SPECIAL SECTION: UNITY IN DIVERSITY – INDIA 2007

Federations

WHAT'S NEW IN FEDERALISM WORLDWIDE

OCTOBER / NOVEMBER 2007

Diversity drives India's resurgence

CONGO-KINSHASA LEANS TOWARD FEDERALISM

INDIA: CAJOLING AND COMPROMISE DRIVE A MULTI-PARTY SYSTEM

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Federations

SPECIAL SECTION

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Diversity, India and Intergovernmental Relations. Here women line up at a poll with their voter identity cards in Patna, a city in eastern India.

AP PHOTO/ AMAN SHARMA

Diversity drives India's resurgence

Indian Prime Minister Manmohan Singh visits the Golden Temple, the holiest shrine of the Sikhs, in Amritsar. A member of the Congress Party, he is India's first Sikh Prime Minister. India's diversity and its history as the birthplace of many religions also gave India three Muslim presidents, as well as many Hindu presidents and one who was a Sikh. India's system thrives on diversity and pragmatic intergovernmental relations – two themes of the 4th International Conference on Federalism, hosted by the Government of India in New Delhi, November 5–7, 2007.

NEWS

SPECIAL SECTION: UNITY IN DIVERSITY

OTHER DEPARTMENTS

Social security brings Belgians to brink

"If our country splits up, we'll all be worse off."

BY RICARDO GUTIÉRREZ AND BÉNÉDICTE VAES

REUTERS/FRANCOIS LENOIR

Belgians tussle over their health-care system. Hospital workers recently protested lack of funding for the non-profit health sector.

A major struggle is brewing over Belgium's social security system and the battle could alter the country's federal structures. What is at stake is Belgium's once-generous network of social services, which could be considerably rolled back as a result of recent national elections.

The tug of war over social security began June 10 after the national elections for the federal parliament. As there was not a clear majority, King Albert II named the leader of the largest party, Flemish Christian Democrat leader Yves Leterme, to form a coalition government.

But disagreement among the parties over whether to devolve social security to the regions of Belgium has led to a stalemate. It is not known when a new coalition government will be formed. In the meantime, Guy Verhofstadt, the outgoing prime minister, whose Flemish Liberal party was defeated in the June 10 election, has agreed to govern as a caretaker.

The communities in Belgium most at odds over social security are the two that make up the vast majority of the country: Dutch-speaking Flanders in the north, which comprises 58 per cent of Belgium's 10.4 million population, and French-speaking Wallonia in the south, where 31 per cent of the people reside. Most of the balance of the population is in Brussels, a separate, largely French-speaking region, surrounded by Flanders.

The struggle is playing out against a background of disquieting talk of separation where, in a recent poll, 43 per cent of those polled from the Flemish north said they favour separation from Wallonia.

Decentralizing social security

The fate of the Belgian social security system, known as *sécu*, is at the heart of debates between potential partners of an "orange-blue" government coalition, which would unite Christian Democrats (orange) and Liberals (blue) against the Socialists.

A clear winner at the polls on June 10, Yves Leterme's Christian Democrats want greater weight to be given to the federal constituent units (the communities and regions). This is good news for the Flemish nationalists. It is not at all reassuring for French-speaking Belgians of all political colours, who see in this the seeds of destabilization of the federal system, starting with social security.

The stakes are high. Each year, the social security system provides income to 1.7 million pensioners, 600,000 unemployed and 150,000 pre-retirees. It also pays family allowances to more than one million families, covers 26 million days of hospitalization and pays for 70 million visits to the doctor.

But social security is operating in a different context from the unitary Belgian state in which it was founded in 1944, on the private-insurer model of obligatory universal insurance. Since that time, the Belgian government has become largely decentralized, with the regions and communities taking over several jurisdictions from the central authority, including education, welfare and culture. For Flanders, this is just the beginning: the region also wants to have its say on health and employment – two areas where

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social security plays a predominant role.

Leterme, the Flemish Christian-Democrat leader, has translated his voters' desires into government proposals. For example, his much-debated federal proposal gives regions the right to help determine salary costs through targeted reductions of employer contributions to social security. Implicit in this proposal is the creation of three different methods for the funding of social security: one for Flanders, one for Brussels and one for Wallonia.

Two conflicting visions of the future

Leterme, who is most likely to become prime minister, speaks of a progressive regionalization of health care. Flanders wants to completely decentralize preventive medicine, whereas French speakers are advocating its remaining a federal competence. Unemployment benefits would follow: for a start, each region would become responsible for policies to reintegrate the long-time unemployed.

For Robert Deschamps, economics professor at the *Facultés universitaires de Namur* and author of *Fédéralisme ou scission du pays* (Federalism or splitting up the country), "these measures risk – without it becoming clearly apparent – an irreversible destabilization of the federal system and, in time, will result in a splitting of the country to the advantage of only one partner – the richest and most powerful." Deschamps wrote that he fears "a decline of the federal system, basically to the detriment of the inhabitants of Brussels and Wallonia, who are the poorest."

Might it go so far as to have a prosperous and enterprising Flanders split off from Wallonia, which is stuck in a post-industrial crisis? This is a simplistic and unhelpful scenario. A study published in June by the Centre for Social Policy Research of the University of Antwerp, titled *Social Security, Transfers and Federalism*, concluded that Wallonia receives more social benefits than Flanders, particularly in the areas of unemployment benefits and early retirement pensions. However, since 2003, more social security payments have gone to Flemish pensioners than to Walloons. This trend probably will continue because there is a larger aging population in the Dutch-speaking north of the country.

The co-author of this study, Béa Cantillon, defends the principle of financial transfers managed by the social security system: "Differences in income within and among the Flemish and Walloon regions are reduced. The '*sécu*' therefore reduces, to a significant degree, the risk of poverty."

Yet many in Flanders are determined to turn social security over to the regions. And the *sécu* is not all that Flanders wants the regions to control. Former Flemish minister Eric Van Rompuy was recently quoted as saying that a "new deal" was necessary to put control of Belgium's "economic levers" under the regional governments. An article on the Vlaams Belang separatist party's website claims that in 1999, Flanders financed 64 per cent of Belgium's social security benefits and received less than 57.6 per cent in return.

REUTERS/FRANCOIS LENOIR

Protesters march on the residence of Belgium's King Albert II in Brussels in August with a banner reading "Now more than ever: Flanders independence."

The University of Antwerp team evaluated the effect of a major cut in north-south transfers. In Flanders, the average household income would increase by seven per cent while in Wallonia it would drop by four per cent, exacerbating poverty levels.

Study co-author Cantillon said she wondered whether the aging population of Flanders would like to see a Wallonia with low salaries and poor social security developing on its doorstep.

Belgium trails other EU countries in social security

Economist Deschamps agreed, saying: "In a country such as ours, with multiple interregional relationships, co-operative arrangements, involving responsibility and co-ordination, produce better results than splitting, in terms of economic growth and employment. In other words, if our country splits up, we'll all end up worse off."

The need for reform is pressing because the social security system has become less effective. In a February 2007 comparison of the Belgian system with the evolution of European social policy, Cantillon made a harsh assessment: "In 1997, we were champions of the fight against poverty. We were ahead of Denmark, Norway, France, Germany and the Netherlands. Today, in 2007, our social safety net is comparatively mediocre; we risk heading towards minimal social protection. We're moving from the Scandinavian to the British model."

But the mesh of the net could become too wide. The risk of poverty is particularly high for families that depend entirely on replacement income, namely many single mothers and pensioners. The Minister of the Economy says that one Belgian in seven (14.7 per cent) is poor, which for a single person, means living on less than 822 euros a month. For a couple with two children, it is less than 1,726 euros. This is the situation of 10.7 per cent of the population of Flanders and 17.5 per cent of that of Wallonia.

What is at stake here? Cantillon points to the reduction of the family allowance for the first child, which has lost one-third of its value in 25 years. (Leterme aims to increase it). She also cites pensions – "among the lowest in Europe" – which have failed to keep pace with the cost of living. However, a measure to progressively link the lowest pensions with social assistance has been introduced recently.

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REUTERS/DAVID LEWIS

The wealth that caused the wars: a copper-mining complex towers over the town of Lubumbashi in Katanga province, Democratic Republic of Congo.

Congo-Kinshasa leans toward federalism

The new 26 provinces hope to escape the fate of the old "provincettes"

BY THOMAS TURNER

Now that the Democratic Republic of Congo (DRC) has held its first free elections in 40 years – in 2006 – following a bloody five-year civil war that ended in 2003, it is laying the groundwork for power sharing among 26 provinces and for accommodating its four national languages.

As the country attempts to recover from that war, the question of federalism is once again on the agenda. The DRC is one of Africa's largest and most populous states, with 68 million people and 700 local dialects. These characteristics help to explain the persistent struggle, both during the colonial era and since independence, to find the "right" formula to balance central control and uniform rules against decentralized administration that would take into account local conditions.

The source of much of the fighting has been over the spoils: the DRC holds 30 per cent of the world's cobalt reserves plus 10 per cent of all copper, in addition to uranium, gold and oil.

The country's new president, Joseph Kabila, son of former president Laurent Kabila, and Prime Minister Antoine Gizenga, are both heirs to the centralist tradition in Congolese politics. Of the 60 parties represented in the new National Assembly, only three small parties have the word "federal" or "federalist" in their names, and none of them have more than eight members in their caucus. However, this is not the only indicator of the strength of federalist sentiment or ideology in the country.

Under the new Constitution, approved by a 2005 referendum, the existing 11 provinces – Kinshasa, Province Orientale, Kasaï Oriental, Kasaï Occidental, Maniema, Katanga, Sud-Kivu, Nord-Kivu, Bas-Congo, Équateur and Bandundu – are to be split up by September 2009, creating 26 provinces. The Constitution is silent on whether the system of governance is either federal of unitary.

Sharing power with the provinces

Like many federations however, the DRC has to accommodate diversity. The vast country of 68 million people with four times the area of France has 250 ethnic groups and as many as 700 local languages and dialects. It has turned to a quasi-federal system to accommodate diversity.

One example of this quasi-federal system is that the Senate of the DRC is now elected by the assemblies of the provinces. Senators now come from and are chosen by their respective provincial legislatures. This is part of the new constitutional order in the DRC in which the powers are divided between the national, provincial and even local levels. Second, a Conference of Governors was created by the Constitution to give voice to the provinces. The Conference, chaired by the president, has a mandate to "assure harmony among the provinces themselves" and to "provide advice to the two orders of government." Third, a constitutional court has been established to settle disputes between the central government and the provinces over competence in any area.

To protect diversity, there are four recognized national languages, each of which is used as a common language in different regions: Kikongo, Lingala, Tshiluba and Swahili, in addition to French – the official language. Every law passed by the central government in Kinshasa must be published in all four national languages within 60 days.

Federalism and its opponents

Constitutionally, the DRC has had an ambivalent relationship with federalism. In the rush to independence in 1960, the new state was given a "Fundamental Law" that would run out after four years. After independence, there was a chain reaction whereby various parties carved out miniature provinces that they could dominate. These new provinces purportedly had to meet certain criteria, including "viability" and a minimum population of 700,000. Most of the "provincettes" (as journalists dubbed them) corresponded to one, or occasionally two, colonial districts. Setting up the new areas created jobs for politicians and administrators and brought government closer to the people. But it also set off a new round of ethnic conflict. Provincial police forces functioned as miniature armies, seizing territory from their rivals.

Federalism remains controversial, however. This is partly because of the various secessionist movements and civil

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wars that followed the first government after independence in 1960, led by Patrice Lumumba, who was assassinated in 1961.

In 1964, a constitutional convention was held in the capital of the former Kasai province. The Luluabourg Constitution was explicitly federalist. It consecrated the political victory of the federalist moderates over the Lumumbists, disempowered after the assassination of Lumumba three years earlier. Later that year, a civil war broke out between the Lumumbists and the central government. In 1965, when the tide had turned against the Lumumbists, the army commander, Colonel Joseph Mobutu, seized power and began restoring order. He re-established most of the colonial provinces. Only the Kongo people and the Luba-Kasai retained their own provinces.

However, Mobutu deprived the provinces of their separate governments. An administrator, who could not be a local person, headed each province, district and territory. The prefectoral administrators were incorporated into Mobutu's party-state, and given political functions alongside their more strictly administrative ones.

REUTERS/DAVID LEWIS

Supporters in Kinshasa celebrate the victory of President Joseph Kabila in the Democratic Republic of Congo, November 2006.

Mobutu's tentative moves

Late in the 1980s, the Mobutu government began experimenting with territorial administration. The territorial reforms got tangled up in the broader struggle between the aging dictator and forces that were calling for democracy. When multi-party political competition resumed at the beginning of the 1990s a flock of parties appeared on the scene, some opposing Mobutu and some supporting him.

The Congolese political landscape was remodelled twice. The war of 1996–97 brought Laurent Kabila to power with the backing of Rwanda and Uganda. However, in the war of 1998 to 2002, Rwanda and Uganda backed a collection of Kabila's opponents and this second war ended in a stalemate. Kabila and his successor, Joseph Kabila, held a southern belt including Kinshasa and Katanga. Rwanda and the Congo Democratic Rally (*Rassemblement Démocratique Congolais, RCD*) held the east. Uganda and the Congolese Liberation Movement (*Mouvement de Libération du Congo, MLC*) held the north.

So, after a long war and long peace process, a new constitution was drafted and approved in 2006 and elections held. The new Constitution represents a compromise between federalists and centralists. This Constitution has some unitary attributes in that it provides for supervision by the central government of the decentralized territorial entities and nomination of governors and vice governors by the president of the Republic. Elements of federalism can be seen in the division of competencies between the central government and the provinces, and the administrative autonomy of the provinces.

Empowering the provinces

The Constitution specifically lists the competencies of the central government and of the provinces as well as concurrent competencies. The central government shares with the provinces powers including regulation of radio, television and cinema; civil and traditional law; land and mineral rights and environmental protection. The provinces are responsible for education from preschool to secondary. Also, the provinces have been given independent financial means including land tax, taxes on rental income and motor vehicle taxation.

The new Constitution may create jobs for the political class and bring administration and government closer to the people. The big test will come during the next round of elections. The elections of 2006 generated large-scale violence, as parties and associated militias attempted to establish control over one region or another. The various militias are to be disbanded or integrated into the national army, and the police force is to be national as well. It is unclear whether these measures will suffice to ensure peaceful elections in the future.

A crucial question concerns the distribution of political power between the centre and the regions. The attempted secession of mineral-rich Katanga and South Kasai, and the chaos of the era of the "provincettes" (1962–66) discredited federalism. In turn, 30 years of Mobutu's dictatorship discredited extreme centralization. The *Rassemblement Démocratique* party called for federalism, which had the effect of tainting that position. President Joseph Kabila and Prime Minister Antoine Gizenga face problems posed by a secessionist sect among the Kongo people in the West and of Hutu and Tutsi militias in the East.

Sharing mineral revenues

The 2006 Constitution does address the vexing question of how to divide revenues from mineral resources. The provinces can retain 40 per cent of national revenues derived from their territory. Resource-rich provinces, like Katanga, thus keep a large share of the money from their mineral deposits. The Constitution also creates an "equalization fund" to redistribute up to 10 per cent of national monies to infrastructure projects in poorer provinces. This strikes a three-way balance among the rich provinces, the poor provinces and the central treasury in Kinshasa. It remains to be seen whether this can translate into a practical check on centralizing and secessionist forces in the DRC.

Congo's riches should benefit all of its people. That presupposes balance between the interests of the central government and the provinces. What that balance should be is for the Congolese to decide. Many fear, however, that excessive provincial autonomy could serve as an invitation for continued foreign interference.

SPECIAL SECTION

Unity in Diversity

INDIA 2007

Introduction

The special section of this issue of *Federations* magazine tackles two classic themes of federal governance, diversity and inter-governmental relations, and how they shape the internal politics of several federal countries.

These eight articles address themes of central interest to practitioners of federalism. They were chosen to also appeal to the appetites of the less initiated.

The selection includes pieces on unity and diversity in Ethiopia, India, Nigeria and Switzerland, four countries who value their respective forms of diversity and have found unique ways of promoting it in order to strengthen the unity of their nations.

Cajoling and compromise drive India's multi-party system

Indian federalism bristles with paradoxes

REUTERS/JAGADEESH INDIA

Manufacturers of political party banners, flags and signs display their products before shipping them to campaign offices from their workshop in Bangalore.

The common thread is that laws have been adopted to protect certain rights of minorities.

Two of the four articles on intergovernmental relations focus on how Spain and Italy continue gradually shifting power to their constituent units, demonstrating how a certain level of conflict between the central authority and the constituent units is inevitable and no doubt necessary.

The other two pieces examine politics in India through the prism of India's fascinating multi-party system and the realignment of power sharing within the country.

These topics, diversity and intergovernmental relations form two of the four core themes of the Fourth International Conference on Federalism in new Delhi from Nov. 5–7, the other two being local governments and federal systems; and fiscal federalism, the subject of a recent special section of *Federations* Magazine.

This is the year of India's Diamond Jubilee, 60 years of independence. It is thus most fitting that the International Conference, whose theme Unity in Diversity: Learning from Each Other, be held in a country whose enduring unity has been maintained through its considerable diversity. There is much to learn from the Indian experience.

We trust these articles will inform and resonate both with you our regular reader and you, the conference participant who is reading us for the first time.

- **Rod Macdonell**, Senior Editor

BY ASH NARAIN ROY

India is not a textbook federation. Under the classic theory of federalism, it is not a federation at all. The Constitution of India does not use the term federation; rather, it describes India as "a union of states." And yet, the country's Supreme Court has unequivocally maintained in two landmark judgments, in 1977 and 1996, that "the Indian union is federal" and "it (federalism) is the basic feature of the Constitution." Described variously as a "federation without federalism," quasi-federal and "a union of unequal states," the federal system in India has often evoked lively academic debate.

India has an evolving federalism. With the advent of coalition governments in New Delhi, India has shed the straightjacket of the unitary colonial regime it inherited and operated under in the initial years of independence. Indian federalism has moved beyond textbook formulations; it bristles with many paradoxes.

The success of Indian democracy and federalism has many roots. India is a state built on ancient civilizations but its democratic institutions have adapted well to modern and post-modern realities. The development of the Indian political system during the six decades after independence has given it a measure of strength and stability. Unlike most post-colonial states, India's basic constitutional and political framework remains that which became operational soon after independence.

Indian federalism is a judicious blend of rigidity and flexibility. The basic structure of the Constitution cannot be easily changed. Certain changes in the Constitution require a two-thirds majority in Parliament, besides being ratified by not less than half of state legislatures. There are also cases, including the formation of new states, which require approval of a simple majority in Parliament. Thus, the Indian Constitution allows for change and evolution through its amending formulas. By 2006, it had been amended 96 times.

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Independence and evolution

The existing federal system in India has deep historical roots. The British Crown, the rulers of the princely states and the independence movement leaders each saw federalism in a good light for different reasons. To the British, the federal formula was the best guarantee of their trading interests. The rulers of Indian princely states – local hereditary rulers within British colonial India – welcomed such a framework as they could retain their autocratic powers. And freedom movement leaders thought federalism offered the best possibility of an early realization of their goal of political freedom and as a compromise to prevent the partition of India along communal lines. For the Muslim League, federation could only be considered a stepping-stone toward a sovereign Pakistan.

India's Constituent Assembly was ready to frame a federal constitution when it first met in 1946 and early 1947. However, the announcement of the Mountbatten Plan, outlining the partition of India, changed the mood of the country in favour of a strong central authority. Overnight, federalism became suspect in the eyes of the constitution makers.

After the partition of India and independence in 1947 there was sectarian violence of an unprecedented scale accompanied by a huge exchange of populations between the two countries. What loomed large at that critical moment for India was not federalism, but national unity and integration. The constitution makers did not abandon the federal idea as such, but rather vested the central government with extraordinary powers. Thus India became a union of states.

The Congress system

Ironically, independent India has always been a federation despite the silence of the Constitution in this regard. During the period of one-party domination by the Congress Party, which Indians have named "the Congress system," India remained what former Supreme Court judge V.R. Krishna Iyer calls "unitary at the whim of the Union and federal at the pleasure of

[PLEASE TURN TO PAGE 22]

Large web of consultative bodies have enhanced the federal structure

Restructuring the centre-state relationship in India

BY GURPREET MAHAJAN

IT WAS REGIONAL DISPARITIES, HISTORIC DIFFERENCES AND the enormous cultural diversity of India that led the framers of its Constitution to adopt a federal form of government. Still, they did include several centralizing elements: the office of the centrally-appointed governor, the all-India administrative services (the higher civil service, which serves both the central government and the states), very centralized revenues, and the power to declare an internal emergency and dismiss an elected state government. These mechanisms enabled the central government to exercise its influence and control over the states.

After independence, those centralizing aspects of the federal system had been reinforced by the dominance of one party, the Congress Party, at both the central and the regional levels. Because Congress effectively controlled both levels, any differences between states (regional governments) and between the centre and the states could be sorted out through intervention of the party leadership. As the Congress Party became more centralized in its own functioning and organizational structure, the balance tilted even more heavily in favour of the centre.

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The political context changes

In the 1960s and after, changes in the political process provided the impetus for restructuring the centre-state relationship. As the Congress Party's hegemony broke down, new regional parties came to power, demanding more fiscal and administrative autonomy within the federation. This process, sometimes described as the shift from centralized federalism to co-operative federalism, began in the mid-1970s. Since the 1990s it has been further consolidated with coalition governments being formed at the centre. The failure of any one party to gain majority in the central Parliament, and the growing dependence of national parties on support from regional parties to run the government at the centre, has given more elbow room for the federal units to bargain and influence important decisions at the centre.

The space that the political process created for regional players and states vis-à-vis the centre has over the years been formalized through a series of institutional mechanisms. This pursuit of institutional change and innovation accelerated in 1989 when the National Front coalition, with V. P. Singh as prime minister, assumed office at the centre. The demand for restructuring the centre-state relationship had been gaining momentum since 1967 when the Congress Party lost elections for the first time in nine states. A framework for restructuring the centre-state relationship had been prepared beginning with the Rajmamar Committee set up by the Dravida Munnetra Khazagam party when they were the government of Tamil Nadu state, the memorandum on centre-state relations submitted by the Left Front Party in 1977, and the opposition conclave in 1983 in Srinagar. The centre responded by setting up the Sarkaria Commission to look into the issue. In 1988, the commission made 247 recommendations in its report, 179 of which have since been accepted, paving the way for greater consultation and co-operation between the centre and the state.

New institutional mechanisms set up

The Constitution of India, under Article 263, envisaged the creation of institutional mechanisms for investigating, discussing, and advising on specific issues of concern to the centre and the states. One of the most important of these institutions, the National Development Council (NDC), was set up in 1952 with the Prime Minister as chair and the chief ministers of all the states as members. The NDC was supposed to strengthen and mobilize efforts in support of the five-year plans. Its role was subsequently expanded in 1967, when, following the recommendations of the Administrative Reforms Commission, it became a consultative body involved in the preparation of the plans and conducting their mid-term reviews.

In 1990, there emerged another important institutional mechanism – the Inter-State Council (ISC), with the prime minister as chair, chief ministers of all the states, six ministers of

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cabinet rank appointed by the PM as members, and another four ministers of cabinet rank as permanent invitees. While the NDC involved the states in determining planning priorities, the ISC was expected to facilitate a more comprehensive dialogue. In recent times, the ISC has prepared an action plan on good governance and scrutinized the implementation of the Sarkaria Commission's recommendations on centre-state relations.

Over the years, several other institutions have been set up to enhance co-operation between the centre and the states. While most of these are advisory bodies, in the changing political scene they have been able to play a positive role. Zonal Councils were established under the States Reorganization Act of 1956. With the Home Minister as chair and the chief ministers of states in the region as members, these councils meet to resolve differences between the states and with the centre and to promote balanced socio-economic development in the region. There are now five such councils and they offer concerned states an opportunity to deliberate on issues of shared interest; last year, the focus was on rural development, infrastructure, tourism, mining, and internal security.

Besides the Zonal Councils, there are a number of inter-state consultative bodies that review policies on specific issues: e.g., the National Water Resource Council, the Advisory Council on Foodgrains Management and Public Distribution and the Mineral Advisory Board. In addition, institutions have been set up under Article 263 to provide data for policies on specific issues. There are at present separate Central Councils of Health, Local Self Government, Family Welfare, Transport Development, Sales Tax and Sales Excise Duties, and Research in Traditional Medicine. Also, from time to time, the government sets up a finance commission to recommend the distribution of resources from the centre to the states. There exists, as well, a provision for the creation of tribunals to settle disputes between states on the sharing of river water.

AP PHOTO/MUSTAFA QURAISHI

Party leaders from national and state legislatures share levity after smearing on coloured water during the Holi celebrations in March. The chief minister designate of Uttarkhand state, B.C. Khanduri, right, smiles as India's opposition leader, L.K. Advani, leads him forward.

Limits of the existing structure

This large web of consultative bodies has enabled states to initiate dialogue with the centre and with each other, and has helped minimize tensions and enhance the co-operative dimension of the federal structure. While the contribution of these institutions must not be underestimated, there are nevertheless certain concerns that need to be addressed so that the institutionalized interactions nurture a sense of partnership, rather than paternalism, between the centre and the states.

First, no matter how well institutions are designed, their effective functioning is dependent upon, and can be impeded by, the larger political context in which they operate. For example, the ISC was set up in 1990 when the Congress Party had been voted out of power and first met in 1992. Then, after the Congress Party was voted back in, no meetings were held for the next six years – thus undermining the ISC.

Second, in the period of reform, new decision-making centres emerged and diminished the role of some of the existing consultative bodies. This is clearly the case of the NDC. Today, the NDC's approval is required for finalizing the five-year plans, but, effectively, the planning priorities are determined by the Planning Commission, a body of the central government.

Third, while consultative bodies are forums where political positions of different parties can be, and often are, articulated, the spirit of dialogue is not always present. Therefore, the challenge is to mould them in a way that they become mechanisms for genuine co-operation.

Lastly, even though mechanisms of co-operation and consultation have been put in place, the centre remains powerful politically, and in extreme cases it can invoke the extraordinary measure known as President's Rule, which allows the central government to assume all the powers of a state government when that government is deemed to not be carrying out its functions in accordance with the Constitution.

From 1950 to 1967, President's Rule was imposed on 10 occasions. From 1967 to 1983, when the Congress Party was no longer the dominant force, this provision was invoked 81 times. In 1994, the Supreme Court ruled that such proclamations of emergency are not immune to judicial review. Since then, President's Rule has only been imposed around 20 times and the political barriers to this measure have been raised. On balance, despite many institutions for co-operation and providing independence for the states, the centre remains a powerful influence, further strengthened by its control of important fiscal transfers from the centre to the states for centre-sponsored schemes.

While there are certainly challenges confronting the federal polity, it cannot be denied that many contentious issues have been resolved successfully through the existing institutional arrangements. There is added reason for optimism. The central government has recently acknowledged the need to make the Inter-State Council a more effective mechanism for discussion on crucial economic and social concerns. In this era of coalition politics, it is to be expected that there will be more validations of this kind, helping India achieve a genuinely co-operative federalism.

Accommodation of cultures in tune with India's spirit of liberal democracy

India's extreme diversity makes pluralism imperative

REUTERS/VIJAY MATHUR

An "untouchable" becomes Chief Minister of the northern Indian state of Uttar Pradesh. Mayawati Kumari, leader of the Bahujan Samaj Party, a party of Dalits or "untouchables," took power in the state after her party's victory in May.

BY AKHTAR MAJEED

As the Indian constitutional structure shows, it is possible to respect cultural diversity without damaging the nation-state. In multicultural, multi-ethnic and plural societies, such as India and many others, social justice, economic progress and political democracy can be achieved only through accommodation of diverse interests and identities. The system of law and justice derives its legitimacy from not allowing the need of any one group to overshadow or eliminate the needs of others. Thus, in India, pluralism melds cultures with the spirit of liberal democracy.

A country the size of a continent, with an area of 3.28 million square km and a population of over one billion, India is the world's most plural society: 22 national languages and some 2000 dialects; a dozen ethnic and seven religious groups fragmented into a large number of sects, castes and sub-castes; and some 60 socio-cultural sub-regions spread over seven natural geographic regions. A viable and successful system of government must recognize these identities and respect and accommodate them. The Constitution of India has done just that and has become the best guarantee for a viable and vibrant nation.

Ultimately, it is not just a question of majority/minority in a plural society; it is a question of social and distributive justice in a liberal democracy. If democracy is not receptive to various identities in a plural society, then it remains only a majoritarian democracy that underprivileges minorities. Since majoritarian procedures and institutions could disadvantage minorities, the Indian Constitution has ensured special provisions for the protection of minority rights as well as balancing group rights with individual rights.

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Territory and ethnicity

The framers of the Constitution were deeply conscious that India is a plural society, but they were also concerned about the need for unity and consolidation. In the aftermath of the 1947 partition of India, creating Pakistan and India, such concerns were natural. It was in that context that a particular type of federal governance was visualized, which evolved over time into multi-layered federalism as the way to fulfill aspirations of the many cultural groups. The socio-economic diversity of the country made bargaining within Indian federalism important. Once the decision-making processes were decentralized, the result was consensual democracy.

The framers of India's Constitution had intended the very size and heterogeneity of the original large states to discourage the emergence of parochial identities. However, they left the door open to a reorganization of states along linguistic lines, which, over time, has produced 28 states and six union territories. Many countries have had difficulty in maintaining national identity in the face of demands for autonomy, even secession. Heterogeneous India's success in remaining intact is surely rooted in reorganization: the adjustment of state boundaries and creation of new states – both of which are the prerogative of the central government. In the last decades, as India has become less centralized, the politics of states' reorganization have changed as well. States no longer feel they are overshadowed by the central government, nor is there a feeling of systemic discrimination against the states.

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REUTERS/AUSTIN EKEINDE

Former militia leader Mujahid Dokubo-Asari attempted to run for governor of Rivers state while in prison on a charge of treason. On June 14, 2007, he was released by Nigeria's new president, Umaru Yar'Adua, who is seeking to bring peace to the Niger Delta region.

Diversity has also spawned clan-based militias

Nigeria's federal framework dampens ethnic conflicts

BY ISAWA ELAIGWU

DIVERSITY IS OFTEN SEEN AS DETRIMENTAL TO NATION-building. Yet diversity can also lead to much greater accommodation in a multinational state. In Nigeria, federalism has been adopted as a mechanism for accommodating diversity and managing potential conflict.

An extraordinarily heterogeneous society, Nigeria has a population of about 140 million according to the 2006 census, more than 400 linguistic groups and some 300 ethnic groups. Under British colonial rule from 1914 to 1960, Nigeria used English as the single common language. The most important aspects of diversity in Nigeria are language, ethnic identity, religion, majority/minority cleavages and regionalism or geo-ethnicity.

It is not uncommon to hear 10 different languages within a radius of 20 kilometres, as you can in Plateau State. Language is a key indicator of ethnic group. Often, ethnic identity coincides with residential territory. At times, administrative boundaries overlap with regional boundaries, within which there is a dominant ethnic group, such as the Hausa/Fulani in the North, the Yorubas in the West and the Ibos in the Eastern region. However, in each region, there are also numerous minority groups, with their own specific identities.

There are three basic religions in Nigeria – African traditional religion, Christianity and Islam. While Islam was introduced in Nigeria by Arabs along their northern trading routes, Christianity came with European missionaries from the South.

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Little contact under British rule

While diversity in Nigeria has been a source of administrative concern, the nature of colonial administration, which regionalized Nigeria in 1939, meant that Nigerian groups coexisted but had little contact with one another. The 1946 Richards Constitution brought Nigerian leaders together in the Legislative Council (1947) for the first time. Yet, by 1951, as the British colonial umbrella was gradually folding, nationalists began to compete to inherit political power from the British, withdrawing to their familiar ethnic and ethno-regional bases to organize for the struggle. Thus, between 1951 and 1959, major ethnic groups in many regions were mobilizing against other regions. Finally, suspicion and fear among Nigeria's groups led to the adoption of federalism in 1954 in order to manage the conflict. Still, the colonial authority found it necessary to set up the Willink Commission to investigate the fears of minority ethnic groups in the regions, and opted to allay them by including a human rights clause in the Independence Constitution of 1960.

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But various regional politicians and groups continued to be alarmed. The South feared the tyranny of the Northern groups who represented 54 per cent of the population. On the other hand, the North feared the Southern tyranny of skills, as the region was more advanced in Western education and therefore had more jobs in the developing government and business sectors. Such suspicions and resentments significantly affected a number of political developments, particularly the census exercises of 1962-1963, the federal elections of 1964, and the Western regional elections of 1965, and ultimately led to the military coup of 1966 and the aborted secessionist bid of the Eastern Region – the Biafran War – between 1967 and 1970.

An unbalanced federation

As the leader of a military coup in 1966, Major-General Johnson Aguiyi-Ironsi's government inherited the ongoing problems of an unbalanced federation, in which the regions were more powerful than the centre. It therefore opted to alter the structure of the federation, creating 12 states out of the existing four regions in 1967. This grew to 19 states in 1976, 21 states in 1987, 30 states in 1991 and 36 states in 1996. The revised federal structure provided a useful medium for the central government to compartmentalize conflict areas among the old regions and to reduce their intensity. But, as new states emerged, erstwhile minorities became new majorities, often more vicious than the old. Ethnicity and regionalism did not die with the creation of states, and often standing issues crept back through other avenues, such as recruitment into public office and resource distribution.

The issue of language often rose to the surface. In the Second Republic, from 1979-1983, the House of Representatives found, as had the Constituent Assembly of 1978-1979, that it was convenient to continue to use English as the official language. In addition, however, it approved the use of the Hausa, Ibo, and Yoruba languages, a move that was sharply opposed by representatives of minorities who saw it as "cultural slavery." This controversy subsided with the adoption of English as the official language at federal and state levels.

Religious conflict emerges

Religion had not been a serious source of conflict until the late 1970s. At the Constitution Drafting Committee in 1976 and 1977, and during the Constituent Assembly sessions of 1978 and 1979, the *Sharia* law debate opened sectarian schisms. Suddenly, religion took a front seat in political discourse. The attempt by Muslims to extend *Sharia* beyond personal and inheritance matters, and to establish a federal *Sharia* Court of Appeal, was resisted by Christians. As a compromise, *Sharia* and customary courts were to be introduced only in states that so desired. At the federal level, the Court of Appeal was to have three judges learned in *Sharia* and customary law sitting with common-law judges. Such a compromise would have been more difficult in a unitary system.

Yet in 1986, the news of Nigeria's joining the Organization of Islamic Conference (OIC) stirred up another religious crisis, especially between Christians and Muslims. While reassurances were given, there was no withdrawal from OIC. Between 1980 and 2005, there were over 45 violent religious conflicts in which lives and property were lost, conflict intensified in particular when Zamfara state extended Sharia law to include criminal matters in 2000. Twelve northern states quickly followed in adopting *Sharia*. The violence resulting from the introduction of the *Sharia* in Kaduna State triggered reciprocal killings in the southeastern part of Nigeria. The *Sharia* fire did not spill over to other states because of Nigeria's federal structure and the autonomy of component units.

Struggle over resources

Another source of conflict is resource distribution. Most of the proceeds from petroleum and gas, upon which Nigeria depends, come from a predominately minority area, the Niger Delta, which includes Delta, Edo, Akwa Ibom, Cross River, Rivers and Bayelsa States. Feeling cheated and neglected over the years, these states accused the central government of using their resources to develop other areas and threatened to take control of them. They had walked out of the National Political Reform Conference in 2005 because the conference had rejected a sharing formula of 25 per cent of oil revenues by derivation. The federal government has tried to deal with the problem of neglect by establishing the Niger-Delta Development Commission, devoted to the development of the area. However, former president Olusegun Obasanjo's master plan was met with skepticism. The Yar'Adua/Jonathan administration is currently trying to resolve the issue.

A final instance of diversity is the emergence of ethnic militias. After May 1999, when the military dictators handed over power to civilians, latent subnationalism exploded into violence. The O'dua Peoples' Congress, the Arewa Peoples' Congress, the Ibo Peoples' Congress, The Bakassi Boys, the Movement for the Actualization of the Sovereign State Biafra, the Egbesu and the Ijaw Youth Congress – were all subnational militia groups that challenged the state with violence. As the Nigeria Police Force grew less effective in maintaining law and order, subnational militia groups grew stronger. Their goals, as they – and certainly not others – saw them were to:

- Protect their identity, culture and values.
- Demand what they considered an appropriate share of resources.
- Respond aggressively to actions regarded as unfair.
- Act as a vigilante group to protect lives and property.
- Defend the land of their ancestors against strangers.

In the Niger Delta, some leaders created militias as military wings of political groups. After the 2003 elections, these politicians lost control over their militias. Violence spread among young people, who challenged state control. The Niger Delta imbroglio continues. It is to be hoped that new measures by President Yar'Adua can resolve the issue.

Federalism tries to establish legal and other forms of compromise among diverse interests. In Nigeria, the federal framework has enabled leaders to compartmentalize conflicts over ethnicity and regionalism, thus reducing – though not eliminating – conflicts. It has made it possible for Nigerians to cope with religious conflicts and to contain aggressive subnationalism. Diversity can enrich the process of nation-building, and, in troubled times, provide the promise of renewed intergroup relations, as the pendulum continues to swing between federalism and centralism.

German, French, Italian, Romansh – and now English?

Swiss cantons bear brunt of nation's multilingualism

Four official languages grace Swiss franc notes – French, German, Italian and Romansh. The cantons in Switzerland have a larger multilingual task than the federal government because schools and hospitals are located in bilingual areas of many cantons.

BY MALCOLM MACLAREN

Four languages appear on Swiss franc bills and the country's name in Latin – *Helvetica* – appears on its coins and postage stamps. The four languages – German, French, Italian and Romansh – appear on franc bills because they are the languages of the Swiss Confederation. *Helvetica* alone appears on coins and stamps as a concession to size constraints. In making these choices, the unity of Switzerland is challenged by its underlying diversity. The official response has been to seek their accommodation. Governments have sometimes attempted to encourage – and sometimes to downplay – diversity.

How effective has the Swiss approach been? It's not easy to preserve harmony and encourage understanding and exchange between different linguistic communities, especially while maintaining and promoting the less-used Italian and Romansh languages. The canton of Grisons, officially trilingual, has often been described as "Switzerland in miniature" and offers insights into what Swiss linguistic politics has achieved.

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Switzerland is above all marked by its diversity, which has defined its politics throughout its history and has been characterized by efforts to overcome divisions, fragility and internal conflict. Diversity motivated the choice of a federal system of government in 1848 and is the reason for the existence of 26 cantons and about 2,728 municipalities in a land with just over 7 million inhabitants and 40,000 square kilometres. Switzerland is not a nation in the traditional ethnic sense because it is not based on a common language, religion or culture. It is what German speakers call a *Willensnation* – a country based on the desire of citizens to live together peacefully in diversity. The challenge for political institutions has been to facilitate coexistence of linguistic or other communities and development of a common Swiss society.

Language and the law

According to the Federal Census of 2000, German is spoken by 72.5 per cent of Swiss citizens, largely in the north and centre of the country, French by 21 per cent, to the west, Italian by 4.3 per cent, in the south, and Romansh by 0.6 per cent, in the south-eastern canton of Grisons. Article 4 of the Federal Constitution states that the national languages are German, French, Italian and Romansh, and confirms that linguistic diversity and the desire to live together are the political and conceptual foundations of the nation. In particular, Romansh is not to be considered a relic, but rather a living language, with its well-being, like that of German, French, and Italian, a matter of concern and a prerequisite for linguistic harmony. The Constitution does, however, make a concession to practical constraints: while Romansh speakers must be able to communicate with the Federal administration in their language, not all federal legislation must be translated into Romansh.

Switzerland's multilingualism is ensured through the individual's right to linguistic freedom (Article 18) and protection of the linguistic communities' integrity and homogeneity (Article 70). These potentially conflicting principles are implemented through the nation's federal structure.

According to Swiss jurisprudence and legal doctrine, the principle of "linguistic freedom" means the right to use any official language in communications by private parties with the state and between themselves.

The protection of this constitutional right is, however, qualified by the territorial principle, which permits linguistic

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freedom to be limited to preserve the traditional makeup, boundaries and homogeneity of linguistic territories. By ensuring that linguistic communities have the space they require, the territorial principle recognizes that an individual can only realize himself or herself as a member of a linguistic community.

Linguistic territories are not protected for their own sake. Rather, this determination is made at the cantonal level. While the federal government must take certain measures on behalf of Italian and Romansh, as well as of linguistic harmony generally, its role is secondary to and supportive of that of the cantons. Language, like culture and education, is a cantonal matter. The cantons enjoy considerable discretion in designating the languages of cantonal administration and schools, and determining how use of language should be regulated. They bear the main responsibility for realizing – and where necessary, reconciling – obligations relating to linguistic rights and territories.

Linguistic territories vs. multilingualism

Swiss policy on language has maintained the desire of citizens to live together peacefully. However, tensions between linguistic communities remain and minority languages continue to be threatened:

- **Federal multilingualism, cantonal unilingualism and bilingualism.** Federally, the Swiss government is quadrilingual. Cantonally, governments operate in fewer languages. Most cantons have only one official language. Officially bilingual cantons are Bern (German-speaking majority, French-speaking minority), Fribourg (French majority, German minority) and Valais (French majority, German minority). The only officially trilingual canton is Grisons (German majority, Romansh and Italian minorities).
- **Language linked to territory**. The attempt to realize "linguistic freedom" and the territorial principle simultaneously has led to frequent legal disputes. Article 70 of the Constitution, which seems to promise protection for linguistic minorities, has been used on occasion by cantonal and municipal authorities to require their children to attend public school in the majority language. The Federal Supreme Court is called upon frequently to reconcile these two constitutional principles in areas of the country where different linguistic communities are thoroughly mixed.
- **Creating a new canton**. One way Switzerland has "solved" an internal conflict involving language is through creation of a new canton. The officially French-speaking Jura canton was split off from the officially German- and French-speaking canton of Bern in 1978 after a protracted process involving complex negotiations and popular votes at all levels. But the status of French-speaking districts of Bern canton remains a concern. The canton recently granted them limited autonomy, and groups in Jura canton want Jura to annex those districts.
- **Multilingual advantage**. Switzerland has found it especially difficult lately to have a productive dialogue between linguistic and other cultural communities and to use the great potential of its heterogeneity to its advantage. This prevailing inability has manifested itself in stark disagreement between French-speaking and other areas over initiatives to open Switzerland to the wider world.
- **"Unofficial" languages**. Switzerland is faced with two new linguistic challenges. First, one-tenth of its population – mainly foreign residents and temporary foreign workers – speaks a non-official language, with the largest group speaking Bosnian, Serbian or Croatian. Second, the onslaught of English poses a challenge to policymakers. With English becoming the lingua franca globally, and most Swiss more fluent in it than in another national language, some commentators propose adoption of English as Switzerland's common language.

Governing a trilingual canton

The experience of trilingual Grisons canton illustrates how different languages can cause cultural problems as well as richness. The official languages of Grisons are German, Romansh and Italian. However, little Romansh is spoken in Grisons or elsewhere in Switzerland. Among Swiss inhabitants of Grisons, 73.5 per cent are German-speaking, 16.9 per cent Romansh and 8.4 per cent Italian. There are fewer than 27,000 Romansh speakers there and Romansh is used infrequently in administration or court matters.

Article 3 of the Grisons Constitution tries to reconcile linguistic variety with linguistic territories and to preserve linguistic harmony in policy-making. It provides that the canton and municipalities are to take necessary measures for maintenance and promotion of Romansh and Italian, and to encourage understanding and exchange between the linguistic communities. Municipalities and communes are to determine administrative and school languages with the canton.

For over 25 years, the cantonal government sought to pass a language law to implement Article 3. Citizens of Grisons finally approved the law in June 2007 after heated debate. The new law sets one threshold for percentage of native speakers to designate a municipality as officially unilingual. The law sets a lower threshold for a second language when designating a municipality as officially bilingual. Each language must be one of the official languages. The law also prefers speakers of minority languages in hiring for the cantonal administration and provides that as a rule the language of court proceedings is to be that of the defendant. The law met with stiff opposition from German speakers in Grisons who felt disadvantaged.

The future of the Swiss model

The Grisons language law has been greeted by some linguists and legal experts as "a model for the whole of Europe." Not everyone agrees. Certainly, a state with a culturally diverse population will only remain united if its communities consider the state as their own. While Switzerland has managed to survive, it has not perhaps grown together as its founders intended. Provision for powerful, homogeneous cantons may have reduced conflict but has not furthered integration.

The Swiss experience with diversity also suggests that the ability of a constitution to prevent conflict and promote understanding and exchange between linguistic communities is limited. Switzerland remains less multilingual than plurally unilingual. Multilingualism cannot be imposed from outside; it must be nourished by a collective desire from within society.

Ethiopian Constitution protects diversity

But the right to secession proves a thorny issue along the borders

REUTERS/RADU SIGHETI

An Ethiopian woman arrives at her synagogue in Addis Ababa at the start of Rosh Hashana, the Jewish New Year, in September.

BY MEHARI TADDELE MARU

Multiethnic Ethiopia has miraculously remained intact despite a dizzying 30 years that has seen it go from a monarchy to communism to a transition to democracy all while having to endure several droughts, famines and oppressive poverty.

Its strength and its capacity to endure seem to lie in Ethiopia's diversity.

It has more than 85 ethnic communities with different languages or dialects. It is the second-most populous sub-Saharan African country after Nigeria. Ethiopia has religious diversity as well. Christianity and Islam are the largest religions, and Judaism and a number of other religions are also found there.

To govern this nation of 78 million inhabitants, one of the most diverse and conflict-prone in the world, the government introduced "ethnic federalism" which was constitutionally enshrined in 1995. Ethiopia places a high priority on issues related to its ethnic groups, one of the many compelling facets to the country's form of federalism.

From the fourth century AD to 1974, Ethiopia was ruled as several forms of a Christian monarchy. The last emperor, Haile Selassie, was overthrown in 1974 by a Marxist-Leninist military group called the Derg, led by Mengistu Haile Mariam. His group set up a single-party communist state. This regime was overthrown in 1991 by a coalition of largely ethnic-based rebel movements, the Ethiopian People's Revolutionary Democratic Front (EPRDF).

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Constitution recognizes communities

The Constitution that came into effect in 1995 established a federation made up of nine ethno-linguistically divided regional states and two chartered federal cities – Addis Ababa and Dire Dawa. The nine regional states are Afar, Amhara, Benis-hangul/Gumuz, Gambella, Harari, Oromia, Somali, Tigray and the Southern Nations, Nationalities and Peoples' Region.

However, the Constitution also grants self-government to all ethno-linguistic communities, including, if they so desire, the right to form a regional state or even to secede and form an independent country. The Constitution explicitly states that "all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia." It defines ethno-linguistic communities as a "Nation, Nationality or People … a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."

The federal Constitution explicitly gives all ethno-linguistic communities the right to protect and promote their culture, language and historical heritage through self-government. It assumes that every community has its own territory and confers the right to "a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits…."

The diversity of the regional states may be measured according to:

- population
- ethnic diversity (multiethnic or homogeneous)
- religious diversity (as it overlaps with other factors)
- way of life (settled or nomadic)
- urban or rural setting

Tigray, Afar, Amhara, Oromia and Somali regional states all are named after their dominant native inhabitants. These states have one dominant indigenous ethnicity and language. The other states – the Southern Nations, Nationalities and Peoples; Gambella; Benis-hangul/Gumuz; and Harari – are multiethnic regional states with no single dominant ethnic community.

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While the federal Constitution has conferred an unlimited right to self-determination to ethno-cultural communities, the regional states are also expected, as some already have, to grant special administrative status to minority ethno-cultural communities by creating special zones called *Liyu Zones* or special districts known as *Liyu Woreda*.

The purpose of this federal arrangement is to promote "unity in diversity" by guaranteeing preservation of the cultural, linguistic and religious distinctiveness of the ethno-linguistic communities, as well as their distinct lifestyles. Thus, in the Ethiopian federal system, diverse identities are not merely tolerated but are constitutionally protected, and public expression of these diverse identities is politically promoted.

Upper house arbitrates

Another institutional expression of "unity in diversity" is the House of Federation. The upper houses in most federations have an equal number of representatives for each constituent unit or else are weighted somewhat for population. The House of Federation, however, is composed of one representative per ethnic group plus an additional representative for each one million population of that group.

This formulation means that, for example, the ethnically very diverse Southern region has a larger voting block than more populous but relatively homogenous regions like Oromia and Amhara. In all cases the representatives are either appointed by the state legislatures or each state may organize direct elections. The roles of the House are less in the general legislative areas and more specifically in settling conflicts between regions, acting as final arbitrator of the Constitution and determining the revenue-sharing formula.

The following cities and regions, which are home to various groups of differing identities, serve as good examples of both the diversity and unity of Ethiopia.

ISTOCKPHOTO.COM/DAVID KERKHOFF

Young boys from the Hamer people, one of Ethiopia's 85 ethnic communities, watch a bull jumping ceremony in the Lower Omo Valley.

Religious tensions plague Somali state

The Somali regional state has three overlapping identities and a secessionist movement. About 96 per cent of the population of the Somali regional state is Somali and about the same proportion is Muslim, while 85 per cent of the population is nomadic. The nomadic way of life has a culture of bearing arms as a birthright. All these identities are also commonly shared with the population of Somalia, a country with a 1,600-km long border with Ethiopia. The border areas have long served as bases for several Ethiopian secessionist movements and as a safe haven for armed separatist groups fighting in Ethiopia.

There are overlapping identities of ethnic groups along Ethiopia's borders with other countries, including Somalia. Indeed, movements such as the Western Somalia Liberation Front, which has renamed itself the Ogaden National Liberation Front, are mainly quasi-ethnic and quasi-religious movements, fused with ethnic ties to Somalia. The spillover effects of such movements who claim homelands in Ethiopia and neighbouring countries pose a difficult question for Ethiopia. How do you determine whether a particular movement is a legitimate Ethiopian ethnic group pressing for its legal right to secede or a group of foreign intruders when both share the same language, ethnicity and politics? Some Ethiopians along the border also fear that religious radicalism from Somalia may cross the border into Ethiopia. Recently, there have been sporadic tensions and outbreaks of violence in several parts of Ethiopia between Orthodox Christians and Muslims, heretofore known for their generally peaceful coexistence and mutual respect.

UN body recognizes ancient city

In July 2007, the city of Harar, a UNESCO-designated world-heritage site, celebrated its 1,000th anniversary. Guarded by its medieval walls, the ancient city has been an important centre of Islamic culture and commerce since the thirteenth century. Home to more than 100 mosques, some of which are older than those in Saudi Arabia, Harar is generally considered the fourth holiest city of Islam.

Even though non-indigenous Oromo and Amharas constitute a majority, Harari state is mainly designated to be territorially administered by and for the Harari. The power of the regional state is, therefore, divided mainly between the Harari and Oromo ethno-linguistic communities. Compared to regional states such as Oromia, with a population of 27.3 million, and Amhara regional state's 19.6 million, Harari, with 131,000 residents, would normally be considered too small to enjoy the privileges of a regional state. Nonetheless, Harari's special place in Ethiopian history as a centre of Islamic faith, along with its cultural and religious diversity, has justified this status.

Capital city draws rural folks

Ethiopia's two largest cities are urban oases in an overwhelmingly rural country, melting pots amid ethnically-based states and regions. With a combined population of nearly 3.4 million, Dire Dawa and Addis Ababa are two chartered regional city-states of huge diversity. These cities are the exception in Ethiopia: overall, nearly 85 per cent of Ethiopia's population is rural. Members of almost all of Ethiopia's ethno-linguistic communities live in these two cities, and for this reason, the cities are answerable to the federal government, not to a specific ethno-linguistic group. Although the numerical majority in Dire Dawa is Oromo, Amharic is the official language of city

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Federalization is popular with the North but resisted by the South

Italy takes the slow boat to federalism

BY FRANCESCO PALERMO AND JENS WOELK

FEDERATIONS/SHANNON ELLIOT

In Italy, the regions of the North start just above Rome. Differences between North and South led to a movement for federalism that is stronger in the North.

Over the last 10 years, Italy has been in the process of federalizing. Delays along the way have led to a federal constitutional framework around a centralist political culture. At the same time, the rich regions of the North are demanding more autonomy, while the poorer regions of the South are worried that further federalization will widen the economic gap between the two parts of the country.

From the time of Italian unification in 1871 until 1948, Italy had a unitary form of government. It was only with the Republican Constitution of 1948 that an innovative, but also feeble, experiment with regionalization was conducted.

After the Second World War, not all Italian regions were treated equally. From the very beginning, Italian regionalism was characterized by its asymmetrical design, as a matter of constitutional law and in terms of implementing the powers that were transferred to the regions. Despite constitutional provisions for one standard regional design for the whole country, only five special or autonomous regions were established. All five were in the periphery: three in the Alpine region in the north, with historic minority groups, Aosta Valley, Trentino-South Tyrol, Friuli-Venezia Giulia; and the two main islands of Sicily and Sardinia. There were international obligations imposed by the peace treaty between Italy and the Allied Powers after the Second World War and fears about a possible secession of these peripheral areas. Each of the five regions has a special statute, which is essentially a basic law that has full constitutional authority.

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The third way

As an innovative experiment, the regionalization of the whole country mapped out a "third way" between a federal and a unitary system, to avoid too great an asymmetry between these areas and the rest of the territory. However, this two-track regional design, set out in the Constitution of 1948, was not fully developed until the 1970s. By 1972, the ordinary regions were given devolved legislative powers. Eight of these 15 ordinary regions are in the North: Piedmont, Emilia-Romagna, Liguria, Lombardy, Marches, Tuscany, Veneto and Umbria. Two are considered to be divided between North and South: Lazio (Latium) and Abruzzo. The other five are in the South: Apulia, Basilicata, Calabria, Campania and Molise. Since the early 1970s, a permanent increase in the regional powers gradually narrowed the gap between the so-called ordinary and special regions. The path has been neither straightforward nor coherent, influenced by shifting political priorities and the Constitutional Court. As there is still no constitutionally guaranteed institutional representation of regional interests at the central level, extending federalism essentially meant challenging national laws in the Constitutional Court. These conflicts and Constitutional Court rulings emphasizing co-operation and consultation led to the gradual empowerment of the regional level and to a system that can be described as co-operative regionalism.

A series of important reforms of the public administration and the system of local self-government were adopted between

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the late 1980s and the late 1990s. These reforms encouraged the more active regions to start developing their potential for self-government. Political demands for more self-government became an absolute priority for the rich and industrialized northern regions – demands which were also echoed by the government in Rome. Initially, the devolution of powers was primarily seen as a means for reducing expenditures by the national government. Pressures by a federalist, and on occasion secessionist, political party, the Northern League, made federal reform a political issue requiring constitutional reform.

Steps toward federalism

In 1999 and 2001, two constitutional amendments were approved which considerably increased the powers of the ordinary regions. The first reform introduced the direct election of regional presidents. It also strengthened the regions' constitutional autonomy, as the basic regional laws are now to be enacted by the ordinary regions themselves in a special procedure. The second reform of 2001 completely reshaped the constitutional provisions concerning relations between the national government and the regions, following decisions by the Constitutional Court.

The reform declares all component units of the republic to be equal – the national government, regions, provinces and municipalities. While this sounds unusual for a federal system, it does express the concept of functional spheres rather than hierarchical levels of government. The two-track asymmetry – involving ordinary and autonomous regions – is confirmed, but further differentiation is now possible upon the request of single ordinary regions. Most importantly, the reform drastically changes the distribution of legislative and administrative powers between the national government and the regions.

The Constitution now lists all legislative powers of the national government as well as the fields of concurrent legislation in Article 117. Now, the residual powers lie with the regions. Administrative powers are no longer connected with legislative ones, but rather are distributed in a flexible manner under Article 118. The new provision for fiscal federalism allows for partial financial autonomy of subnational entities in Article 119. As well, all regions must establish a consultative body for the representation of local authorities within their territories.

Until the early 1990s there was an unwritten pact between North and South allowing Italy to devalue the Lira as a means of maintaining its competitive footing with other European countries. The economically depressed and dependent South, for its part, used public expenditure as a means of stimulating consumption. Then there were pressures to reduce the public debt and overall public expenditure in order for Italy to enter the European Monetary Union. The collapse of the North-South pact undermined the equilibrium between northern and southern regions on regional expenditure and tax policy. Corruption scandals in the early 1990s led to the demise of the old order with the dissolution of the Christian Democratic Party and the Socialist Party. This collapse of the old political order helped to increase the pace of these changes and a budgetary crisis made the introduction of a number of vital structural reforms even more urgent.

Slow implementation

Six years after the passage of the constitutional amendments, the reform is far from complete. Although some amendments came into effect immediately, such as the new distribution of legislative powers, the new lists were found to be incomplete and to contain many overlaps, giving rise to an enormous increase in the number of controversies. The Constitutional Court had to face the fundamental task of redefining the competencies. Frequently, this provided a rationale for expanding the role of the national government through the assumption of jurisdiction over cross-cutting issues instead of over narrow jurisdictional matters, and the interpretation of the national government as guardian of the national interest.

A second group of reform provisions required further detailed legislation, especially in the field of fiscal federalism. Unfortunately, the centre-right coalition government under then prime minister Silvio Berlusconi, elected immediately after the approval, did not show any interest in implementing the reform inherited from the previous government. Thus, only two statutes of implementation were adopted, in 2003 and 2005, and the issue of financial relations is still unresolved.

In addition, Berlusconi's government – including the right-wing Northern League, which sought more radical results – presented its own, more far-reaching constitutional counter-reform. This proposal affecting 53 articles of the whole Constitution was finally adopted by the centre-right coalition's majority in Parliament in November 2005. However, its entry into force was prevented when 61 per cent of voters opposed it in a referendum in June 2006. This referendum took place just after Berlusconi's government lost the general elections. The new government under Prime Minister Romano Prodi has since assumed the initiative and is attempting to complete the implementation of the 2001 reform.

However, even the regions were not that diligent in capitalizing on the new opportunities for reform, and the process of passing new basic laws has been very slow.

Flaws in the system

Further constitutional reform seems unlikely at this point. The next steps in Italy's federalization process likely will be the implementation of fiscal federalism provisions and perhaps some shifts in competencies. For example, there is wide agreement that energy must be a national competence, not a shared one.

At the moment, Italy can best be described as a devolutionary asymmetric federal system in the making. The term devolutionary is appropriate because powers have been transferred from the national government to the regions; asymmetric reflects that there are two types of regions and the implementation of federalism differs from region to region; and "federalism in the making" specifies that even after the reform of 2001, the term "federal" or "federalism" does not appear in the Constitution. Federalism in Italy will come about in a step-by-step basis, starting with the approval of the new basic law by each region, and by each region taking full advantage of the opportunities to move forward with the reform. Italy's constitutional framework certainly allows for a federal form of governance. It is now up to the politicians to assume their responsibilities.


REUTERS/GUSTAU NACARINO

Spanish Prime Minister José Luis Rodriguez Zapatero (r.) helps José Montilla campaign for president of the region of Catalonia in October 2006. Montilla was elected.

Autonomous communities and municipalities take on more responsibilities

Spanish regions gain power

BY ROBERT AGRANOFF

In Spain, the contest between the central government and the country's 17 regional governments can become volatile. The debate reached a fever pitch in mid-2007 with regard to Basque demands for greater autonomy, when opposition leader Mariano Rajoy of the Popular Party accused Prime Minister José Luis Rodríguez Zapatero of having negotiated with Basque ETA terrorists "behind the backs of the Spanish people and playing with the structure of the state as if it was a Meccano set." Yet according to popular opinion polls in August 2007, Zapatero's popularity has actually gone up since the ETA cancelled the cease-fire on June 6.

No country has moved toward an intergovernmental system as rapidly as Spain in recent decades. Shortly after the death of Spanish dictator Francisco Franco in 1975, democracy was restored and the political system became federal in virtually all but name, bringing autonomy to regional and local governments, with powers divided between the central authority and 17 regional governments, called "autonomous communities" in Spain. The division of jurisdiction has evolved through framework laws, Spain's Constitutional Tribunal and day-to-day intergovernmental relations.

Ambitious subnational leaders have mainly sought further decentralization and devolution of powers to autonomous community and local levels. Besides its 17 autonomous communities, in 2005 Spain had 50 super-municipal provinces (seven merged with autonomous communities), 81 county-level entities, 8,107 cities or municipal corporations, 909 consortia (vertical partnerships between municipalities, provinces, autonomous communities and the state), 988 intermunicipal services and about 3,700 sub-municipal units and government corporations. Many joint bodies made up of representatives from the central government and autonomous community bodies have evolved through transfer of powers and concurrent programming. Spain's entry into the European Union in 1986 has affected policy in such areas as land use, solid waste disposal, coastal zone management, employment and immigration.

SPECIAL SECTION
Unity in Diversity
INDIA 2007

How governments interact

Spanish intergovernmental relations, or IGR, take place at three levels:

- **Macro IGR** includes political interactions between regional and national leaders, as well as major issues concerning territorial division or concurrence of powers.
- **Meso IGR** refers to less visible but important routines of official-to-official contact, the negotiation of grants and contracts, establishing governmental partnerships and so on.
- **Micro IGR** is the hidden-from-public-view operational level at which projects are negotiated, regulations and standards are enforced, contracts are managed, land is zoned and building permits are issued.

Macro IGR. This form of interaction includes issues of regional strife, usually involving identity, powers or financing, which attract attention outside Spain. As well, regional parties often negotiate deals in the central parliament when forming coalition governments. Political conflict always draws attention, and these struggles are significant and do define IGR, to some extent. But broader concerns of territorial politics come into play.

Framework laws passed by Parliament in Madrid also animate a dynamic IGR. Most powers are not neatly compartmentalized, but rather have an impact on two or more

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levels. One study of about 74 non-defence, foreign and domestic policies indicated that 17 involved exclusive central jurisdiction and 19 exclusive autonomous community authority, with the remaining 38 having a mixed nature. This last group contains most core policies, including education, health, social services, income assistance, economic and commercial development, transportation, local government and environmental management. The operation of the education and health systems is shared between Madrid and the autonomous communities. Local government is made operational by country-wide laws affecting elections, financing and basic organization and services.

Meso IGR. Spain's extensive interlocking arrangements – with central framework laws complemented by further legislation and regulation in the communities – means that both orders of government have strong interest in the implementation process in many areas. Spain's system of parliamentary and cabinet government permits much of this activity to be conducted within the executive branches by administrators and contacts with their counterparts are extensive. At the political level of ministers and heads of government, Spain has less contact than in such parliamentary federations as Australia, Canada and India. However, a Council of Autonomous Community Presidents was recently formed and it has biannual meetings with the prime minister; these focus on broad policy design, leaving other issues primarily to bilateral contacts.

REUTERS/VINCENT WEST

A representative of Batasuna, the illegal Basque independence party, speaks at a news conference in San Sebastian in September.

Policy design issues are also important in generating IGR at the meso level. For example, the rules of urban planning and zoning are only broadly regulated by Madrid. Each autonomous community has its own laws dealing with urban development, permits, construction and regulations. Each municipality is required to file and update a 10-year plan for development, approved by the autonomous community, including exceptions that are allowed. The same planning and operational processes are applicable to autonomous community-local affairs in terms of providing infrastructure, social services, income maintenance, health services and education. In all these areas, middle-level intergovernmental issues have largely shifted from Madrid-autonomous community to autonomous community-local government.

As a result, more of the "action" in a number of these areas focuses on the autonomous community capitals. Mayors and their councillors negotiate with regional agencies over matters such as financing and policy interpretation, review and approval. Similarly, the main public interest organization for governmental units, the Spanish Federation of Municipalities and Provinces, relies more on lobbying by its autonomous community-level affiliates, along with the autonomous-community-level advocacy of its non-affiliated counterpart associations in the Basque Country and in Catalonia.

Micro IGR. This level, not seen by the public, includes the negotiating of projects, enforcing of standards and management of contracts. Many small Spanish municipalities do not have the population and revenue base to offer the full array of such required services as water and waste-water handling, refuse collection, access roads and sanitation. They have three choices if they do not directly deliver each service: allow the provincial government to provide the service, form a special district with nearby municipalities to deliver the services or arrange a service contract with another municipal government or a private vendor. Each of these types of arrangement is intergovernmental in nature and all require autonomous community approval. Municipalities engage in interactions with autonomous community education officials on such matters as sites for new schools.

Intergovernmental dealings occur within the larger frameworks of *meso* and *macro* IGR. This is where government ultimately works – or doesn't – in federal systems.

Where governments meet

Four additional mechanisms help hold together the system of intergovernmental relations:

- Sectoral conferences, or multilateral meetings and issues forums focused by policy area for autonomous community-Madrid mutual exchanges and problem-solving.
- Bilateral co-operation commissions, essentially project-oriented negotiating bodies comprised of first- and second-level management from state and autonomous community administrative bodies. These bodies initially negotiated the

transfer of services "downward" and later dealt with the latest power transfers in health and education for some regions.

- Joint plans and programs between Madrid and autonomous community governments, especially in areas of joint or overlapping competencies, including those related to EU implementation.
- Most numerous are bilateral and multilateral collaboration agreements: contracts linking two or more governments. More than 5,000 collaboration agreements have been signed by Madrid and regional governments, as well as countless others between provincial and municipal governments, and special units of government.

The building of Spain's "State of Autonomous Regions" (*Estado de las Autonómias*) has depended heavily on these four types of agreements and commissions.

Fiscal links are also fundamental in a system that is vertically unbalanced. The latest studies reveal that "own source taxes" – taxes imposed locally – of autonomous communities in 2005 amounted to only 0.9 per cent of all revenues. The autonomous communities receive 50.3 per cent of their revenues as a fixed share of various taxes levied by the central government on their behalf. They receive another 46 per cent in the form of various transfer payments from the central budget (apart from the special fiscal regime for the Basque and Navarre autonomous communities).

Municipalities fare somewhat better, inasmuch as direct and indirect taxes, charges and fees, and other revenue sources in 2002 amounted to about 65 per cent of local revenues. Another 13 per cent comes from state transfers, and the remainder from provincial and autonomous community transfers. Only a portion of these are unconditional, and the others are dependent on completion of specific projects.

Forces that drive intergovernmental relations

Several important factors appear to animate IGR dynamics:

- Constitutional and institutional frameworks of the state, particularly guarantees of autonomy and a share of state revenues, assure that the levels interact.
- Framework laws in many core policy areas, plus the basic structure of autonomous community and local governments, lock in interdependence among levels.
- Europeanization means areas such as employment, immigration, urban waste, landfills, public procurement, employees' work time and environmental impact involve a fourth tier of government.
- Electoral competition, coalition governments and the rotation of political parties in office have strengthened autonomous communities and, to some extent, local governments, and insulated them from top-down control, creating a "politics of place," unit by unit of government.
- Spanish political culture feeds on the importance of place and individualism leading to the tradition of multiple unilateral contacts to supplement or complement any multilateral activity.
- Following subnational traditions of deep administrative involvement in intergovernmental relations, administrative and executive federalism are the prevailing interactive modes. These reinforce the federalizing nature of Spanish intergovernmental relations.

ETHIOPIA [FROM PAGE 16]

administration. Moreover, even if the majority residents of Addis Ababa are the Amhara, Addis Ababa is the capital, not only of Ethiopia, but also of Oromia regional state.

Nomads blur demography

The effect of diversity within one region in Ethiopia can be seen in Gambella regional state, located in southwestern Ethiopia bordering Sudan. An ethnically heterogeneous regional state without a dominant ethnic community, Gambella is host to about 253,000 people from the Anywaas, Nuer, Mezengir, Opio and Komo, plus settlers from Tigray, Amhara, Oromia and Southern Regional State. The Nuers constitute the largest group, 39.7 per cent, while the Anywaa make up 27.4 per cent of the total population.

Gambella has both settled and nomadic populations, so it is influenced by the seasonal migration of the nomadic Nuers, which has an effect on demographic and other aspects, such as power sharing and conflict over resources. As a regional state with a porous international border with Sudan, Gambella has inhabitants in areas where ethnic groups are divided across a border. There was fighting between different ethnic groups there in 2003 and 2004, and the situation is still volatile to this day.

The ethnically-based power-allocation system set by the federal Constitution has affected the relationship among the ethno-cultural communities and led to violent conflicts at the local level as different groups vie for what they see as their rightful share of power and control over resources. Lessons will surely be drawn from this unintended result.

Pragmatists support ethnic federalism

Unfortunately, Ethiopia does not benefit from a broad-based consensus among the political class about the role and brand of federalism that is right for the country. The political reaction to the ethno-linguistic federalist arrangement in Ethiopia can be summarized into three views. First are those who support ethno-linguistic federalism as a matter of the ethno-linguistic communities' human right to self-determination, up to and including secession. They support federalism even at the cost of unity. Second are those who see ethno-linguistic federalism as regrettable but the only way to prevent disintegration. This is a calculated version of unity: inherently they are opposed to secession but they support ethno-linguistic federalism as a necessary means to unity, not for its own inherent merit.

A third view is held by those who are totally opposed to ethno-linguistic federalism; they want to do away with it and replace it with either another form of federalism or a unitary system. It is this author's position that if this view was to be implemented it could turn the country into bloody civil war. Moreover, it could lead ultimately to the disintegration of the country – the very outcome the holders of this view abhor. In other words, this position is blind to the essential Ethiopian reality – which is that only a system that politically and legally guarantees and explicitly celebrates Ethiopia's diversity can achieve durable peace and unity. Ethiopia has the constitutional framework to accommodate diversity. The task now is to apply that framework fairly throughout all of the country.

INDIA [FROM PAGE 7]

the Centre." However, with the weakening of the Congress system and the rise of regional parties, Indian political leaders realized that the federal system was the bedrock of India's democratic edifice.

One-party dominance had its share of unhealthy influence on the federal body politic. Such was the obsession with strong federal government that regional movements and identity aspirations became a sort of anathema to the Indian state. Yet, the States Reorganization Act of 1956 paved the way for the creation of linguistic states, which stymied many demands for autonomy. While southern India burned over the perceived imposition of the Hindi language in the 1960s, there were ethnic stirrings in the northeast and subnational uprisings. Some movements bordered on secessionism, while the ethnic upsurge was primarily the result of an accrued sense of neglect and alienation. The 1980s saw three autonomy movements, in Punjab, Assam and Kashmir.

Leaders in the Congress Party warned that having strong states would entail a weak central government, and vice-versa. If the country was weak and drifting in the late 1970s and 1980s, they argued, it was the result of regional demands for autonomy. Such an argument could be considered misleading as it sidestepped the central issue of distribution of powers.

The end of one-party rule

The transformation of India from a dominant-party to a multi-party system has strengthened federalism. Although the Congress Party remains a major player, India operates with a multi-party system that includes the Bharatiya Janata Party (BJP) and many state-based parties. Since 1996, regional parties have become important constituents of each federal coalition. Gone are the days of one-party rule.

REUTERS/SUCHETA DAS

In run-up to Indian elections, cookies are sold with party symbols. Clockwise from top left: Congress Party, Bharatiya Janata Party, Tinamool Congress and Communist Party (Marxist).

Three combinations of coalition governments have held power: the non-BJP, non-Congress-led United Front, supported from outside by the Congress Party (1996-98); the BJP-led National Democratic Alliance (1998-2004); and the present Congress-led United Progressive Alliance (since 2004). The United Front government's alternative model of governance, with its devolution of greater economic and administrative autonomy to states, set the tone for change in the federal polity. Coalition governments have come to stay and India has learned to live with this. With their commitment to granting greater autonomy to states and transferring the bulk of centrally-sponsored programs to state governments, regional parties have successfully advanced the cause of federalism.

The Indian federal system has to go through frequent negotiations between the centralists and seekers of autonomy, and between federal and state governments. There have been repeated revisions of the Constitution and frequently the failure of talks and accords. It is through such constant churning that India's federal system has matured. In the early days of independence, demands for autonomy were viewed increasingly as divisive and secessionist. Today, parties that made such demands hold important levers of power in the present coalition government.

A changed federal system

India has moved a long way from co-operative federalism, where states and the central government jointly plan and carry out programs, to competitive federalism – where individual states compete in terms of services offered, including lower tax bases. The country still has a strong central government, but it does not have the same clout as it once wielded in the days when Congress was the dominant party .

In today's multi-party coalition, the central government often has to cajole and negotiate with the states where it would once have bullied its way through. As well, there have been occasions when a state government has taken on the central government and defied its will. The arrest of two central ministers by the Tamil Nadu government in 2001 illustrates the extreme end of the new transformation. On June 29 and June 30, 2001, Tamil Nadu chief minister J. Jayalalitha got her longtime rival and former chief minister M. Karunanidhi arrested along with two central ministers, Murasali Maran and T. R. Balu. It was an act of political vendetta. A nationwide outcry got them released on July 2.

As Susanne Hoeber Rudolf and Lloyd Rudolf write, "the states are making themselves heard and felt politically and economically more than they ever have." India is moving from administrative federalism toward multi-level political federalism. Through the 73rd and 74th constitutional amendments, a third tier of governance has been created. These 1993 amendments to the Indian Constitution provided the framework for introducing a third tier of elected councils in rural and urban areas. They also provided for reserving at least one-third of elected seats in councils for women. Today, many previously excluded groups and communities are included. But the biggest impact of the 73rd and 74th amendments is on local governance, which moved beyond the exclusive control of central and state governments.

Economic reforms have given a new lease on life to states, and there has been a gradual shift of power away from the central government. With the end of one-party rule and the advent of coalition governments, India is moving toward a polity that permits the emergence of strong states with a strong centre, accompanied by increasingly assertive local governments.

With 22 official languages, a population of 1.1 billion, more than five major religions and a geography ranging from mountain ranges to rain forests to flatlands, it is hard to imagine India as anything but a federal country. Had the Indian Constitution been shorn of its federal provisions, India probably would have had to adopt federalism simply to survive. In the past 60 years, federalism has changed the grammar of Indian politics.

This has led to a situation where demands for states' reorganization are no longer treated as a political bargaining lever against New Delhi, but as an administrative convenience.

The formation or reorganization of states in India has been based on considerations such as geographical proximity, a common language, similar usages and customs, comparable socio-economic and political stages of development, common historical traditions and experiences, a common way of living, administrative expediency and, more than anything else, a widely prevalent sentiment of togetherness; that is, a sense of identity.

Setting the borders of states

The reorganization of states has served good governance by advancing four criteria:

- administrative convenience
- economic viability
- similarity in the developmental needs of a sub-region
- cultural-linguistic affinity

If an ethnic group is not concentrated territorially, it can then envisage economic and political gains if it obtains greater regional autonomy, for example the earlier demands for a separate Telengana state in Andhra Pradesh. Where regional autonomy in the form of a separate state is not a viable strategy, or is perceived as not immediately possible, demands have been made for preferential treatment, such as those in the state of Maharashtra for exclusive benefits for the local residents. Many demands for constituting new states have been based on allegedly unfair distribution of development benefits in multi-lingual states, for example in Assam in the 1970s and 1980s.

REUTERS/KRISHNA MURARI KISHAN

Women line up with their voter identity cards in the eastern Indian city of Patna. One million women were guaranteed seats on village councils or *panchayats* thanks to an amendment to the Indian Constitution.

Just as federal India is a composite, plural entity, so have many states become cohesive with a plural basis rather than a single identity. The states are often cohesive political and administrative units, even though they are based not on one identity, but on a synthesis of different identities. There are some states that do claim a distinctive cultural identity; these states are ecologically distinctive, like Uttrakhand, where environmental activists in Himalayan communities acted 30 years ago to prevent further degradation of forests. There are also states that claim to be ethnically distinctive, like Tamil Nadu, Karnataka or Kerala. In another group, regional identities have been subsumed under the dominant language, like Maharashtra, Gujarat or West Bengal. All of these states are what may be called single-identity states. On the other hand, the large composite states such as Uttar Pradesh reflect a set of variables: language/dialect, social composition of communities, ethnic regions, demographic features, area contiguity, cultural pattern, economy and economic life, historical antecedents, political background and psychological make-up and felt consciousness of group identity. It is in such regions that most demands have been made for new states, as in the north-east of the country.

A voice in local governments

In addition to ethnic groups seeking autonomy, there are also those within the same ethnic group who are sometimes left out of the political process or the local economy. For example, past community development programs often could not succeed due to planning done by bureaucrats and politicians in state capitals with little or no input from the local communities for whom the programs were planned. This encouraged dependence on government resources and undermined self-help. By a constitutional amendment, a new system of rural local bodies called "*panchayats*" and local municipalities was introduced in 1993. The system provides for a three-tier structure at the village, intermediate and district levels. Through the village council, the primary source of power is now the village. One-third of the elected representatives in these bodies have to be women, who occupy nearly one million seats on the councils. Powers and responsibilities have been given to the elected local bodies to plan and execute economic development plans. There are district planning committees that prepare the development plan for the district as a whole, integrating plans prepared by the rural *panchayats* and urban municipalities. In this way, the institutions under this system seek to realize the goals of decentralized administration consistent with decision-making by people at the grass root level.

The importance of territory has been useful in building upon diversity within nation-states and ensuring that cultural and ethnic differences do not become the basis for group inequality. Further, the different groups do not perceive one another as either inferior or superior. Indian nationhood rests on developing a societal ethos that facilitates the coexistence of diverse groups within one country by power-sharing arrangements. Endorsing pluralism as a value has made possible the nurturing of both equity and identity in a single political system.

REUTERS/HO NEW

Venezuelan President Hugo Chávez explains the world to school children in the town of Maturin in September. His "missions" in areas of education, health and welfare make up a parallel system of service delivery that is challenging the existing order.

Decline of federalism in Venezuela

President Chávez's revolution has no room for a strong federal system

BY CHRISTI RANGEL GUERRERO

Eight years into his "Bolivarian Revolution," President Hugo Chávez has been making changes that chip away at federalism in Venezuela, which in 1811 became the first federal country in Latin America.

What the Chávez government has undone is much of a legacy of two centuries of federalism in Venezuela.

After the federal Constitution of 1811, there was a swing toward centralization due to the Spanish legacy of hierarchical and authoritarian political structure, and centralized control of mineral resources. By the end of the 19th century, a highly centralized system of government had been imposed and Venezuela was federal in name only.

A new constitution in 1961 allowed for decentralization, but little was done until 1989, during a deep political and economic crisis, when the necessary consensus was reached. This consensus permitted the reform of the central government with the goal of reviving the federal nature of the country through political, administrative and economic decentralization.

The first major reform provided for direct, secret and universal elections to elect state governors. In addition, new provisions created the position of mayor and established direct voting for mayors. A new law provided the legal underpinning for transferring powers, services and resources. Then, in 1993 and 1996, additional laws were enacted with the aim of ensuring that intergovernmental transfers were sufficient for the subnational governments to carry out their new responsibilities.

In September 2007, new constitutional changes were given second reading in the National Assembly to

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remove the limit on the number of times a president can run for re-election. These changes, which also give the government power to expropriate private property without judicial approval, will go to a public referendum if approved on third reading.

Venezuela's Senate, which previously had to approve constitutional amendments, was abolished in 1999 when a new constitution was adopted by a constitutional convention where 80 per cent of the delegates were supporters of President Chávez.

A new centralism

In June 2007, invoking a presidential decree, Chávez created the Central Planning Commission. The commission represents a significant change to the country's economic system. The creation of the central commission appears to clash even with Chávez's own 1999 Constitution, which states that the "Bolivarian Republic of Venezuela is a decentralized Federal State."

In the past eight years, laws passed under the new Constitution have promoted a new centralism. This was done by imposing regulations applicable to all levels of government with regard to procurement, government operations, public administration, land transportation and transit, tourism and ports.

A further centralizing step was accomplished by changing laws related to public budgeting to reduce the transfer of revenues from the central government to the states. Neighbourhood organizations called communal councils, whose makeup and financing depend on the Presidency, were created with powers of public management that deal with state and municipal matters.

The Chávez government's constitutional provision requires the adoption of laws to implement the new federal system and to increase decentralization.

Effects of the participatory democracy program

Since 1999, Chávez has been introducing a political program that he says favours "participatory democracy." To this end, he began imposing a centralized approach to government service delivery that sidestepped the existing federal system. The president created what he called "missions" in the areas of welfare, health and education through a system of parallel off-budget funding. This strategy increased his political influence among many in the states and municipalities. At the same time, these actions minimized the power and functions of all agencies of subnational representation, amid an aggressive campaign to discredit them. Some of the methods he used were to:

- Create parallel national structures for providing public services within the jurisdiction of states and municipalities.
- Reverse the process of transferring powers.
- Administer the main sources of public revenues so as to limit the actions of dissident subnational representatives.
- Create off-budget funds that evade controls and increase discretionary action in centralized public spending.

An example of the last point is the expansion of control over communications, such as radio and television stations and the Internet, which was done in the name of defending the system of "direct democracy," thereby eliminating intermediaries between the president and the people.

These central government practices are taking place in a country with very weak political parties and a fragmented electorate, whose pro-federal elements were accused of taking extreme stances.

In a general strike in 2002, many state and municipal governments with opposition leaders closed their government offices in the struggle to change the people in power at the national level. While most of these leaders took part in democratic and peaceful protests, some also participated in an unsuccessful coup against Chávez in 2002.

In addition, the deep political polarization between those who favour and those who oppose the president's program has left little room for discussion of the consequences of the re-centralization process and its impact on efficient public management and the democratic system.

REUTERS/JSAAC URRUTIA

Venezuelan soldiers guard the transmitter of Radio Caracas TV in Maracaibo after taking control of the station in May 2007. President Chávez refused to renew the station's license.

Centralizing effects

The new Constitution brought in by Chávez in 1999 did include aspects of decentralization that already had constitutional status. However, it did not further the transformations needed to entrench federalism more deeply, such as increasing the taxation powers of the states or ceding additional powers and services to them. Instead, the Constitution showed a reversal of the trend toward expanding the federal system by:

- Eliminating the Senate, a chamber that represented geographic areas.
- Establishing that national laws define the organization and operation of state legislatures (Article 162).
- Stating that national power is inherent in organizing municipalities (Article 168).
- Making centralized management controls a concurrent power of national and state governments (Article 165).
- Concentrating power in the Presidency of the Republic (Article 236).
- Establishing an upper limit on the proportion of regular revenues transferred from the national government to states

[PLEASE TURN TO PAGE 30]

No drugs and no guns, says a sign in English and Spanish outside an elementary school in Arlington, Texas. The U.S. Supreme Court struck down a federal statute creating gun-free zones near schools. State and local legislation is still legal.

U.S. Supreme Court shifts to centre in recent constitutional rulings

There has been no federalism revolution in the courts, nor is there likely to be

BY G. ALAN TARR

Settling disputes between the federal government and the states has been and will continue to be a key role of the United States Supreme Court.

"The question respecting the extent of the powers actually granted [to the federal government], is perpetually arising, and will probably continue to arise, as long as our system shall exist." So wrote Chief Justice John Marshall of the United States Supreme Court in *McCulloch v. Maryland* (1819), and his statement has proven prophetic. Many Supreme Court cases have focused on the distribution of power between the federal and state governments. In some the Supreme Court has upheld the federal government's claims, while in others it has safeguarded the powers of the states.

The nine justices of the U.S. Supreme Court play a crucial role in American federalism. They police the boundary between the federal government's powers and those of the states, striking down as unconstitutional those federal laws that invade state powers and those state laws that infringe upon federal rights. Aside from their appointment by the president with the "advice and consent" of the Senate, the justices remain free from interference by the legislative and executive branches, and this independence enables them to serve as a neutral umpire in resolving federalism disputes.

The U.S. Supreme Court has over time offered varying answers to the question of how the Constitution divides power

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between the federal and state governments. After 1937, a shift toward the federal government occurred, continuing, though somewhat diminished, until the early 1990s. Another shift appeared imminent in the mid-1990s. A crucial source of federal power is the Commerce Clause of the U.S. Constitution, which authorizes Congress to regulate trade with foreign nations, with the Indian (Native American) tribes, and among the states. Congress has relied on this clause as authority for many laws that it has enacted, regulating both commercial and non-commercial activity. From 1937–1994, the Supreme Court consistently rejected claims that Congress had exceeded its powers under the Commerce Clause. But in *United States v. Lopez* (1995) and *United States v. Morrison* (2000), a five-member majority struck down federal statutes as beyond congressional power under the Commerce Clause.

When states fail to protect individual rights

Another major source of congressional power is the Fourteenth Amendment, adopted in 1867 after the Civil War. This amendment gave Congress the power to legislate when states fail to protect individual rights. During the twentieth century, the Court largely upheld federal laws enacted under the Fourteenth Amendment. But in *City of Boerne v. Flores* (1997) and subsequent cases, the justices invalidated federal statutes as beyond Congress's power under the Fourteenth Amendment. In two cases during the 1990s, they also struck down congressional statutes that "commandeered" state officials into implementing federal programs. And in *Seminole Tribe of Florida v. Florida* (1996) and subsequent cases, the justices invalidated several federal laws that allowed states to be sued without their consent.

Some hailed the Court's aggressive policing of constitutional boundaries as a "federalism revolution." But members of Congress saw in the Court's rulings a lack of respect for Congress. Thus, when Congress was holding hearings in 2005 to confirm John Roberts as the new Chief Justice, Senator Arlen Specter of Pennsylvania blasted the Court's rulings as a "usurpation" of congressional authority. Whatever the assessment, there was overwhelming agreement that the Supreme Court's decisions signalled a major shift, fulfilling former Chief Justice Rehnquist's pledge to respect the principle that "the Constitution creates a Federal Government of enumerated powers." In other words, the Constitution grants only limited powers to Congress.

With the benefit of hindsight, however, it is clear that both the hopes and the fears were exaggerated. There has been no federalism revolution, nor is there likely to be. Let us examine what actually occurred and why.

Invoking the "Commerce Clause"

In the 1995 case of *United States v. Lopez*, the Supreme Court struck down a federal statute creating gun-free zones near schools. Five years later, the Court invalidated a provision of the federal Violence Against Women Act that established a right to sue perpetrators of gender-based violence in federal court. These decisions might have signalled a fundamental shift on the Court. But in neither case was Congress directly regulating economic activity, so the rulings might merely have meant that federal laws regulating non-commercial activity in areas of traditional state concern would have a difficult time in the Supreme Court.

This narrower reading was confirmed by the Supreme Court in 2005 in *Gonzales v. Raich*. In this case, a federal law conflicted with a California program that authorized doctors to prescribe marijuana for medical purposes and permitted patients to grow or purchase marijuana for those purposes. The Court upheld the applicability of the federal law, noting that Congress was directly regulating economic activity, since there was a thriving (albeit illegal) market for marijuana, and that Congress could regulate even intrastate non-commercial activity in order to achieve its regulatory ends.

Interpreting the Fourteenth Amendment

The Fourteenth Amendment protects individual rights against infringement by state governments and authorizes Congress to enforce the amendment. In 1990 the Supreme Court ruled that state governments did not have to exempt persons from obeying laws that conflicted with their religious beliefs, as long as the laws were applied even-handedly to everyone. Congress sought to reverse this ruling. Relying on the Fourteenth Amendment, it enacted a law that required states to demonstrate a "compelling state interest" before requiring persons to act in violation of their religious beliefs. But in *City of Boerne v.*

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REUTERS/JIM YOUNG

Four Supreme Court justices flank President George W. Bush at his state of the union address in January. From left: John Roberts, Anthony Kennedy, Stephen Breyer and Samuel Alito.

REUTERS/TOBIAS SCHWARZ

Keeping a coalition in line: German Chancellor Angela Merkel moderates a meeting of coalition members with Peter Struck of the Social Democratic Party, who was named co-chairman of the parliamentary joint commission to reform Germany's fiscal federalism.

German *Länder* to control own taxes?

Reform of fiscal federalism "one of the most difficult issues since unification"

BY FELIX KNÜPLING

Last year, the Federal Republic of Germany introduced the most extensive constitutional reform since its birth. The constitutional overhaul, which Germans call *Federalism Reform I*, established a new division of legislative powers between the federation and its constituent units, the *Länder*.

This year, *Federalism Reform II* is starting where *Federalism Reform I* left off. In its coalition agreement to form the federal government after the October 2005 elections, the Christian Democrats and Social Democrats agreed that the first stage of reform should be followed by a further step – to adapt financial relations between the Federation and the *Länder* to the new underlying economic conditions in Germany and elsewhere.

In the first stage of this reform, legislators in Berlin barely touched on the constitutional provisions governing state finances, knowing that to do so would have made the process an impossible task. But even now, the challenge is big. The reform is being handled by a parliamentary joint commission of the lower house – the *Bundestag* – and the upper house, the *Bundesrat*. As Christian Democrat leader Norbert Lammert, the Speaker of the federal parliament, put it during the first meeting of the commission in March 2007, the fiscal reform "is surely one of the most difficult issues the federal government and the *Länder* have had to tackle since German unification."

Commission to decide on reform

The joint commission is co-chaired by Peter Struck, chairman of the Social Democratic parliamentary group in the *Bundestag*, and Christian Democrat Günther Oettinger, the premier of Baden-Württemberg. Each house of parliament

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has delegated 16 regular members to the commission. Four of the *Bundestag* delegates are members of the federal government. Almost all of the *Länder* have sent premiers.

The two chambers have agreed on a group of measures in a resolution that ties in with approval of the first stage of the reform. The commission's mandate includes the tasks of:

- Developing effective mechanisms to prevent and manage budgetary crises in the face of Germany's enormous public debt, which totals more than 1.5 trillion euros (more than $2 trillion U.S.).
- Drafting proposals for the modernization of Federation-*Länder* financial relations, particularly in the areas of growth and employment policy.
- Strengthening the responsibilities of regional and local authorities, and ensuring they have the necessary financial resources to carry out their duties.
- Modernizing the administration and grouping together of public services with the aim of enhancing efficiency and reducing red tape.
- Easing the requirements for voluntary mergers between *Länder*.

Thus far, the commission discussed financial issues during a public hearing in June 2007, with 18 experts it appointed. A second public hearing focusing on administrative issues is planned for November. The aim is to enact final legislation in 2008.

REUTERS/ALEXANDRA BEIER

The beer tax is one of the few independent sources of revenue for the German regional governments. Drinking this beer is Guenther Oettinger, Baden Wuerttemberg's Christian Democratic Premier and co-chairman of the parliamentary joint commission to reform Germany's fiscal federalism.

More autonomy for the *Länder*?

Fiscal law in Germany is predominantly federal law, and the *Länder* are subject to many restrictions on raising revenues and carrying out expenditures. The country has a mixed revenue collection and distribution system. The most important taxes – the value added tax, and personal and corporate income taxes – are shared revenue sources for the *Länder* and the federal government. The basis of these taxes is decided jointly in the *Bundestag* and the *Bundesrat*. But the rates and basis for other tax sources belonging exclusively to the *Länder*, such as inheritance or automobile taxes, also have to be passed by both chambers. Experts estimate that only two per cent of total *Länder* revenue is autonomous. This comes from the beverage tax (beer tax), entertainment tax, dog tax, and hunting and fishing tax. The only notable exception for total tax harmonization is the local business tax, which each community and city can set independently according to its needs.

Germany's fiscal federalism is also marked by a very complex financial equalization system aimed at providing comparable standards of living for people in the entire country, as the German Constitution requires. After distributing revenues to the *Länder*, a system of transfer payments kicks in, bringing the fiscal capacity of each *Land* to 97.5 per cent of the average. Critics contend that because the degree of fiscal equalization between the states is extremely high, the richer states are discouraged from increasing their efficiency because most of the gains would be transferred to the poorer states. It is also a disincentive for the poorer states to improve efficiency as that would decrease the amount of transfers they received.

The lack of *Land* autonomy on the revenue side and the strong restriction on the spending side which requires the *Länder* to provide a minimum quality of public services have led the *Länder* to rely on transfers from the federal government and to use borrowing as the instrument of choice to finance any spending shortfalls. This has contributed to the enormous debt the country has amassed.

The politics of fiscal reform

Some of the wealthier and more economically powerful *Länder*, ruled by Christian Democratic-led governments, are demanding more autonomy over the raising of income taxes. They prefer to raise their own tax rates on the share of income tax they are entitled to. Obviously, remodelling the revenue system in this fashion would encourage competition. This approach is largely supported by Christian Democrat politicians in the *Bundestag* and in the richer *Länder*, and by the Free Democrats.

However, the poorer *Länder*, especially in East Germany, whose economic capacity is about two-thirds of the average, are very reluctant to introduce more competition. As well, many Social Democrats remain skeptical, referring to the structural differences between the *Länder*. "Competition requires that the federation, the *Länder* and the communities are in the same position to fulfill their duties," Berlin mayor Klaus Wowereit of the Social Democrats said during a *Bundestag* debate on March 8, 2007. The premiers of the six *Länder* in the former East Germany accordingly made it clear they do not want to introduce changes to the equalization system. Part of the equalization system is the Solidarity Pact II, negotiated in 2001. Under the terms of the pact, the East German *Länder* will receive special federal grants totalling 159 billion Euros until 2019, on a yearly declining scale, to enable them to cope with the challenges of unification.

Applying a "debt brake"

One proposal to deal with the debt crisis is to introduce a "debt brake," or a halt to

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BELGIUM [FROM PAGE 3]

Missing: political unity over social security

In August, the *Fondation Roi Baudouin*, a Brussels-based charity established in 1976 to work for justice, democracy and respect for diversity, sent a special report to the presidents of all political parties, reinforcing the climate of disillusionment. Its authors, Michel Roland, of *Université Libre de Bruxelles*, and Jan De Maeseneer, of Ghent University, highlight the essentially inequitable nature of the health care system. They conclude that depending on a person's ranking on the income scale, on average, she or he may die five years earlier than another of higher rank. They add that on average, those with a lower level of education may experience 25 fewer years of good health than well-educated citizens.

Belgians are not equal when it comes to health. And the *Fondation*, which claims that the Belgian government is indifferent about this inequity, has submitted concrete proposals to the government coalition negotiators to create a federal body to combat inequalities in the health care system, enhance primary care and step up preventive efforts.

Reforms require the financial means to carry them out, and these means are not lacking in Belgium. Since 2005, the centrally managed pool of pensions, health and disability insurance, unemployment and family allowances has posted surpluses. To date, this money has been used to pay off debts and to bolster the *Fonds de Vieillissement* (Aging Fund), created in 2001 to cover the costs generated by the growing number of senior citizens. Other steps are expected.

Economics professor Deschamps advocates broadening responsibilities for the regions and increased co-operation between the federal government and the constituent units.

"Co-operation here is still piecemeal, in contrast to countries like Germany, where federalism is really entering a phase of maturity."

What is needed is a maturity that requires imagination, Cantillon said. "In Flanders, people see separation as the cure-all. At the other end of the country, people feel continually under threat. This situation puts social security on the line. It prevents us from coming up with more constructive solutions."

VENEZUELA [FROM PAGE 25]

REUTERS/JORGE SILVA

A mural in Caracas portrays Fidel Castro and Hugo Chávez. The legend reads "Cuba and Venezuela: the two countries are brothers."

and municipalities through the "Constitutional Transfer".

- Granting authority to the central government to establish limits on state and municipal taxation powers (Article 156).

Essentially, with the inauguration of Hugo Chávez as president in 1999, the processes of decentralization and federalism were reversed. Chávez could not turn back the clock and prevent the achievements of the previous decade from influencing the Constitution adopted in December 1999.

However, according to constitutional expert Allan Brewer-Carias, the 1999 constitutional text contradicts the Constitution's initial intent, and "covers with a democratic veil a highly centralized and authoritarian system in which powers can be concentrated, which has in fact happened." Defenders of the Chávez government have a different interpretation, such as that of Member of Parliament and constitutional scholar Carlos Escarrá. According to Mr. Escarrá the Constitution of 1999 is in the process of being reformed in order to, among other objectives consolidate the "peoples' power." He added that the government hopes to deepen the dispersed decentralization proposed by President Chávez.

The future of federalism

The presence of a federal structure enabled the Venezuelan opposition to rally around the only serious opposition candidate for president, Manuel Rosales, the governor of Zulia State, in 2006. Governors and mayors have been elected by coalitions opposing the president's program. They are against presidential Legal Decree No. 5841, which creates a mandatory system of centralized planning for all government entities, including states and municipalities.

As for finances, all the states depend on intergovernmental transfers from the national government. The national government has used its administrative tools to slow or deny payments, but the transfer that accounts for most of the money, called the Constitutional Transfer, is subject to less discretionary action. This gives the states some autonomy in spending, and transfers have grown in real terms with the increase in the national government's budget, although less so than the central government's finances. This condition, combined with the fact that the majority of Venezuelans approved of the changes that took place after decentralization, may have protected state government finances so far. Also, Venezuelans typically associate their cultural values and individual rights with their geographic location. Most people did not believe that political decentralization could be reversed.

The efforts on the part of President Chávez to impede the states' autonomous actions demonstrate that, to date, even a weakened federalism represents an obstacle to his other goals that require an increasing concentration of power in the central government. The current situation is one of uncertainty for those who defend Venezuela's federal model.

UNITED STATES [FROM PAGE 27]

Flores (1997), the Court declared this law unconstitutional. According to the Court, Congress's powers under the Fourteenth Amendment did not extend to the "intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter." It was the Court's responsibility to determine whether Congress had overstepped its bounds. This seemed to promise a continuing judicial scrutiny of congressional legislation affecting the states. However, the Court has since retreated from a confrontation with Congress, and its rulings show considerable deference to congressional judgment.

Accused of commandeering

In other cases, the Supreme Court ruled against the federal government when it dictated specific behaviours to state governments.

For example, the court found that part of a law dealing with radioactive waste was unconstitutional. The provision required a state that had failed to provide for the disposal of low-level radioactive waste to take possession of the waste and become liable for damages associated with it. Justice Sandra Day O'Connor held that the Constitution simply does not give Congress the authority to require the states to regulate.

"Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents," she held.

The court followed with a ruling striking down provisions of a handgun law that commanded state and local law-enforcement officers to conduct background checks on prospective handgun purchasers. The justices held that conscripting state officers to carry out a federal program violated the states' sovereignty.

But despite the publicity generated by these rulings, they had little impact on American federalism. For one thing, Congress has only rarely relied on commandeering state officials to achieve its ends. For another, as the court noted in *New York v. United States*, Congress could still regulate directly and to pre-empt contrary state regulations. Or Congress could establish grant programs that would induce states to adopt the policies it favored as a condition for receiving federal funds.

States invoke immunity against lawsuits

The Supreme Court has given a mixed message when it comes to whether Congress can enact laws allowing state governments to be sued without their consent. The Court struck down seven federal statutes in the 1990s in which Congress had authorized persons to sue the states. In one case, then Chief Justice Rehnquist wrote that "each State is a sovereign entity in our federal system" and that "it is inherent in the nature of sovereignty not to be amenable to suit without its consent."

However, the justices have since ruled that Nevada employees could sue their employers in federal court for violation of the Family and Medical Leave Act. And in subsequent rulings the Court has continued its deference to Congress, upholding a federal law that guarantees that disabled persons can sue states in federal court. And in a Virginia case the justices ruled that the Bankruptcy Clause of the Constitution gives Congress the authority to take away the immunity that usually protects states from private suits.

Judges divided

The Supreme Court's federalism initiatives in the 1990s have proved less revolutionary than most commentators had predicted. In part, this may reflect the divisions among the justices. Many of the Court's federalism rulings have been 5-to-4 decisions, and efforts to pursue a more fundamental break with existing judicial doctrine might have splintered the Court majority. In part, however, it may reflect a lack of judicial commitment to federalism itself. Some commentators have suggested that the Court's rulings reveal less a principled attachment to federalism than a desire to enhance judicial power at the expense of Congress. Certain decisions support such an interpretation. Whatever the case, the recent replacement of two strong advocates of federalism – Chief Justice Rehnquist and Justice O'Connor – suggests that the final word on the question respecting the extent of the powers actually granted to the federal government has yet to be written.

GERMANY [FROM PAGE 29]

all borrowing. Another is the introduction of an "early warning system" to avoid unhappy budgetary surprises. But such moves would only help to prevent future indebtedness. Legislators still need to deal with the current debt of the *Länder* and the federation. Günther Oettinger, co-chair of the commission, proposed the introduction of a special solidarity fund to assist the *Länder* in reducing the debt. Some *Länder* argue there first must be agreement about how to avoid accumulating even more debt in the future before considering how to deal with the accumulated debt.

However, the *Länder* – especially the poorer ones in the east – obviously will face a huge challenge if a debt brake is introduced. Currently, they have had only two ways of balancing their budgets: cutting expenditures, or borrowing more money, thereby increasing their total debt. But cutting expenditures is not a viable option because most expenditures are prescribed by federal law. And if a debt brake is introduced, they will not be able to borrow money any more.

It seems like a no-win situation, but Hans-Peter Schneider, executive director of the Institute of Federalism in Hannover, argues that the East German *Länder* might be interested in receiving more fiscal responsibility because they know that this will be their salvation. "The *Länder* need greater fiscal autonomy," Schneider said. "First, they should have the competency to legislate on those taxes which are attributed to them. Second, they should be empowered to (place a) surcharge on shared revenues to finance specific tasks for a restricted period of time. Finally, they should be able to deal more flexibly in administering federal laws and to deviate from federal standards, which often are very costly for the *Länder*." In general, he argued that Germany's form of federalism needs to be shifted more from an administrative one to a creative, constructive model.

Federalism Reform II will not be completed until 2008 at the earliest. The grand coalition needs to be able to compromise with the *Länder* to reach agreement on legislation and get it passed in Berlin. When it is, it will represent more than a major step in the development of German federalism.

What India can show the world

BY GEORGE ANDERSON

India, the world's largest democracy and federation, was born in terrible circumstances: partition and the biggest mass movement of people in history, literacy around 12 per cent, the constant spectre of famine and a checkerboard of states and principalities that had not previously been governed together.

Against these enormous challenges, Indian democracy has survived and strengthened, while the country has increasingly prospered. This success ranks among the most important positive political developments of the post-war world. (In my view, the others are decolonization, European unity and the collapse of Soviet communism.)

Independent India's success is rooted in its founders' conception of a pluralist country, inclusive of all the many strands of its society – linguistic, regional, caste, gender and religious. Their vision was democratic and federal, secular and attentive to the rights of minorities. This was the vision of Gandhi, Nehru and others during the long struggle for independence. The Indians undertook the drafting of their Constitution with the greatest deliberation. A constituent assembly of 300 members met for 165 days over a three-year period. It was supported by innumerable committees as well as reports and careful study of the experience of a variety of democracies. While views differed on such key issues as the powers of the states, language provisions and religion, in the end the Constitution was a product of a broad and legitimate debate amongst Indians, not the parting gift of a retreating imperial power.

Since independence, India has coped with virtually every challenge known to politics: war, domestic insurgencies, strong communitarian demands from linguistic and religious groups, caste and class tensions, corruption and even a break in normal democratic government. Inevitably, there have been some dark days, and India's performance in some areas has been disappointing. But the big story is one of remarkable success in maintaining the founding vision, and of consolidating democracy and positive social change.

India's founders and leaders have found inspiration not only in the great lessons of Indian history, but also in political experiences and thinking around the world. The world also has much to learn from India. Thus, it is appropriate that India will host the 4th International Conference on Federalism. Five hundred Indian and 500 international practitioners and experts on federalism will exchange experiences around the themes of diversity, fiscal federalism, local government and intergovernmental relations.

The Indians will surely show their habitual interest in lessons from others. But it will also be an occasion for others to bring a serious focus to India's experience and the lessons it can offer. For example, its dramatic reform of local government has brought 3 million citizens into elected office with a tremendous impact on local decision-making and the empowerment of women. India's experience is highly relevant to various fragile democracies in developing countries coping with deeply diverse and often conflictual societies. As well, with the world's second-largest Muslim population and other minorities, it is relevant for long-established democracies that are coming to terms with multiculturalism and significant religious minorities. Its scale and complexity exceeds in many ways that of Europe, whose project of creating a united community in an environment of huge diversity and historic tensions provides interesting parallels and contrasts.

The conference will go to the heart of the Forum's mission of learning from comparative experience. It could be held in no better place than Delhi in India's jubilee year.

George Anderson is the president and chief executive officer of the Forum of Federations.

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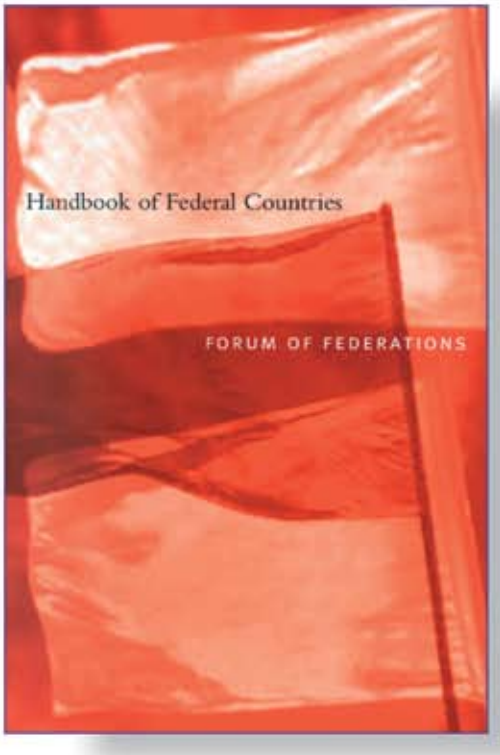

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