

# ***Federations***

**What's new in federalism worldwide**



Vol. 2, No. 5 / November 2002

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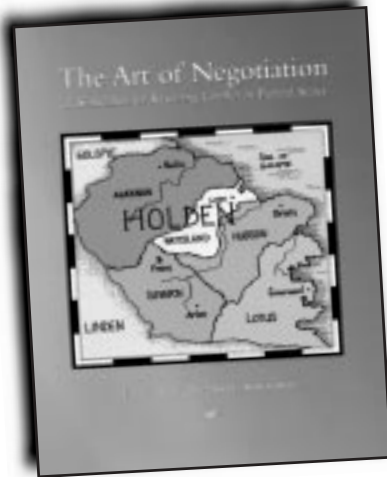


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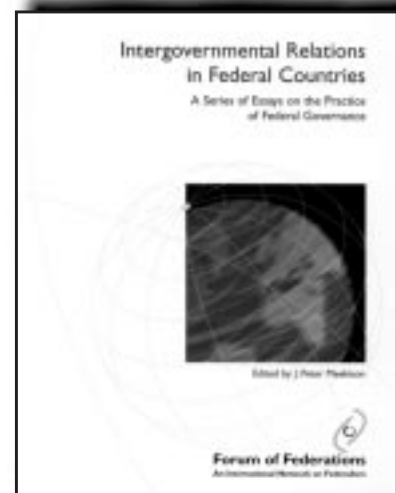
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# Federations

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Vol. 2, No. 5 / November 2002



**Cover story:** The search for a constitutional solution begins (see page 5).

*Liberation Tigers chief negotiator Anton Balasingham (R), seen with Sri Lankan government chief negotiator G.L. Peiris at the landmark peace talks in Pattaya, Bangkok September 18, 2002. REUTERS/Sukree Sukplang.*

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This publication is also available in French under the title *Fédérations – Le fédéralisme de par le monde, quoi de neuf.*





# From the Editors

**The** setting is the University of Saint Gallen in eastern Switzerland – a school with a strong sense of tradition matched by a progressive outlook. It is late August and we're at the International Conference on Federalism 2002, successor to the Mont-Tremblant conference organized by the Forum of Federations in 1999. The organizers of this summer's event have placed great emphasis on the process of dialogue. They encourage participants to go beyond their fixed positions, to be frank and honest and to do more than lob volleys of rhetoric at each other.

A case in point: in one workshop a Canadian federal cabinet minister, the Swiss President and a mixed group of academics and practitioners from around the world candidly discuss fiscal equalization – how federal countries seek to even out disparities between richer and poorer regions. It quickly emerges that there are very different political cultures and traditions represented at the table. For some accountability and respect for conditions are paramount concerns. For others it seems most important that the practice of equalization not create political tensions. Yet, as they exchange ideas and experiences, it is clear that the participants are genuinely learning from each other – and deepening their understanding of their own practices of federalism as they explain them to others.

The most striking aspect of this and many other sessions at the conference is the remarkable spirit of openness and candour. The people taking part seem unconcerned by the fact that their peers, sometimes their political adversaries, and journalists are privy to everything they say. Taking part in the dialogue is all that matters.

The Saint Gallen Conference may not be remembered for any stirring declarations or solemn collective undertakings. But in scores of workshops and discussion groups something more important was going on. Participants were learning from each other.

The next major international event of this order will be in Belgium in 2004. In the meantime the Forum will be busy working with practitioners around the world, through programs focused on the real-life challenges they confront daily.

In this new-look issue of *Federations* we have reports that we hope shed some light on where federalism is going in diverse parts of the planet.

Our cover story deals with the possibilities of multi-level and federal models for war-weary Sri Lanka. The parties in Sri Lanka may be ready to consider building a lasting peace based on mutual respect and a constitution that guarantees regional autonomy and ethnic and religious rights, while preserving national unity. If they succeed it will be an invaluable precedent for others who confront similar conflicts.

The Forum is deeply engaged in this effort. As it has matured as an organization the Forum has come to realize that federalism is not only important to those who already practice it but also to those who are looking for enduring solutions to long-standing grievances and disputes.

This issue's Practitioners Page deals with another such case: Cyprus. We met the former mayor of Nicosia at the Saint Gallen conference and discussed with him the validity of some sort of federal option for his country. Lellos Demetriades feels much despair at the long history of distrust between Turks and Greeks. But one current development offers hope: EU expansion. An EU that considers Cyprus a likely candidate for membership should be highly motivated to help find a lasting constitutional arrangement that would avoid the permanent partition of the island into two countries.

As we write these words it is still not certain who will finally win the Brazilian presidency. Whoever does will take office in January along with a slew of newly elected legislators and state governors. In previous issues of *Federations* we have covered some of the tensions in the Brazilian federation, particularly as concerns fiscal matters (see Vol. 1, # 1 and Vol. 3, # 3). This time, Gilberto Rodrigues gives an overview of unfinished federal business that the new president and other newly elected office holders will confront. Both presidential candidates in the second round have competent advisors on what Brazilians refer to as "federative" issues and so, whatever the outcome, reforms related to federalism will almost certainly be on the new president's agenda.

We also have reports on the way "local pacts" in Spain empower municipal governments, the arduous search for agreement between Canada's federal and provincial governments on reform of the health insurance system and the relationship between the management of the rail system and federalism in India. Plus Swiss politician and academic René Rhinow discusses recent constitutional reforms in Switzerland in the light of that country's long federal history. ☺

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**You** have noticed by now that we have a new "magazine" format for *Federations*. We hope you find this attractive and easy to read. We have kept our three-hole punched pages and perforated sheets to make it possible to store in the hard binders we send subscribers. And you can still get one of those handsome binders if you subscribe now!

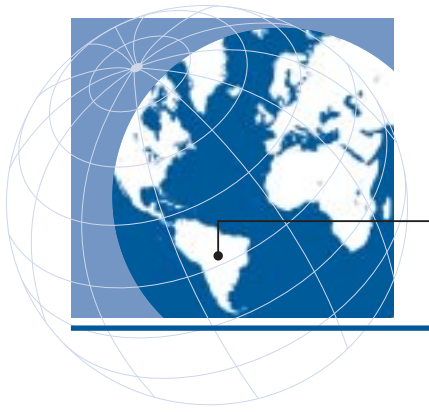
In future issues we intend to devote space to letters, to short updates on federal developments around the world, and to book reviews. We want your comments, your news of federalism in your area, and your books to review. Just drop us a line at:  
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Looking forward to hearing from you!



# Brazil votes: Change crucial to its cities and states

Whoever goes on to win the presidency will have to deal with the need to modernize the practice of federalism.

BY GILBERTO RODRIGUES

**The** general elections in Brazil will produce not only a new President and Vice-President, but 26 state Governors and Deputy Governors, one Governor and Deputy Governor for the Federal District, and two Senators per state - equivalent to two-thirds of the Senate. As a result, the House of Deputies and the Legislative Assemblies of the states will be completely revamped. The extent of the change in the political framework will generate momentum for institutional and administrative changes in the country.

After two successive terms in power, from 1995-1998 and 1999-2002, President Fernando Henrique Cardoso will close the doors on his administration in January 2003, leaving behind as his main legacy democratic consolidation and the creation and maintenance of an environment of economic stability.

Still, Brazil lives with the dilemma of how to improve its great productive potential, develop its economy to levels allowing it to battle the growing public debt, and urgently deal with deep regional disparities and the socio-economic exclusion of a large sector of the population.

The UNDP's 2002 Human Development Report gave Brazil a rating of 0.757 on a scale of 0 to 1 - equivalent to 73rd place on a list of 173 countries examined. Brazil placed it below the Latin American and Caribbean average of 0.767. Even more crushing is the Brazilian classification by the Gini Index: the country has the fourth largest concentration of income on the planet!

Given this scenario, among the various challenges that the new President, governors and legislators will have to face is the need to redefine and update Brazilian federalism.

## **The "Federal Pact"**

Tensions over centralization and decentralization of power have existed in Brazil since the time of the First and Second Empires, between 1822 and 1889. Historically, the Portuguese legacy favoured centralization, and it was only in the First Republic (1889-1930), with the adoption of federalism, that the states achieved a higher level of autonomy.

During most of the Twentieth Century, Brazilian federalism was marked by either centralizing authoritarian regimes, or by liberal regimes preferring decentralization. A significant increase in subnational autonomy in relation to the Union only occurred during the democratization process and the approval of the 1988 Constitution.

The new Constitution granted federal autonomy to municipalities, formally making them equal to the Union and the states. As a result, Brazil became the first country in Latin America to include local power in the federal entity, making it one of the three levels of government. (Mexico followed a similar path after its last constitutional reform.)

It is based on this new constitutional federal pact, its practice and progressive implementation, that the debate over the shape of Brazilian federalism is taking shape.

Yet most small and medium-sized municipalities still do not have staff with the minimum qualifications to meet their new constitutional demands – doing something about that will be one of the challenges for new leadership after the election.

## **Debt, taxes and equalization**

The debate on fiscal federalism gained impetus when the Fiscal Responsibility Act of May 4, 2000 (*see Federations Vol. 2 No. 3*). It takes on one of the most serious issues facing the entire country: the boundless indebtedness of the constituent units, generating difficult-to-manage public debts. The Act is intended to ensure proper governance and alters the habits of a culture with a vice for endless spending. But the fiscal adjustment required by this Act is causing serious difficulties for the sustainability of a number of states and municipalities.

In this environment, reform must be fiscal and tax-related in order to globally and completely encompass the problem of funds for guaranteeing the functioning and autonomy of the federal entities.

Fiscal equalization must be redefined in order to resolve the grave regional socio-economic imbalances. In such an environment, the existing systems for vertical transfers, such as in the fields of health and education, must be improved and better protected from possible attempts at political meddling and manipulation. As for fiscal competition, effective regulations would reduce regional asymmetries and end the fiscal "war" between and among the states.

For more than a decade Brazilians have discussed reforming the tax system. But all proposals have run up against the fact that the federal government would lose as a result of moving tax jurisdiction to the states and municipalities.

The legislative proposals and discussions put forward to date have succeeded in eliminating taxes on production with the creation of a value-added tax (VAT). This tax is only charged on the end product and has a more encompassing profile than the two already in existence (the "tax on services and circulation of goods" and the "manufactured goods tax").

Both the fiscal and tax reforms must take place without forgetting about the participation of Brazil in MERCOSUR

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**Gilberto Marcos Antonio Rodrigues** is a professor of International Law at the Faculty of Law of the Catholic University of Santos, State of São Paulo, Brazil.

(the “Southern Common Market”) and its possible membership in the Free Trade Area of the Americas (currently in the negotiating phase), entities which foster policies of fiscal harmonization.

### **Basic services and combating crime**

The themes of federalism are interconnected like the genes on a strand of DNA. In the federal structure, the redefinition of jurisdictions only makes sense if tax reform permits the creation or channelling of sufficient funds to be allotted to the budget in order to cover the anticipated or assumed responsibilities.

This second priority touches upon issues quite close to the population, and has become the touchstone of efficiency when formulating and executing essential public policies in the areas of health, education, the environment, and housing and basic sanitation.

Brazilians are very concerned about an alarming level of urban violence and organized crime. This is feeding demands for changes to state and federal jurisdiction over public security.

The greatest manifestations of violence and crime are concentrated in the cities, and yet the municipalities do not have the constitutional authority to undertake policing, except for looking after municipal property. The states, on the other hand, have two police forces, the civil and military police, whose levels of cooperation are precarious, if not non-existent, and create wasted financial and human resources.

There will likely be a serious debate on how municipalities can take on new responsibilities in this area, following the example of transit administration. The verbs “to federalize” and “to statize” exist in the Portuguese language, and mean to make the management or execution of a policy or public service federal or state-run. There is no entry in any dictionary for the verb “to municipalize” with the same meaning. However, this is one of the most challenging items on the Brazilian federalism agenda, supported by the global movement to strengthen local power in the management of areas usually run by central or state entities.

On the other hand, many argue that the investigation and sentencing of organized crime suspects should be federalized, i.e. assumed by the federal government, in order to guarantee the integrity and independence of police commissioners, prosecutors and judges, and to ensure the due legal process.

### **A lack of cooperation**

In a country with three levels of government (federal, state and, unlike many federations, *municipal*) the lack of effective institutional mechanisms to facilitate intergovernmental relations is shocking. The “fiscal wars” among states (*see Federations Vol.1,#1*), which in Brazil are destructive to regional economies, would probably be easily resolved with intergovernmental cooperation. The Brazilian reality dictates that it develop its own model in this area. The federal system is quite complex, with the Union, the 26 states plus the federal district, and 5,561 municipalities, among which there are profound degrees of socio-economic difference.

When the Union agrees to a treaty, the states and municipalities are also bound, and there are no examples in

Brazil of past resistance to this rule. Due to the growing complexity of international themes and the greater involvement of subnational players in implementing multi-lateral agreements, dialogue and intergovernmental action in this field is becoming increasingly important.

For instance, Brazil ratified the Climate Change Convention (1992) and the Kyoto Protocol (1997). But there is still no plan as to how they are to be implemented on the subnational levels. Given the non-existence of intergovernmental channels of communication, the federal government has acted randomly, in accordance with what it perceives to be its own interests.

### **States, municipalities and foreign relations**

Finally, the international relations of the states and municipalities, a phenomenon that intensified especially in the 90s in the wake of globalization and the process of regional integration, deserve to be treated with zeal. The international cities movement, driven by the Habitat Conference (UN/1996) and its developments, and the MERCOCITIES NETWORK, which encompasses hundreds of municipalities of MERCOSUR member countries, are two areas in which there might a place for increased cooperation between and among all orders of government.

There is also a potential for conflict here. An example of that is the crisis of the moratorium on the Eurobond in the State of Minas Gerais in 1999, when the federal government had to intervene to prevent the flight of capital.

In this area, there already exists an institution designed to foster cooperation. The Ministry of Foreign Affairs created the Federative Relations Council in 1997 and its role is to work closely with the states, municipalities and civil society.

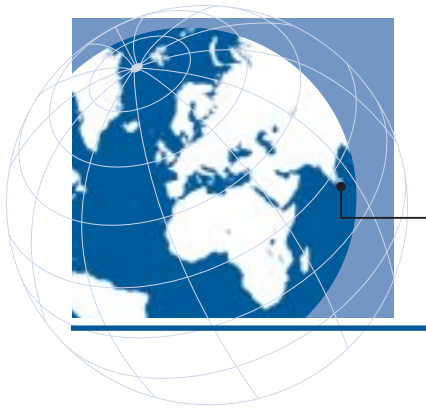
But that body is not sufficient to deal with the growing international engagement of states and municipalities. In this sense, the creation of a consultative forum and ongoing interaction of federal diplomacy could promote subnational discussion and open up people’s minds to the responsibilities that implementing an external federal policy entails.

### **A “federal culture” in Brazil?**

Confronting all of these challenges in the short and mid terms requires taking initiatives aimed at preparing future generations to better deal with and benefit from federalism. Educational institutions, especially universities and research centres, should expand to include learning about the Brazilian reality from a federal point of view. Similarly, understanding other federal systems is a valuable resource to have.

The curricula and educational programs of the Faculties of Law and Law Courses do not include the law and legislation of the states and municipalities. Yet these are the institutions that educate the majority of the executives for the three levels of government, many who work at interpreting and applying the law.

The debate on federalism reforms must stimulate and be supported by the spread of a federal culture in Brazil, using new educational resources that accurately reflect the perspectives of each of the three levels of the federation. (6)



# A new peace initiative in Sri Lanka

Can the formerly warring ethnic groups agree on an architecture of government that allows them to co-exist peacefully?

BY **RUPAK CHATTOPADHYAY**

**Peace** is one step closer in Sri Lanka.

On September 18 2002, the Government of Sri Lanka and the Liberation Tigers of the Tamil Ealam concluded the first round of formal peace talks in Sattahip, Thailand. The two parties committed themselves to establishing a Joint Task Force to oversee rehabilitation in the war-ravaged north and also set dates for the next three rounds of talks.

An event such as this would have been unthinkable a year ago. An earlier peace process in 1995, initiated by the Sri Lankan President Mrs. Chandrika Bandarnaike Kumaratunga, fell apart after the President herself became the target of a bombing.

The current peace process started with the election of the United National Front Government in December 2001. Prime Minister Ranil Wickremesinghe won office on a mandate to end the civil war. The new government initiated peace moves shortly after assuming office.

The government recognized that it lacked the ability to bring about a military solution to the conflict and the human costs of the conflict had been horrendous. Almost two decades of war cost Sri Lanka 65,000 lives and has left the country's economy in poor shape. It would not be an exaggeration to say that two decades of conflict have bankrupted Sri Lanka.

## ***Liberation Tigers hold entrenched position***

Any movement towards a final settlement would require rebuilding the confidence of the Tamil population and dealing with the Liberation Tigers of the Tamil Ealam,

popularly known as the LTTE. The north had been under sustained economic blockade for many years that had stunted economic progress and increased the population's sense of isolation from the national mainstream. The highly militarized nature of the conflict had ensured the LTTE's emergence as the de facto representative of the Tamils in northern and eastern Sri Lanka.

Indeed, most ordinary Tamils are grateful to the LTTE for fighting the government to the negotiating table. Furthermore, the LTTE controls vast tracts of land, from which it could not be evicted. The new government also

recognized that the failure of President Kumaratunga's peace efforts stemmed from her unwillingness to engage the LTTE. In short, no solution was possible without the LTTE.

For its part, despite the high price it paid in human lives during the civil war, the LTTE was no closer to achieving out-and-out Tamil independence. Its much smaller recruitment base made a war of attrition ultimately unsustainable.

Heightened scrutiny of designated terrorist organizations after

September 11 must also have been an important factor in contributing to the LTTE's decision to enter negotiations.

Prime Minister Wickremesinghe was probably speaking for both sides last February when he declared:

"We have no option but to talk, there is no alternative."

## ***Goods flow, roads re-opened***

Government controls on the shipment of goods to LTTE-controlled areas were relaxed in December last year. The signing of a Norwegian-brokered Cease Fire Agreement between the government and the LTTE in February 2002 followed this. A team of Scandinavian observers oversees ceasefire implementation. Despite reports of minor infractions of the ceasefire agreement by both sides, the agreement has brought about an end to military confrontation on the island.

***Guns, not butter: A recent rise in the price of northern produce (rice and mango) induced by rising demand in the south marks the beginning of national economic reintegration.***

**Rupak Chattopadhyay** is a program officer with the Forum of Federations.



The government's decision to de-proscribe the LTTE prior to the beginning of the peace talks has created a more conducive environment for the talks.

The reopening of the strategic A-9 highway linking Jaffna, the main Tamil-dominated city in the north, to the south has brought much needed relief to the war-weary population in the north. Food, medicines and other supplies are now flowing in both directions. A recent rise in the price of northern produce (rice and mango) induced by rising demand in the south marks the beginning of national economic re-integration.

***Some form of asymmetric devolution now seems a forgone conclusion as part of the peace settlement.***

#### **End to travel restrictions**

There is much to celebrate in the south as well.

The streets of Colombo are free of unpopular security checkpoints for the first time in a generation. Uniformed security personnel are no more conspicuous in Colombo than in any western city. Public sentiment in the country is buoyed by rising foreign investment and a resurgence of tourist arrivals since the summer.

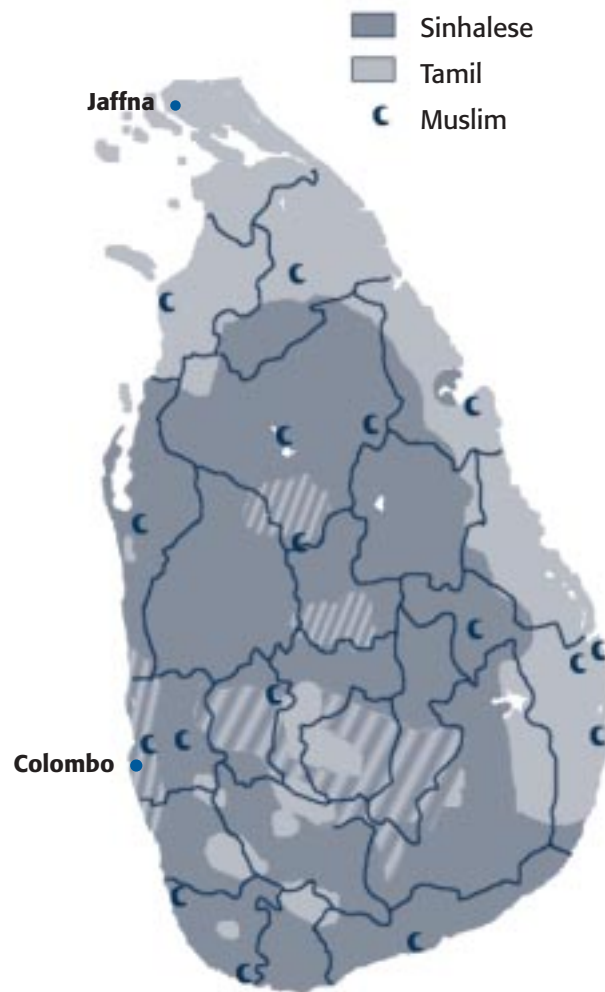
And throughout Sri Lanka, more than 100,000 displaced people have returned to their homes or are on their way.

The process of normalization has been aided by the removal of all travel restrictions on civilians. Tamils traveling to the south from Jaffna and the east are no longer required to obtain special passes or register with the police on arrival. All restrictions on travel are being lifted – with the exception of LTTE cadres who under the ceasefire agreement are supposed to register with the authorities when traveling to government held areas.

Encouragingly, people from the south have begun to travel to the north, in order to see first hand the scale of destruction. For many southerners this is their first glimpse ever of the Tamil areas. This free movement of people has contributed a great deal to a popular sentiment in support of peace.

The Norwegian government has played the key role in securing a ceasefire and getting the two parties to the negotiating table. But there are limits to what it is able or willing to do.

## ***Sri Lanka: Ethnic communities and religions***



The apparent durability of the ceasefire is encouraging. But to consolidate peace the two parties will soon have to grapple with a range of complex political and humanitarian issues. In the short term, the two sides will have to work out the modalities of reconstruction and safeguarding minority rights across the island.

Any future political settlement (interim or permanent) will have to address the concerns of these groups. While the establishment of an interim administration in the northern and eastern provinces is likely to be dominated by the LTTE, there are substantial minorities of Sinhalese and Muslims who are apprehensive.

In the longer term, the two sides will have to put in place institutions that devolve power to north and east. The two sides will also have to decide how to demobilize the LTTE's considerable armed force and how, if at all, the LTTE's administrative apparatus can be integrated into that of the state.



## More international help

The two parties recognize the challenge ahead of them and have invited international assistance. To this end, at the end of the first round of talks the parties agreed to establish a Joint Task Force for Humanitarian and Reconstruction Activities. The Joint Task Force will constitute a partnership between the Government of Sri Lanka and the LTTE, and will have responsibility for the identification, financing and monitoring of urgent humanitarian and reconstruction activities in the north and east.

The task force will operate with due participation of Muslims, who form a substantial minority in the east. The LTTE and the Sri Lankan government will jointly carry out an international campaign to raise funds for the redevelopment of the war-ravaged north and eastern provinces.

The functioning of the Joint Task Force will test the ability of the two sides to work together. Indeed, it is certain to throw up issues of jurisdiction and division of powers between two administrative centers – the sort of issues that commonly arise in devolved systems.

In recognition of the fact that any final settlement will entail a substantial devolution of powers to the Tamil community and its representatives, the Sri Lankan parties invited Canada to work on this process. Following meetings between representatives of all involved parties, the Government of Canada is drawing on the expertise of the Forum of Federations."

Following the first round of peace talks, it is already quite clear that any final political settlement will be accompanied institutional changes that devolve power asymmetrically to the Tamil areas. This means that instead of power being devolved equally to all provinces, as is the case in the United States, the Tamil provinces are likely to receive much greater administrative autonomy, as is the case with Catalonia in Spain. It is important to emphasize that any institutional model adopted may borrow features from existing federal systems but it likely to be unique to Sri Lanka.

## Sri Lanka facts

### HISTORY

- 1505 Portuguese colonization begins
- 1658 Dutch colonization begins
- 1798 British rule starts
- 1948 Gains independence
- 1947 D. S. Senanayake of United National Party (UNP) elected first Prime Minister
- 1956 UNP loses to the Sri Lanka Freedom Party, led by S. Bandaranaike
- 1959 Bandaranaike assassinated in; succeeded first by son, then his widow
- 1960 Sinhalese is declared only official language
- 1965 UNP retakes power, faces much unrest
- 1970 Ms Bandaranaike leads leftist coalition to power
- 1971 Marxist uprising; suppressed by government
- 1972 Government changes name from Ceylon to Sri Lanka
- 1976 LTTE founded, seeks separate nation for the Tamils in north and east Sri Lanka
- 1977 UNP returns to power under J.R. Jayawardene
- 1983 Violence between Tamils and Sinhalese erupt
- 1987 Indian troops intervene and enforce a peace agreement
- 1989 Indian troops depart
- 1991 Violence erupts again in with two political assassinations
- 1993 LTTE seize military base near Jaffna, leads to very bloody fighting
- 2002 At time of cease-fire, an estimated 20,000 have died in the on-again, off-again civil war

### GEOGRAPHY

- Area: 65,610 sq km - two-thirds the size of Switzerland
- Population: 19,408,000 (2001 est.) - slightly more people than Australia
- Ethnicity: Sinhalese: 74%, Tamil 18%, Arab 7%, Other 1%
- Religions: Buddhist 69%, Hindu 15%, Christian 8%, Muslim 7%
- Languages: Sinhala 74%, Tamil 18%, other 8%

### ECONOMY

- Economic sectors: Food processing, agriculture, textiles and apparel, telecommunications, insurance & banking
- Employment sectors: Services 45%, agriculture 38%, industry 17%
- Export sectors: plantation crops 20%, textiles & garments 63%
- Export commodities: textiles, clothing, tea, coconut products, diamonds, refined petroleum products, spices
- Labour force: 6.6 million (1998)
- Unemployment rate: 8.8% (1999 est.)

## A daunting challenge

Sri Lanka has historically been a unitary state. Consequently, any devolution process must address two substantive issues.

The first of these has to do with governance issues.

The parties who will ultimately share power must be provided with adequate technical advice so that they may be able to draw on the experiences of other countries when fashioning new institutions. Sri Lanka's lack of substantial experience in issues of inter-governmental relations

presents real challenges to the smooth functioning devolved or federal state. The Forum has a role to play in providing the parties with expertise on constitutional reforms and inter-governmental relations (specially on fiscal relations, jurisdictions issues and dispute resolution mechanisms). The greatest challenge before the LTTE is transforming itself from a military organization into a political party.

The second issue has to do with building public support for new institutions.

While the government and the LTTE are in agreement about the need for a substantial devolution of power from Colombo, the public may be less enthusiastic about this. No constitutional reforms can succeed without public support. Past efforts at devolution have stirred up mixed emotions across the country. Depending on which community one belongs to, the public sees devolution as either the first step towards the disintegration of the Sri Lanka, or as falling well short of minority aspirations.

It is important to provide the public with a more accurate understanding of multi-level governance and its potential to ameliorate ethnic and communal relations, that is, its potential to preserve a unified state while guaranteeing minority rights.

Between September 2 and 7, 2002, a team of international experts recruited by the Forum of Federations visited Sri Lanka to evaluate the exact nature of technical advice that the parties would require as they entered the peace talks – and to raise public awareness on multi-level governance. The team included Forum Chair and former Ontario Premier Bob Rae; academics David Cameron and Will Kymlicka from Canada and Charlie Jeffery from Britain; and former senior official of the Alberta government Peter Meekison.

The Forum's team met first with Ministers G.L.Peeris, Minister for Constitutional Affairs, and Milinda Morogoda, Minister of Science and Technology, along with officials from the Prime Minister's Office, the Peace Secretariat and the Ministry of Finance.

The team then traveled to the northern city of Vanni to meet the LTTE leadership represented by Mr.Thamil Chelvan, the head of the LTTE's political wing.


## Engaging the public

In collaboration with the Sri Lankan Center for Policy Alternatives, the Forum organized a series of public lectures and seminars in the cities of Colombo, Kandy and Jaffna. These public events allowed the team to engage members of the general public, some sections of which were hostile to the idea of devolution and/or a federal Sri Lanka.

The sessions provided the visiting group with an opportunity to address concerns about the costs and suitability of federalism for Sri Lanka and emphasize the role that devolution can play in conflict management. Based on the mission, it was clear that there was a clear public sentiment in favor of peace. Indeed, the volume of traffic on the A-9 best illustrates why peace is good for the economy and public welfare.

It was also clear that there are people who remain apprehensive about the shape of any final settlement and that the lack of any experience with multi-level governance causes many to be wary about its chances for success.

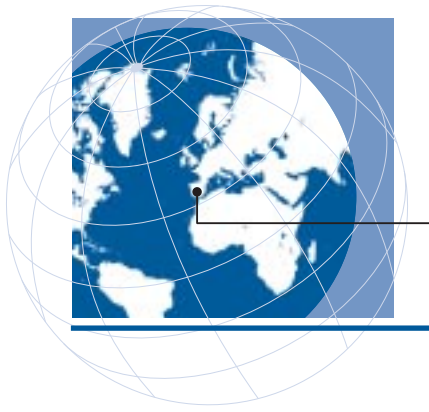
Some form of asymmetric devolution now seems a forgone conclusion as part of the peace settlement. Asymmetric devolution implies that the constituent units of a new Sri Lankan government structure would not have identical powers and responsibilities, but would assume roles appropriate to their situations. The concept also implies that there could be a system of cultural and minority rights alongside the basic constitutional and political structure – a system that might, for instance, guarantee certain cultural rights to Tamils living in Sinhalese dominated areas or Sinhalese living in Tamil areas.

One of the most pressing tasks now is to raise public awareness about the constitutional and governance options. 

**We have no option but to talk, there is no alternative.**

## Ten Months in the Peace Process

19 December 2001	LTTE announced a one-month unilateral ceasefire
24 December 2001	Government announced one-month cessation of hostilities.
15 January 2002	Government relaxed restrictions on transporting goods to North
22 February 2002	Government and the LTTE agreed to a permanent ceasefire
3 March 2002	Sri Lanka Monitoring Mission established to monitor ceasefire
8 April 2002	Jaffna-to-Kandy main highway – the A9 - reopened
10 April 2002	The LTTE leader held first press conference in 12 years
27 July 2002	First official meeting between the Government Minister and the LTTE chief negotiator in London
4 September 2002	Government lifted the ban on LTTE
16 September 2002	Preliminary talks began between the Government and LTTE



# More power for Spain's municipalities?

Spain is ready to assign more genuine responsibility to the towns and cities.

BY VIOLETA RUIZ ALMENDRAL

**The** local governments of Spain are seeking more authority. After more than twenty years as part of the decentralized system put in place by the 1978 constitution, they think the time has come for them to step forward and play a more relevant and active role. This is what the so-called "*Pactos Locales*" (Local Pacts) are aimed at. They are a set of agreements between the central government, the Autonomous Communities, and the local governments with the purpose of both redefining and broadening the authority bestowed upon local entities.

Even though such agreements are not legally binding on any tier of government, they have played a very important role in preparing the groundwork for legislative changes that have resulted in more autonomy for municipalities. The Spanish Constitutional Court has often recognized the relevant role that agreements of this sort play in the Spanish model of government (among others, in Decision 181/1988). (see Box 1)

Under the central government's 1985 Local Government Act, municipalities must be in charge of a number of functions, such as public lighting, refuse collection, sewers or pavements. Depending on their population, they are expected to provide additional services to citizens, such as public libraries, markets, or police and social services. Furthermore, municipalities are granted the possibility of offering citizens additional services in a series of matters that are actually shared between the central government and the Communities – among others, education, culture, housing, health, and environmental protection.

Municipalities are now seeking a new assignment of authority. Given the cooperative nature of the Spanish decentralised system, the only way to attain this redistribution is through an agreement between the three

## How Spanish local government works

There are two main kinds of local entities (within the Communities) in Spain: provinces and municipalities. Only the latter have authority of their own; the provincial role is merely one of coordination and "Local Pacts" concern mainly the municipalities.

Following the ancient Napoleonic division, there are 38 Provinces in Spain, each of which is formed by a number of municipalities. There are 8,101 municipalities in Spain. As many as 6,954 have less than 5,000 inhabitants and only 115 have more than 50,000. There are 54 municipalities of more than 100,000 inhabitants that make up 42% of the country's more than 40 million people.

The municipalities have access to the central government and the Communities' governments through the local government associations created to represent local interests – the most important at the moment being the FEMP (*Federación Española de Municipios y Provincias*) which represents more than fifty percent of municipalities in Spain. This association has played a most relevant role promoting the interests of local government and negotiating with the central government in the first Local Pact. It is expected that it will also play a major role in the second Local Pacts.

Furthermore, the Local Government Act of 1985 created the *Council of Local Authorities of Spain* – a statutory body whose role is to promote cooperation between the central government, Communities, and municipalities. Among other functions, it takes part in the establishment of criteria for the allocation of resources to municipalities.

Until very recently, the attention had been mainly on the Communities. The end of Franco's dictatorial regime and the subsequent passing of the Constitution of 1978 brought about an important decentralization process that ended with the creation of seventeen Autonomous Communities. The optional structure of the decentralization process – the fact that most authority is shared between the central government and the Communities and the different interest in autonomy shown by the latter – has given place to a model that can be defined as an asymmetric and cooperative federation.

The Constitution dedicates far more attention to setting the rules for the decentralization process of the Communities, than to laying out the framework for the autonomy of municipalities. Nevertheless, the autonomy of municipalities is guaranteed both in section 137, that states that, together with the other tiers of government, they "*shall enjoy self-government for the management of their respective interests*", and section 140.

The authority to define what municipalities are – and what matters they shall be in charge of – is bestowed by the Constitution upon the central government. However, Communities may also regulate this matter, which makes it, in practice, a shared matter between both tiers of government, although the Constitutional Court has – of late – broadly interpreted the central government's authority upon municipalities (in Decision 233/1999).

**Violeta Ruiz Almendral** is Professor of Finance and Tax Law at Carlos III University in Madrid.



existing tiers of government. This is what the Local Pacts are aimed at.

### ***Much power devolved in late '90s***

There has already been one Local Pact, and another one is being negotiated at the present time. The first Pact was agreed between the central government and the municipalities in the mid-nineties. As a result, between 1998 and 1999 the central government passed a set of laws that redefined and increased municipal authority. Among other changes, this Pact dealt with matters such as security in public places, transport and parking, environmental protection, tourism, health, and housing.

However, this first Local Pact could not deal with most of the matters that had been proposed by the municipalities, as they were matters under the jurisdiction of the Communities, and they did not participate in that first Pact. Thus, out of 92 proposals to broaden and redefine authority that had been introduced by the municipalities, the central government was only able to deal with 32, as the 60 other proposals concerned authority belonging to the Communities.

The moment has come to undertake this second reform of the municipalities' autonomy. The present time is quite propitious because the devolution process for the Communities has just been completed. As of January 1<sup>st</sup>, 2002, and for the first time in Spain's history, all Communities, (with the exception of the Basque Country and Navarre, that have special regimes) have the same level of authority as well as the same financing system. Therefore, they do not need to worry about obtaining further authority and can finally pay the deserved attention to the hitherto somewhat neglected needs of the municipalities.

### ***A Second Decentralization?***

The second Local Pact is being negotiated now and will actually consist of a series of pacts between the Communities and their municipalities. The central government will also play a relevant role, as its task is to define the general principles under which the new authority shall be given to Communities.

The main idea of the second Local Pact or, as it is more often referred to, the *Second Decentralization*, is that the Communities will have to give some of their authority to the municipalities. Among other areas, municipalities now seek more authority in matters such as consumer protection, sports, education, and employment.

This process will not be an easy one, as there is great variety in the needs and capacities of the different municipalities and, most of all, because the spirit of cooperation between the central government and the Communities is still not all it could be.

From a technical perspective, the legal procedure to bring about this "Second Decentralization" will be the passing of new laws by the legislative bodies of the Communities, once the pacts have been agreed to. These laws will have to abide by the central government's Local Autonomy Law of 1985, and will have to establish the procedures for the increase of the municipalities' authority.

### **Evolution of decentralization of public expenditures (% of participation of total public expenditures)**

Year	Central government	Autonomous Communities	Municipalities
1978	89	–	11
1984	72.6	14.4	13
1987	66.7	18.7	14.6
1990	59.6	23.9	16.5
1992	57	26.6	16.4
2000	51	32.5	16.5

### ***The money issue***

One last, but by no means least, aspect of the second decentralization is its financing. In principle, the funds for these new authorities should come from the Communities' funds; it will be their authority that will be transferred onto the municipalities. However logical as this may seem, there is no agreement in this regard, which has become one of the most controversial sticking points of the Local Pacts.

Municipalities have always claimed that they do not have sufficient means for carrying out their authority, although their fiscal behaviour is far better than the Communities'. In effect, it is quite paradoxical that Communities – whose powers to raise new resources are by far larger than the municipalities – are still quite financially dependent on the central government, while municipalities (with a much smaller power to raise income) have traditionally shown much more fiscally responsible behaviour.

In 2001, the resources of the municipalities deriving from their own taxes accounted for 60% of their total income; the other 40% was transfers from the central government and the Communities. In the case of the Communities, less than 20% of their resources are derived from their own taxes and income; the other 80% comes from transfers by the central government and the European Union Funds.

It is quite clear that financing is a crucial issue in any decentralization process. The Constitution recognizes the relevance of financing in the guaranteeing of the Municipalities' autonomy, and stipulates that both the central government and the Communities provide sufficient funds to them. Section 142 states that "*Local Treasuries must have sufficient funds available in order to discharge the functions assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of Central government taxes and those of the Autonomous Communities*".

The special relevance of the Local Pact resides in that it reinforces the autonomy of the municipalities, as it both increases and redefines their authority. However and most importantly, Local Pacts are an excellent example of an instrument of cooperation. In the *quasi-federal* Spanish model of territorial organisation, most authority is shared between the different tiers of government. This explains the significant role played by agreements; they are indispensable to avoid role confusion. It is not an exaggeration to say that, without cooperation, no system with shared authority can adequately function.

This reality is both the dark and the bright side of the Local Pacts. If they work adequately, they may serve to encourage a high level of cooperation among the different tiers of government. The dark side is that, without cooperation, the Local Pact is not likely to produce any result at all. ☺

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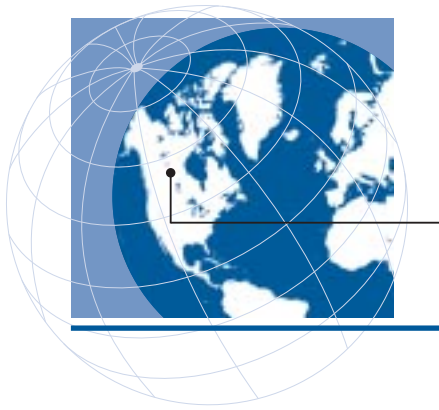
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# Canada: the struggle over health care

Can a one-man Commission offer reforms to preserve the country's universal health insurance program?

BY TIM STUTT

**Ask** Canadians what makes their country different from the United States and you'll get the same answer: medicare – Canada's universal public health system. But rising costs, declining federal government financial support, growing shortages of health care workers and longer waiting lists for treatment cast a shadow on this cherished institution.

Canadians think their health care system is in danger, and this year their anxiety burst to the surface during public debate on medicare.

In April 2001, Prime Minister Jean Chrétien appointed Roy Romanow to chair a one-person Commission to investigate the sustainability of Canada's universal health care system. Few foresaw the response the former Saskatchewan Premier's inquiry would face: Thunderous applause, loud booing, marching protestors and the occasional heckler were all part of the agenda as the Romanow Commission on the Future of Health Care in Canada held public hearings across the land.

But the Canadian government did not put all its eggs in one basket. A parallel set of public hearings on "the state of the health care system in Canada" was commissioned by the Canadian Senate (an appointed body) in March 2001, under Senator Michael Kirby. Kirby chairs the Senate committee on social affairs, science and technology, which released its interim report on health care in April 2002, upstaging the interim report of the Romanow Commission.

The next report of Kirby's committee is set for October, also upstaging the Romanow Commission's final report in November. Controversy has plagued Kirby – journalists called for his resignation on grounds of conflict of interest, citing his involvement in Extencicare, an owner of nursing homes and other health care facilities.

## Health Care: Priority No. 1

As Canadians await nervously the November 2002 release of the Romanow Commission's final report, opinion polls show attitudes towards their health care system have soured.

Canadians have a preoccupation with health care as an important public policy issue. A Communication Canada poll of more than five thousand Canadians conducted between April 25 and May 13, 2002 found that 93 per cent of those surveyed gave health care "high priority". This is the highest interest rating of any issue – ahead of national security in the wake of the September 11 terrorist attacks in the United States, unemployment, the state of the economy, taxation, public debt or any other problem.

**Tim Stutt** is an Ottawa-based writer and public affairs consultant.

## Commissioner Romanow:



**can he save the system?**

Another Canadian preoccupation is equality of access to health care – regardless of ability to pay. A Conference Board of Canada analysis of Canadians' socio-economic values from 1981 to 2001 noted Canadians continue to support universality for health care. The same survey reported that 71 per cent of respondents said the quality of care they receive is good.

Yet the same Communication Canada survey demonstrates Canadians are more inclined to believe their health care system is in trouble. The poll says 64 per cent of Canadians believe the health care system is in poor shape overall, versus 30 per cent of respondents who say more money alone would solve its problems.

## Federal influence via cash

Canadian health care does not form one national system –nor is it delivered exclusively by the public sector (see *Lazar in Federations, Special Triple Issue, Summer 2002, pg 35*).

Health care in Canada is predominantly financed by personal and corporate income taxes and is delivered primarily by private individuals and institutions.

The Canadian Constitution provides that the provinces are responsible for health. As a result, medicare is best described as an interlocking set of ten provincial and three territorial health insurance plans that provide access to universal, comprehensive coverage for medically necessary hospital, in-patient and out-patient physician services. Together these plans accounted for the largest share of a total of \$82.5 billion CDN in health expenditures or 9.3 per cent of Canada's Gross Domestic Product in 1998.

Since the 1950s the federal government has influenced the evolution of health care in Canada via financial transfers to provincial and territorial governments. These transfers were intended to help the provinces and territories provide the same health coverage across Canada.

## Five principles for the whole country

In 1984 the federal government adopted the *Canada Health Act*. This legislation specifies that provincial health insurance plans receiving federal funding must abide by five principles. Provincial plans must:

- 1) provide universal coverage
- 2) cover all "medically necessary" services
- 3) be publicly administered
- 4) provide portable coverage that can be used outside the province
- 5) not charge user fees or allow "extra-billing" by physicians



At the same time the nature of federal transfers changed in a way that ensured tension between federal rules and provincial responsibility. During the 1950s and 1960s the federal government transferred conditional grants to the provinces and territories on a roughly fifty-fifty cost share basis for specified insured health services. In 1977 the federal government replaced these cost sharing arrangements with per capita transfers known as block funding.

From 1977 to 1996 the federal health care contribution was based on a uniform per capita entitlement that was adjusted annually according to changes in Canada's Gross National Product. Block funding transfers took the form of a tax transfer and cash payments.

### **Cuts in federal cash**

With the arrival of block funding, federal health care transfers became conditional solely on provincial and territorial compliance to the principles of the *Canada Health Act*. Since they were no longer tied to spending on hospital and physician services, the provinces and territories had the flexibility to invest in other approaches to health care or to expand coverage for supplementary health benefits. However, block funding also left the provinces and territories vulnerable to changing federal priorities and growing financial pressures.

In response to economic uncertainties and a mounting federal deficit, the federal government unilaterally changed the formula used to calculate block funding on several occasions during the 1980s and 1990s. Lower total health care transfers to the provinces and territories provoked angry responses from their political leaders.

This trend continued during the 1996-97 fiscal year as the federal government consolidated its contribution to provincial and territorial health and social programs in a new single block transfer, the Canada Health and Social Transfer (CHST). Federal funding is transferred to the provinces and territories as a combination of cash contributions and tax points. Tax points represent reductions of federal taxes to give provinces more room to levy their own taxes.

### **New century, new squabbling**

The signing of a Health Accord in September 2000 between the federal, provincial and territorial governments has not halted the squabbling over health care financing, even though the Accord provides a significant increase in funding to the provinces and territories from 2000 to 2004.

The federal government doubts that the provinces and territories devote all health care fiscal transfers to health care. Some federal politicians have even accused their provincial counterparts of using the transfers to help finance provincial tax reductions.

As for the provinces, they urge the federal government to go beyond the Health Accord to restore the health care transfers that it cut during the 1990s. They argue the federal share of total health care spending is now only 14 cents on the dollar, down from 50 cents in the 1960s. The federal government replies the 14-cent figure is lower than it actually is.

### **A fiscal necessity: reform**

Health care continues to gobble up an ever-increasing share of provincial and territorial budgets. For example, last December the Canadian Institute for Health Information predicted the increase in provincial and territorial government spending on

health care would total 7.9 per cent for 2001. And in their 2002-2003 budgets the provinces have budgeted from five to ten per cent more funding for the health care line item. In contrast the Canadian economy grew only by 1.5 per cent in 2001.

A recent report from the province of Alberta included a call to increase the role of private, for-profit health care delivery under certain circumstances. Alberta Premier Ralph Klein responded that the province would not wait for the release of the Romanow Commission's final report next November in order to start implementing his own report's recommendations.

### **Political posturing, public response**

A June 2002 release of the results of a Romanow Commission public opinion focus groups study showed Canadians want increases in public funding for health care, not only by redirecting resources, but also from tax increases.

But the study also shows Canadians would place strict conditions on any tax increase. They want better accountability from governments, health care providers and users. They want greater transparency about where the money goes and its impact. And they want additional taxes to be earmarked for health care.

At the same time a Romanow Commission discussion paper released in September 2002 shows that citizens launching legal challenges under the Canadian Charter of Rights and Freedoms may play a crucial role in the future of the country's health care.

The paper says it may be possible to launch a charter case over the denial of access to private health care to ensure the right of timely treatment. Or the Charter of Rights could also be used to argue for an even broader public health system.

Finally, Prime Minister Chrétien's announcement in August that he will leave office in February 2004 has added a further element of intrigue to the mix. Since making his retirement plans public the Prime Minister has hinted that fixing Canada's health care system would be part of his political legacy. But his Finance Minister – and one of his potential successors – has indicated there may be little new federal funding for health care in the short term.

### **What new form for medicare?**

The Romanow Commission is caught in a vice grip of high public expectations, mounting financial pressures, inter-governmental fighting and political intrigue.

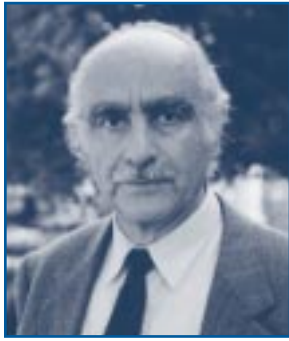
In his February 2002 interim report Roy Romanow defined four approaches on what to do about health care:

- more public investment
- asking Canadians to bear more of the costs personally through user fees and other means
- increasing private sector involvement
- and reorganizing service delivery to provide integrated care

But with some pushing for greater private sector participation and others pulling to preserve the universal character of the system it doesn't look like a one-size-fits-all solution will be very easy, or even possible.

As Romanow himself put it:

"In reality, it is doubtful that any one perspective, however logical or persuasive, provides a complete solution for our health care system." (6)



# *the* **Practitioner's** *page*

**Lellos Demetriades of Cyprus**

## **A federal constitution for Cyprus?**

**Cypus** is a prime candidate to become a member of the European Union. Turkey is also seeking to join the EU. Their joint aspirations may provide impetus for a constitutional resolution of the island's chronic conflict – a solution that could very well entail creating a federal structure for Cyprus.

Forum of Federations Senior Editor Karl Nerenberg interviewed Lellos Demetriades, former Mayor of Nicosia, in St. Gallen, Switzerland this August, at the International Conference on Federalism 2002.

---

**Federations:** When you were the mayor of Nicosia, what powers and functions did you have?

**Demetriades:** They are the usual powers and functions of Mayor. You have to deal with everyday affairs, the roads, the lighting, keeping the town clean, town planning, and things like that. Except that on top of that, in addition to the ordinary headaches that a mayor has today – you know: clean atmosphere, environment, that kind of thing – on top of that I had to deal with a divided city. That is a city where the line's drawn right across the heart of the city, across the center of the city, dividing it into two parts and there is no communication between the two. So everything stops at the border and in order to proceed further you have to make special arrangements and if they work well: good. If they don't then you're in trouble.

---

**Federations:** Were you mayor of both parts of the city?

**Demetriades:** Well, legally, theoretically if you wish, I was the only mayor of Nicosia. There can be no other mayor because we don't recognize... Not 'we', I mean not 'we the Greek Cypriots' or whatever. The rest of the world except Turkey does not recognize any other state in Cyprus except the Republic of Cyprus.

***For the first time in our history of struggling to solve the problem of Cyprus, we at long last have one great power supporting us, that's the European Union – because it suits their purpose. We have an ally because a lot of people really are fed up with the situation . . . and the great powers that have always played an important role in this kind of problem, they really think that they should do something about it.***

---

**Federations:** But did you actually have authority to administer the Turkish half?

**Demetriades:** No, no. *De facto* I did not. And I was mayor of course from 1971 to 2001. So during that period the city was partly divided at the beginning but then at the very end after the invasion in 1974 there was something like an Iron Curtain, you know, no communication at all.

---

**Federations:** How was the Turkish part of Nicosia administered?

**Demetriades:** Well, under their own rules of administration they had elections and they elected a

person who was called the mayor of that part of Nicosia but of course, again, there was no legal recognition of that.

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**Federations:** Did you know him?

**Demetriades:** I got to know him and I think we liked each other very much. Of course we had the difficulty with who is he and who is me. So we decided to do away with titles and say that he represented the Turkish civil community of Nicosia and I represented the Greek community. But we all belonged to one town and if we really liked our town we had to do something about it in relation to common services.

---

**Federations:** You're at an international conference on federalism. What is your interest in federalism?

**Demetriades:** What is now burning us all is what will happen before the end of the year. Why before the end of the year? Because it seems that at the end of the year the European Union will have to make a decision as to whether we enter or not. We are ready to enter. In fact, we are number one ahead of all the other candidate countries and the only thing, which worries us and worries also the European Union is the position taken by Turkey that if European Union proceeds unilaterally with us and accepts Cyprus as a member then they will do all sorts of terrible things.

I don't know what exactly they intend to do but said they will make life very difficult. Not for us only but for the international community. So there is a problem, there is not much hope, I must say, that the problem will be solved. I mean the "Cyprus problem" so to speak. But on the other hand I have a feeling – because of the fact that for the first time in our history of struggling to solve the problem of Cyprus, we at long last have one great power supporting us, that's the European Union – because it suits their purpose.

We have an ally because a lot of people really are fed up with the situation, including the Cypriots and because there is too much trouble in our part of the world and the great powers that have always played an important role in this kind of problem, they really think that they should do something about it. And without some kind of assistance from these powers I don't think anything will be done.

Now in my mind of course when I say assistance I mean that they would not force us to say, "Yes, the Turkish-Cypriot minority of 18% are entitled to have a cessation from the Republic of Cyprus and form their own independent state and all that." Nowhere in our

discussions was it said that look here you just start having two states out of one because there is a minority then the motherland is 40 miles away and for their own interest they want to have a separate sort of state. Short of that, we are ready to give the minority of 18% all sorts of safeguards, liberties, anything that any country has in the European Union – because we Cypriots want to go in. Greece is in. Turkey wants to join the EU, so why not accept some kind of a European Union country constitution? We are ready to accept it.

---

**Federations:** Would you expect aid from the European Union to help you write a constitution suitable to Cyprus' needs or would you be looking at the constitution of a particular federal country such as Belgium or Germany?

### **The Future of Cyprus**

*Cyprus was ruled by the Ottoman Empire from 1571 until 1878, when it was transferred to British administration by the Congress of Berlin. International negotiations in Zurich and the London Conference in February 1959 led to the Cyprus Constitution of 1960, which included a form of power-sharing between the Greek Cypriot and Turkish Cypriot communities. In 1974, a failed coup attempt against the Makarios government in Nicosia was cited by Turkey as grounds for military intervention. Turkish troops then occupied 37 % of the island, where the Turkish Cypriots have since formed the Turkish Republic of Northern Cyprus, which is recognized only by Turkey.*

Greek Cypriot proposal for a federal solution, on the Government of Cyprus website:

- [http://www.pio.gov.cy/docs/proposals/proposal1989/proposal1989\\_main.htm](http://www.pio.gov.cy/docs/proposals/proposal1989/proposal1989_main.htm)

Turkish Cypriot proposals for a two-state confederation, on the Turkish Ministry of Foreign Affairs website:

- <http://www.mfa.gov.tr/grupa/percept/IV-3/dodd.htm>

Confederation proposal of Turkish Cypriots:

- <http://www.north-cyprus.net/trnc/negotiations/confed.htm>

"Reuniting a divided island: Cyprus, north and south", *Le Monde Diplomatique*, April 2002:

- <http://mondediplo.com/2002/04/09cyprus>



**Demetriades:** I wouldn't go as far as saying that we shall adopt completely the constitution of Germany or Belgium or whatever, no, because each case has its own particular problem, peculiarities, the same you have to adjust it, yes, but you cannot depart from basic rules.

And one basic rule is that yes you can have a federal constitution and the federal government could be loose and not having too much power and all that, fine, but it must not be two independent states getting together to form another one. No, that we cannot accept and in fact there is no such precedent in any European constitution that they mention, even the constitution of Belgium.



**The divided city of Nicosia.**

**Federations:** Imagine that you are trying to develop a constitutional framework on a federal model for Cyprus. One difference with Belgium and many other countries is there is a great difference in numbers that you have over 80% Greek and under 20% Turkish. What kind of guarantees do you have and how do you make them practical?

**We in Cyprus, the Greek Cypriot side if you wish, we are ready to accept the principles prevailing in Europe about this kind of constitution, a federal constitution, Belgium in particular. But not to have something different which will be a monster. I mean an unknown creature, a monster of constitutional – federal constitutional law.**

**Demetriades:** There are many ways. First of all it's the constitutional guarantees that beyond that there is the guarantee of other nations. We would be prepared for example to have some kind of guarantee from the United Nations or from a number of countries. I mean we don't want to do any harm, I mean real harm to the minority. We do not have this in mind. But remember the majority has also rights.

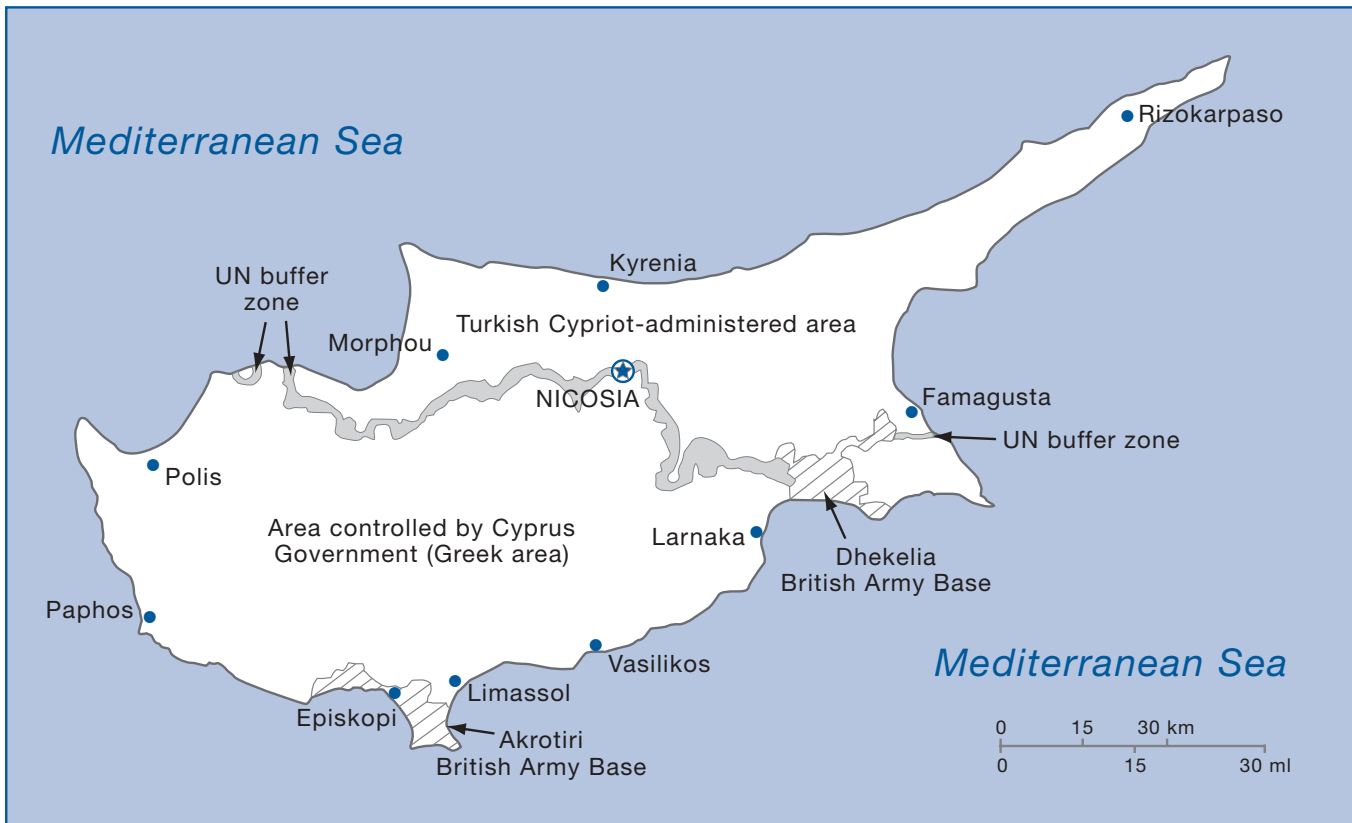
At the end of the day you cannot change the majority into a minority and vice-versa.

**Federations:** Would all the division of responsibilities and powers have to be based on a more or less per-capita basis? Or would you consider, say, having the equivalent of what you have in many federal countries of a senate, where the two sides are equally represented despite the difference in population?

**Demetriades:** Yes, we are prepared to have... to reach that stage too. Under the principles, which prevail now in Europe, it must be a workable constitution. It must not be full up of deadlocks and nobody knows what will happen. It's extremely difficult to describe to you. You know it very well, more than me, the little details and whether it will be majority vote – it cannot be majority vote for everything. For very important matters it has to be a special majority or other checks and balances. I am ready for it and I repeat that. We in Cyprus, the Greek Cypriot side if you wish, we are ready to accept the principles prevailing in Europe about this kind of constitution, a federal constitution, Belgium in particular. But not to have something different which will be a monster. I mean an unknown creature, a monster of constitutional – federal constitutional law.

**Federations:** So, how do you proceed now? What process would you use to proceed to try to get a serious discussion aside from the support of Europe?

**Demetriades:** You have to agree on the principles. If you do not agree on the principles you cannot go along to a draft. So before the end of the year at least we agree on the principles and then it will not be that



***You have to agree on the principles. If you do not agree on the principles you cannot go along to a draft. So before the end of the year at least we agree on the principles and then it will not be that difficult to sit down and draft a constitution on the basis of these principles.***

difficult to sit down and draft a constitution on the basis of these principles.

**Federations:** Would you be interested in some point at looking internationally and trying to gather some expertise in the historic management of this kind of political structure – a federal political structure – once you get past the first initial stage of an agreement?

**Demetriades:** We have been seeking and we did secure advice from constitutional lawyers and draftsmen and we have them on a sort of permanent basis and the staff of the Secretary-General who is dealing with our problem does in fact include people who have this knowledge to deal with this particular matter.

The problem is that the political decision is not there yet and if nothing happens towards that direction I'm

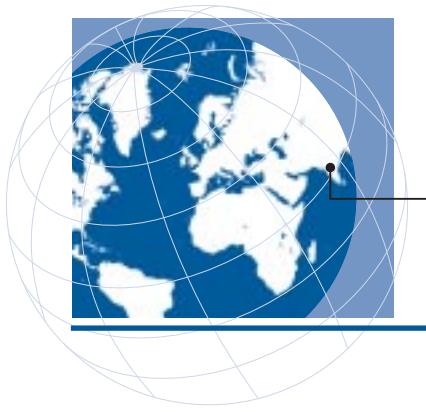
afraid that the Cyprus problem will go on and on. Most probably we shall be accepted in the European Union. The Turks will proceed to do what they want to do. There is no other way for the time being. So it doesn't look very optimistic on the horizon, but this I've said before: there are a lot of special circumstances now. ... So we hope for the best. ☺

### ***Reuniting an island – problems with solutions?***

**The Green Line** – line dividing Cyprus between the Turkish and Greek areas of Cyprus, patrolled by UN Peacekeeping troops. There is one checkpoint in Nicosia, at the Ledra Palace, where tourists can cross from Greek Nicosia to Turkish Nicosia for a day.

**The 24 empty seats in the legislature** – today 24 of the 80 seats in Cyprus' House of Representatives stand empty - they were set aside for Turkish Cypriots but they have been unfilled because Turkish Cypriots refused to run for them in elections.

**Meetings without titles** – Rauf Denktash, who holds the title of President of the Turkish Republic of Northern Cyprus, an entity recognized only by Turkey, and Glafcos Clerides, President of Cyprus (though he controls only the Greek part), met recently for the first time in decades, but only on the condition that no titles were used by either.



# Federalism rides the rails in India

India's states and central government battle over railway jobs at one of the largest passenger rail carriers in the world.

BY *PRASENJIT MAITI*

**Indian** Railways were founded 150 years ago under the British Raj to strengthen "the Jewel in the Crown", as the British then called India. Today, Indian Railways has 100,000 km of track, a workforce of 1.65 million, and carries 13 million passengers a day. Yet 55 years after independence, Indians are struggling over the future of this jewel.

The Government of India's controversial decision to add seven new railway zones on October 1, 2002, to the existing nine zones has provoked renewed tension between neighbouring states. The decision also raised tensions between the states and the "center", as Indians call their federal government. Add a Railway Minister, Nitish Kumar, whose home state of Bihar stands to gain from the decision, and a Marxist state government in West Bengal that stands to lose, and you have a recipe for conflict.

The tension has even threatened the stability of the National Democratic Alliance government, led by the Bharatiya Janata Party. The Trinamul Congress, a regional party in the ruling coalition in Delhi from the state of West Bengal, protested strongly against the Railway Ministry's decision to split Eastern Railway. At present, Eastern Railway comprises the states of West Bengal, Bihar and Uttar Pradesh. The Trinamul Congress threatened to leave the coalition government if the status quo was not restored.

## ***The decision to split***

The decision to add seven new zones goes back to 1996. Then railway Minister Ramvilas Paswan, an MP from Hajipur in North Bihar, said it was necessary for the sake of "efficiency and decentralization". This was during the short period of the unstable United Front coalition government and the decision was not implemented at the time.

The Trinamul Congress alleges that the BJP and the Samata Party revived this long-forgotten decision to win votes in the forthcoming Bihar state elections.

Bihar would gain from the split, as railway revenues earned from coal freight would now be sent to Hajipur, a city in Bihar state and headquarters of the new zone. Calcutta, the metropolis of West Bengal state, would lose. After a mass transfer of railway employees from Calcutta to Hajipur, the Government of West Bengal would lose both sales and commercial taxes. The West Bengal economy would no longer have those railway workers spending their wages in Calcutta. The Trinamul Congress leader and ex-Railway

## ***Indian Railways: a giant at 150***

- Largest railroad network in Asia
- Second largest in the world under one public sector agency
- 63,000 km of routes (110,000 km of track)
- 8,300 locomotives
- 39,000 coaches
- 350,000 freight cars
- 1.65 million employees
- 11,000 trains a day, including 7000 passenger trains.
- 376 million tones of freight traffic in 1992-93
- 4.2 billion passengers in 1992-1993.
- 13 million passenger trips daily.

Minister Mamata Banerjee accused Indian Prime Minister Atal Behari Vajpayee of having "ditched" West Bengal in the process of creating the new railway zones.

However, the BJP and its more prominent allies, such as Railway Minister Nitish Kumar's Samata Party, where the policy to split the zones originated, said they would not yield to what Kumar called Mamata Banerjee's "politics of blackmail". It should come as no surprise that Kumar is from Bihar state.

## ***Growing opposition***

The Communist Party of India (Marxist) and its ruling Left Front allies in West Bengal called the decision "more political than administrative". The Left Front claims that federal decisions such as merging the revenue-rich Dhanbad division of the Eastern Railway into a new zone would lead to considerable revenue losses for West Bengal. Such a move would worsen fiscal relations between the Union and the state governments.

The two left wing parties also severely criticized the decision to transfer both the Eastern Railway and South Eastern Railway headquarters from Calcutta.

The Chief Minister of West Bengal, Buddhadeb Bhattacharya, requested both Railway Minister Kumar and the Deputy Prime Minister, Lal Krishna Advani, to reconsider their decision. An all-party delegation also met with Prime Minister Atal Behari Vajpayee at New Delhi to plead their case. Mamata Banerjee even called a 24-hour Bangla Bandh (strike), protesting against the Center's "stepmotherly attitude and passivity of the state government."

The parties opposed to the split are divided. The Communist Party of India (M) rejected Mamata Banerjee's call for a

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united struggle against the coalition government, demanding Banerjee should first quit the governing coalition. The Communist's West Bengal State Secretary Anil Biswas said:

"Mamata Banerjee should first make her stand clear and come out of the coalition."

He added that Banerjee had earlier declined to join the Left parties when a joint delegation from West Bengal went to negotiate with the Prime Minister about the Eastern Railway split.

### ***Rolling on deficits***

A boost to opposition to the split came when six former Indian Railway Board chiefs requested that Prime Minister Vajpayee abort his government's decision to create the seven new railway zones. They called the decision to create the new zones "a populist, parochial and political overture," and predicted it would be "an operational debacle, a financial disaster and an administrative blunder." The former railway chiefs also expressed wonder at how the Indian Railways could possibly afford additional liabilities when it uses 60 percent of its revenues to pay salaries to 1,600,000 employees and spends 102 rupees for every 100 rupees it earns.

And Eastern Railway's books show that it has the largest losses in the country on a percentage basis, with an operating ratio at 129:100 - which means it spends 129 rupees for every 100 rupees it earns. Such losses have been called signs of public sector misgovernance, something that India's second generation of economic reforms is supposed to eliminate.

### ***Zones for political reasons?***

Moreover, even the Fifth Central Pay Commission, a board established by the United Front Government and recently criticized for recommending salary scales that were too high, recommended that Indian Railways reduce its manpower by 400,000. The former chiefs added:

"Since 1948, only three new zones have been created, one for strategic reasons (Northeast Frontier Railway) and the other two for operational reasons, but none on linguistic or political grounds."

But the former chiefs' arguments didn't impress Railways Minister Kumar. He says West Bengal has no reason to complain.

"It is not a state-centric division. Dhanbad includes four states — Jharkhand, Bihar, Uttar Pradesh and Chhattisgarh. Moreover, smaller zones mean higher efficiency," he explained.

In addition the headquarters proposed for Eastern Railways' new zone — Hajipur, a city of about 21,000 inhabitants — was

unknown even to senior railway staff. When Eastern Railway Financial Adviser and Chief

Accounts Officer, B.K. Banik, was asked about the location of Hajipur, he had to check his railway map first!



**150<sup>th</sup> Anniversary train**

Some have raised the question of the worsening law and order situation in Bihar, where there has been kidnapping of doctors and rigging of elections. How can India decentralize its railway administration and reflect the Indian ethos of multicultural and cooperative federalism without a safe and secure environment for the new railway zone headquarters?

The junior federal minister of railways, Bandaru Dattatreya, argues that the split would not undermine the interests of any state. "There is no need to politicize the issue of bifurcation. If at all there is any financial burden, it will be on the railways and not the individual states," he added.

This debate does not just break down on party lines. In a number of cases different state branches of the same party have opposing positions on the dispute. In the state of Jharkhand, the local units of both the BJP and the Samata Party sharply opposed the transfer of revenue-rich Dhanbad and Katihar divisions of Eastern Railway seeking to protect their own states' economic interests. In Bihar, however, those same parties *supported* this transfer (with an eye, no doubt, to the forthcoming state legislative assembly elections).

### ***Implications for the future***

The decision to split Eastern Railway has exposed the simmering tension that underlies India's federal politics in the new millennium. Local aspirations often run counter to policies of the central government. When making major decisions, party leaders are expected not only to act in an objective manner but also to be seen conducting public affairs objectively. Even veteran statesmen like Vajpayee or Advani more often than not appear to falter at this critical juncture. As a result, transparency as a value in federal politics has suffered in India.

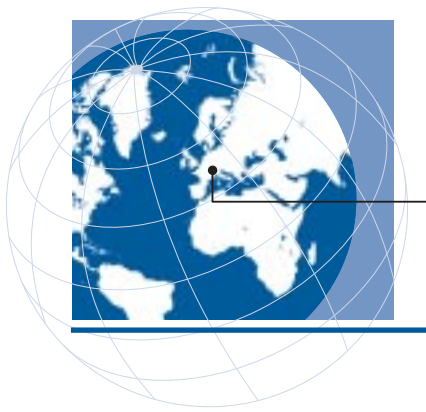
If Indians want stability in government, regional parties such as the Trinamul Congress and the Samata Party will have to restrain their practice of jeopardizing coalitions over a single issue. They will have to remember that coalition members also have responsibilities and that they will be held accountable for the failures of government even if their party wins a tactical victory in the heat of the moment.

For their part, national parties such as the ruling BJP could draw critical lessons in federal politics from this controversy. They need to improve their leadership and organizational skills in such areas as dialogue and conflict resolution. (6)

### ***Safety on Indian Railways***

- Accidents decreased from 2131 in 1960-61 to 396 in 1997-98.
- An accident rate of 0.57 per million kilometers traveled in 1996-97
- 700 -800 fatalities annually.





# COMMENT: Swiss reform and the long tradition of federalism

BY RENÉ RHINOW

**In** Switzerland, no one has any doubt about the need for federalism and the reasons for it. It is the *raison d'être* of this unique federation of different linguistic, cultural and religious communities.

Recent and ongoing reforms are understood as an attempt to strengthen and update federalism and, in particular, to enhance the status and weight of the lower-tier members. The oft-quoted remark from 1944 of the constitutional lawyer Werner Kägi is as true today as ever: "Switzerland will be a federation or it won't be."

The famous anarchist Pierre Joseph Proudhon (1808-65) prophesied in the first half of the nineteenth century that "the twentieth century will begin the era of federations or else humanity will again launch into a thousand-year purgatory." Proudhon seems to be right if you consider primarily the second half of the twentieth century and both the trend toward federal states in the continent of Europe and the increasing decentralization of the formerly centralized unitary states.

## The foundations

The history of Switzerland is marked by a process of evolution from inter-state alliances to an alliance of states and finally a federal state. Since the actual founding of the country in 1848, federalism has been a cornerstone of the Swiss political system, alongside specifically entrenched democracy. The federal system has been and continues to be seen as an adequate response to the juxtaposition and even jumble of different linguistic and cultural communities. These communities include different religious denominations, mountainous, valley and flatland regions, cities, built-up areas and rural areas, and various deeply-rooted social and political groups, all of which have had to be and will have to be accommodated in the federal state.

Federalism is also seen as a particular manifestation of the division of powers, which helps to preserve diversity and protect political, cultural, linguistic, and regional minorities in general. It is also closely related to the democratic principle since the ideal of citizen participation is more easily achieved in small geographic areas.

Like other federal states, Switzerland has two faces: integration and centralization on one side and the preservation of autonomy and diversity on the other. This diversity is fostered in a commonwealth that is already quite small, and the 26 cantons again differ quite sharply in their histories, sizes, languages, religious denominations, economies, geographies, combinations of urban and rural areas, and internal political differences. Switzerland is therefore a "land of minorities" in

which all its citizens are part of majorities and minorities, depending on the perspective, and have therefore developed sensitivity to both the need to protect minorities and the need to respect the majority.

Swiss federalism has therefore developed from the bottom up. From a historical standpoint, the member states are homelands that emerged or further congealed after the French Revolution. The development of Swiss federalism therefore bears a certain similarity to European integration, not historically, of course, or according to geographic size, but in its development of principles and systems.

## Constitutional reform

On January 1, 2000, Switzerland adopted a new, updated Federal Constitution. Strengthening federalism was a major concern in the reform process. The intent, among other things, was to lend expression in the constitution to the basic pillars of the federal system in a way that was clear and easily understood by the citizenry. The guiding principle (or renewed philosophy) of federalism was, on the one hand, cooperation between the federal government and the cantons as well as among the cantons, and on the other, tripartite federalism with the three constitutional levels of the federal government, the cantons and the municipalities.

The borders of the individual states in the federation are not identical with either the open borders of the linguistic and cultural communities or the borders of the various religious denominations. The strengthened federalism of the new constitution was intended, not least of all, to alleviate the discrepancies between the linguistic, cultural and denominational borders and the various internal territorial borders with deep historical roots.

It would be misguided to divide Switzerland into simple linguistic regions. The bilingual cantons of Bern (with the southern Jura), Fribourg (Freiburg), Valais (Wallis) and Graubünden are important bridges among various parts of the country.

## Cantonal autonomy and self-rule

The cantons are generally considered states because they have all the characteristics of a democracy and a political system with a Constitution, a legal system, a parliament, a government, justice, civil rights and (cantonal) political parties. Their autonomy includes organizational and financial autonomy, autonomy in the tasks they address, and (limited) "implementation autonomy," all financially supported by horizontal and vertical equalization payments.

The term "implementation autonomy" (*Umsetzungsautonomie*) appears in the Federal Constitution (compare to Art. 46) and should be preferred to "executive federalism"

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**Réne Rhinow** is a professor of parliamentary and administrative law at the University of Basel.

(Vollzugsföderalismus). In view of the considerable increase in federal responsibilities, it is more and more important to provide and guarantee the cantons enough latitude to shape the implementation of federal legislation. Implementation is therefore much more than simple execution. It includes independent shaping of policy.

### **“Assumed jurisdiction” of cantons**

According to the Constitution the federal government carries out the tasks assigned to it by the Federal Constitution, while the cantons freely decide which tasks they wish to assume control over within the framework of their responsibilities. The new Federal Constitution lists the federal jurisdictions in a special chapter, together with the objectives and constitutional and legislative tasks (Art. 54-125).

The chapter on jurisdictions was written by borrowing at times from the old text and occasionally even adopting it word for word. However, great importance was attached to producing a text that was not too dense and that spelled out the jurisdictions, materials and objectives without a plethora of detail.

The federal government therefore controls the assignment of national tasks through its constitution. It has the competency to take over competencies (the so-called “competency competency”). The Federal Constitution therefore also contains powerful tools to help the cantons defend their interests appropriately.

### **Participation**

Participation in the federal government, in a spirit of participatory or cooperative federalism, is especially intense in Switzerland. It can be seen in the *Ständerat* or upper chamber of Parliament, which is elected by the people within the various cantons (Art. 150, 3), as well as in the requirement for a popular majority and a majority of the upper chamber for all constitutional changes, for certain new international treaties, or for the emergency legislation suspending the constitution (Art. 140, 1). Since every new federal jurisdiction requires a constitutional change, none can be created without the approval of majorities in a majority of the individual cantons.

Member state participation also involves the consultation procedure (Art. 147), the cantonal initiative for changes to the constitution (Art. 160, 1), and the right of eight cantons to demand a popular referendum on legislation, certain international treaties, and emergency federal legislation (Art. 141, 1; optional referendum).

Switzerland has placed importance on this participatory federalism, and this importance is increasing. Various forms of so-called “conference federalism” have emerged, especially conferences of the directors of cantonal departments and – for more than ten years now – the conference of cantonal governments.

### **Cooperation**

The multi-faceted, mutually supportive cooperation between the federal government and the cantons cannot be reduced to the old description of a “relationship of trust.” It is based on their increasingly intertwined responsibilities and the realization that effective application of federal policy requires both the participation of the cantons, acting on their own behalf, in the implementation of federal policy and mutual cooperation in the entire policy-making process, that is, from the planning stage to execution.

The Federal Constitution puts particular emphasis on the importance of dialogue and cooperative federalism. The new “partnership article” (Art. 44) obliges the federal government and the cantons to collaborate and to consider and support one another.

### **Tripartite structure, equality, equal treatment**

The new constitution expressly entrenches the municipalities and their autonomy. It obliges the federal government to consider the possible effects of its actions on the municipalities, as well as on the cities, built-up areas, and mountainous areas (Art. 50). The federal government thereby commits itself to a state with a tripartite structure consisting of the federal government, the cantons and the municipalities. It lies within the jurisdiction of the cantons, however, to determine the structure of their own cantonal government and to demarcate the autonomy of the municipalities.

In view of the large disparities in the size of the cantons (Zurich has 1.2 million inhabitants and Appenzell-Innerrhoden 15,000 inhabitants; Basel-Stadt is 37 square kilometres in area and Graubünden 7,000 square kilometres), this constituent element is anything but obvious. The equality ideals of the constitution are not reflected, however, in the actual influence that various cantons exercise over federal policy.

The constitution contains a rule expressly stating the supremacy of federal legislation over cantonal (including municipal) legislation (Art. 49, 1). The federal government is entrusted with ensuring that the cantons observe federal law (Art. 49, 2).

The federal government is responsible for guaranteeing the cantonal constitutions, that is, approving them if they comply with federal legislation and meet certain minimum requirements in regard to democracy and the rule of law (Art. 51). It protects the constitutional order in the cantons and their continuing existence and territorial integrity (Art. 52/53).

### **Ongoing reforms**

Switzerland currently finds itself in another stage in the reform of federalism: the redesigning of equalization payments and tasks. It is based for the most part on four pillars:

- the disentanglement of funding and tasks
- new forms of cooperation and funding between the federal government and the cantons
- substantially increased inter-cantonal cooperation
- burden-equalization and transparent financial equalization in the narrow sense, which distinguishes between the equalization of resources and burdens

In addition, the inter-cantonal legislation is supposed to be strengthened to stop what the cantons consider to be a disturbing tendency for major functions to be lost to the federal government. A government bill to this effect is currently before Parliament.

The heart and soul of federalism has been and remains federalism, as it really exists – a positive view of unity and diversity, tolerance and differences, autonomy and decentralization. Of fundamental importance is the will of the people to be together and to be different and to see this as strength.

It is incumbent on the constitution to create the conditions in which living federalism can become and remain real in the service of peace, freedom, the protection of minorities and democracy. 6

***The Forum of Federations, an international network, seeks to strengthen democratic governance by promoting dialogue on and understanding of the values, practices, principles, and possibilities of federalism.***

The **Forum of Federations**, created in 1998, is a non-profit, international organization, based in Ottawa, Canada. The Forum conducts a wide range of programmes of mutual cooperation designed to help develop best practices in countries with federal systems of government around the world.

**The Forum's** activities focus mainly on "practitioners" – people who work in the field. These may be elected officials, civil servants, consultants, academics, and others with a practical interest in the challenges of governing in federal systems.

The Forum also works in countries that wish to explore the *possibilities* of the federal model.

And we have a number of programmes specifically aimed at youth – in particular, young practitioners of federalism.

The Forum's first major event was a large international conference on federalism in an age of globalization, held at Mont-Tremblant, Québec, Canada, in 1999.

Since that time the Forum has developed a series of projects working with practitioners in a wide variety of countries, including Nigeria, Brazil, Mexico and Canada. In those projects, we work on issues of federal governance through workshops, roundtables and other knowledge-sharing activities.

The Forum also looks to establish continuing processes whereby newly acquired knowledge can be put into practice.

The Forum has an interactive web site: **[www.forumfed.org](http://www.forumfed.org)**

You can find on-line versions of our publications, as well as documentary information on the practice of federalism on the Forum's web pages. The web site has regularly updated information on all Forum projects.

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Postal or Zip Code Country

