

DISCUSSION

Paper

15/99

EUROPEAN INTEGRATION IN THE 21ST CENTURY
Federalism and Subsidiarity as the Framework Vs
Regionalism and Decentralisation at the Margins



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European integration is a complex and dynamic process that has led to the formation of a new political and economic order. This process has been driven by the desire for a more integrated and stable world, and has led to the formation of the European Union. The process of integration has been a long and difficult one, and has involved the negotiation of complex legal and political issues. The process has also been a source of controversy, with some arguing that it has led to a loss of national sovereignty and others arguing that it has led to a more stable and prosperous world. The process of integration has also been a source of inspiration, with many people seeing it as a model for other regions and countries to follow.

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The North Australia Research Unit (NARU) is directly accountable to the Director of the Research School of Pacific and Asian Studies, The Australian National University.

The location of the North Australia Research Unit in Darwin made it something of a frontier research post for more than two decades. Opened in the early 1970s, the variety of scholars over the years, and even today, is a reflection of the interdisciplinary nature of the research carried out at the Unit.

A large portion of that research has focused on the Aboriginal and Torres Strait Islander peoples of Australia and, in that context, on the social, cultural, political, economic and development issues which are part of northern Australia. The range of research projects which are underway at any particular time depend very much on the priorities of the individuals who locate themselves at NARU. Aboriginal and Torres Strait Islander issues are of continuing importance in northern Australia and, consequently, to NARU. The reasons for this would be obvious to anyone who visits northern Australia – outside of Darwin, indigenous people comprise the majority of the population in the north.

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EUROPEAN INTEGRATION IN THE 21ST CENTURY¹

Federalism and Subsidiarity as the Framework Vs Regionalism and Decentralisation at the Margins

Christine Fletcher*

Introduction

This paper argues for a critique of certain principles and practices that are frequently marketed as a substitute for the architecture and the principles of federalism. The scene for the critique is the framework of European integration.

Since the end of the Second World War, Australia's ties with Western European nations, and more recently, the so-called transitional economies of Eastern Europe, have grown from strength to strength. Indeed, other than the Aboriginal and Torres Strait Islander peoples, modern Australia is a country of immigrants, a large proportion of whom have their origins in Europe.² The 1996 census data from the Australian Bureau of Statistics shows that 56.8 percent of overseas-born Australians were from the United Kingdom, Ireland, and Europe. The next largest group of people born overseas is from Southeast, Northeast, and Southern Asia, combined.

Australia's trade links with countries of the European Union (EU) are also growing stronger, an issue increasing in importance since the economic downturn in the Asia region. With the disaster in East Timor, the direction of Australia's foreign policy is being questioned and trade relations with Indonesia are deteriorating. By contrast,

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¹ This is a revised version of a paper presented at the Faculty of Economics, University of Torino, Italy. The preparation of the paper for publication in an earlier draft was generously supported by a Visiting Fellowship from the International Centre for Economic Research in Turin, during 1999.

² For details of this see S. Castles, W. Forster, R. Iredale and G. Withers, 1998, *Immigration and Australia: Myths and Realities*, Allen and Unwin, Sydney.

according to a recent statement by Australia's Foreign Minister, Alexander Downer, relationships between the EU and Australia have never been better. In the first nine months of 1998, Australia's exports to the EU increased by 35 percent compared to the same period in 1997.³ But, while relations with the EU grow stronger, the net trade affects of our relationship with Indonesia continue to spiral downwards.

Governments and businesses in Australia are relatively well informed about the nature of government and economic institutions in Indonesia, and other Asian countries – at least, that appeared to be the case from a Northern Territory perspective. However, it is clear now that little, if any, weight was given to the question of whether the political and constitutional institutions of neighbouring Asian countries were growing at the same rate as the 'economic miracle'. We know now that there were serious weaknesses in the process of government-to-government relations in many regions in Indonesia, for example. Now, with Australia-Indonesia trade relations in tatters, there is the need to find new or bigger markets. As the EU moves towards a dominating trade position in Australia's region, and with the introduction of the euro in January 1999, Australia is positioning itself to try and incorporate European Union affairs into its own institutions as much as practicable, and in an effort to attract EU resources.

But, how well do we know the system of government designed for European integration? European integration is an expression of innovative government that, for the most part, involves a complex set of institutions designed to interlock with most of the leading economies of Western Europe. At a political level, the entire system is driven by several key principles, one of which is federalism.

In fact, European integration is completely balanced on the principles that support the federal-type structures that form the base of the Union. This paper provides detailed examination of the origins, structures and the operations of those principles.

Background Sketch

Subsidiarity and federalism form the most important aspects of the framework for integration because, historically, they are argued to work effectively in democratic countries. Also, universally, both have a formal role in the constitutional development

³ *European Union News*, Vol.17, No.1, February/March 1999.

of integration. Federalism in particular has a constitutional base which acts as a stabilising influence on integrating sub-national, or in the European case, national sovereign entities into the architecture of government – federalism has a constitutional history of coping well with diversity, and guarantees constitutional protection to participating jurisdictions.

The purpose of both principles is unification, coexistence and participation. However, where federalism establishes constitutional jurisdictions, subsidiarity does not guarantee any particular protection for one government from another. Within the European Union subsidiarity operates within a legal structure, acting in defence of local organisations against strong central institutions.⁴ In effect, subsidiarity has the potential to keep tabs on policies that are seen to threaten local jurisdictions. Alternatively, this feature of subsidiarity is seen to run counter to the goals of the federal principle because it could be used to challenge the sub-national sovereignty of the states, provincial, or even national governments. Although, arguably, any contradictions that exist between the two principles seem to have been overridden by the representative measures associated with those relationships.

The integration of local communities into government at the international level – those within the structure of the European Union – relies heavily on subsidiarity. Subsidiarity is designed to bring citizens participation to the forefront of the decision-making process within the institutions of central government. Federalism, on the other hand, provides the formal constitutional basis of nation states. In the framework of the EU, federalism legitimates the process through which nation states themselves can become constituents of international governance. Federalism represents the institutional interests of states, whereas the principle of subsidiarity, it can be argued, supports the local majoritarian interests of people (or their local representative bodies) within those states.⁵

By comparison, regionalism and decentralisation contain policies that usually operate in conditions already established by other constitution factors. However, as the second half of this paper illustrates, both of these ‘strategies’ usually have territorial

⁴ For an historical and legal account of subsidiarity, see Deborah Z. Cass, 1992, ‘The Word That Saves Maastricht? The Principles of Subsidiarity and the Division of Powers Within the European Community’, in the *Common Market Law Review*, Vol. 29, pp1107–1136.

⁵ For a classic overview of majoritarianism, see Aaron Lijphart, 1984, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press, New Haven.

dimensions involving transfers and, in some cases, territorial or intergovernmental agreements. It is the planning methods used to decentralise, and to reform regions that are often problematic, particularly when several different jurisdictions have to co-exist. As a planning strategy, or as a method for 'developing' a region, regionalism is sometimes seen as an attempt by one or more governments to create a new jurisdiction, either through agreements, political and financial strategies, or through new representative institutions – or as one jurisdiction attempting to assert its authority over others.⁶

Both regionalism and decentralisation can run counter to the federal principle because both involve competition for the jurisdiction of others. Decentralisation, for example, carries no constitutional obligations. It is often used as an economic solution for reforming underdeveloped or impoverished economies, or for meeting regional political demands. Decentralisation is also used interchangeably with fiscal federalism – an economic method for allocating fiscal benefits to different fiscal jurisdictions in an effort to improve public outputs.⁷ Decentralisation requires no particular adherence to democratic institutions and, by design, implies dominance by central decision-making institutions. The most worrying factor is that decentralisation is sometimes confused with federalism and, if applied to a federation, would ignore the regional significance of self-determination – a fundamental right of sub-national units of government in federal systems. Fiscal federalism and decentralisation, sometimes used to refer to a similar process, can add pressure to the right of regional governments to exercise self-determination. Decentralisation tends to be popular as a solution to regional problems in countries with developing economies or where the local and regional jurisdictions are under the authority of a central government.⁸ In a federation, intergovernmental arrangements between federal jurisdictions and those of state or provincial governments can lead to decentralised program management but only when all parties agree to cooperate.

Discussions of how integration operates across different jurisdictional levels within the EU covers both unitary and federal systems and begins, in the following section of the paper, with the principle of subsidiarity.

⁶ Michael Keating, 1998, *The New Regionalism in Western Europe: Territorial Restructuring and Political Change*, Edward Elgar, Cheltenham, UK.

⁷ See Wallace E. Oates, 1991, 'The New Federalism: An Economist's Perspective' (first published in *Cato Journal* 1982), in a reprint edited by W. Oates, *Studies in Fiscal Federalism*, p98, Edward Elgar.

⁸ Rondinelli and others.

Subsidiarity

Subsidiarity was once described by Jaques Delors (1989) as 'the interface between economic and political integration'.⁹ As a principle, subsidiarity draws patterns for building political structures that allow the European Union to respond to community needs at a regional level. In theory, it allows local entities a degree of control over the type of policies the powerful coalitions of bureaucracies and governments put into effect.

In Europe, subsidiarity is built into various legal instrumentalities to guard against the exploitation of local communities by more powerful governments. As a principle, subsidiarity is supposed to protect local communities from the pressures of international jurisdictions created through the organisation of European integration. Presumably, through institution-building, subsidiarity offers local communities some protection from the unpredictable movement of shifting resources in the international community.

Outside of insisting that local interests be represented at a national and international level, there are difficulties with the coordination of different administrative organisations which belong to different sovereign entities.¹⁰ Ideally, it might be possible for some of these difficulties to be addressed within the intergovernmental architecture – the forums where intergovernmental relations take place – of the various participating political systems. According to recent research on public accountability in OECD member countries, the process through which intergovernmental relations takes place is where subsidiarity and the economic dimension of various political systems actually converge.¹¹ In a system where federalism is the cornerstone of the constitution, there are intergovernmental sub-systems that coordinate their functions through agreement, contracts, and through various executive forums. This is not to say that cooperation is also a factor. As one writer has observed, competition between different players, disputes over sovereignty

⁹ Subsidiarity originated from Catholicism.

¹⁰ See Daniel J. Elazar, 1987, *Exploring Federalism*, University of Alabama Press, Tuscaloosa.

¹¹ For a view of accountability in intergovernmental relations, see Karl-Peter Sommermann, 1999, 'Accountability Management of Intergovernmental Partnerships in a Legal Perspective', in *Accountability Management in Intergovernmental Partnerships*, OCED, 19th Session of the Committee, Chateau de la Muette, Paris 25–26 March 1999.

and various other social, political and economic factors can create fragility and challenge different aspects of a union.¹²

At the very least, however, intergovernmental forums create space for sharing information and where government administrations interact.¹³ Many of the economic decisions that affect local communities are also likely to emerge within intergovernmental partnerships. Policies formulated in intergovernmental forums are usually designed to be shared, although not necessarily on equal terms.

In legal terms, the roles and responsibilities of partners to the European treaty process leading to integration are grounded within the EC-Treaty. According to Article 3b (2),

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States (and can therefore, by reason of the scale of effects of the proposed action, be better achieved by the Community).¹⁴

Legal interpretations propose that subsidiarity applies hierarchy and order to a system of government, first by blunting the degree to which central power can impose its will on the states and then offering to protect local communities within those states.

Subsidiarity – Comparative Concepts

Definitions of subsidiarity keep referring to 'closest to the people': 'citizen control'; the importance of local government, and so on. Prime Minister Tony Blair, in his speech on subsidiarity, tried to balance the relationship between citizens and international government by arguing that subsidiarity keeps Europe in touch with the

¹² For an interesting article on the pros and cons of managing federalism in an international setting see Keith Boeckelman, 'Federal Systems in the Global Economy: Research Issues', in *Publius*, 26 (1):1-10

¹³ See C. Fletcher & C. Walsh, 1996, 'The Principle of Subsidiarity: Perspective's Drawn from Australia's Federal Experiences', in Thomas Fleiner & Nicolas Schmitt (eds), *Vers une Constitution européenne - L'Europe et les expériences fédérales (Towards a European Constitution)*, Institut Du Fédéralisme Fribourg, Suisse.

¹⁴ The Draft European Charter of Regional Self-government also refers to the principle of subsidiarity.

people. In his view, citizens are more likely to support the EU if Europe legislates less and leaves the details of everyday life to the people themselves to manage.

By comparison to subsidiarity, in federal theory *all* governments are closest to the people.¹⁵

- First, the essence of federalism is shared government and in context with the way political ideas were used to interpret federalism in the early part of the 20th century, virtually all government activities, whether it be concerned with revenue, expenditure or implementation, involves more than one level of government.
- Second, federalism offers a variety of outcomes through different structures. Because federalism is shared government, uniformity of standards might be formally incorporated into regulations, but not uniformity of outcomes.

Subsidiarity in the Regions

Lack of a theoretical base makes subsidiarity very difficult for the thousands of local government organisations that foster the notion of 'strength through association' to sell to their respective electorates. There are various organisations within the framework of the European Union whose role includes the integration of local and regional structures into the architecture of the international organisation. The Committee of the Regions is one organisation within the European community whose aim is to represent local interests through existing national umbrella groups representing local governments within the network of boundaries that criss-cross the EU.

Committee of the Regions

After much deliberation, the Committee of the Regions (COR) was established as an advisory body by the Treaty on European Union and began its first session in 1994. Subsidiarity is also mentioned in the Draft Treaty. The aims of the COR are to ensure

¹⁵ This was the thrust of Morton Grodzin's original thesis on the American federalism in the 1940s and has been used commonly as a defence against the erosion of federal principles in the United States, Australia and Canada.

that local people will gain access to decisions taken by government officials or bureaucrats from within the wider EU.¹⁶

The COR falls within the vast organisation of community institutions which comprise part of European integration. The base of the organisation is made up of 222 local and regional representatives, all appointed by the Member States. In terms of making the principle of subsidiarity work effectively, the role of the COR is taken very seriously by local government.¹⁷

The Treaty requires that the COR:

be consulted on matters relating to trans-European networks, public health, education, youth, culture and economic and social cohesion.¹⁸

The COR is bureaucratic by design and this is reflected in the array of standing Commissions and sub-Commissions constructed to observe and if possible influence the various peak policy issues dealt with in the wider structure of the EU. These include: agriculture, information technology, youth, urban issues, land use, education, public health, tourism, European airport networks, and the list goes on. The COR even boasts a role as an overseer of EU institutions – from auditing citizen voting patterns in local elections through to demanding that it have input into policy design and implementation.

The COR is an example of how the principle of subsidiarity has been inserted into the process of governance. It emphasises the significance of local level institutions. In reality, local institutions in any unitary system are at the mercy of the national government – in federal systems local government is generally at the mercy of the states. In other words, authority available to the local level is generally determined by governments with much greater access to resources and strong constitutional power. In unitary systems with very strong central governments, such as in the United Kingdom and France, it's the national government that sets the parameters of power.

¹⁶ For a complete analysis of the COR and its origins see Thomas Christiansen, 1996 'Second Thoughts on Europe's Third Level: The European Union's Committee of the Regions', in *Publius, The Journal of Federalism*, 26:1 (Winter 1996: pp 93-116).

¹⁷ Information on how the Committee of the Regions actually operates can be found in various publications and European Community web sites or, from Directorate for Press and Communications, Committee of the Regions, Rue Belliard 79, B-1040 Brussels.

¹⁸ See the profile of the Committee within the European Union structure provided by Press and Communications, at the above address or visit the European Parliamentary website on *Europa.com*.

In most western democratic federations, the states or provinces are the source of power (although, in the United States, local government units have a much greater access to resources and financial autonomy than other federations).¹⁹

Local governments tend to believe that the dominance of state governments over local governance weakens the local voice as a consequence. In some countries outside of the EU, local authorities have latched onto the principle of subsidiarity as a means of amplifying their voice beyond that of the dominant state. In Australia, local government seized onto the so called virtues of subsidiarity extolled by the COR in Europe and, like children who see more liberal benefits from their grandparents than their parents, they wanted to be closer to their national rather than their state government.

Local authorities are the cornerstone of democracy: they have a major role in essential services; they form the local architecture of municipalities and cities, and they enliven the cultural dimension of society.²⁰ In their interpretation of subsidiarity, local authorities now have a stronger obligation to exercise political and economic responsibility.

In Europe, the COR is a 'regional' body. Whether the COR can maintain its influence and promote its goals through the provisions of subsidiarity without losing its identity or without damaging the jurisdictions of national governments is a moot point. According to analysis by Christiansen, 'the actual closeness between COR members and their reference groups at home' has to be questioned.²¹ However, there is no apparent evidence of negative outcomes at this stage of integration.

Also, according to a recent study by the OECD, subsidiarity gives local government a coordinating role in the area of intergovernmental relations (within the nation state).²² In this interpretation, subsidiarity can contribute to the way revenue and expenditure powers between regions are actually shared.

¹⁹ If new legislation passes the US Congress, local governments will be free to opt out of the conditions attached to tied grants system in education expenditure so long as they sign a 5 year agreement with their respective state government and guarantee to meet the education standards required. See US Congressional proceedings.

²⁰ Historically, local authorities are not always seen in a positive light. Early federalists such as Thomas Jefferson saw the states and local governments as far more meaningful than a federal, or a national government but, by the same token, believed that city government attracted corruption. He used the example of the decaying cities in Europe during the 17th century.

²¹ See Thomas Christiansen, 1996, *Op Cit*, pp. 115

²² See Karl-Peter Sommermann, OECD, *Op Cit*.

In practice, both subsidiarity and federalism are driven by the political desire to constrain centralised power – neither of them were derived from a rational desire to singularly organise finances or make a system into a more cost effective form of government. This can translate into significant political implications. The fundamental difference between them is that only one is a system of government.

Federalism

Much of what we understand to be democratic federal theory – ideas about shared sovereignty, diversity in unity, frustrations of shared jurisdictions and the nature of multijurisdictional decision-making – is comparatively recent.

Founders of federalism in the United States set up the constitutional federal framework and the principles that, broadly speaking, other modern federal countries have only relatively recently applied. Much depends on the way federal principles are interpreted. Countries that adopt those federal principles apply their own interpretation to the way power is shared but the universal basis for the survival of federalism lies in its constitutional framework – federal constitutions guarantee to place constraints on central authority.²³

The key feature of federalism is that it gives representation to other jurisdictions – it treats sub-national governments as constituents. Bi cameral legislatures exist for this purpose – the United States Senate, and the Australian Senate, are two such examples. Through Upper Houses, constituent governments can, and do, have a major effect on the way the system operates. For example, in the early 1970s, through constitutional interpretations, ploys and schemes, the Australian Senate (the States House) became the instrument for a constitutional crisis – that crisis forced a democratically elected government out of power. Ultimately, the system did not fail because, in addition to the States House (the Senate), federalism identifies a national majority through majoritarian representation of the voting population in the Lower House.²⁴

²³ Early examples in 18th century America are illustrated in debates over the relationship between tax and representation – the Americans knew that they had to impose constraint on central power for the union to succeed – see *The Federalist Papers*, also the collection in *The Anti-federalists*, 1966, edited by Cecelia M. Kenyon (Northeastern University Press, Boston), and also Cliff Walsh, 1992, *Fiscal Federalism: An Overview of Issues and a Discussion of their Relevance to the European Community*, *Discussion Paper*, Federalism Research Centre, The Australian National University, Canberra.

²⁴ In Australia, this is the House of Representatives.

It is the combination of these two institutional designs that reinforce the federal principle:

- first, by affecting the organisation of power away from a central government – by securing sovereignty to the sub-national governments, and
- second, by ensuring that the voice of the national majority is amplified through the legislature.

This combination is a platform that, according to supporters of federalism, strengthens the political system. Since there is a positive relationship between political freedoms and economic well being, this dual institutional arrangement represents one of the main virtues of federalism.²⁵

John McGinnis,²⁶ an advocate of effective federalism, recently drew the attention of the US Senate Committee on Government Affairs to, what he referred to as ‘the most wealth producing document in human history’ – the American Constitution.²⁷ According to McGinnis, federalism improves government actions because:

- first, it ‘create(s) a marketplace for governments. By putting state governments in competition with one another it forces them to innovate.’
- second, federalism establishes close relationships between government and people that then creates ideal conditions for people to receive a service that they believe suits them.

This is generally argued to be the standard virtue of federalism. However, it might be easy to overlook the fact that human happiness is a major determinant of what actually becomes identified as a public good – as much a cultural determination as an economic choice. Without recognising the significance of qualitative variables, the process of government might have to rectify a public ‘wrong’ rather than a ‘public good’ – a costly exercise.

²⁵ See Aaron Lijphart, 1984, *Op Cit*.

²⁶ John McGinnis is Professor Law, Benjamin N. Cardozo School of Law, Yashiva University, New York. He was a Fellow at the International Centre for Economic Research, Turin, Italy during the preparation of this paper in June 1999.

²⁷ Testimony of John O. McGinnis before *Senate Committee on Government Affairs*, concerning the State Federalism, May 5, 1999, published by the Jacob Burns Institute for Advanced Legal Studies, Brookdale Centre, 55 Fifth Avenue, New York, NY 10003-4391.

McGinnis' third point concerns civic responsibility. He argues that,

- federalism tempers strategic behavior and substitutes in its place the genuine concern of one citizen for another.

In other words, federalism thrives on consensus. Rather than override or dominate the different wishes of the people of regional communities, federalism provides a constitutional structure and a process through which multiple and different communities must coexist.²⁸ Federalism also makes allowances for issues of shared sovereignty through the use of consensus.

This is the fundamental difference between decentralisation and federalism. A system may appear to have federal qualities, particularly in 'administrative federalism', and apply federal ideas to its treatment of intergovernmental grants. But, if sovereignty is not shared by sub-national governments through a federal constitution, then the system is not federal.²⁹

Shared Sovereignty

There have always been difficulties in coordinating national, or international, policy in a system which houses multiple constitutional jurisdictions. Jurisdictional overlaps in a federation bring sovereignty into focus. Historically, the question of divided sovereignty has not been easily reconciled with federalism.³⁰

Unitary systems strongly discourage divided sovereignty but now with the shift towards regional representative institutions in Britain and elsewhere challenging political theory about the parameters of national sovereignty, this in itself has become an issue for contemplation of nationalism, self-determination, and autonomous regions, as European integration takes further shape.³¹

Theories about how the modern federal state should actually function was shaped largely by lawyers and, much later by students of political institutions and government

²⁸ McGinnis, *ibid*, p4.

²⁹ See Daniel J. Elazar, 1998, *Constitutionalizing Globalisation: The Postmodern Revival of Confederal Arrangements*, Rowman & Littlefield, Maryland, USA.

³⁰ Christine Fletcher, 1992, 'Altered States: Federalism, Sovereignty, and Self-Government', Federalism Research Centre *Discussion Paper*, The Australian National University, Canberra.

³¹ Michael Keating, 1998, *Op Cit*.

(Elazar etc). Leading theorists Dicey, and Bryce, held legalistic views about how a federal system should work.³²

They were concerned that federalism would lead to the break up, rather than the unity, of the nation state. Bryce in particular analysed the affects of divided sovereignty against a background of British parliamentary sovereignty. Kenneth Wheare, also a lawyer, was the most informed about the constitutionalities of shared sovereignty in a federation.

According to Wheare, Federalism means,

a division of functions between co-ordinate authorities, authorities which are in no way subordinate on to another in the exercise of their allotted functions.³³

Those early debates, however, gave little weight to the shape and affects of regional political cultures on the development of shared power. The impact of divided sovereignty also influenced William Riker's view of federalism in ways that still arise in debates. Riker's view of federalism focused on the chilling racist powers of the southern American states against African Americans during the Civil Rights movements. Riker reversed his view of federalism as a racist form of government more recently. Arguments along similar lines were used successfully against adopting federalism as a constitutional form of government in South Africa. In contrast, federalism has been used for the purpose of unifying rather than dividing nations – accommodating, rather than rejecting diversities of cultures, people and beliefs. Both Nigeria and Ethiopia opted for shared power through federal arrangements to accommodate strong ethnic differences.³⁴

Each system differs in its distribution of power. Daniel J. Elazar takes the view that in American federalism there are no single centres of power. Federalism in America resembles a matrix with multiple centres where power is shared. He argues the regional political differences are just as powerful as cultural or linguistic differences. In fact, politics and culture are constantly changing. Even in a system where sub-national power is guaranteed, it is important to ensure that different measures of regional preferences are insured against the uniform tendencies of centralising forces.

³² A.V. Dicey, 1962, *Introduction to the Study of the Law of the Constitution*, 10th edition, St. Martins Press, NY; James Bryce, 1914, *The American Commonwealth*, Macmillan, New York; KC Wheare, 1964, *Federal Government*, 4th Edition, Oxford University Press.

³³ KC Wheare, 'What Federal Government Is', cited in John Kendle 1997, *Federal Britain: A History*, Routledge, London, p.115.

³⁴ Daniel J. Elazar, 1998, *Op Cit*.

Evidence of this need is no more so than in the impact of constitutional judicial decisions in the United States, Canada, and perhaps even more so in Australia, because it highlights the ongoing need to reinforce the strength of state and provincial self-determination in federations.

The Coexistence of Cultural Variations

European integration is balanced on accommodating different nationalities from different regions in Europe within a strategic process without undermining the constitutional sovereignty or the political dignity of each cultural community.

Despite the initial difficulties encountered towards reaching agreement, one of the advantages of Europe, compared to a system such as Australia or the United States, is that each constituent government has historically identifiable cultural and linguistic differences.³⁵ Canada and Switzerland have linguistic and cultural differences, and there are other federations in Europe where the federal principle is strongly associated with regional identities. On the other hand, in some federation, political differences measured by preferences are strong enough to unify the need for federalism – this is certainly the case in Australia.

Turning again to federal theory: Elazar's thesis of diverse political cultures is closely related to the complex vitality of civil society. It seeks to explain, through policy changes, how regional political cultures can be so different among peoples who share the same language.³⁶ We know in Europe why regional cultures are different – each constituent member of the European Union is a separate nation state. It is also clear from the literature on civil society, and from evidence that has emerged since the collapse and reformation of eastern European systems that freedom of association, or lack of it, affects the behavior and relationship of government to people.

The question of political culture and civil society within different regions also has application within the social and political platform as factors that help explain how regional economies grow. Economists David Morgan and Sheilah Watson apply Elazar's framework of political culture to explain how intergovernmental financial

³⁵ Ethiopia's federation is also based on language and culture but not within the democratic paradigm. India, by comparison is a robust democratic federal system but with ethnic and historical complexities – see for example, M. Govinda Rao and Tapas K. Sen, 1996, *Fiscal Federalism in India: Theory and Practice*, Macmillan India Ltd, Delhi.

³⁶ Daniel J. Elazar, 1987, *Op Cit*.

arrangements indicate differences between regions. In their view, government budgets, financial programs and policies, together with demographic factors, reinforce the way governments want their institutions to operate. And, since governments are supposed to represent our interests, then it says something important about where we want our taxes to be spent.³⁷ In terms of choice, it suggests a strong relationship between public choice and freedom of association – that is, for people to choose they must be free.

Perhaps the last area to take hold in explaining the relationship between governments in federation has been the study of fiscal federalism. Fiscal federalism grew out of public finance and public choice theory which had difficulty coping with several political jurisdictions at the one time and moving between different jurisdictions did not make any institutional provisions for sharing. Fiscal federalism has now become an essential part of the explanation for how federal systems work. However, in fiscal federalism, there are no rules that say the system in which it is applied must be federal. Fiscal federalism is commonly applied as a method of reforming intergovernmental transfers – shifting resources between different levels of government in unitary systems.³⁸ In this context, fiscal federalism has a lot in common with decentralisation.

According to Wallace E. Oates, fiscal federalism is about optimising advantages by maximising the benefits of resource distribution through fiscal, not necessarily, political jurisdictions.

He points out that:

the term federalism for the economist is not to be understood in a narrow constitutional sense. In economic terms, all government systems are more or less federal; even in a formally unitary system, for example, there is typically a considerable extent of defacto fiscal discretion at decentralized levels.³⁹

³⁷ The methodology for the research into the political culture involved surveys about preferences, budgetary direction and so on.

³⁸ This term is used interchangeably with decentralisation in Italy – a unitary system with highly complex multiple layers of governance and historically strong regional differences.

³⁹ Wallace E. Oates, 1991, 'An Economist's Perspective on Fiscal Federalism (first published in 1977), in a reprint edited by Oates, *Studies in Fiscal Federalism*, p22, Edward Elgar.

Oates admits that, for economic reform, fiscal federalism dispenses with politics and constitutions. He quotes Livingston (1952) who argues that fiscal federalists believe that,

The essence of federalism lies not in the institutional or constitutional structure but in the society itself.⁴⁰

Clearly, this is a long way from the type of federal constitutionalism that safeguards the rights of sub-national governments. The division of constitutional authority over who raises revenue varies from federation to federation. In Australia, almost all constitutional powers rest with the States.⁴¹ The Commonwealth has an agreement with the States to raise most direct taxes but that is not entrenched in the constitution nor does it prohibit the states from raising tax so long as they don't impose an unreasonable burden on the people of each state.

In the American, Australian and Canadian federal systems, the constitutional power of the states and provinces predate the national or federal constitution. Many of the powers that are missing from national/federal constitutions – for example, local governments – are legislated under state/provincial constitutions.

Whether revenue raising by a particular level of government is entrenched in the constitution (such as in Belgium and Germany) or whether it takes place as a result of legislation would also be a factor in the way jurisdictions are shared but there are many other complicating variables. Intergovernmental transfer systems cannot be taken out of context with political foundations.

The next section explains how regionalism and decentralisation fits in with principles of federalism and subsidiarity.

Regionalism

At an international level, regionalism implies a strategic approach towards a range of policy developments within the jurisdiction of the national government, or other governments, or through the organisation of a group of nations – North American Free

⁴⁰ W. Livingston, 1952, 'A Note on the Nature of Federalism', *Political Science Quarterly*, 67: pp81-95.

⁴¹ In some federations already established on democratic principles, for example, the Australian federation, and less so in Canada, equalization methodology was built into the intergovernmental transfer system. This was done several decades ago in Australia to stabilise financial relations between the states and to discourage secession. Different forms of equalisation have been adopted elsewhere to target regions that are disadvantaged, impoverished, or where political tensions are strong – South Africa is an example.

Trade Agreement (NAFTA), the European Community (EC), Association of South East Asian Nations, Association of Southern African States (ASEAN), and so on.⁴² There are, however, several levels to the concept of regionalism. Regionalism is as much about territorial and cultural regions as it is about economic development and trade. In his book on 'new regionalism', Keating reminds us that the regions of Europe predate the nation state and yet, despite the historical determinism and complex depth of regionalism, explanations for what constitutes the emergence of regions outside of clearly defined boundaries are often avoided.⁴³

Domestically, ideas about regionalism generally involve several jurisdictions, as I mentioned at the beginning of this paper, regionalism is a concept of integration that is reflected in the representative institutions and in the intergovernmental agreements and structures of the EU and of OECD countries.

Regionalism can also work at a sub-national level – the recently appointed Scottish and Welsh parliaments, Northern Ireland – either through changes to relations between centres and regions, and through establishing resource sharing arrangements for the purpose of developing policies for certain territories. These sorts of arrangements are increasing.⁴⁴

One example is the area known as the ERN (the Neisse – Nisa – Nysa Euroregion) now a municipal partnership of three border territories at the outer border of the EU – the Czech Republic and the Republic of Poland and the German Democratic Republic – was under the direct control of Moscow and the Council for Mutual Economic Assistance until about 1989.⁴⁵ This particular region is referred to sometimes as the 'black triangle' because of impoverishment and environmental problems. Now the Commission of the EU has all sorts of programs directed at assisting this region.

Because of the number of jurisdictions involved, solutions to the development of regions are a complicated undertaking in the management of intergovernmental relations. For that reason, regionalism has to be seen in context with the nature and type of the nation states or, domestic states, in which it is planned. The outcomes are not always beneficial for all.

⁴² Daniel J. Elazar, 1998, *Op Cit.*

⁴³ Michael Keating, 1998, *Op Cit.*

⁴⁴ For an historical overview of federal type arrangements under British rule, see John Kendle, 1997, *Federal Britain: A History*, Routledge, London.

⁴⁵ Karl-Peter Sommermann, OECD, *Op Cit.*

Regionalism: A Tool for Planning and Political Change

Regionalism itself is not a theory of the state. In fact if anything, regionalism has been used by politicians over the years to actually undermine the way systems operate.

On a more positive side, in what became a classic American report into the reform of American federal government administration by James Fesler in the 1940s, regionalism was referred to as 'groupings of functions' to deal with the growth in the size and capacity of government activity.⁴⁶

As big government became an issue, Americans became suspicious of taking the concept of regionalism too seriously because it was seen as a new way to organise government – to undermine existing local, state/provincial authority. Regionalism was seen to pose a threat to constitutional jurisdictions on the assumption that regions could create an extra layer of authority that might then compete for someone else's jurisdiction.

One American – Martha Derthick – described the growth of regional organizations that overlap into a series of different existing jurisdictions as unpleasant growths superimposed on the constitutional system. Derthick was referring to the Tennessee Valley Authority (TVA), a statutory authority set up as a utility to manage resources across the different local, country, and state jurisdictions of three states.⁴⁷

Regionalism had become an architectural tool for town planners and also a method of analysis for neo-classical economists. In political terms, regionalism was partly explained in a theory of global economic inequalities by Gunter Frank, and then by Wallerstein, through an explanation of exploitation by rich states of the resources of poor states. Known as the core-periphery analysis, Wallerstein's theory is based on the redistribution of resources from poor states to rich states, with semi-peripheral states acting as agents for the wealthy.⁴⁸

⁴⁶ James Fesler, 1959, *Patterns of Field Administration*, Pittsburg: American Society for Public Administration.

⁴⁷ Martha Derthick, with Gary Bombardier, 1974, *Between State and Nation: Regional Organizations of the United States*, Brookings Institute, Washington.

⁴⁸ I. Wallerstein, 1974, 'Dependence in an Interdependent World', *African Studies Review*, 17, 1: and, Frank, A.G., 1991, 'No Escape from the Laws of World Economics', *Review of African Political Economy*, 50: 21-32.

Regionalism has a long and colourful history in modern Europe. In the 19th century, Peter Kropotkin, a Russian anarchist proposed a redistribution of resources across North Africa and Europe to weaken what he believed was the threat of globalisation on production. Kropotkin was a former Marxist and a supporter of Adam Smith's political economy. He was also a political agitator, a geographer and a scholar – he wrote *Mutual Aid* and also *Fields, Factories and Workshops Tomorrow* – both in the last two decades of the 19th century.⁴⁹

Kropotkin was concerned at the time that the import of New Zealand lamb and other products into Europe would have negative social affects by discouraging regional diversity in terms of production. This, he said, would destroy natural individualism. He believed that the pursuit of profits through specialised production would limit growth – he argued that government was a burden on market growth.

Petr Kropotkin failed to understand the significance of the relationship between government and people. He thought sovereignty should be weakened rather than strengthened. In his book *Fields, Factories and Workshops Tomorrow*, he simply calculated that agricultural production should take place through passive non-competitive community participation on a regional basis. He naively wanted to shift pastoral industries across national borders and move starving people from one region to another because of geographic factors – regardless of the cultural, social, economic practices or the history of political traditions that differed between regions.

Kropotkin believed that the British could feed 37 million people from colonial Africa by cultivated the soil in Belgium. In his attempt to design safety nets for globalisation he completely misunderstood the significance of political, social and cultural institutions. Ironically, it is the institutional strengths *within* nations that provide barriers to the weak institutional conditions the globalism can exploit. The issue finds favour with federalism. Indeed, during the height of the Quebec secessionist debates in the early 1990s Albert Breton argued that the affects of globalisation are likely to be less negative if a system of government encourages strong and favourably responsive national, state and local institutions.⁵⁰

⁴⁹ See Petr Kropotkin, 1974 edition with introduction by Colin Ward, *Fields, Factories and Workshops Tomorrow*, Harper Torchbooks, New York: also, Petr Kropotkin, 1939 (reprint), *Mutual Aid: A Factor of Evolution*, Penguin England.

⁵⁰ Professor Albert Breton visited the Federalism Research Centre at the Australian National University during the period of constitutional reform process in Canada. He also is a Fellow at the International Centre for Economic Research in Turin, Italy.

Regionalism can be a powerful tool of government and reform but history tells us that it should be treated with respect, and perhaps also with a degree of apprehension.

Decentralisation

Decentralisation tends to be an ambiguous and widely used method for solving economic problems between 'regions', particularly where one region has strong authority over others. As a concept, decentralisation attracts enormous interests, particularly among economists and in the area of development administration.⁵¹

The concept is most useful in developing countries where infrastructure and the delivery of social policy are impoverished and where central governments hold economic and constitutional sway over the regions. It usually represents recognition by central regimes and others that, first, populations in regions and provinces lack essential service infrastructure. Second, economic development is generally badly lacking and growth is poor. Many developing countries, particularly post colonial states with a legacy of dysfunctional administrative or legislative systems, have problems with high levels of centralisation to the extent that the periphery, or the regions, are either exploited by resource rich organisations and receive little if nothing in return.⁵²

Outside of its use as a tool for developing financial and administrative reforms in borderless communities, decentralisation is an ambiguous concept that thrives in countries where communities demand a level of autonomy that does not threaten the sovereignty of the central government. There is no question that decentralisation is useful as a specific tool of reform under certain conditions but in general terms it says nothing about how government actually operates or whether communities at the end of this so called process actually benefit.⁵³

There are not necessarily any measures incorporated into decentralisation that are capable of taking account of the self-determination of people in the regions. In some instances, decentralisation actually results from a process already entrenched – such

⁵¹ Writers in this genre include Dennis A. Rondinelli.

⁵² For example, see various editions of the *Review of African Political Economy*, Carfax Publishers, Sheffield, UK.

⁵³ A recent overview of decentralisation can be found in J. Litvack, J. Ahmad, & R. Bird, 1998, *Rethinking Decentralization in Developing Countries*, Sector Studies Series, The World Bank, pp. iii-40.

as the 'decentralisation' of power to regional parliaments in Britain – in which case, it has a profile as an instrument that benefits regional communities.

Also, decentralisation of resources implies that there are specific purposes attached to the policies being imposed by a central government. In a federation, it is not possible for one government to override the constitutional authority of another through decentralisation. Its use in a federation is limited by sub-national level consensus and to the ability of national governments to build financial incentives into the system of grants to encourage agreements and participation by other levels of government. Also, in system with federal features but where central or national governments are constitutionally strong, decentralisation is used as a means of reinstating the role of local government: this has been the case in Spain.⁵⁴

The World Bank has been taking account of institutions in its decentralisation solutions for developing countries for some time. Among the large body of literature produced on this is the work of Roy Bahl and Johannes Linn on intergovernmental fiscal equity in less developed countries, published as a World Bank discussion paper in the mid 1990s and then reproduced in *Publius* in 1994.

Decentralisation of financial responsibility – movement of tax powers and distribution methods for grants – generally involves significant degrees of administrative change and reform which, in any event, is an attempt to reform outcomes. In systems that are not democratic or where central governments dismiss the idea of negotiating with local or regional governments, decentralisation is a standard response to demands for reform.

The fundamental difference between federalism and decentralisation is this: federalism is a system of government; decentralisation is not a system. Decentralisation is a process for policy reform which, in the west, has to skirt around and through jurisdictions that often have an interest in *not* supporting decentralisation. To be successful, decentralisation has to conform to existing constitutional arrangements and its use is policy specific. Ultimately, decentralised 'power' can be reversed by the government with constitutional jurisdiction over the regions. As Oates argues, decentralisation and federalism are different entities. The economic application of decentralisation and fiscal federalism:

is one in which the central government assumes the primary responsibility for the stabilization and distribution functions and in which the allocation function

⁵⁴ See E. Carrillo, 1997, 'Local Government and Strategies for Decentralization in the State of the Autonomies', *Publius*, 27 (4): 39–64.

is shared in such a way that different levels of government provide those services whose range of benefits and costs are confined to the residents of their respective jurisdictions.⁵⁵

If we accept Elazar's view that there are multiple centres of power in a federal system – such is the case in the EU – and that federal jurisdictions and processes are, by necessity, shared, then there appears to be a degree of confusion over the parameters of fiscal federalism and constitutional federalism which, both in practice and in principle, is sufficient enough to cause closer examination of what is meant by decentralisation.

Conclusion

In western democratic systems, there are certain generic principles that are implicit in the way we design and operate our system or government. Federalism and subsidiarity define the shape of constitutional authority of the nation state in different ways.

As this paper has illustrated, the principle of subsidiarity is designed to deliver a strategic process that links local citizens to supranational institutions through the architecture of the European Parliament. In formal terms, subsidiarity is expressed through treaties and legislation and, as a feature of that, it unites the regional and local community interests together, drawing attention to local needs through the ministerial structure of national representation within the institutions and bodies of the European Community.

However, unlike federalism, subsidiarity does not offer a level of constitutional protection for regional communities that federal constitution can provide. That sort of protection can only be found in the way power is organised through the institutions of the nation state itself and, in the consensual preparation for power-sharing between countries in the EU.

Federalism has a relatively long history as a political system, particularly as a democratic system. To some, the most worrisome feature of federalism lies in the way sovereignty is shared which, in a constitutional sense inhibits or constrains the

⁵⁵ Wallace E. Oates, 1991, *The New Federalism: An Economist's View*, *Op. Cit.* p.95.

limit to which centralised power can be organised. Of course, for others, this is the true virtue of federalism.

Shared sovereignty and overlapping functions is also used to influence intergovernmental transfer systems. Because federalism places legal limits on the expansion of a national or federal government into the jurisdiction of other governments, it also places constraints on the expansionary tendencies of the sub-national governments towards each other, or towards national government. Sub-national governments – states and provinces – share sovereignty with each other and with the national government, with the exception that national governments have a mandate to defend the nation, deal with international border issues (customs, tariffs etc) and represent the ‘national interest’ in international forums.

At one level of analysis, federalism makes government more accountable to the people because multiple jurisdictions encourage governments to compete for constituents – federalism spawns several different majorities, rather than one. Alternatively, federalism makes more traditional concepts of accountability very difficult to reconcile with the principles of representative government. Partly, that is because public sector principles do not distinguish whether or not a system is federal or unitary. This is one of the issues facing EU integration. Hence, ministerial obligations to the electorate, through the legislature, are often difficult to reconcile with accountability because federal systems have multiple legislatures. This underlines the reason why subsidiarity has become so important within the overall governance of the EU.

Subsidiarity was derived from a different source but it is not incompatible with federalism. Subsidiarity is a different and relatively new political resource designed to protect local interests within the new internationalisation of government. In fact, subsidiarity has been created and crafted specifically for the EU. Likewise, regionalism is a creation. Regionalism is multifaceted – it can be a problem if it overrides existing sovereign boundaries and, arguably, it is usually someone’s solution to economic and political agenda and can lead in all or any direction. It covers the full political spectrum from the redistribution of political representation, like that recently taking place in Scotland and Wales, and also Northern Ireland, through to the construction of supranational governmental authorities within the framework of the EU.

In some cases, federations also have been ‘created’ as a solution to unity, even in the absence of natural community consensus, or simply as a conflict management strategy or because no other options exist – Yugoslavia, and the former Soviet Union are examples. Lack of majority consensus or use of force leads to failure, or disaster.

Governing becomes expensive. Consensus is a cheaper, and economically, a more effective form of government than the alternatives. This became apparent in the crash of some economies in East Asia and also Eastern Europe.

However, the use of federalism or 'federal-type' arrangements has led to confusion between what is meant by the terms federalism and decentralisation, respectively. Because of its emphasis on regional self-determination, the terminology of federalism has been fused, misleadingly, with the decentralisation of policies in systems which have strong regional characteristics. We now appear to have a situation where these two terms, despite vastly different implications, are used interchangeably with each other.⁵⁶ As Oates argues, this stems from the fact that fiscal federalism – a form of decentralisation – appears to have become confused with federalism as a constitutional form of government. Some students of decentralisation appear convinced that there is very little difference between federalism (fiscal) and the more ambiguous and limited concept of decentralisation.

Since efforts to address inequities in financial transfer systems between central, regional and local governments has become relatively common place, the popularity of fiscal federalism as a way of dealing with problems is likely to increase. Whether the confusion between the decentralisation tendencies of fiscal federalism and the non-centralising trend of constitutional federalism causes real problems remains to be seen but, inevitably, the differences need to be taken into account. Decentralisation is a factor applied to varying degrees in all of these processes. If the system is federal, then decentralisation raises more problems than it can solve.

⁵⁶ This situation has surface in Italy since the reform of intergovernmental transfer systems has become an issue and federalism has become a substitute term for fiscal decentralisation.

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