Federations
What's new in federalism worldwide
Vol. 4, No. 4 / June 2005

Can the Basque region declare "free association" with Spain?

Spanish PM Zapatero, Basque Premier Ibarretxe: a handshake does not mean a "Yes"

Plus:

- Sri Lanka: parties remain divided
- New US law limits class action lawsuits
- India: Who can aid local governments?

Canada . . . . C$5.00
Switzerland CHF5,00
UK £4.00
India Rs76.50
Mexico . . . . Mex$20.00
Euro area. €5.00
USA and elsewhere . . . . US$4.50

A publication of the Forum of Federations
www.forumfed.org

The Forum of Federations is an independent organization that was initiated in Canada and is supported by many countries and governments.

The Forum is concerned with the contribution federalism makes and can make to the maintenance and construction of democratic societies and governments. It pursues this goal by:

- **building international networks fostering the exchange of experience on federal governance,**
- **enhancing mutual learning and understanding among practitioners of federalism, and**
- **disseminating knowledge and technical advice of interest to existing federations and of benefit to countries seeking to introduce federal elements into their governance structures and constitutions.**

The Forum of Federations

The name implies a meeting place for federal countries, where they can share and exchange ideas on matters of common interest. And the Forum does play that role. But it plays that role as an international, non-governmental organization, which gives it the flexibility to work all over the world in a great variety of ways.

The Forum works with partners on the worldwide Global Dialogue project, a multi-year enterprise that is producing a series of unparalleled resources on comparative federalism. The Global Dialogue brings together scholars, researchers and seasoned practitioners. It has a worldwide range of activities, building from country workshops to global conferences.

The Forum also works intensively in a select group of countries, in collaboration with local partner organizations. These countries are India, Nigeria, Mexico and Brazil. The Forum has a vast international network of experts and practitioners. In these country programs and others, the Forum brings this international expertise to bear on the challenges each country confronts.

In areas of the world where federalism could be part of a solution to conflicts between ethnic, religious and tribal groups, the Forum also offers its expertise and services. These areas include Sri Lanka, the Philippines and Sudan.

The Forum works with youth – young practitioners and academics in federal countries and elsewhere – to help them create a worldwide network to exchange information and ideas on federal systems, and, in co-operation with other agencies and governments, to offer to youth opportunities for advancement in learning about federal practices and federal countries.

And the Forum produces a great volume of high quality publications and multimedia products, all directed at busy practitioners and citizens in general. The Forum does not duplicate scholarly and academic work. Its goal is to make expertise and knowledge accessible and useful to a broad public internationally.

It is not surprising that Canada provided the impetus to get an organization such as the Forum off the ground. Federalism has long been a central preoccupation of Canadian society. Part of the reason for creating the Forum was to open the windows to the Canadian federal debate and let in air and ideas from around the world.

The Forum's inaugural world conference at Mont Tremblant, Quebec, in 1999, achieved that purpose. Hundreds of experts and practitioners from every part of the world gathered in Canada, bringing with them a wide range of perspectives on federalism. There were Russians, Nigerians, Americans, Mexicans, Argentineans, Swiss, Belgians, Indians, South Africans and many, many more. Few had ever participated in such a broad based dialogue on federal governance.

The Mont Tremblant Conference led to the founding of the Forum as an ongoing, active institution, based in Ottawa. It also led to the International Conference of 2002, held in St. Gallen, Switzerland with participants from even more countries.

One of the great accomplishments of the St. Gallen Conference was to advance the process of engagement and dialogue begun at Mont Tremblant. The Conference's motto was "Learning from each other" and that spirit has continued to guide the Forum's work.

After the 2002 Conference, Swiss authorities committed to work more closely with the Forum in a continuing way. One important symbol of that commitment was the appointment in 2003 of a Swiss national, supported by the Swiss government, as the Forum's Vice President of Global Programs. Now the Forum is engaged in a further process of internationalization, all the while maintaining the goal of working as a flexible, action-oriented NGO. Five federal countries so far have signed agreements to support the Forum: Austria, Australia, Canada, Nigeria and Switzerland.

Forum of Federations
700-325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada
Tel.: (613) 244-3360 Fax: (613) 244-3372
Email: forum@forumfed.org

www.forumfed.org

Forum of Federations' Board of Directors: Arnold Koller, Chair (Switzerland); Bob Rae (Canada); Rui de Britto Álvares Affonso (Brazil); David Cameron (Canada); Alex Ekwueme (Nigeria); Nicholas Haysom (South Africa); Clarence Thomas (Manny) Jules (Canada); Teresa de Madero (Mexico); Narasimhan Ram (India); Gil Rémillard (Canada); Henning Voscherau (Germany); Ronald Watts (Canada); Michael Zorbas, Youth Representative (Australia)

Federations

What's new in federalism worldwide

Vol. 4, No. 4 / June 2005

In this issue

Tsunami fails to end Sri Lankan bickering and distrust 3
by Rohan Edrisinha
While political elites squabble, the most vulnerable suffer

India: Delhi, the states and local councils compete for power 5
by Ash Narain Roy
Should Delhi give direct aid to municipalities?

***Cover story:* Basque proposal of "free association" challenges Spanish federalism** 7
by Violeta Ruiz Almendral
Basque leader's Plan not accepted by Madrid

US law restricts citizens' chances to go after big corporations in court 11
by Richard A. Brisbin, Jr.
Republicans show "flexibility" on states rights

Nigeria: Can a handpicked elite group reform the federal system? ... 13
by Kingsley Kubeyinje
Will President Obasanjo's Reform Conference make a real difference?

A new constitution for Europe – getting closer to federalism? 15
by Uwe Leonardy
How close is the European Union to becoming a federal state?

***Practitioner's Page:* A Bosnian diplomat reflects on a federation on the fault lines of three civilizations** 17
by Vjekoslav Domljan
When ethnicity defines religion and language, creating a federal citizenship is difficult

Argentina: From "funny money" to fiscal responsibility 19
by Alejandro Arlia
New pact aims to eliminate money printed by provinces

Briefs & Updates 21

From the Editor

Five countries plus one commit to framework agreement with Forum

As this last issue of *Federations* Volume Four goes to bed, the Forum of Federations is experiencing big changes.

When this organization got its start in the late 1990s, it was a Canadian initiative seeking international interest. That interest started to show itself in 1999 at the first International Conference on Federalism in Mont Tremblant, Quebec.

Following that event, Forum established itself as a Canadian based organization with an international focus for its activities and an equally international board of directors.

Almost three years later, following the second international conference in Switzerland, Forum and the Canadian and Swiss governments initiated a more intense process of internationalization. That exercise came to fruition over the past year with five countries signing framework agreements with the Forum. The signatory countries - Australia, Austria, Canada, Nigeria and Switzerland - have agreed to provide ongoing support to Forum, to play a role in its governance and take part in its activities. A sixth country, India, will sign the agreement in June. India will also host the next international conference in 2007 or 2008.

Forum and its partner countries will continue to work hard to engage other countries on a formal basis.

As it stands, a great many countries collaborate actively with Forum on a project and program basis. This is reflected in the worldwide scope of the Forum's work. That scope is a sign of the great appetite around the world to learn more about what many call the "federal idea".

It is important to emphasize that it is an *idea* - not a dogma! People sometimes say of Forum that it "promotes federalism". It may seem to be a subtle nuance, but Forum does not do that.

When Forum engages in governance assistance, dialogue and networking activities it aims to make knowledge and expertise available and to encourage an open-ended exchange of ideas and best practices. If studying and examining federalism as it is actually practiced convinces some that it is not appropriate to their situation, so be it. Forum will not take that to be an indication of failure. It is not Forum's job to gain converts to federalism, only to assist peoples to make their own choices.

This magazine was created to fulfill part of Forum's mandate. Our goal is not to see federalism through rose coloured glasses but to describe how it works in the real world.

Our cover story this issue deals with the continuing challenge that the Basque Country poses to the Spanish national government. When former Prime Minister Aznar blamed the Madrid train bombing on Basque terrorists he was widely excoriated. It was one factor in the surprise election victory of Socialist leader Zapatero. Now Basque restiveness is becoming a thorn in the side to the new Prime Minister.

We also have a pair of articles that examine governance issues in post-tsunami India and Sri Lanka. In India, the question of the extent to which the federal government should deal directly with local governments is paramount. The story in Sri Lanka is of the missed opportunity to find some spirit of accommodation in the wake of tragedy.

As the largest federation (and country) in Africa, Nigeria has merited significant attention in these pages. This time the story is about President Obasanjo's Reform Convention. This is an effort at fundamental reform that has managed to attract critics both in the Muslim North and the oil-producing but impoverished Niger Delta. The fissures in Nigerian society are deep. The memories of the attempted secession of the eastern "Biafra" region and subsequent civil war are still strong three decades later. And the whole country smarts from the long succession of military dictatorships. The recently restored democracy survived its first test of a second democratic election last year. A root and branch reform of the federal system, that will address such issues as ownership of natural resources and the fiscal capacity of the states, is still waiting. Obasanjo's newest initiative may only be a step in that direction.

There is much more in this issue, including a story from the USA on changes to the rules governing class action suits that will have the effect of sending more cases to the federal court. This is ironic since the measure was sponsored by the normally pro-states' rights Republicans.

We encourage you to make use of Forum's online library. There are more than 800 useful documents relating to federalism that you can download free of charge. Just go to Forum's web site: **www.forumfed.org** If you have any difficulty using this resource, please let us know by writing: **nerenberg@forumfed.org**

We also welcome your comments or suggestions about anything in these pages, at the email address above or the co-ordinates below.

www.forumfed.org

A publication of the Forum of Federations

700-325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada

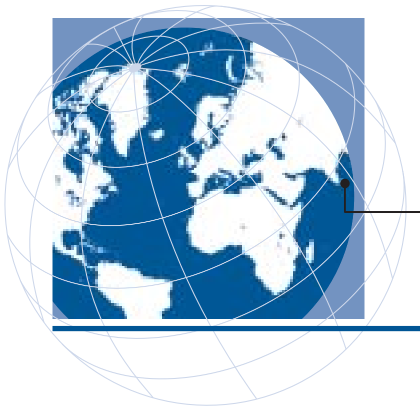
Tel.: (613) 244-3360, Fax: (613) 244-3372 • forum@forumfed.org

Editorial: Editor: Karl Nerenberg; Associate Editors: Carl Stieren, Mahalya Havard; Editorial/Administrative Assistant: Rita Champagne

Photos: Cover: Agencia EFE, Madrid; Page 3: Nonviolent Peaceforce, Sri Lanka; Page 5: The Hunger Project, India; Page 8: Forum of Federations' video "The Challenge of Diversity"; Page 9: Basque village – Professor Sanda Kaufman, Levin College, Cleveland, Ohio, USA; Page 11: Wired New York, www.wirednewyork.com; Page 13: Nigerian President Obasanjo – www.olesegun-obasanjo.com; Page 18: Bridge in Bosnia – Urban Golob, Ljubljana, Slovenia – www.ipak.org; Page 19: *La Razon*, Buenos Aires; Page 21: Citizens' Assembly on Electoral Reform, Victoria, British Columbia, Canada; Page 23: Gobierno del Distrito Federal, Mexico, D.F.

Federations *is published four times per year by the Forum of Federations. Subscription rates are C$20 per year in Canada, US$20 per year anywhere else in the world. Contributions of articles are welcome. Contact the Editors at the above coordinates. The Forum of Federations cannot guarantee the return of unsolicited manuscripts.*

Other editions: French – Fédérations – *Le fédéralisme de par le monde, quoi de neuf.* Russian – *Федерации - Что нового в мире федерализма.* Spanish – *Federaciones: Lo nuevo del federalismo en el mundo*



Tsunami fails to end Sri Lankan bickering and distrust

Sri Lanka's elites revert to squabbling and politics as usual while the most vulnerable suffer.

BY *ROHAN EDRISINHA*

When the tsunami struck Sri Lanka and devastated the lives, homes and properties of thousands of Sri Lankans across racial and religious barriers, many people hoped that something positive would emerge from the tragedy.

People hoped that the Sri Lankan Government and the rebel Liberation Tigers of Tamil Eelam (LTTE) would at least temporarily shed their differences on how to build on the tenuous ceasefire agreement signed in 2002, and co-operate in the task of relief and rehabilitation. And they hoped that a sense of urgency and commitment would trump the struggle for power among the Sinhalese, Tamil and Muslim communities of Sri Lanka as the island grappled with the unprecedented challenges posed by the natural disaster.

Unfortunately, after some brief signs of hope, Sri Lanka's now almost legendary, bitter, petty and personal competitive politics resurfaced, and in the past six months has obstructed an efficient and fair response to the challenges posed by the tsunami.

The tsunami inflicted the most damage in the eastern and southern provinces of Sri Lanka. Fishing communities on the coastline were particularly affected. The east is probably the most multi-ethnic province in the island with all three main communities almost equally represented there. It is also part of the region claimed by the LTTE as the Tamil homeland. The southern province is primarily Sinhalese, but also the political heartland of the two political parties that formed an alliance of convenience to secure a majority at the April 2004 parliamentary elections.

The present Prime Minister – and presidential aspirant in 2006 – has his political base in a district that the junior partner in the ruling coalition, the Sinhalese nationalist People's Liberation Front (JVP) considers its main political base. These demographic and political factors (in the case of the east) and subtle political rivalries (in the case of the south) have contributed to tensions and difficulties that undermined the efficacy of the responses to the challenges of the post-tsunami phase.

Patronage and ideological cleavages

The broader political context also contributed to the rather confused response. Next year, 2006, is a presidential election year in Sri Lanka. The stakes are high given the near authoritarian powers wielded by the holder of the office. Large amounts of aid can be used by the incumbent government to engage in the bane of Sri Lankan politics – patronage. Money, loans, permits and other favours are generously doled out to friends and supporters. The opposition will oppose any projects and program that facilitate this while the incumbent government will inevitably seek to maximize its political influence through the use of patronage.

Tsuanmi relief: does it reach the most needy?

The ideological and political differences within the ruling coalition have surfaced in the aftermath of the tsunami. The major grouping, the People's Alliance, is centrist, willing to work with the private sector and international financial institutions, while its junior partner, the JVP, touts North Korea and Cuba as its economic models, is deeply suspicious of the private sector and has almost a pathological hatred for the World Bank and IMF.

On the ethnic conflict, the People's Alliance is committed to peace negotiations and engaging with the LTTE, while the JVP has been reluctant even to recognize the existence of an ethnic conflict, preferring to label the conflict a problem of terrorism.

These significant differences did not manifest themselves when the two parties opposed the policies of the "liberal" and pro-business United National Party (UNP) that was in power from 2001 to 2004. It was easy to agree on broad criticisms, many of them well founded. The UNP's economic policies marginalized the poor, those in the rural areas, the farmers, while favouring the rich and the corrupt. As well, the UNP's negotiations with the LTTE were excessively pragmatic and weak on principle, commitment to human rights and pluralism.

But when the current coalition found itself in government, economic and political realities demanded positive, more specific alternatives on both major challenges. The divisions between the two parties emerged and President Kumaratunga (of the larger, more moderate party, the People's Alliance) struggled to keep the coalition united and committed to common policies

The tsunami struck on December 26, 2004, in a political context of deep division within the government, division

Rohan Edrisinha *teaches at the Faculty of Law, University of Colombo, Sri Lanka. He is also a founder, Director and Head of the Legal Division, Centre for Policy Alternatives, a Colombo-based independent public policy institute. Mr. Edrisinha contributed the Sri Lankan section of a chapter on "Adopting Federalism" in the Forum's "Handbook of Federal Countries, 2005", published by McGill-Queen's University Press.*

between the ruling coalition and the main democratic opposition group, and division between the Government of Sri Lanka and political parties in the south and the LTTE in the north and east – two areas that they claim as Tamil homeland.

Weak bear the brunt of the devastation

The initial response of the Kumaratunga administration was perfectly consistent with the centralizing political culture of Sri Lanka. The coalition parties which had always opposed the authoritarian presidential system and had pledged to abolish it, had no qualms about strengthening it even further by creating a series of institutions directly under the control of the President with little if any mechanisms for parliamentary oversight, transparency and accountability. Two weeks after the tsunami struck, the government announced the formulation of a Comprehensive Development and Infrastructure Rebuilding Action Plan and the establishment of an institution somewhat pompously titled the Authority for Rebuilding the Nation.

There were also the related concerns that those most affected by the tsunami would not be consulted or participate in the design of programs to deal with their own rehabilitation or be adequately compensated for the burdens they would have to bear with respect to their relocation.

For example, the worst affected group in both the east and south was the fishing community. Rehabilitation plans sought to prohibit fisher folk from returning to the beaches and imposed strict limits on the construction of housing close to the seashore. However, there was to be no similar prohibition on hotels and guesthouses, owned and managed by the politically influential business community in the country. Furthermore, given the fact that fishing communities had, rightly or wrongly, lived for years on the beach fronts, the relocation programs should have included mechanisms to deal with the new challenges posed by storage, transportation, security of boats, equipment and other trappings of fishing life.

The debate over federalism

The establishment of presidential task forces to coordinate the post-tsunami responses and the proposed Authority to Rebuild the Nation were completely at odds with the direction in which the country needed to go if radical constitutional and political reform was to be the basis for a political solution to the island's protracted ethnic conflict.

The parties in the ruling coalition had promised to abolish the unpopular, centralizing executive Presidential system. The President and her party believe that a solution had to be based on federal principles and indeed had facilitated the drafting of new constitutional proposals, which were quasi-federal in character, in 2000.

The opposition party, the UNP, and its leader seem to recognize that any real solution to the ethnic conflict had to provide a viable alternative to LTTE demands for Tamil self-determination. Liberals from the three main communities and civil society groups have campaigned over the past twenty years or so for a solution on federal lines as a way of reconciling the competing interests of the stakeholders to the conflict.

Both the initial response and the proposed institutional response from the government went counter to these initiatives that favoured federalism as means toward conflict resolution.

Fear of LTTE seeking the advantage

Another complicating factor was the fact that the Liberation Tigers of Tamil Eelam had, after the protracted military conflict, wrested control from the Government of Sri Lanka of a significant part of the northern and eastern provinces of the island, and exercised *de facto* control over them. The LTTE had set up its own institutions including a police service, courts and various types of administrative mechanisms in these areas. Though the campaign for a federal type solution to the conflict continued, there were many skeptics who believed that the sole objective of the LTTE, even during the negotiations, was to convert the *de facto* control it exercised over parts of the north and east into *de jure* control over the whole of that region. In other words, their continued aim was to set up an independent nation state in the north and the east of the island.

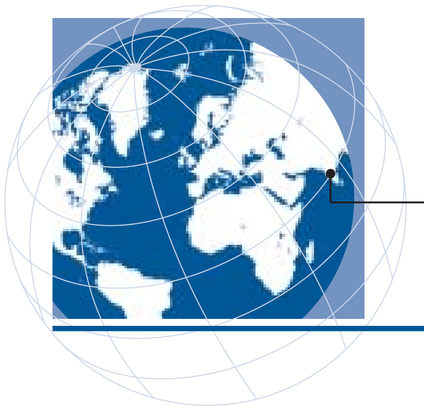
This theory of the skeptics received a boost starting in October 2003 when there were indications that the LTTE was trying to distance itself from an agreement reached in Oslo in December 2002 during the Norwegian-facilitated peace talks. The LTTE, which had until then demanded the so-called four Thimpu Principles – nationhood, a traditional Tamil homeland, the right of the Tamil nation to self determination and complete equality – agreed to clarify some of the ambiguity in the Thimpu principles by agreeing to explore a federal solution based on internal self-determination within a united Sri Lanka.

Many considered this agreement to be a significant breakthrough, but the talks broke down just as a roadmap for implementing this agreement and a human rights accord were to be discussed. Other factors certainly contributed to the breakdown in the negotiations in March 2003. However, the reluctance on the part of the Liberation Tigers of Tamil Eelam to endorse the Oslo formulation and the absence of any reference to it in an October 2003 set of proposals for an interim self-governing authority strengthened the argument of the skeptics who believed that a significant hard-line element of the LTTE remained steadfast in its goal of an independent nation state.

The squabble over the visits and itineraries of foreign dignitaries, where they should visit and whom they should meet, though unfortunate, needs to be understood in the context of the deep suspicion and distrust that exists between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. The Government, distrustful of the LTTE's commitment to a solution within a united country, feared that the LTTE would exploit a visit to a tsunami-affected area under its control for publicity that would fortify its campaign for international recognition and legitimacy. The Liberation Tigers of Tamil Eelam, on the other hand, viewed the Government's attitude as yet another example of its centralized, "majoritarian" mindset.

As things stand now, the post-tsunami challenges have made a complex and difficult situation even worse. Nevertheless, the campaign for a just political solution based on federalism and internal self-determination, democracy, human rights and pluralism needs to continue.

Sri Lanka has no alternative if it wants a just and durable peace.



India: Delhi, the states and local councils compete for power

BY *ASH NARAIN ROY*

Who was more to blame for bypassing federalism during the tsunami crisis in India – the federal government in Delhi or the states? It was hard to tell, because everyone's fingers were pointing to the other person.

Chief Minister Jayalalitha Jayaram of the state of Tamil Nadu accused the federal finance minister of seeking to "totally bypass the states in undertaking rehabilitation works" in the tsunami-affected areas of India. Meanwhile, about 100 presidents of the smallest local governments – *panchayats* – from 23 tsunami-ravaged districts had to plead with state governments for a role and involvement in the rehabilitation measures that were already underway. Their specific concerns were job-retraining programs and small business loans.

The *panchayat* presidents made their demands at a conference organized by Delhi-based Institute of Social Sciences. *Panchayat* presidents from heavily tsunami-ravaged parts of India – Tamil Nadu, Kerala, Andhra Pradesh and the Andaman and Nicobar Islands – all attended the conference in Chennai on January 29.

Opposing Delhi as a career

Some of the leaders of regional parties in India have made career out of their anti-Delhi rhetoric. (Tamil Nadu has a fair share of them). However, when it comes to devolving power further down to *panchayats*, that zeal is missing. The provincial leaders and political formations, who fight for sufficient autonomy for self-expression within the federal system, can easily change tack. Their motto could be: "Do what we say – don't do what we do".

That the tsunami tragedy should sharpen this "on-again, off-again" antagonism between the federal government and the sub-national entities makes the irony even starker.

On January 29, Finance Minister Chidambaram made a statement to the press on the rehabilitation package which the Tamil Nadu Chief Minister (Jayalalitha) had criticized as undermining the authority of the state governments. That same day, *panchayat* presidents were meeting in Chennai and taking the national agencies and state governments to task for keeping the local government representatives on the margins. And that initiative had the blessing of another federal minister, Mani Shankar Aiyar, who was present for the entire meeting.

Tamil Nadu's Jayalalitha was on a firm ground. She wrote to the Prime Minister seeking his immediate intervention to change the norms for implementing the "Rajiv Gandhi Rehabilitation Package for Tsunami-affected Areas". As per the federal finance minister, the job-retraining programs and small business loans part of the rehabilitation measures were to be implemented only by the public sector banks. An outraged Jayalalitha responded: "It was the state governments which undertook the search, rescue, evacuation, cremation/burial of the dead and the organisation of relief camps in the first phase without waiting for any financial assistance from the federal government".

Ash Narain Roy *is on the Faculty of the Institute of Social Sciences, New Delhi.*

Members of a local panchayat in India: should federal government relief go directly to the local level?

The main opposition party to the Congress Party, the Bhartiya Janta Party or BJP, sensed political gains. It also demanded the immediate withdrawal of Rajiv Gandhi's name from the Tsunami relief package. It charged the federal government with working "against the spirit of the constitution and against the spirit of the federal setup". The Tamil Nadu government finally had its way, with the federal finance ministry announcing that financial relief would also be implemented through the state governments concerned.

Federal government on defensive

India has shown the world a promising model in decentralized governance and its experiments in democratic decentralisation have earned it praise globally.

And yet, the irony of electoral politics is that the empowerment of local government institutions itself has begun to generate considerable heat and dust between the federal government and the states. Local rule by the village councils or *panchayats* is a state responsibility and yet it was a federal law in 1992 which made the *panchayats* "institutions of self-government" and the third tier of India's federal government. The federal government has reason to be unhappy about the tardy progress in the field of democratic decentralization in some states and the states

have their own valid reasons to fear transgressions of the federal system.

During the Chief Ministers' conference on rural development through *panchayats* in June 2004, Prime Minister Manmohan Singh came out with a proposal for block funding of districts by the federal government to fight rural poverty. However, several state governments, including Tamil Nadu, Bihar and West Bengal, cried murder. They fiercely opposed the idea of direct funding of *panchayats* by Delhi.

Here again the Tamil Nadu government took the lead and warned the federal government against taking away the constitutional federal powers of the states. While West Bengal found the proposal "unacceptable", Andhra Pradesh sought a "substantial allocation of funds at the discretion of the state government for utilisation depending upon the specific need of an area". The federal government was thus forced to beat a hasty retreat and assured the states that it would not do anything to disturb the existing arrangements.

India is currently going through a phase of what may be characterized as "competitive federalism". With the advent of the Congress-led United Progressive Alliance government, this competitive approach seems to have become a new hobby of legislators and provincial leaders. Suddenly India looks like a land of a "million mutinies".

In July 2004, the assembly of the state of Punjab unanimously tossed aside water-sharing accords with its neighbouring states of Haryana and Rajasthan, and pledged to withhold its water resources for its residents alone. It led to a lot of embarrassment for the Congress Party in Delhi as Punjab's Chief Minister Amarinder Singh defied his own party leaders including Sonia Gandhi and Prime Minister Manmohan Singh and refused to withdraw the controversial resolution. The Punjab Government's controversial decision to annul all inter-state river-sharing agreements posed a threat to the federal nature of India. The Manmohan Singh Government had little option but to pass the ball to the Supreme Court.

As if to take the cue from Punjab, the assembly of the state of Uttar Pradesh passed a resolution seeking re-inclusion in the state of two former districts – Udhan Singh Nagar and Hardwar – currently part of the state of Uttaranchal. Seven years ago, when Uttaranchal was being carved out of Uttar Pradesh, all kinds of arguments based on topography, ethnicity and the region's history were put forth by the Uttar Pradesh government not to allow these regions to go with the new state. By laying claim to these districts again, that state's government has raised an issue with far-reaching consequences.

Delhi no longer fires state governments

At the height of last year's anti-Delhi agitation in Manipur in North-East India, the state government threatened to pass a resolution changing its status as a "disturbed area" which would have the effect of making the Armed Forces (Special Powers) Act inoperative. What the Punjab and Manipur governments did may have appeased local people but their methods have set a questionable precedent. A few years ago, the federal government would have fired the defiant state government; this time around, it cajoled the state government not to precipitate a constitutional crisis. That itself is a big change.

It was the advent to power of the first non-Congress Party government, the BJP-led United Front government in 1996, that marked the beginning of what that coalition's Common Minimum Programme called "an alternative model of governance based on federalism, decentralization, accountability, equality and social justice…" It made the most forthright commitment to strengthen federalism. As it said, "we pledge to represent the will of the Indian people to strengthen the forces of political federalism which, in the Indian context means a strong national government, strong states and viable local bodies".

From 1996 onwards, federalism has asserted itself by the growing strength of the regional and smaller parties and their influence with all successive federal governments.

The Congress party's perception of federalism, the role of the regional parties and coalition has undergone a metamorphosis. Congress once dismissed regional parties as chauvinist and forces of disintegration. The demands for autonomy by the Dravida Munnetra Kazhagam (DMK) party in Tamil Nadu and the Shiromani Akali party in the state of Punjab were forcefully decried by the Congress party as secessionist.

It was Congress that conjured up the bogeyman of strong states causing a weak national government and vice versa. As political scientist Rajini Kothari puts it: "This bogey was based on a theory about the nature of power relations that was not just phoney; it was downright fraudulent. For it refused to face up to the central issue in any democratic setup: distribution of power."

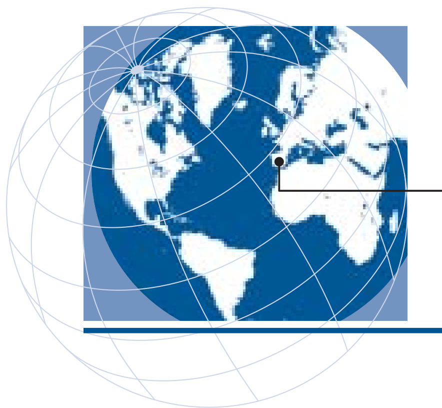
Gains by regional forces

There has been a sea change in the way Congress now looks at coalition and federalism. The regionalist DMK party today is prominently represented in the Manmohan Singh cabinet. The Congress has learned the lesson the hard way. An analysis of the vote share won by various parties during the 2004 general elections in India shows that the regional parties are growing at the expense of the national parties.

The share of votes of both the BJP and the Congress has dropped from 23.7 per cent and 28.3 per cent in the 1999 Lok Sabha to 22.2 per cent and 26.7 per cent in 2004 respectively. The combined vote share of the BJP and the Congress has dropped to less than 49 per cent from 52 per cent in 1999 and 51.4 per cent in 1998. The disadvantaged castes, the intermediary castes, the peasantry…and the regional parties have become the new stakeholders.

To a certain extent India has already reached a stage of multi-layer governance with Delhi, the states and the *panchayats* enjoying autonomy and particular responsibilities. It has dismantled the notion that the strong states would necessarily imply a soft national government. On the contrary, it would help in correcting the regional imbalance and erosion of state powers that has taken place over the years.

Economic liberalisation has been marked by a decline in public investment, the progressive weakening of the Planning Commission and the emergence of the states as critical stakeholders in economic growth. This has transformed the federal system. Delhi is no doubt still powerful but it is seen more as a regulator and not as intervener.



COVER STORY

Basque proposal of "free association" challenges Spanish federalism

It may be scenic and prosperous but the Basque Country is still restive.

BY *VIOLETA RUIZ ALMENDRAL*

Three years after Franco's death, Spain adopted the Constitution of 1978. For the past 26 years, it has been widely supported by Spanish citizens, including the Basques. Now, just when the Spanish model of "asymmetric" federalism was gaining respect worldwide as a successful model, another challenge has emerged. That challenge is the Ibarretxe Plan, a document that throws the future of Spanish federalism into question.

The Plan, named after the Basque Country's Premier or *Lehendakari*, Mr. Juan José Ibarretxe Markuartu, is a proposal by the Basque Country to enlarge its political authority by becoming a "freely associated state" to Spain. Formally, the Plan has been presented as a reform of the Basque Country's "Statute of Autonomy "(*Estatuto de Autonomía*). In practice, its actual implementation would entail a major constitutional reform.

According to the Spanish model of government, every territory has the right to assume a significant range of powers, based on a constitutionally prescribed negotiating process. In this way, the idea of asymmetric federalism is clearly embedded in the Spanish Constitution of 1978.

> **Spain's constitution was approved by 88 per cent of those who voted in a referendum in December 1978.**

Why then, should the Ibarretxe Plan be causing such a great fuss and political turmoil?

Some – mainly conservatives – claim that it will bring about the "destruction of the unity of Spain". But the problem with the Plan does not lie so much in its *content*, but rather in the *context* in which it arises, as well as in the *process* that the Basque Government has been pursuing in order to attain its objectives.

Violeta Ruiz Almendral *is professor of tax and finance law at the University Carlos III de Madrid and the author of several works on Spanish fiscal federalism. For Federations magazine, she wrote "Taxes, transfers and spending in Spain: the regions and the centre seek the right balance" in February 2002; and "More power for Spain's municipalities?" in November 2002.*

The Basque Country is just one of 17 Autonomous Communities that make up Spain.

In memory of Guernica

The claims for greater autonomy by the Basque Country are not new. For more than two centuries, this region has maintained a somewhat tense relationship with the Spanish government.

Like other regions in Spain – Catalonia, Andalusia and Galicia – the Basque Country expected its "situation" to be resolved and autonomy granted under the new democratic regime inaugurated in 1978. The makers of the Constitution met the challenge by providing the legal means for certain regions to obtain ever greater levels of autonomy. For the Basque Country, this meant the approval of its Statute of Autonomy in 1979, commonly known as the *Gernika Statute*, named after the famous Basque town of Guernica, bombed for Franco by the *Luftwaffe* and immortalized in Picasso's famous painting.

Ever since, the Basque Nationalist Party (*Partido Nacionalista Vasco*) has ruled in the region and it has never really ceased to claim a greater level of political authority or the Basque Country, albeit within the context of the original "constitutional consensus".

Only 17 months elapsed from initial constitutional discussions in August 1977 to the Constitution's approval in a referendum by 88 per cent of those who voted in December 1978. Now this consensus is in question – or has been irremediably shattered, as some claim – and the Basque Nationalists and an allied party have decided to go solo in proclaiming greater autonomy. Whether this is the result of the previous eight years of former Spanish Prime Minister José María Aznar's centralizing politics, or rather a way for the Basque Nationalists to capitalize on Basque nationalist support and be kept in the government of the Basque Country, is not certain.

In the Basque Country, the sense of national identity remains strong.

The dark side

What few in Spain want to talk about is that there is another side – a dark side – to the context of the Ibarretxe Plan that has been poisoning the whole process. That side is terrorism. The ETA, a Basque terrorist group created in the sixties to fight Franco's dictatorship, greatly increased its activities precisely when democracy had become a reality. Since then it has killed more than 900 people, injured more than 5,000 and kept many different parts of society under a death threat.

> **The Basque Nationalists claim the Ibarretxe Plan will put an end to terrorism and its consequences.**

At present, every politician in the Basque Country – Basque or Spanish – who is not a nationalist, cannot leave home without a bodyguard. The same is true for many others – Basques and Spanish – who are members of the media, the judiciary, university professors and a long list of Basques that either do not support independence or have different views that do not exactly coincide with the ETA's. Yet the political supporters and voters of the ETA represent only 10 per cent of the Basque electorate.

The threat also affects a number of people, not politically defined, who refuse to pay the so-called "revolutionary tax" levied by the terrorist groups through a very consolidated and efficient network of threatening letters and sharing of information. All official data confirms this situation, as well as the existence of a sort of Basque Diaspora. More than 300,000 Basques have left the country in the last few years, a high figure when we consider the region's current population of just over 2.1 million citizens.

In contrast, the Basque Country is not only a beautiful and otherwise tranquil region, but also one of the richest in Spain, with one of the lowest unemployment rates in the country, about 7 per cent. It has a *per capita* GDP income of 24,934 €, only slightly lower than Madrid's 27,153 €, and higher than both the Spanish average of 20,020 € and the EU's 21,172 €. The region also has an annual growth rate of 2.9 per cent. In other words, it is not the economic situation that is driving Basques apart or forcing them to leave, but a very strong social division.

The Basque Nationalist Party has clearly acknowledged and expressed its concern for this situation. The Basque Nationalists claim the Ibarretxe Plan will put an end to terrorism and its consequences.

But, and as good as the intentions of the Basque Nationalists may be, all evidence points to the opposite.

The ETA is still alive and kicking. On February 9, a bomb blast in Madrid's main convention centre injured 40 people. Its apparent inaction in the last few months may have a lot more to do with a desire not to provoke the anger of Spaniards who were outraged by last year's major terrorist attacks in Madrid than with an actual change in ETA tactics. Such was the view held by most experts at the recent *Club de Madrid* summit on terrorism, held one year after the massacre.

The content of the Plan

The Ibarretxe Plan intends to enhance the political authority of the region almost to the point of granting it the status of a country within a country.

The text of the Plan calls for the recognition of the Basque nationality, with a special stress on boosting the use of the Basque language, currently known and spoken by less than 20 per cent of Basque citizens. Along the same line, the proposal opens the possibility of secession, by means of a referendum. As well, it would create a Basque Country Supreme Court and give the Basque government exclusive authority on a number of matters that it currently shares with the Spanish government. These include education, immigration and the general electoral system. The Plan also calls for the right to have direct diplomatic relations with and representation at the European Union, a claim that would probably require amending the European Constitution.

The controversy over these reforms and one of the reasons why they have been rejected in the Spanish Parliament is that they require a deep constitutional reform, which would entail a referendum in the whole country, not just the Basque region.

But the Plan is also being criticized for what it does *not* intend to reform; namely, the Basque Country's taxation system which has not been practically modified since its

Political roots stretch back across centuries: the Basque village of Getaria on the Atlantic coast.

enactment in 1981. Many experts claim that the system leads to an over-financing of the region.

Rejection then Basque election

The Plan was approved in the Basque Parliament by an absolute majority on December 30, 2004. The "small print" of that majority, though, is that the Basque Nationalist Party was able to pass the Plan only with the votes of *Herri Batasuna*, a political party that had been declared illegal on the grounds that it was the political wing of terrorism. *Herri Batasuna* members voted on the Plan because the Basque Parliament had refused to expel them after the ban.

> **The Ibarretxe Plan intends to enhance the political authority of the region almost to the point of granting it the status of a country within a country.**

After that, the Plan was thoroughly discussed in the Spanish Parliament and overwhelmingly rejected by a vote of 313 to 29 on February 1 on the grounds that it was clearly a constitutional reform.

Following that rejection there was a heated and ugly campaign leading up to Basque Country elections on April 17, 2005. Because the *Herri Batasuna* could not participate in the elections, another political group, *Aukera Guztiak* (whose name means "all the options") was created with virtually the same actors. This group was, in turn, banned by the Constitutional Court, which offered to lift the ban only if the party rejected terrorism. The group refused to do that. The Basque Nationalists won the elections nonetheless, but the party failed to win an absolute a majority. It forged a working majority, however, with the support of the nationalist *Partido Comunista de las Tierras Vascas (*Basque Country Communist Party). The result is that the Ibarretxe Plan is still on.

The escalation in rhetoric has been growing constantly, with Mr. Ibarretxe accusing Spanish Prime Minister Zapatero of being "just as" authoritarian as former Prime Minister Aznar, who had been in office from 1996 to 2004.

Meanwhile, the conservatives claim that a too young and tender Zapatero does not have what it takes to conduct the debate and put an end to the Plan. The fact is that in clear contrast with the highly centralized and not exactly "dialogue-friendly" position of the previous government, the Socialists have shown a different predisposition. They have allowed the discussion of the Ibarretxe Plan in the Spanish Parliament, where the Basque *Lehendakari* was given the opportunity to fully explain and discuss the Plan.

What now?

With a Basque Nationalists coalition ruling the Basque parliament, Spain's young democracy is faced with what probably constitutes its biggest challenge since it began in 1978: how to resolve the regional question. Mr. Ibarretxe has already announced his Government's intention to go on with the Plan because he says only the Basques should have the right to decide their future. The Basque Nationalists categorically reject the idea of a referendum by the rest of the country.

Spanish newspapers are full of opinion columns these days. The fact is, however, that nobody really seems to have a clue what would happen if the Basque Nationalists proceed with the Plan. The Spanish Constitution has a provision empowering the Spanish government to "suspend" the political autonomy of a Community when it challenges the "general interests." Legally, it has that option. Politically, it would toll the death knell for the consensus on Spanish decentralization.

A possible solution could be a sort of "return challenge" from the Spanish government. Instead of ruling out the approval of the Plan on the grounds that it is unconstitutional, the Spanish government could pass special legislation to establish its own terms. That would be something similar to the Canadian Clarity Act of 2000, which sought to establish the basis upon which the Canadian government would negotiate with a province following a secession referendum. The Canadian Act requires a "clear question" and a "clear majority" without otherwise defining those. It leaves that up to the federal Parliament should the situation arise.

That approach might not be appropriate to the "Basque question" which has political roots that stretch back across the centuries and is nourished by long memories of repression. A political solution of some sort seems the best option. Sadly, the present context, with terrorism looming large, may not offer the tranquility needed to undertake a major constitutional reform.

Forum of Federations Videos & DVDs available from... magiclantern

Order these titles online at:
www.magiclantern.ca

The Challenge of Diversity: The Federal Experience

DVDs Include English & French Language Tracks

THE CHALLENGE OF DIVERSITY describes how five countries deal with their diverse ethnic and linguistic characteristics through their federal systems: • India • Switzerland • Belgium • Spain • Canada.
There are important differences among these countries, and this program describes a variety of very different federal, or quasi-federal, responses to the need to accommodate two or more language/ethnic/ religious/ cultural groups within one country.

2004 40 min. Grade: 10 - Adult
VHS & DVD Price:
Public Performance Rights-$79 Home-Use -$29.99

Speaking of Federalism

SPEAKING OF FEDERALISM is an exploration of ideas from the 2002 International Conference on Federalism in the words of the participants who came to St. Gallen, Switzerland, for the event. It is a compilation of ideas on what federalism means, in the words of those who practice it in more than a dozen countries.

2004 21 min. Grade: 11 - Adult
VHS & DVD Price:
Public Performance Rights-$79 Home-Use -$24.99

Rights Definitions

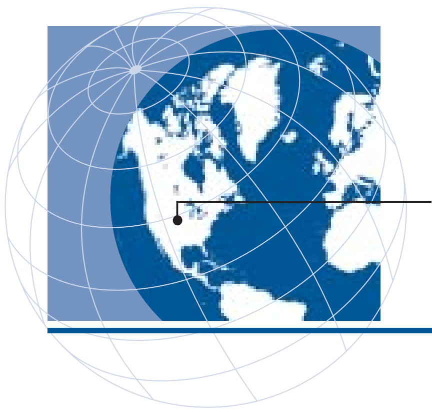
Home-Use
Programs purchased with a Home-Use licence (HV) are to be used only for private home viewing.

Public Performance Rights
Public Performance Rights (PPR) allow the purchaser to show the program to groups of viewers, provided that no fee is charged and the program is not broadcast or streamed.

To Order
Online: www.magiclantern.ca
Email: orders@magiclantern.ca
Toll-Free Fax: 1-866-852-2755

Magic Lantern Group
1075 North Service Rd. W, Suite 27
Oakville , Ontario, L6M 2G2
1-800-263-1717

Prices are in Canadian dollars and do not include shipping costs.



US law restricts citizens' chances to go after big corporations in court

… and the Republicans show flexibility in their dedication to states' rights.

BY *RICHARD A. BRISBIN, JR.*

Will Washington's new legislation governing class action lawsuits mean the end to huge settlements by big tobacco and major polluters?

That's the charge made by the critics of the *Class Action Fairness Act* of 2005, passed in February by the United States Congress at the urging of President George W. Bush. Supporters of the Act say it will only spell the end to frivolous lawsuits by lawyers who take a percentage cut of every award to their clients. Opponents say it will severely restrict action against industries that pollute and sell products that cause injury and death to consumers.

New courthouses aside, will the Federal Court have room to take on class action suits?

The Act limits the power of the states' judiciaries in class action lawsuits. These are suits about a common injury brought on behalf of large numbers of unrelated plaintiffs. The plaintiffs in such lawsuits often claim that a commercial product or financial service has caused injury to consumers.

The most important thing about a class action suit is that every person who has suffered from a product or service in the manner defined in the lawsuit identified in the lawsuit – not just those who file the lawsuit – is entitled to a share in the compensation. In some cases that affected a large part of the population, industry was forced to pay huge settlements.

The new "fairness" Act was strongly endorsed by business associations and corporations and its passage illustrates how the Bush administration is redesigning the American system of judicial federalism. There has been a shift in the boundaries provided for in the constitution between the separate federal and state judicial systems and this shift benefits private sector interests.

Richard A. Brisbin, Jr. *is Associate Professor of Political Science and a Benedum Distinguished Scholar at West Virginia University. He is the author of "A Strike Like No Other Strike: Law and Resistance During the Pittston Coal Strike of 1989-1990" (2002), and "Justice Antonin Scalia and the Conservative Revival" (1997), among other books.*

Class action lawsuits as social policy

In 1938 the United States Supreme Court first adopted Federal Rules of Civil Procedure that permitted plaintiffs injured by the same event to join together as classes in suits.

In civil rights suits during the 1950s and 1960s, African Americans successfully used these class action provisions to challenge racially discriminatory governmental policies.

In 1966 the Supreme Court revised the Rules. The revision permitted federal lawsuits to secure government recognition of constitutional rights for racial and religious minorities, the mentally ill, and recipients of governmental services.

Soon lawyers filed state class actions alleging a wide range of common injuries from business financial practices, manufactured products such as asbestos, tobacco, firearms, pharmaceuticals, and autos, and the environmental degradation caused by corporate dumping of pollutants in streams and on land. Class action suits became an institution in America, an institution that was regulating industry and causing the creation of social policy.

Pushing cases to the federal court

The *Class Action Fairness Act* is a "sea change" in US law. It reshapes American judicial federalism, private class actions, and corporate power.

The act changes the right of plaintiffs in class action suits to choose where their case will be heard. This is called "diversity jurisdiction" in the legal system. When drafting the United States Constitution of 1787, the Framers avoided political controversy by establishing a dual court system. The existing systems of state courts received jurisdiction over crimes within their borders and most civil disputes. The federal courts acquired jurisdiction over crimes and civil conflicts to which the federal government was a party or that arose on federal lands or occurred across state or international boundaries.

Two centuries ago, Congress permitted the federal courts – as well as state courts – to hear "controversies between citizens of different states" or what has become known as diversity of citizenship cases by passing the *Federal Judiciary Act* of 1789. The aim was to prevent "home cooking" or the prejudice of state courts against out-of-state parties.

Moreover, the Supreme Court determined that the defendants in diversity cases could "remove" their cases from state to federal court only by showing the dispute arose under federal constitutional or statutory law or there was "bad faith" or discrimination against them by a state court.

The *Class Action Fairness Act* significantly enhances the role of the federal courts to decide cases involving citizens of different states. With a few exceptions, it requires federal courts to consider any class action if more than one-third of the class members are from more than one state. This situation is likely with most cases concerning injuries caused by manufactured products.

Also, the Act makes it much easier for the corporate defendants in class actions to petition to remove their cases to federal courts. The defendant need not show judicial bad faith, only minimal diversity of citizenship among members of the class, one hundred members in the class, and an aggregate of $5 million at issue in the suit. This change makes it possible for firms to avoid having their suit considered by state court juries drawn from communities with a large poor, minority, or politically liberal population that might be disinclined to support corporate interests.

These changes increase the authority of federal judges to consider conflicts and set policy when "have-not" injured parties and rights claimants sue state and local governments and corporations.

As if that weren't enough, the Act changes the rules on multiple-party suits. It establishes a new form of "mass action" in American legal practice. For 100 or more plaintiffs who do not qualify as a class for a class action suit, if they are arguing the same issues of law and fact, their lawsuit now counts as a "mass action" case. The Act says that in a mass action case, any individual defendant claiming $75,000 or more has to have his or her case held in federal court, while those claiming under $75,000 would be left to litigate in a state court. Defendants can use this law to "divide and conquer" those suing them in such cases. Cases in which plaintiffs suffer minimal losses, such as small overcharges for a product, will often be too costly to litigate. As well as once again increasing the authority of federal courts, this provision might reduce the legal costs for corporations.

The act also changes how lawyers for the plaintiffs are paid. Attorneys for class plaintiffs are usually paid by "contingency fee". But how this contingency fee is calculated has now been changed by the act. The lawyer is paid a percentage – usually twenty to forty percent – of the monetary award in cases they win. If they lose, they are not paid.

The act also has the potential to change remedies for injuries. Beside compensation for injuries, in American state courts judges or juries can additionally award the plaintiff "punitive damages" as penalty against the defendant that supposedly will teach this defendant and others not to engage in the harmful activity in the future.

Punitive damages, rarely limited by state law, are a discretionary award that can extend into the hundreds of millions of dollars. They provide an economic incentive to file class actions when the compensatory damage would be the relatively small cost of a consumer product such as a contraceptive device or a recording on compact disc. In cases heard by federal courts, however, some laws limit punitive damage awards and the Supreme Court has established guidelines to control such damage awards. Federal jurisdiction of class actions therefore sometimes can permit corporate defendants to avoid large and costly punitive damage awards.

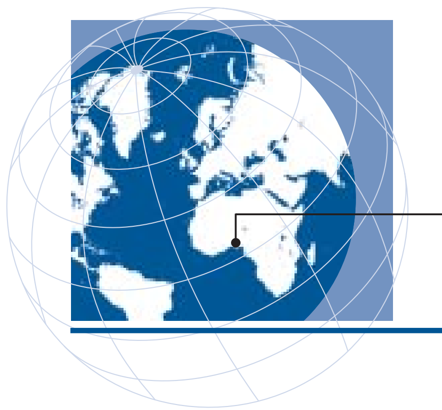
The political divide

Behind the legal changes made by the Act lurks a bitter political division. American business, especially through the interest group the United States Chamber of Commerce, has regarded class action litigation and pro-consumer decisions of judges as against business interests. Business sees in such decisions increasing insurance costs, expenditures on risk management, restrictions on the exploitation of natural resources, and legal fees. It claims these costs diminish the competitiveness of American firms in a global economy and cost American jobs.

Business has sought to advance its interests through its contributions to candidates, largely those of the Republican Party, and lobbying to restrict class actions and revise other legal rules that increase insurance costs. Minorities, consumer, and environmental interests and their attorneys have sought to counter business influence through contributions to and political alliances with federal and state legislators of the Democratic Party. The passage of the *Class Action Fairness Act of 2005* signifies a victory for business interests in this conflict.

Ironically, however, the Act is a Republican-supported shift of duties and power to the federal judiciary. Since the 1930s, the Republican Party has stood as a defender of the states and decentralized government. It has opposed a greater role for the federal government and sought more freedom for American business from federal regulation. Its spokesmen, such as House Majority Leader Tom DeLay, often rail against an "activist" federal judiciary. Nonetheless, the *Class Action Fairness Act* allows business to federalize litigation and create new activities for the federal judiciary, a judiciary that Chief Justice William Rehnquist – a conservative Republican - already considers to be in a "funding crisis."

The lesson of the Act is that federalism is far from being an immutable principle of American constitutional governance. Instead, federalism is often trotted out as a symbol to justify certain partisan political objectives. But threats to federalism and the centralization of power in the federal government, such as those that often concern American business and the Republicans, sometimes just disappear. The time they disappear is usually when they might hamper the ability of business to make money. That has happened with this Act's expansion of federal judicial power and resulting reduction of state judicial responsibilities.



Nigeria: Can a handpicked elite group reform the federal system?

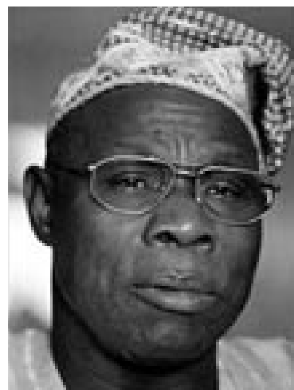
A new "Reform Conference" has its work cut out for it.

BY *KINGSLEY KUBEYINJE*

Almost since the restoration of democracy in Nigeria in 1999, many, especially in the south, have complained that the country isn't "truly" federal. The central government is too strong, they argue, and dominates local and state governments.

President Olusegun Obasanjo has responded to this criticism by convening a "National Political Reform Conference." The President and the 36 state governors handpicked 410 high-profile delegates who will do a root-and-branch examination of Nigeria's political system over a three-month period. At the end of the deliberations, the delegates should come up with recommendations that could fundamentally change the practice of federalism in the country.

The delegates include such eminent figures as Chief Emeka Anyaoku, immediate past Secretary-General of the Commonwealth, retired Gen. Ike Nwachukwu, two-time foreign affairs minister, Prof. Adebayo Adedeji, former Executive Secretary of the UN Economic Commission for Africa and Prof. Jerry Gana, two-time minister and a serving Presidential adviser.



Will Obasanjo's reform conference produce popular results?

This conference is the first exercise of this kind since the country got its independence from Britain in 1960. Southern discontent is one motivating factor. But so is a general discontentment about the operation of a federal system that currently favours a politically and financially strong federal government to the detriment of weak state and local governments.

Critics of the present structure, such as Governor Bola Tinubu of Lagos state in southwest Nigeria, have often argued that while the country professes federalism, in reality it is run like a unitary state, with an overbearing federal government.

Tinubu and a number of other state governors have often challenged the federal government in court, for "overstepping" its constitutional bounds. Tinubu and his like have consistently called for the practice of "true federalism" and the introduction of "fiscal federalism" in the sharing of federally collected revenue. They are not comfortable with the fact that the federal government appropriates for itself more than 48 per cent of revenue, leaving the states and local governments without sufficient funding. Many feel that the federal government should not have more than 30 per cent.

Oil, "indigene-ship" and retooling the presidency

The recently convened conference, headed by retired Supreme Court Justice Niki Tobi, will tackle various contentious and divisive issues, including resource control, an agenda championed by nine southern states from whose region the country derives its oil wealth, which accounts for at least 90 per cent of the country's foreign exchange earnings.

Another contentious issue is the question of "state of origin", under which Nigerians have been classified as "indigenes" and "non-indigenes" and as "settlers" and "non-settlers".

In Nigeria, the fact that one was born in a particular state or has resided therein for a great many years, does not automatically confer the status of, to use the Nigerian term, an "indigene" on the person. A Nigerian not classified as an "indigene"(legally considered indigenous to a region) can be routinely denied certain rights. For instance, a non-"indigene" cannot contest elected office in that person's state of residence but must do so in the state of origin of his or her father.

Delegates will also have to consider what would be the best political structure for the country. While some Nigerians insist that the present federal-state-local government structure should be retained, some others want a return to what they call "regionalism," which was practiced in the early years of independence. Under the discarded regional structure, the then four regional governments were both politically and financially strong. They controlled the resources in their respective areas, earned all the monies and only paid royalties to the federal government.

The conference would also have to decide whether Nigeria should retain the present presidential system, patterned on the US model and generally seen as expensive or whether the country should return to the parliamentary Westminster model. This system was practiced in the country in the early 1960s.

The delegates have constituted themselves into 19 committees and are now meeting behind closed doors. Their reports will be discussed later at plenary sessions where recommendations for reform will be worked out.

Kingsley Kubeyinje *is an editor with the federal government-owned News Agency of Nigeria (NAN), a wire service.*

Some believers; many doubters

While many political actors such as Don Etiebet, leader of the main opposition All Nigeria Peoples Party, believe that at the end of the day, the conference will proffer solutions to most nagging national issues, some are of the view that nothing substantial will come out of the talks, for which the president is committing 932 million naira (US $7 million).

Those who believe that the conference will end up merely as a talk shop point to the "no-go areas" outlined by Obasanjo. For example, delegates are barred from looking into the possibility of any ethnic group or any of the nation's six political zones – south-east, south-west, south-south, north-east, north-central and north-west – pulling out of the federation, either now or in future.

The delegates are also forbidden from discussing religion, in spite of the fact that many blood-letting riots which had occurred in the country were instigated through religious differences. While a good number of Nigerians prefer that the country be considered a secular state, others insist that it be regarded as a "multi-religious" state. Still others believe that it would be best to Islamize the country, a fact reinforced by the fact that some Northern governors have implemented Islamic Sharia law in their states and expect strict compliance from all.

Some of those who believe that nothing useful can be achieved through the government-sponsored conference are planning an alternative event, that they call the "Pro-National Conference" (or "Pronaco"). The brains behind this alternative meeting, which the government is somewhat jittery about, include Nobel Laureate Prof. Wole Soyinka, Chief Anthony Enahoro, who in 1956 moved the motion for Nigeria's independence, fiery Lagos-based lawyer Chief Gani Fawehinmi and a host of other human rights activists. The "Pronaco" conference may take place sometime in June.

Some critics also believe that since the government single-handedly appointed all the delegates, those delegates will do the state's bidding and implement the government's agenda, often citing a well-known Nigerian proverb that "only ingrates bite the fingers that feed them". Much as many delegates have tried to allay that fear, the emergence recently of a draft constitution (associated with pro-government delegates) further aroused the suspicion among many Nigerians that the federal government, for one, has a hidden agenda, one that notable includes the much-rumoured ambition of President Obasanjo to serve a third term. While the present constitution prescribes only two terms of four years each, the draft constitution prescribes a single six-year term. And some delegates, such as Greg Mbadiwe, are already campaigning for the prolongation of Obasanjo's stay in office, when his second term expires in May 2007.

In addition, the National Assembly (the official name for the federal parliament) has tacitly distanced itself from the conference – and by inference its decisions – by refusing to approve the 932 million naira the president sought for hosting the conference. Indeed, 52 members of the Assembly dragged the president to court for organizing the conference, which they say is unconstitutional. Although the group has withdrawn the suit, many believed that the parliamentarians are determined to trash the conference report, whatever it says. In addition, political analysts and observers say the National Assembly has the power to refuse constitutional backing for the decisions taken at the conference.

When the National Assembly gave him a cold shoulder, the president was forced to look elsewhere for the money. Although the government has yet to disclose how the money was raised, it is believed that the president took it out of his hefty security allotment, for which he normally does not have to account.

North and South – can the twain meet?

More significantly, many fear that unless deft political moves are made, the conference recommendations may be rejected outright by a section of the country – the predominantly Muslim northern Nigeria — which was not in support of the idea in the first place.

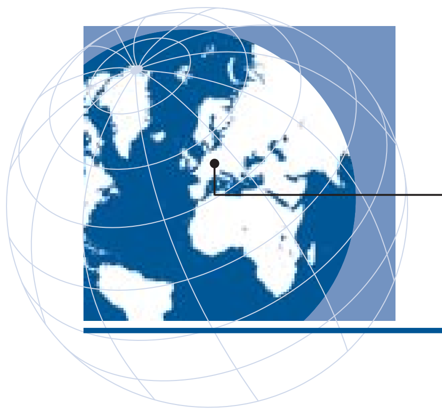
The North is Nigeria's most populous region, dominated by the country's largest ethnic group, the Hausa, and northern elites have been skeptical about the motives for the conference, which they fear is an attempt to diminish their region's political stature and influence.

Indeed, northern leaders have raised a number of objections, which if not properly handled could jeopardize the conference's outcome. For example, a group of prominent northern leaders led by the powerful Sultan of Sokoto, Muhammad Maccido, have consistently denounced the composition of delegates, insisting that it was skewed in favour of Christians, who are predominantly from the south. They have opposed the fact that both the conference chair and the secretary are Christians, even though the secretary is from the north. President Obasanjo has since succumbed to the pressure and appointed a southerner, who is also Muslim, as co-conference secretary.

To drive home their objections, a number of Islamic groups have threatened to wage Jihad against the federal government, if their objections were not quickly and adequately addressed. Some of the groups insist that another Muslim be appointed as co-chairman.

It is a fact that the idea for the convocation of what was then referred to as a "sovereign national conference" originated in the south, particularly in the southwest. Southwestern Nigerians still have bitter memories of the surprise annulment of the June 12, 1993, presidential election which the late Moshood Abiola, a politician from that geo-political zone and a billionaire businessman, was almost certain to win. That annulment by the then military administration of Gen. Ibrahim Babangida, a northerner, was seen as a clear evidence of the north's unwillingness to have citizens of other parts of the country govern Nigeria. Before that election – acclaimed by international observers as the fairest and freest in the nation's history – six northerners had ruled independent Nigeria for a cumulative period of 28 years and 4 months since October 1960, compared to only three years by two southerners.

Now, with a President from the Southwest, and powerful political forces in the North, Nigerians are still grappling with the ethnic and regional tensions that caused a civil war in the 60s and 70s and a number of coups and counter-coups since then.



A new constitution for Europe – getting closer to federalism?

The proposed new constitution has power-sharing provisions that could turn the EU into something more closely resembling a federation.

BY *UWE LEONARDY*

By June 2005, the new European Constitution will have faced the voters in referendums in several EU countries – including France, whose former president, Valéry Giscard d'Estaing, wrote the draft. No one knows whether these referendums will pass or not. Some countries may even want to amend the constitution before it is ratified.

But does the draft constitution give the new Europe a federal structure?

Some critics deny that the constitution has any federal elements at all. But even before the constitution was drafted, the EU had these significant federal characteristics:

- **Direct legislation:** EU laws have always automatically come into force for individuals and corporations (and other "legal persons") without the need for member countries also passing those laws. And the EU's legal rules have since gained supremacy over the relevant provisions of national laws. (This resembles the role of the national or federal government in a federal country.)
- **Division of powers:** The resulting division of legislative powers between two different levels of government – the European Union and the member states (including their regions) – is the clearest federal element of the European structures and the defining feature of a federal system.

> **Is the "flexibility clause" really about flexibility or does it hide some real constitutional dangers?**

While these characteristics were in existence long before the Constitutional Treaty came into life as a draft, that Treaty has continued the EU's evolution in a federal direction still further.

- The name of the Treaty makes a political claim. By its intent to "establish a Constitution for Europe" in law, it shows that the Union already has state-like features in many respects. The further development of these features has been set out as a political program for a federal state, although one of a unique and unconventional type.
- The technical and legal detail of the Constitution marks the most substantial step yet towards a genuinely federal structure for the EU. The introduction of rules for how to divide legislative powers between the Union and its member states is a clear sign of federalism.

Uwe Leonardy *is the former Head of the division dealing with constitutional matters of the Lower Saxony Mission to the German Federal Government and former Senior Fellow, Centre for European Integration Studies University of Bonn. He is the author of "Is Europe heading toward a federal constitution?" in Federations, Vol. 1 No. 5.*

Subsidiarity in the European Union

In line with Article 3b of the European Maastricht Treaty, subsidiarity means that decisions in a multilevel system of governance should be made as close to the people as possible. Subsidiarity, in other words, is a political principle of guidance rather than a legally binding stipulation. This means that its application requires negotiated agreements.

Thomas O. Hueglin, From the International Conference on Federalism 2002, St. Gallen, Switzerland, Report of Work Sessions 6 and 18 on Decentralisation and Good Governance

Exclusive and shared powers

Up to now, there were only a few exclusive powers of the European level in various scattered provisions of the existing Treaties on the Community and the Union. The bulk of the powers the EU exercised in practice were derived directly from the politically defined wide objectives of the Union. This has over the years led to expansion of powers by the EU, which many member states acknowledged in their own constitutions or rules of constitutional interpretation.

The proposed division of powers lists them and defines exclusive and "shared" legislative powers. To the shared powers, the EU has added "areas of supporting, coordinating and complimentary action". The exercise of the "shared" powers - in fact the EU's priorities - is subject to the principle of *subsidiarity* (*see Box 1 and Box 2*). Thus the shared powers are regulated by one of the central features of federal systems.

A new wide-ranging and controversial "flexibility clause" now also legalizes action by the Union if this "should prove necessary, within the framework of the policies defined ... ,

to attain one of the objectives set out in the Constitution, and the Constitution has not provided the necessary powers" (*See Box 2*). Although the "flexibility clause" was based on a (weaker) existing clause, some critics see it as a dangerous instrument.

Two significant issues arise from these new parts of the constitution:

- Is the Constitutional Treaty's division of responsibilities between the Union and its Member States sufficient? And is it efficient?
- Is the "flexibility clause" really about flexibility or does it hide some real constitutional dangers?

Defects in the rules

Whether the shared powers meet European priorities is the most relevant test of the choice of the shared powers in the constitution. However, the choice of shared powers of the EU is not based on such concrete criteria as the maintenance of legal or economic unity as necessitated by the Constitution. Instead, in defining the shared powers, the new Constitution merely subtracts the exclusive powers from the EU's list of powers and adds "supporting, coordinating and complimentary actions".

To limit the EU's right to use of these "shared powers", the Constitution resorts to the principle of subsidiarity without binding that use to any legally defined criteria. This does not adequately answer the demands for a clearer and more efficient division of powers between the Union and its Member States.

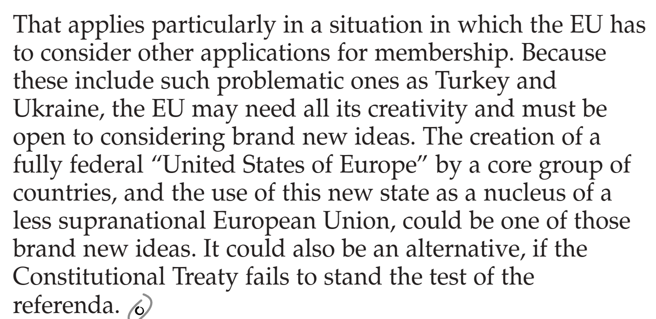
The fact remains that subsidiarity is legally ambiguous and subject to political manipulation. The result is a kind of a circular solution. In the area of shared powers, in which the member states continue to exercise authority where the institutions of the EU do not make use of theirs, the conditions for laying claim to these powers and the requirements for making use of them can only be clearly established by concrete criteria.

But there is another factor in determining rules for the division of powers. The Constitution enumerates no fewer than 202 provisions for binding legal acts of the Union in a wide variety of categories (European laws, framework laws, regulations and decisions). But none of these provisions is linked in any legal way to the Constitution's rules on the division of responsibilities. The Constitution does not indicate which of those legal acts are to be considered as deriving from either the EU's exclusive powers, its shared powers, or its other powers. In that sense, the rules for the division of powers seem to be rhetorical rather than constitutional norms.

The effect of the "flexibility clause" is to give the Council the power to alter the Constitution's divisions of powers without requiring an amendment to the Constitution. That gives the clause significance far beyond mere adaptation in the context of existing constitutional rules. If you consider the enormous efforts necessary for ratification of the Constitution by all member states, then granting power to the EU to modify the power balance in the Constitution seems out of proportion and extremely questionable.

Not cause to reject the constitution

The fact is that there are provisions in the European Constitution that should evoke some concern. But to say that does not imply any plea for the rejection of the Constitution in its national ratification procedures and especially not in the upcoming referenda. No constitution has ever been perfect from its very beginning. A constitution can only be improved once it exists. Still, its faults need to be identified in time.



That applies particularly in a situation in which the EU has to consider other applications for membership. Because these include such problematic ones as Turkey and Ukraine, the EU may need all its creativity and must be open to considering brand new ideas. The creation of a fully federal "United States of Europe" by a core group of countries, and the use of this new state as a nucleus of a less supranational European Union, could be one of those brand new ideas. It could also be an alternative, if the Constitutional Treaty fails to stand the test of the referenda.

The European Constitution on flexibility and subsidiarity

Article I-11 - Basic Principles, Paragraph 3 "Subsidiarity"

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that Protocol.

Article I-18 – the "Flexibility Clause"

Flexibility clause

1. If action by the Union should prove necessary, within the framework of the policies defined in Part III, to attain one of the objectives set out in the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article I-11(3), the European Commission shall draw national Parliaments' attention to proposals based on this Article.
3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

Further reading:

Official website of the European Convention:
http://european-convention.eu.int/
Full text of the constitution:
http://europa.eu.int/constitution/index_en.htm

the **Practitioner's** page

Dr. Vjekoslav Domljan of Bosnia
A Bosnian diplomat reflects on a federation on the fault lines of three civilizations

Dr. Vjekoslav Domljan, *the Ambassador to Canada from Bosnia and Herzegovina, led the team that prepared the first development strategy for the Council of Ministers of Bosnia and Herzegovina, "Entrepreneurial Society", under the auspices of the World Bank. He was the Bosnian representative for financial property succession for post-Communist Yugoslavia.*

"If the state is strong, it will crush us; if it is weak, we will perish."

- Paul Valéry

At different times in history, Bosnia and Herzegovina was part of the Roman, Goth, Slav, Hungarian, Ottoman and Austro-Hungarian empires. When the Austro-Hungarian Empire crumbled at the end of World War I, the country, commonly known as Bosnia, was made part of the Kingdom of Yugoslavia. After World War II, it became part of Communist Yugoslavia under Marshal Tito. Yugoslavia broke apart a decade after Tito's death, first with the almost peaceful secession of Slovenia and then with the war ending in the independence of Croatia, Bosnia's northern neighbour. War tore apart Bosnia from 1992 to 1995, ending with the Dayton Peace Agreement signed by all parties in Paris in December 1995.

Bosnia is a beautiful country, full of rugged mountains and peaceful valleys, medieval ruins and modern hotels, where some tourists are returning again. A page of the official tourism site of Bosnia describing the city of Mostar, heavily damaged in the war, says it all: "Recovering from the devastation is no easy task... the physical aspect of reconstruction is the easier bit, soul healing comes a bit slower."

The hollow tree in Vancouver's Stanley Park is the perfect metaphor for Bosnia. The tree is empty inside, with a huge hole into which tourists often drive their cars to have their pictures taken. By a strange twist of fate, the tree is alive, with a huge treetop full of green leaves. The tree is like Bosnia - an existing but fragile state.

A zero-sum game?

A historical atlas shows Bosnia criss-crossed by fault lines running from the Baltic and Black Seas to the Adriatic. These fault lines separate three civilizations and converge in Bosnia. Along these cultural faults lines many stresses have existed for a long time. Similar to geological faults, the East-West fault line has existed since the ninth century. The European-Islamic fault line has existed since the 14th century. Both have been the scene of frequent eruptions.

Bosnia is located at the intersection of the Western European (Catholic and Protestant), the Eastern European (Orthodox), and the Islamic (Muslim) civilisations. The country has served as a flashpoint many different times. Future eruptions could well recur.

> ***In Bosnia, one's religion is almost always tied to one's ethnicity and language.***

Ivo Andric, a native of Bosnia who was awarded the Nobel Prize for literature in 1961, described the Bosnian drama in his novel *The Bosnian Chronicle*:

How is it possible for this country to become stable and orderly … if its people are divided as nowhere else in Europe?... the centre of the spiritual life of each of these … groups is far away, in a foreign land, in Rome, Moscow, Istanbul, Mecca... and God alone knows where, but at any rate not here where the people are born and die. And each group considers that its well-being is conditioned by the disadvantage of each of the other … faiths, and that they can make progress only at their cost…. And each of them is expecting salvation from somewhere outside, each from the opposite direction.

A Canadian scholar, Vern Neufeld Redekop, described deep-rooted conflict as having the character of a "zero-sum game" with high stakes, in which each side becomes convinced that they can only win at the expense of the other. As in other parts of the world, the deep-rooted rivalry in Bosnia has caused a strong decline in support for compromise and unity.

Strong units, weak centre

In Bosnia, one's religion is almost always tied to one's ethnicity and language. If one has Croat ancestors, he or she is likely to be Catholic and speak Croatian. A person of Serb ancestry is extremely likely to be an Orthodox Christian and speak Serbian. Someone of Bosniak descent is most likely to

be Muslim and speak Bosnian. However, a speaker of one language can easily understand the other two. Reading across the three languages is a bit more difficult, because Bosnian and Croatian only use the Roman alphabet, while Serbian prefers the Cyrillic.

Mostar bridge was rebuilt, but how long will it take Bosnians' lives to mend?

Within Bosnia, there are two distinct constituent units: the Federation of Bosnia and Herzegovina (the Bosniak-Croat Federation), and Republika Srpska (the Serb Republic). The fact that there are two units – rather than a larger number, as in most federal countries - poses a greater challenge for Bosnia. Ronald L. Watts, one of the world-wide leading writers on federalism, has described two-unit federations or unions as ones which sharpen polarization, produce impasses and lead ultimately to instability.

And the ideological pendulum has recently swung in Bosnia from a point dangerously far on the left to one dangerously far on the right. The absolutism of the common has been replaced by the absolutism of particularity, or more precisely Communist internationalism has been replaced with ethno-national balkanization**.**

The present institutional arrangements fail to reflect accurately the two important aspirations of Bosnians: national unity and ethnic identity.

Just as there have been centrifugal forces pulling Bosnia apart, there have also been centripetal forces pulling it together. On the one hand, differences between Bosniaks, Croats and Serbs have become more acute; on the other hand, internal conflicts have been moderated through a combination of rules to deal with inter-regional trade, united action in conducting international trade and central-state level institutions to deal with international institutions.

Political parties mirror the fractured nature of society. The dominant parties are identified according to ethnic differences, making them top issues. There are no parties that emphasize the importance of building up unity and finding solutions to urgent economic, legal and social problems (mass unemployment, gaps in the rule of law, low social capital, etc.) - problems the former Communist party (now the Social Democratic Party) neglected.

Consequently, the central institutions of Bosnia are much weaker than either those of the inter-war Kingdom of Yugoslavia or those of the former Communist Yugoslavia. Both states failed due to unresolved ethno-national problems.

The nationalists within each ethnic group in Bosnia are primarily interested in institutions they may have under their own control, ruling over territories where their own ethnicity is a majority. Consequently, Bosnia, with a population the size of Montreal, still has armies and even secret services organized by each ethnic region, but lacks a single police service fighting local corruption, regional crime and international terrorism.

After the war of 1992-1995, the Office of the UN High Representative in Bosnia was mandated to facilitate the resolution of intractable conflicts in Bosnia. Since friction between ethnic groups has polarized the country, the High Representative has tried to introduce and/or strengthen central political institutions and reinforce the Council of Ministers. However, initiatives to enforce the central level to hold Bosnia together, and resist disintegration of the country are mainly attempts of imposing unity rather than encouraging its growth from within.

The High Representative himself has tried to generate some unity by taking actions such as establishing the Indirect Taxation Office at the central political level, to tax and generate original revenues, with taxation headquarters in Banja Luka. Such actions are, however, second-best solutions, because they were not initiated by the Bosnian government.

Justice and jobs?

After the end of the war, Bosnia did not have the necessary structures and conditions for institutional development and conducting policies. In this vacuum, each High Representative in turn designed and imposed programmes to resolve the country's most important problems. Currently, two of these problems are justice and jobs.

There are structural impediments to the pursuit of justice. Most citizens cannot afford to pay high court costs and legal fees when they are victimized. The new "top-down capitalists", who acquired their wealth by privatizing socially-owned and self-managed companies, can afford it but they are not interested in legal order. They prosper more in disorder.

The absence of rule of law in Bosnia is caused by the complexity of institutional arrangements, the misunderstanding of the situation by foreign advisors, and mainly by the insufficient implementation of justice by local authorities. The High Representative may force the public authorities and regulators to pass a law or a procedure but it cannot force them to enforce it. The nationalists in each ethnic group introduce parallel systems in their constituent units and modify the formal rules in their tug-of-war with the High Representative.

There is still little understanding of which specific institutional design will work best in a specific country: the approaches of the stronger ethnic side or the weaker multi-ethnic side. It takes decades to change social institutions. As the great Russian satirist Vladimir Voinovich warned, "the Russian system ended, but the Russians remained". Not until Bosnians change their social norms – which will only happen slowly–can new legal, economic and political institutions, like those of the EU, be popularly accepted so they could be incorporated into Bosnian society.

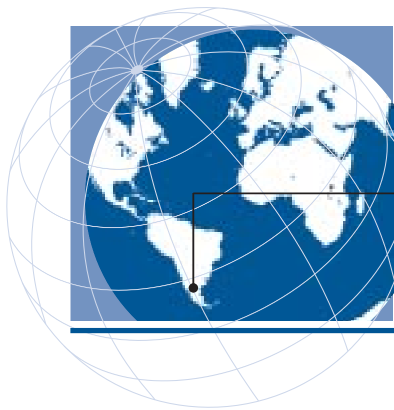
FURTHER READING:

Andric Ivo, *Bosnian Chronicle*, translated by Joseph Hitrec (New York : Knopf, 1963).

Hupchick, P. Dennis and Harold E. Cox, *The Palgrave Concise Historical Atlas of Eastern Europe (*New York: Palgrave, 2001).

Redekop, Vern Neufeld, *From Violence to Blessing: How an Understanding of Deep-rooted Conflict Can Open Paths of Reconciliation* (Ottawa: Novalis, 2002).

Watts, L. Ronald, *Comparing Federal Systems*, 2nd Edition (Montreal: McGill-Queen's University Press, 1999).



Argentina: From "funny money" to fiscal responsibility

BY *ALEJANDRO ARLIA*

The city of Buenos Aires issued its own currency, as did many provinces.

In Argentina, the past decade was marked by recurring deficits and a resulting increase in indebtedness at all levels of government. Progressively the country became submerged in a deep economic recession that lasted almost four years, from 1998 to 2001.

The continued contraction of economic activity meant a huge reduction in the levels of taxes collected. The result was that the national and some provincial governments resorted to alternative tools of financing. A whole series of quasi-currencies were issued. These took the form of credit notes for local circulation, whose redeemable value varied significantly among the different jurisdictions. As a result, 11 quasi-currencies were circulating through the nation's territory, many of which suffered a high rate of depreciation *(see box)*.

This was a drastic strategy. But the governments thought it necessary in order to give a measure of liquidity to a highly depressed economy and to allow them to continue at least a minimum level of public spending.

The worst point came at the end of 2001, triggering the greatest crisis in Argentine history. The massive deterioration of the economic, political and social fabric meant the break-up of the institutional order, and thus the breaching of most social contracts. In this framework, the national government and the provincial governments alike entered into suspension of payments.

Quasi-currencies

(October 2002 - in millions of pesos. The amounts represent the value of each unit of quasi-currency for each Argentine peso, at the October 2002 rate.)

Jurisdiction	Amount Issued	Market Value *
Buenos Aires	2,793	0.95
Cordoba	876	0.84 - 0.88
Corrientes	250	0.40
Catamarca	40	1.00
Chaco	100	0.68 - 0.74
Entre Rios	260	0.70
Formosa	100	0.66 - 0.76
La Rioja	27	1.00
Mendoza	120	0.90
Tucuman	173	0.85 - 0.90
Subtotal	4,739	
National Government	3,300	
Total	8,039	

Orderly financing

The year 2002 became the year to establish order and new starting points. The Argentine public sector began a massive process of reordering its finances, and by means of different programs developed in 2002 and 2003, the country achieved monetary reunification, refinancing of the municipal, provincial and national debt, and convergence towards financial equilibrium.

The 24 subnational jurisdictions began by implementing "orderly financing programs." Through these programs, the national government grants financial assistance to the 23 provinces and the autonomous city of Buenos Aires to address their financial deficits and their repayments of capital. The latter entities commit themselves to a series of fiscal objectives that are designed to lead them to equilibrium.

As for the accounts of the national government, their progress towards equilibrium was not regulated by particular programs or laws. It was not even framed by a new agreement with the International Monetary Fund.

In both cases - the national government and the 24 subnational jurisdictions - the quest for balance was the result of a strong political conviction about the importance of a return to fiscal health and of the national government's re-establishing its role as the single monetary authority and the main body responsible for fiscal policy.

As a result, after more than ten years of deficits, the national government and the 24 jurisdictions achieved financial balance in the 2003 fiscal year, and went on to obtain a surplus in the year 2004. This underscored the need for establishing harmonized criteria and coordinated actions among all levels of government in order to consolidate the fiscal recovery.

Sound management and transparency

The progress of these transformations made possible the Fiscal Responsibility Act of August 2004. This legislation institutionalizes the fiscal rules agreed to in the framework of the "orderly financing programs."

The Act establishes the adoption of harmonized fiscal rules that ensure orderly management in the use of resources, and favour transparency in public administration. This facilitates citizen control over public operations and predictability of fiscal policy performance.

The most relevant provisions of the Act are as follows:

- **Application of uniform budgetary categories.** These permit the consolidation of public accounts and comparisons of fiscal information between the nation and the provinces and among the latter.

Alejandro Arlia *is the President of Centre for Federal Studies (CEFED) in Buenos Aires.*

- **Presentation of the projected fiscal framework annually by the national government for the next fiscal year,** so that the provincial administrations have the necessary information to develop their budgetary projections.
- **Regular and harmonized publication of fiscal information.** The two levels of government must publish their budgets, fiscal operations, information on the public debt and the level of activity of the public sector.
- **Rules for the treatment of public income and expenditures in the stages of formulation and implementation of the budget.** In particular, this limits the expansion of primary spending to the nominal growth of the Gross Domestic Product. It demands a primary surplus from jurisdictions whose debt servicing exceeds 15 per cent of their current revenues (net after transfers to municipalities.)
- **Establishment of anti-cyclical funds.** All levels of government must create these funds so as to guarantee the continuity of their operations in critical moments, without falling into fiscal imbalance.
- **Credit sustainability.** The Act promotes coordination measures to assure that basic services are maintained. It regulates the access by provinces to new credit, and promotes strategies of recovery for those that are highly indebted, setting as a limit the assignment of 15 per cent of current revenues (net after transfers to municipalities) for debt servicing.
- **Creation of the "Federal Council for Fiscal Responsibility."** This operates as the means for applying the provisions of the Fiscal Responsibility Act. It is composed of the ministers of economy and/or finance of the national and provincial governments and of the autonomous city of Buenos Aires.

The national government invited the provinces and the autonomous city of Buenos Aires to voluntarily adhere to the Act. At the same time, the provinces broadened the scope of application of this regulatory framework through the participation - also voluntary - of their respective municipalities.

Currently, 17 provinces out of 24 adhered the Act: Buenos Aires, Catamarca, Corrientes, Chaco, Chubut, Entre Ríos, Formosa, Jujuy, La Rioja, Mendoza, Misiones, Río Negro, San Juan, Santa Cruz, Santa Fe, Santiago del Estero y Tucumán.

Questions remain

While the need to consolidate the recovery of public finances at the different levels of government is indisputable, there are some controversial aspects of the Act.

One of them is the direct correlation between the increase in GDP and the performance of current primary spending. The linking of the potential increase of current primary spending to the growth of the Gross Domestic Product has as its implicit logic the need to avoid diversions of funds that could lead to a new fiscal crisis, in the face of increases in irreducible costs at some unfavourable moment of the economic cycle. However, the priority given to fiscal discipline cannot be divorced from the socioeconomic circumstances of the country nor from the commonly accepted basic rules of economic performance.

When the Act was approved in August 2004, some sectors were worried by the low proportion of GDP represented by public spending during the 2002 and 2003 fiscal years. It was valid to argue that freezing spending at these levels would not allow a response to society's growing demand for public benefits, basically those linked to social services and assistance to the most disadvantaged sectors. But the economic growth of 2004, and therefore the increase in fiscal resources, allowed the public sector to increase its expenditures to reach 38 per cent of GDP. Even if this ratio is low in comparison to international levels (50 per cent), it means a higher starting point than that of previous years.

The question of anti-cyclical funds was also controversial. Even though everyone agreed with the need for these funds, some objected to the omission of uniform criteria in the Act, and to the lack of quantitative objectives for meeting uniform criteria. This "omission" by those who drafted the Act was based on the belief that it would be not possible to oblige any provincial administration to keep a percentage of its resources to address future adverse situations, given the current enormous pressures on their levels of spending.

The crisis of 2001 had a profound effect on the "fiscal culture" of the authorities at the different levels of government. The current reality of fiscal surplus is proof of this culture change. In that light we can be sure that each administration will know how much it will need in its anti-cyclical reserve.

The art of the possible

The results of the arrangements made for the provincial debt were satisfactory. Achieving the 15 per cent relationship between services and current net revenues is not always possible. In the year 2005 at least eight jurisdictions will not be able to meet the objective. In any case, the regulatory framework foresees scenarios in which the national government and the provinces will seek alternative mechanisms in order to reach such an objective.

In this sense, the year 2005 can be seen as a very good opportunity for achieving credit sustainability for some jurisdictions that, due to different circumstances, did not achieve the same financial recovery as the rest of the provinces. That is to say, given favourable economic conditions, and with the resolution of the structural problems of provincial and national indebtedness, fiscal year 2005 offers the opportunity to attend to pressing needs of the people.

With regard to the Federal Council for Fiscal Responsibility, there were very important advances made in the first months of the year. In January 2005, all its members met for the first time, and set up monthly meetings in which they worked on the operational rules of the Council. As a result, in the coming days the National Executive will approve the Council's Regulatory Decree, which will permit its regular functioning beginning in the month of May.

To date it is fair to say that the Fiscal Responsibility Act has served to consolidate a number of fiscal rules (control of public spending, preservation of budgetary balance, limits on indebtedness, monetary unification) and to deal with the financial exposure of different levels of government. Based on the successful experience of fiscal reordering in the three-year period 2002-2004, Argentineans will be able to look back on the past year as one of continued progress toward sound public administration and financial stability.

Briefs & Updates

Referendum results for proportional representation show narrow loss in Canadian province

Voters in British Columbia, on Canada's Pacific coast, came within a whisker of changing their electoral system. The referendum, held May 17, 2005, was to change the existing first-past-the-post electoral system to a type of proportional representation known as the Single Transferable Vote or STV.

The proposal, drafted by a Citizen's Assembly with one member from each of the electoral districts of the province, gained 57.4 per cent of the initial count of votes, just short of the required 60 per cent required for the proposal to become law. Ironically, the initial referendum results show the proposal overwhelmingly passed the other criteria, which was to gain majority support in 48 of the province's 79 electoral districts (the referendum won a simple majority in 77 districts). The results were close enough to trigger a final count, which was to begin on May 30, after *Federations* went to press. For final results, see the British Columbia electoral commission website at www.elections.bc.ca.

B.C. Citizens' Assembly members' names were drawn by random, one from each electoral district.

The "Single Transferable Vote" system allows voters to rank their candidates on the ballot and creates multi-member electoral districts. The voters second choices are also counted in a complex system of redistributing the votes of candidates eliminated in a number of ballot counts. The Citizen's Assembly considered other options, including keeping the present system, or adopting "Mixed Member Proportional Representation", a system used in Germany, New Zealand, Scotland and Wales, in which half of the members are elected in single-member districts by a first-past-the-post system and half are elected from party lists. In that system, each voter gets two votes: one for the local representative, and one for the list of the party of his or her choice. The number apportioned to each party from the list vote is then adjusted to bring the percentage of seats close to the percentage of votes for each party provincewide.

However, the British Columbia Citizen's Assembly rejected the Mixed Member Proportional Representation system in large part because the Assembly members did not want the political parties to have any say in which candidate would sit in the legislature.

In three other Canadian provinces, proposals for some form of proportional representation are being considered. In New Brunswick and Prince Edward Island, there are proposals for a form of Mixed Member Proportional Representation. In Quebec, there is a proposal for multi-member districts.

A commission has been appointed by Prince Edward Island (in Canada's Atlantic region in the east) to educate voters about different electoral systems, draft a referendum question, and set a date for a referendum to choose between the existing first-past-the-post system and Mixed Member Proportional Representation. The commission will hold public meetings in autumn 2005 and then recommend a referendum date, widely expected to be held before the next provincial election in 2008.

In the province of New Brunswick, across the Northumberland Straits from Prince Edward Island, a legislative commission has recommended a Mixed Member Proportional Representation system with 36 directly elected members and 20 members chosen from party lists. The commission recommended a referendum on the proposal in time for a new system, which, if chosen, could be ready for the 2011 provincial election.

In Quebec, a system has been proposed for Mixed Member Proportional Representation that would have 77 members elected in single-member districts and 50 members elected from party lists in multi-member districts. On this part of the proposal there is general agreement among those favouring proportional representation. A split emerges on the way those 50 members from party lists are to be elected. The Quebec Ministry for the Reform of Democratic Institutions recommends that those 50 members be elected in between 24 and 27 districts. Opponents of this system charge that this large number of districts biases the elections toward a two-party system.

Pakistan's provinces demand larger share of revenues

As of May 20, Pakistan's federal and provincial governments were negotiating down to the wire over allocations to the provinces before Pakistan's budget was approved.

On May 19, Pakistan's Prime Minister Shaukat Aziz said he was working to come to a consensus agreement with the provinces before the budget was approved.

At stake was the size of the provincial share of the so-called "NFC award" that the National Finance Commission allocates. The government was proposing that 47 per cent of the NFC resources should go to the provinces, but provincial governments were demanding 50 per cent.

In addition, several particular provinces claimed they had been short-changed in the way the NFC resources were awarded to them. Balochistan claimed that they had not received their fair share of the gas revenues, and the North-West Frontier Province claimed that it had not received its fair share of the hydro-electric power generation profits.

As of 2000, according to the IMF, Pakistan's provinces raised or collected only 21 per cent of their budgets – the remainder came from their share of the NFC resources and other federal grants.

South Africa aims for free compulsory education

The government of South Africa will strive to provide free, compulsory education, Education Minister Naledi Pandor said at an event to commemorate the 50th anniversary of the Freedom Charter on May 6.

The Charter, adopted in 1955, united the opponents of the white minority government of the day. It brought together the African National Congress, the South African Indian Congress, the South African Coloured People's Congress, the South African Congress of Democrats and the South African Congress of Trade Union into a non-racial united front known as the Congress Alliance.

But the charter as a list of demands changed when apartheid was overthrown and a new non-racial constitution written. It has now become a list of promises that South Africans are holding their government to.

"There are many objectives that continue to require rigorous attention. We do not as yet have free compulsory education," Pandor said.

"In this regard we have not managed to live up to the spirit and intention of the Freedom charter, but it is an issue that we are addressing."

However, the minister said that the country had made great strides in transforming education.

"Access statistics at all levels point to widening of education opportunities for all South Africans," she added.

There were 11, 638,356 learners in all primary, secondary, consolidated and middle schools according to a report from Statistics South Africa for the year 2003. And UNESCO reported South Africa as having surpassed a primary school enrolment rate of 90 per cent in 2000.

Germany says yes to EU constitution, French voters say no

Germany's lower house of parliament, the Bundestag, approved the European Union constitution by more than 95 per cent, with 568 in favour only 23 members opposed. Of those 23, there were 20 members of the Christian Democrats.

French emotions ran strong during the referendum on the EU Constitution

The near-consensus in Germany contrasts starkly with the situation in France, where a referendum was defeated on May 29. Many voters on the left opposed the new constitution as too "pro-business" while voters on the far right feared an EU with Turkey as a member. The difference between the two countries was illustrated by the scene of dozens of students from Berlin carrying blue-and-yellow EU flags and lobbying French citizens in Paris to vote yes in the last weeks of the campaign.

Opposition to President wins Comoros elections

National parties from the three autonomous islands in Grand Comoros won 9 of 12 seats in the Comoros legislature, it was announced on April 28. The results were a blow for President Azali Assoumani, who had seized power in a coup in 1999. In 2002, Assoumani won election for President with 75 per cent of the vote.

The parliamentary elections were a result of the South African-guided peace and reconciliation pact reached earlier this year. The agreement was aimed at ending the conflict between President Assoumani and the Presidents of the three autonomous islands, Grande Comore, Anjouan and Moheli.

Bulgaria and Romania set to enter EU

The European Union approved the entry of Bulgiaria and Romania in 2007. The European Parliament also said that both countries will be expected to make reforms before their entry. The EU officials want both countries to take measures to reduce corruption and organized crime.

Both sides claim victory in Ethiopian election

Ethiopia's electoral board has started investigating claims of irregularities in the presidential vote on May 15, with rival parties claiming victory.

"Some political parties have submitted complaints on the election process. The board has commenced its first hearing of the complaints," said the deputy head of the National Electoral Board of Ethiopia, Tesfaye Mengesha.

The ruling Ethiopian People's Revolutionary Democratic Front was claiming it was "on the path to victory", according to Information Minister Berekat Simon But the opposition Coalition for Unity and Democracy was also claiming victory.

Austria ratifies EU constitution

Austria's parliament ratified the European Union's constitution by a vote of 181 to 1 on May 11, 2005. One member of the legislature, Barbara Rosenkranz, an EU opponent from the Freedom Party, voted against ratification. Only one deputy was absent from the vote.

The vote in favour easily surpassed the two-thirds majority required. In the debate before the vote, during which 30 deputies spoke, Chancellor Wolfgang Schuessel said the constitution was a well-balanced solution for an expanded European Union. "It makes for a Europe that is stronger," he said. His colleague Wilhelm Molterer, of the ruling People's Party, told the legislators that the constitution gave Austria "more possibilities to influence" the EU. "There's no difference between big and small in this constitution." On May 25, the Bundesrat, the second house of the Austrian Parliament, was scheduled to ratify the constitution.

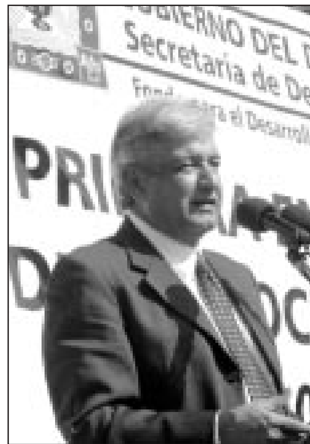
Danger of fighting if Nagaland peace talks fail

After four months of peace talks with Delhi, the leader of an insurgent group in Nagaland in northeast India warned that there could be fresh violence unless the talks succeeded.

The warning came from Thuingaleng Muivah, the leader of the National Socialist Council of Nagaland after Prime Minister Manmohan Singh warned that it would take more time to find a solution to the revolt by Naga people in the northeast.

About 20,000 people have died in the rebellion in Christian-dominated Nagaland since it began more than five decades ago.

Mexico City mayor to run for President



Threat of jail lifted for Mexico City Mayor López Obrador.

Popular Mexico City Mayor Andres Manuel López Obrador will be running for President of Mexico after all. Obrador, who belongs to the left-leaning Partido de la Revolución Democratica (PRD), who was threatened with prison and therefore could not have run for President, won a reprieve in early May. López Obrador was threatened with a prison term because someone in his city government disregarded a court order to stop construction of a short access road leading to a hospital, over land that was acquired by Lopez Obrador's predecessor but whose ownership was still in dispute. But after a meeting with President Fox of the right-leaning Partido Acción Nacional (PAN), the threat of prison was removed from Obrador.

Belgian federal government approves EU constitution

On May 18, the Belgian parliament approved the European Union constitution by a vote of 118 for and 18 against, with one abstention. The Belgian senate had already given its approval. Complete Belgian approval now awaits the votes of the five regional legislatures.

ERRATA

Gay rights in the USA

The author's biography in the *Federations* Vol. 4 No. 3, 'Will gay rights be a state-by-state battle in the USA?' on page 8 was in error. It should have read "*Jeremy D. Mayer is an Assistant Professor at the School of Public Policy of George Mason University, Alexandria, VA, USA.*"

Gays, lesbians and the law in federal countries

In Briefs & Updates, Vol. 4 No. 3, the date in the sidebar saying when "Brazil amended its immigration policy to recognize relationships between binational same-sex couples." should have read "*December 2004*", not December 2005.

Subscribe to *Federations*

Return by fax to the Forum of Federations: (613) 244-3372 or send email to nerenberg@forumfed.org

4 issues: in Canada: CAN $ 20 — in EU countries: € 20 — in the USA and all other countries: US $ 20

Name: ______________________ Title: ______________________

Organization: ______________________

Address: ______________________

City, Province/State: ______________________

Postal Code: ______________________ Country: ______________________

Phone: ______________________ Fax: ______________________

E-mail: ______________________ Internet: ______________________

Suggest people to receive *Federations*

free for a limited time

Name: ______________________

Address: ______________________

City, Province/State: ______________________

Postal Code: ______________________ Country: ______________________

E-mail: ______________________

METHOD OF PAYMENT:

❒ cheque or money order enclosed ❒ please send invoice

❒ charge to my credit card: ❒ Visa OR ❒ Mastercard

Credit card no. ______________________ Expiration: ______________________

Date (mm/yy): ______________________ Signature: ______________________

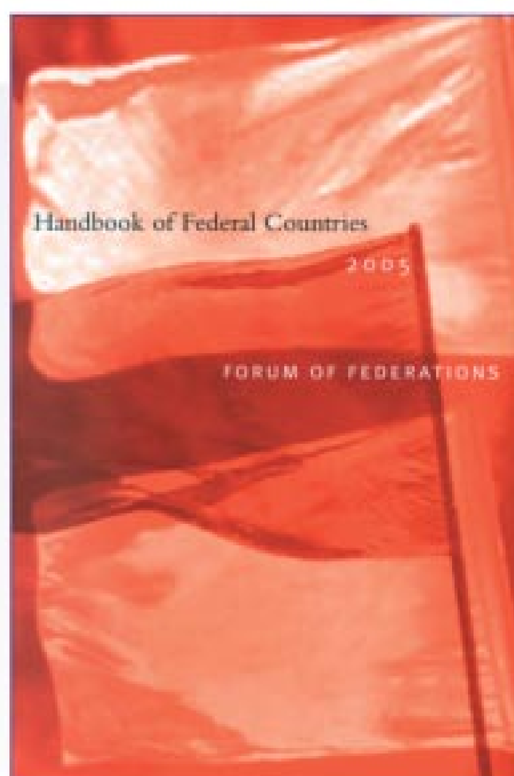
700 - 325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada
Tel.: (613) 244-3360 • Fax: (613) 244-3372
nerenberg@forumfed.org • www.forumfed.org

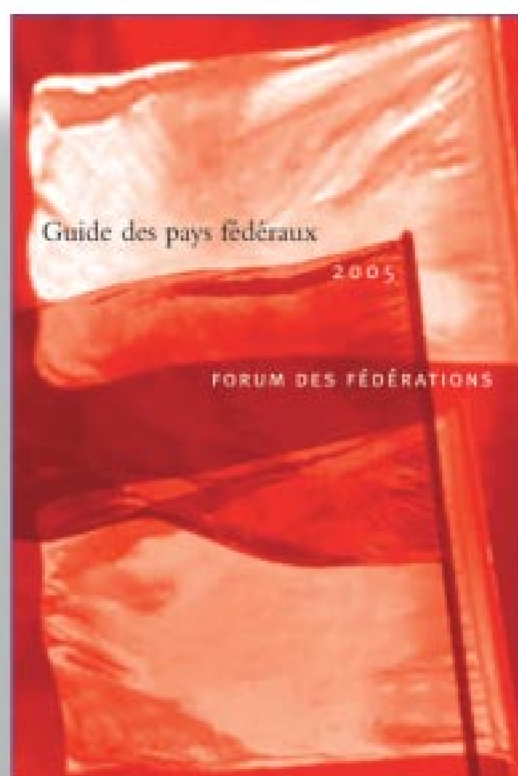
Handbook of Federal Countries, 2005

EDITED BY ANN L. GRIFFITHS,
COORDINATED BY KARL NERENBERG

This is *the* indispensable reference book on the developments, political dynamics, institutions, and constitutions of all the federal countries of the world. This is a newly revised edition, with up-to-date information on 25 countries including Nigeria, India, Belgium, Germany, USA, Canada, Brazil, Mexico, Spain and South Africa. There is also a new foreword by Forum of Federations President Bob Rae.

0-7735-2888-1 $65.00 cloth 6 x 9 488pp
30 Maps
Published for the Forum of Federations





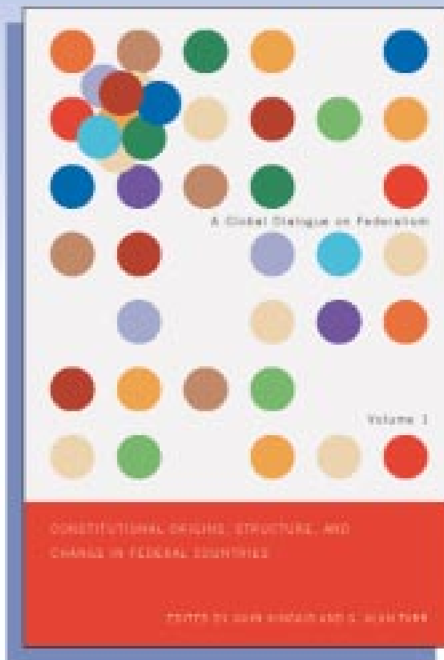
Guide des pays fédéraux, 2005

SOUS LA DIRECTION DE ANN L. GRIFFITHS,
COORDONNÉ PAR KARL NERENBERG

C'est l'ouvrage de référence indispensable sur l'évolution, la dynamique politique, les institutions et les constitutions de tous les pays fédéraux du monde. Il s'agit d'une nouvelle édition, comprenant des données actuelles sur 25 pays dont le Nigeria, l'Inde, la Belgique, l'Allemagne, les États-Unis, le Canada, le Brésil, le Mexique, l'Espagne et l'Afrique du Sud. L'ouvrage s'ouvre sur une préface inédite de Bob Rae, président du Forum des fédérations.

0-7735-2896-2 65,00 $ relié toile 6 x 9
512 pages 30 cartes
Publié pour le Forum des fédérations

McGILL-QUEEN'S UNIVERSITY PRESS
www.mqup.ca



Constitutional Origins, Structure, and Change in Federal Countries

EDITED BY JOHN KINCAID AND G. ALAN TARR

"This illuminating book is the written equivalent of listening to the wisdom of experience of other federal countries." *Dr Arnold Koller, former president of Switzerland*

"This impressive volume will be of value to practitioners as well academics, a difficult balance to strike. I hope my US compatriots will engage in this vital dialogue." *Dan Sprague, Executive Director of The Council of State Governments*

0-7735-2916-0	$29.95	paper
0-7735-2849-0	$85.00	cloth
6 x 9	472pp	13 maps

Available in French in Spring 2006 under the title:
Origines, structures et changements constitutionnels dans les pays fédéraux

Dialogues on Constitutional Origins, Structure, and Change in Federal Countries

Edited by Raoul Blindenbacher and Abigail Ostien

0-7735-2939-X $12.95
paper 6 x 9 68pp

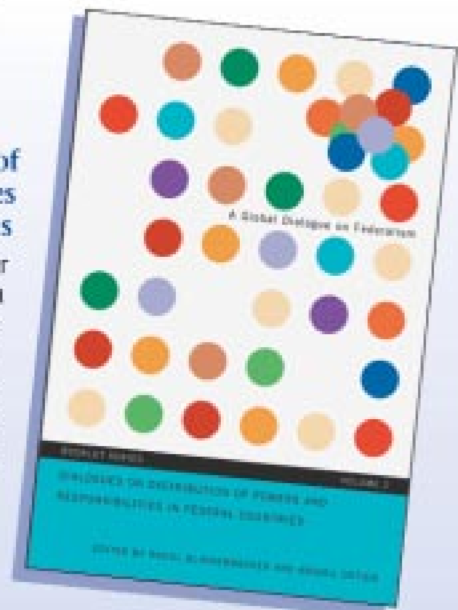
French edition under the title:
Dialogues sur les origines, structures et changements constitutionnels dans les pays fédéraux

Dialogues on Distribution of Powers and Responsibilities in Federal Countries

Edited by Raoul Blindenbacher and Abigail Ostien

0-7735-2940-3 $12.95
paper 6 x 9 68pp

French edition available June 2005 under the title:
Dialogues sur la répartition des compétences et des responsabilités dans les pays fédéraux



iacfs
INTERNATIONAL ASSOCIATION OF CENTERS FOR FEDERAL STUDIES

McGILL-QUEEN'S UNIVERSITY PRESS

www.mqup.ca

Return undeliverable Canadian addresses to
Forum of Federations
325 Dalhousie, Suite 700
Ottawa, Ontario K1N 7G2 Canada

Canada Post Publications Mail Agreement no. 40745010