangements complicate accountability and autonomy, and thus both democracy and federalism. They do not need to be avoided for this reason, but their consequences need to be anticipated and managed.

Finally, almost all federations, with the United States as a clear exception, experience the phenomenon of executive federalism. While the detail varies to a degree, depending on the mix of institutions and forms of federalism, the common denominator is a high level of policy making by governments acting collectively, relying on executive dominance of their respective legislatures to ensure that their decisions are given effect. Many of the policy outcomes thus achieved are beneficial. There is a sense, also, in which this process merely takes the familiar reality of the executive dominance of legislatures in many democratic systems to new heights. Nevertheless, as with other cross-jurisdictional arrangements, executive federalism disturbs traditional institutional arrangements, blurring lines of accountability and making the operation of democratic processes difficult for voters to understand. Its impact is most severe on the institutions of the constituent units, thus also weakening federalism itself. Many federations presently are seeking ways to minimize or compensate for the disadvantages of executive federalism while retaining the advantages of cooperation of this kind.

Glossary

ABORIGINAL SELF-GOVERNMENT arrangements for self-government of indigenous peoples within a larger political framework; in Canada, demand for the constitutional recognition of an inherent right of aboriginal self-government in conjunction with the constitutional guarantee of "existing aboriginal and treaty rights," Constitution Act, 1982, Section 35 (1).

ADMINISTRATIVE COURT *Verwaltungsgerichthof;* highest court for the adjudication of administrative law in Austria; may be complemented by similar courts at the Land level; these would then replace the Independent Administrative Tribunals; see constitutional convention.

ADMINISTRATIVE FEDERALISM term given to German-style federalism whereby the division of powers is not primarily between specified policy domains (as in US-style legislative federalism) but between the authority to make policy at the federal level and the responsibility for the implementation and administration of that policy by the state governments.

ANC African National Congress; dominant party in South Africa.

APARTHEID legal framework of racial segregation and discrimination against people of non-European descent in South Africa (1948 to early 1990s).

ASYMMETRICAL FEDERALISM denotes unequal or non-identical distribution of powers and responsibilities among the constituent units of a federal system.

BUNDESRAT [German] Federal Council; the name of the upper house or second chamber of the bicameral national legislatures of both Austria and Germany; occasionally translated as "Senate."

BUNDESTAG [German] Federal Assembly; the lower house or first chamber of the bicameral national legislature of Germany; occasionally translated as "House of Representatives."

CANTON name for the 26 constituent units in the Swiss federation.

COERCIVE FEDERALISM see cooperative federalism.

CONCURRENCY/CONCURRENT POWERS an approach to dividing powers whereby levels of government are explicitly expected to share jurisdiction over

specific policy areas. Can be effected either by creating a list of concurrent powers, or by granting authority over various functions to one level of government without providing for those powers to be exclusive. Where concurrent powers are constitutionally listed, the constitution usually specifies that in cases of conflict, the laws of one level or other shall have paramountcy (i.e., they will prevail).

CONFERENCE OF THE CANTONAL EXECUTIVES regular meeting of the heads of government of the Swiss cantons.

CONGRESS the bicameral national legislature of the presidential system of government in the United States of America. Prior to that, the unicameral and sole governing body of the United States under the Articles of Confederation. Also the title of the bicameral federal legislature of Argentina, Brazil, Mexico, and Venezuela.

CONSTITUTIONAL CONVENTION 1. a specially convened meeting of representatives to draft or enact fundamental law; 2. an unwritten rule of constitutional practice; 3. specific reference to the *Verfassungskonvent* currently drafting a revision of the Austrian Constitution.

CONSTITUTIONAL COURT a judicial body exercising final jurisdiction specifically over constitutional questions including the relationship between levels of government in a federation, as distinct from a supreme court, or one that acts as the apex of the legal system in general. First established in Austria (the *Verfassungsgerichthof*); examples now include Belgium's Court of Arbitration (*Cour d'arbitrage*) and Germany's Federal Constitutional Court (*Bundesverfassungsgericht*) and the constitutional courts of South Africa and the Russian Federation.

CONSTITUTIONAL STATE a system of government operating on the basis of a firm set of procedural rules regulating the rotation of office and exercise of power in a way that ensures that everyone is equal before the law.

COOPERATIVE FEDERALISM practice and principle of modern federalism whereby the levels of government work together to coordinate policy design and delivery in areas of overlapping responsibility. Prescribed in some federations (e.g., Germany's "joint tasks") but more typically a non-constitutional adaptive response of governments to the realities of modern federal governance. Does not necessarily entail an equality of power and resources between the participating levels of government and indeed may represent an exercise in COERCIVE FEDERALISM whereby the superior resources or powers of the federal government impose national policies.

COST SHARING formal arrangement between levels of government to share funding responsibilities for agreed-upon programs of service delivery.

COUNCIL OF THE FEDERATION formal but non-constitutional and non-statutory arrangement in Canada for consolidation of intergovernmental negotiation among the provincial and territorial heads of government.

DECENTRALIZATION OF POWER transfer of authority and or resources from the central government to the governments of the constituent units of a federation.

DUAL DESIGN/FEDERALISM the idea of strict legislative separation of powers in a federation; each order of government legislates and administers autonomously in its own sphere. Also known as "watertight compartments."

ELECTORAL COLLEGE nominal body for electing the president of the United States of America; members are elected by a plurality of voters in each state with each state having the number of electors equal to their numbers in Congress.

ENUMERATED POWERS authority to legislate over specific matters explicitly assigned to a particular level or levels of government by the constitution; see residual powers for contrast.

EUROPEAN CLAUSE 1992 amendment to the German constitution (Article 23; new) requiring participation of the *Bundesrat* in European legislation affecting *Länder* responsibilities.

EXECUTIVE FEDERALISM in parliamentary federations (e.g., Canada, Australia, India) the prevalence of intergovernmental negotiation conducted between and within orders of government by the political executive, largely to the exclusion of the legislative branch.

FEDERAL CONVENTION OF 1787 Convention called under the authority of the existing Congress of the United States to revise the existing constitution (the Articles of Confederation); produced the new Constitution that was ratified as the current Constitution of the United States of America.

FEDERAL COUNCIL 1. *Bundesrat;* name of the upper house or second chamber of the bicameral national legislatures of both Germany and Austria. 2. *Bundesrat/Conseil Fédéral Consiglio Federale,* executive governing council and collective head of state in Switzerland.

FEDERAL COURT OF AUDITORS *Rechnungshof,* controls budget accuracy, expediency and thrift of all orders of government in Austria.

FEDERAL GOVERNMENT colloquial and sometimes official term for the central government of a federation.

FEDERAL PRESIDENT *Bundespräsident;* the head of state in the parliamentary national governments of both Austria and Germany.

FEDERAL SUPERVISION authority of the federal government to veto actions by *Länder* governments in Austria.

FIRST MINISTERS CONFERENCES intergovernmental meetings of the prime minister and the 13 premiers (heads of government) of the 13 provinces and territories of Canada; see also executive federalism.

FISCAL CO-PARTICIPATION access to appropriate revenue sources for all levels of government in a federation.

FISCAL FEDERALISM the arrangements and practices in any federal system for the distribution of tax powers and tax revenues among the levels of government and the transfer of revenues between governments vertically and horizontally within a federation.

GDR "German Democratic Republic"; the unitary state created in the Soviet occupation zone of Germany, lasting from 1949 until re-unification in 1989.

HIGH COURT OF AUSTRALIA the supreme court for constitutional and other law in the Commonwealth of Australia.

HOMOGENEITY, STANDARDS OF principle of constitutional adjudication in Austria limiting the autonomy of the *Länder* in designing their own governing systems.

HORIZONTAL DIVISION OF POWER separation of powers between the three branches of government - legislative, executive, judicial - as in the presidential system.

HOUSE OF REPRESENTATIVES name of the lower house or first chamber in the bicameral national legislatures of Australia, Nigeria, and the United States; sometimes used as the translation for the names of the lower houses of the Belgian and Swiss legislatures.

INDEPENDENT ADMINISTRATIVE TRIBUNALS *Unabhängige Verwaltungssenate*, appellate courts in the Austrian *Länder* mainly dealing with issues falling under indirect federal administration.

INDIGENESHIP RIGHTS privileged constitutional rights for indigene populations in Nigeria.

INDIRECT FEDERAL ADMINISTRATION arrangement in Austria whereby national policies and programs are administered by the *Länder*; version of administrative federalism.

INTERGOVERNMENTAL COOPERATION/COORDINATION arrangements for maintenance of ongoing working relationships in administrative and policy making between and within levels of government in a federation - typically neither constitutional nor statutory; see also: cooperative federalism.

INTERLOCKED GOVERNANCE the German model of federalism, characterized by shared jurisdiction between federal and *Land* levels of government (see administrative federalism) combined with a strong role for the *Land* governments in the federal policy-making process (via the *Bundesrat*).

JOINT GOVERNANCE see interlocked governance.

KERALA a state of the Indian federation.

LAND [German] name for the constitutive units of both the Republic of Austria and the Federal Republic of Germany; *Länder* plural.

MEDIATION COMMITTEE see *Vermittlungsausschuss*.

MUNICIPAL ORGANIC CHARTERS statutes of municipal self-government in Argentina.

NATIONAL ASSEMBLY 1. lower house or first chamber in the bicameral national legislature of South Africa; 2. bicameral national legislature of Nigeria, comprising Senate and House of Representatives.

NATIONAL CONFERENCE mooted constitutive assembly for reassessing Nigeria's constitution.

NATIONAL COUNCIL *Nationalrat*; the lower house or first chamber in the bicameral national legislatures of both Switzerland and Austria; occasionally translated as "House of Representatives."

NATIONAL COUNCIL OF PROVINCES upper house or second chamber in

the bicameral national legislature of South Africa.

PLENARY POWERS a general presumption of jurisdiction based on an implicit or explicit grant of unlimited and unspecified powers. See residual powers.

PROPORTIONAL REPRESENTATION [PR] electoral system that assigns seats in a legislature in a way that provides an accurate reflection of the share of votes received by the contesting parties; effected through nation-wide or regional multi-member electoral districts.

PROVINCE name for constituent units, as an alternative to states, in various federations (e.g., Canada, 10 provinces; South Africa, 9 provinces); in some federations used for divisions below the level of the constituent units (e.g., Spain).

REFERRAL OF POWERS constitutional provision allowing one level of government to transfer or delegate (i.e., revoke) authority to act in a stipulated area of jurisdiction to another level of government.

REPRESENTATIVE GOVERNMENT a system of government where the legislative and executive bodies are filled, directly or indirectly, through a process of regular elections.

REPUBLIC 1. a system of government where rule is carried out by those directly or indirectly elected by the people; 2. term used in Australia to denote constitutional status following proposed replacement of the existing dual regal and viceregal heads of state with an office of a directly or indirectly elected president.

REPUBLICAN PRESIDENTIAL SYSTEM a system of representative democracy designed on the basis of a separation of powers between the legislative and executive branches.

RESIDUAL POWERS those unidentified powers that are left by a federal constitution either implicitly or explicitly to a particular order of government in contrast to explicitly assigned enumerated powers.

RESPONSIBLE GOVERNMENT the British term for an executive government that depends upon the continuing support of a majority in the legislature (i.e., a parliamentary democracy); see Westminster model.

REVENUE SHARING a practice, agreement, or rule whereby the proceeds of a particular revenue source are distributed among levels of government in a federation.

SAARC TREATY South Asian Association for Regional Cooperation founded in 1985 by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka; in 2003, member countries agreed to form the South Asia Free Trade Area (SAFTA) among themselves, to take effect in 2006.

SARKARIA COMMISSION Indian commission on centre-state relations that reported in 1988 with wide-ranging recommendations on the constitutional division of powers and the operation of India's federal system.

SELF-DETERMINATION refers to rights of governing autonomy for minority groups or nations in federal systems; controversial in Canada because of Québec's extensive claims to such rights as a nation.

SENATE name of the upper house or second chamber in the bicameral

national legislatures of Australia, Belgium, Brazil, Canada, Nigeria, Mexico, and United States of America.

SHARIAH LAW code of Islamic law in force in some northern states of Nigeria; adjudicated by Shariah courts.

SPENDING POWER the ability of a government in a federation to spend in areas outside its legal jurisdiction and thus to exercise influence or control by means of its financial resources over matters falling within the jurisdiction of other levels of government; most commonly operates either through the power of federal governments to fund "national" programs or through the power to make transfers conditional upon adherence to federation-wide norms.

STÄNDERAT [German] Council of States; the upper house or second chamber of the bicameral national legislature of Switzerland.

STATES name for the constituent units in the federations of Australia (6 states), Brazil (26 states), India (28 states), Mexico (31 states), Nigeria (36 states), United States of America (50 states).

STATUTES ordinary legislative acts or laws.

STATUTORY REFORMS changes made through the sub-constitutional process of legislative enactment.

SUBJECTS OF THE FEDERATION generic term for the 89 varying constituent units of the Russian federation, comprising republics, territories, regions, autonomous areas, autonomous regions, and federal cities.

SUPREME COURT the highest court for constitutional and other law in Canada, India, Mexico, Nigeria, and the United States.

THIRD TIER local government that may be municipal or commune, county, region, or functional; characteristically sub-constitutional in status.

THREE-LAYER FEDERALISM the classic division of federations into three levels or orders of government: the overarching federal government; the constituent units; and the various local governments of the "third tier."

TREATY FEDERALISM refers to the idea of maintaining federal union by an ongoing process of mutual treaty agreements rather than on the basis of a fixed constitutional division of powers.

UNEQUAL WEIGHTING variation in constitutional status and powers between constituent units of a federation; also referred to as asymmetrical federalism.

UNIFORM POLICIES policies and standards imposed across a federation upon constituent units without variation.

UNION 1. informal reference to a federation as a whole, or to the national order of governance; 2. official term for the Indian federation and its national government.

UNION TERRITORIES regions of the Indian federation lacking statehood and governed under the aegis of the Union government.

VERMITTLUNGSAUSSCHUSS [German] Mediation Committee; parliamentary committee provided for in the Constitution of the Federal Republic of Germany to resolve disagreements between the two chambers of the federal parliament, *Bundestag* and *Bundesrat*.

VERTICAL FISCAL IMBALANCE [VFI] an imbalance in revenues and responsibilities between the levels of government in a federation, with one level enjoying revenues in excess of its needs and the other or others bearing expenditure responsibilities in excess of their own-source revenues.

WESTERN ALIENATION term used in Canada to describe the grievances of the less populous, more resource-based provinces in the western half of the country - Manitoba, Saskatchewan, Alberta, and British Columbia.

WESTERN PROVINCES the four less-populous provinces in the western half of Canada: Manitoba, Saskatchewan, Alberta, and British Columbia.

WESTMINSTER SYSTEM the version of parliamentary government originating in England, subsequently the United Kingdom. Characterized by evolution of an uncodified constitution and the consolidation of a unitary state; the rule of parliamentary supremacy or sovereignty; limited judicial review; a strong reliance on unwritten constitutional rules known as conventions (notably the conventions of responsible government); the retention of a monarchical head of state exercising only vestigial constitutional power; and the use of the plurality-based single-member electoral system ("first-past-the-post").

ZUSTIMMUNGSGESETZE [German] national legislation in the Federal Republic of Germany that under the Constitution requires approval (*Zustimmung*) of the *Bundesrat* because its execution and administration falls into the administrative autonomy of the *Länder*.

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