

# FEDERALISM AND MULTI-LEVEL GOVERNANCE: COMPARING THE EU WITH OTHER FEDERAL STATES

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In its recent “Whitepaper on Multilevel Governance” the Committee of the Regions puts forward the parameters for promoting multilevel governance as the preferred model or process of coming to binding decisions within the EU. According to the whitepaper, multilevel governance means “coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies.”<sup>2</sup>

The emphasis lies on partnership. Local and regional actors are not longer seen as “intermediaries”, but as partners and actors in shaping EU policy. Politically spoken, to promote multilevel governance is a way of trying to increase the influence of local and regional authorities who frequently have to implement EU legislation but feel that at the same time they are not properly involved in the decision making process.

I will argue that the debate about the future of the EU – and therefore also about the proper role of regions and local authorities within the EU – can be inspired by bringing in comparative experience of non-EU federal countries. Obviously, the EU has a lot to share because of its unique experience in multi-level governance and federalism, respectively.<sup>3</sup> But it can potentially also gain by looking outside the conventional European context: First, by comparing the basic nature and history of the EU with other federal states the discussions on the future of the EU and also about the often proclaimed deficits of the EU can be enriched. Second, new trends of informal and formal relations between the local and the federal level in federal states across the globe can be observed which might inspire the debate about the role of regions in the EU decision making process.

## *EU and Federalism*

Although the EU is not a classical federation it has many federal features. It can be described as a supranational organization, with features both of an international organization, and, increasingly, of a federal system: Despite significant differences, the Council of Ministers

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<sup>1</sup> Director Europe, *Forum of Federations*

<sup>2</sup> *White Paper on MLG*, p.5.

<sup>3</sup> I will use the concepts of “multilevel governance” and “federalism” interchangeably.

now appears to some extent as a second chamber of the legislative power (comparable to the German *Bundesrat*).

The European Parliament, whose members are directly elected, may be compared to the first chamber of the legislative branch. For its part, the EU Commission increasingly profiles itself as a European government: it is politically responsible and formally chosen by the European Parliament even though national governments maintain a major influence on its composition. Also, the EU has a central court.

One of the biggest differences between the EU and other federal systems remains that most of the EU's fiscal issues lie outside its competences, and are thus left for national governments. The EU has a limited budget (less than 1% of GDP) and thus limited means to its "spending power" in areas in which it does not enjoy formal competences.

For decades, the process of European integration has been accompanied by a debate about the EU's deficiencies. Critics usually refer to the opaqueness of its institutions, its remoteness from its citizens, the lack of accountability and the democracy deficit of its institutional arrangements and its policy making process.

Many critics of the EU argue that the most obvious way to overcome the deficits of the EU would be to move beyond the complex "proto"-federalism of the existing EU to a "fully-fledged" European federation. This would entail a clearly set-out separation of powers between different levels of government – EU, member states, regional and local authorities – and a federal executive either directly elected by the people or responsible to a directly elected legislature.

Yet, there is a paradox here. The fiercest critics of the shortcomings of the present EU structure are almost always hostile to federalism. This is because, first, there is the burdensome expression "federal/federalist". Although in federal countries like Germany, Austria and Switzerland the term refers to a strengthening of the second tier of government, the constituent members (*Länder, Cantons, Autonomous Communities*), it means exactly the opposite in Anglo-Saxon countries: namely, the strengthening of the federal government. This goes back to the famous *Federalist Papers* and the founding of the United States: It was the Federalists who argued for a strong central government. Consequently, in some countries, especially the United Kingdom, the word "federal" has become taboo, needlessly distorting discussions surrounding the new European constitution/the Lisbon Treaty.

Secondly, the constitutions of former centrally-governed countries such as Spain deliberately avoid using the term "federal". It was intended not to unnecessarily irritate adherents of the unitary state, although, from an analytical point of view Spain is certainly a *de facto* federation.

A comparative look into the history of federations can shade some light on the federalism debate in Europe. History teaches that federations emerge and are formed through both

centrifugal and centripetal forces. In the academic literature, there is a well known distinction between “coming together” or “building” federations and “holding together” or “dis-building” federations.<sup>4</sup> In this literature, the nature of federalism is not so much explained by the question of centralization versus decentralization but as a question of balance – a balance that moves over time. The American model started very decentralized and has moved furthest towards centralization (despite original intentions). In contrast, Canada has perhaps gone furthest in the opposite direction. It was created as a very centralized federation but has considerably decentralized over time.

The hostility to federalism in the EU is mainly resulting from the fact that the EU, like the USA, is a case of “building” rather than “dis-building” federalism and the fear is that it will end up with a centralized structure similar to the USA. However, one can argue that the EU is grounded in a very different tradition of federalism than the USA and has also very different roots. Here, the Swiss experience is enlightening. Similar to Switzerland, the initial objective of EU integration has not been the creation of a strong central government but the coordination and integration of policy fields under the subsidiarity principle. The oil in the machinery of this model of federalism is cooperation and compromise rather than a clear separation of exclusive powers at different levels of government.

Thus, the key question is not what power should be attributed to which level but instead what is the appropriate balance of *power-sharing* among different levels of government with regard to each policy field. Also, while American federalism is predominantly institutional or constitutional federalism, European federalism – much like Canadian federalism – is predominantly treaty-based procedural federalism.

If it is accepted that EU federalism has different sources of inspiration, than the EU appears not as a case of “proto-federalism” but a case of federalism *sui generis*. Accordingly, in order to address the deficiencies of the EU we might have to look for inspiration outside the conventional wisdom: rather than focusing on a clear separation of powers and a pan-European parliamentary system of representation and governance, the democratic deficit in the EU might be addressed best by improving the procedural elements of European governance: transparency of council proceedings, the further strengthening of the subsidiarity principle, the increased involvement of civic participation; and also, the definition of a proper role for regions and local authorities in the collective European decision making process has to be found.

The “Whitepaper on Multi-Level Governance” of the Committee of Regions is already addressing some of these issues mentioned above. I think that a more intense debate about the nature of the EU and a comparison to other federal states can stimulate the European debate even further.

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<sup>4</sup> See George Anderson, *Federalism: An Introduction*, Oxford University Press, 2008.

### *The Role of the “Third Tier Level” in Federal Systems*

This holds also true if we look more specifically at the role of regional and local authorities. A major trend concerning the EU derives from the impact of the gradual extension of EU competencies which are detrimental to national ones. In federal (or quasi-federal) member states (Austria, Belgium, Germany, Italy, Spain, and to some extent Portugal and the UK) this implies the transfer to the EU of a number of competencies which - in the domestic context - lie within the sphere of the constitutive units of these national federations (*Länder*, regions, *Autonomous Communities*). As a consequence, these subnational or constitutive units also wish to be involved in the European relations (what in the “Whitepaper” is captured by the expression “multi-level governance”).

A more structured involvement of regions and local authorities in the European decision making process began in 1993 with, first, the creation of the Committee of the Regions as a consultative EU organ comprised of constitutive units of the EU member states. Secondly, the EU Treaty henceforth formally authorized the member states who so wish, to be represented within the Council of Ministers by a member of the government of one of their constitutive units (a regional Minister).

The relations within EU member states follow both a top-down as well as a bottom-up dynamic. The first results from efforts by the European Commission to develop relations with the governments of member States or their constitutive units, in order to ensure the effective implementation of EU law or policies. Pursuant to EU law, the Commission is politically responsible before the European Parliament for the proper implementation of EU law and policies. However, the *means* of implementation rest solely with the national governments.

While it has no formal role in implementation, the European Commission plays a very central role in the EU law-making process, since legislative proposals may only emanate from the Commission. Thus, in addition to their formal representation within EU institutions, governments of the member states or their regions develop important - bottom-up - informal channels of influence directed at the Commission. Sub-national entities often engage in multilateral relations, through associations which adopt common positions that are then forwarded to the EU.

Thus, there is a very dynamic direct relation between the EU and local and regional governments and it could be inspiring to compare these relations with the increasing interaction between local authorities and the federal governments in federal states and to bring this experience into the European discourse. Recently a major comparative study about the role of local governments in federal systems has been conducted, that identified some important trends which could inspire the debate of the role of regions in the EU. This joint

project of the Forum of Federations and the International Association of Centers of Federal Studies looks at the role of local government in Australia, Austria, Brazil, Canada, Germany, India, Mexico, Nigeria, Switzerland, Spain, South Africa, and United States.<sup>5</sup>

This study shows that, much like in the EU, given the overlap in responsibilities, extensive financial relations and the need to co-produce services, co-operation between the three orders of government – local, regional, federal – is a necessary consequence. Moreover, extensive collaboration is needed where local governments are required to implement policies and legislation from the other orders of government. In local governments' relations with both states and federal governments, organised local government plays a crucial role in articulating and defending their interests.

Within the dominant constitutional and statutory framework, local governments' primary relationship is with the second tier order. The interaction often reflects a more equal relationship than what the formal legal structures suggest: In Australia, the contradictory situation of municipalities being creatures of statute, yet mostly financially independent, has led to a relationship based on partnership, as reflected in numerous co-operation protocols concluded between local and state governments. In Canada, local governments are described as “policy takers, not full partners,” but there are recent provincial initiatives to involve municipalities in joint planning. Such developments are also found in Mexico and Nigeria.

At the second-tier level, organised local government plays an important role in most countries, voicing the concerns of its members. Indeed, an emerging trend in at least six of the 12 countries in this study is a formalized relationship between local and federal governments. The focus of the federal government's engagement with local government is usually consultation on federal policy or legislation affecting local government. Different modes of consultation can be identified: the most formal mode is local governments' participation in federal institutions through their organised local government representatives. Less formal is the inclusion of local governments in decision-making processes through various consultation procedures.

For example, in Australia, local governments participate in federal intergovernmental forums. Organised local government is a member of the Council of Australian Governments, comprising the executives of the federal and state governments. In Switzerland, the consultation forum is very specific in focus. The Tripartite Conference of Swiss Agglomerations, comprising the federal government, the cantons, and organised local government, promotes vertical co-operation in policy fields relevant to metropolitan areas. Likewise, in Canada, the federal government has signed tripartite agreements with two cities

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<sup>5</sup> See Nico Steytler (ed.), *Local Government and Metropolitan Regions in Federal Systems – A Global Dialogue on Federalism*, McGill Queens University Press, 2008.

and their provinces (i.e., Vancouver and British Columbia, Winnipeg, and Manitoba) on key issues of urban development.

South Africa is unique in that organised local government is a non-voting member of the second house of the national parliament, the National Council of Provinces. It is also a member of the peak intergovernmental relations forum, the President's Coordinating Council, along with the provincial premiers.

In Spain, organised local government participates in two co-operative structures: the National Commission of Local Administration and the General Conference on Local Matters, the latter being a body that includes the autonomous communities. In the United States, Germany, and Nigeria, the interaction is much more informal. Organised local governments act as lobby groups rather than negotiating partners.

These are just snapshots of the intensity of relations and interaction between local authorities and the regional as well as the federal level in 12 countries. Obviously, the EU is much more complex and the experiences of these countries cannot be simply transferred to the EU. But nevertheless, the comparative view outside the European context might inspire thinking about the future role of local authorities and regions within the EU – both regarding informal as well as formal arrangements of interaction between various levels.

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