

Federations

What's new in federalism worldwide

Vol. 5, No. 3 / October/November 2006

Most significant change in 50 years

Germany reforms federalism



German Chancellor Angela Merkel joined with coalition colleagues Edmund Stoiber, left, and Kurt Beck to strike a landmark agreement

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

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

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

The Forum of Federations

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

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

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

In countries where federalism could be part of a solution to conflicts between ethnic, religious and tribal groups, the Forum also offers its expertise and services. It has significant resources for programs in Sudan and Iraq. It also has been active in Sri Lanka and the Philippines.

The Forum also works with young practitioners and young academics in federal countries and elsewhere to help them create a worldwide network to exchange information and ideas on federal systems.

And the Forum produces a number of high-quality publications and multimedia products, all directed at busy practitioners and others, to make expertise and knowledge accessible and useful to a broad public worldwide.

Canada provided the impetus to get the Forum off the ground. The Forum's inaugural world conference was held in Canada, at Mont Tremblant, Quebec, in 1999. That first conference led to the founding of the Forum as an ongoing institution, based in Ottawa. It also led to the International Conference of 2002, held in St. Gallen, Switzerland with participants from even more countries. The International Conference on Federalism 2005 took place in Brussels, Belgium, and the next conference will be hosted by India in New Delhi in 2007.

After the 2005 Conference, the Forum became even more international. Eight governments have now signed agreements with the Forum and they sit on the Forum's Strategic Council, supporting Forum activities and providing expertise. The governments of countries that have signed to support the Forum are Austria, Australia, Canada, Germany, India, Mexico, Nigeria and Switzerland.

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Cover story: When Germany's reform package for federalism became law on September 1, 2006, it was the biggest change to that country's federal system in more than 50 years. Now Germany joins other federations in which the constituent units – the *Länder* in Germany – have significant powers of their own.
Cover: AP Photo / Fritz Reiss

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From the editor

Germany is in the midst of the mother of all reforms in its modern history.

This is why our cover story for this issue of *Federations* is about how Germany is contending with the disentangling of powers between its federal and state governments.

Federations assigned the task of explaining Germany's emerging form of competitive federalism to Margaret Heckel, the political editor of *Welt* and *Welt am Sonntag* of Berlin. Ms. Heckel writes that federalism had come to be viewed by many Germans as more of an obstacle than an asset.

Federalism is about the sharing of power and this issue looks at how power is brokered in the **United States of America**. As well, we look at how, with looming elections, a sea change might well take place in **Russia**.

John Dinan, a professor at Wake Forest University, explores how the chief policy innovators in the U.S. are the states, not the federal government, which seems incapable of initiating legislation of any significance.

Meanwhile, Russia is heading into a two-year myriad of elections in which President Vladimir Putin is barred by law from running again, and those running for the Duma have to be aligned with one of the political parties. Svetlana Babayeva, executive editor of the Russian magazine *Profile*, tells this story.

Not all marriages are forever. Nick Hawton of the BBC tells us about the relatively smooth process of separation between **Serbia** and **Montenegro**, and how these positive steps contrast sharply with what many fear will be the imminent bitter split between Serbia and Kosovo.

In **Mexico**, Associated Press writer Lisa J. Adams describes a country emerging from a close and acrimonious election in which Felipe Calderone won by a margin of less than 0.6 percentage points.

Spain also is coping with realignments within its federation. With 77 per cent of voters in Catalonia voting for a new deal with Spain, Catalonia will gain powers over economic regulation and culture.

The president of the Forum of Federations, George Anderson, writes that although the outcome of the vote is momentous, most Catalonians appeared more interested last June in the World Cup matches than in the consequences of their recent vote.

Such is summer in Europe.

In **India** and **Canada**, *Federations* looks at progressive government initiatives. In the case of India, the aim of the initiative is to promote affirmative action programs and improve the lives of downtrodden castes. In Canada, a federal initiative relieves entrepreneurs of the headaches and frustrations associated with chasing down the many permits that governments require of new companies.

The Canadian story is told by Carl Stieren, the associate editor of *Federations*. Carl's article describes the BizPaL program – which enables businesspeople to navigate their way through the BizPaL website and determine all the permits they will need from the federal, provincial and municipal orders of government in order to set up shop. The program, which originated in Australia, is popular with entrepreneurs because it saves days of valuable time.

In writing about India, Prof. Ash Narain Roy describes how government-mandated affirmative action programs are providing real educational opportunities and employment prospects to members of lower social castes.

We are told in advertisements for the American Express credit card that "membership has its privileges."

But are the privileges worthwhile? Is **Austria**, and its population of eight million, better off in the European Union, than **Switzerland**, which did not join but whose economy is highly integrated with the EU?

Barbara Beck of *The Economist* weighs the pros and cons of EU membership for the small but wealthy countries, and why Switzerland, with its seven million people, is likely to continue foregoing the privileges of membership.

In the **Philippines**, journalism professor Yvonne Chua portrays a country that has set aside the federalism option for now, but will likely reconsider after it decides whether to adopt a parliamentary form of government rather than its current presidential system.

This issue's Practitioner's Page was written by Bertus de Villiers of **Australia**, who describes how the establishment of the State Administrative Tribunal of Western Australia offers citizens an inexpensive means of challenging government decisions.

Mr. de Villiers is a member of the state tribunal.

Finally, *Federations* magazine recently polled its readers through an online survey asking what they would like to see changed in the magazine. You can read about how these responses will help tailor this publication to the needs of you the reader. 6

Rod Macdonell

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The “mother of all reforms”

German compromise ends standoff on federalism

BY MARGARET HECKEL

September 1, 2006, was the day many German politicians had laboured toward for many years.

On that day, their federal reform — the largest since 1949 — became law. Bavarian Premier Edmund Stoiber dubbed it “the mother of all reforms.”

The guiding principle of the reform was disentanglement of state and federal orders of decision-making. One of its goals had been to make it easier for ordinary people to figure out who was responsible for which law. Since Germany is a federal state, most legislation emanating from the *Bundestag*, the German lower house, had to be accepted also by the *Bundesrat*, the upper house, representing the 16 German states or *Länder*. Very often, the political colours in the *Bundestag* and the *Bundesrat* were not the same and the leaders of the *Länder* governments used the *Bundesrat* as their tool to oppose the federal government. Political stand-offs sometimes replaced collaboration, which led to less than ideal legislation. Even the leaders of the *Länder* at some point had to agree that this system had to be changed. The opportunity for approving sweeping federal reform came when the so-called “grand coalition” of Social Democrats and Christian Democrats stepped into power in autumn 2005: the partners had huge majorities in both chambers of the German legislature.

Länder take on more responsibility

Today, thanks to the reform, the *Bundesrat* has veto power over fewer laws — some say one-third, some say 40 per cent or higher — where it had been an estimated 60 per cent before. In exchange for this, the *Länder* are now solely responsible for education, law enforcement in prisons, the law regulating public demonstrations, paying their bureaucrats and even deciding when to open their shops. There are further changes of course, but these are the most

Margaret Heckel is the political editor of *Welt*, *Welt am Sonntag* and *Berliner Morgenpost*, published by Axel Springer Verlag in Berlin. Before joining Axel Springer Verlag in April 2006, she was political editor of *Financial Times Deutschland* and its Berlin bureau chief.



- AP Photo: REUTERS/Manuela Hartling

*Six-year-olds on their first day of school in Berlin. Will all German children start school at the same age now that the *Länder* control education?*

important. The federal level, on the other hand, assumes more responsibility for nature conservation and water regulation.

In addition to Chancellor Merkel and her key coalition colleagues Edmund Stoiber and Kurt Beck, Interior Minister Wolfgang Schäuble also played a major role in the reforms. All in all, the reform loosened the reins on the *Länder* and allowed them a chance to change from a system of basically cooperative federalism to more competitive federalism. The cooperative federalism practised in Germany had proven to be very expensive: whenever the federal government in Berlin and the *Länder* could not agree on what to do, Berlin tried to buy off the other side. A classic example occurred in 1999 when Chancellor Gerhard Schröder and his coalition of Social Democrats and Greens decided to push a new tax reform through parliament. The *Bundesrat* was at that time dominated by the opposition, namely Christian Democrats, who wanted to derail the tax reform. Schröder tried to woo some Christian Democrat leaders of the *Länder* and succeeded — for example, by promising the Mayor of Berlin (the city of Berlin is a *Land* and has seats in the *Bundesrat*) money for his city in exchange for a positive vote for the tax reform. In this way, the reform passed — but the cost to the taxpayer was much higher than it otherwise might have been. The recent so called Hartz legislation for labour market reform is another case in point. Again, some *Länder* agreed only after the Bund put much more money on the table.

Advent of competitive federalism?

However, there are those who fear that the move towards a more competitive federalism will have its downside. The areas about which they are most concerned are education, environment and the payment of local employees and state civil servants, including teachers and police officers. While some of these fears may be valid, others are an expression of unhappiness with competitive systems in general.



German Interior Minister Wolfgang Schäuble

As an example, take pay scales for state and local employees. Police officers of similar rank and age are paid the same in the *Land* of Bavaria in the south of Germany as they are in Schleswig-Holstein in the north. There are differences between eastern and western Germany, but none within eastern Germany itself — say Thuringia or Saxony. In principle, Bavaria could decide to give new police officers a 10 per cent raise, perhaps because there were too many vacancies and safety in Bavarian streets was deemed to be threatened. It would then be quite possible that police staff from Thuringia and even Schleswig-Holstein might move to Bavaria to work there for the higher wage. Of course, this would worry the finance ministers of both Thuringia and Schleswig-Holstein, if they couldn't follow suit and now had vacancies to fill themselves. In market systems, that's the way things work, but for Germany, it is a new experience that hasn't been put to the test — hence the resistance. Meanwhile, unions are ready to argue the other way around: they fear that standards of pay and working conditions will enter a downward competitive spiral once the *Länder* can make such decisions on their own.

In the area of education, the worry is more that common standards will be given up and replaced by 16 different *Länder* regulations. However, there has been no national curriculum in the past and almost none of the standardized testing common in countries like Great Britain or the United States.

Nonetheless, the *Länder* now have almost complete autonomy concerning their primary, secondary and university systems. Baden-Württemberg, for example, could now decide that all five year olds will attend first grade, whereas neighbouring Bavaria might decide that school should begin only at age seven. The disadvantages are obvious: a family moving from Bavaria to Baden-Württemberg with pre-school children would find itself in trouble. In practice, no sensible education minister of any *Land* would do anything like this. But the potential lines of conflict are there — and they will have to be addressed by complicated negotiation among all 16 education ministers of the *Länder*, including their federal counterpart. And it is clear that such autonomy will have to be followed by more rigorous testing on the national level to make sure that all *Länder* are meeting minimum educational standards. This is, in fact, already happening, prompted also by the shocking figures from the Pisa education study of the Organization for Economic Cooperation and Development

(OECD) — a study that showed Germany as lagging severely behind most industrialized nations in educational achievement.

In the area of the environment, the federal authorities can now work out a national nature conservation law. However, in some aspects the *Länder* can “opt out” or choose not to participate in a federal law. The reason for these strange exemptions stems from the need for compromise: neither *Berlin* nor the *Länder* would give up their rights and so, in some areas, the new federal reform suffers from the same bad compromises that plagued it before. In principle, a big recycling company active in all 16 *Länder* can now hope for common legislation to govern such business in all of Germany. Were things to go wrong, however, the company could also encounter 16 different regulations for their work. Whether common sense will prevail over the individual interests of the *Länder* remains to be seen.

Another area in which the “mother of all reforms” is definitely wanting is finance reform. Finance reform was excluded from the talks because all politicians involved feared that not even the majorities of the grand coalition were big enough for agreement on this extremely controversial subject. There will be talks on finance reform in the future, in a so-called Federal Reform II, but almost no one in Germany is confident that much will be achieved.

The reason for the complicated structure of finance flows between states that has evolved since 1945 is that most taxes, with only a few exceptions, were and still remain under federal legislation. Income tax, for example, is divided among *Berlin* (42.5 per cent), the *Länder* (42.5 per cent) and local communities and cities (15 per cent). Fifty per cent of all corporate tax goes into federal coffers; 50 per

Continued on page 12

Germany at a Glance

Name: Federal Republic of Germany
(*Bundesrepublik Deutschland*)

Capital: Berlin

Constituent units: 16 *Länder*

Central Government:

Head of State: President (*Bundespräsident*)

Elected by: Members of the *Bundestag* and an equal number of members of *Länder* legislatures

Government Leader: Chancellor (*Bundeskanzler* / *Bundeskanzlerin*)

Elected by: *Bundestag*

Lower house: *Bundestag* with 614 members

Elected by: General election with mixed proportional representation

Upper house: *Bundesrat* with 69 members

Elected by: Governments of the *Länder*



Canada's BizPaL tells businesspeople what permits they need

Instant info from a federal system

BY CARL STIEREN

In parts of Canada, a single website informs entrepreneurs about every single permit they will need in order to launch a new business – a kind of federal super-store for businesspeople.

Most of the permit application forms can be downloaded and some can be completed and submitted online.

The website is called BizPaL, an Industry Canada project which began in 2003. In provinces and cities that have taken on the program, businesspersons no longer spend a week or more tracking down all the many licenses required by agencies of the three orders of government, federal, provincial and municipal.

"Our first website launch was in Whitehorse, Yukon Territory, in December, 2005," said Myriam Monrat of Industry Canada. "That's where BizPaL first went online."

The aim of the program is to cover all of Canada with each province and territory online with its own customized BizPaL website.

BizPaL licensing information is currently available for small and medium-sized firms, which represent the largest mass of potential BizPaL customers. For instance, in the food service sector alone, there are thousands of new restaurants starting up each year in a \$38 billion per year industry.

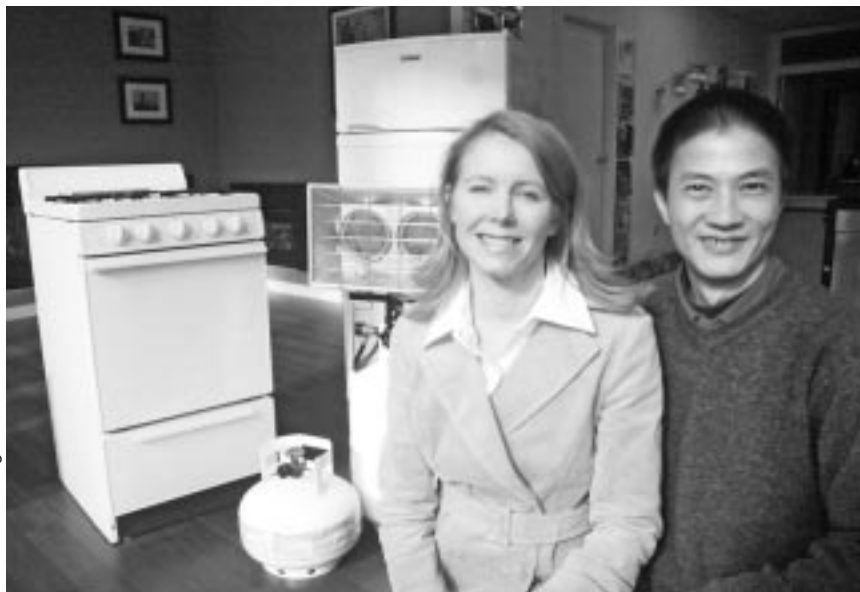
For the user, BizPaL generates a thorough, exhaustive and numbered list of all permits needed by a given entrepreneur, including costs, expected waiting period, inspections, other requirements and downloadable forms.

It is not necessary to be incorporated or a registered partnership to use the service.

Canadian officials got their inspiration for BizPaL from another federation, Australia, whose Business Licence Information System (BLIS), has been operating in every Australian state and territory since October 2006. The BLIS system is an initiative of the Australian government's Department of Industry, Tourism and Resources.

To date, mostly smaller cities have come on-stream, and Monrat is preparing to pitch the virtues of BizPaL to the country's bigger cities. The city of Ottawa is on board though. Its 850,000 population makes it the country's fifth largest city. (Please see sidebar on Carl's Café.)

The businesses that use BizPaL find it a time-saver. William and Susan Chung were starting a new business, Alpine Comforts Hearth and BBQ Products, in Kamloops, British Columbia. There the Chungs identified a market for propane-powered refrigerators, stoves and other appliances for cabins and chalets halfway up a nearby mountain, or to tourist ranches far from a municipal gas line.



Susan and William Chung used BizPaL when starting Alpine Comforts in Kamloops, British Columbia.

William Chung learned about the BizPaL program from city hall and it provided him with a link to permits he had never heard of.

"That way, we know about the permits and can get them so we don't have to pay fines later down the road," he explained. He has since promoted the program to other friends who are starting businesses.

Another business advocate of the program is Kim Solonick, business support officer for Däna Näye Ventures in Whitehorse, Yukon. The organization is an aboriginal-controlled non-profit institution that advises people starting small businesses.

Solonick runs workshops on how to prepare a feasibility study for new start-ups.

"Prior to BizPaL, I used to say, 'Here's the very long list of places you need to visit, including the Canadian Environmental Health Department, the territorial licensing agencies, and so on.'"

Carl Stieren is the associate editor of *Federations Magazine*.

"They went to one office and got one answer (about permits) and went to another office and got a totally different answer."

With BizPaL, you get a consistent answer.

"We used to have a whole week assigned to going out to see what licences and permits they needed," she said. "Now they can get it with the click of a button."

Getting the necessary business permits in Canada can be a complicated task, which is dictated in part by Sect. 91 of Canada's Constitution, which gives the federal government the power to regulate trade and commerce. But since a landmark ruling in 1880, that federal power has been interpreted narrowly.

A number of court cases upheld the provinces' rights over property and civil rights, set out in Sect. 92 of the Constitution. Consequently, permits for local businesses within a province fall under provincial jurisdiction.

In general, Canadian municipalities are empowered to enact bylaws affecting any business carried on within the city, with regard to health and safety, nuisance control or consumer protection. So cities, along with the provincial governments and the federal government, all have powers to require different kinds of permits and licenses.

The first task in promoting the use of BizPaL was to enlist provincial and territorial governments to join the program and start preparing lists of permits and devising mechanisms to keep permit information up-to-date online.

The Yukon Territorial government, the BizPaL pioneer, now has the municipalities of Whitehorse, Dawson City and four other towns online. In Ontario, the City of Ottawa went live on Sept. 25, 2006. The province of Saskatchewan joined in June with its provincial government website and so did Saskatoon, the province's largest city. In British Columbia, the town of Kamloops was the first online. The government of the province of Manitoba and several local municipalities are expected to be online soon.

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Ottawa's BizPaL website shows businesses the licenses they need.

How to licence a café with BizPaL

I have always wanted to open my own restaurant – a place called Chicago Carl's Café in **Ottawa** - where friends can gather and folk singers can perform.

I have the money for the tables and chairs, dishes, cutlery and all the kitchen equipment, but before getting too committed to this dream, I need to find out about all the licenses and permits I will need from the city, the province and from the federal government.

So, I decided to give BizPaL a road test.

I tried it out by first going to <http://www.bizpal.ca/>, and then clicking my way to http://www.ottawa.ca/business/starting/bizpal/index_en.html.

After a couple of clicks more, I came to a list of businesses that included appliance repair, art dealers, motorcycle, boat and other vehicle dealerships, oil and gas pipeline and related structures, restaurants and several other categories of businesses.

I chose "restaurants."

I was then presented with a number of questions, and I clicked "yes" to say I would be doing building renovations, serving alcohol, offering live entertainment, having an outdoor patio, and playing live or recorded music. I clicked "no" to having five or more pool tables. Then I was shown a summary of my responses and asked if I wanted to change anything. When I clicked "yes," my original choices had vanished, and instead of changing one answer, I had to answer the same 20 questions again. This is the only bug I found in the BizPaL website. From my answers, BizPaL told me I would need these permits:

1. Vendor Permit – Ontario
2. Entrance Permit – Ontario
3. Encroachment Permit – Ontario
4. Site Plan Control Approval – Ottawa
5. Building and Land Use Permit – Ontario
6. Liquor Sales Licence – Ontario
7. Food Premises License – Ottawa
8. Building Permit – Ottawa
9. Temporary Encroachment Permit – Ottawa
10. Commercial Sign Permit – Ontario
11. Permanent Sign Permit – Ottawa
12. Temporary Sign Permit – Ottawa
13. Performing Rights Licence – Canada

The federal government licence was the one that surprised me. The website of an agency called SOCAN explained it is an organization that administers the world's entire repertoire of copyright-protected music, and for live music I will have to give SOCAN three per cent of what I will pay my musicians.

BizPaL gave me all my answers in a flash, with no hesitation and saved me from long waits in line at government buildings and city hall. The cost of 12 of the 13 licenses and permits will be about \$2,500 with the exception of the site plan – which could cost between \$1,400 and \$10,000 – if I build an outdoor patio. On second thought, maybe I don't need that patio. Or better yet, I will just hold onto my day job – for now.



Federalism put on back burner

Tug-of-war over constitutional change in the Philippines

BY YVONNE T. CHUA

The Philippines is caught in legal and political battles over attempts to change its constitution. In the eye of the storm are debates over how these changes should be done, and whether the country should replace its current unitary two-chamber presidential system with a unicameral parliamentary form of government.

Amid the scathing exchange between forces for and against charter change, popularly known as “cha-cha,” the initiative to shift the country to a federal system has been pushed to the back burner. But that hardly worries Jose V. Abueva, one of the foremost proponents of federalism and chairman of the 55-member Consultative Commission that submitted proposed constitutional amendments to President Gloria Macapagal-Arroyo last December.

Abueva’s travels around the country as adviser to the Charter Change Advocacy Commission created by Arroyo have convinced him of a clamour among Filipinos for constitutional change and regional government. He sees the confrontations between the national government in Metro Manila and local politicians as a sign that Filipinos are tired of Manila-centric politicians who think they are the only ones capable of running the country.

Several public opinion polls show that the majority of Filipinos still want the right to elect their president directly, a right they could lose in a parliamentary form of government. One survey, however, shows a good number of Filipinos favour the formation of regional governments, the precursors to federal states.

Parliamentary system first, then federalism

But if cha-cha proponents are not campaigning as hard for federalism as they are for the shift to a parliamentary government, it is by design. “The shift to a parliamentary government is already being challenged. If you add on federalism, it will not fly. It’s too drastic, like a double whammy,” Abueva says. “But it’s not as if we have forgotten it.”

So far, two organizations — the citizens’ *Sigaw ng Bayan* (The Nation’s Call) and the Union of Local Authorities of



— AP Photo: Bulit Marquez

Protestors in Manila demonstrate against constitutional changes - “cha-cha” for short.

the Philippines (ULAP) — are campaigning for a shift to parliamentary government through what is known as a people’s initiative for constitutional amendments. A petition for a people’s initiative requires the signatures of 12 per cent of all registered voters and at least three per cent of voters in each congressional district, for a total of five million votes. The two groups say they have gathered nearly 6.3 million signatures. Once the signatures are validated, a plebiscite can be called to amend the constitution.

For technical reasons, however, the federal issue was deliberately excluded from that petition. The two groups had limited themselves to the parliamentary issue, uncertain if their initiative would apply as well to constitutional revision and not merely to amendment, explains Abueva. Revision refers to the Charter’s overhaul, unlike amendment, which covers scattered changes.

Anti-charter-change groups organize

The *Sigaw ng Bayan* and ULAP petition is now tied up in the Supreme Court, awaiting decision on whether a new enabling law is needed to cover a people’s initiative. The high tribunal had ruled in 1997 that the existing law was inadequate. Anti-charter change groups, meanwhile, have filed opposition to the petition, alleging fabricated signatures and “fatal defects.” Only two persons had signed the petition, to which the signature sheets of the voters were attached. Also at issue is the direct involvement of pro-Arroyo public officials in the petition,

Yvonne T. Chua teaches journalism at the University of the Philippines. She was the training director of the Philippine Center of Investigative Journalism from 1995 to 2006.

in the process making it an initiative of the government and not the people.

But cha-cha proponents such as Abueva are pinning their hopes on a second and faster route to constitutional reform: Congress might convene a constituent assembly composed of the House and the Senate, for the purpose of amending the constitution. "If the constituent assembly flies, then we can push all the amendments, including federalism," Abueva says.

The Philippine Constitution requires a vote of three-fourths of all members of Congress to amend the Charter through a constituent assembly. In early September, the Speaker of the House of Representatives, Jose de Venecia, declared he had persuaded 204 members of his 236-strong chamber to agree to a constituent assembly. Not long after, the House committee on constitutional amendments adopted a resolution calling on Congress to change the Constitution through such a mode. Plenary debates on charter change are about to start in the chamber.

This puts the House in direct confrontation with the 24-member Senate. A majority of senators had earlier signed a resolution proclaiming that the Senate and the House must vote separately in amending the Charter through a constituent assembly. The impasse will predictably reach the courts.

Up against the people's initiative and a constituent assembly, cha-cha opponents have stepped up the campaign to thwart moves to revise the Constitution. In the forefront are "STOP Cha-Cha," a coalition of civil society groups, business, academe, church representatives and legislators led by no less than former President Corazon Aquino. "One Voice," is yet another citizens' group led by a former chairman of the Commission on Elections. The country's bishops have also weighed in on

***The shift to a
parliamentary
government is already
being challenged.***

***If you add on
federalism, it will
not fly.***

– Jose V. Abueva

the issue with a pastoral letter endorsing a constitutional convention comprised of elected delegates as the means to revise the charter and to ensure total transparency and widespread discussion and participation.

Most anti-charter change groups resist changes to the Constitution as long as the legitimacy and corruption issues hounding Macapagal-Arroyo remain unresolved. Even federalism stalwart Senator Aquilino Pimentel, author of the law that devolved more powers to local governments, remains

firm in his stand to oppose cha-cha until Macapagal-Arroyo resigns.

Wiretap scandal weakens Arroyo

Arroyo's legitimacy as president was challenged after wiretapped conversations she had with an elections commissioner during the 2004 elections were made public in June 2005. The conversations purportedly show the president with a hand in cheating her closest opponent, famous action star Fernando Poe Jr., by trying to influence the elections commissioner. Arroyo has, however, survived two subsequent impeachment attempts, the more recent of which was in August 2006. Abueva sees the defeat of the second impeachment bid against Macapagal-Arroyo as a sign that the country wants to move on, and he notes the shrinking number of pro-impeachment lawmakers.

At any rate, the House will soon be preoccupied with other things, among these the new proposed Constitution that the House committee on constitutional amendments is set to present for plenary debates. This version is different from the one that Abueva's Consultative Commission finished crafting in December 2005. The House committee's working draft explicitly provides for the establishment of a federal system of government consistent with a unicameral parliamentary system within

ten years of the approval of the constitutional amendments. It envisions the Philippines being divided into "independent states," clothed with powers on national defence, foreign relations and monetary policies.

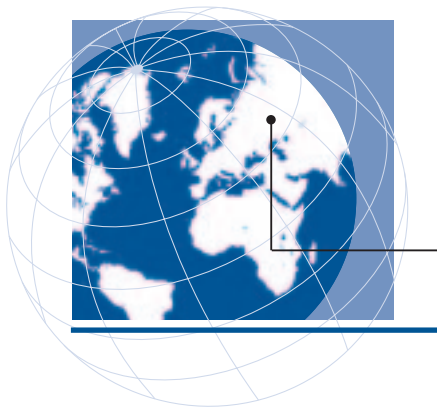
Abueva's version, on the other hand, proposes the establishment of "autonomous territories," to include not only regions but also provinces and highly urbanized cities, as a forerunner to a federal government. The three-step process of creating an autonomous territory includes 1) a petition to Parliament to form an autonomous territory, 2) passage by Parliament of an organic act



– Forum Photo: Carl Siteren

Senator Pimentel (r.) won't support charter change until President Macapagal-Arroyo resigns.

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Russian parties could merge or disappear

Shifting electoral laws benefit Putin

BY SVETLANA BABAYEVA

The October 2006 elections for regional parliaments in nine constituent units of the Russian Federation have launched a major election cycle in the country that will culminate in the spring 2008 presidential elections.

The voters gave a pro-Kremlin party, United Russia, a majority or a plurality of the vote in all nine regions. Each regional legislature now simply must approve or reject the Russian President's nominee for governor.

Presidential election legislation has not changed since 2004 when Vladimir Putin was re-elected for a second term. That is why there are only two intriguing issues regarding the future campaign. The first is who will become Putin's successor. At this point, Minister of Defence, Sergei Ivanov, and former Head of the President's Administration, Dmitry Medvedev, are mentioned as the most likely candidates. Both became vice prime ministers in November last year; both travel a lot across the country with thorough coverage by TV channels. However, President Putin loves unexpected actions, so do not rule out the emergence of a third figure.

A third term for Putin?

Second, Putin himself reiterated that he would not run for a third term (under the Constitution, he cannot stay more than two consecutive terms as President). However, as elections draw near, Putin is experiencing more and more pressure to extend his presidency. The main argument of the advocates for a third term is that Putin has widespread support among the Russian people and that there is no worthy successor to him. Putin's approval rating is now more than 50 per cent according to recent polls.

In 2008 Putin will be 55 years old, not even retirement age, which is 60 for men in Russia. Presumably, Putin will want to be actively involved in some way. But in Russia, with its Byzantine traditions, it will be quite difficult because every new leader discards whatever the previous leader did, including their team.

Two possibilities have been raised that could allow Putin to hold on to power. The first one is the establishment of



— AP Photo: Michal Japionizke

Russian President Vladimir Putin with Duma Speaker Boris Gryzlov seated behind.

a "Union State" with neighbouring Belarus and the election of a President for this new confederation. But the Belarusian President Alexander Lukashenko is not willing to share his power with anyone. Putin himself is also against such a mechanism because it would lead to Russia's international isolation and doom him to the role of a "second Lukashenko." For Putin it is crucial to maintain good relations with the West.

Theories, speculations and elections

Another way for Putin to stay in power would be to declare a state of emergency over all of Russia or within some constituent units. According to the Constitution, in

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such a situation the President can temporarily introduce “partial limitations of rights and freedoms of citizens,” including the postponing of elections. This particular scenario is considered probable by some experts. In a TV phone-in in late October, Putin ruled out a third term but hinted at some form of political involvement.

What may be a lot more interesting is what will happen during the elections just four months prior to the presidential race. Elections for the State Duma — the lower chamber of the Russian Parliament — will take place in December 2007. For the last 15 years, Duma elections have been a reflection of the political palette of Russia.

The previous elections for the State Duma took place in December 2003, also less than four months prior to the presidential race. The main result was the victory of a pro-government party called United Russia, which received roughly 37 per cent of all votes, which, added to its wins in many single-member electoral districts, gave the party more than 220 seats out of 450.

In the years that followed, United Russia’s caucus in Parliament was replenished by new members, both independent deputies and members of other factions who crossed the floor. Eventually, a pro-government “Constitutional majority” of 300 votes was formed in Parliament.

It is this majority that has so significantly changed the legislation on elections that it would be fair to consider it a fundamentally different system of elections that will be tested in December 2007.

So, what are those changes?

- **Abolition of the so-called “proportional scheme.”** Under this scheme, 50 per cent of the seats in Parliament were ceded to candidates elected from party lists, while the other 50 per cent went to deputies competing for a single seat in their electoral districts, allowing representatives of opposition parties to win seats in the Duma. The two largest right-wing opposition parties, Yabloko and Soyuz Pravykh Sil or SPS (Union of Right Forces) — it just so happens in Russia that the right wing is represented by liberals — failed to win more than five per cent of the vote, the minimum threshold for representation in the current Duma. However, some of their members won seats in the Duma thanks to single-seat races in their constituencies. Afterwards, several of them joined the United Russia caucus while others remained independent.

The elections of 2007 will be based solely on party lists. All 450 seats of the Duma will go to candidates chosen by proportional representation from the lists

(The federal government) has so significantly changed the legislation on elections that it would be fair to consider it a fundamentally different system of elections ...

provided by the parties on the ballot. This means that independent candidates will either have to join one of the parties on the ballot or look for a new job.

- **More stringent requirements for parties running for Parliament.**

Specifically, any party must have been in existence for at least one year, must have at least 50,000 members and must have branches with 500 members across the country. When deputies were adopting these standards and voting for amendments to the Law on

Political Parties, their rationale was that traditionally in Russia “caliphs for an hour” would emerge right before elections, i.e. small formations with doubtful reputation and questionable financing. At this point, it is not known how many parties will take part in the elections. The Central Elections Commission of the Russian Federation (the body responsible for conduct of elections) assumes there will be between seven and ten parties.

The main parties are United Russia, which holds a centre-right position, the Communist Party, and the Liberal-Democratic Party of Russia (LDPR), which occupies the niche of conservative and marginal electorates. A liberal coalition is also possible, as well as the participation of the recently formed second pro-government coalition on the left side of the political spectrum, made up of three parties: Motherland, the Party of Life, and the Party of Pensioners. One of the leaders of United Russia, Boris Gryzlov, is the Speaker of the lower chamber of Parliament while one of the new coalition leaders, Sergey Mironov, is the Speaker of the upper chamber of Parliament.

- **Raising the threshold for political party representation in Parliament from five per cent to seven per cent of the vote.** This move is perceived to significantly lower the chances of the liberals — SPS and Yabloko — to win seats in Parliament. The public associates the liberals with the painful reforms of the 1990s, which is why they do not have vast popular support; the Kremlin does not like the liberals much either, so they cannot count on its administrative resources, such as appearances of their leaders on TV or at meetings with the President.

After the last elections, the liberal parties’ share of the vote did not even meet the five per cent threshold for representation in Parliament. When representatives of pro-government parties voted in favour of raising the bar in upcoming elections, their reasoning was that the new barrier would encourage creation of several large parties instead of hundreds of small ones that voters do not recognize.

With the introduction of the new threshold for representation, officials are making projections about the representation of four, or at most five, parties in a new Parliament. The frontrunner is United Russia, followed by LDPR, the Communists, and members of the new coalition of Motherland and the Party of Life.

- **Deletion of the “none of the above” line on the ballot.** When deputies were passing this amendment they referred to European preference for avoiding such a line on the ballot. Their opponents argued that by checking a box in the “none of the above” line, voters were expressing their attitude towards elections and parties. It is true — Russians even coined a new phrase, “the elections were won by candidate ‘none of the above’”. In some regional and municipal elections, candidate “none of the above” has secured as much as 20 to 30 per cent of the vote, a lot more than any “living” candidate or party.

The trend of voting for “none of the above” has become common in the past five to six years. With Putin’s accession to power in 2000, both the weight and the influence of the state have increased in all aspects of Russian life, while, at the same time, government institutions have been steadily losing credibility. This trend is even more pronounced in the constituent units. In Russia, people traditionally like to believe in the possibility of finding a kind-hearted tsar. That is why voter turnouts during presidential elections are much higher than during municipal elections.

Yet according to recent surveys of the Levada Center, only one per cent of respondents think that they personally influence the life of their country, whereas 87 per cent are certain that they are excluded from the decision making. Moreover, when Parliament discussed deleting the “none of the above” line, some experts suggested that the members of parliament were eyeing future federal elections. What if people are disappointed with all the candidates and decide to express their opinion by voting for “none of the above”?

- **Observers at polling stations.** From now on voting and vote counts will be overseen exclusively by observers who represent registered candidates; i.e., in the context of parliamentary elections, observers will represent only the parties that are running. International observers can be invited by the President, the federal government, the Central Elections Commission or the Chambers of Parliament.

A law on “extremism”

It is likely that deputies will decide to adopt more amendments to the election legislation. For instance, last summer new amendments to the law on extremism were actively discussed. The final definition of extremism was so blurry that it could imply virtually any pre-election activities. “Extremism” could be interpreted as calls for discord, obstructing the activities of government bodies, slander and so on. In practice this would mean that any party could be removed from the race and the administration could exert serious pressure on mass media and

even have them closed by interpreting any criticism as slander. The bill became the subject of animated discussions at large and in the media. As a result it was partially softened. However, even deputies and senators themselves admit that the term “extremism” requires further clarification.

This is all to say that future parliamentary elections in Russia will be radically different. Many experts, including staff of the Central Elections Commission, think that it is already possible to predict the composition of the new Parliament. According to these insiders, about 30 to 35 per cent of the vote will be won by United Russia; the Communists will win around 10 per cent; LDPR will get 10 to 12 per cent; the Motherland-Party of Life block will win 12 to 15 per cent; and the rest will be won by smaller blocs.

Mistrust of government

Nevertheless, despite Russia’s political, economic, and social stability and the benefits of high oil prices, various strata of society are dissatisfied for several reasons. The first reason is the poor performance of institutions such as law enforcement bodies, courts and regional governments. Another reason is that the people of Russia still have a strong urge for social equality, which manifests itself in hatred towards the rich, for example. Lastly, xenophobia is also on the rise. In the summer of

Russia at a Glance

Name:	Russian Federation
Capital:	Moscow
Constituent units:	89 regions (21 republics, 6 krais, 49 oblasts, 2 cities of federal significance, 1 autonomous oblast, 10 autonomous okrugs)
Central Government:	
Head of State:	President
Chosen by:	Universal suffrage
Government Leader:	Prime Minister
Chosen by:	Appointed by the President with consent of the State Duma
Lower house:	State Duma with 450 members
Chosen by:	Starting in 2007, general election with proportional representation for all seats
Upper house:	Federation Council with 178 members – two from each of 89 regions
Chosen by:	One appointed by the Governor or President of the region, one elected by the regional legislature

Shifting electoral laws benefit Putin

2006, fifty-three per cent of respondents to a survey by the Levada Centre said they were sure that the number of fascists in Russia had gone up (47 per cent shared this opinion in August 2004, and 37 per cent in October 2005). At the same time, 34 per cent agreed that “people of non-Russian nationalities are to blame for many misfortunes in Russia” (58 per cent disagreed with this statement).

It will not be surprising if these attitudes are reflected during the elections in the form of an unusually high percentage of votes in favour of certain parties, or large numbers of spoiled ballots or low voter turnouts.

This does not mean that such actions will ruin the elections. But parliamentary elections do “lay the groundwork” for the next political cycle and they do reveal social attitudes. If the attitudes of the public do not turn out as positively as many politicians or official spin doctors want them to, they will create a heavy burden for both the next Parliament and for the next President, whoever that will be. And if the October 8 elections are any indication, changes in the federal government — and changes made by it — will have significant effects on Russia’s 89 regions. ⑥

German compromise ends standoff on federalism

cent into *Länder* coffers; Germany’s value added tax, for example, is also divided among the three layers of the state — and is constantly shifting, too. What makes the system even more complicated is that most taxes are also divided among “wealthy” and “poor” *Länder* — with the wealthier obliged to subsidize the poorer. If the poor ones amass too much debt, they have to be bailed out — as were Bremen and Saarland, for example. Many argue that this system leads to collective irresponsibility because the poor *Länder* know that someone will always foot the bill for their “extravagance.”

Yet on Oct. 19, 2006, a verdict from the German Constitutional Court regarding the city of Berlin stated that the city did not deserve a bail-out. Berlin had amassed roughly 60 billion euros of debt and pleaded in court that it couldn’t manage without a contribution from the federal government and the other *Länder*. One of the justices of the court, based in Karlsruhe, took the Berlin slogan, “Poor but sexy” and turned it on its head, saying that perhaps Berlin was sexy because it was not poor. The ruling has effects on the dimension of federal finance reform for the future.

Much remains to be done with federal reform in Germany. In its early years, federalism served the country quite well. As laws got ever more complicated, though, only a few experts knew who was responsible for what and who really had to foot the bill. This situation did not benefit the federal state, as its citizens came to see federalism more as an obstacle than an achievement. It is promising that after so many years, Germany has finally embarked on federal reform. And it would be more promising still if the country could find the courage to embark on federal finance reform as well. ⑥

Instant info from a federal system

The provinces and territories are responsible for their own data, and they receive reminders to update their information from Industry Canada.

The next milestone for BizPaL is to reach critical mass, Montrat explained. “We want to reach 60 per cent of all businesses starting up in the next two years.”

Statistics Canada reports that there are approximately 135,000 businesses started in Canada each year, that would mean reaching 80,000 businesses per annum.

By enlisting the support of the Canada Federation of Independent Business, the new service had a key ally. “They supported us because one of their main concerns was responding to red tape and paper burdens of their members,” she said.

Signing up new provinces has been a game of dominoes.

“When Saskatchewan joined, they looked at how Ontario did it by region and they leveraged some of that information,” Montrat said, “And British Columbia looked at what Saskatchewan did and they liked what they did and looked at how they did it. People in the partnership are helping one another.

Clearly, BizPaL is off to a significant start. Proof of its initial success came in June 2006, when BizPaL won the Government of Canada’s Public Service Award of Excellence. The award was for the launch of the business-friendly innovation and for delivering quality service to citizens and businesses.

But the real test will be in getting all the provinces and territories to buy into the system. Right now, the service is free for participating governments. Starting April 2007, provincial governments will be expected to pay a share of the cost of the BizPaL operations. “We want it to be sustainable,” said Montrat.

It’s a worthy goal. ⑥



Montenegro's separation took place peacefully

Serbian parliament approves new constitution

BY NICK HAWTON

In the Chamber of the Serbian Parliament, the deputies stood and applauded, and the president and prime minister shook hands. It was Saturday night, Sept. 30, 2006, and the special session of Parliament had just unanimously approved a new draft constitution. President Boris Tadic said it was the first time in 50 years that broad political agreement had been reached on such an important issue. Serbian voters approved the constitution in a referendum on October 29.

The constitution guarantees democratic, religious and minority rights, including the separation of church and state, but the preamble contains an omen for future negotiations with the UN over Kosovo: it states that Kosovo is "an integral part of the territory of Serbia."

Indeed, it was an historic moment. For seven years, Serbia has been on a political roller-coaster as it experienced war, sanctions, revolution, the assassination of a prime minister, coalition government, the hunt for war criminals and the final break-up of the former Yugoslavia. The approval by Parliament of a new constitution, which still has to be approved in a national referendum, finally updates the legal and political framework inherited from the days of

Slobodan Milosevic and marks an important watershed in modern Serbian history.

But the political upheaval is not necessarily over and important questions still remain. How are Serbia and Montenegro dividing up the spoils of marriage? What will be left of their federal union? On the immediate horizon, how will the issue of Kosovo be resolved? Will it be allowed the independence that the vast majority of its people want — or will it remain within sovereign Serbia? And what are the implications for other areas in the region like the Serb-run half of Bosnia, Republika Srpska?

Montenegro votes for independence

It was by the narrowest of margins but the pro-independence campaign in Montenegro was victorious. In the Republic's referendum on May 21, 2006, just over 55 per cent of voters supported independence and the break with Serbia. Most observers were not surprised by the result. The law required a vote of at least 55 per cent for Montenegro to secede.

The State Union of Serbia and Montenegro was the illegitimate child of what was left of the former Yugoslavia. Its parents were political expediency and political

compromise, and its creation was more by default than some grand political design.

By the end of 1995, four out of the six Republics of the former Yugoslavia had formed their own states (Slovenia, Macedonia, Croatia and Bosnia), leaving Serbia and Montenegro on their own. But in the years that followed, Montenegro's political leader, Milo Djukanovic, moved closer to advocating full independence. The European Union became concerned that a new Balkan conflict was on the horizon. Javier Solana, its foreign policy chief, cajoled and encouraged Belgrade and Podgorica to sign the so-called Belgrade Agreement in March 2002, forming the State Union of Serbia and Montenegro, and defusing any potential conflict.

The Union had nominal responsibility for foreign affairs, defence, external and internal economic relations and the protection of human rights and minorities. In fact, the

most visible signs of any "union" were when the national sports teams played, when the army was on manoeuvres or when the flag was flown. The so-called Federal Parliament met rarely.



— Photo: Vlado Marinkovic

In Belgrade, the old Federal Parliament of Yugoslavia has become the Parliament of the Republic of Serbia.

Nick Hawton is the BBC's Belgrade Correspondent. In 2002-05, he was the network's Sarajevo correspondent. He has covered many stories in the region, including the death of Slobodan Milosevic, Montenegro's road to independence and political developments in Kosovo. He also writes for *The Times* of London.

In reality, when Montenegro declared independence this past spring, there was not that much to unravel — rather two bits of wire than a ball of wool. The two republics had been going their own way for some time. They both had separate currencies: Montenegro the euro and Serbia the dinar. They were operating under separate tax and customs systems, and they had separate police forces.

The division of spoils, such as they are, has been relatively amicable, based on the principle that what's in Serbia stays in Serbia and what's in Montenegro stays in Montenegro. State Union buildings and other physical assets have been evenly divided, depending on where they are. In terms of the military, Montenegro, being on the Adriatic Sea, inherits most of the navy (apart from a few patrol boats on the Danube River, which go to Serbia). Land and other assets also are divided on the basis of where they are, there they stay.

This smooth process of separation has been facilitated by three key factors. First, the relatively weak central structures of the State Union's institutions, coupled with their brief life span, simply did not contain the necessary glue to prevent easy division. Second, the Union was created not out of any widespread desire on the part of local politicians, but rather because it was desired by the European Union. And third, the ties between the people of Montenegro and Serbia are very strong, in terms of language, religion and family. It would take a lot more than the break-up of the manufactured State Union to threaten those bonds.

Kosovo: a de facto UN protectorate

The peaceful break between Montenegro and Serbia could hardly provide more contrast to the probable, and

imminent, break between Kosovo and the rest of Serbia. Since the war of 1998-99, which culminated in a NATO bombing campaign of Serbia, relations between Serbs and Albanians have been tense and difficult. There have been outbreaks of violence such as the riots in March 2004 when Albanian gangs attacked Serb communities across the province, leaving 19 dead.

While Kosovo is a province of Serbia, it has, in effect, been run by the United Nations Interim Administration Mission in Kosovo (UNMIK) since June 1999, under the authority of UN Security Council Resolution 1244. The vast majority of the province's 2 million people are Kosovo Albanians, who are keen for independence. The remaining Serbs in the province, perhaps numbering about 100,000, want Kosovo to remain a part of Serbia.

Intermittent talks about the province's long-term future have taken place this year, but there has not been a major breakthrough. The Contact Group, made up of the major powers including the United States and Russia, and which is overseeing developments in Kosovo, has said it would like to see a long term settlement agreed to by the two sides by the end of this year. Tensions in Kosovo itself have been rising during the past few months as a decision on final status nears.

The preamble of the new Serbian Constitution describes Kosovo as being "an integral part of the territory of Serbia." The Serbian government insists it will not accept an independent Kosovo, but is prepared to discuss giving it "substantial autonomy." What this would mean in practice remains unclear and, in any case, is probably largely irrelevant. The Kosovo Albanian political leadership says it will not accept anything less than full independence. It appears to be a zero-sum game and the international community will probably have to adjudicate.

Guarantees for Kosovo's Serbs?

UN envoy Martti Ahtisaari, who has been chairing the final status talks, will make his recommendations to the Security Council in the next couple of months. The Council will then have to make a decision. While no one is saying it openly, it appears Kosovo is likely to be given independence under strict international supervision and with strong guarantees for the minority Kosovo Serbs. One element that could delay a final decision is the likelihood of a Serbian general election around the end of the year.

One curious point is that, although Kosovo is regarded by Serbia as an integral part of Serbia, according to the draft constitution, the Albanians of Kosovo were not allowed to vote in the referendum on the constitution. On Oct. 29, 51.4 per cent of voters in Serbia approved the new constitution in a referendum that saw just over 53% of eligible voters participate. The referendum question included a non-binding preamble stating that Kosovo will remain part of Serbia. Serbia still deems ethnic Albanians in Kosovo to be citizens of Serbia, and the new Constitution says Kosovo is to be considered a part of Serbia. But the vast majority of the population of Kosovo were not given the opportunity to vote in the referendum.

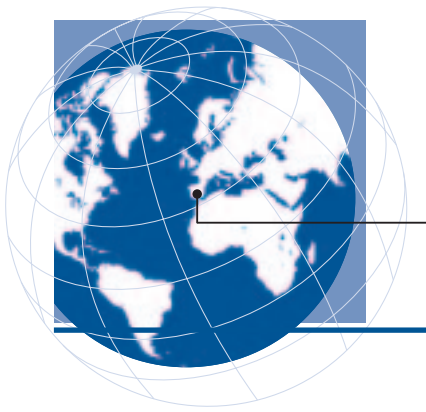
There is one other potential danger: the possibility that Kosovo itself might be partitioned, thus complicating even

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— Photo: Alan Grant

Montenegro's coastline at the Bay of Kotor: Serbia is now landlocked.



Prime Minister Zapatero backed plan

Catalonia votes for more autonomy within Spain

BY *GEORGE ANDERSON*

The evolution of Spain's political system took an important step on June 18, 2006, when 77 per cent of voters in Catalonia approved a new deal between Barcelona and Madrid in a referendum. The deal was designed to reconcile Catalonia to Spain's evolving "federalism." It generated much agitation within the political class. Mariano Rajoy, leader of the national Popular Party, claimed it would be the end of Spain and made six trips to Barcelona to campaign against it. Josep-Lluís Carod-Rovira, the leader of Catalonia's nationalist party, Esquerra Republicana de Catalunya (ERC), led his members out of the Catalan government over the agreement. The deal's great defenders are Prime Minister José Luis Rodríguez Zapatero in Madrid and President Pasqual Maragall in Barcelona, both of whom are Socialists.

Despite this, the Catalan public seemed remarkably unfazed. A visitor to Barcelona saw only a few decorous campaign posters in a city that was far more caught up in the World Cup. Voter turnout was only 48 per cent, taking some of the bloom off the rose of the YES vote.

Catalonians negotiated with Madrid

The package negotiated between Madrid and Barcelona was constrained by the decision to avoid the perils of making it an amendment to the Spanish constitution — which would have required a national referendum. So it tried to address some serious issues through a reform of Catalonia's Statute of Autonomy, approved by the national Cortes (Spain's parliament), the Catalan parliament and a referendum in Catalonia. Some provisions of the new statute are likely to be challenged in the constitutional court.

The new package includes provisions relating to the classic issues of identity, powers and money. Inevitably, the parts that most attracted public attention related to the highly symbolic issues, relating to identity, vocabulary and official languages.

The Catalan government had initially proposed a text that explicitly recognized the "Catalan nation," and asserted Catalonia's uniqueness and the precedence of its laws. While popular in Catalonia, such language would not sell in Spain at large. Barcelona settled for a heavily negotiated, non-judicial, preambular clause that simply takes note of two different views: that Catalonia's parliament has defined it as a "nation" while the Spanish constitution "recognizes the national reality of Catalonia as a nationality." The final text places Catalonia's self-government firmly within the Spanish Constitution, and the judiciable clauses stick to the existing language of "nationality." There is no general precedence for its laws.

George Anderson is the President and Chief Executive Officer of the Forum of Federations.



— AP Photo: Manu Fernandez

Catalan nationalists march in Barcelona for the new Catalan charter.

The agreement declares, "Catalan is the official language of Catalonia," while that of Spain is Spanish. It goes on to assert that each individual in Catalonia has the "right to use and the right and duty to know the official languages." Catalonians are equally divided between those who speak Catalan and Spanish at home. Almost all Catalan speakers also speak Spanish so there has never been an issue about an official status for Catalan outside Catalonia. Some unilingual Spanish speakers in Catalonia and across the country see the new, official status of Catalan — especially as a job requirement in the Catalan courts and civil service — as unfair, even if they are to be helped to learn Catalan. (The Catalan government provides free Catalan lessons for immigrants, but they must pay to learn Spanish.) The language regime for schools requires that all students must study in Catalan for four years, but otherwise they have a choice between Spanish and Catalan.

For politicians, the greatest practical significance of the new deal probably relates to the changes in the powers of the two orders of government. A major complaint of Spain's "autonomous communities" is that the central government has very broad powers to pass basic laws that establish a national framework for a policy area. In this regard, Spanish federalism is similar to Germany's, where the federal government establishes many basic laws that are then

implemented by the subnational governments. However, unlike Germany, Spain does not have an upper house with any kind of effective veto power by the regions on centralizing laws of the national parliament. For this reason, there has been a long debate about redesigning the Spanish upper house along the lines of the German model. In the past, Madrid passed some very detailed laws which the autonomous communities had to implement with little flexibility. The constitutional court has curtailed the worst abuses in this practice.

Devolution or “administrative federalism”?

According to a Catalan minister, the culture in many national ministries is to treat the autonomous communities as subordinates, not partners, in a system some call “administrative federalism.” This can be exaggerated because there has been significant devolution of decision making in areas such as income assistance, health care and education, and there has also been a significant shift of spending and taxation to the autonomous communities. That said, Spain’s system is characterized by strong policy levers in Madrid.

A large part of the new deal attempts to define the respective authorities of the central government and the autonomous communities. Typically this is done *within* a subject area — such as agriculture, water, hunting and fishing, banks, trade, corporations and professions, culture, external relations — so that the provisions tend to be very detailed. There are some surprising powers given to Catalonia for economic regulation in an era when the EU is pushing ever greater harmonization. It is also given a strong role in the sensitive area of culture.

Another big issue, as in most federations, is money and “fair share.” Catalonia is richer than Spain generally and its

The strongest regional identities in mainland Spain are those of the Catalans, Basques and Galicians...

government believes it contributes disproportionately to the rest of the country. The current fiscal arrangements are not transparent and involve numerous distortions and inequities. Furthermore, the regime is complicated by EU contributions to poorer regions, which are now under review.

Catalonia had hoped to get a financial deal similar to that of the Basque country and neighbouring Navarre. For historic reasons, these two autonomous

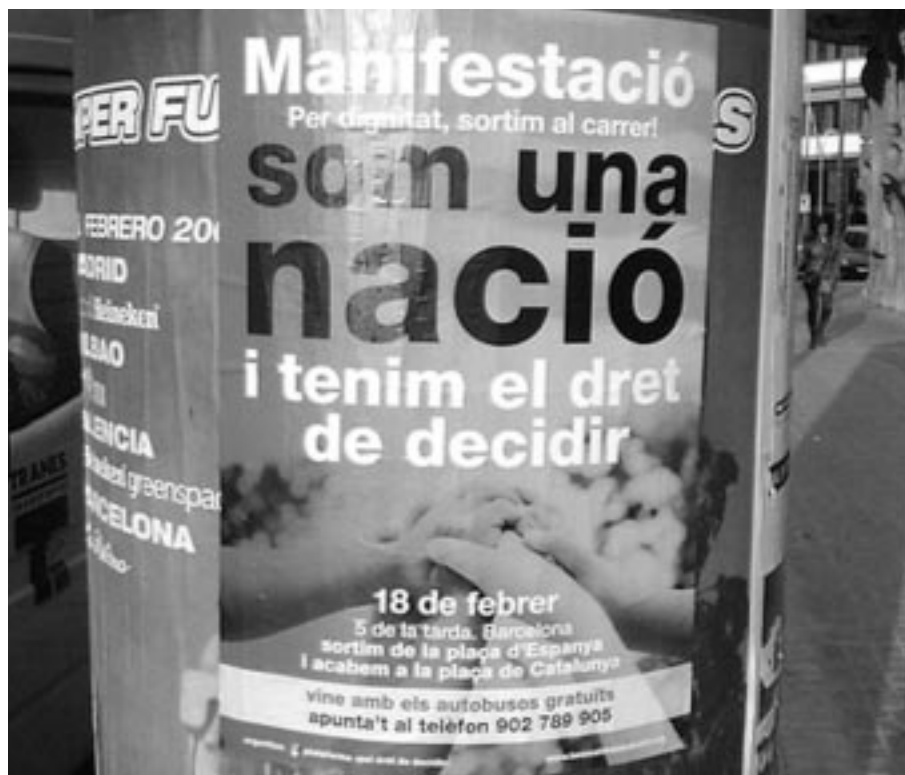
communities collect all personal, corporate and sales taxes in their areas and then transfer a part of them to Madrid. Extending a model that could make Madrid fiscally dependent on the autonomous communities was a bridge too far for Zapatero. The new deal has some modifications to the financial system, but key revenues and taxes will remain with the centre, and implementation of the new provisions will require a new law from the centre. There could be a row over whether this part of the package is constitutional. In any case, Spain’s fiscal regime will need to be revisited, perhaps after the current round of negotiations with the EU on assistance funds for 2007-11.

Avoiding the word “federal”

While most experts would agree that Spain’s political system is now broadly “federal,” those on the right in Spanish politics remain deeply averse to the idea and symbolism of federalism, which they see as undermining Spanish unity. Thus the word “federal” tends to be avoided in official use in Spain. As well, as is the case in some other federations, Spain’s arrangements include some unusual — even non-federal — features. For example, the Constitution provides for autonomous communities, but nowhere are the seventeen communities

listed. Moreover, their powers have been largely determined not by constitutional provisions but through statutes that are negotiated by Madrid and the individual autonomous communities, of which that with Catalonia is the latest. Initially, the historic nationalities — the Basques, the Catalonians, and the Galicians — were favoured with greater powers, giving rise to “asymmetry” in Spanish federalism.

However, other regions, led by Andalusia, objected, so the principle was accepted that whatever some received, all could have (with the important exception of some key financial powers of the historic or *foral* communities of the Basque country and Navarre). Over time, all autonomous communities will want virtually all the substantive powers that go to Catalonia or the others. So asymmetry is largely unstable and tends to lead to symmetry in the long term. Even now, the other autonomous communities — led by



— Photo: Stuart Mudio

Poster in Barcelona says: “We are a nation”.

Continued on page 20



One in and one outside the EU

Austria and Switzerland take different paths

BY BARBARA BECK

Austria and Switzerland have much in common. Both are democracies with federal governments; both are small, with populations of about eight million and seven million, respectively; both inhabit a sometimes hostile Alpine geography in the middle of Europe; and they share a border. But their histories have been very different, and in recent decades each has reached its own accommodation with its European neighbours. For Austria, that has meant membership in the European Union, while for Switzerland, it has led to an emphatic independence and a number of carefully negotiated compromises to enable it to do business with the EU.

Austria was a relative latecomer to the EU, arriving long after the six founding members (Belgium, France, Italy, Luxembourg, the Netherlands and West Germany) signed the Treaty of Rome establishing the European Economic Community (EEC) in 1957. Under Austria's 1955 state treaty that restored its independence after the Second World War, it was required not only to remain strictly

neutral, but also to abstain from any direct or indirect political or economic union with Germany. In 1960, it became one of the founding members of the European Free Trade Association (EFTA) that grouped together Britain, Denmark, Norway, Portugal, Sweden and Switzerland. This provided a framework for dismantling trade barriers without the political obligations involved in EEC membership.

Austria in the "other economic union"

The arrangement proved satisfactory until 1986, when the European Community (EC, its new name after 1965) embarked on a plan for closer integration. Under the Single European Act, it aimed to establish a single internal market within the EC that would allow the free movement of people, goods, services and capital among all its members. The EFTA countries, meanwhile, started negotiations to set up a European Economic Area in the hope of sharing some of the benefits of the single market. But Austria was disappointed by the terms that were offered and decided to pull out.

Thanks to the political changes taking place in Central and Eastern Europe, Austria in 1989 felt able to submit an application to join the EC. Following successful negotiations, more than 66 per cent of its people voted for entry in a referendum in April 1994, and at the beginning of 1995, it became a full member. It embraced the European Monetary Union in 1999 and adopted euro notes and coins in 2002.

For a country that depended on the European Union for about 70 per cent of its trade it seemed to make sense to seek membership. This not only meant that Austria was able to take full advantage of the single European market, but also that it would be able to influence any future developments from the inside. Admittedly, a country with eight million people might not

carry much clout in a union whose member countries have a population of 450 million (and more to come), but it will have more influence than an outsider.



– AP Photo: Donald Stampfli

A woman holds 50 euro banknotes and 100 Swiss francs. Both can be withdrawn from automatic teller machines in Geneva, Switzerland.

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EU expansion to the East affects Austria

Austria arrived in time to get involved in the negotiations for the EU's enlargement to the east, a subject close to its heart. It had mixed feelings about such expansion. On the plus side, the entry of eight eastern European countries in 2004 meant that, for the first time, Austria was entirely surrounded by other EU countries, so it no longer had to police a huge border with non-members. The entry of all those new members also opened up new business opportunities and created jobs at home. On the minus side, the much lower wages and standards of living in the accession countries were seen as bringing more competition and an influx of foreign workers who undercut the domestic labour force.

Austria's doubts about enlargement showed up in a marked decline in the EU's popularity after its accession. Matters were made worse by tight fiscal policies adopted by the government to comply with EU rules and Austrian job losses caused by foreign takeovers. But what caused particular anger in Austria was the EU's collective response to its 1999 elections. These brought big gains for the right-wing, anti-immigration Freedom Party, which was invited into a coalition led by the centre-right People's Party. Fearing that Austria might slide toward right-wing extremism, all other EU countries suspended bilateral contacts in early 2000. This prompted the resignation of the party's colourful leader, Jörg Haider, though the party remained in the coalition. The other EU states eventually resumed normal relations. But the Austrians felt offended by what they saw as interference in their internal affairs. The recent Austrian elections in October gave the Social Democrats a two-seat edge over the conservative People's Party, with whom they were negotiating a coalition in mid-October. The new government coalition is likely to exclude the Freedom Party, removing this particular bone of contention.

In any case, relations with the EU have become somewhat more cordial recently. In spring 2005, Austria ratified the proposed new EU constitution (although its rejection by the French and the Dutch soon afterward in effect killed it off). In the first half of 2006, Austria held the rotating presidency of the EU, which was generally seen as a success and improved both Austria's image in the EU and the EU's image among Austrians. But Austrians still grumble that as EU members they have to go along with everything that is decided in Brussels, whereas Switzerland next door avoids the obligations of membership while still gaining many of the advantages. And other problems might lie ahead. For example, Austria has made it clear it is opposed to Turkish accession to the EU, and might hold a referendum if the EU approves it. If the Austrian people say no, that would create a tricky situation.

Switzerland's special case

But even if Austria's enthusiasm has waxed and waned, the country has at least worked within the EU. Switzerland has preferred to go it alone, instead. That should come as no surprise: the country has always been wary of joining international organizations. Even so, in 1992, having successfully completed negotiations for



Photo: Austrian Chancellor's Office

Austrian Chancellor Wolfgang Schüssel (left) opening the exhibition "Austria in Europe". – Austrian Chancellor's Office

joining the European Economic Area, it actually filed an application for EU membership. But in a referendum later that year, the Swiss people turned down the carefully negotiated EEA agreement by the narrowest of margins. That obliged the Swiss government to put its EU application on ice, where it is likely to remain for the foreseeable future.

Yet Switzerland still had to find a way of doing business with the EU, with which its economy is highly integrated. For many years, it had been in the habit of aligning its legislation in areas such as banking, insurance, competition and product liability with that of its EU neighbours to speed the flow of goods and services. But more co-ordination was needed, and in 1994 Switzerland opened negotiations with the EU on a number of sectoral dossiers dubbed "Bilaterals I." Five years later, agreement was reached in seven areas: the free movement of people; air and land transport; agriculture; technical barriers to trade; public procurement; and research. In 2000, the results were approved by the Swiss people by a two-thirds majority in a referendum.

Swiss sign Bilaterals II with EU

However, it soon became clear that a further round of negotiations was needed ("Bilaterals II"), partly because not all the issues from the first round had been resolved, but more importantly because new ones had emerged. This time, the agenda included Swiss participation in the EU's arrangements for fighting crime and for asylum policy, known as Schengen-Dublin, as well as combating fraud and the taxation of savings. This last item proved particularly contentious because the Swiss felt it would threaten their banking secrecy, an important competitive advantage in their financial services industry. A compromise was eventually reached and the Bilaterals II agreements have now also been signed and ratified. The cantons took part in negotiating Bilaterals II because Switzerland's major constitutional revision of 1999 gave the cantons the right to participate in the making of foreign policy, in particular in international negotiations pertaining to their exclusive powers. This development was intended to offset the gradual loss of cantonal self-

rule due to the pressures of increased international co-operation in bodies such as the EU.

The problem for Switzerland is that the EU is constantly evolving, so the agreements will have to keep being updated, opening up the prospect of never-ending negotiations. Over time, the EU might become less willing to enter into such negotiations and less prepared to make concessions. Meanwhile, Switzerland has no input into the decisions made in Brussels.

Many Swiss argue that despite these drawbacks, Switzerland is actually better off outside the EU. As a member, it would have to pay a hefty annual membership fee (although even as an outsider, it makes a financial contribution in return for access to the EU market). If Switzerland were to join the euro zone, it would also have to abandon its cherished Swiss franc, which might push up interest rates by a percentage point or two. The country's banking secrecy would become increasingly difficult to maintain, and its system of value-added tax would have to be adapted. Even its farmers would be less mollycoddled.

On the other hand, Switzerland would clearly gain from automatic access to a huge market on its doorstep, and from the opportunity to help shape EU policies from the inside. Swiss Europhiles also believe that EU entry would administer a positive shock to their country, rousing it from its complacency, increasing competition and reducing its egregiously high price levels. In recent decades, economic growth in Switzerland has been far

slower than in its European neighbours, including Austria, so the Swiss are no longer much richer than everyone else around. But there are many reasons for that, only some of them related to keeping out of the EU. Indeed, many analysts agree that in economic terms, the advantages and disadvantages of Swiss membership are fairly evenly balanced. In the end, the decision will be a political one. The recent electoral gains of the anti-EU Swiss People's Party have made EU entry in the foreseeable future that much less likely.

But the main reason why Switzerland is likely to stay out for quite some time is its system of federalism and direct democracy. Were it to join, it would have to accept the entire body of legislation on which the existing Union is based — the *acquis communautaire* — without being able to pick and choose. And once in, it would have to fall in with the EU's policies, whether it liked them or not. That would be hard to swallow for a country that invariably consults its people about almost every major decision at every level of government. The Swiss government has commissioned a study, due out this year, to look at the options for its future relations with the EU, but no one is expecting quick results.

The two Alpine republics have found different ways of living with the EU, in one case on the inside, in the other on the outside. Each has made the choice that best suits its political system. Both choices carry risks. But given that both countries remain rich and successful, it would be hard to argue that one is better than the other. ⑥

Continued from page 8

Tug-of-war over constitutional change in the Philippines

establishing the territory, and 3) validation of the organic act in a plebiscite. "Since the principle of federalism is based on self-determination in forming a union, we follow the same principle," Abueva explains.

Autonomous territory proposed

Like the unicameral parliament being eyed at the national level, an autonomous territory would have its own unicameral legislative assembly with primary powers over more than a dozen areas of governance. These include:

- administrative organization, planning, budget, and management,
- creation of sources of revenue and finance,
- agriculture and fisheries,
- natural resources, energy, environment, indigenous, appropriate technologies and inventions,
- trade, industry, and tourism,
- labour and employment,
- public works, transportation (except railways), shipping and aviation,
- health and social welfare,
- education and the development of language, culture and the arts as part of the cultural heritage,
- ancestral domain and natural resources,

- housing, land use and development, and
- urban and rural planning and development.

The final push toward federalism is embodied in the proposed Constitution's transitory provisions hammered out by the Abueva commission. Within one year and after at least 60 percent of the Philippine provinces, highly urbanized cities and component cities shall have joined in the creation of autonomous territories, Parliament, upon petition of a majority of the autonomous territories through their regional assemblies, is mandated to enact the basic law to establish a Federal Republic of the Philippines and transform the autonomous territories into federal states.

Abueva acknowledges that the Consultative Commission's proposal towards a federal government is a far cry from what his Citizens' Movement for a Federal Philippines (CMFP) had originally advocated: the creation of 12 federal states within a 10-year transition period.

"It was a visionary proposal," Abueva says. "But that's the only way. If you want to advocate change, you come out with the ideal. Of course, once you face the politicians, it becomes an area of contest. We were prepared for that, and what happened was a compromise." Obviously, a compromise palatable to this federalist. ⑥

Letter to the editor

India seeks peace

In Federations Vol. 5, No. 2, I read that the federal government in India did something that few other countries are doing these days. They managed to sit down with separatist militants who had been fighting the Indian Army and negotiate a means for settling their differences within a federal system.

The author of the article, "The challenge of peace in Nagaland", Rupak Chattopadhyay, wrote:

"That the Naga ceasefire has largely held for eight years shows the seriousness of the parties' intent to find a solution, as well as the difficulties of finding a solution that meets the aspirations of both sides. The involvement of civil society (especially students, church groups and tribal councils) in the peace process has been significant, symbolizing an intense yearning for peace."

Many years ago, a British Quaker, a long-time Indian citizen and disciple of Gandhi, used her courage and skill to help bring peace between units of the Indian army and insurgents in Nagaland.

Today many world leaders seem less willing to consider negotiations as an alternative to all-out war. But there are successful examples of countries that have done so, without giving in to their opponents.

Why don't the governments of other federal countries fighting brutal and costly civil wars take a leaf from India's new approach and make diplomacy and negotiation their top priorities? It could allow diverse communities to live together peacefully.

Murray Thomson
Ottawa (Ontario) Canada

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Catalonia votes for more autonomy within Spain

Valencia, Aragon and Andalucia — are working to revise their statutes along the lines of Catalonia's new deal, as they did in 1979. However, even if Spain is moving towards a large measure of symmetry, many of the key federal arrangements differ slightly among the autonomous communities, making for something of a legal hornets' nest.

Polls indicate that the strongest regional identities in mainland Spain are those of the Catalans, Basques and Galicians, where the populations all identify more strongly with their local region than with Spain. These very distinctive nationalities within Spain tend to resent other autonomous communities getting the same powers that they have, because that would dilute the symbolic recognition of their distinct national character. However, it has been difficult to maintain such asymmetry, except in a few narrow and typically very symbolic areas.

Opposition to Catalonia's new charter was led nationally by the anti-federalist Popular Party and in Catalonia by the independentist ERC. (Although Spain's national government has no power to approve each region's Statute of Autonomy, national parties can and often do make them national issues.)

In this case, both parties emerged as losers. The Popular Party did not make the gains in national standing that it wished to. And polls suggest over half of the ERC's supporters favoured the deal, despite their leaders' intense opposition. The next test will be Catalan elections in November.

This agreement represents a major accomplishment for Prime Minister Zapatero, but he now confronts the more daunting issue of negotiations with the Basques. By far the most sensitive part of this is that he has undertaken to engage directly with the ETA leadership, who have made a "permanent" renunciation of violence after a long-running insurgency that left more than 800 dead. These negotiations will include how to secure the peace and how to deal with past crimes. At the same time, he is discussing a new deal with the legitimately elected Basque government, which has been advocating a "free association" agreement with Spain in which it would take control of such sensitive issues as identity cards and border controls. Having just negotiated a hard-fought package with the Catalan government, Prime Minister Zapatero will find it difficult to go much further in the Basque country. (6)



President Calderon faces a divided country

Mexican election separated rich and poor states

BY LISA J. ADAMS

The closest election results in Mexico's history — and the loser's refusal to accept them — have thrust Mexico into political chaos, potentially threatening the unity of the federation and the stability of its still-young democratic institutions.

Felipe Calderon, of President Vicente Fox's conservative National Action Party, defeated leftist candidate Andrés Manuel López Obrador in the July 2 election by about 230,000 votes — a margin of less than 0.6 percentage points.

The race was not only one of the tightest ever in Mexico; it was also one of the most bitter.

Calderon portrayed former Mexico City mayor López Obrador as a man with dictatorial tendencies who would bankrupt the country with unworkable populist programs, while López Obrador claimed that Calderon's only goal was to aid the wealthy while ignoring the nearly 50 per cent of the country's 107 million people who live in poverty.

López Obrador demanded a recount

López Obrador claimed that widespread fraud orchestrated by Fox's administration and Calderon cost him the election and he demanded a full recount of the more than 41 million votes cast. The nation's top electoral court refused, instead ordering a partial recount of nine per cent of the 130,000 polling stations where it said there appeared to be evidence of problems.

On Sept. 5, one day before its legal deadline, the Federal Electoral Tribunal declared Calderon the president-elect.

López Obrador, refusing to accept his defeat, instructed supporters to tie up Mexico City's main Reforma Avenue and central Zocalo square with massive tent camps, street marches and symbolic "takeovers" of government offices to protest the alleged widespread fraud that he claims cost him victory. The blockades lasted seven weeks, further frustrating traffic-weary residents of the 20 million-strong capital and costing local hotels, restaurants and stores millions of dollars in losses.

Hundreds of thousands of López Obrador's fans, with a massive show of hands, "elected" him as their "legitimate" president at an Independence Day rally led by the ex-candidate on Sept. 16. His followers pledged to refuse to recognize either Calderon's victory or any government institutions of the "false" republic, and vowed to carry out acts of civil resistance throughout the six-year term of "usurper" President Calderon.

López Obrador will not be recognized as Mexico's leader under the current constitution, by Mexico's existing democratic institutions nor by the vast majority of world leaders, who have sent congratulations to Calderon. Thus, as López Obrador launches a nationwide tour to disseminate his revolutionary message, he has two options: to act as a balancing opposition figure who can pressure lawmakers to change and strengthen the very institutions he decries — or as a gadfly whose only purpose is to throw obstacles in Calderon's way.

The first approach "would strengthen (Mexican) federalism and society," said Ulises Corona Ramirez, a political scientist and federalism expert at Mexico's National Autonomous University. "The second would weaken federalism, because it would divide the society, the country, the states of the republic, and the cities into two opposing camps: 'Those who are with me and those who are against me.'"

López Obrador's so-far intransigent position leaves legislators from his Democratic Revolution Party — elected in the same process he said was rampant with fraud — with a serious dilemma. The party, which has always placed third behind the former ruling

Institutional Revolutionary Party and National Action, surged ahead in the recent election to become the second-



Photo: www.felipe-calderon.org

The winner: President Felipe Calderon during the election campaign

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strongest force in Congress — a powerful position it could use to advocate many of the institutional changes that López Obrador is calling for.

Party members also could be essential in helping Calderon move forward with the numerous fiscal, labour, energy and judicial reforms. Many say the adoption of such reforms are essential for strengthening Mexico's government institutions and the democratic federation as a whole. Fox tried, but failed, to win support for such changes in an opposition-dominated Congress. In the past few years the federal government has reduced its share of expenditures at the subnational level. More than 60 per cent of total expenditures is now spent by state and local governments. However, states and municipalities still continue to be highly dependent on federal transfers.

Calderon needs to build bridges

Calderon might have a better shot, given that National Action now holds the most seats in both legislative houses, while Institutional Revolutionary lawmakers have indicated they are willing to back him on many proposals.

However, López Obrador recently warned Democratic Revolution lawmakers — along with legislators from the smaller *Convergencia* and Labour parties who have joined a new political front on his behalf — to reject all contact with Calderon.

It's not entirely clear to what extent they will adhere to those instructions. Some Democratic Revolution lawmakers and the party's own founder, Cuauhtemoc Cardenas, have publicly expressed doubts about López Obrador's current course of action, saying it is counterproductive for the country and the party.

But other legislators are sticking by him, resisting Calderon's calls to work together in multiparty harmony

The race was not only one of the tightest ever in Mexico; it was also one of the most bitter.

for the good of the country's 31 states and the Federal District of Mexico City.

Instead, they and other party leaders have opted for acts of "civil resistance," the latest of which have included hurling eggs at Calderon's car, staging a mock "closing" of his headquarters, and scattering merchandise around Wal-Mart stores to reject what they say was the unfair influence that wealthy companies exerted to help Calderon win.

López Obrador's "For the Good of All, But First the Poor" campaign — which has involved angry tirades against the rich and Mexico's business community — has exposed centuries-old class and racial divisions and underscored the wide gaps between the northern, well-off states that tend to support Calderon and the southern poorer states that back López Obrador. In Mexico, 10 per cent of the country's households have 42.1 per cent of total national income, while the bottom 60 per cent account for only 23.4 per cent.

State legislatures split among parties

On the state level, the Democratic Revolution Party — commonly known as the PRD from its initials in Spanish — controls six states: Baja California Sur, the southernmost state of Chiapas, the Pacific coast states of Guerrero and Michoacan, the northern state of Zacatecas, and the capital, Mexico City, where López Obrador served as mayor from December 2000 until July 2005. While in office, López Obrador was widely popular, in large part because of his implementation of government subsidies such as discounted transportation and free pension programs for the elderly. Since then, all eight parties in the lower house of Congress have expressed support for expanding the pension program nationwide.

Calderon's party, known by its Spanish initials as PAN, controls nine states, from Baja California and San Luis Potosi in the north to Yucatan in the south.

Calderon — seeking to rally support from the millions who did not vote for him and to strengthen his mandate — has pledged to implement policies aimed at shrinking those gaps, saying the reduction of poverty is among his top three priorities.

He also has promised to form a multiparty Cabinet that takes all views into consideration, and is setting up meetings with various governors.

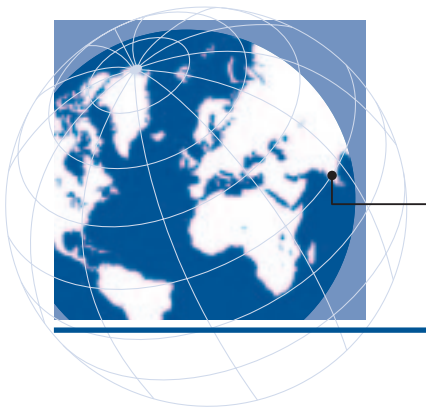
"I want to have a relationship of deep respect and profound understanding with the governors and mayors of all the parties, conscious not only of the political but also the social diversity of each state," he said.



Photo: www.cmla.org.mx

Defeated presidential candidate López Obrador greets his supporters.

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Quotas for marginalized classes

Indian federalism tackles the problem of castes

BY ASH NARAIN ROY

The post-Cold War world has seen a gradual erosion of India and the other nation states and the rise of what Kenichi Ohmae, well-known management guru, calls the "region state." The rise of a region state requires at minimum an international airport, low trade barriers, good logistics infrastructure, top class universities and good quality of life. This is happening within many of the states in India and in the states or provinces of other federal countries.

At the same time, federalism has come of age in India. There is no longer one-party dominance at both the centre and the state governments, as there was in the 1950s and 60s. Consequently, Indian federalism is not as shallow as it once was. The southern states and some western states such as Maharashtra and Gujarat have made rapid strides which has given them enormous bargaining leverage with the federal government.

India is currently the toast of the world, second only to China as the emerging economic superpower of the 21st century. Yet over the years, while India's GDP grew at an impressive rate of about seven to eight per cent, the rich-poor divide also became larger. There is a realization that if India is to emerge as an economic giant, it must have a policy framework to empower the "lower" castes and other disadvantaged sections of people who have suffered from centuries of caste-based oppression.

For those formerly known as "untouchables" and other victims of caste oppression, seats were reserved in parliament and in state legislative assemblies through clauses in India's first constitution when the country became a republic in 1950. These groups were also guaranteed a certain quota of jobs in the public service and places at universities. Another category of intermediary castes, known as the "Other Backward Classes," have now demanded similar benefits. In fact some benefits already exist but the demand today is for quotas or reserved places and jobs in educational institutions as well as in the private sector. In the United States, this sort of program is called "affirmative action". This demand created an uproar and the country recently witnessed prolonged anti-quota agitations.

Northern India cool to quotas

Interestingly, south India remained cool when protests against the federal government's move to provide quotas

Ash Narain Roy is a senior faculty member of the Institute of Social Sciences, New Delhi.



Photo: Wendy Ulrich/Jerry Pratt

Dalit children will now have more chances in India.

for the Other Backward Classes in elite educational institutions raged across north India. The fears raised over job quotas — sacrificing merit, promoting inefficiency, and fuelling caste politics — seem to have no relevance in the south. Decades ago, the southern states implemented quotas for the "backward" communities.

The state of Tamil Nadu provides a quota of 69 per cent in jobs and admission for all courses, including medical and engineering colleges, which goes far beyond the Supreme Court's guidelines that quotas should not exceed 50 per cent of all available jobs or places at university.

If such a practice leads to inefficiency, why is it that Tamil Nadu seems to be a better-governed state? The examples set by the southern states prove beyond doubt that an inclusive society can be achieved through quotas without compromising quality and merit. Despite high quotas, Tamil Nadu has a formidable health-care delivery system. It has won accolades from economists and social scientists, including economist and Nobel Laureate Amartya Sen.

The argument in the northern states is that the quota system has nothing to do with social justice and that it will lead to social fragmentation. They propose instead that what the traditionally oppressed classes need is better schools and skill development. Students from disadvantaged classes suffer from high drop-out rates, low participation in vocational training and low enrolment in higher education. Rather than reserved university places, what students need is a policy to prepare them for medical, engineering and technical institutions. This can be done only through a financial support system.

Indian states have never been as assertive as they are today. It is primarily the result of the advent of coalition governments at the federal level. Recently some ministers in the central government from smaller parties in Tamil Nadu fiercely opposed government privatization in certain sectors and forced the central government to drop its plan. New Delhi can no longer dismiss the government of a state and call for new elections — something that it often did in past decades. A strong state government is able to take on and successfully defy the central government. The authority of the federal government is definitely waning and shrinking. Today, the federal government has to negotiate with state governments where it would once have bullied its way through.

Enacting quotas

Indian federalism has moved beyond textbook formulations. Today, two orders of government will compete to act first or act more forcefully on important issues. For example, by introducing quotas for Other Backward Classes, the Manmohan Singh government in New Delhi hopes to win the support of these communities. It has also resurrected Indira Gandhi's *Garibi Hatao* (Eradicate Poverty) slogan mainly to draw the support of the poor and marginalized sections of people. The state governments do the same on the eve of elections. If the Congress Party swears by the Other Backward Classes, so does the Bharatiya Janata Party. If the one plans a quota for these classes, the other will initiate a higher quota.

Regional parties, particularly Tamil Nadu-based parties such as the *Dravida Munnetra Kazhagam*, and its ally, the *Pattali Makkal Katchi*, have been actively involved in the promotion of the federal government's decision to provide a quota to Other Backward Classes in institutes of higher learning. It is felt that Tamil Nadu has witnessed a great social and educational development thanks to the quota policy in educational institutions. The ruling Congress Party has its own electoral compulsions to push the quota issue. Congress is determined to halt its decline by implementing the quota, and one of two quota bills has already been tabled in Parliament. It would introduce a quota of 27 per cent for students from the Other Backward

Classes in institutions of higher education aided by the government.

Ending marginalization of lower castes

India has inherited, through centuries, a caste-based society. India has a current population growth of 1.3 per cent annually and today 50 per cent of all Indians are under 25 years of age. With these population dynamics, marginalization of any section of society from the market economy will seriously impact India's overall competitiveness and economic prospects.

Muslims, too, have started demanding a quota. But the federal government has turned down the demand for a separate job quota for Muslims on the ground that such a quota violates the fundamental right to equality enshrined in the Constitution. However, the Congress-led United Progressive Alliance has decided to allot 15 per cent of funds for development and welfare schemes for the minorities. It will cover all the nationally declared minorities, including Muslims, Christians, Buddhists, Sikhs and Parsis. The national government now has a Ministry of Minority Affairs. Many in the opposition see it as a Congress Party ploy to win elections.

In India, political parties have sought to cultivate certain caste groups and communal and regional formations by articulating their demands to win electoral favour.

This practice, called "vote-bank politics," has brought narrow and sectarian interests to the forefront over the years. The former "untouchables" and socially and economically backward classes have now become important stakeholders in the national polity. The reserving of a number of seats in the *panchayats* — the village councils — for women and lower castes and tribal groups has given these groups increased political power. Quotas for more and more caste groups and even demands for statehood for a region have been turned into law even when such demands were difficult to justify economically or administratively. In most of the states in India, power has shifted from the so-called forward castes to the middle and lower castes. The rise of the lower castes and the considerable clout they have acquired has changed the very grammar of Indian politics.

Women, lower castes, advance in local governments

That the states have emerged stronger is also an established fact. Healthy regionalism, as opposed to the parochial regionalism of the 1960s, is flourishing. The institution of village self-governance, often referred to as *Panchayati Raj*, now has a constitutional mandate and certain pan-India features. Since the creation and regulation of *panchayats* is a state-level power, every state has passed legislation in conformity with the central government's legislation. But many states also provided quotas for the Other Backward Classes. For example, Bihar has reserved 50 per cent of the



Photo: www.pbse.com/oachappan/tamilnadu

Tamil Nadu's economy has flourished despite quotas.

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The State Administrative Tribunal of Western Australia: Facilitating citizen redress

BY **BERTUS DE VILLIERS**

The state of Western Australia established the State Administrative Tribunal (SAT) in January 2005.

The new tribunal is intended to improve administrative fairness and to simplify review of administrative decisions of the state and of local authorities in the state. Its creation is a practical example of how states in a federation can experiment with institutional development and reform with the aim to better serve the interests and protect the rights of their citizens.

The tribunal has become the most recent laboratory in Australia aimed at exploring ways to simplify review of administrative decisions, introduce informal processes in hearings, encourage aggrieved persons to represent themselves, and expand the accessibility of the judiciary. This follows wide agreement in Western Australia that administrative review had become very complex and confusing since it was vested in numerous bodies, time consuming, costly and suffering from a lack of transparency.

Much has been written about the pros and cons of states in federations being able to develop institutions that suit the needs of their citizens. Although this report does not explore the respective points of view, it is generally accepted that federalism allows flexibility for states in a federation to become a living testing ground for new ideas from which other states may draw lessons.

Characteristics

SAT is empowered by the State Administrative Tribunal Act 2004 of Western Australia to review administrative decisions by the state and local authorities. One key objective is to provide for the review of administrative decisions in a manner that is fair and according to the substantial merits of the case. In doing so, the tribunal attempts to act as speedily and with as little formality as is practicable. For example, more than 90 per cent of

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Photo: Brian McMorrow

Western Australia Supreme Court in Perth: appeals from the SAT can wind up here.

applications are listed for a first hearing within two to three weeks from making the application. The first hearing is used to clarify issues and program the application for a formal hearing or for mediation. In terms of its review function, it may affirm a decision, vary a decision or set aside a decision and substitute its own. The tribunal may also refer a decision back to the decision makers and invite them to reconsider.

The tribunal is interested not only in the fairness of the processes that led to a decision, but also in the substantial merit of an administrative decision. The test of

“substantial merit” sets it apart from many other administrative review bodies where the focus is only on procedural and not substantial fairness.

With its more than 140 Acts of Parliament, as well as delegated legislation, the State Administrative Tribunal is the most comprehensive administrative review body of its kind in Australia. In its administrative review functions, it takes over jurisdiction that previously fell within the purview of the Supreme Court, District Court, Local Court and the Court of Petty Sessions. In addition, the review functions that were previously held by ministers and various other public officials have been transferred to the tribunal.

Practical value

In practical terms, within the short period of its existence the tribunal has contributed to improved administrative review for the people of Western Australia.

It brings administrative review of decisions under a single body and thereby reduces the complexity and cost of maintaining a wide range of ad hoc bodies for review and other purposes. Previously, administrative review was very complex, spread across a large number of bodies and confusing. Now the State Administrative Tribunal offers a one-stop shop with full-time members and a pool of knowledge and expertise.

The tribunal is not a court of law and therefore it is not bound by the rules of evidence or technical legal procedures. According to one expert, tribunals of this nature operate in “some hazy air alongside the system of justice administered by the traditional courts.” However, the tribunal is bound by the rules of natural justice and seeks resolution of complaints according to equity, good conscience and the substantial merits of a case. While it is user-friendly, it reflects the status and appearance of a court of law. In general, parties would feel as if they were in a court of law while, at the same time, being more at ease and relaxed since the processes are informal.

The tribunal provides consistency of decisions and therefore offers greater legal certainty and transparency to the public. It has a high educational value. In many instances in the past, review decisions were not published and therefore inaccessible to the public. Its decisions are published and accessible from its web site and from media reports from time to time. The tribunal has a direct and ongoing impact on improving administrative procedures of government departments and local governments for the benefit of the public.

It ensures that, with minor exceptions, administrative decisions of local and state authorities are reviewable by an impartial and independent body. Public officials are accordingly accountable to the Tribunal rather than to an in-house departmental review forum or review by the responsible minister. The separation between executive and judicial branches of government is therefore clearer.

Administrative Tribunals in Australia

The Australian federal government in Canberra has long had an Administrative Appeals Tribunal, upon which many State Administrative Tribunals were modelled. The State of New South Wales established its own Administrative Decisions Tribunal in 1997 and the State of Victoria created its Civil and Administrative Tribunals in 1998.

Its procedures and processes are intended to be simple and user-friendly. Complainants can be self-represented and the presiding member has a duty to explain to parties, as far as is reasonably practical, the nature of proceedings and any aspect of the procedure. It is estimated that up to 70 per cent of applicants are self-represented. The tribunal is not bound by legal technicalities. This means the general language during proceedings is usually easier to understand for members of the public.

The cost of lodging an application with the State Administrative Tribunal is substantially less than in a court. The point of departure in relation to other costs is that parties are responsible to bear their own cost if they chose to make use of legal representation or call expert evidence. One of the major causes for persons seeking review of decisions, namely the high cost of litigation, is therefore done away with. Only in very rare instances are costs awarded to a party.

One of the main objectives of the tribunal is to settle disputes through mediation. SAT members are trained in mediation techniques and skills. Mediation enables a complainant to engage public officials face to face in circumstances conducive to agreement rather than confrontation and conflict. Discussions held during mediation sessions are private and without prejudice. This further encourages solution-based processes rather than conflict-driven outcomes. The State Administrative Tribunal currently has a success rate of approximately 70 per cent in mediations.

The composition of the tribunal is characterised by the multidisciplinary background of its members. Although most of the 15 members are lawyers by training, the president is required to be a judge of the Supreme Court, while the two deputy presidents are required to be judges of the District Court. Other members come from non-legal backgrounds such as planning, psychology, psychiatry, finance, environment and welfare. This contributes to the tribunal’s pursuing a non-legalistic approach to administrative review. Certain matters can only be considered by legally trained staff.

Continued on page 30



Defying Washington

U.S. state capitols take on policy making

BY JOHN DINAN

State governments have long been seen as the chief policy innovators in the U.S. This is true today, even with, and to some degree because of, unified Republican Party control of the presidency and Congress.

This continuing policy leadership role for states is partly a testament to the tremendous challenge of enacting federal legislation, given the partisan polarization and proliferation of veto points in Washington, in contrast with the situation in many states. As well, a minority party frustrated in its policy aims at the federal level is often able to secure its goals through state governments where it enjoys majority support. Finally, a number of policy areas remain outside of federal control and lodged firmly in the hands of the states, despite continuing efforts to nationalize them.

Face-off against national gridlock

Republican control of the presidency and both houses of Congress for part of 2001, and from 2003 to the mid-term elections in 2006, might have been expected to facilitate passage of national legislation, especially after the 2004 election when Republicans added to their margins in the House of Representatives and Senate. To some degree, this expectation has been borne out, with passage in the 109th Congress (2005-06) of a comprehensive energy policy act, a class-action reform bill and a bill protecting gun manufacturers from civil liability suits, all of which would have encountered more difficulty under divided party government of the kind seen from 1969-76, 1981-92, 1995-2000 and 2001-02.

But enactment of national policy in other areas has proved elusive, either because Republicans are not all on the same page or because of plentiful opportunities for minority party obstruction. And in many of these instances, states have been led to fill in the vacuum.

Illegal immigration is a leading issue where states in 2006 have been forced into action by splits in the Republican majority in Washington. In December 2005, the House passed a bill that focused heavily on securing the border and on requiring employers to verify the legal status of their workers. But in May 2006, the Senate, with the support of President George W. Bush, approved a very different bill that would combine border security and employer-enforcement provisions (which are both quite popular with the public) with a pair of highly controversial plans: a major new guest-worker program and a process to permit most of the 11 million illegal immigrants currently in the country to become legal residents and eventually citizens. Although the usual procedure is to iron out such inter-

cameral differences in a conference committee, there has been a long delay in convening such a committee, resulting in no major immigration law emerging from Congress before the November 2006 elections, thereby boosting state and local government efforts to pass their



Photo: City of Albuquerque, New Mexico

Albuquerque Mayor Martin Chavez launched a free downtown bus in July 2006.

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own restrictive immigration policies instead. In fact, the National Conference of State Legislatures (NCSL) reported that as of July 2006, about 57 immigration-related laws had been enacted this year, far outpacing the state legislative output in previous years. Among other things, these state laws (and local ordinances) deny benefits or services to individuals who cannot prove their legal residence, penalize employers and landlords for failing to check the legal status of workers and renters, and increase penalties for human trafficking.

Minimum-wage policy is another area where gridlock in Washington has prompted state legislators to fill the void. For nearly a decade, the federal minimum wage has been \$5.15 an hour, despite several efforts, mainly on the part of congressional Democrats, to pass an increase. Then, in August 2006, Congress came close to finally accomplishing this goal when the House combined a minimum-wage increase to \$7.25 (favoured mostly by Democrats) with major reductions in the estate tax (favoured mostly by Republicans). However, the bill failed to emerge from the Senate, even though it was supported by a clear majority of members.

The cause of the defeat, as observers of U.S. politics have become all too aware, is the increasing resort in recent years to the filibuster — the practice of obstructing legislation by giving a never-ending-speech — which essentially requires all non-budget measures to obtain support from a super-majority of 60 senators. In this case, Senate Majority Leader Bill Frist could only muster 57 votes in favour of the package, and so it failed. Once again, though, state governments have stepped into the breach, with 18 states now boasting a minimum wage higher than the federal minimum. As well, voters in seven states went to the polls in November 2006 on ballot measures aimed at providing further minimum-wage increases. In one case, California Governor Arnold Schwarzenegger, a moderate Republican, reached a deal with Democratic lawmakers in August 2006 to boost California's minimum wage to \$8 an hour, the highest of any state.

Response to one-party control in Washington

Before the November 2006 elections, the Democrats were already firmly entrenched in a number of state capitols. Democrats held 22 governorships, compared with 28 for the Republicans. As for state legislatures, Democrats controlled both the House and Senate in 19 states, while Republicans control both houses in 20 states, with 10 other legislatures under divided-party control. Nebraska's legislature, the only unicameral body at the state level, is non-partisan.

The fact that Democrats are well represented in many state capitols and enjoy large majorities in several of them, particularly in the Northeast and Far West,

**...twelve states
from the Northeast,
Midwest and Far West
are trying to force the
federal government
to regulate carbon
dioxide emissions
under the Clean Air Act
Amendments.**

provides an excellent opportunity for them to enact policies that are blocked by Republicans at the national level. To be sure, Democrats are still generally the party of centralization and federal power, whereas Republicans tend to favour decentralization and state power more often than not.

But throughout U.S. history, party positions on federalism have been determined as much by pragmatic calculations of political advantage as by principled assessments of the virtues of centralization or decentralization. Thus, it is no surprise that as Republicans have ascended to

power in Washington in recent years, they have embraced centralization in certain respects, while Democrats have gained a newfound appreciation for state governmental innovation in certain areas.

Climate change is one area where Democrats (and some moderate Republicans) have been quite active at the state level in opposition to conservative policies in Washington. The Bush administration and congressional Republicans have hesitated to move quickly, if at all, in mandating reductions in greenhouse gas emissions responsible for global warming.

Not only has President Bush failed to submit the Kyoto Protocol for congressional ratification, but his administration has declined to designate carbon dioxide as a pollutant to be regulated under the Clean Air Act Amendments. Nor have Democratic Congress members had success in recent years in enacting mandatory reductions in greenhouse gas emissions.

But state and local officials have pushed ahead in the face of national Republican opposition. A growing number of Northeastern states are signatories to the Regional Greenhouse Gas Initiative (RGGI), which works toward reducing carbon dioxide emissions from power plants in the region. And in June 2006, the U.S. Supreme Court agreed to hear in its coming term the case of *Massachusetts v. EPA*, where twelve states from the Northeast, Midwest and Far West are trying to force the federal government to regulate carbon dioxide emissions under the Clean Air Act Amendments.

Then, in July 2006, Schwarzenegger, the moderate Republican governor of California, met with British Prime Minister Tony Blair, and they agreed to work together on ways that California and Britain can reduce greenhouse gas emissions. Even local governments have got into the act. The mayor of Albuquerque, New Mexico, Martin J. Chavez, told the Washington Post in August 2006: "Like most mayors, I'm disappointed the federal government has not taken more of a lead on this issue, but so be it. We're moving forward."

Embryonic stem-cell research is another issue where state officials have pressed ahead in the face of conservative opposition in Washington. President Bush announced in August 2001 that he would permit federal funding of research on existing stem-cell lines but would not allow federal funds to support research on stem cells created after that time. Then in July 2006 he used his veto pen — for the first time in his presidency — to block a law seeking to authorize federal funding of newly created stem cells. However, state governments are free to fund this research, and several states have done so, most notably when California voters approved a 2004 ballot initiative authorizing the issuance of \$3 billion in state bonds for such research over the next decade. A number of other states have authorized funding on a smaller scale, including several grants announced in the wake of, and in response to, the president's July 2006 veto. In November 2006, Missourians voted on a constitutional amendment ensuring the continuation of embryonic stem-cell research in that state.

Action in areas outside federal control

Because the federal government possesses limited enumerated powers, states retain sole responsibility for a number of policy areas, as was made quite clear in 2006 in regard to laws governing marriage and land use. In both cases, efforts were made during the last year to centralize the issue and bring about a national resolution, but without success. This left the matters to the states, which have been quite active this year on both fronts.

Same-sex marriage has been a bitterly disputed issue since the Massachusetts Supreme Judicial Court in 2003 interpreted the state constitution as requiring marriage licenses to be granted to same-sex couples, making Massachusetts the only state to legalize gay marriage. Several others permit same-sex civil unions. Although this ruling inspired same-sex marriage supporters to file similar lawsuits in other state courts around the country, it also prompted critics to advocate a federal constitutional amendment to declare marriage in the U.S. to be between a man and a woman, and to prohibit judges from issuing contrary rulings. This proposed Federal Marriage Amendment failed in 2004 to receive the necessary two-thirds votes in the House and Senate to be sent to the states for ratification, and it failed again when it was brought for votes in June and July of 2006. As a result, states are left to decide whether to legalize same-sex marriage, and this question has been at the forefront in 2006 of the state judicial docket and the legislative and constitutional agenda. Supporters continue to press other

States are left to decide whether to legalize same-sex marriage...

state judges to legalize same-sex marriage, though so far without success, including a key defeat in July 2006 when such an argument was rejected by the New York Court of Appeals. Opponents have enjoyed considerable success in working through state legislatures to prevent legalization of same-sex marriage, and they have gone on to cement these bans by enacting state constitutional amendments.

Before this year, 19 states had already enacted constitutional provisions of this sort. Then, in a June 2006 vote, Alabama became the 20th state to approve such an amendment.

Eminent domain is not an issue that one would usually expect to leap to the forefront of the national political agenda, but this is exactly what has happened in the aftermath of the U.S. Supreme Court's June 2005 decision in *Kelo v. New London*. At issue was whether state and local governments are prohibited by the U.S. Constitution from invoking their eminent domain power to condemn private property (with just compensation) for economic development purposes. The plaintiffs in this case, along with supportive interest groups, wanted the court to set a national policy prohibiting such actions. But in a 5-4 vote, the court declined to do so, thereby leaving the matter to the states. Roused to action by a public that had not previously been aware of the full extent of the use being made of the eminent domain power, state governments have responded with a flurry of wide-ranging legislation intended to better protect property owners and limit the use of the eminent domain power. Four states passed such laws in the remaining months of 2005, and 2006 has brought even more activity. The National Conference of State Legislatures reported that as of August, 23 states have passed such legislation in their 2006 session.

Laboratories of democracy

The U.S. states have long been celebrated as laboratories of democracy, by which it is usually meant that policy experiments in some states are later implemented in others, and then at the federal level. But as can be seen from a review of political developments in 2006, state policy innovation also takes other forms, such as providing an outlet for policies blocked in Washington by gridlock or unified party control, and permitting a range of policy outcomes on controversial issues ripe for different treatment in various states. This could be fortunate, given the difficulty of governing such a large and diverse country if the national government would ever come to be seen as the sole policy incubator, with no recourse for proposals blocked in Washington, and if one-size-fits-all solutions were to be imposed on controversial issues over which citizens are bitterly divided. ⑥

Mexican election separated rich and poor states

Calderon is smart to take such a position: The governors — once merely yes-men working for a large party machine that ran the country for decades — today are freely elected and represent not one, but three major parties. They have a great deal of influence over who runs for federal office from their states and over what issues they will tackle once voted into Congress.

State leaders are wrestling with a number of issues for which they would appreciate Calderon's support: job creation, attracting tourism, fighting the widespread scourge of drug trafficking, and restructuring the executive branch's tight control over national resources distributed to the states.

The president has wielded near-total control over revenue, directing excess oil revenue not foreseen in the budget to programs of his choice, including personal publicity spots, while granting more or less of the wealth to states based on their political leanings.

"We have a distribution of federal resources that is not just, egalitarian or honest," Professor Corona said.


Mexico's Congress recently approved a law that aims for a fairer distribution system by giving legislators more say over how funds are handed out and allowing cities to raise their own tax revenues.

If such a system is actually implemented, it could help strengthen federalism in Mexico, said Carol Weissert, a

political scientist at Florida State University in Tallahassee, Florida, who is also editor of *Publius: The Journal of Federalism*. "The fact that it's really coming to the fore is pretty important," she said.

But perhaps one of the issues most likely to have an immediate impact on Mexico's federal system is the crisis in the southern state of Oaxaca, where striking teachers and radical sympathizers have held the streets of the once tourist-friendly capital hostage for four months to demand wage increases and the state governor's resignation.

Despite growing calls for his intervention, Fox — a major supporter of federalism — has said the matter falls essentially under state jurisdiction, and that his office should only serve as an adviser in negotiations, instead of sending in national police or the army to restore order. However, Fox sent more than 4,000 federal police into Oaxaca in October 2006 to put down the protest by teachers and trade unionists. He also is aware that few have forgotten the brutality with which students were massacred by government forces during demonstrations in Mexico City in 1968 and 1971.

If Fox — or Calderon after him — decides to use public force at a time when states are still struggling to assert their independence from the presidency, "It would send a negative message... that maybe the old centralized system is closer at hand than some people thought," Weissert said. 

Facilitating citizen redress in Western Australia

Case studies

The four following case studies show the impact of the State Administrative Tribunal on administrative decision making:


It upheld a decision by the Commissioner of Police that a person can be refused a licence to work as a crowd controller on grounds of outstanding charges of indecent assault. In its decision the Tribunal found that, although it cannot make a finding regarding the criminal charges, the interests of society demand that such serious charges be taken into account to determine if the person is of "good character" to be licensed to deal with vulnerable persons. This decision was upheld on appeal to the Supreme Court in 2005. This decision has set the standard for dealing with similar applications where serious outstanding charges are involved in the licensing of persons who deal with members of the public.

It upheld a decision by the Department of Fisheries to restrict the issuing of fishing licences due to the scarcity of a certain fish resource. The Tribunal took into account the policy considerations that influenced the decision of the department and its obligation to protect scarce resources. The Tribunal accepted that the policy to restrict quotas has serious financial implications for operators and that some persons may miss the quota with a slight

margin, but found that the department acted within its mandate.

It ordered a local government (the Town of Vincent) to pay costs incurred due to its unreasonable conduct in failing to undertake research of its own records prior to issuing a notice. The Tribunal emphasized that a local authority must show due diligence in dealing with the public and ensure that it takes into account its own records before it issues a notice.

It ordered a policy of a local authority to be struck down since it was inconsistent with the town planning scheme. The policy, which required approval of certain types of dwellings, was inconsistent with the town planning scheme that did not require such approval. The applicant could, therefore, erect the dwelling without planning approval.

The establishment of the State Administrative Tribunal shows that experimentation with structures of governance is ongoing, even in one of the older federal democracies of the world. The power of civil servants over the lives of ordinary citizens is immense. The tribunal offers citizens an opportunity to challenge administrative decisions that affect them — without costing an arm and a leg. 

Federations readers like the magazine, want theme-oriented articles: survey

Our recent survey of *Federations* readers has provided invaluable input and advice about what changes you would like to see in the magazine. We thank those who took the time to give feedback and encourage you to keep telling us how we're doing and what emphasis you'd like to see in our stories. (If you didn't get a chance to give your opinions, you can always send us an email or letter saying what you think.)

The survey strongly indicates that while readers appreciate news articles in *Federations*, they want more theme-oriented articles and comparative reports included in the magazine's mix. As a result, starting with the next issue, you will be seeing more theme-oriented and comparative articles.

The encouraging news is that 82 per cent of respondents like the magazine, either somewhat or a lot (49 per cent somewhat and 33 per cent a lot), while only three per cent do not like it. Clearly, the glass is half full but the goal for the editorial group is to increase the number of those who like our magazine a lot.

Most respondents to the survey (81 per cent) were from countries that are federations. The respondents were from 25 countries, including five unitary states: the Netherlands, the Philippines, Britain, Peru and Sri Lanka. The other 20 were Argentina, Australia, Austria, Belgium, Brazil, Canada, Ethiopia, Germany, India, Malaysia, Mexico, Nigeria, Pakistan, Russia, Serbia-Montenegro, South Africa, Spain, Switzerland, Venezuela and the United States.

For reasons we are still pondering, 15 per cent of respondents do not receive the magazine, while according to our records it is supposed to be delivered to their mailboxes. If you fall into this category, perhaps you could let us know how we might solve this problem (perhaps by changing delivery to another mailing address, for example).

There was another anomaly. A full 86 per cent of respondents were males, and only 14 per cent were females. We shall be drilling down to determine the meaning of this disproportionate representation of males among respondents.

Another interesting finding is that more than half of respondents wish to receive the magazine electronically, rather than via the regular mail system. We shall, therefore, be identifying ways of delivering it electronically, but only to those who prefer to receive the magazine through online delivery.

Federations has about 15,000 recipients, about 11,300 of whom receive the English-language version. The Spanish edition goes to 1,000 recipients, almost 700 get the French version and 2,000 receive the magazine in Russian. (The survey was sent by email to about 6,000 English- and French-speaking readers, and 140 replied.)

The following tables provide additional information on the online survey conducted this year between May 28 and July 31.

1. Occupations of respondents

* Higher Education / University	34%
* NGO – Agencies	25%
* Government Administration	24%
Other Sectors, private firms and retired persons	17%

* Eighty-three per cent of respondents were from the academic world, government or NGOs.

2. Contents of the magazine

What you like most	
Feature articles (Comparative case studies on best governance practices)	47%
Analytical articles (Specific issue featuring one Federation at a time)	40%
Briefs (On current news in different federal countries)	13%

3. Frequency of publishing

Three issues per year	
Just frequently enough	64%
Not frequently enough	22%
Too frequently	2%
No opinion	12%

This year it was decided to increase the size of the magazine to 32 pages from 24, and to reduce the frequency of publishing, from four to three issues per year. This has resulted in a savings in printing and distribution costs, and a marginal gain for readers with the addition of a few more articles.

Continued from page 14

Serbian parliament approves new constitution

further the political landscape of the region. Northern Kosovo around the town of Mitrovica is predominantly Serb. Its electricity, water, health and education systems are already tied to the rest of Serbia, rather than Kosovo. If Kosovo does become independent, the people there might be tempted to secede from Kosovo and create a *de facto* partition. The international community and the Albanians have said they would not accept this and the potential for violence is obviously there.

The last of six Yugoslav republics

The political landscape of the former Yugoslavia is simplifying. The six republics that made up Yugoslavia are now six states in their own right. While relations between them are not great, they have been worse. After the trauma of war, sanctions and economic depression in the 1990s, a kind of stability has settled over the region. But no one can say that stability is yet secure or deep-rooted. Threats remain, particularly over the issue of Kosovo. If some sort of deal can be reached, and the threat of violence is kept to a minimum, then that stability might grow.

If there is no deal, and the international community feels obliged to impose a solution, then the future appears more unpredictable. If Kosovo is given independence and boundaries are re-drawn, then there might be other demands for change. The Serbs who live in their self-proclaimed "Republika Srpska" in Bosnia might ask to secede from Bosnia and join Serbia. Albanians living in southern Serbia might do the same and ask to join a newly independent Kosovo. The international community will have to tread carefully and warily if it wants to avoid re-opening the Pandora's Box of Balkan nationalism. ⑥

Continued from page 24

India tackles the problem of castes

seats in each village council for women. In some states, elections to *panchayats* are held on a party basis. Yet even here, regional diversity is distinct.

While some states have transferred the required 29 per cent quota to local government institutions as provided for in the Indian Constitution, others have devolved hardly any power to them. Because of the constitutional amendment for women's representation on *panchayats*, all states have implemented the nation-wide 33 per cent quota for women. But Bihar recently held an election for *panchayats* — after reserving 50 per cent seats for women. Interestingly, there was no agitation in the state against that decision.

It would be naïve to expect the desire for national unity and regional aspirations to be perfectly reconciled, just as there cannot be perfect reconciliation of national identity and regional identities. On the one hand, there is the modern nation state recognized as the main carrier of social and political development, with its matrix of laws, bureaucracy, markets, and communication networks — all of which can also create their own asymmetries and inequalities. On the other hand, there are often competing caste, religious and regional identities that continue to be potent sources of political mobilization. One can only hope the expression of identity doesn't overwhelm the recognition of the nation as the carrier social and political development, and that such development doesn't destroy the one principle on which it rests: the equality of all citizens. ⑥



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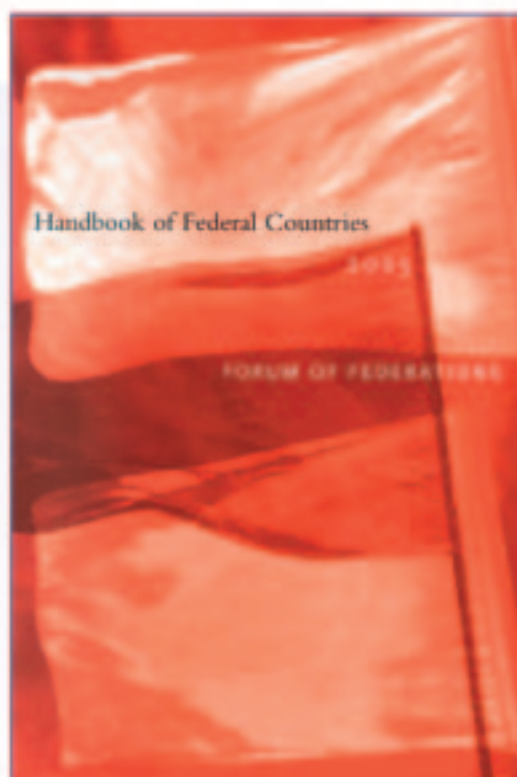
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