



What is Federalism?

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Federalism is a fragile and dynamic form of political cooperation for sharing power and responsibility among diverse territorial units. In a federalist system, each sphere of government (i.e., the union, states, provinces, counties, municipalities) possesses its own agencies. At the same time, the central government exercises jurisdiction over the citizens of a given state independently of local authorities within the limits of a federal constitution.

In several fields of official activity, the central government tends to play a lesser role than state and local governments. A government performs well in strengthening public services when it knows the preferences of the local population. Services such as safety, education and health (including water supply and basic sanitation), fundamental in social and economic development, tend to be the responsibility of state and municipal governments, demonstrating the importance of good local administration.

The degree of centralization or decentralization of power tends to create a balance between the different levels of government. State and local governments are closer to the citizens, facilitating not only popular control of public acts but also cooperation between different public agencies. Federalism does not allow a far away central government to have total control.

In his classic *Democracy in America* (1840), Alexis de Tocqueville outlined the dilemma involving division of power in a federation:

The most prominent evil of all federal systems is the complicated nature of the means they employ. Two sovereignties are necessarily in presence of each other. The legislator may simplify and equalize as far as possible the action of these two sovereignties, by limiting each of them to a sphere of authority accurately defined; but he cannot combine them into one or prevent them from coming into collision at certain points. The federal system, therefore... demands the daily exercise of a considerable share of discretion on the part of those it governs. A divided sovereignty must always be weaker than a unitary one.

The operation of two sovereignties within one territory is crucial to federalism. Both the national and the local power each have attributes under the federal constitution that frees each of them from interference by the other in specified areas. This is what makes federalism a complex political model. It is not always possible to find clear limits to federal and state power in the federal constitution. There are always gray areas in which both spheres believe they have the right to act and legislate. The potential for conflict is great. Some simple examples illustrate this. The federal government is empowered to run foreign trade policy. However, in doing so, it may create customs barriers which harm the economies of some states and benefit others. State and municipal governments are responsible for public education at the primary and secondary levels. Yet the federal government could set policy targets, supported by federal financing, for a basic curriculum, minimum salary for teachers and basic school equipment as national priorities. Is the federal government thus infringing upon state jurisdictions?

The potential for conflict stemming from dual sovereignty in federalism means that such a system can only work well if there is a pact between the different parts of the federation. The federal pact has two main components. First, the governments forming the federation (state, municipal and federal) should agree on minimum rules for working together: a division of taxation powers, forms of political representation, a hierarchy of national and local laws, division of responsibilities for public services, of ownership of natural resources, and of legislative powers, forms of distribution of resources from developed regions to those less developed. All these provisions should be in the federal constitution. Second, a judicial authority is needed for resolving conflicts with power to interpret the constitution, usually a supreme court.

In the United States, the cradle of modern federalism, the Supreme Court often is called upon to settle federal conflicts. Its constitution is two centuries old, yet the division of federal and state powers is still not clearly delineated. To this effect, *The Wall Street Journal* recently reported:

Over the past decade, the Supreme Court has issued a string of decisions whose effect is to return power to the local communities in which they arise. The best known [case] is Lopez, in which it ruled in 1995 that Congress couldn't ban guns within 1,000 feet of public schools; it had overstepped its authority to regulate interstate commerce. But it has also let states place limits on abortion, ruled that Congress couldn't order sheriffs to do background checks on would-be gun buyers, and said that Congress couldn't pass a law saying states could be sued in federal courts. There is a clear pattern here of restoring authority to the community.

The fragility of federalism has been recently manifested in the dismemberment of the former Yugoslavia and the Soviet Union. In Brazil the conflict over distribution of tax revenues and payment of state debts jeopardizes economic stability. In Germany the wealthiest states are increasingly less willing to subsidize the poorer states; instead of transferring revenues to residents of other states, the tendency is to lower taxes and raise available income to their citizens. In both Russia and China states are supposed to collect taxes to be passed on to the central government, an issue of bitter contention in both countries.

The dynamic character of federalism can be seen in the reunification of Germany after 1989 and in the recent decentralization of political power in such different nations as the United States, France, Britain, Italy, Spain, India, Brazil, South Africa, China, Chile, Peru and Venezuela, as well as in debates over federalism in the development of the European Union. The World Bank's *World Development Report 1999/2000* observes: "countries everywhere are decentralizing political, fiscal and administrative powers to lower levels of government – countries large and small, rich and poor, largely driven by demands for greater local autonomy."

The constitutional distribution of power in a federation can strengthen the central government by making the states financially dependent on the union, with little political autonomy and without their own judicial systems. At worst, the states stop being autonomous, becoming mere administrative departments of the central government. This is no longer a federal system but a unitary government, since dual sovereignty was suppressed in favor of sovereignty of solely the central government.

If power is concentrated in the states, the federal government will have little influence in local affairs. A federal system thus becomes a confederation. There are many historical examples of autonomous entities (countries, states or, historically, city-states or kingdoms) uniting to create a confederation to which they delegate tasks of common interest such as defense, trade regulation between members, emission of a single currency and resolving conflicts between members. Each member of the confederation keeps its independent character and sovereignty. The central government is an agency looking after the common interests of the participants, without autonomy to act directly in the interests of state citizens. States in the confederation exercise power through representative delegates. Classic

examples of confederations are the ancient Greek city-states, Italian Renaissance cities, the 17th Century Dutch Republic and the Articles of Confederation (1781-88), under which the United States was ruled briefly after the American Revolution. All these confederations were unstable and short-lived.

Federations in which the constitution unsettles the balance of power in favor of the federal sphere tend to create great federal bureaucracies with little vision or capacity for dealing with everyday, local-level problems. A typical example of this situation in Brazil was Getúlio Vargas' *Estado Novo*, which ceremoniously burned state flags and appointed all state governors. The fall of Vargas and restoration of democracy produced a wave of decentralization, with a new constitution returning power to state governments.

When a federation is too decentralized, acquiring traits of a confederation, it breeds other risks. Disunity, predatory disputes and secession are bred by economic rivalry between states, attempts by some members to dominate the confederation, disobedience of those dissatisfied with majority decisions of the confederate states or by the fragile federal government.

In the celebrated *Federalist Papers*, essays written in favor of ratification by the confederate states of the United States Constitution in 1787, Alexander Hamilton, James Madison and John Jay analyzed the ancient Greek confederations (446-146 BC), which were too decentralized to operate successfully:

Among the confederacies of antiquity the most considerable was that of the Grecian republics.... The members retained the character of independent and sovereign states and had equal votes in the federal council.... This council had a general authority to propose and resolve whatever it judged necessary for the welfare of Greece; to declare and carry on war; to decide in the last resort all controversies between the members; to fine the aggressing party; to employ the whole force of the Confederacy against the disobedient; to admit new members.... They had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions.... Very different, nevertheless, was the experiment from the theory.... The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest.... The deputies of the strongest cities awed and corrupted those of the weaker; and the judgment went in favor of the most powerful party. Even in the midst of defensive and dangerous wars with Persia and Macedon, the members never acted in concert, and were, more or fewer of them, eternally the dupes or the hirelings of the common enemy.

The reflections in *The Federalist Papers* on separatism in excessively decentralized federations seem a foreboding of the U.S. Civil War (1861-65). The southern states, opposing federal policies of industrial protectionism benefiting the North and limiting market access for southern agricultural exports, seceded from the Union to form a new confederation. Secession was brewing since the early decades of the 19th Century, based on the doctrine of nullification. States opposing federal policies argued that since the Union had been created by the states, states should have the power to annul federal laws that violate their interests. In 1832 South Carolina declared federal export tariffs unconstitutional. Federal customs agents were banned from the state. Another kind of nullification was tried recently in Brazil. State treasury secretaries collectively proposed a constitutional amendment giving veto power over federal legislation to a council of state governors.

Federal systems are threatened by two extremes. On one hand, they risk excessive growth of the central government, suffocating local participation in decisions and distancing itself from local interests. At the other extreme, excessive decentralization tends to generate predatory competition between regions while stimulating fiscal laxity and separatist initiatives. Thus a federal pact must provide for a balanced distribution of power as well as an efficient process for dealing with conflicts between different jurisdictions.

The main article of this edition of *Braudel Papers* analyzes the principal traits of Brazilian federalism since the revival of civilian rule in 1985. In Brazil, as in the Holy Roman Empire of medieval Germany, the king is in the hands of his barons. The Brazilian president depends on state governors for passage of critical legislation in Congress, without which the federation would be bankrupt. The Brazilian federation is delicately tied together by an elaborate system of financial transfers from the federal government to local authorities. The 1988 Constitution shaped a fiscal system in which states and municipalities receive large flows of federal funds while remaining free to manage their finances and to contract debts. Local governments have no responsibility for sustaining the financial or political viability of the Union.

We live in an unbalanced federal system where states and municipalities have won, in the 1988 Constitution, powers and prerogatives that allow them to dominate the Union politically and to compete amongst themselves in a disorganized and predatory fashion. Many municipalities live entirely off federal transfers without bothering to tax their own citizens. A slogan of the American Revolution against British colonialism (1775-81) was: "Taxation without representation is tyranny." Brazilian federalism could offer another slogan: "Representation without taxation is a farce." The 1988 Constitution and the organization of political forces since re-democratization together confer a *confederate* character to the Brazilian federation, subjecting it to those centrifugal and separatist forces typically present in confederations.

The Union struggles to resist pressures from the states and municipalities to absorb their debts to save them from bankruptcy. Meanwhile, municipalities and states fight among themselves for growing chunks of federal revenues (participation funds, agreements, amendments to the budget, etc.). There seems to be no sense of restraint and no urgency for fiscal reform to enable Brazil's economy to produce more wealth and social justice.

Instead, Brazil must deal rationally with constitutional rights that cannot be enforced and that weaken its political and economic viability. Some of these prerogatives compose the perverse incentives that undermine social justice and the federal system. Professor J.H. Elliott of Oxford University, a historian of Spain's imperial decline, once observed: "There are few contests of wider import and greater significance than that between the demand for change and the insistence on the sanctity of tradition." This contest is being fought out in Brazil today. Its federal system faces a challenge of adaptation that will shape its viability for many years to come.

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